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Premium

Live streaming of SC proceedings: the rationale and the concerns

Broadcasting court proceedings is a step in the direction of transparency and greater access to the justice system, but there are concerns around the impact of live streaming both on judges and the people watching the proceedings.

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The Supreme Court of India. (PTI Photo/File)

The Supreme Court in a full court held on Tuesday (September 20) decided to live stream its proceedings in crucial Constitution Bench cases that will be heard from September 27. The decision comes nearly four years after a plea was made in the interest of transparency.

History of the case

On August 26, on the day of former Chief Justice of India (CJI) N V Ramana's retirement, the Supreme Court streamed its proceedings live. But the first steps towards the decision were taken in 2018, when a three-judge Bench comprising then CJI Dipak Misra, Justice A M Khanwilkar, and Justice D Y Chandrachud agreed to hear a public interest litigation seeking live streaming of judicial proceedings on matters of constitutional and national importance.

The petitioners, who cited the principle of open access to justice, included Senior Advocate Indira Jaising. In March 2018, the court issued notice to the Attorney General of India K K Venugopal, seeking his views on the issue.

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Recommended by A-G

In his response to the court, Venugopal recommended introducing live streaming as a pilot project in Court No.1, which is the CJI's court, and only in Constitution Bench cases.

“The success of this project will determine whether or not live streaming should be introduced in all courts in the Supreme Court and in courts pan India,” he said. The A-G cited de-congestion of courts and improving physical access to courts for litigants who have to otherwise travel long distances to come to the SC in support of his recommendation.

The Supreme Court approved a set of guidelines suggested by the A-G, which included allowing transcripts and archiving the proceedings. However, the A-G suggested that the court must retain the power to withhold broadcasting, and to also not permit it in cases involving:

- i. Matrimonial matters,
- ii. Matters involving interests of juveniles or the protection and safety of the private life of the young offenders,
- iii. Matters of National security,
- iv. To ensure that victims, witnesses or defendants can depose truthfully and without any fear. Special protection must be given to vulnerable or intimidated witnesses. It may provide for face distortion of the witness if she/he consents to the broadcast anonymously,
- v. To protect confidential or sensitive information, including all matters relating to sexual assault and rape,

- vi. Matters where publicity would be antithetical to the administration of justice, and
- vii. Cases which may provoke sentiments and arouse passion and provoke enmity among communities.

Live streaming in HCs

Following the SC's decision, Gujarat High Court began live streaming its proceedings in July 2021. Currently, the Jharkhand, Karnataka, Madhya Pradesh, Orissa, and Patna High Courts live stream their proceedings. Allahabad High Court is learnt to be considering doing the same.

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What happens elsewhere

- * **United States of America:** While the US Supreme Court has rejected pleas for broadcast of its proceedings, it has since 1955 allowed audio recording and transcripts of oral arguments.
- * **Australia:** Live or delayed broadcasting is allowed but the practices and norms differ across courts.
- * **Brazil:** Since 2002, live video and audio broadcast of court proceedings, including the deliberations and voting process undertaken by the judges in court, is allowed. A public television channel, TV Justiça, and a radio channel, Radio Justiça, were set up to broadcast video and audio. Separately, dedicated YouTube channels hold discussions and commentaries on the judicial system, apart from broadcasting proceedings live.
- * **Canada:** Proceedings are broadcast live on Cable Parliamentary Affairs Channel, accompanied by explanations of each case and the overall processes and powers of the court.

* South Africa: Since 2017, the Supreme Court of South Africa has allowed the media to broadcast court proceedings in criminal matters, as an extension of the right to freedom of expression.

* United Kingdom: In 2005, the law was amended to remove contempt of court charges for recording proceedings of the Supreme Court. Proceedings are broadcast live with a one-minute delay on the court's website, but coverage can be withdrawn in sensitive appeals.

Concerns around live streaming

Broadcasting court proceedings is a step in the direction of transparency and greater access to the justice system, but there are concerns around the impact of live streaming both on judges and the people watching the proceedings.

Video clips of proceedings from Indian courts are already on YouTube and other social media platforms with sensational titles and little context, such as "HIGH COURT super angry on army officer". There are fears that irresponsible or motivated use of content could spread disinformation among the public.

A 2018 paper by Felipe Lopez titled 'Television and Judicial Behavior: Lessons from the Brazilian Supreme Court' that studied the Brazilian Supreme Court concluded that justices behave like politicians when given free television time, they act to maximize their individual exposure.

There are also studies that investigated the effects on the behaviour of politicians on the introduction of C-SPAN in the US House of Representatives and the US Senate, which concluded that broadcast of proceedings corresponded with a growth in the frequency of filibustering.

However, sometimes positive systemic corrections have been made possible due to the broadcast of court proceedings.

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A 2017 study by researchers at Northwestern University of archives of the audio proceedings of the US Supreme Court showed that “judicial interactions at oral argument are highly gendered, with women being interrupted at disproportionate rates by their male colleagues, as well as by male advocates”. Last year, SCOTUS Justice Sonia Sotomayor said that the gendered disruptions identified by the study had been addressed, and now Justices ask questions according to seniority instead of interrupting in a random way.

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