

Live streaming of Supreme Court proceedings

September 24, 2022

Manifest Pedagogy:

The Supreme Court has decided to live stream court proceedings in important constitutional cases. The decision comes nearly four years after a plea was made in the interest of transparency. 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.

In News: The Supreme Court decided to live stream its proceedings in crucial Constitution Bench cases that will be heard from September 27.

Placing it in the Syllabus: Polity and Governance.

Static Dimensions

- Background

Current Dimensions

- Recommendations by Attorney General
- Live streaming in HCs
- Precedents around the world
- Significance of Live streaming proceedings
- Concerns around live streaming

Content

Background

- The first steps towards the decision were taken in 2018, when a three-judge Bench agreed to hear a public interest litigation seeking live streaming of judicial

proceedings on matters of constitutional and national importance.

- The Supreme Court in **Swapnil Tripathi vs Supreme Court of India (2018)** had ruled in favour of opening up the apex court through live-streaming.
 - It held that the live streaming proceedings are part of the right to access justice under **Article 21** (Protection of Life and Personal Liberty) of the Constitution
- **Gujarat High Court** was the first high court to livestream court proceedings followed by Karnataka high court.
- 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.
- 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.

Recommendations by Attorney General

- AG 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 in India.
- 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.
- A-G suggested that the court must retain the power to

withhold broadcasting, and to also not permit it in cases involving:

- Matrimonial matters.
- Matters involving interests of juveniles or the protection and safety of the private life of the young offenders.
- Matters of National security.
- 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.
- To protect confidential or sensitive information, including all matters relating to sexual assault and rape.
- Matters where publicity would be antithetical to the administration of justice.
- 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.

Precedents around the world

- **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.

Significance of Live streaming proceedings

- The case for live streaming of SC cases of constitutional/national importance are quite strong. Such cases impact various aspects of people's lives.
 - Therefore, the public's ability to participate in this conversation by watching these proceedings will not just increase legal literacy but potentially enhance the public's continuous engagement with the Constitution and laws.
- Such direct engagement is better than a process mediated through some Delhi-based lawyers or court reporters,

especially when inexpensive technology allows such live access.

- It will bring discipline and improve how judges and lawyers conduct the proceedings, as they are aware that the public is watching.
- Positive systemic corrections have been made possible due to the broadcast of court proceedings.
 - 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.

Concerns around live streaming

- During hearings judges may not ask questions or make comments that could be perceived as unpopular.
- There is an increasing trend of oral observations of the court, which are not binding on parties replacing reasoned judgement and orders that are consequential.
 - Live streaming may accentuate this trend, with the reportage being focused on the oral process, rather than the final verdict.
- Lawyers, aware of their new audience, may choose to grandstand and play to the gallery, especially in a case they expect to lose. Thus, live streaming has the potential to simultaneously suppress desirable speech and enhance undesirable speech within the courtroom.
- With the advent of social media, every citizen became a potential journalist. Lack of editorial control has in

fact meant informational anarchy, with fake news and propaganda dominating YouTube and social media feeds.

- Social media has on the whole weakened democracy.
 - At Stanford University, in April 2022, former US president Barack Obama flagged that “you just have to flood a country’s public square with enough raw sewage. You just have to raise enough questions, spread enough dirt, plan enough conspiracy theorising, that citizens no longer know what to believe”.
- Indications already exist that snippets of the judicial process, once available in the public domain, are already open to both sensationalism and disinformation.
 - Some of the high courts, such as Gujarat, Karnataka and Patna, have made their live streamed archived videos available. They are seeing spliced videos of their proceedings splashed over YouTube with titles that scream.
- Added to this are videos shared through WhatsApp which take a clip of a few seconds clip from a question/observation by a judge or lawyer and make propaganda videos, often demonising the professional. Most such videos are anonymous and avoid any accountability.
- If portions of the proceedings can be circulated in short, misleading capsules on social media, judges and lawyers alike may self-censor during live-streamed proceedings.
 - That will have the undesirable effect of sanitising the oral proceedings and preventing genuine courtroom engagement.
- A 2018 paper by Felipe Lopez titled ‘Television and Judicial Behaviour: 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 maximise 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.

Wayforward

- We must experiment with live streaming of SC proceedings, for wholesale rejection of change is a recipe for stagnation.
- The solution may lie in carefully determining how the live streaming proceeds.
- Careful selection of cases for live streaming, not uploading archived stream on the SC website until it is legally/technologically possible to ensure that such videos cannot be spliced and other similar measures that reflect an understanding of how the public consumes (dis)information will ensure that live streaming enriches constitutionalism across the country.
- A set of guidelines must be framed to ensure that the video titles and description are not misleading and convey accurate information only.
- Strict punishment/penalty must be attached with the unauthorised reproduction of live-streaming of videos.
- A hasty and wholesale introduction on the other hand is likely to land the SC right in the middle of the majoritarian and toxic information swamp that prevails in the country.

Mould your thoughts

1. In order to boost transparency and accountability, the Supreme Court has recently decided to live stream proceedings of important constitutional cases. Critically analyse. Also compare with the precedents being followed by other democratic nations in this

regard. (250 words).

Approach to the answer.

- Introduction about court decision.
- Background of the matter
- Significance of live proceedings
- Concerns around live proceedings.
- Practices being followed in other countries.
- Wayforward and conclusion.