

## LIVE STREAMING OF COURT PROCEEDINGS: ANALYSING CHECKS AND BALANCES IN THE ERA OF DIGITALISATION

Pritam Kumar\*  
Dipendu Das\*\*

### ABSTRACT

*Indian democracy rests on pillars of transparency, equity and justice for all. Moreover, **Right to Information** is a fundamental right under **Article 19 (1) of the Indian Constitution**. When looked at from this perspective, broadcasting or live streaming court proceedings seems like a step in the right direction. On the face of it, it ensures transparency and provides greater access to a citizen who seeks to expand his knowledge and remain woke about the country's judicial affairs, but the impact of live streaming isn't always positive. It most certainly is not a bed of roses and comes with its fair share of criticisms and backdrops.*

*The history of the subject matter in question dates back to 2018, when a petition was put forth before a three-judge bench to live stream cases of national importance. The petitioners in the case, cited the grounds of transparency and accessibility, which included senior advocate Indira Jaising. Following this, the then Attorney General of India, KK Venugopal introduced live streaming as a pilot project, only in Constitution Bench cases. Cases involving matrimonial disputes, matters involving juveniles, matters of national interest, rape cases, etc were excluded to protect the sanctity and sovereignty of the courts. Just like the two sides of a coin, live streaming comes with its own pros and cons. As long as the cons don't outweigh the merits, it can be an effective tool to promote accessibility and awareness towards the functioning of the Judicial System. Just like any other provision, every right comes with responsibilities, and hence, it becomes crucial to put a system of checks and balances in place to regulate free speech and maintain court decorum.*

*In this research paper, we aim to reflect on-*

- a) The merits and demerits of live streaming of cases*
- b) How it has become a source of entertainment by various streaming platforms*
- c) The checks and balances that need to be put in place and,*
- d) Free speech in contrast with breach of court decorum.*

**KEYWORDS:** *Live Streaming, Judiciary, Digital Courts, Digital Growth, Technology*

---

\* IVth Year, National University of Study and Research in Law, Ranchi Jharkhand.

\*\* IVth Year, National University of Study and Research in Law, Ranchi Jharkhand.

## 1. MERITS OF LIVE STREAMING

In the backdrop of Covid19 we have seen the idiom ‘necessity is the mother of invention’ coming into life. On one side where our economy faced massive backlash due to the lockdown situation, on the other hand we saw the new inventions of various stakeholders of society that were coming up as a rescue to reach out to one another and reduce the currently dominating digital divide. With the acceptance of technology at a better handhold, new opportunities are now opening up. One such opportunity was provided under the leadership of justice U.U. Lalit by allowing public broadcast of court proceedings to target a better flow and accessibility of justice<sup>1</sup>.

Article 21 of Indian constitution which guarantees the right to access of justice, got a new light of focus through this decision. The fundamental goal of this initiative was to reach out to more people through the use of the internet and provide the feeling of easier access to justice. The physical form of court limits the number of attendees and also brings out a sense of restrictiveness of participation of people, in general. However, with this step the judiciary targeted to reach out to every citizen and the use of the internet for the purpose was the best possible method they could use. The stigma and restrictiveness in the minds of the people for participating and reaching out to courts for addressing any need is also expected to reduce with this initiative. This would not only instill the common people’s faith in judiciary but would also bring forward a more progressive form of democracy where participation is the main goal.

This initiative would create transparency along with better accessibility in the working of the judiciary. With the access of live streaming present in any form of internet enabled devices like phone, tv, computer etc. people can easily participate in court proceedings, even from the comfort of their home. This would not only be very cost effective but would also save a massive chunk of time that is often wasted while traveling back and forth. The scope of interruption would also decrease at a substantive amount which would ensure smooth flow of justice<sup>2</sup>.

In the legal field the decision of live streaming of court proceedings would be extremely beneficial for both the lawyers as well as the law students. With the increasing reach of judicial proceedings. Law students could get interested in this comparatively underrepresented subject by observing judicial procedures, hearing

---

<sup>1</sup> The Pros and Cons of Live Streaming Court Proceedings, <https://rlresources.com/2023/04/10/the-pros-and-cons-of-live-streaming-court-proceedings/>, April 10, 2023.

<sup>2</sup> Supriya Mehta, *Many Lawyers None in Courts*, The Softcopy.

genuine arguments from lawyers, and hearing judges ask probing questions. The operation of the court and legal profession will serve as a new focus for the study and research of law professors and legal researchers.<sup>3</sup> This would target the contemporary issue of less students opting for litigation as their career option after completion of their law degree. The online legal proceedings would instill enthusiasm in them and would act as a push for them to venture into litigation as a possible lucrative career option. Moreover, this would create a sense of awareness amongst common people about the legal world and the law aspirants would also get boosted which in turn provide India with more responsible and well aware future law students. The legal practitioners would also benefit from this step as they would now be able to access the judicial proceedings happening around the country at an easier pace and learn more from their counter lawyers. The live streaming would be instrumental for legal research and academicians as their scope of reach would expand immensely, which would reflect in their work, creating superior quality of legal research.

This step would give a scope for a better public scrutiny in regards to the working of the government. The active role of the media, which is considered the carrier of democracy, would be seen. This would strengthen the democratic ethos of the country and increase mass participation and awareness. The gap between the citizen and the government would reduce a lot and the concept of rule of law would be upheld.

## 2. SOME OF THE DEMERITS AND CONCERNS REGARDING THE LIVE STREAMING OF COURT PROCEEDINGS ARE AS FOLLOWS

- Abuse of the Courts' live streaming is possible.
- **Data Privacy & Safety** - The major issue with live broadcasts of proceedings is that if the data is not completely protected, the personal information or identities of victims or defendants may surface online. In divorce conflicts and rape cases, it may implicate issues of national security and constitute as a **violation of the fundamental right to privacy**. Live streaming is not permitted in some situations, like rape, marital cases, etc.
- Complaints are also expressed concerning the whole thing's commercial nature. The contracts with the broadcasters ought to be non-commercial in nature. The deal should not benefit anyone.
- The largest obstacle to conducting live court hearings is infrastructure, particularly internet connectivity. The safety of the court cannot be

---

<sup>3</sup> Supriya Mehta, *Many Lawyers None in Courts*, The SoftCopy, Oct 28, 2021.

guaranteed by third-party software or services. Another issue to be concerned about is the unauthorized usage of live streaming videos because it will be very challenging for the government to regulate it.

- **Installation and Upkeep:** Installing cameras and DCRs in every court in the nation will take a lot of time. A significant difficulty is also the hiring of technical professionals for ongoing technological maintenance.
- **Preparing the Judges and Administrative Personnel** - Because this will be a new change, not only the judges themselves will need to receive training or preparation for such hearings, but also the administrative staff in the courtroom.
- A shortage of technical staff in the courts, as well as understanding and acceptance of the system reform among litigants and advocates. In a developing nation like India, litigants and attorneys from rural areas must deal with the digital gap.
- Inaccurate video footage from the Supreme Court's live webcast may be utilized to mislead the audience. In certain cases, clips have been altered to paint a negative view of judges and attorneys.
- Studies on the live streaming of judicial proceedings in courts throughout the world have revealed that justices operate like politicians and engage to increase their personal visibility. The craving for attention can undermine the effectiveness of Supreme Court hearings and squander priceless judicial resources and time.
- There is a risk that matters will go to a public trial where the public's opinion will affect the judges' rulings. Judges' capacity to make impartial decisions could be impacted by live streaming inadvertently. Judges and attorneys will be reluctant to express criticism out of concern for public response.

### **3. LIVE STREAMING OF COURT'S PROCEEDINGS: A SOURCE OF ENTERTAINMENT**

On August 26, history was created when the Supreme Court's (SC) Chief Justice's Court proceedings were live webcast. The Supreme Court opened the door for live streaming of matters with significance for the nation and the constitution in the **Swapnil Tripathi** decision, rendered in September 2018.

There is a compelling argument for live streaming important Supreme Court cases for the constitution and the country. Numerous facets of people's lives are impacted by such occurrences. Because of this, the public's capacity to participate in this discussion by watching these hearings may improve the public's ongoing engagement with the laws and the Constitution in addition to increasing legal literacy. When low-cost technology enables such live access, such direct

involvement is preferable than a process mediated through some lawyers or court reporters<sup>4</sup>.

There are reasons to exercise caution even as we move forward, though. Social media's introduction transformed every individual into a potential journalist. Since news and perspectives could no longer be restricted by the vested interests of editors and news organizations, this was first viewed as empowering. However, with more than ten years of experience, it is becoming increasingly clear that the absence of editorial oversight has resulted in informational disorder, with propaganda and fake news taking over social media feeds and YouTube. Contrary to original expectations, there is a growing consensus that social media has generally undermined democracy.

There are signs that portions of the legal system that were formerly in the public domain are already vulnerable to sensationalism and misinformation. A few high courts, including those in Gujarat, Karnataka, and Patna, have kept their archived live-streamed footage accessible. They are witnessing edited videos of their events being posted all over YouTube with offensive names. Additionally, there are propaganda videos that are circulated through WhatsApp that use a brief excerpt from a query or observation made by a court or attorney and typically criticize and defame the expert. The majority of these videos avoid accountability by being anonymous.

Any practicing advocate would attest that a court argument is a whole procedure that must be viewed as a whole, rather than through individual questions or comments made during this process. Judges and litigants might self-censor during live-streamed proceedings if elements of the proceedings can be shared in brief, false summaries on social media. The oral proceedings will become sterile as a result, and true courtroom participation will be prevented.

Although individual court rulings are not intended to be well-liked, the judiciary as a whole need to be respected by the people. This makes sense since, although being passed by a popular government, the Constitution mandates the judiciary to invalidate unconstitutional laws and rulings. Constitutional morality, not popular morality, is the standard to which constitutional court judges swear allegiance. Their oath requires them to "uphold the Constitution."

---

<sup>4</sup> Live Streaming| Cases of constitutional and national importance to be live streamed; Supreme Court Rules to be modified suitably: SC, <https://www.scconline.com/blog/post/2018/10/01/live-streaming-cases-of-constitutional-and-national-importance-to-be-live-streamed-supreme-court-rules-to-be-modified-suitably-sc/>.

We must try live streaming SC proceedings because rejecting change outright will only lead to stagnation. It could be possible to find a solution by closely monitoring the live streaming process. Live streaming will enhance constitutionalism across the nation if cases are carefully chosen for live streaming, archived streams are not posted on the SC website until it is technically and legally possible to prevent such videos from being spliced, and other similar efforts that represent an insight of how the public consumes (dis)information are taken.

#### **4. FREE SPEECH IN CONTRAST WITH BREACH OF COURTROOM DECORUM**

Out of all the fundamental rights that are given in the Constitution of India, freedom of speech and expression is the most important yet misused out of all the fundamental rights. In the United States of America, freedom of speech and expression grants all citizens of America the liberty to criticize the government and speak their minds without fear of being censored or persecuted. If we talk about a diverse country like India, Article 19(1)(a) of the Constitution of India says that all citizens have the right to freedom of speech and expression. This implies that the right to express one's own opinions freely, either verbally or through writing. People therefore assume that this right is limitless. Fortunately, or unfortunately, this is not the case. This fundamental right, like other rights, is subject to certain restrictions.

For a country to remain democratic, there are two basic yet important pillars from where it derives its strength. They are freedom of speech and expression guaranteed in the Constitution and the independence of judiciary. The motive of mentioning these is to imply that constructive criticism is essential for the development of democracy and the Supreme Court should protect free speech. But a line needs to be drawn so that constructive criticism does not turn into lowering down the authority of the judges or even obstruct the administration of justice. If this happens, then court has the power to punish such act under the Contempt's of Courts Act, 1971. Section 5 of this act states that fair criticism is not to be termed as the contempt of the court. However, the irony over here is highlighted when judiciary against whom the remark has been made, gets the power to determine whether the criticism was of constructive nature or not.

The most recent case of contempt of court was in 2022, when senior independent journalist and whistleblower Savukku Shankar was convicted in Suo-moto contempt of court for 6 months of imprisonment. He said in an interview that "The entire higher judiciary is riddled with corruption". He argued "I stand by what I said" in the trial. He was sent to jail on 15 September 2022.

The most famous case of contempt of court was in 2020 when lawyer and activist Prashant Bhushan was convicted of this offence. He had released a press photograph of the former Chief Justice of India, Chief Justice Sharad Bobde. In the photograph, he was seated on a motorcycle without a face mask during the Covid-19 pandemic in India. Kulbhushan Jadhav criticized the judiciary for their selective focus in hearing cases during the lockdown. On an order released by the Supreme Court to Kulbhushan Jadhav for apologizing for the comments passed by him, Jadhav declined to do so. A challenge to the constitutionality of the Contempt of Courts Act, filed by Bhushan and others, is still pending.

A similar case was observed in the post-emergency era of the year 1977-78 when two editors- Shamlal of The Times of India and S. Mulgaokar of The Indian Express were charged with contempt of court<sup>5</sup> for their articles in their respective newspapers. In the articles. They questioned the bench which decided the case of *A.D.M. Jabalpur v Shivakant Shukla*<sup>6</sup> which was decided by then Chief Justice of India Justice A K Ray, Justice M H Beg and Justice Jaswant Singh. Both the articles criticized the integrity of the above-mentioned judges. The then government led by Janata Party eased the restrictions and re-established press freedom, which was something these articles took advantage of.

Two separate cases of contempt were instituted suo-moto against both the editors. Both editors chose to contest their matters and a constitutional bench would eventually hold that neither of them acted in contempt of court. It is relevant to note that the two editors commented and questioned the integrity of the judges and the then Chief Justice of India. Yet they were held to be not in the contempt of the court. This goes to show the importance that was given to the freedom of speech and expression of the editors' and the freedom of press as well.

While freedom of speech and expression is a very important right for human beings in order to voice their opinions, contempt of court is indeed one of the reasonable and lawful restriction. None of the fundamental rights granted to us by the Constitution are absolute. One could argue that the ambit of the reasonable restrictions enshrined between clause 2 to 6 of Article 19 of the Constitution of India are so wide that they restrict the very rights that clause 1 of Article 19 grants. However, the objective of including reasonable restrictions was to maintain a balance as our constitution makers knew that if they were to enshrine absolute rights on Indian citizens, dire circumstances would emerge leading to a

---

<sup>5</sup> Explained: In contempt case against Prashant Bhushan, the 'Mulgaonkar principles', <https://indianexpress.com/article/explained/in-contempt-case-the-mulgaonkar-principles-6564785/>.

<sup>6</sup> *A.D.M. Jabalpur v Shivakant Shukla*, AIR 1976 SC 1207.

failure of constitutional machinery. After all, the Constitution of India as we know it is a living document that has survived for over many decades now despite several amendments being made and various foiled attempts to dilute the spirit of the Indian Constitution.

### **5. SYSTEM OF CHECKS AND BALANCES**

The system of checks and balances refers to a way of governance where different organs of the government have the authority to keep a check on the misuse of power of other organs. The aim behind such a system is to ensure that there is no unchecked use of power that may lead to misusing the same. Such a system is usually in constitutional governments. In the Indian context for example the legislature has power to make laws however the judiciary has the authority through judicial review enshrined in article 226 as well as article 227 for high courts and article 32 and article 136 for supreme court<sup>7</sup>. Thus, the judiciary has power to ensure no misuse or ultra vires use of power.

The court allowed live streaming of court proceedings through the judgment of 2018, *Swapnil Tripathi v Supreme Court of India*. The global pandemic of covid 19 acted as a prompt to execute the same. There were some rules put forward subject to this live streaming. As described in the rules it is prohibited to live stream any proceedings on matrimonial cases, cases concerning sexual offences, cases regarding gender-based violence against women, matters involving Prevention of Child Sexual Offences Act, 2012 and cases involving Juvenile Justice (Care and Protection of Children) Act, 2015. Despite clear rules stating that unauthorized usage of the live stream will be punishable under Indian Copyright Act, 1975<sup>8</sup>, Information Technology Act, 2000<sup>9</sup> and other provisions of law not excluding law of Contempt. According to the rules it is not allowed to edit the recordings; they must be kept in the original form.

However, we see many recordings being edited dramatically and published via social media and other video platforms like YouTube. The recording also comes with inappropriate taglines or captions. Thus, court proceedings are exaggerated for the purpose of entertainment and not used for educational purposes as intended by the court. These recordings get viral and do rounds in the society with views hitting up to millions. Such attention garnered to the cases puts a lot of pressure on judges and lawyers. Specially lawyers as people fail to understand they are also humans prone to error and not up to be mocked. A lawyer's

---

<sup>7</sup> System of Checks and Balances, <https://unacademy.com/content/karnataka-psc/study-material/polity/system-of-checks-and-balances>.

<sup>8</sup> Indian Copyright Act, 1975.

<sup>9</sup> Information Technology Act 2000.



professional abilities too may be judged by the people not taking into full idea of previous accomplishments<sup>10</sup>.

Another important thing to note is that judicial proceedings are being watched by people mostly having absolutely zero legal knowledge. Thus, there is a huge possibility that statements made by Judges or lawyers can be taken out of context. This lack of legal understanding of people coupled with intentional attempts to mislead by dramatic effects leads to a disaster.

There are countries like the United Kingdom which have been live streaming for around a decade now. There are no issues regarding the subject as there is little media coverage on these recordings. Occasionally these recordings gather attention on account of cases involving famous personalities. This could be achieved through a robust system of checks and balances.

In terms of the doctrine of checks and balances in India the videos get widely circulated without the publisher being held responsible for the content put forward. The editing of recordings can even tarnish the image of reputed lawyers which hurts their career. However, the publisher of such videos suffers no impact of this loss. In spite of rules and regulations we continue to see such videos being circulated freely and the publishers not facing much legal consequences. Hence there are no preventive measures or remedial measures leading to unbridled use of power.

## **6. LEGAL ASPECTS AND RECENT DEVELOPMENTS IN THE INDIAN CONTEXT**

The Media and Entertainment Industry is inclusive of digital media, print, cinematographic films, broadcasting and films. These are recognized under the Ministry of Information and Broadcasting (MIB); Ministry of Electronics and IT which is further regulated by the Central Bureau of Communication.

Digital Media involves information technology platforms, broadcasting and cable TV sector under Telecom Regulatory Authority of India (TRAI) which maintains interconnection, quality of service and tariff aspects.

When the Cinematograph Act 1952 is read with the Cinematograph (Certification) Rules 1983 (CTN Rules)<sup>11</sup> it intends to regulate registration and licensing by broadcasters, cable networks and statutory bodies.

---

<sup>10</sup> The Public's Right to Know: Live Streaming of Court Proceedings and the First Amendment by Mark Silverstein (2012).

Print is regulated by The Press and Registration Books Act 1867<sup>12</sup> and Registration of Newspapers (Central) Rules 1956 along with the Press Council of India as a statutory body to initiate freedom of press under Article 19(a)<sup>13</sup> of the Constitution.

However, under Indian legality, it is subjected to “reasonable restriction” that their must not be contempt of court, defamation of any government body over irregularities and decency, morality and harmony must be respected and maintained in between India and other countries by respecting the sovereignty and integrity of India.

Reflecting upon a case law, Swapnil Tripathi V Supreme Court of India (2018) enunciates concerns of privacy, confidentiality of litigants and prohibition of trials stipulated by Central or state legislation to maintain and protect larger public interest owing to sensitivity of the case.

The recent amendment is Central Media Accreditation Guidelines 2022 (CMA) guides for essentials for accreditation of working journalists as in situations when they act prejudicial to a country’s security, sovereignty and friendly relations with other countries.

The e-committee releases Draft Module Rules for Live-Streaming and court proceedings where the Supreme Court establishes a judicial system that is more accessible, effective and impartial to give justice to each and every individual with regard to the abrogation of their legal rights in media and entertainment. Further, to ensure greater transparency, inclusiveness and a fair trial; the cases are reflected under Article 21 which signifies the right to access justice by every citizen of India<sup>14</sup>.

Information and Technology Act 2000 recognizes online media companies as ‘intermediaries’ where one person on behalf of another person can receive, store and transmit information or service on record. Data protection and privacy is regulated under the IT Act 2000 which obligates online live streaming services, digital media and specific guidelines in response.

---

<sup>11</sup> Cinematograph (Certification) Rules 1983.

<sup>12</sup> The Press and Registration Books Act, 1867.

<sup>13</sup> Article 19, The Constitution of India, 1950.

<sup>14</sup> The First Amendment and the Right to Live Stream Court Proceedings by David L. Hudson Jr. (2020), Cornell Law Review.