

# ● EXPERIMENTING WITH CAMERAS IN THE COURTROOM: LIVE- STREAMING COURT PROCEEDINGS AND CONCERNS OF CONTEMPT OF COURT



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## Abstract

*In 2018, the Supreme Court of India introduced live-streaming of court proceedings as a pilot project. The move was widely welcomed as a significant step towards judicial reform and public participation in the legal process. Live-streaming has emerged as a means of promoting transparency and accessibility of the legal system. It allows the public to observe courtroom proceedings remotely, promoting openness and accountability in the judicial system. However, the introduction of live-streaming also raises concerns about the potential for contempt of court. The availability of live-streaming can amplify the risk of contempt, as it enables a broader audience to witness court proceedings and potentially engage in behaviours that disrupt the administration of justice. It may give a platform for individuals to make derogatory comments. This contrast establishes a rich foundation for scholarly discourse. This article explores the practice of live-streaming and highlights the concerns of contempt of court it raises. Moreover, it undertakes an examination of the practices in leading common law countries to identify the obstacles and possible solutions concerning live-streaming.*

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## Key words-

*Administration of Justice, Contempt of Court, Live-streaming, Open Justice, Publicity*

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## INTRODUCTION

Historically, court proceedings were considered sacrosanct, and photography or recording whether audio or video invited action for contempt of court<sup>1</sup>. Courts employed the practice of excluding the public to protect witnesses from potential retaliation and shield them from experiencing embarrassment and emotional distress. These measures were deemed justified and were upheld as valid decisions aimed at fostering an environment within the courtroom that encourages witnesses to freely disclose all pertinent information. Throughout the annals of English legal history, legislative arrangements consistently precluded the presence of television cameras in courtrooms. Since 1925, a stringent prohibition on photography within courtrooms and the contiguous areas of judicial establishments in England and Wales was effectuated as stipulated under section 41 of the Criminal Justice Act 1925. Before 1925, the practice of capturing photographs within courtrooms in England and Wales was subject to judicial oversight, facilitated through the judge's inherent authority to manage legal

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<sup>1</sup>DANIEL STEPNIAK, AUDIO-VISUAL COVERAGE OF COURTS - A COMPARATIVE ANALYSIS 11-12 (Cambridge University Press 2008).

proceedings, alongside the legal principles encompassing contempt of court<sup>2</sup>. However, over the last few decades, there has been a growing tendency to scrutinize the restrictions imposed on broadcasting court proceedings. As technology continues to progress, the limitations imposed on broadcasting are progressively being viewed as incongruent with the common law doctrine of open justice.

On September 26, 2018, the Supreme Court of India, in the case of *Swapnil Tripathi v. Supreme Court of India*<sup>3</sup>, delivered a judgment allowing the live-streaming of court proceedings. It was held that the inclusion of live-streaming of court proceedings falls within the purview of the right to access justice as enshrined in Article 21 of the Constitution of India. The Bench comprising Chief Justice Dipak Misra, alongside Justice A. M. Khanwilkar and Justice D. Y. Chandrachud, pronounced that the broadcasting of court proceedings in real-time serves the greater welfare of the public. It was decided that, initially, only cases of constitutional and national importance in the Supreme Court shall be live-streamed as a pilot project. Nevertheless, the verdict remained un-executed for a considerable duration. After almost four years, the Bench of the Supreme Court presided over by the then Chief Justice U. U. Lalit, arrived at a unanimous resolution to implement live-streaming of constitutional bench proceedings. On August 26, 2022, the Supreme Court conducted the live-streaming of its proceedings<sup>4</sup>. Over time, various High Courts have also adopted this practice. The Gujarat High Court has achieved the distinction of being the first High Court to implement live-streaming of its judicial proceedings. There is also deliberation on extending the scheme to the district courts. The endeavour of live telecasting is being undertaken on an experimental basis, with the determination to either sustain or modify the practice contingent upon the results and findings derived from the trials.

Live-streaming is poised to enhance both transparency and the accessibility of court proceedings. Facilitating the access of citizens to observe real-time proceedings of the Supreme Court represents a significant stride in cultivating an enlightened and well-informed citizenry. The initiative will facilitate a deeper comprehension of the judiciary's resolute commitment to safeguarding the rights of socio-economically disadvantaged, historically marginalized, and dis-empowered segments of the populace. It possesses the capacity to foster a culture that upholds the rule of law. This technological solution of live-streaming can facilitate the right of access to justice for the public in general and the litigants in particular, effectively extending the spatial confines of the courtroom beyond its tangible boundaries. It possesses certain inherent advantages like serving an educational purpose by enabling the practical examination of cases. Additionally, it mitigates various drawbacks of the system, including challenges related to extensive travel, time consumption, and overcrowding within the court premises.

However, apprehensions arise regarding the ramifications of live-streaming on both the judicial officials presiding over the cases and the audience observing the proceedings. Live dissemination of court proceedings is vulnerable to potential misuse. It may

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<sup>2</sup>Id.

<sup>3</sup>*Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639.

<sup>4</sup>Explainer: Now, you can watch Supreme Court live, THE TIMES OF INDIA (Sept. 27, 2022, 03:41 PM), <https://timesofindia.indiatimes.com/india/explainer-now-you-can-watch-supreme-court-live/articleshow/94467488.cms>.



encompass issues of national security considerations and potentially constitute a breach of the fundamental right to privacy. The Attorney General also put forth a recommendation, advising against the live-streaming of proceedings in cases where public dissemination of information could be detrimental to the fair and impartial dispensation of justice. He also advised against live broadcasting in cases<sup>5</sup> that are likely to incite emotions, arouse strong sentiments, and foster hostility among different communities. The unapproved duplication of live-streaming videos presents an additional area of concern, given the considerable challenge it poses for governmental regulation. The lack of proper infrastructure presents another obstacle to the successful execution of live court proceedings.

Undoubtedly, the evolution of the legal framework is imperative to meet the dynamic demands of a rapidly changing society. However, there is a need to deliberate on and address the socio-legal implications associated with this paradigm shift, to maintain a delicate balance that prevents the potential disadvantages from outweighing the advantages. The practice of broadcasting legal proceedings must be guided by the common law principle of open justice subject to refinement through the laws of contempt, alongside diverse statutory limitations, and the fundamental rights safeguarded by the Constitution of India. Ultimately, the control over such streaming ought to be administered through the inherent authority of judges, provided to curtail coverage when the imperative of administration of justice necessitates such action.

## SWAPNIL TRIPATHI JUDGEMENT AND THE LEGAL FRAMEWORK

In *Swapnil Tripathi v. Supreme Court of India*, the petitioners, and interventionists, asserting themselves as individuals with public concern, had formally requested a pronouncement from the Supreme Court affirming the necessity for live broadcasting of proceedings on matters of constitutional and national significance within the Supreme Court. Moreover, the petitioners requested guidance from the Court in formulating directives aimed at facilitating the identification of extraordinary cases warranting eligibility for live-streaming. The central issue, in this case, pertained to the appropriateness of live-streaming court proceedings before the Supreme Court. The petitions put forth were grounded on the notion that live-streaming would facilitate broad public and litigant access to legal proceedings. Substantiating their arguments, the petitioners drew upon the authoritative pronouncement of a nine-judge Bench in *Naresh Shridhar Mirajkar v. State of Maharashtra*<sup>6</sup>. The Court in this case upheld the rights of journalists to disseminate accurate accounts of legal proceedings under Article 19 of the Constitution. It underscored the significance of open trials in safeguarding the credibility and efficiency of judicial institutions, as well as in bolstering public confidence. The Court observed that an all-encompassing attainment of justice necessitates the litigant's capacity to directly perceive, discern, and comprehend the unfolding of legal proceedings. Referring to *Scott v. Scott*, the Court observed "... where there is no publicity, there is no justice. Publicity is the very soul of justice... It keeps the

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<sup>5</sup>Bikash Singh, Manipur Violence: Unrest triggered after HC order to recommend quota for Meiteis, THE ECONOMIC TIMES (May 6, 2023, 12:42 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/manipur-violence-unrest-triggered-after-hc-order-to-recommend-quota-for-meiteis/articleshow/100022219.cms?from=mdr>.

<sup>6</sup>*Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1.

Judge himself while trying under trial<sup>7</sup>." Drawing an analogy between the judicial system in India and that of a pyramid, the Supreme Court underscored the significance of introducing live-streaming for the proceedings conducted within the district courts, which constitute the expansive foundation of the pyramid, serving as the primary point of interaction between citizens and the legal system.

While the Indian legal framework does not explicitly refer to open justice, it does include statutory provisions that address the concept of open court. Concerning the pronouncement of judgments by the Supreme Court, Article 145(4) of the Constitution explicitly mandates that such pronouncements must take place in an open court<sup>8</sup>. However, the Constitution does not contain any explicit provision concerning open court hearings before the Supreme Court. Instead, the provisions for conducting open court hearings are mentioned in the Code of Criminal Procedure<sup>9</sup> and the Code of Civil Procedure<sup>10</sup>. Further, the constitutional provision outlined in Article 21 engenders the right to access justice. The right to access and be furnished with information is also firmly entrenched in Article 19(1)(a). The act of publishing the legal proceedings of the Supreme Court and High Courts exemplifies one aspect of the court's classification as a court of record under Articles 129 and 215 of the Constitution respectively.

The broadcasting of legal proceedings would serve as a confirmation of the constitutional rights granted to both the general public and the parties involved in litigation provided the majesty of the court and privacy rights of both litigants and witnesses are protected.

## LIVE-STREAMING AS AN EXTENSION OF OPEN JUSTICE

As mentioned above, the verdict in the *Swapnil Tripathi* case is founded upon the principle of open justice. Jeremy Bentham introduced the concept of open justice, which can be comprehended most effectively not as a singular notion but rather as a collection of guiding principles. It encompasses both procedural and substantive aspects, such as the right of an involved party to be present in court as an observer, the encouragement of comprehensive, impartial, and precise media coverage of court proceedings, the obligation of judges to provide well-founded justifications for their decisions and the public's access to court judgments<sup>11</sup>. Lord Chief Justice Hewart articulated this concept in *R v. Sussex with* the following assertion: "... justice should not only be done but should manifestly and undoubtedly be seen to be done<sup>12</sup>." While the Indian legal system does not explicitly enunciate the concept of open justice, it does mention open court, which is considered a crucial procedural aspect in the wider framework of open justice<sup>13</sup>. According to Black's Law Dictionary, "open court" may mean "... either a court which has been formally convened and declared open for the transaction of its proper judicial

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<sup>7</sup>Scott v. Scott, 1913 AC 417.

<sup>8</sup>INDIA CONST. art. 145, cl. 4.

<sup>9</sup>Code of Criminal Procedure, 1973, § 327(1), No. 2, Acts of Parliament, 1974 (India).

<sup>10</sup>Code of Civil Procedure, 1908, § 153B, No. 5, Acts of Parliament, 1908 (India).

<sup>11</sup>Emma Cunliffe, Open Justice: Concepts and Judicial Approaches, 40 FED L REV 385, 389 (2012).

<sup>12</sup>R v. Sussex, [1924] 1 KB 256.

<sup>13</sup>(2018) 10 Supreme Court Cases 639.



business or a court which is freely open to the approach of all decent and orderly persons in the character of spectators<sup>14</sup>." In simpler terms, it refers to judicial proceedings that are accessible to the general public, wherein any individual interested is granted the right to be admitted and participate.

In India, it is a standard practice, that all types of cases presented before the judiciary, be they civil<sup>15</sup> or criminal<sup>16</sup>, are required to undergo adjudication in open court, giving rise to the proposal for live broadcasting of court proceedings. In *Swapnil Tripathi*, the utilization of live-streaming during courtroom proceedings was regarded as a means to uphold the principles of open justice. Trials conducted in an open court and exposed to public scrutiny inherently function as a safeguard against arbitrary or unpredictable judicial actions. Additionally, they serve as a potent means of instilling public trust in the legal system's integrity, objectivity, and impartiality. Nonetheless, it is prudent to subject the live-streaming procedure to meticulously crafted directives to avert the potential for its adverse impact on the dispensation of justice and the incitement of contemptuous behavior towards the court. In *Naresh Shridhar Mirajkar v. State of Maharashtra*<sup>17</sup>, a limited right to access to court was recognized and it was clarified that such entitlement does not rise to the status of a fundamental right for the public at large.

Further, debating the advantage of ensuring transparency in broadcasting legal proceedings, *Dolores K. Sloviter*, contended that there exists no compelling rationale to suggest that the advantages derived from observing a trial in this manner would not be equally achieved through the physical presence of impartial spectators within the courtroom, as opposed to the scenario of dispersed viewers observing via televised broadcasts<sup>18</sup>. Given the dearth of empirical evidence regarding the impact of live-streaming on trial proceedings, we are compelled to lean on the analyses and contentions presented by proponents and opponents alike. Regardless of our stance, the integration of live-streaming must align with the imperative of ensuring the effective dispensation of justice.

An open trial must aim to safeguard the rights of the parties rather than serve as a means of public entertainment. The paramount right is of the litigants to a just and equitable trial, rather than of the public to observe proceedings via live-streaming. Further, the regulatory framework for live-streaming must adhere to the broad principles<sup>19</sup> enunciated by the Supreme Court in the *Swapnil Tripathi judgment*. In addition to the exclusion of matrimonial affairs, instances of sexual offenses, and proceedings involving minors, the presiding judge is anticipated to disqualify cases where live-streaming is likely to undermine the integrity of the judicial process. A well-synchronized system ought to be in place for the prompt cessation of live-streaming in instances where there is a perceived risk of contempt of court or any other threat to the effective administration

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<sup>14</sup>HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1318 (4th ed. 1968).

<sup>15</sup>Code of Civil Procedure, 1908, § 153B, No. 5, Acts of Parliament, 1908 (India).

<sup>16</sup>Code of Criminal Procedure, 1973, § 327, No. 2, Acts of Parliament, 1974 (India).

<sup>17</sup>AIR 1967 SC 1.

<sup>18</sup>Dolores K. Sloviter, *If Courts Are Open, Must Cameras Follow?*, 26 HOFSTRA L. REV. 873, 886 (1998).

<sup>19</sup>Such as modest time delay, retaining copyright, exclusion of certain categories of cases, streaming by authorised agency, ban on commercial use, archive on website, and vesting the presiding judge with authoritative discretion.

of justice. This becomes especially relevant in instances where the preservation of broader public interest is warranted due to the delicate nature of a case, which possesses the potential to trigger a law-and-order situation<sup>20</sup>.

It is important to note that there are matters that require meticulous examination before the full-scale integration of live-streaming practices especially in the lower judiciary. In this regard, referring to the methodologies embraced by judiciaries in foreign countries could offer valuable insights in shaping our approach.

## PRACTICES IN OTHER COMMON LAW COUNTRIES

In several common law countries worldwide, the adoption of broadcasting courtroom proceedings has gained notable acceptance. An examination of this evolving concept in selected countries and the corresponding procedural norms as to how courts have addressed concerns of privacy, confidentiality, and the delicate nature of litigants, witnesses, and cases, while maintaining the dignity and majesty of the court could yield valuable insights.

### Australia

In Australia, the courtrooms across various jurisdictions allow the presence of television cameras<sup>21</sup>. Since 2013, the public has been granted access to audio-visual recordings of the Australian High Court<sup>22</sup>. Capturing and transmitting audio-visual content is executed by the personnel of the Court<sup>23</sup>. In the majority of the hearings, the recordings of the proceedings are rendered accessible within a span of one to two days<sup>24</sup>. There are limitations on the act of recording or replicating said recordings such as prior authorization from the Court and retention of copyright<sup>25</sup>. However, except for the High Court, the majority of Australian judicial bodies lack a uniform approach regarding the admission of television cameras within their courtrooms. The practice of filming is typically conducted in an unsystematic manner and is primarily confined to capturing formal ceremonial sessions<sup>26</sup>. These broadcastings of legal proceedings within Australian courts are constrained by the limitations delineated by the law of contempt of court. The law of contempt has been characterized as the primary mechanism within the Australian legal framework for regulating media publicity of court proceedings<sup>27</sup>.

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<sup>20</sup>BIKASH, *supra* note 5.

<sup>21</sup>DANIEL, *supra* note 1, at 210.

<sup>22</sup>(2018) 10 Supreme Court Cases 639.

<sup>23</sup>PHOTOGRAPHY AND RECORDING - HIGH COURT OF AUSTRALIA, <https://www.hcourt.gov.au/about/photography-and-recording> (last visited Aug. 6, 2023).

<sup>24</sup>*Id.*

<sup>25</sup>RECENT AV RECORDINGS - HIGH COURT OF AUSTRALIA, <https://www.hcourt.gov.au/cases/recent-av-recordings> (last visited Aug. 6, 2023).

<sup>26</sup>DANIEL, *supra* note 1, at 210-211.

<sup>27</sup>*Id.* at 212-213.



## Canada

The Canadian Supreme Court is acknowledged as a trailblazer in incorporating technological advancements, exemplified by its endorsement of audio-visual dissemination of its judicial proceedings<sup>28</sup>. In 1993, the Canadian Supreme Court initiated an attempt to facilitate real-time televised broadcasts of the proceedings encompassing three prominent legal cases<sup>29</sup>. The telecasts were regulated by three primary principles:

(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<sup>30</sup>.

The Canadian Parliamentary Affairs Channel (CPAC) is authorized to broadcast the appellate proceedings of the Court, albeit at a later date<sup>31</sup>. The telecasts are bound by established directives that serve to guarantee the Court's continued authority over the entirety of the filming procedures<sup>32</sup>. Since 2009, the appeal hearings have been publicly aired and subsequently preserved within the digital archives of the Court's official website<sup>33</sup>. The Court maintains ownership of the copyright of the legal proceedings<sup>34</sup>. If a party expresses the intention to withhold their case from the broadcast, it is incumbent upon them to communicate this intent to the Registrar no less than a fortnight in advance of the scheduled date of the hearing<sup>35</sup>.

## New Zealand

New Zealand adopts a liberal approach to media accessibility within its court system, having one of the most advanced and progressive live broadcasting frameworks among countries adhering to the common law tradition<sup>36</sup>. During the period spanning from 1996 to 1998, New Zealand undertook a pilot initiative covering more than twenty cases<sup>37</sup>. The entirety of streaming was subjected to a dual set of primary regulations: first, how broadcasts were to be conveyed necessitated adherence to principles of precision, objectivity, and equitable depiction of events, ensuring the absence of any accompanying editorial comment; secondly, the utilization of broadcast content for purposes beyond routine news programming or articles, mandated prior acquisition of

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<sup>28</sup>Kyu Ho Youm, *Cameras in the Courtroom in the Twenty-First Century: The U.S. Supreme Court Learning From Abroad?*, 2012 BYU L. REV. 1989, 2005 (2012).

<sup>29</sup>DANIEL, *supra* note 1, at 150.

<sup>30</sup>KYU, *supra* note 28, at 2006.

<sup>31</sup>DANIEL, *supra* note 1, at 151.

<sup>32</sup>*Id.* at 152.

<sup>33</sup>KYU, *supra* note 28, at 2007.

<sup>34</sup>DANIEL, *supra* note 1, at 152.

<sup>35</sup>(2018) 10 Supreme Court Cases 639.

<sup>36</sup>DANIEL, *supra* note 1, at 300.

<sup>37</sup>(2018) 10 Supreme Court Cases 639.

formal authorization<sup>38</sup>. In New Zealand, the broadcasting of court proceedings by media entities is authorized contingent upon the court's approval and regulated by the guidelines mentioned harmonizing the fundamental tenet of open justice with the imperative of ensuring a fair trial. There is also a latency of ten minutes. Usually, the Supreme Court accords permission for the recording of its proceedings, unless expressly contested by the involved parties<sup>39</sup>.

### South Africa

The inclusion of cameras within the courtrooms of South Africa is a contemporary development. In the year 2017, a significant precedent was set in *Van Breda v. Media 24 Limited*<sup>40</sup>, wherein the Supreme Court ruled in favour of permitting the dissemination of legal proceedings through broadcasting within criminal trials. The court emphasized that broadcasting court proceedings should remain unimpeded unless clear and substantiated evidence of bias is presented, coupled with a credible likelihood that such bias would materialize. The Court has established a set of general guidelines authorising the trial court to judiciously determine the permissibility of broadcasting proceedings, employing a case-specific approach. This involves balancing the potential jeopardy of introducing cameras and the potential detriment to a fair trial. Furthermore, a judge possesses the prerogative to cease media access whenever a determination is made that the regulations stipulated by the presiding judge have been contravened<sup>41</sup>.

### United Kingdom

The Supreme Court of the United Kingdom has sanctioned the streaming of its court proceedings through broadcasting mediums<sup>42</sup>. Till 2005, the act of recording legal proceedings was deemed unlawful<sup>43</sup>, constituting an instance of contempt towards the court<sup>44</sup>. Through the enactment of the Constitutional Reform Act of 2005, an exemption was conferred upon the Supreme Court, absolving it from the proscriptions stipulated within the Criminal Justice Act of 1925<sup>45</sup>. This was extended by the Crime and Courts Act of 2013 to the broadcasting of Supreme Court proceedings excluding these proceedings from the purview of the Contempt of Court Act of 1981<sup>46</sup>. The Eighth Practice Direction promulgated by the Supreme Court delineates the extent and arrangement of the aforementioned broadcasts<sup>47</sup>. The proceedings of the Supreme Court are authorized for filming and broadcasting by three prominent national broadcasters:

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<sup>38</sup>(2018) 10 Supreme Court Cases 639.

<sup>39</sup>DANIEL, *supra* note 1, at347.

<sup>40</sup>*Van Breda v. Media 24 Limited*, 2017 ZASCA 97.

<sup>41</sup>(2018) 10 Supreme Court Cases 639.

<sup>42</sup>WATCH LIVE - THE SUPREME COURT, <https://www.supremecourt.uk/live/court-01.html> (last visited Aug. 7, 2023).

<sup>43</sup>Criminal Justice Act, 1925, § 41, No.Ch. 86, Acts of Parliament, 1925 (UK).

<sup>44</sup>Contempt of Court Act 1981, § 9, No. Ch. 49, Acts of Parliament, 1981 (UK).

<sup>45</sup>Constitutional Reform Act 2005, § 47, No. Ch. 4, Acts of Parliament, 2005 (UK).

<sup>46</sup>Crime and Courts Act 2013, § 31-33, No. Ch. 22, Acts of Parliament, 2013 (UK).

<sup>47</sup>UKSC PRACTICE DIRECTION 8, PARA 8.17.1 - BROADCASTING, <https://www.supremecourt.uk/docs/practice-direction-08.pdf> (last visited Aug. 7, 2023).





BBC, ITN, and Sky News<sup>48</sup>. Any form of transmission that could undermine the credibility of the proceedings, such as programs intended for amusement, satirical content, political party communications, and promotional activities, is proscribed<sup>49</sup>.

In the year 2013, the United Kingdom sanctioned the inclusion of audio-visual broadcasting of proceedings of the Court of Appeals<sup>50</sup> after the endorsement of the Ministry of Justice in its 2012 Report, to publicly air the proceedings of the Court of Appeals, citing the absence of victims or witnesses in these proceedings as a key rationale<sup>51</sup>. However, the Ministry of Justice exercises heightened caution when deliberating upon the broadcasting of proceedings of lower courts as it involves broader concern for witness and victim protection<sup>52</sup>.

### United States of America

The recording of video footage or capturing of photos during its proceedings is prohibited by the United States Supreme Court<sup>53</sup>. The prohibition is grounded in a multifaceted rationale, encompassing concerns over potential deleterious impacts on legal practitioners and judicial authorities<sup>54</sup>. Throughout its history, the Supreme Court has maintained a consistent stance in dismissing pleas for broadcasting of its proceedings<sup>55</sup>. Since 1955, the Court has granted permission for the capture of audio recordings during verbal deliberations. 1955 was the year of the O. J. Simpson trial which according to numerous accounts devolved into nothing short of a spectacle, with jurors, lawyers, and the judge adjusting their behavior to accommodate the demands and preferences of the television audience<sup>56</sup>. At present, the US Supreme Court expeditiously publishes audio transcriptions of the verbal exchanges on the same day as the proceedings, alongside comprehensive audio recordings of all oral debates conducted within each week of hearings<sup>57</sup>.

Certain Federal Courts permit the broadcasting of court proceedings subject to stipulated guidelines. Courts across the various States of the United States have established regulations on the broadcasting of court proceedings, with the specifics of these regulations differing from State to State in terms of both the magnitude and scope.

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<sup>48</sup>PROPOSALS TO ALLOW THE BROADCASTING, FILMING, AND RECORDING OF SELECTED COURT PROCEEDINGS, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217307/broadcasting-filming-recording-courts.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217307/broadcasting-filming-recording-courts.pdf) (last visited Aug. 7, 2023).

<sup>49</sup>*Id.*

<sup>50</sup>Itay Ravid, Tweeting #Justice: Audio-Visual Coverage of Court Proceedings in a World of Shifting Technology, 35 CARDOZO ARTS & ENT. L.J. 41, 45 (2017).

<sup>51</sup>Supra note 48.

<sup>52</sup>(2018) 10 Supreme Court Cases 639.

<sup>53</sup>*Id.*

<sup>54</sup>SUPREME COURT OF THE UNITED STATES - COUNSELOR TO THE CHIEF JUSTICE, <https://cdn.arstechnica.net/wp-content/uploads/2017/10/scotusletter.pdf> (last visited Aug. 8, 2023).

<sup>55</sup>Jason Mazzone, Above Politics: Congress and the Supreme Court in 2017, 93 CHI.-KENT L. REV. 373, 404 (2018).

<sup>56</sup>Salonika Kataria et. al., Cameras in Indian Courtrooms: A Bliss or Misery? - Learning from the American Experience, 1 NUJSL REV. 345, 351 (2008).

<sup>57</sup>ORAL ARGUMENTS - SUPREME COURT OF THE UNITED STATES, [https://www.supremecourt.gov/oral\\_arguments/oral\\_arguments.aspx](https://www.supremecourt.gov/oral_arguments/oral_arguments.aspx) (last visited Aug. 8, 2023).

Since 1946, Rule 53 of the Federal Rules of Criminal Procedure has enforced a prohibition on the filming and broadcasting of criminal proceedings within the jurisdiction of the United States Federal Courts<sup>58</sup>.

In the case of *Estes v. Texas*, the US Supreme Court rendered a verdict observing that the utilization of camera coverage during a trial, even in the face of the defendant's explicit dissent, constituted an infringement upon the defendant's constitutionally safeguarded rights<sup>59</sup>. The Court further held that no provisions within the First and Sixth Amendments of the US Constitution afford any constitutional right sanctioning the utilization of cameras in courtrooms. However, the inquiry into whether the broadcasting of courtroom proceedings inherently compromised the impartiality of a just trial persisted unresolved. The court addressed this query in the case of *Chandler v. Florida*, by asserting that the limitations on camera presence as established in *Estes*'s case should not be construed as an unalterable and all-encompassing prohibition<sup>60</sup>. The court opined that the responsibility for delineating regulations governing the admission of televised broadcasts rested with individual states. It was emphasized that the act of televising a criminal trial should not be automatically construed as intrinsically prejudicial to the defendant's fair trial rights. Following the ruling in the *Chandler* case, all States within the United States have authorized some form of broadcasting within a regulatory framework<sup>61</sup>. However, the court acknowledged the potential risks posed to the defendant's right to a fair trial. *Chandler*'s judgment imposed an unjustifiable onus on the accused to demonstrate that prejudice arose due to the presence of cameras<sup>62</sup>.

The emergence of courtroom broadcasting in most countries is a result of judicial rulings. Also, many of the countries adhere to specific shared protocols, including the implementation of a modest time delay, retaining copyright, preliminary trial initiatives, exclusion of certain categories of cases, and vesting the presiding judge with authoritative discretion. The act of broadcasting is typically prohibited in cases where it hinders the smooth functioning of the judicial process.

## CONCERNS OF CONTEMPT OF COURT

The Supreme Court of India, while acknowledging the usefulness of live-streaming court proceedings, demonstrated an effort to reconcile the diverse concerns of the administration of justice. These concerns encompassed the principles of open justice, the preservation of the dignity and privacy of the parties involved in the proceedings, and the maintenance of the Courts' revered majesty and decorum<sup>63</sup>.

Contempt law addresses issues of prejudicial publicity which also include the practice of live-streaming. Under the common law articulation "any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the courts" amounts to contempt of court<sup>64</sup>. The New South Wales Law Reform

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<sup>58</sup>Federal Rules of Criminal Procedure, § 53, No. 9, Acts of Parliament, 2016 (USA).

<sup>59</sup>*Estes v. Texas*, 381 US 532 (1965).

<sup>60</sup>*Chandler v. Florida*, 449 US 560 (1981).

<sup>61</sup>(2018) 10 Supreme Court Cases 639.

<sup>62</sup>SALONIKA, *supra* note 56, at 349.

<sup>63</sup>(2018) 10 Supreme Court Cases 639.



Commission conceptualises contempt of court in the following manner:

The law of contempt aims to prevent interference with the administration of justice. It regulates a range of human activities that pose a risk of such interference, such as misbehaviour in the courtroom, disobeying court orders, and interference with parties and witnesses in court proceedings<sup>65</sup>.

Further, in India, contempt of court has been broadly categorized as civil contempt and criminal contempt<sup>66</sup>. Because contempt of court encompasses a diverse array of behaviours, different facets related to the broadcasting of legal proceedings have the potential to fall within one or multiple classifications of contempt of court. A broadcaster can potentially engage in an act of civil contempt through the act of disregarding a court directive or guidelines concerning the broadcasting of legal proceedings. On the other hand, the unauthorized use of cameras in the courtroom is capable of constituting contempt in the face of the court - a form of criminal contempt. Sub-judice contempt can also manifest when the broadcasting unduly biases an ongoing trial, thereby impeding the proper dispensation of justice.

Courtroom publicity exerts a dual impact on democracy, simultaneously fortifying and undermining its foundations. While the introduction of cameras in courtrooms appears to expand public accessibility to judicial proceedings, it is crucial to acknowledge that this enhanced access, in certain instances, instead of guaranteeing a just trial, could potentially jeopardize the right to a fair trial due to the contemptuous ramifications associated with the live-streaming of such proceedings. The emergence of social media has empowered everyone to assume the role of a potential journalist. There are discernible signs that segments of the judicial procedure, once accessible to the general public, are susceptible to both sensationalized portrayal and dissemination of misleading information. Despite a proactive approach by courts, there have been instances where fragmented video clips of these proceedings have been disseminated on social media platforms, often accompanied by sensationalized titles trying to vilify judges or legal practitioners. Most of these videos are devoid of any identifiable sources, maintaining anonymity and evading scrutiny or responsibility. Hence, there exists a possibility that both judges and lawyers might engage in self-censorship while participating in live-streamed hearings<sup>67</sup>. This is likely to result in an unfavourable consequence of sterilizing the oral proceedings and impeding authentic courtroom interaction. Certain academic studies indicate that judges, when provided with unrestricted television airtime, demonstrate behavior akin to that of politicians, wherein they take actions aimed at optimizing their visibility and presence<sup>68</sup>. It would be a gross violation of fair trial if the judges and advocates adjust their behavior to the tastes of the viewers. Live-streaming and subsequent comments on social media may also lead to

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<sup>64</sup>R v. Gray, [1900] 2 QB 36.

<sup>65</sup>DANIEL, *supra* note 1, at 213.

<sup>66</sup>Contempt of Courts Act, 1971, § 2, No. 70, Acts of Parliament, 1971 (India).

<sup>67</sup>Joshua Rozenberg, Will televised trials create celebrity judges?, THE GUARDIAN (Sept. 6, 2011, 20:30 BST), <https://www.theguardian.com/law/2011/sep/06/televised-trials-celebrity-judges>. (last visited on 11th Oct, 2022)

<sup>68</sup>Felipe Lopes, Television and Judicial Behaviour: Lessons from the Brazilian Supreme Court, 9 ECON. ANAL. LAW REV. 41, 41 (2018).

mob trial on sub judice matters<sup>69</sup>. Later public may feel let down by the judiciary if the court verdict goes against their sentiment.

The act of live-streaming also gives rise to a plethora of other concerns such as: (a) privacy issues - in the absence of robust safeguards, live-streaming can lead to violation of privacy rights of the litigating parties (b) discretionary powers - the present system of live-streaming gives the presiding judge uncontrolled discretionary power to decide on the streaming of a case (c) psychological impact of live-streaming - owing to the heightened awareness of public scrutiny, judges might refrain from offering remarks that could potentially be construed as unpopular (d) heightened emphasis on oral remark - due to live-streaming of cases there are hints of increased emphasis on oral remarks of judges rather than the final verdict (e) threat to evidence - the presence of cameras might impact the composure of witnesses, leading to constraints on their ability to testify with true freedom (f) escape route for accused - live-streaming has the potential to serve as an escape route for accused, given that they may contend adverse publicity and the absence of a fair trial as mitigating factors<sup>70</sup> (g)shifting focus of judges - live-streaming compels judges to shift their focus towards administration of what transpires through camera.

The live-streaming practice necessitates diligent adherence to systematically formulated directives. The introduction of live-streaming also necessitates appropriate amendments to the Contempt of Courts Act, 1971. Any unapproved utilization of the live stream should be subject to legal sanctions as per the law of contempt. Also, it is important to note that in recent times, there has been a shift in the approach to harmonising competing interests through contempt of court and sub judice regulations alone. The new approach tends to also emphasize open justice, free expression, and the public right to information<sup>71</sup>.

## CONCLUSION

The live-streaming of court proceedings undeniably offers the public an opportunity to observe and gain insight into court proceedings, a privilege that was previously hindered by logistical constraints and infrastructural limitations within the courts. However, with the practice of live-streaming and opening courts to a broader audience comes the increased possibilities of contempt of court. Live-streaming of sub-judice matters is expected to incite significant public emotion, potentially influencing the impartiality of the trial process. People will comment on ongoing cases on social media based on their feelings and sentiments, which in turn, will result in increased pressure of public opinion on judges. Hence, broadcasting must be subject to restrictions in the interest of public morals, privacy, contempt of court, national security, and public order.

The regulatory framework for live broadcasting is presently in an incipient phase. With unfettered discretionary power, presiding judges have a delicate task at hand of choosing carefully the cases to be live-streamed. While streaming, it must be ensured that the dignity of the court and the parties remain intact. What is necessitated is a

<sup>69</sup>THE LEGAL NOW, <https://www.youtube.com/watch?v=gEYyKA0fMLA> (last visited Sept. 5, 2023).

<sup>70</sup>SALONIKA, *supra* note 56, at 358.

<sup>71</sup>Clive Walker, *Fundamental Rights, Fair Trials and the New Audio-Visual Sector*, 59 MOD. L. REV.517, 517-518 (1996).



nuanced equilibrium between the requirement of dissemination and the assurance of equitable justice for all involved parties. In certain cases, video or audio recording of proceedings can be an alternative to live-streaming.

Before broadcasting is applied in the lower judiciary, it is desirable to have a well-developed regulatory framework. Courts must be cautious while deciding to live stream trial court proceedings as victims and witnesses are more likely to appear in such courts and hence, involve larger issues of victim and witness protection. The onus of delineating the procedural intricacies for broadcasting lower court proceedings rests upon the respective High Courts. This necessitates comprehensive research into the live-streaming experiences of various High Courts. Effective advancement of this project to the lower judiciary will heavily depend upon insights derived from these experiences.

Cameras in the courtroom are a new phenomenon for the Indian judiciary and some aspects require further investigation. Careful empirical study must be conducted to understand the impact of cameras on judges, advocates, and other participants. Such a survey must consider the Hawthorne Effect which elucidates the alterations in the conduct of research subjects when exposed to the act of being observed. Additional research is warranted to ascertain the potential advantages of implementing live-streaming in India, particularly given the current state of the country's development.

In pursuit of progress and intellectual growth, we must embrace the practice of live-streaming court proceedings. Refusing to adapt would only lead to a state of stagnation, hindering our capacity to evolve. On the other hand, an indiscriminate implementation of live-streaming is poised to place the judiciary in a state of disarray. The resolution may be found through meticulous examination and discernment of the live-streaming process and guidelines.