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# **ONLINE STREAMING AND** **RECORDING OF COURT** **PROCEEDINGS**

*AUTHORED BY- SHERON MATHEW PHILIP,  
VARUN RAJ GIRIDHAR AND SARAH SIBY*

## **Abstract:**

The online streaming of court proceedings was an eventuality in the evolution of the Indian Legal system for which the advent of the covid- 19 pandemic set into motion a wheel that was set back by decades of redtapes As expressed by the Hon’ble CJI “We’re just trying to explore the possibilities of a live transcript. It is an experiment. Then we will have a permanent record of arguments. Of course, it will help the judges and the lawyers, but law colleges can also analyze how arguments are made”. We can infer from this that the transfer of legal proceedings from offline to online will not be easy or even ostentatious in the first stages. The Legal system is too diverse or dynamic to be completely uprooted from its conservative procedures that have its pros and cons acquired over centuries. The most obvious of challenges will be technical in nature and the rest can be accounted to logistic and practical misgivings to the ones involved and the ones affected. This paper tries to address the technical challenges that can and will hinder the obvious i.e. redefining of the legal system through technological revolution.

## **Introduction**

The Indian Constitution upholds the social dignity of Indian citizens by establishing fundamental rights. The inherent rights guaranteed by the Indian Constitution that extol the esteem of someone's existence include 'Equality,' 'Freedom,' 'Cultural and academic rights,' 'Freedom of faith,' and 'Constitutional remedies.' But, to what extent do these rights complement each other in terms of managing the results and sustaining India's democratic machinery? The Hon'ble Supreme Court of

India on 26.09.2018 through the Writ Petition (Civil) No. 1232 of 2017 with Writ Petition (Civil) No. 66 of 2018, Writ Petition (Civil) No.861 of 2018 and Writ Petition (Civil) No. 892 of 2018 allowed the 'Live Streaming of Supreme Court caseproceedings on issues being constitutional and of national importance having an effect on the overall publicat large or an outsized number of people'. The Constitution of India through Article 19 (1) (a) confers rightto freedom of speech and expression to a citizen. Right to understand and receive information, it's by now settled, might be a facet of Article 19 (1) (a) of the Indian Constitution. Article 21, on the other hand, confers the Right to Privacy to a person. There's a core relation between Article 19 and also Article 21 which collectively holds the dignity of the 'Live Streaming of Supreme Court's proceedings.'<sup>[1]</sup>

## Genesis

All the Courts were functioning through video conferencing throughout the Covid-19 lockdown and even at this instant. Advocates, the parties, victims etc. are all participating in the court proceedings during the hearing through video conferencing. Also, within the model video conferencing rules as prescribed by the e-Committee of the Supreme Court, it has been only if the overall public is visiting to be allowed to appearat the hearing conducted through video conferencing. The Supreme Court in Swapnil Tripathi v Supreme Court of India (2018) has ruled in favor of opening up the apex court through live-streaming. It held that the live-streaming proceedings may be a component of the correct to access justice under Article 21 of theConstitution. However, the judgment has remained unimplemented. The e-Court Mission Mode Project was conceptualized with a vision to transform the Indian Judiciary through ICT enablement of Courts. TheLearned Attorney General of India Mr. K. K. Venugopal submitted his proposition for live streaming of court proceedings. Mr. Venugopal was retorting to the Writ Petition No. 66 of 2018 filed by Senior Advocate Indira Jaising, who was seeking a declaration for allowing live streaming of the case proceedingswithin the Hon'ble Supreme Court in cases which hold constitutional and national importance. She had alsofocused on framing of guidelines with relevancy for live streaming. The Hon'ble Court held the Ratio Decidendi of the case within the purpose that 'live streaming is basically the use of technology to 'virtually' expand the courtroom beyond the physical four walls of the courtrooms. Technological solutions are oftena tool to facilitate actualization of the correct access to justice bestowed on all and also the litigants, specifically, to produce them virtual entry within the court precincts and more particularly in courtrooms. within the method, an outsized segment of persons, be it entrants within the bar,

journalists, civil society activists, academicians or students of law visiting be able to view live proceedings in propria persona on a real-time basis. <sup>1</sup>Opening the vista of the Courtrooms transcending the four walls to accommodate an oversized number of viewers can epitomize transparency, good governance, and accountability. It absolutely was said that since no one can plead ignorance of law, there is a corresponding obligation on the State to spread awareness about the law and so the developments thereof including the evolution of the law which might happen within the method of adjudication of cases before this Court.

Whereas to imbue greater transparency, inclusivity and foster access to justice, it's expedient to line up infrastructure and also the framework to enable live-streaming and recording of Proceedings. These Rules are framed by the state supreme court of \*Judicature\* within the exercise of powers under Article 225 or relevant statute where applicable, and Article 227 of the Constitution of India. These Rules will apply to the tribunal of \*Judicature\* and to the courts and tribunals over which it has supervisory jurisdiction.

## **Terminology**

Archival Data:

Data archiving is that practice of identifying data that's not active and moving it out of production systems into long-term storage systems. Archival data is stored in order that at any time it may be brought back to service.

Device for Communication:

Denotes a wired or wireless hardware device capable of delivering analogue or digital signals via the phone and other communication methods.

Designated Officer:

Means the Registrar (IT) or the other officer mandated to hold out the function of granting access to copies of Recordings under these Rules.

Hardware:

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<sup>1</sup> Krishnadas Rajagopal, 'Live-Streaming of Court Proceedings crucial for dissemination of information: CJI' The Hindu (New Delhi, July 17, 2021)

Means and includes equipment to be installed for Live-streaming and Recording of Proceedings or any ancillary activity.

IT Committee:

Means and includes a committee constituted by the judge to cope with matters concerning information and communication technology, also stated because the court Computer Committee or e-Committee.

Live-stream:

Means and includes a live television link, webcast, audio-video transmissions via electronic means or other arrangements whereby anyone can view the Proceedings as permitted under these Rules.

Proceedings:

Mean and include judicial proceedings, administrative proceedings, Lok Adalat proceedings, full-court references, farewells and other meetings and events organized by the Court.

Recording:

Means audio and video data of Proceedings stored in electronic format, whether or not it's Live-streamed  
Recording Device:

Means and includes a tool capable of recording images or sound, including but not limited to camera, audiorecorder, video recorder, mobile telephone, or screen recorder.

Registrar (IT):

Means and includes any officer so designated by the judge of the tribunal  
Remote Location:

Means and includes a geographical location, different from the Court Premises, from where Proceedings are conducted.

Transcript:

Means the official written account of the Proceedings published as per the directions of the Court.<sup>2</sup>

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<sup>2</sup> Krishnadas Rajagopal, 'Draft rules for live-streaming, recording of court proceedings out' The Hindu (New Delhi, June 7, 2021)

## **Technical professionals**

A dedicated room (DCR) shall be founded for each court complex. The DCR shall, inter alia, comprise a political candidate of the Court, technical and video recording experts. The DCR will monitor and track Proceedings as they are Live streamed, recorded, and transcribed. The DCR shall make sure that nothing uncivil or inappropriate is streamed within the property right. The coverage of Proceedings are going to be coordinated by the technical experts under the direct supervision of the Registrar (IT) or her/his nominee. The Registrar (IT) and/or their nominee shall be subject to the directions of the IT Committee for the general implementation of Live-streaming and Recording of Proceedings.

Technical expert(s) should be appointed/deputed at each of the Court Premises to facilitate the Live-streaming of Proceedings, in addition to the Court Master and court employees connected to the Bench. The technical expert(s) will work under the supervision of the DCR's overall oversight.

## **Streaming and Archives**

Subject to the exclusions contained within these Rules, all Proceedings are Live-streamed by the Court. The following are to be excluded from Live-streaming:

- i. Matrimonial matters, including transfer petitions arising thereunder.
- ii. Cases concerning sexual offences, including proceedings instituted under Section 376, Indian code, 1860 (IPC).
- iii. Cases concerning gender-based violence against women.
- iv. Matters registered under or involving the Protection of youngsters from Sexual Offences Act, 2012<sup>3</sup>(POCSO) and under the Juvenile Justice (Care and Protection of Children) Act, 2015.
- v. In-camera proceedings as defined under Section 327 of the Code of Criminal. Procedure, 1973 (CrPC) or Section 153 B of the Code of Civil Procedure, 1908 (CPC).
- vi. Matters where the Bench is of the view, for reasons to be recorded in writing that publication would be

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<sup>3</sup> Protection of children from sexual offenses Act, 2012

antithetical to the administration of justice.

vii. Cases, which within the opinion of the Bench, may provoke enmity amongst communities likely to guide to a breach of law and order.

viii. Recording of evidence, including cross-examination.

ix. Privileged communications between the parties and their advocates; cases where a claim of privilege is accepted by the Court; and non-public discussions between advocates.

x. the opposite matter during which a specific direction is issued by the Bench or the magistrate.

The Recordings are archived. Recordings are also uploaded, wholly or partly, on the Courts' website or made available on other digital platforms, as directed by the Court. Access to copies of the Recordings not uploaded are going to be sanctioned by the Designated Officer, who will act as per law. An application for copies of Recordings shall be made within the form prescribed in Schedule III. The Archived Data should ordinarily be retained by the Court for a minimum of six months, subject to special directions issued by the concerned Bench in an exceedingly particular case. The jurist may issue practice directions regarding the cases and also the period that archived data are preserved.

## **Disclaimers, Prohibitions and Restrictions**

Disclaimers:

- i. The daily cause list published on the web site of the Court shall contain requisite information and disclaimer regarding Live-streaming.
- ii. The Archival Data shall not constitute the official record of the Court Proceedings unless otherwise directed by the Bench.

Prohibitions and Restrictions on usage of the Recording or Live -stream:

- i. No person/entity (including print and electronic media, and social media platforms) apart from an authorized person/entity shall record, share and/or disseminate Live-streamed Proceedings or Archival Data. This provision shall also apply to all or any messaging applications. Any person/entity acting contrary to the current provision are going to be prosecuted as per law.

The Court shall have the exclusive copyright within the Recordings and Archival Data. Any unauthorized usage of the Live-stream are going to be punishable as an offence under the Indian Copyright Act, 1957, Information Technology Act 2000<sup>4</sup>, and other provisions of law, including the law of Contempt.

- ii. Any party/ litigant-in-person accessing the Live-stream are bound by these Rules.
- iii. The Live-stream shall not, without the prior written authorization of the Court, be reproduced, transmitted, uploaded, posted, modified, published, or re-published in any form.
- iv. The employment of authorized recordings in their original form is also permitted by the Court, inter-alia to disseminate news and for training, academic and educational purposes. Authorized recordings handed over for the aforesaid purposes shall not be further edited or processed. Such Recordings won't be used for commercial, promotional purposes or advertising in any form.
- v. Nobody shall use a Recording Device for recording or for transcribing the proceedings, aside from those authorized by the Court.<sup>5</sup>

Use of Communication Device or Recording Device during proceedings:

- i. someone must not use a Communication Device or a Recording Device to disturb Proceedings in an exceedingly manner that will cause concern to a witness or other participants within the proceedings or allow an individual who isn't a participant to receive information about the proceeding or the hearing to which the person is not otherwise entitled.
- ii. During Proceedings, all personnel shall follow the instructions of the

Presiding Judge, adhere to courtroom etiquettes and discipline, and shall not engage within the following actions- audio and/or video, taking screenshots or using mobile communication tools to relay the Proceedings.

- iii. Violation of Sub-Rules (i) and (ii) will lead to prosecution as per law. Additionally, the Bench may direct seizure of the Communication Device or Recording Device.

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<sup>4</sup> Information technology Act, 2000

<sup>5</sup> Krishnadas Rajagopal, 'Draft rules for live-streaming, recording of court proceedings out' The Hindu (New Delhi, June 7, 2021)

## Restrictions on Media:

For the Notion:

1. There's no clear and convincing evidence that television cameras within the courtroom negatively affect courtroom personnel nor places undue hardship unproved participants.
2. Modern technology has made television equipment less cumbersome, allowing deployment in an exceedingly relatively discreet an unobtrusive fashion.
3. The general public has become so aware of television as a fact of existence that the presence of television cameras in the courtroom wouldn't cause court participants to retort in a very discriminatory or fundamentally unfair fashion, and wouldn't hamper the free flow of knowledge.
4. Court participants would perform in a very more professional fashion, knowing that the proceedings are being televised.
5. Because the public witnesses the televised professional proceedings of the courtroom, the courts' image would be bolstered.
6. By expanding the trial audience and educating the general public with reference to the judicial process, public understanding and confidence within the courts would increase, while myth and mystique would dissipate.
7. The courtroom could be a public forum, and also the public 'has the right to know'.

Against the Notion:

1. The trial participants' primary audience would shift from the case at hand to the external public.
2. Courtroom distractions would increase, and witnesses, already uncomfortable and stressed thanks to having to appear in court, would be further stressed, thus hampering the free flow of knowledge.
3. Jurors, concerned with being on television, would not target the trial proceeding to the extent that they should.
4. Lawyers would be tempted to play to the TV cameras instead of specialize in the essential elements of the case at hand.

5. Television cameras tend to portray defendants as being guilty and produce a climate of hostility toward defendants. The result being, all else held constant, a greater likelihood of guilty verdicts being returned thanks to the presence of the camera within the courtroom
6. Television cameras inherently specialize in court participants and as a result, targets them for possible community pressure, threats and abuse.
7. A distorted picture of court proceedings would be portrayed to a good audience, thus further undercutting an already much maligned social institution.

## Recent Judicial Trends

Swapnil Tripathi v. Supreme Court of India, in an RTI response, the Madras tribunal has stated that it's not taken steps to implement the Supreme Court's directions regarding the live-stream of court proceedings. The Court said that the virtual hearings are being conducted through Microsoft Teams platform. It's further stated within the reply that as per the video conferencing rules, except in proceedings which are ordered to be held in-camera, the Court shall endeavor to produce public viewing subject to availability of the bandwidth. This response has come on the RTI application filed by Saurav Das, an independent journalist who sought a response on what actions are taken to measure stream the Court proceedings pursuant to the Supreme Court's directions within the case of Swapnil Tripathi v. Supreme Court of India, whereby the Supreme Court had decided to live-stream Court proceedings within the larger public interest.<sup>6</sup>

Nupur Thapliyal and Ors. Vs. State of Madhya Pradesh and ors. During this case the Madhya Pradesh High Court informed the tribunal Judicial that web link to look at court proceedings held via video conference are going to be made available online soon. This writ was filed on behalf of the journalist, Registrar General of the judiciary bringing on the record minutes of E-Committee meeting of tribunal, stated that the E Committee has resolved to supply live web links of the hearings happening through virtual mode and videoconferencing to any or all the journalists and people aspiring to access them. The state supreme court's response came on plea moved by four journalists seeking better access to the High Court proceedings. The court administration said that it's approved virtual streaming of court proceedings through a link to be made available on the Madhya Pradesh tribunal

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<sup>6</sup> Swapnil Tripathi vs Supreme Court of India on 26 September [2017] S.C. Civ [2018] 1232 (Indian Kanoon)

## **Challenges Faced By the Public**

Globally, India was ranked 89th out of 149 countries/regions by average internet connection speed. Over 60 per cent mobile users in India are facing network problems while accessing internet across locations. All these leads to chaos while performing online proceedings as well as when the general public attends them. There has been an ongoing problem in rural areas of mobile network connectivity. The villages are remote, backward because of lack of facilities and poor connectivity. The reason for this are:

1. Connecting when "roaming" can be a struggle. If your flight has just landed, several hundred devices power on and try to connect to an overloaded network. On a train, users find it difficult to hold a conversation even when passing through areas with moderate cellular coverage. It's the same on interstate highways.
2. Lack internet tower in rural areas. Telecom towers, with their antennae, are the ubiquitous symbol of mobile telephony in India, yet there are too few of them with just 425,000 for the entire country.
3. Mobile data is patchy in India. 3G isn't everywhere, but even where you get a strong 3G signal, you might find no data activity. This is a problem for a country with 240 million mobile internet subscribers - that's 92% of its total internet subscriber base.

These are the reasons which makes it difficult for general public in attending online proceedings.

## **Challenges Faced By the Court**

1. The issue of access: There a number of litigants and advocates who lack internet connectivity and requisite infrastructure and means to participate in virtual hearings and therefore the process. This has serious implications. The plain one being that an outsized chunk of our citizenry is liable to being excluded from the method of justice delivery thanks to factors beyond their control. Moreover, such issues are likely to hit lower courts the worst. And this may have ramifications of its own since district or subordinate courts are the primary port of

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<sup>7</sup> Nupur Thapliyal and ors v. High Court of Madhya Pradesh and ors, (Bar and Bench, 16 Jun, 2021)

require an unlimited majority. Most virtual court proceedings in India currently happen using third party software/platforms which pose a security hazard and are at risk of hacking and misuse. An exclusive software for India's judiciary to use and to handle virtual court hearings must be developed.

2. The degree of comfort: A highly underrated but equally consequential factor is whether or not everyone, whether or not access to reliable internet connectivity is universal, is comfortable and well versed with the new tools and mediums of justice delivery. It's interesting that the Secretary, Department of Justice stated that big, well-to-do law firms and advocates in urban areas would face issues as compared to those participants in rural areas given the digital divide.
3. The concept of open courts: It might threaten the constitutionality of Court proceedings and undermine the importance of Rule of law which forms part of the essential structure of the Constitution.

## **Remedies for the Public**

The problems solved by setting up strong network towers in both rural and urban areas. There by a good amount of people access online proceedings. Telecom companies like Jio, Airtel, etc. should collectively take an initiative. Company like Jio has taken the initiative of providing fiber route wires in rural areas for fast network connection and is feasible for public at less cost. At the same time Airtel is on mission of establishing tower for providing internet in all rural areas. Setting up internet service center or internet café in all important points of every rural and urban area can help people in accessing the internet this also help the law graduates and law students who cannot physically access the court can access virtually.

## **Remedies for Court**

The Ministry of Communications should mean the implementation of the National Broadband Mission, with the aim of providing reliable, and consistent connectivity infrastructure to any or all districts and lower courts across India. The judiciary considers solutions like mobile video conferencing facilities to permit meaningful participation from those living in remote geographies. Training programs are concerned in each of the 25 High Courts. Twenty-five master trainers extended training to 461 trainers within the districts, who successively have now been tasked with training

others within the lower courts and within the remaining districts. Another suggestion is that the Bar Council of India should introduce a computer coursemodule within the syllabus of three/five-year law programs so on skill students in a number of these aspectsas an element of their college education and training. The matter associated with the thought of open courtwill be resolved by recording the proceedings and making it easy accessible.

## **Conclusion**

To quote Isaac Asimov “the saddest aspect of society right now is that science gathers knowledge faster than society gathers wisdom”. The Indian Judiciary is notorious for delayed justice, a result of the incompetent system. According to the latest statistics the pending cases in the Indian High Courts range from 59 lakhs and above. It is a reality that these numbers deter people from taking faith in the judicial mechanism that were designed to protect the downtrodden. Information Technology has revolutionized government and private sectors alike in the past decades. There is no reason the Judiciary should abstain from taking advantage of the immense potentials of the IT sector in providing quicker, better justice to thecitizens of this nation. There are obvious concerns in revitalizing a system that inherently is intolerant to change. But this is no challenge beyond the reach of human ingenuity.

The Apex Court has issued guidelines to balance the interest between the administration of Justice and decorum of Court. The Court has also allowed the interns to attend the Court proceedings so they'll learn every procedure of the Court to facilitate the creation of a generation of legal luminaires more adapted to online courts.

Before we refit our courts with cameras, more fundamental reforms must be initiated. Confidentiality and reliability should be the foundation of an online judiciary . There is no place for error in matters concerningthe life and liberty of an individual being held back by technical difficulties. Initiated with the at most caution and an eye for detail online courts can fundamentally change the face of our judicial system. This is not a solution for the future but a remedy for the present. The judiciary must also employ a press officerto liaise with the media, and issue simultaneously one or two page summaries of its judgments to facilitategreater public understanding.