



Virtual access to courtroom and live streaming of judicial proceedings in India: Constitutional perspective and emerging judicial trends

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Abstract

Indian legal system subscribes to the principle of open justice in which citizens have a right to know about and to follow court proceedings. Live-streaming will allow real time access to courtroom proceedings to litigants and to every member of the society. The issue is this whether there should be live dissemination of proceedings of the Court proceedings with the aid of Information and Communications Technology (ICT). Therefore, live or online transmission of court proceedings with the aid of ICT enabled tools will sub-serve the cause of access to justice. After consultation with Hon^{ble} Judges of the Supreme Court and the High Courts, the Advisory Council of the National Mission of Justice Delivery and Legal Reforms decided in its meeting held on 26th August, 2014 to initiate audio video recording on an experimental basis in the Courts in India. With respect to the Virtual Access to Courtroom and Live Streaming of Judicial Proceedings in India, on 12th February, 2020, first in its history, the Calcutta High Court allowed live streaming of proceedings *live* on YouTube. On 11th September, 2020, in its 103rd report of the parliamentary panel stated that live-streaming will help reinforcing public faith in the judicial system. From 26th October, 2020, the Gujarat High Court also streamed proceedings of cases on YouTube live. On 9th April, 2021, Justice Dr. Dhananjaya Y Chandrachud inaugurated Judgments & Orders portal and e-filing 3.0 modules. Therefore, at this point, we have to discuss the Concept of open courts, Comparative Law, Indian Jurisprudence, Technology and Open Court, Model Guidelines for broadcasting of the proceedings of the Supreme Court of India, Present Position and some recent Landmark Judgments with respect to the Virtual Access to Courtroom and Live Streaming of Judicial Proceedings in India will be referred for brief analysis in this research work.

Keywords: Indian legal system, open courts, virtual access live-streaming, access to courtroom proceedings, information and communications technology (ICT), comparative law, Indian jurisprudence, technology and open court, ICT in Indian courts, judicial proceedings, the 'supreme court of India TV' and 'high court TV' etc

Introduction

Virtual Access to Courtroom and Live-streaming of court proceedings will allow real access to courtroom proceedings to litigants and to every member of the society. The issue is whether there should be live broadcasting of proceedings of the Court. This would enable litigants and society to have wide access to judicial proceedings. It is pertinent here to mention that the cases of constitutional and national importance have a significant impact on the social fabric. After consultation with Hon^{ble} Judges of the Supreme Court and the High Courts, the Advisory Council of the National Mission of Justice Delivery and Legal Reforms decided in its meeting held on 26th August, 2014 to initiate audio video recording on an experimental basis in the Courts in India. In, this meeting it was noted that audio video recording of Court proceedings was proposed in the Policy and Action Plan Document for Phase II for the e-Courts Mission Mode Project. Rules for live streaming of Court proceedings are very essential so that a e-committee of the Supreme Court of India was constituted under chairmanship of Justice Dr. D Y Chandrachud, Judge, Supreme Court of India to ensure e-courts project and also to ensure that the dignity and majesty of the Court is preserved and at the same time to address the concerns of privacy and confidentiality of the litigants or witnesses.

At this point, we have to discuss the Concept of open courts, Comparative Law, Indian Jurisprudence, Technology and Open Court, Model Guidelines for broadcasting of the

proceedings of the Supreme Court of India, Present Position and some recent Landmark Judgments with respect to the Virtual Access to Courtroom and Live Streaming of Judicial Proceedings in India will be referred for brief analysis in this research work.

Concept of open courts

Open justice/open court is an entrenched principle of common law system. The Court must be open both in the physical and metaphorical sense except for in-camera proceedings such as cases involving women/child sexual abuse or matrimonial proceedings/marital privacy. Every citizen has a right to be acquainted with the course of judicial proceedings. Therefore, an open court proceeding make sure that the judicial process is subject to analysis by general public and the public analysis is very essential for maintaining transparency and answerability.

In 18th century, the idea of open justice was propounded by

Jeremy Bentham

"...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.

Bentham in his Draught of Code for the Organization of the Judicial Establishment" codified the principle of open justice as:

Article XVIII- Judicial proceedings, from the first step to the last inclusive, shall, in all cases but the secret ones

herein specified, be carried out with the utmost degree of publicity possible.

As per Bentham, agreed, that in-camera proceedings are to be carried out in the judge's chamber. He also accepted that the open justice for trials by the National Assembly Courts: Article III- Such trial shall be conducted from beginning to end, with open doors and with the utmost possible degree of publicity."^[1]

Lord Chief Justice Hewart also formulated the principle of open justice:

"Justice should not only be done, but should manifestly and undoubtedly be seen to be done."^[2]

Lord Judge CJ^[3] sketches a link between open justice and democratic values:

"...the principle of open justice represents an element of democratic accountability, and the vigorous manifestation of the principle of freedom of expression. Ultimately it supports the rule of law itself."

As per Black's Law Dictionary 'open court' means

"... A court to which the public have a right to be admitted... This term may mean either a court which has been formally convened and declared open for the transaction of its proper judicial business, or a court which is freely open to spectators..."^[4]

In administration of justice, the idea of open courts is very much crucial to maintain public confidence:

"The public must be able to enter any court to see that justice is being done in that court, by a tribunal conscientiously doing its best to do justice according to law."^[5]

Bentham regarded that open courts ensure a check on the process of adjudication in judicial proceedings as a mechanism to prevent improbity of judges:

"Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial.

... It is through publicity alone that justice becomes the mother of security. By publicity, the temple of justice is converted into a school of the first order..."^[6]

Open Courts and comparative Law

Matters relating to virtual access to courtroom and live streaming are very sensitive in nature. So that the modules adopted by the courts in different countries may be discussed here as they have already embraced the concept of live-streaming and broadcasting courtroom proceedings as follows:

Australia

The process in Australia follows, "An open court system in all Australian jurisdictions admitting television cameras into courtrooms."^[7] Since 2013, "Audio-visual recordings of the High Court of Australia have been made available to the public."^[8] In Australia, "The entire process of filming and broadcasting is carried out by the Court staff and transcripts of the hearings are made available within a day or two of most hearings. The High Court has stated that initially the recordings will be available after a few business days; however, the Court will endeavour to reduce the number of days."^[9] As per Daniel Stepniak, "Apart from the High Court, most Australian courts do not maintain a consistent policy on admitting television cameras into the courtroom. Filming is permitted on an ad hoc basis and is usually

restricted to the recording of file and overlay footage or ceremonial sittings."^[10]

Canada

In Canada, "The Canadian Supreme Court is considered a pioneer for adapting itself to technology and permitting audio-visual broadcasting of its proceedings. In 1993, the Canadian Supreme Court conducted a successful pilot project, live televising the hearings of three high profile cases. The broadcasts were governed by the following guidelines:

(a) The case to be filmed will be selected by the Chief Justice. (b) The Chief Justice or presiding Justice may limit or terminate media coverage to protect the rights of the parties; the dignity of the court; to assure the orderly conduct of the proceedings; or for any other reason considered necessary or appropriate. (c) No direct public expense is to be incurred for wiring, or personnel needed to provide media coverage."^[11]

The Canadian Supreme Court permits, "the Canadian Parliamentary Press Gallery to live broadcast all appeals before it."^[12] As per Daniel Stepniak, "The Canadian Parliamentary Affairs Channel (CPAC) is also allowed to televise the appeal hearings of the Court, but at a later date. The broadcasts are subject to guidelines which ensure that the Court retains control over the filming process. The copyright over the proceedings is retained by the Court. Before any case can be filmed, the Supreme Court requires parties to consent to the recording and televising of the proceedings. Any party seeking to exclude their case from the broadcast must convey the same to the Registrar at least two weeks prior to the hearing date."^[13] Although the CPAC decides, "Which cases to broadcast, the Supreme Court has the discretion to prohibit the filming of specific appeals. The CPAC is permitted to share the broadcast feed with other television networks, for use as snippets in news programs and at present, four cameras are installed in the Supreme Court. Since 2009, the appeal hearings have been broadcast and are archived on the Court's website. The cameras are installed by the Court and are operated by the Court's employees. Outside cameras are not permitted except for special events."^[14]

International Courts

As per ICC official website, "International courts have also embraced the idea of broadcasting their court proceedings. The International Criminal Court (ICC) permits televising of its cases, although with a thirty minute delay."^[15] On YouTube, "The ICC has a YouTube channel where it broadcasts case proceedings, press conferences, and informative videos in different languages."^[16] As per Rule 63, "In the European Court on Human Rights (ECHR), all hearings are permitted to be made public, unless specifically disallowed by the Court."^[17] The ECHR rule provides, "The broadcast is available on the Court's website on the same day. Broadcast of morning sessions is put up by the afternoon, and the afternoon sessions by evening. The ECHR states that all hearings are filmed and broadcast of the court's website on the day itself, from 14:30 (local time) onwards."^[18]

New Zealand

As per Daniel Stepniak, "New Zealand allows wide access to the media in courts and has one of the most progressive

live broadcast policies among common law countries. The Supreme Court permits recording of its proceedings in majority of the cases, unless specifically objected to by the parties.”^[19]

In New Zealand, “Traditionally, members of the media were only permitted to make hand-written notes of court proceedings, without the use of any electronic device. From 1996 to 1998, New Zealand conducted a three year pilot project which covered more than twenty cases.”^[20]

Since 2016, “New Zealand permits media houses to broadcast court proceedings with the approval of the court. The broadcast is governed by a set of guidelines which balance the principle of open justice with the need for a fair trial. They impose upon the media the responsibility to provide ‘an accurate, fair and balanced report of the hearing’ without publishing anything out of context ^[21]. They also provide for a ten minute delay in broadcasting audio and video recordings. Under the guidelines, any media outlet wishing to film and broadcast court proceedings is required to seek prior written permission from the court for each case. The Supreme Court’s media guidelines, published upon its establishment in 2004, indicate that audio-visual covering is to be considered as the norm, rather than the exception:

Subject to paragraph (5), all applications to televise or otherwise record proceedings of the Supreme Court will be deemed to be approved unless a party indicates, within 3 days of being advised by the registrar of the application that the party objects to it.”^[22]

South Africa

Since 2017, “In South Africa, the presence of cameras in the courtroom is a recent development and is at a relatively nascent stage. The Supreme Court of Appeal (which is the highest court of appeal in South Africa) set a precedent permitting broadcasting of proceedings in all courts of South Africa. Now, the media is permitted to live broadcast the proceedings of all South African courts. While permitting the media to live broadcast the court proceedings, Ponna JA made an interesting observation that it was time for courts to ‘yield to a new reality:

It is thus important to emphasize that giving effect to the principle of open justice and its underlying aims now means more than merely keeping the courtroom doors open. It means that court proceedings must where possible be meaningfully accessible to any member of the public who wishes to be timeously and accurately apprised of such proceedings. Broadcasting of court proceedings enables this to occur.

Witnesses are granted the freedom to object to broadcasting their testimony, subject to the court’s final discretion. This discretion, Ponna JA (speaking for the bench) emphasised, must be exercised by the courts on a case-by-case basis, by conducting an individualised enquiry. Where the judge finds that the objections of the witness are valid, the court considers alternatives to regular photographic or television coverage.”^[23]

United Kingdom

In United Kingdom, “The Supreme Court of UK permits broadcasting of its courtroom proceedings.”^[24] Ministry of Justice, United Kingdom provides, “Three national broadcasters- BBC, ITN, and Sky News ^[25] are permitted to film and broadcast the Supreme Court proceedings, in

accordance with the protocol which has been agreed with ^[26]. The protocol prohibits recording of certain types of proceedings like private discussions between litigants and their counsel ^[27]. The footage is only allowed to be used for informational purposes in programs like news, current affairs, education, and legal training ^[28]. However, any broadcasting which may detract from the seriousness or integrity of the proceedings, like entertainment programmes, satirical programmes, political party broadcasts, and advertising or promotion, is not permitted. Further, any still images are always required to be used in a way that has regard to the dignity of the Court and its functions as a working body. Sky News airs live broadcasts of the UK Supreme Court’s hearings. By the end of 2011, the UK Supreme Court permitted journalists to use live text-based communications, including social media platform Twitter, during court hearings. The presiding judge, however, retains full discretion to prohibit such communications in the interest of justice.”

As per official Twitter handle, “The UK Supreme Court has its own Twitter handle (@UKSupreme Court) which it uses to update the public about its judgments ^[29]. It also has a YouTube channel where it showcases short summaries of judgments read out by the judges.”^[30]

In 2013, “the UK permitted audio-visual coverage of the Court of Appeals (Civil and Criminal). The broadcast is subject to certain limitations - (a) only the judgments and lawyers’ arguments are permitted to be filmed. Victims and witnesses are not recorded; and (b) live broadcasts are delivered with a seventy seconds delay ^[31].” According to British legal commentator, Joshua Rozenberg, the seventy seconds delay is favorable and necessary because:

“That gives everyone involved just over a minute to work out that something should not be heard or seen in public before the recording leaves the courtroom. The problem could be mild profanity...Somebody might quote information that is protected by a court order or is unreportable for some other reason. Perhaps the cameras might catch a glimpse of someone whose face must not be included in court broadcasts, such as the appellant or a witness ^[32].

The court retains control over the live broadcast. A single video-journalist is authorized to record and regulate the live proceedings and is bound by the court’s orders. Only the appointed journalist or his substitute is permitted to take pictures in court. The appointed journalist is jointly employed by the four media groups which are funding the project- Sky News, ITN, BBC and the Press Association news agency. Only the appointed journalist or his substitute is permitted to take pictures in court. Although the appointed journalist has the permission to film any of the fifteen courtrooms in which the Court of Appeals may sit, practically, the media organizations pick only one court at a time for live broadcast.”

United States of America

According to the official website, “The US Supreme Court does not permit video recording or photography of its proceedings. It releases audio transcripts of the oral arguments on the same day. Audio recordings of each week’s oral arguments are released on the court’s website at the end of the week.”^[33]

Since 2014, the US Court of Appeals for the Ninth Circuit has approved, “Video broadcasting of all cases before it,

except those prohibited by law through guidelines^[34]. Each Federal Court of Appeals has the discretion to provide audio or video recordings of its proceedings, subject to guidelines framed by the court. The media needs to take prior approval of the court to record the proceedings. The presiding judge is granted absolute discretion to limit or terminate media coverage, or direct the removal of camera coverage personnel when necessary, in order to protect the rights of the parties or aid the conduct of proceedings.” As per official YouTube handler, “The video and audio recordings of the federal judiciary are hosted on YouTube and are also available on the court’s official website^[35].” In *Chandler v. Florida* it was held, “The district and lower courts in each state permit some form of audio or video broadcasting and recording of its proceedings, subject to guidelines and rules.^[36]”

Indian Jurisprudence

Article 145 (4) of Indian Constitution provides about open courts:

“(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under Article 143 save in accordance with an opinion also delivered in open Court.”

Section 153-B of the Code of Civil Procedure, 1908 provides for open court:

“Section 153-B. Place of trial to be deemed to be open court:

The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.”

Similarly, Section 327 of the Cr.P.C. also mandates criminal courts to be open:

“[(1)] The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.”

As per legal provisions all courts in India are open to the public and function as open courts, except in camera proceedings.

Technology and open court

In the present age, technology has become an inevitable facet of all aspects of life including Internet penetration and increase in the use of smart phones. Technology can enhance public access, ensure transparency and Courts must take the aid of technology to enhance the principle of open courts by moving beyond physical accessibility to virtual accessibility.

The importance of making justice accessible to the common citizen was explained by Lord Neuberger in his Judicial Studies Board in his speech in 2011:

“...if justice is seen to be done it must be understandable. Judgments must be open not only in the sense of being available to the public, but, so far as possible given the technical and complex nature of much of our law; they must also be clear and easily interpretable by lawyers and also to non-lawyers. In an age when it seems more likely than ever that citizens will have to represent themselves, this is becoming increasingly important.^[37]”

In *Krishna Veni Nagam v. Harish Nagam*^[38], the Apex Court had taken into consideration technological developments to regulate the use of video conferencing for certain categories of cases:

“The advancement of technology ought to be utilized also for service on parties or receiving communication from the parties. Every District Court must have at least one e-mail ID. Administrative instructions for directions can be issued to permit the litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated officer/manager of a District Court may suitably respond to such e-mail in the manner permitted as per the administrative instructions. Similarly, a manager/information officer in every District Court may be accessible on a notified telephone during notified hours as per the instructions. These steps may, to some extent, take care of the problems of the litigants.”

In *Santhini v. Vijaya Venketesh*^[39], the Supreme Court of India considering the issue of permitting video-conferencing for matrimonial disputes, Justice Dr. D Y Chandrachud, in his dissenting opinion, discussed the importance of using technology to enhance the delivery of justice:

“Technology must also be seen as a way of bringing services into remote areas to deal with problems associated with the justice delivery system. With the increasing cost of travelling and other expenses, videoconferencing can provide a cost-effective and efficient alternative. Solutions based on modern technology allow the court to enhance the quality and effectiveness of the administration of justice. The use of technology can maximise efficiency and develop innovative methods for delivering legal services. Technology-based solutions must be adopted to facilitate access to justice... Repeated adjournments break the back of the litigant. We must embrace technology and not retard its application, to make the administration of justice efficient.”

Model Guidelines for Broadcasting of the proceedings of the supreme court of India

In *Swapnil Tripathi v. Supreme Court of India*^[40], Justice Dr. D Y Chandrachud analyzed the model guidelines for broadcasting of the proceedings and other judicial events of the Supreme Court of India:

“A. Kind of matters to be live-streamed

1. Proceedings involving the hearing of cases before the Supreme Court shall be live-streamed in the manner provided below:

a. Cases falling under the following categories shall be excluded as a class from live-streaming:

- (i) Matrimonial matters, including transfer petitions;
- (ii) Cases involving sensitive issues as in the nature of sexual assault; and
- (iii) Matters where children and juveniles are involved, like POCSO cases.

b. Apart from the general prohibition on streaming cases falling in the above categories, the presiding judge of each

courtroom shall have the discretion to disallow live-streaming for specific cases where, in his/her opinion, publicity would prejudice the interests of justice. This may be intimated by the presiding judge in advance or live-streaming may be suspended as and when a matter is being heard; and

c. Where objections are filed by a litigant against live-streaming of a case on grounds of privacy, confidentiality, or the administration of justice, the final authority on live-streaming the case shall lie with the presiding judge.

F. Miscellaneous

1. The Supreme Court shall hold exclusive copyright over videos streamed online and archived with the Registry; and
2. Re-use, capture, re-editing or redistribution, or creating derivative works or compiling of the broadcast or video footage, in any form, shall not be permitted except as may be notified in the terms and conditions of use and without the written permission of the Registry.”

Present Position

First time on 12th February, 2020, the division bench of Justice Sanjib Banerjee and Justice Kausik Chanda of Calcutta High Court had allowed the proceedings to be streamed live on YouTube.

On 11th September, 2020, in its 103rd report of the parliamentary panel submitted that live-streaming will help reinforcing public faith in the judicial system. The report was submitted to Vice-President M Venkaiah Naidu by Bhupender Yadav, the chairman of the parliamentary panel. The Committee submitted as follows:

“The Committee is of the view that with the advent of Information technology, there is not a single facet of human life that is left untouched by it. ICT has also transformed the legal landscape in India and the Indian judiciary has come a long way from a paper-based era to the one dominated by digital technology and is now moving towards cloud based technology. The Committee believes that in coming times, technology will emerge as a game changer and advocates would be required to use technological skills in combination with their specialized legal knowledge and therefore, they should keep up with the changing times.

The Committee notes that world over, Court proceedings are recorded in some form or the other. The apex Court has time and again emphasized the significance of live streaming of Court proceedings in promoting openness and transparency which in turn reinforce public faith in judicial system. The Committee agrees with the observation made by the apex Court that live streaming Court proceedings, especially cases of constitutional and national importance having an impact on public at large or a section of the public will promote transparency and openness. The litigant need not come to the Court to watch the proceedings and thus will reduce crowding inside the court. The Judiciary may also consider broadcasting virtual hearings of certain specified categories of cases to further the principle of open justice and open Court^[41].”

On 26th October, 2020, the Gujarat High Court also streamed proceedings of cases heard by Chief Justice Vikram Nath on YouTube live. According to an administrative order issued by the Chief Justice, the telecast was on purely experimental basis.

On 9th April, 2021, Justice Dr. Dhananjaya Y Chandrachud

^[42] inaugurated Judgments & Orders portal and e-filing 3.0 modules as:

“Justice Dr. Dhananjaya Y Chandrachud inaugurated a Judgments and Orders Portal for searching past judgments and orders and an e-Filing 3.0 module to allow electronic filing of court documents. The Judgments and Orders search portal is a repository of judgments pronounced by various High Courts in the country. It provides facility to search judgments and final orders based on multiple search criteria. While speaking about the portal he said that the judgment search portal has data today of 38 million cases available and we have data of 106 million cases which are being disposed of & are available & the total number of 141 million orders. With this mine of data, why not we provide a free search engine.

On this occasion, Shri Barun Mitra, Secretary, Department of Justice, Government of India also emphasized,

The Constitution recognizes justice as one of the foremost deliverables for the people of India and the e-Courts project has played a sustained role in ensuring citizen centric justice and that in recognition of this exemplary work, this project has been conferred the Excellence in Digital Governance Award in 2020 by Government of India.”

Emerging Judicial Trends

The Supreme Court of India has emphasized in various judgments on the importance of open courts. The most significant judgment on this aspect is *Naresh Shridhar Mirajkar v. State of Maharashtra*^[43] which was decided by a nine-judge Bench and the majority emphasized on the importance of open courts. Chief Justice Gajendragadkar, while speaking for the majority observed:

“It is well settled that in general, all cases brought before the courts, whether civil, criminal, or others, must be heard in open court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial tribunals, courts must generally hear causes in open and must permit the public admission to the court-room.”

Justice Hidayatullah in his dissenting opinion agreed with the majority on the importance of an open court system:

“As we have fortunately inherited the English tradition of holding trials (with a few exceptions) in public, I shall begin with the English practice. It has always been the glory of the English system as opposed to the Continental that all trials are held *ostiis apertis*, that is, with open doors. This principle is old... it is a direct guarantee of civil liberty and it moved Bentham to say that it was the soul of Justice and that in proportion as publicity had place, the checks on judicial injustice could be found....”

Justice J C Shah elaborated on open justice but also recognized the need to restrict access to protect the administration of justice, in cases where it becomes necessary:

“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. But hearing of a cause in public which is only to secure administration of justice untainted must yield to the paramount object of administration of justice. If excessive publicity itself operates as an instrument of injustice, the court may not be slow, if it is satisfied that it is necessary so to do to put such restraint upon publicity as is necessary to secure the court's primary object..."

Quoting Hegel in 'Philosophy of Right,' Justice Bachawat added that:

"A court of justice is a public forum. It is through publicity that the citizens are convinced that the court renders even-handed justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the court proceedings. The publicity generates public confidence in the administration of justice. In rare and exceptional cases only, the court may hold the trial behind closed doors, or may forbid the publication of the report of its proceedings during the pendency of the litigation. Hegel in his Philosophy of Right maintained that judicial proceedings must be public, since the aim of the Court is justice, which is a universal belonging to all."

In Mohd. Shahabuddin v. State of Bihar ^[44], Justice M K Sharma, in his concurring opinion described open courts:

"In my considered view an 'open court' is a court to which general public has a right to be admitted and access to the court is granted to all the persons desirous of entering the court to observe the conduct of the judicial proceedings..."

In Swapnil Tripathi v. Supreme Court of India ^[45], Justice Dr. Dhananjaya Y Chandrachud opined,

"Live-streaming of court proceedings is manifestly in public interest. It is important to re-emphasise the significance of live-streaming as an extension of the principle of open justice and open courts. However, the process of live-streaming should be subjected to carefully structured guidelines. Initially, a pilot project may be conducted for about three months, by live-streaming only cases of national and constitutional importance in the Chief Justice's Court. Progressively, as and when the infrastructure is ready, this Court can expand the ambit of live-streaming to cover all cases (except for the ones which are excluded). The need for live-streaming of proceedings applies with equal and, in some respects, greater force to proceedings of cases in the district judiciary and the High Courts. The pattern of litigation in our country resembles a pyramid. The courts within the district judiciary represent the large base of the pyramid where citizens have the greatest interface. It is to the Courts comprised in the district judiciary that citizens turn as a point of first access for remedying injustice. At the tip of the pyramid is the jurisdiction of Apex Court. In terms of volume, the largest amount of litigation emanates in the district judiciary, followed by the High Courts. The engagement of the district judiciary in resolving injustices faced by citizens requires that every citizen should have full access to and knowledge about the proceedings before those courts. Equally, the principle of an open court which has been espoused in this judgment would merit that proceedings before the High Courts should also be live-streamed. Live-streaming of proceedings is crucial to the dissemination of knowledge about judicial proceedings and granting full access to justice to the litigant. Access to justice can never be complete without the litigant being able

to see, hear and understand the course of proceedings first hand. Apart from this, live-streaming is an important facet of a responsive judiciary which accepts and acknowledges that it is accountable to the concerns of those who seek justice. Live-streaming is a significant instrument of establishing the accountability of other stake-holders in the justicing process, including the Bar. Moreover, the government as the largest litigant has to shoulder the responsibility for the efficiency of the judicial process. Full dissemination of knowledge and information about court proceedings through live-streaming thus sub-serves diverse interests of stake holders and of society in the proper administration of justice. For lawyers and judges familiar with the cocoon of a physical court room, live-streaming would require attitudinal changes. They include the maintenance of order and sequencing of oral arguments. Judges in charge of their courts would have to devote attention to case management. But these demands are necessary incidents of the challenges of our time. Slow as we have been to adapt to the complexities of our age, it is nonetheless necessary for the judiciary to move apace with technology. By embracing technology, we would only promote a greater degree of confidence in the judicial process. Hence, the Chief Justices of the High Courts should be commended to consider the adoption of live-streaming both in the High Courts and in the district judiciaries in phases, commensurate with available resources and technical support. The High Courts would have to determine the modalities for doing so by framing appropriate rules."

While emphasizing upon the importance of live streaming judicial proceedings Justice Dr. Dhananjaya Y Chandrachud ^[46] opined:

"There are multiple reasons why live-streaming will be beneficial to the judicial system:

- a. The technology of live-streaming injects radical immediacy into courtroom proceedings. Each hearing is made public within seconds of its occurrence. It enables viewers to have virtual access to courtroom proceedings as they unfold;
- b. Introduction of live-streaming will effectuate the public's right to know about court proceedings. It will enable those affected by the decisions of the Court to observe the manner in which judicial decisions are made. It will help bring the work of the judiciary to the lives of citizens;
- c. Live-streaming of courtroom proceedings will reduce the public's reliance on second-hand narratives to obtain information about important judgments of the Court and the course of judicial hearings. Society will be able to view court proceedings first hand and form reasoned and educated opinions about the functioning of courts. This will help reduce misinformation and misunderstanding about the judicial process;
- d. Viewing court proceedings will also serve an educational purpose. Law students will be able to observe and learn from the interactions between the Bar and the Bench. The archives will constitute a rich source for aspiring advocates and academicians to study legal advocacy procedures, interpretation of the law, and oratory skills, among other things. It will further promote research into the institutional functioning of the courts. Live-streaming and broadcasting will also increase the reach of the courts as it can penetrate to every part of the country;
- e. Live-streaming will enhance the rule of law and promote better understanding of legal governance as part of the

functioning of democracy;

f. Live-streaming will remove physical barriers to viewing court proceedings by enabling the public to view proceedings from outside courtroom premises. This will also reduce the congestion which is currently plaguing courtrooms. It will reduce the need for litigants to travel to the courts to observe the proceedings of their cases;

g. Live-streaming is a significant instrument of enhancing the accountability of judicial institutions and of all those who participate in the judicial process. Delay in the dispensation of justice is a matter of serious concern. Live-streaming of court proceedings will enable members of the public to know of the causes of adjournments and the reasons why hearings are delayed; and

h. Above all, sunlight is the best disinfectant. Live-streaming as an extension of the principle of open courts will ensure that the interface between a court hearing with virtual reality will result in the dissemination of information in the widest possible sense, imparting transparency and accountability to the judicial process.”

In *The Chief Election Commissioner of India v. M.R Vijayabhaskar & Ors.*,^[47] the division bench also considered about live streaming of judicial proceedings and observed:

“Cases before the courts are vital sources of public information about the activities of the legislature and the executive. An open court serves an educational purpose as well. The court becomes a platform for citizens to know how the practical application of the law impacts upon their rights. In *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639, a three Judge Bench stressed upon the importance of live streaming judicial proceedings. One of us (DY Chandrachud J) analyzed the precedent from a comparative perspective:

82. [...] through these judicial decisions, this Court has recognized the importance of open courtrooms as a means of allowing the public to view the process of rendering of justice. First-hand access to court hearings enables the public and litigants to witness the dialogue between the Judges and the advocates and to form an informed opinion about the judicial process.

83. The impact of open courts in our country is diminished by the fact that a large segment of the society rarely has an opportunity to attend court proceedings. This is due to constraints like poverty, illiteracy, distance, cost and lack of awareness about court proceedings. Litigants depend on information provided by lawyers about what has transpired during the course of hearings. Others, who may not be personally involved in litigation, depend on the information provided about judicial decisions in newspapers and in the electronic media. When the description of cases is accurate and comprehensive, it serves the cause of open justice. However, if a report on a judicial hearing is inaccurate, it impedes the public's right to know. Courts though open in law and in fact, become far removed from the lives of individual citizens. This is anomalous because courts exist primarily to provide justice to them.”

Further, the Supreme Court of India considered about virtual accessibility of courtroom and observed as:

“Our Court has performed its modest part to acknowledge the rapid pace of the development of technology and our need to keep up. In *Swapnil Tripathi*, it noted:

C. Technology and Open Court

84. In the present age of technology, it is no longer sufficient to rely solely on the media to deliver information

about the hearings of cases and their outcomes. Technology has become an inevitable facet of all aspects of life. Internet penetration and increase in the use of smart phones has revolutionized how we communicate. As on 31-3-2018, India had a total of 1,206.22 million telecom subscribers and 493.96 million internet users. Technology can enhance public access, ensure transparency and pave the way for active citizen involvement in the functioning of State institutions. Courts must also take the aid of technology to enhance the principle of open courts by moving beyond physical accessibility to virtual accessibility^[48].”

Conclusion and suggestions

With respect to the Virtual Access to Courtroom and Live Streaming of Judicial Proceedings in India, on 12th February, 2020, the Calcutta High Court permitted live streaming of its proceedings. A division bench consisted with Justice Sanjib Banerjee and Justice Kausik Chanda permitted that the proceedings for this case to be streamed live on YouTube. After that on 11th September, 2020, the parliamentary panel in its 103rd report submitted that live-streaming of Judicial Proceedings will help reinforcing public faith in the judicial system. This report was submitted to Vice-President M Venkaiah Naidu by Bhupender Yadav (Member, Parliament of India), the chairman of the parliamentary panel. On 26th October, 2020, the Gujarat High Court also streamed the proceedings of its cases heard by Chief Justice Vikram Nath live on YouTube. Recently, on 9th April, 2021, Justice Dr. Dhananjaya Y Chandrachud released manuals in 14 languages and inaugurated Judgments & Orders portal and e-filing 3.0 modules for its top citizen-centric service free e-Courts services mobile app. As much steps have been taken by the Judiciary and the Government to pursue the matter with respect to the Virtual Access to Courtroom and Live Streaming of Judicial Proceedings in India but some more steps are still awaited in this regard to establish more judicial accountability and public confidence in administration of justice. Therefore, the Government should start free to air TV channels for all cases of constitutional and national importance except in *camera proceedings* like the ‘*Supreme Court of India TV*’ and ‘*High Court TV*’ named after every High Court working in the country same on the pattern of ‘*Lok Sabha TV*’ and ‘*Rajya Sabha TV*’ as working presently.

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- exercising merely magisterial powers. 2. A court session that the public is free to attend..."
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