

Supreme Court of India

Swapnil Tripathi vs Supreme Court Of India on 26 September, 2018

Author: A Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1232 OF 2017

Swapnil Tripathi .. Petitioner(s)
:Versus:

Supreme Court of IndiaRespondent(s)

WITH

WRIT PETITION (CIVIL) NO. 66 OF 2018
Indira Jaising ..Petitioner(s)
:Versus:

Secretary General & Ors.Respondent(s)

AND

WRIT PETITION (CIVIL) NO. 861 OF 2018

Mathews J. Nedumpara & Ors. .. Petitioner(s)
:Versus:

Supreme Court of India & Ors. ..Respondent(s)

AND

WRIT PETITION (CIVIL) NO. 892 OF 2018

Centre for Accountability and Systemic
Change & Ors. .. Petitioner(s)
:Versus:

Secretary General & Ors. ..Respondent(s)

Signature Not Verified

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SUBHASH CHANDER
Date: 2018.09.26
16:01:06 IST
Reason:

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JUDGMENT

A.M. Khanwilkar, J.

1. The petitioners and interventionists, claiming to be public spirited persons, have sought a declaration that Supreme Court case proceedings of constitutional importance having an impact on the public at large or a large number of people should be live streamed in a manner that is easily

accessible for public viewing. Further direction is sought to frame guidelines to enable the determination of exceptional cases that qualify for live streaming and to place those guidelines before the Full Court of this Court. To buttress these prayers, reliance has been placed on the dictum of a nine-Judge Bench of this Court in Naresh Shridhar Mirajkar and Ors. Vs. State of Maharashtra and Ors.,¹ which has had an occasion to inter alia consider the arguments of journalists that they had a fundamental right to carry on their occupation under Article 19(1)(g) of the Constitution; that they also had a right to attend the proceedings in court under Article 19(1)(d); and that their right 1 (1966) 3 SCR 744 to freedom of speech and expression guaranteed under Article 19(1)(a) included their right to publish a faithful report of the proceedings which they had witnessed and heard in Court as journalists. The Court whilst considering the said argument went on to emphasise about the efficacy of open trials for upholding the legitimacy and effectiveness of the Courts and for enhancement of public confidence and support. It would be apposite to reproduce the relevant extract from the said decision propounding about the efficacy of hearing of cases in open courts, in the following words:

20.. 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. As Bentham has observed :

In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity. (Scott v. Scott [(1911) All. E.R. 1, 30])

2. Indeed, the right of access to justice flowing from Article 21 of the Constitution or be it the concept of justice at the doorstep, would be meaningful only if the public gets access to the proceedings as it would unfold before the Courts and in particular, opportunity to witness live proceedings in respect of matters having an impact on the public at large or on section of people. This would educate them about the issues which come up for consideration before the Court on real time basis.

3. As no person can be heard to plead ignorance of law, there is corresponding obligation on the State to spread awareness about the law and the developments thereof including the evolution of the law which may happen in the process of adjudication of cases before this Court. The right to know

and receive information, it is by now well settled, is a facet of Article 19(1)(a) of the Constitution and for which reason the public is entitled to witness Court proceedings involving issues having an impact on the public at large or a section of the public, as the case may be. This right to receive information and be informed is buttressed by the value of dignity of the people. One of the proponents has also highlighted the fact that litigants involved in large number of cases pending before the Courts throughout the country will be benefitted if access to Court proceedings is made possible by way of live streaming of Court proceedings. That would increase the productivity of the country, since scores of persons involved in litigation in the courts in India will be able to avoid visiting the courts in person, on regular basis, to witness hearings and instead can attend to their daily work without taking leave.

4. As the debate has actuated momentous issues, we had requested the learned Attorney General for India, Shri K.K.

Venugopal to collate the suggestions given by him as well as the petitioners and interventionists and submit a comprehensive note for evolving a framework, in the event the relief claimed in the writ petition(s) was to be granted. We shall advert to the same a little later.

5. We have heard Mr. K.K. Venugopal, learned Attorney General for India, Ms. Indira Jaising, learned Senior Advocate, Mr. Virag Gupta learned counsel, Mr. Mathews J. Nedumpara, learned Advocate and other petitioners/intervenors appearing in-person.

6. Indisputably, open trials and access to the public during hearing of cases before the Court is an accepted proposition.

As regards the pronouncement of judgments by the Supreme Court, there is an express stipulation in Article 145(4) of the Constitution that such pronouncements shall be made in open Court. Indeed, no such express provision is found in the Constitution regarding open Court hearing before the Supreme Court, but that can be traced to provisions such as Section 327 of the Code of Criminal Procedure, 1973 (CrPC) and Section 153-B of the Code of Civil Procedure, 1908 (CPC) which read thus:

Section 327 CrPC 327. Court 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.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into the trail of rape or an offence under section 376, section 376-A, section 376-B, section 376-C [section 376-D or section 376-E of the Indian Penal Code (45 of 1860)] shall be conducted in camera;

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court;

[Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.] (3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court:] [Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.] Section 153-B CPC 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 state 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.

7. Notably, in *Naresh Shridhar Mirajkar (supra)*, this Court, in no uncertain terms, expounded that open trial is the norm but, at the same time, cautioned that there may be situations where the administration of justice itself may make it necessary for the Courts to hold in-camera trials. Applying the underlying principles, it may be appropriate to have a proper and balanced regulatory framework before the concept of live streaming of Court proceedings of this Court or any other courts in India is put into action.

8. Indubitably, live streaming of Court proceedings has the potential of throwing up an option to the public to witness live court proceedings which they otherwise could not have due to logistical issues and infrastructural restrictions of Courts; and would also provide them with a more direct sense of what has transpired. Thus, technological solutions can be a tool to facilitate actualization of the right of access to justice bestowed on all and the litigants in particular, to provide them virtual entry in the Court precincts and more particularly in Court rooms. In the process, a large segment of persons, be it entrants in the legal profession, journalists, civil society activists, academicians or students of law will be able to view live proceedings in propria persona on real time basis. There is unanimity between all the protagonists that live streaming of Supreme Court proceedings at least in respect of cases of Constitutional and national importance, having an impact on the public at large or on a large number of people in India, may be a good beginning, as is suggested across the Bar.

9. Live streaming of Court proceedings is feasible due to the advent of technology and, in fact, has been adopted in other jurisdictions across the world. Live streaming of Court proceedings, in one sense, with the use of technology is to virtually expand the Court room area beyond the physical four walls of the Court rooms. Technology is evolving with increasing swiftness whereas the law and the courts are evolving at a much more measured pace. This Court cannot be oblivious to the reality that technology has the potential to usher in tangible and intangible benefits which can consummate the aspirations of the stakeholders and litigants in particular. It can epitomize transparency, good

governance and accountability, and more importantly, open the vista of the court rooms, transcending the four walls of the rooms to accommodate a large number of viewers to witness the live Court proceedings. Introducing and integrating such technology into the courtrooms would give the viewing public a virtual presence in the courtroom and also educate them about the working of the court.

10. We must hasten to add that our attention was invited to the decision taken by the Advisory Council of the National Mission of Justice Delivery and Legal Reforms on the proposal to initiate audio video recording on an experimental basis in the Courts. In its meeting held on 26th August, 2014, 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. However, in the meeting of the E-Committee held on 8th January, 2014, the issue was taken up but was deferred as it required consultation with Honble Judges of the Supreme Court and the High Courts. Indeed, consultation with the Honble Judges of the Supreme Court and the High Courts may become essential for framing of rules for live streaming of Court proceedings so as to ensure that the dignity and majesty of the Court is preserved, and, at the same time, address the concerns of privacy and confidentiality of the litigants or witnesses, matters relating to business confidentiality in commercial disputes including prohibition or restriction of access of proceedings or trials stipulated by the Central or State legislations, and, in some cases to preserve the larger public interest owing to the sensitivity of the case having potential to spring law and order situation or social unrest.

These are matters which may require closer scrutiny. While doing so, the modules adopted by courts in other jurisdictions may be useful. The position in some of the Courts in other jurisdictions (arranged in alphabetical order) as culled out from the material pointed out to us, is as follows:

I. Australia

1. High Court: Allows recordings of its proceedings to be published on its website².

Since 1st October, 2013, the High Court of Australia, which is its apex court, has made available on its website audio- visual recordings of all full-court hearings held in Canberra³.

a. The content of the coverage is vetted and recordings are posted usually within day or two of the hearing; b. The High Court has issued certain terms for use of such recordings on its website, which include restrictions on recording or copying without prior permission of the Court and retention of copyright over the proceedings by the Court⁴;

c. The High Court permits members of the public to take photographs inside courtrooms when the Court is not in session, for private purposes. Audio-video recording of Court proceedings by private parties is expressly banned. The Court however, on certain occasions, permits film ²Available on the Australian High Court website at: <http://www.hcourt.gov.au/cases/recent-av-recordings> ³ Media Release: Audio-Video Recordings of Full Court proceedings available on the Australian High Court website at:

http://www.hcourt.gov.au/index.php?option=com_acymailing&ctrl=archive&task=view&listid=6-judgment-delivery-notification&mailid=28-media-release 4 Terms of use:

Access to the audio-visual recordings of the Court is subject to the following conditions: (1) You will not record, copy, modify, reproduce, publish, republish, upload, post, transmit, broadcast, rebroadcast, store, distribute or otherwise make available, in any manner, any proceeding or part of any proceeding, other than with prior written approval of the Court. However, schools and universities may broadcast/rebroadcast proceedings in a classroom setting for educational purposes without prior written approval. (2) The audio-visual material available via our web-site of Court proceedings does not constitute the official record of the Court.

(3) Copyright of the footage of the proceedings is retained by the Court. By clicking "I agree/play" (when available), you agree to be bound by these terms of use. Available on the Australian High Court website at: <http://www.hcourt.gov.au/cases/recent-av-recordings> crews to film parts of proceedings like the arrival of the Justices and them sitting at the bench, the Court staff positioned in the Court, and the barristers and solicitors at their tables in the courtroom. Such permission is granted on a case-to-case basis and subject to certain conditions imposed by the Court⁵;

2. Lower Courts^{6,7}: There are no statutory restrictions on media coverage of lower court proceedings and permission for broadcast of hearings differs from court to court.

a. Federal Court of Australia: Allows the media to broadcast proceedings on a regular basis and also publishes videos of certain judgment summaries on its website.

i. In the Federal Court of Australia (having appellate jurisdiction), television camera coverage is coordinated and supervised by the Courts Director of Public Information.

ii. The Court itself has not imposed any rigid conditions on recordings. Most recordings are permitted on an ad-hoc basis and on certain conditions, including that the proceedings are not disturbed, that no artificial lighting is used, that cameras remain in fixed positions once proceedings have commenced, and that the Court retains the right to veto the use of any part or of all footage recorded.

5 Photography and Recording available on the Australian High Court website at: <http://www.hcourt.gov.au/about/photography-and-recording> 6 In-Court Media Coverage a consultation paper available on the website of the New Zealand Judiciary at: https://courtsfnz.govt.nz/In-Court-Media-Review/In-Court-Media-Review/In-Court-Media-Coverage_-_consultation-paper_.pdf 7 Report to Chief Justice on In-Court Media Coverage available on the website of the New Zealand Judiciary at: https://www.courtsfnz.govt.nz/In-Court-Media-Review/In-Court-Media-Review/ReporttoChiefJusticeonincourtmediacoverageF6_7_15_20150720.pdf iii. The website of the Federal Court also contains a video archive of certain judgment summaries, accompanied by text versions⁸.

iv. Rule 6.11 of the Federal Court Rules, 2011⁹ seems to indicate that private parties may also take recordings of proceedings, subject to restrictions laid down therein.

b. Supreme Courts: Permission for broadcast varies, depending on the court.

i. The Supreme Courts (having trial jurisdiction) for the various Australian districts differ on permission for media broadcasting. For example, the Queensland Supreme Court allows for a live or delayed broadcast⁸ Available on the website of the Federal Court at: <http://www.fedcourt.gov.au/digital-law-library/videos>⁹ 6.11 Use of communication device or recording device in place where hearing taking place (1) In this rule:

communication device includes a mobile telephone, audio link, video link or any other electronic communication equipment.

recording device means a device that is capable of being used to record images or sound, including a camera, tape recorder, video recorder, mobile telephone or digital audio recorder. (2) A person must comply with any directions made by the Court at the hearing of any proceeding in the Court relating to the use of a communication device or recording device. (3) A person must not use a recording device for the purpose of recording or making a transcript of the evidence or submissions in a hearing in the Court. (4) A person must not use a communication device or a recording device that might:

(a) disturb a hearing in the Court; or

(b) cause any concern to a witness or other participant in the hearing; or

(c) allow a person who is not present in the Court to receive information about the proceeding or the hearing to which the person is not entitled. Note 1 The Court may have regard to any relevant matter, including the following:

(a) why the person needs to use the device in the hearing;

(b) if an order has been given excluding one or more witnesses from the Court whether there is a risk that the device could be used to brief a witness out of court;

(c) whether the use of the device would disturb the hearing or distract or cause concern to a witness or other participant in the hearing.

Note 2 The Court may dispense with compliance with this rule see rule 1.34. available on the website of the Australian Government at: <https://www.legislation.gov.au/Details/F2011L01551> of only judgment remarks¹⁰ and has also issued practice directions in that regard¹¹.

ii. Filming court proceedings is permitted in certain situations in certain Supreme Courts like New South Wales¹², Northern Territory¹³, Western Australia¹⁴ and Tasmania¹⁵, after an application is

made to the presiding Judge or to the registrar in some courts.

c. Trial Courts: Rarely admit cameras and when they do, allow recording mostly for ceremonial events or for stock footage.

10 For definitions and explanations, see Protocol for the Recording and Broadcasting of Judgment Remarks available on the website of the Supreme Court of Queensland at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/485224/protocol-for-recording-and-broadcasting-judgment-remarks.pdf 11 Amended Practice Direction Number 8 Of 2014 available on the website of the Courts of Queensland at:

https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/225553/sc-pd-8of2014.pdf 12 See the following documents available on the website of the New South Wales Supreme Court:

Recording and broadcasting of judgment remarks policy at: http://www.supremecourt.justice.nsw.gov.au/Documents/Forms%20and%20Fees/Media%20Forms/recording_and_broadcasting_of_judgment_remarks_policy_1014v2.pdf and Media Guidelines On Reporting Criminal Proceedings at: http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Media%20Guidelines_Reporting%20Criminal%20Proceedings%20in%20the%20NSW%20Supreme%20Court_April%202016.pdf 13 Media Guide available on the website of the Northern Territory Courts website at:

http://www.nt.gov.au/justice/ntmc/media/documents/Media_Guide.pdf 14 Transcripts and Videos available on the website of the Supreme Court of Western Australia at:

https://www.supremecourt.wa.gov.au/T/transcripts_and_videos_2018.aspx?uid=9348-5501-0341-3842 15 Media Guidelines available on the website of the Tasmanian Supreme Court at:

https://www.supremecourt.tas.gov.au/__data/assets/pdf_file/0014/414221/Media-Guidelines-May-2018.pdf

II. Brazil

1. Supreme Court: Allows live video and audio broadcast of Court proceedings, including the deliberations and voting process undertaken by the judges in court.

a. The Brazilian congress enacted a law, which was sanctioned by the President on 17th May, 2002, enabling the creation of a public television channel, TV Justiça, dedicated to the judiciary.

b. From 14th August, 2002 onwards, Supreme Court proceedings have been telecast live on TV Justiça¹⁶. A separate radio channel, Radio Justiça¹⁷ broadcasts audio proceedings.

c. Both the television and radio stations are owned by the Brazilian judicial branch and operated by the Supreme Court.

d. There are also two YouTube channels, one titled Tv Justica¹⁸ which shows discussions and commentaries on the judicial system and the other titled STF¹⁹, which broadcasts live proceedings of hearings before the Supreme Court.

2. Lower Courts:

a. Superior Court of Justice: This Court is the highest appellate court in Brazil for non-constitutional questions of federal law. Proceedings are broadcast on the TV Justica channel;

b. Trial Courts: Do not show broadcast of proceedings.

16 TV Justica official website at: <http://www.tvjustica.jus.br> 17 Radio Justica official website at: www.radiojustica.jus.br/ 18 Official Youtube channel at: <https://www.youtube.com/user/TVJustica> 19 Official Youtube channel at: <https://www.youtube.com/user/STF> III. Canada

1. Supreme Court²⁰: Allows broadcast and live streaming of its proceedings.

a. The Canadian Supreme Court has permitted media coverage of its proceedings since 1994, on public broadcast service provided by the Cable Parliamentary Affairs Channel (CPAC)²¹. A formal agreement between the Court and the CPAC governs this media coverage. b. The Supreme Court retains copyright over the broadcast material, and has ultimate say in use of the coverage. Only the Courts own sound facilities can be used for recording, and permanently installed cameras within the courtroom are used for visual coverage. The agreement between the Supreme Court and CPAC also requires broadcast of proceedings to be accompanied by explanations of each case and the overall processes and powers of the Court.

c. The Supreme Court has also started broadcasting/webcasting live video streams of court hearings on its website since 2009²² and has an archive of its previous broadcasts²³.

2. Lower Courts a. Federal Courts: Permit media coverage by broadcasters The Federal Court of Appeal allows audio-video media coverage of proceedings as per published guidelines²⁴.

20 See In-Court Media Coverage a consultation paper at footnote 6 21 Official website at: <http://www.cpac.ca/en/programs/supreme-court-hearings/> 22 Available on the website of the Supreme Court of Canada at: [\[dossier/info/hear-aud-eng.aspx\]\(https://www.scc-csc.ca/case-dossier/info/hear-aud-eng.aspx\) 23 Available on the website of the Supreme Court of Canada at: \[Indian Kanoon - <http://indiankanoon.org/doc/43629806/>\]\(https://www.scc-csc.ca/case-</p></div><div data-bbox=\)](https://www.scc-csc.ca/case-</p></div><div data-bbox=)

dossier/info/webcasts-webdiffusions-eng.aspx 24 Media coverage of proceedings with audio-visual equipment is only permitted in accordance with the following guidelines:

a. A media request to cover a specific proceeding must be made sufficiently in advance to allow for necessary permissions to be obtained.

The Federal Court also has its own set of guidelines regulating coverage of proceedings²⁵.

b. A decision as to whether to allow media coverage will be made by the Chief Justice, after consultation with the panel of judges hearing the particular case, as well as with the parties.

c. The Chief Justice or panel of judges hearing the proceeding may limit or terminate media coverage to protect the rights of the parties; to assure the orderly conduct of the proceedings; or for any other reason considered necessary or appropriate in the interest of the administration of justice.

d. Nothing in these guidelines shall prevent the Chief Justice from placing additional restrictions, or prohibiting altogether, media access to the Court's facilities. e. Only equipment which does not produce distracting sound or light shall be employed to cover proceedings.

f. The Chief Justice or his designate may limit or circumscribe the placement or movement of the media personnel and their equipment. Guidelines on Public and Media available on the website of the Federal Court of Appeal of Canada at: http://www.fca-caf.gc.ca/fca-caf_eng/media_eng.html 25
Electronic Media Coverage of Federal Court Proceedings

1. General a. With reasonable advance notice in writing to the Chief Justice of the Federal Court, the media may make an application for electronic media coverage of judicial review proceedings. b. The Chief Justice will consult with the judge hearing the proceeding and counsel for the parties.

c. The Chief Justice or the presiding judge may at any time impose conditions on, or terminate, media coverage to protect the rights of the parties; to preserve the dignity of the Court; to assure the orderly conduct of the proceedings; or for any other reason considered necessary or appropriate in the best interest of justice.

d. No direct public expense is to be incurred for equipment, wiring or personnel needed to provide media coverage.

e. There shall be no audio pickup or broadcast of conferences which occur in a court facility between counsel and their clients, between co-counsel of a client, or between counsel and the Court held at the bench.

2. Equipment and Personnel a. Unless otherwise permitted, electronic media coverage is to be limited to: i. two portable television cameras, each operated by one camera person; ii. one still photographer;

iii. one audio system using existing court audio systems or unobtrusive microphones and wiring. b. If two or more media representatives apply to cover a proceeding, their representatives are expected to agree upon a pooling arrangement, including designation of pool operators, procedures for cost sharing, access to and dissemination of material, and a pool representative. c. The media must show that they will use only equipment that does not produce distracting sound or light, or use flash attachments, other artificial light sources, signal lights or devices indicating that it is activated.

d. The presiding judge may specify the location of equipment in the courtroom and require modification of light sources at media expense. e. Media personnel are expected to place, replace, move or remove equipment, or change film, film magazines or lenses before court proceedings, after adjournment or during recesses.

3. Use of Materials Within 10 days of publication or broadcast of any material generated through electronic media coverage, media are to provide the Court with a copy. A written application has to be made for permission to record proceedings but the general policy is to allow such applications if they are made within a reasonable time. b. Courts of Appeal²⁶: Courts of Appeal in the provinces allow or deny permission to broadcast court proceedings based on their own guidelines²⁷.

c. Courts of first instance/Trial Courts: Broadcast of proceedings is rare. Although each province maintains its own guidelines for coverage, in practice, approval for broadcast of proceedings is rarely given.

IV. China:

Live streaming and recorded broadcasts of court proceedings are being implemented across the judiciary, from the trial courts right up till the Supreme Peoples Court of China.

1. Supreme Peoples Court:

a. The Supreme Court has allowed proceedings of its public hearings to be broadcast live²⁸ from July 2016 onwards.

These broadcasts are governed by the 2010 regulations issued by the Supreme Court, Provisions on the Live Broadcasting and Rebroadcasting of Court Trials by the Peoples Courts²⁹. These regulations focus on the type of cases to broadcast.³⁰ Policy on Public and Media Access available on the website of the Federal Court of Canada at: http://www.fct-cf.gc.ca/fc_cf_en/MediaPolicy.html ²⁶ See In-Court Media Coverage a consultation paper at footnote 6 ²⁷For example, the Nova Scotia Court of Appeal has its own guidelines while the Ontario Court of Appeal introduced a pilot for broadcast of court proceedings but permanent implementation of such scheme was hampered by express prohibitions on broadcast of proceedings laid down in Section 136 of the Ontario Court of Justice Act, 1990. ²⁸ Official website for streaming at: <http://tingshen.court.gov.cn/court/o> ²⁹Available at:

http://www.law-lib.com/law/law_view.asp?id=324868 30 Article 2: The peoples court may choose the openly tried cases of higher public attention, greater social impact, and of legal publicity and education significance to make live broadcasts of b. Additionally, cases involving matters like review of death sentences and review of decisions on foreign arbitral awards are not broadcast. Politically sensitive cases are broadcast at the discretion of the Court.

c. The 2010 Regulations have been supplemented by The Peoples Court Courtroom Rules, 2016³¹. These new rules indicate that court proceedings can only be broadcast by the official Court machinery and that other parties are restrained from recording court proceedings in any manner³².

d. These regulations are rules are silent on taking consent from parties involved the matter.

and rebroadcast court trials. The live broadcasting and rebroadcasting of court trials are prohibited for the following cases:

(1) Cases that are not openly tried in accordance with the law since any national secret, trade secret, individual privacy, or juvenile delinquency, among others, is involved; (2) Criminal cases on which procuratorial organs clearly require the non-live broadcasting and rebroadcasting of court trials for justifiable reasons; (3) Civil and administrative cases on which the parties clearly require the non-live broadcasting and rebroadcasting of court trials for justifiable reasons; and (4) Other cases of which the live broadcasting and rebroadcasting are inappropriate. [Translated version] ³¹ English copy available at: <https://www.chinalawtranslate.com/courtrules/?lang=en> Also see the official website for Chinese courts: <http://www.court.gov.cn/fabu-xiangqing-19372.html> ³² Article 11: In any of the following situations, for trial activities that are conducted openly in accordance with law, the people's courts may use television, the internet or other public media to broadcast or record images, audio or videos:

(1) a high degree of public concern;

(2) a larger social influence;

(3) the value for legal publicity and education is quite strong. *** Article 17: During court proceedings, all personnel shall follow the instructions of the chief judge, or a judge hearing the case alone, respect judicial etiquette, abide by courtroom discipline, and shall not conduct the following actions:

(1)*** (2) *** (3) *** (4) Taping, videotaping, or taking pictures of trial activities or using mobile communication tools to propagate trial activities;

(5) *** [Translated version]

2. Lower Courts:

a. Proceedings of several courts, including High Courts and family courts, have been made available on a centralised, official website, the Chinese Open Trial Network³³ from September 2016 onwards, in consonance with the aforementioned Peoples Court Courtroom Rules, 2016. Majority of the cases being broadcast are civil in nature, with some criminal and administrative matters also being made available.

b. Proceedings of around 3500 lower courts have been made available on the website, with many videos available in High Definition (HD) format. In 2017 alone, more than 1.27 million trials had been broadcast on the website. c. Some High Courts also make their proceedings available on their own websites³⁴.

V. England:

1. Supreme Court: The media is permitted to broadcast court proceedings and hearings are live streamed and recorded. a. Till 2005, recording of court proceedings was a crime³⁵ and also amounted to contempt of court³⁶.

³³Available at: <http://tingshen.court.gov.cn> ³⁴For example, see the Zhejiang High Courts website at: <http://www.zjsfgkw.cn/CourtHearing/Video> and <http://zj.sifayun.com/?courtId=5168>; ³⁵Section 41 of the Criminal Justice Act, 1925 (as originally enacted): 41. Prohibition on taking photographs, &c, in court (1)No person shall

(a)take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b)publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof; and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding fifty pounds. (2)For the purposes of this section

(a)the expression " court" means any court of justice, including the court of a coroner :

(b)the expression "judge" includes recorder, registrar, magistrate, justice and coroner :

b. With the implementation of the Constitutional Reforms Act, 2005³⁷, the Supreme Court was exempted from the prohibition imposed under the Criminal Justice Act, 1925.

The Crime and Courts Act, 2013³⁸ also exempted

(c)a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the

person while he is entering or leaving the court-room or any such building or precincts as aforesaid. Available on the website of the UK Legislature at: <https://www.legislation.gov.uk/ukpga/Geo5/15-16/86/section/41> 36 Section 9 of the Contempt of Court Act, 1981 (as originally enacted): 9. Use of tape recorders (1) Subject to subsection (4) below, it is a contempt of court

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication ;

(c) to use any such recording in contravention of any conditions of leave granted under paragraph

(a).

(2) Leave under paragraph (a) of subsection (1) may be granted or refused at the discretion of the court, and if granted may be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave; and where leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without prejudice to any other power to deal with an act of contempt under paragraph (a) of subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited shall (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings Available on the website of the UK Legislature at: <https://www.legislation.gov.uk/ukpga/1981/49> 37 47. Photography etc (1) In section 41 of the Criminal Justice Act 1925 (c. 86) (prohibition on taking photographs etc in court), for subsection (2)(a) substitute (a) the expression court means any court of justice (including the court of a coroner), apart from the Supreme Court;.

* * * Available on the website of the UK Legislature at: <https://www.legislation.gov.uk/ukpga/2005/4/section/47> 38 Sections 31, 32 and 33 of the Act, available at: <http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted> recording of Supreme Court proceedings from the ambit of the Contempt of Court Act.

c. Since its inception, the Supreme Court has given broadcasters access to footage of its hearings. These hearings are governed by protocols with such broadcasters. The Supreme Court has also issued a practice note which broadly sets out the scope and structure of such broadcasts³⁹.

d. The Supreme Court allows for hearings to be live streamed on its own website⁴⁰ with a delay of around one minute and also has a Youtube channel which shows selected broadcasts from the live stream⁴¹. Broadcast of proceedings is subject to the discretion of the Law Lords, who reserve the right to withdraw coverage for sensitive appeals.

2. Lower Courts: The Crime and Courts Act, 2013 amended the existing laws to facilitate broadcasting in courts and tribunals by providing exceptions to the Criminal Justice Act, 1925⁴² and prescribing conditions subject to which 39 Practice Note 8.17.1:

Broadcasting 8.17.1. The President and the Justices of the Supreme Court have given permission for video footage of proceedings before the Court to be broadcast where this does not affect the administration of justice and the recording and broadcasting is conducted in accordance with the protocol which has been agreed with representatives of several UK broadcasters. Permission to broadcast proceedings must be sought from the President or the presiding Justice on each occasion and requires his or her express approval. Where the President or the presiding Justice grants permission, he or she may impose such conditions as he or she considers to be appropriate including the obtaining of consent from all the parties involved in the proceedings. Available at: <https://www.supremecourt.uk/docs/practice-direction-08.pdf> ⁴⁰ See official website at: <https://www.supremecourt.uk/live/> ⁴¹ Official Youtube channel at: <https://www.youtube.com/user/UKSupremeCourt> ⁴² Amended Section 41 of Criminal Justice Act, 1925:

41. Prohibition on taking photographs, etc., in court. (1)No person shall

(a)take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b)publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof;

recordings could be made. Broadcast of court proceedings is allowed in a limited number of courts across the country. a. Court of Appeal for England and Wales⁴³: The Court broadcasts its proceedings live with a 70-second broadcast delay system i. The broadcast system is operated by a specialist video journalist who takes orders from the court. ii. The broadcast is conducted by cameras, some of which are operated completely wirelessly, and can be moved from court to court. Subject to the judges' approval, the video journalist can take his cameras into any of the courtrooms in which the Court of Appeal may sit. iii. Lawyers' arguments and judges' comments appear in the broadcast but defendants, witnesses and victims are not shown.

iv. Footage can be used for news and current affairs but not in other contexts such as comedy, entertainment or advertising.

b. Crown Court: The Crown Court (Recording) Order, 2016⁴⁴ partially lifts the prohibition on recording proceedings in order to facilitate a pilot project of recording sentencing remarks in the Crown Courts. Since then, several Crown Courts have trialled broadcast of proceedings.

and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding fifty pounds. [F1(1A)See section 32 of the Crime and Courts Act 2013 for power to provide for exceptions.] (2)For the purposes of this section [F2(a)the expression court means any court of justice (including the court of a coroner), apart from the Supreme Court;]

(b)the expression Judge includes . . . F3, registrar, magistrate, justice and coroner:

(c)a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the courtroom or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the courtroom or any such building or precincts as aforesaid. See: <https://www.theguardian.com/law/2013/oct/30/court-of-appeal-proceedings-televised> 44Available on the website of the UK Legislature at:

http://www.legislation.gov.uk/uksi/2016/612/pdfs/uksi_20160612_en.pdf VI. European Court of Human Rights (ECHR)

1. The ECHR allows for broadcast of court proceedings, as a corollary of its court rules, which set out that all hearings are public⁴⁵.

2. All the Courts public hearings are broadcast on the Courts website⁴⁶. Hearings held in the morning can be viewed in the afternoon while those held in the afternoon are available during the evening.

3. All the Courts public hearings since 2007 have been filmed and can be viewed, with interpretations available in French and English.

VII. Germany:

Germany has passed legislation which allows for live broadcasting of court proceedings in the Federal and Supreme Courts, although actual instances of such broadcasts are rare owing to the strict restrictions imposed by the said legislation.

1. Federal Constitutional Court and Supreme Courts a. Section 169 of The Court Constitution Act forbade radio and television broadcasts of trials, and sound and film ⁴⁵ Rule 63 Public character of hearings

1. Hearings shall be public unless, in accordance with paragraph 2 of this Rule, the Chamber in exceptional circumstances decides otherwise, either of its own motion or at the request of a party or any other person concerned.

2. The press and the public may be excluded from all or part of a hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.

3. Any request for a hearing to be held in camera made under paragraph 1 of this Rule must include reasons and specify whether it concerns all or only part of the hearing. Available on the official website of the ECHR at: https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf 46 Available on the official website of the ECHR at:

<https://www.echr.coe.int/Pages/home.aspx?p=hearings&c=recordings> made for the purposes of public presentation⁴⁷.

b. In October 2017, the German parliament passed the Act to Increase Media Access in Court Proceedings and to Improve Communication Aid for People with Speech or Hearing Impairments⁴⁸. The amendment act provides for the possibility of broadcasting and recording the pronouncements of the judgments and the sentencing of the Federal Constitutional Court of Justice and the five Supreme Federal Courts. Such broadcast is permissible if the proceedings are deemed to be of historical significance for Germany but can be prohibited to protect the legitimate interests of parties to the proceedings or even of third parties.

c. The recordings will not be made public but will be handed over to the German Federal Archives or a State Archive where they can be accessed subject to certain conditions.

d. Broadcasts of proceedings will happen in separate media rooms. The decision to provide broadcasting in the media room or to even to permit broadcasting or recording at all, is the judges discretion and cannot be appealed. e. Since there are restrictions imposed by the law regarding broadcast of proceedings and owing to the strict privacy ⁴⁷ Section 169 The hearing before the adjudicating court, including the pronouncement of judgments and rulings, shall be public. Audio and television or radio recordings as well as audio and film recordings intended for public presentation or for publication of their content shall be inadmissible. English version of The Court Constitution Act available at: https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html ⁴⁸ English translation; In German, Gesetz zur Erweiterung der Medienöffentlichkeit in Gerichtsverfahren und zur Verbesserung der Kommunikationshilfen für Menschen mit Sprach- und Hörbehinderungen (Gesetz über die Erweiterung der Medienöffentlichkeit in Gerichtsverfahren-EMÖGG), available on the website of the German Judiciary at: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/BGBl_EM%C3%B6GG.pdf;jsessionid=B96F37ED7F0163627DB7B0BF3343C555.2_cid297?__blob=publicationFile&v=1 protection granted to parties to proceedings, combined with the narrow scope of what

constitutes a case of historical significance, actual broadcasts of court cases in Germany rarely occur.

2. Lower Courts: The amendment act only mentions the possibility of broadcasting proceedings of the Federal Constitutional Court and Supreme Federal Courts and makes no mention about broadcast of proceedings in lower courts.

VIII. International Criminal Court (ICC)

1. The ICC allows for live streaming of its proceedings with a 30-minute delay to allow for any necessary redactions of confidential information⁴⁹.

2. The ICC has an official Youtube channel where it publishes programmes concerning cases, proceedings, informative sessions, press conferences, outreach activities and other events at the Court⁵⁰. The channel allows viewers to follow various cases before the ICC, in several languages, through the weekly postings of summaries of proceedings.

IX. International Criminal Tribunal for the former Yugoslavia (ICTY)

1. Court proceedings are available for viewing on the website of the ICTY⁵¹.

49 Official website for streaming at: <https://www.icc-cpi.int> Also see Understanding the International Criminal Court available on the official ICC website at: <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf> 50 Official Youtube channel: <https://www.youtube.com/user/IntlCriminalCourt/featured> 51 Available on the official website: <http://icr.icty.org>

2. ICTY also has a Youtube channel where selected clips of guilty pleas, witness testimonies and short documentaries are made available. Additionally, the ICTY has social media accounts in order to bring the activities of the court closer to the public⁵².

3. The United Nations International Residual Mechanism for Criminal Tribunals (IRMCT), a court created to perform a number of remaining functions previously carried out by the ICTY, amongst others, also contains video recordings of ICTY proceedings on its website⁵³ and official Youtube channel⁵⁴.

X. Ireland (Northern):

1. Supreme Court: The United Kingdom Supreme Court has jurisdiction over Northern Ireland and accordingly, hearings of cases which arise in respect of Northern Ireland are live streamed.

a. Just as in England, media coverage of courts in Northern Ireland was prohibited by the Criminal Justice (Northern Ireland) Act, 1945⁵⁵, which was similar to the original 52 Official press release by the ICTY available at: <http://www.icty.org/en/press/tribunal-social-media-channels-go-live> 53 Official website: <http://www.irmct.org/en/cases#all-cases> 54 Official Youtube channel:

<https://www.youtube.com/channel/UCNPOPvnINPwtfjwEnYtIvYw> 55 29 Prohibition on taking photographs, etc., in court.

(1) No person shall

(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction of such photograph, portrait or sketch; and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding [F1 level 3 on the standard scale]. (2) For the purposes of this section [F2(a) the expression court means any court of justice (including the court of a coroner), apart from the Supreme Court;]

(b) the expression judge includes recorder, registrar, resident magistrate, justice of the peace sitting out of petty sessions and coroner;

(c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the Criminal Justice Act, 1925, and which applied identical restrictions to photography or sketching in the courts of Northern Ireland. Section 9 of the Contempt of Court Act, 1981 also extended to Northern Ireland.

b. With the implementation of the Constitutional Reforms Act, 2005, the United Kingdom Supreme Court was exempted from the prohibition imposed under the Criminal Justice (Northern Ireland) Act. The Crime and Courts Act, 2013 exempted recording of Supreme Court proceedings from the ambit of the Contempt of Court Act⁵⁶.

c. The UK Supreme Court has also sat in Northern Ireland and proceedings of the same have been live streamed on the website of the Court. During the session, the Supreme Court allowed proceedings to be broadcast live in a separate overflow courtroom within the Court premises.⁵⁷

2. Lower Courts: Although the government has indicated its intention and willingness to allow court proceedings to be recorded⁵⁸, actual broadcast of lower court proceedings remains restricted.

building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid.
⁵⁶ See position in England at Point V ⁵⁷ A list of provisions made for broadcast of its hearings in Ireland is available on the official website of the Supreme Court at: <https://www.supremecourt.uk/news/access-to-supreme-court-hearings-in-belfast.html> ⁵⁸ Research and Information Service Briefing Paper on Broadcasting in Courts, available on the website of the Northern Ireland Assembly at:

<http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/justice/381>

2.pdf XI. Ireland (Republic):

Although there are no statutory provisions which prohibit photography or sound, television or video recordings in courts, broadcast of court proceedings, whether photography or audio-video recording, without permission, is restricted as a practice 59.

1. Supreme Court: Has allowed cameras into the Court on rare instances.

The first broadcast of Court proceedings was in October 2017, when the delivery of two judgments of the Supreme Court was broadcast live on the state broadcaster, RTE, using small robotic cameras inside the court room⁶⁰.

2. Lower courts: Do not appear to allow broadcasting of proceedings, as on date.

XII. Israel⁶¹:

1. Supreme Court: Has approved of live-broadcasting court proceedings.

a. The Israeli Courts Act, 5744-1984⁶² imposes criminal punishment for taking and publishing pictures in a court room unless the court grants permission. The media however can report on events occurring in most Israeli courts, subject to the limitations imposed by the audio-visual coverage mentioned in the Act.

59 See Report on Contempt of Court by the Law Reform Commission of Ireland, Chapter 4.43, available at: http://www.lawreform.ie/_fileupload/Reports/rContempt.htm 60 See: <https://www.bbc.com/news/world-europe-41732226> 61 See Audio-Visual Coverage Of Court Proceedings In A World Of Shifting Technology by Itay Ravid available at:

<http://www.cardozoelj.com/wp-content/uploads/2017/02/35.1-Ravid.pdf> 62 Title 70(b) of Act, Prohibited Publications; Israeli Courts Act available in Hebrew at:

<http://www.wipo.int/wipolex/en/details.jsp?id=15289> b. Earlier, a legal presumption existed against audio-visual coverage of courts in Israel. In September 2014, a limited pilot was launched to allow live coverage of court hearings at the Supreme Court although there was no formal administrative legislation or regulation issued in that regard.

c. Thereafter, in November 2014, the Chief Justice of Israel approved of live broadcasting of Court proceedings⁶³.

2. Lower Courts: Do not generally allow for broadcast of proceedings but exceptions have been made in cases of historical significance.

- a. Reporting on court proceedings by media is allowed but broadcast of such proceedings is not. Certain courts allow the media to photograph the judges entering the courtrooms, but request the media to stop recording before hearings begin.
- b. Permission has also been given to cover events in honour of retiring judges as also for hearings of quasi-judicial committees.
- c. Permission to record and broadcast trial court hearings has been granted on five occasions in Israel's history. Two cases involved trials of Nazi personnel and were allowed because the trials were deemed to be of historical significance. One case involved a defamation lawsuit filed against an Israeli newspaper, another was the trial of a man charged with the assassination of the Israeli Prime Minister and the final instance was in 1999 when the Jerusalem District Court allowed the broadcast of the decision given in the criminal case of a former Israeli Minister.

63 See: <https://www.ynetnews.com/articles/0,7340,L-4592208,00.html> XIII. New Zealand:

1. Supreme Court: Allows for broadcast of its proceedings. a. Media guidelines have been issued for regulating broadcast of Supreme Court proceedings⁶⁴ which supplement the In-Court Media Coverage Guidelines applicable to the various other courts of New Zealand.
2. Lower Courts: Broadcasting of proceedings is allowed in the lower courts, with several guidelines issued in that regard. a. Judges have a broad discretion as to the procedures in courtrooms over which they preside, subject to certain specific provisions such as the various rules of court, and statutory requirements.
- b. Broadcast of court proceedings is allowed before the Court of Appeal, High Court, Employment Court, District Court and any other Tribunal which chooses to adopt the same, subject to the discretion of the presiding judge.

64 10.5 Appendix E: Supreme Court media guidelines

1. 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 three days of being advised by the registrar of the application, that the party objects to it.
2. Any such objection must be communicated to the registrar in written form and must include the grounds upon which the objection is made.
3. The registrar must immediately communicate the objection to the news media applicant and to all other parties to the proceedings. They must make any submissions they wish to make in relation to the objection in writing within three days of receiving it. The court or a judge will then determine the application.

4. An application under paragraph 1 must be made in sufficient time before the hearing of the proceedings to which it relates to enable the steps referred to in paragraphs 1 and 3 to be taken. The registrar may waive this requirement for good cause and may abridge any of the times referred to accordingly.

5. If an application under paragraph 1 is made in circumstances in which the registrar considers there is insufficient time to comply with paragraphs 1 and 3, or to enable the court properly to consider the application, the registrar must refer the matter to a judge who may decline the application or give such directions concerning the application as he or she thinks fit.

6. The physical arrangements for any televising or recording of proceedings shall be determined by the registrar after such consultation with the applicant and otherwise as the registrar considers appropriate. Available on the official website of the New Zealand Ministry of Justice at: <https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-e/> These broadcasts are guided by the In-Court Media Coverage Guidelines, 201665.

c. Members of the media make an application to the Registrar of the concerned court atleast 10 days in advance, setting out which aspect of the court process they wish to film. A copy of the application is sent to the other parties, and after submissions have been received, the judge determines whether to approve or decline the application. Whether to grant permission is a matter of discretion for the judge, and the judge also has the power to remove media at his/her discretion.

d. These guidelines do not have legislative force nor do they create any rights in that regard and merely ensure that applications for media coverage are dealt with expeditiously and fairly.

e. They also set out that recordings must not be broadcast until at least 10 minutes have elapsed, although there are certain exceptions made for this rule as well. f. In addition, there is a separate protocol for application of the said guidelines to the District Court summary jurisdiction⁶⁶. There are also separate Environment Court Media Coverage Guidelines⁶⁷.

XIV. Scotland:

1. Supreme Court: The United Kingdom Supreme Court has jurisdiction over Scotland and accordingly, hearings of the Court are live streamed on the Courts website. ⁶⁵ Available on the official website of the New Zealand Ministry of Justice at: <https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-c/> ⁶⁶ Available on the official website of the New Zealand Ministry of Justice at:

<https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-d/> ⁶⁷ Available on the official website of the New Zealand Ministry of Justice at:

<https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-f/>

2. Lower Courts: Broadcast of court proceedings is permissible by law and both civil and criminal cases have been broadcast over the years.

a. There was no statutory ban on broadcasting of court proceedings in Scotland, since the Criminal Justice Act is not applicable to Scotland. However until 1992, the courts adopted a strict position banning electronic media from access to courts.

b. In 1992, the Television in Courts directions were issued⁶⁸ (later quoted in the *X v British Broadcasting Corporation and Lion Television Limited* judgment⁶⁹) which provided that filming could be permitted on the basis of whether the presence of television cameras in the court would be without risk to the administration of justice. These directions provided that the televising of proceedings was not permitted in criminal cases at first instance and that filming could only be done with consent of all parties involved in the proceedings and subject to approval by the presiding judge of the final product before it was televised. The conditions for such filming were varied for a trial period in 2012⁷⁰. c. As long as all key parties agree and conditions are met, full trials can, at least in theory, be filmed for educational purposes and the juries verdict or sentencing can be filmed for other purposes such as news broadcast. Both civil and criminal trials can be broadcast.

d. Cases of special public interest, like the trial of accused in the Lockerbie Bombings, have also been allowed to be ⁶⁸ See Appendix III to the Cameras and live text-based communication in the Scottish courts: a consultation issued by the Judicial Office for Scotland available on the official website of the Scottish judiciary at:

<http://www.scotland-judiciary.org.uk/Upload/Documents/ConsultationDocument.pdf> ⁶⁹ [2005] CSOH 80 ⁷⁰ See Appendix IV to the Cameras and live text-based communication in the Scottish courts: a consultation link at footnote ⁶⁸ broadcast, with guidelines for the same issued by the presiding judge in the matter.⁷¹ e. Scotland is currently in the process of reforming its court-broadcasting process as per the suggestions of a Review Committee⁷².

XV. South Africa:

1. Supreme Court of Appeal: The Supreme Court has allowed for the media to broadcast court proceedings in criminal matters, as an extension of the Constitutionally-guaranteed right to freedom of expression.

a. In its landmark judgment of *The NDPP v Media 24 Limited & others* and *HC Van Breda v Media 24 Limited & others*⁷³, the Supreme Court allowed for broadcast of proceedings in criminal trials, holding that courts should not restrict the nature and scope of broadcast of court proceedings unless prejudice was demonstrable and there was a risk that such prejudice would occur. b. While refraining from laying down rigid rules on broadcast of such court proceedings, the Court set out general guidelines to assist in determining whether proceedings should be broadcast:

i. The trial court would exercise its discretion to allow broadcast of proceedings on a case-to-case basis, after balancing the degree of risk involved in allowing the 71 See Para 5.5 onwards of the Cameras and live text-based communication in the Scottish courts: a consultation link referred to at footnote 68 72 See: Report of the Review of Policy on Recording and Broadcasting of Proceedings in Court, and Use of Live Text-Based Communications available on the official website of the Scottish judiciary at: <http://www.scotland-judiciary.org.uk/25/1369/Report-of-the-Review-of-Policy-on-Recording-and-Broadcasting-of-Proceedings-in-Court--and-Use-of-Live-Text-Based-Communications> 73 [2017] ZASCA 97 (21st June 2017) cameras into the court room against the degree of risk that a fair trial might not ensue;

ii. The trial court could always direct that some or all of the proceedings before it could not be broadcast or could only be broadcast in certain forms, like audio recording;

iii. A judge could terminate coverage at any time upon a finding that the rules imposed by the judge had been violated or the substantial rights of individual participants or the rights to a fair trial would be prejudiced by such coverage if it was allowed to continue;

iv. An accused person in a criminal trial could object to the presence of cameras in the courtroom. If the court determined that the objection raised by the accused was valid, it could exclude cameras from recording; v. Witnesses could also raise objections to being filmed.

If the judge determined that a witness had a valid objection, alternatives to regular photographic or television coverage could be explored, like introducing special lighting techniques and electronic voice alteration, or merely by shielding the witness from the camera. Broadcast of testimony of an objecting witness could be delayed until after the trial is over; vi. Cameras would be permitted to film or televise all non-

objecting witnesses.

vii. There would be no coverage of:

Communications between counsel and client or co-

counsel;

Bench discussions;

In-camera hearings.

2. Lower Courts: In light of the Supreme Court decision in Breda, lower court criminal proceedings are also allowed to be broadcast subject to conditions laid down by the presiding judge.

XVI. United States of America

1. Supreme Court: The Supreme Court does not permit broadcasting of its proceedings for a variety of reasons⁷⁴ including that it could adversely affect the character and quality of the dialogue between attorneys and Justices⁷⁵. a. The Supreme Court has, over the years, consistently rejected pleas to broadcast oral arguments.⁷⁶ It does not allow photography of proceedings or video recordings. b. The Court has, however, allowed audio recording of oral arguments since 1955. Presently, the Court releases same-day audio transcripts of oral arguments⁷⁷ and audio recordings of all oral arguments at the end of each week that arguments are heard⁷⁸.

2. Federal Appellate Courts: Certain Federal Courts allow for broadcast of court proceedings subject to guidelines laid down in that regard.

⁷⁴ See Senate hearings on A Bill To Permit The Televising Of Supreme Court Proceedings on the official website of the US Congress available at: <https://www.congress.gov/110/crpt/srpt448/CRPT-110srpt448.pdf> ⁷⁵ See Letter by Counselor to the Chief Justice, rejecting live broadcast of oral arguments, available at:

<https://arstechnica.com/wp-content/uploads/2017/10/scotusletter.pdf> ⁷⁶ See: Above Politics: Congress and the Supreme Court in 2017 by Jason Mazzone at Pg.

⁴⁰⁴, Footnote 208, 93 Chi.-Kent L. Rev. 373 (2018) available at: <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=4207&context=cklawreview> ⁷⁷ Official website of the Supreme Court at:

https://www.supremecourt.gov/oral_arguments/argument_transcript ⁷⁸ Official website of the Supreme Court:

https://www.supremecourt.gov/oral_arguments/argument_audio a. Filming and broadcast of criminal proceedings in US Federal Courts were prohibited by Rule 53 of the Federal Rule of Criminal Procedure⁷⁹ since 1946.

b. After various pilot runs involving limited number of courts, the Judicial Conference in 2010 authorised a pilot for three years, involving 150 first-instance civil courts. Cameras were to be operated by the court itself, no filming of jurors was to take place and the consent of parties was required. Proceedings could be recorded only with the approval of the presiding judge, and parties had to consent to the recording of each proceeding in a case. Unless the presiding judge decided not to make the recordings publicly available, they would subsequently be posted on the federal courts website, as well as on local participating court websites at the court's discretion. Judges would have a switch or be able to direct cessation of recording if deemed necessary⁸⁰.

c. The Judicial Conference in 2016 decided not to alter the guidelines set out in the 2010 conference. Three districts that participated in the 2010 pilot programme were authorised to continue filming proceedings under the same terms and conditions as in 2010.

d. Federal Courts of Appeals have the option of providing audio or video recordings of appellate hearings, and rules are available on each circuits website. The Ninth Circuit Court for example, live-streams oral arguments⁸¹.

79 Rule 53. Courtroom Photographing and Broadcasting Prohibited Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom. Available on the official website of the House of Representatives, Judiciary Committee at: <https://judiciary.house.gov/wp-content/uploads/2013/07/Criminal2016.pdf> 80 See: History of Cameras in Courts on the website of the United States Courts at:

<http://www.uscourts.gov/about-federal-courts/cameras-courts/history-cameras-courts> 81 See the official website for the United States Court for the Ninth Circuit at: https://www.ca9.uscourts.gov/media/index_video.php

3. Lower Courts/District Courts: Courts in all states have framed rules for broadcast of court proceedings, each varying in the degree and extent to which broadcasts are allowed.

a. In *Estes v. Texas*⁸², the US Supreme Court held that camera coverage of a trial in spite of the defendant's objection to the same violated the defendant's constitutional right, although the question of whether courtroom broadcasting was inherently prejudicial to a fair trial, remained open. This question was answered in *Chandler v Florida*⁸³ where the Court was of the opinion that the restriction on camera coverage imposed in *Estes* was not an absolute, universal ban and left it to the states to frame rules for permitting televised recordings, since televising a criminal trial did not automatically make the trial unfair to the defendant.

b. In the aftermath of the decision in *Chandler*, all 50 US states have allowed for some form of televised broadcast of court proceedings and framed rules for the same⁸⁴, with the applicability and extent of such broadcast varying from state to state. Some states permit visual and audio coverage in all types of court proceedings that are public, including civil and criminal trials of the first instance, at the discretion of the presiding judge, while other states allow such coverage only in appellate courts.

82 381 U.S. 532 (1965) 83 449 U.S. 560 (1981) 84 A complete list of rules enacted in different courts regulating broadcast of proceedings is available on the website for the National Center for State Courts at: <https://www.ncsc.org/Topics/Media/Media-Relations/State-Links.aspx?cat=Cameras%20in%20the%20Courtroom>

11. We may now advert to the comprehensive guidelines for live streaming of Court proceedings in Supreme Court, as suggested by the learned Attorney General for India, which read as follows:

Comprehensive Guidelines for Live streaming of Court proceedings in Supreme Court
Brief Background

1. That the Petitioner in the present Writ Petition seeks a declaration for permitting live streaming of Supreme Court case proceedings of constitutional and national importance having an impact on the public at large and a direction to make available the necessary infrastructure for live streaming and to frame guidelines for the determination of such cases which are of constitutional and national importance.

2. That, in this regard, it is submitted that Courts in India are open to all members of the public who wish to attend the court proceedings. However, in practice, many interested persons are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances to attend hearing on every single date. This is especially true in the case of litigants who have to travel long distances from far off States such as Kerala and States in the North-East and therefore run the risk of being excluded from attending court hearings involving cases filed by them.

3. Furthermore, on miscellaneous days of hearing, the Apex Courts is highly congested, with practically no space available in the Courtrooms and in the public gallery to accommodate litigants, lawyers and law students and interns.

4. On account of such shortcomings, it may be advantageous to build an appropriate infrastructure for live-streaming or audio/video recording of court proceedings to enable the court proceedings to be viewed without the constraints of time or place. It would be ideal if a separate space is allocated by building a hall in the Court for lawyers, clients and interns to watch the live proceedings, so that, the crowds in the Court will be decongested. This will obviate the need for clients coming from far away distances and reduce their inconvenience in witnessing their case. This may also be one of the relevant factors for the Court to consider. Such a system would also enable the lawyers, law students and anyone interested in the workings of the highest court in the country to supplement their learning with practical study of cases of national importance, while ensuring that litigants have a true account of how decisions were made in their respective case. Such a system is in aid of the well accepted and respected tradition of Open justice i.e. justice should be administered in an open court.

Recommendations:

This Honble court may lay down the following guidelines to administer live streaming of Court proceedings:

5. At the outset, it is submitted that Live Streaming of Court proceedings should be introduced as a pilot project in Court No.1 and only in Constitution bench references. 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.

6. To ensure that all persons including litigants, journalists, interns, visitors and lawyers are able to view the live streaming of the proceedings, a media room should be designated in the premises of the court with necessary infrastructural facilities. This will also ensure that courts are decongested. Provisions may also be made available for the benefit of differently abled persons.

7. Apart from live streaming, the Supreme Court may, in the future, also provide for transcribing facilities and archive the audio-visual record of the proceedings to make the webcast accessible to litigants and other interested persons who are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances to attend hearing on every single date. Such webcasts will also allow students of law to supplement their academic knowledge and gain practical insights into cases of national importance.

8. It is pertinent that this Honble Court lay down guidelines to safeguard and limit the broadcasting and recording of its proceedings to ensure better access to justice. Some of the recommendations are:

a. The Court must have the power to limit, temporarily suspend or disallow filming or broadcasting, if in its opinion, such measures are likely to interfere with the rights of the parties to a fair trial or otherwise interfere with the proper administration of justice.

b. The Court may lay down guidelines/criterion to determine what cases constitute proceedings of constitutional and national importance to seek permission for broadcasting.

c. As held famously in the case of *Scott vs. Scott*, (1913) AC 417, While the broad principle is that the Courts must administer justice in public, the chief object of Courts of justice must be to secure that justice is done, broadcasting must not be permitted in the 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, and vi. Matters where publicity would be antithetical to the administration of justice.

vii. Cases which may provoke sentiments and arouse passion and provoke enmity among communities.

d. Use of the footage would be restricted for the purpose of news, current affairs and educational purposes and should not be used for commercial, promotion, light entertainment, satirical programs or advertising.

e. Without prior written authorization of the Supreme Court of India, live streaming or the webcast of the proceedings from the Supreme Court should not be reproduced, transmitted, uploaded, posted, modified, published or republished to the public.

f. Any unauthorized usage of the live streaming and/or webcasts will be punishable as an offence under the Indian Copyright Act, 1957 and the Information Technology Act, 2000 and any other

provisions of the law in force. The law of contempt should apply to such proceedings. Prohibitions, fines and penalties may be provided for.

g. The Courts may also lay down rules of coverage to provide for the manner in which the filming may be done and the equipment that will be allowed in court.

h. Case management techniques should be introduced to ensure that matters are decided in a speedy manner and lawyers abide by time limits fixed prior to the hearing. A skeleton of arguments/Written submissions should be prepared and submitted to the Court by the lawyers prior to their arguments.

i. The Court of Appeal in England, in November 2013, introduced streaming its proceedings on YouTube. The telecast is deferred by 70 seconds with the Judge having the power to mute something said in the proceedings if he feels they are inappropriate for public consumption.

j. Like the Court of Appeal in England, the Supreme Court should also lay guidelines for having only two camera angles, one facing the judge and the other- the lawyer. The camera should not focus on the papers of the lawyer.

12. As aforesaid, Courts in India are ordinarily open to all members of public, who are interested in witnessing the court proceedings. However, due to logistical issues and infrastructural restrictions in courts, they may be denied the opportunity to witness live Court proceedings in propria persona. To consummate their aspirations, use of technology to relay or publicize the live court proceedings can be a way forward. By providing virtual access of live court proceedings to one and all, it will effectuate the right of access to justice or right to open justice and public trial, right to know the developments of law and including the right of justice at the doorstep of the litigants. Open justice, after all, can be more than just a physical access to the courtroom rather, it is doable even virtually in the form of live streaming of court proceedings and have the same effect.

13. Publication of court proceedings of the Supreme Court is a facet of the status of this Court as a Court of Record by virtue of Article 129 of the Constitution, whose acts and proceedings are enrolled for perpetual memory and testimony.

Further, live streaming of court proceedings in the prescribed digital format would be an affirmation of the constitutional rights bestowed upon the public and the litigants in particular. While doing so, regard must be had to the fact that just as the dignity and majesty of the Court is inviolable, the issues regarding privacy rights of the litigants or witnesses whose cases are set down for hearing, as also other exceptional category of cases of which live streaming of proceedings may not be desirable as it may affect the cause of administration of justice itself, are matters which need to be identified and a proper regulatory framework must be provided in that regard by formulating rules in exercise of the power under Article 145 of the Constitution. It must be kept in mind that in case of conflict between competing Constitutional rights, a sincere effort must be made to harmonise such conflict in order to give maximum expression to each right while minimizing the encroachment on the other rights. We are conscious of the fact that in terms of Section 327 of CrPC and Section 153-B of CPC,

only court-directed matters can be heard in camera and the general public can be denied access to or to remain in the court building used by the Court. Until such direction is issued by the Court, the hearing of the case is deemed to be an open court to which the public generally may have access. The access to the hearing by the general public, however, would be limited to the size and capacity of the court room. By virtue of live streaming of court proceedings, it would go public beyond the four walls of the court room to which, in a given case, the party or a witness to the proceedings may have genuine reservations and may claim right of privacy and dignity. Such a claim will have to be examined by the concerned Court and for which reason, a just regulatory framework must be provided for, including obtaining prior consent of the parties to the proceedings to be live streamed.

14. We generally agree with the comprehensive guidelines for live streaming of Court proceedings in the Supreme Court suggested by the learned Attorney General for India Shri K.K.

Venugopal. The project of live streaming of the court proceedings of the Supreme Court on the internet and/or on radio and TV through live audio-visual broadcasting/telecasting universally by an official agency, such as Doordarshan, having exclusive telecasting rights and/or official website/mobile application of the Court, must be implemented in a progressive, structured and phased manner, with certain safeguards to ensure that the purpose of live streaming of proceedings is achieved holistically and that it does not interfere with the administration of justice or the dignity and majesty of the Court hearing the matter and/or impinge upon any rights of the litigants or witnesses. The entire project will have to be executed in phases, with certain phases containing sub-phases or stages. Needless to observe that before the commencement of first phase of the project, formal rules will have to be framed by this Court to incorporate the recommendations made by the learned Attorney General for India as noted in paragraph 11 above, while keeping in mind the basic issues, such as:-

(i) To begin with, only a specified category of cases or cases of constitutional and national importance being argued for final hearing before the Constitution Bench be live streamed as a pilot project. For that, permission of the concerned Court will have to be sought in writing, in advance, in conformity with the prescribed procedure.

(ii) Prior consent of all the parties to the concerned proceedings must be insisted upon and if there is no unanimity between them, the concerned Court can take the appropriate decision in the matter for live streaming of the court proceedings of that case, after having due regard to the relevancy of the objections raised by the concerned party. The discretion exercised by the Court shall be treated as final. It must be non-justiciable and non-appealable.

(iii) The concerned court would retain its power to revoke the permission at any stage of the proceedings suo motu or on an application filed by any party to the proceeding or otherwise, in that regard, if the situation so warrants, keeping in mind that the cause of administration of justice should not suffer in any manner.

(iv) The discretion of the Court to grant or refuse to grant such permission will be, inter alia, guided by the following considerations:

- (a) unanimous consent of the parties involved,
- (b) even after the parties give unanimous consent the Court will consider the sensitivity of the subject matter before granting such permission, but not limited to case which may arouse passion or social unrest amongst section of the public,
- (c) any other reason considered necessary or appropriate in the larger interest of administration of justice, including as to whether such broadcast will affect the dignity of the court itself or interfere with/prejudice the rights of the parties to a fair trial,
- (v) There must be a reasonable time-delay (say ten minutes) between the live court proceedings and the broadcast, in order to ensure that any information which ought not to be shown, as directed by the Court, can be edited from being broadcast.

15. Until a full-fledged module and mechanism for live streaming of the court proceedings of the Supreme Court over the internet is evolved, it would be open to explore the possibility of implementation of Phase-I of live streaming in designated areas within the confines of this Court via intranet by use of allocated passwords, as a pilot project. The designated areas may include:

- (a) dedicated media room which could be accessible to the litigants, advocates, clerks and interns. Special provisions must be made to accommodate differently abled people;
- (b) the Supreme Court Bar Association room/lounge;
- (c) the Supreme Court Advocates-on-Record Association room/lounge;
- (d) the official chambers of the Attorney General, Solicitor General and Additional Solicitor Generals in the Supreme Court premises;
- (e) Advocates Chambers blocks.
- (f) Press Reporters room.

16. It may be desirable to keep in mind other measures to be taken for efficient management of the entire project such as:

- (i) Appoint a technical committee comprising the Registrar (IT), video recording expert(s) and any other members as may be required, to develop technical guidelines for video recording and broadcasting court proceedings, including the specific procedure to be followed and the equipment to be used in that regard.
- (ii) Specialist video operator(s) be appointed to handle the live broadcast, who will work under the directions of the concerned Court. The coverage itself will be

coordinated and supervised by a Court-

appointed officer.

(iii) The focus of the cameras in the courtroom will be directed only towards two sets of people:

a. The Justices/Bench hearing the matter and at such an angle so as to only show the anterior-facing side of the Justices, without revealing anything from behind the elevated platform/level on which the Justices sit or any of the Justices papers, notes, reference material and/or books;

b. The arguing advocate(s) in the matter and at such an angle so as to not to reveal in any way the contents of notes or reference material being relied upon by the arguing advocate(s). This will also apply to parties-in-person arguing their own matter.

c. There shall be no broadcast of any interaction between the advocate and the client even during arguments.

(iv) Subject to any alteration of camera angles for the purpose of avoiding broadcast of any of the aforestated papers, notes, reference materials, books and/or discussions, the camera angles will remain fixed over the course of the broadcast.

(v) This Court shall introduce a case management system to ensure inter alia that advocates are allotted and adhere to a fixed time limit while arguing their matter to be live streamed.

(vi) This Court must retain copyright over the broadcasted material and have the final say in respect of use of the coverage material.

(vii) Reproduction, re-broadcasting, transmission, publication, re-publication, copying, storage and/or modification of any part(s) of the original broadcast of Court proceedings, in any form, physical, digital or otherwise, must be prohibited. Any person engaging in such act(s) can be proceeded under, but not limited to, the Indian Copyright Act, 1957, the Indian Penal Code, 1860, the Information Technology Act, 2000 and the Contempt of Courts Act, 1971.

17. We reiterate that the Supreme Court Rules, 2013 will have to be suitably amended to provide for the regulatory framework as per the contours delineated hereinabove. We may hasten to add that it would be open to frame such regulatory measures as may be found necessary for holistic live streaming of the court proceedings, without impinging upon the cause of administration of justice in any manner.

18. In conclusion, we hold that the cause brought before this Court by the protagonists in larger public interest, deserves acceptance so as to uphold the constitutional rights of public and the litigants, in particular. In recognizing that court proceedings ought to be live streamed, this Court is mindful of and has strived to balance the various interests regarding administration of justice, including open justice, dignity and privacy of the participants to the proceedings and the majesty

and decorum of the Courts.

19. As a result, we allow these writ petitions and interventionists applications with the aforementioned observations and hope that the relevant rules will be formulated expeditiously and the first phase project executed in right earnest by all concerned. Ordered accordingly.

20. While parting, we must place on record our sincere appreciation for the able assistance and constructive suggestions given by the learned counsel and the parties in-

person appearing in this case.

..CJI.

(Dipak Misra) ...J.

(A.M. Khanwilkar) New Delhi;

September 26, 2018.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1232 OF 2017

SWAPNIL TRIPATHI

.....PETITIONER

VERSUS

SUPREME COURT OF INDIA
(THROUGH SECRETARY GENERAL)

.....RESPONDENT

WITH

WRIT PETITION (CIVIL) NO. 66 OF 2018

WITH

AND
WITH

WRIT PETITION (CIVIL) NO. 892 OF 2018

J U D G M E N T

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PART A

Dr Dhananjaya Y Chandrachud, J

A Open Justice

1 The issue in this batch of cases is whether there should be live

dissemination of proceedings before this Court with the aid of Information and Communications Technology (ICT). The basis of the petitions is that this would enable litigants and society to have wide access to judicial proceedings. It is urged that cases of constitutional and national importance have a significant impact on the social fabric. Citizens have a right to know about and to follow court proceedings. It has been submitted that live or online transmission of court proceedings with the aid of ICT enabled tools will subserve the cause of access to justice.

2 Our legal system subscribes to the principle of open justice. The prayer for live-streaming of courtroom proceedings has its genesis in this principle.

Live-streaming will allow real time access to courtroom proceedings to litigants and to every member of the society.

PART A 3 Open justice is a long-established principle of common law systems. It rests on a high pedestal in a liberal democracy as a sound and very sacred part of the Constitution of the country and the administration of justice¹ Jeremy Bentham propounded the idea of open justice in the late eighteenth century while designing principles for establishments in which persons are to be kept under inspection:

...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.² 4 Although Bentham wrote these words in the larger context of public institutions, they apply on equal terms to the theory of open justice. 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.³ According to Bentham, secret (or in-camera) proceedings were to be carried out in the judges chamber.⁴ He also prescribed open justice for trials by the National Assembly Courts, (which, in his Code, were courts constituted to hear complaints against any metropolitan judge):

¹ House of Lords in *Scott v Scott*, [1913] A.C. 417 at 473.

² Jeremy Bentham, *The Works of Jeremy Bentham*, published under the Superintendence of his Executor, John Bowring (Edinburgh: William Tait, 1838-1843). 11 volumes, volume 4, at page 46. ³ *Ibid* at page 288.

4 Ibid at page 303.

PART A Article III- Such trial shall be conducted from beginning to end, with open doors and with the utmost possible degree of publicity.⁵ The principle underlying open justice was formulated by Lord Chief Justice Hewart:

Justice should not only be done, but should manifestly and undoubtedly be seen to be done.⁶ In R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs, Lord Judge CJ draws 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.⁷ Legal scholars indicate that the principle of open justice encompasses several aspects that are central to the fair administration of justice and the rule of law.⁸ It has both procedural and substantive dimensions, which are equally important. Open justice comprises of several precepts:

(i) The entitlement of an interested person to attend court as a spectator;

5 Ibid at page 300.

6 Kings Bench, Division Court in R v Sussex [1923], All ER Rep 233. 7 Court of Appeal, England and Wales in R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs, [2010] 3 WLR 554.

8 Cunliffe Emma, "Open Justice: Concepts and Judicial Approaches", (2012) 40 Fed L Rev 385.

PART A

(ii) The promotion of full, fair and accurate reporting of court proceedings;

(iii) The duty of judges to give reasoned decisions; and

(iv) Public access to judgments of courts.⁹

The principle of an open court is a significant procedural dimension of the broader concept of open justice. Open courts allow the public to view courtroom proceedings. Blacks Law Dictionary defines an open court as follows:

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 spectators¹⁰ The idea of open courts is crucial to maintaining public confidence in the administration of justice:

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.¹¹ Open courts ensure a check on the process of adjudication in judicial proceedings. Bentham regarded publicity about courtroom proceedings as a mechanism to prevent improbity of judges:

9 Ibid.

¹⁰ Blacks Law Dictionary, 6th Edition, 1990, page 1091. The Blacks Law Dictionary, 10th Edition, 2014, page 1263 defines an open court thus: 1. A court that is in session, presided over by a judge, attended by the parties and their attorneys, and engaged in judicial business The term is distinguished from a court that is hearing evidence in camera or from judge that is exercising merely magisterial powers. 2. A court session that the public is free to attend ¹¹ Supra note 7.

PART A 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 order¹² 6 Lord Diplock, speaking for the House of Lords in AG v Leveller Magazine, remarked that open courts are a safeguard against judicial arbitrariness or idiosyncrasy. ¹³ Open courts, in his view, help build public confidence in the administration of justice. ¹⁴ The publics trust in the judicial system depends on their perception of how courts function. Open courts make it possible for the public to develop reasonable perceptions about the judiciary, by enabling them to directly observe judicial behaviour, and the processes and outcomes of a case.

In the decision of the High Court of Australia, in Grollo v Palmer, Gummow J dwelt on the idea of open courts:

An essential attribute of the judicial power of the Commonwealth is the resolution of such controversies ... so as to provide final results which are delivered in public after a public hearing, and, where a judge is the tribunal of fact as well as law, are preceded by grounds for decision which are animated by reasoning. An objective of the exercise of the judicial power in each particular case is the satisfaction of the parties to the dispute and the general public that, by these procedures, justice has both been done and been seen to be done. ¹⁵ ¹² Supra note 2 at page 316-317.

¹³ House of Lords, as per Lord Diplock in AG v Leveller Magazine, [1979] AC 440, at page 450. ¹⁴ Ibid.

15 High Court of Australia, as per Gummow J in *Grollo v Palmer*, [1995] HCA 2.

PART A The Ministry of Justice in the UK, in its proposal to permit broadcasting of court proceedings, has succinctly articulated the need for open courts:

Few people have direct experience of court proceedings, and overall public understanding of the criminal justice system is limited. Most court sittings take place when many people are at work. Many people, therefore, currently base their views on how the system is portrayed on television, or in films. These dramatised accounts rarely portray what happens in court accurately. With the range of technology now available, it should be easier for people to access better information on court proceedings. 16 In the decision of the US Supreme Court in *Richmond Newspapers, Inc. v Virginia*, Burger CJ observed:

The early history of open trials in part reflects the widespread acknowledgment, long before there were behavioural scientists, that public trials had significant community therapeutic value. People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.¹⁷ 7 Public confidence in the judiciary and in the process of judicial decision making is crucial for preserving the rule of law and to maintain the stability of the social fabric. Peoples access to the court signifies that the public is willing to have disputes resolved in court and to obey and accept judicial orders. Open courts effectively foster public confidence by allowing litigants and members of 16 Ministry of Justice, UK, *Proposals to allow the broadcasting, filming, and recording of selected court proceedings, making recommendations*, 2012. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217307/broadcasting-filming-recording-courts.pdf 17 Supreme Court of United States in *Richmond Newspapers, Inc. v Virginia*, 448 US 555 (1980).

PART B the public to view courtroom proceedings and ensure that the judges apply the law in a fair and impartial manner.

B Indian Jurisprudence

8 The concept of open courts is not alien to the Indian legal system. The

Constitution adopts the concept in Article 145(4), which states that the Supreme Court shall be an open court:

(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. The Code of Civil Procedure, 1908 (CPC) and the Code of Criminal Procedure, 1973 (CrPC) extend the principle of open courts to all civil and criminal courts in India. Section 153-B of the CPC provides that every civil court which tries a suit shall be deemed to be an 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. PART B Similarly, Section 327 of the CrPC also mandates criminal courts to be open:

Section 327. - Court 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. Hence, all courts in India are open to the public and function as open courts, except when the administration of justice requires public access to the court to be restricted. The principle of open courts in India recognises exceptions which are in the interest of fair administration of justice.

9 Various judgments of this Court have reinforced the importance of open courts. The earliest and most significant judgment on this aspect is the decision of a nine-judge Bench in Naresh Shridhar Mirajkar v State of Maharashtra¹⁸ (Mirajkar). While upholding an oral order of the High Court prohibiting the media to publish the evidence of a witness in a defamation suit, the majority emphasised the importance of open courts. Chief Justice Gajendragadkar, speaking for the majority observed:

20... 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 18 (1966) 3 SCR 744.

PART B 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 Gajendragadkar then quoted from Bentham (as noted in *Scott v Scott*¹⁹):

20... In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity. Even in his dissenting opinion, Justice Hidayatullah (as the learned judge then was) agreed with the majority on the importance of an open court system:

90. As we have fortunately inherited the English tradition of holding trials (with a few exceptions to which I shall refer later) 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. 19 *Supra* note 1.

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

129...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:

140 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.

141. ...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. Key takeaways emerge from the opinions in Mirajkar:

(i) Open courts serve as an instrument of inspiring public confidence in the administration of justice;

(ii) Open courts act as a check on the judiciary;

PART B

(iii) Publicity of the judicial process is the soul of justice;

(iv) Open justice must yield to the paramount object of the administration of justice, in case it becomes necessary to restrict access in the facts of a particular case; and

(v) Open courts are essential for the objective and fair administration of justice.

10 Almost two decades later, in *Olga Tellis v Bombay Municipal Corporation*,²⁰ a Constitution Bench of this Court held that eviction of slum-

dwellers violated their right to earn a livelihood. Chief Justice Y V Chandrachud reiterated the value of a hearing, in emphasising the principle that justice must also be seen to be done:

47...justice must not only be done but must manifestly be seen to be done The appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done...

...Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experiences at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one. Justice Frankfurter captured part of this sense of procedural justice when he wrote that the validity and moral authority of a conclusion largely depend on the mode by which it was reached No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a 20 (1985) 3 SCC 545.

PART B better way been found for generating the feeling, so important to a popular government, that justice has been done. These observations have been made in the context of analysing the importance of the right to be heard. But Olga Tellis emphasised that not only the ends, but also the means of justice are important. The purpose behind an open court system is to grant the affected party and the public an opportunity to observe justice being dispensed. The process by which justice is rendered has an important bearing on the confidence which it inculcates in society. Knowledge of the process is a confidence builder.

11 In *Life Insurance Corporation of India v Prof. Manubhai D. Shah*,²¹ this Court examined the right claimed by a citizen to contribute to an in-house magazine published by an instrumentality of the State. Writing for the two-judge Bench, Justice A.M. Ahmadi (as the learned Chief Justice then was) dwelt on the significance of disseminating information in a democracy:

8. ...The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy...

...It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set-up, more so in a democratic set-up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution... 21 (1992) 3 SCC 637.

PART B 12 More recently, in *Mohd. Shahabuddin v State of Bihar*,²² a two-judge Bench of this Court was examining a challenge to a notification by the Patna High Court declaring the premises for conducting a trial. Justice M K Sharma, in his concurring opinion, described open courts:

215... 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... Through these judicial decisions, this Court has recognised 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.

13 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 a litigation, depend on the information provided about judicial decisions in newspapers and in the 22 (2010) 4 SCC 653.

PART C 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.

C Technology and Open Court

14 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 revolutionised how we communicate. As on 31 March 2018, India had a total of 1,206.22 million telecom subscribers and 493.96 million internet users.²³ 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.

²³ Telecom Regulatory Authority of India, The Indian Telecom Services Performance Indicators January-March, 2018. Available at: https://traai.gov.in/sites/default/files/PIReport27062018_o.pdf

PART C ¹⁵ The importance of making justice accessible to the common citizen in its truest sense was explained by Lord Neuberger in his Judicial Studies Board speech (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.²⁴ ¹⁶ This Court and the High Courts in India have pro-actively adopted technology to make the judicial process more accessible, organised, transparent, and simple. For instance, many courts in the country, including this Court, now have display boards in the court premises and on their official websites which enable legal practitioners and the public to view the progress of the cause list. This Court and the High Courts maintain websites where they upload cause lists, daily orders, and judgments. They also maintain an archive of previous judgments, allowing users to search for a specific judgment using various inputs.

¹⁷ Recent judgments of this Court also indicate the willingness of this Court to adapt to modern technology for the advancement of justice. In *Krishna Veni Nagam v Harish Nagam*, this Court had taken into consideration ²⁴ Neuberger, Lord of Abbotbury (Master of Rolls) 2011, *Open justice unbound?*, Judicial Studies Board Annual Lecture, 16 March 2011. Available at:

<http://netk.net.au/judges/neuberger2.pdf> 25 (2017) 4 SCC 150.

PART C technological developments to regulate the use of video conferencing for certain categories of cases. Justice A.K. Goel on behalf of himself and Justice Lalit directed:

16. The advancement of technology ought to be utilised 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*, 26 where this Court was re-considering the issue of permitting video-conferencing for matrimonial disputes, one of us (D Y Chandrachud, J.) in his dissenting opinion, discussed the importance of using technology to enhance the delivery of justice:

89. 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. 26 (2018) 1 SCC 1.

C.1 ICT in Indian courts²⁷

Technology has made modernity possible. The interplay between technology and law has allowed dissemination of legal information with a veritable click of a button. We have designed processes and systems to suit the unique requirements of our judicial system. The Indian judiciary has incorporated Information and Communication Technology (ICT) under the aegis of the e-

Courts Integrated Mission Mode Project (e-Courts Project). This has been a part of the National e-Governance Plan (NeGP) which has been implemented in all High Courts and the District Courts of India. It was based on the 'National Policy and Action Plan for Implementation of Information and Communication Technology prepared by the e-Committee of the Supreme Court of India in 2005. The 2005 e-Committee Report proposed three phases for implementation of the e-Courts Project.

The e-Committee of the Supreme Court of India and the Department of Justice, Government of India, through a proper management of the e-Courts Project have ensured efficiency in the judicial process across 21,000 courts in the district judiciary in India. Phase-I of the e-Courts Project was approved in 2010 and enabled computerisation of 14,249 courts in the district judiciary by 2015.

The objective of the ongoing PhaseII of this project is to enhance judicial 27 The websites of Department of Justice, Government of India (doj.gov.in/) and E-courts services (ecourts.gov.in/) contains fair amount of information on the ongoing e-Courts Project.

PART C service delivery for litigants and lawyers by improving infrastructure and providing technology-enabled judicial processes. It involves improved ICT infrastructure, videoconferencing, improved access across seven platforms including a web portal, app, judicial service centers and kiosks. The e-Courts Project also includes capacity building of officers, ICT provisioning of District Legal Service Authorities, Taluka Legal Service Committees, State Judicial Academies and judicial process re-engineering. Currently, the e-Courts project caters to more than 21,000 courts and has been implemented in more than 600 districts, 3,000 court complexes and 6,400 establishments.

C.2 Technology and Implementation One of the objectives of the e-Courts Project is to make the ICT infrastructure comprising of computer hardware, Local Area Network (LAN), Wide Area Network (WAN), information kiosks, UPS, renewable energy-based power backup and other peripherals available in the district judiciary.

The e-Courts Project is developed on Open Source Technology by the National Informatics Centre (NIC), a Central Government department under the Union Ministry of Electronics and Information Technology. A single unified Case Information System (CIS) Software has been developed and made available to the entire district judiciary in India, for catering to the diversified requirements of the country in terms of local procedures, practices and languages. CIS PART C Version 3.0 has been made available in all the district and taluka courts. 15 High Courts are already equipped with CIS Version 1.0.

The e-Committee carried out extensive capacity building exercises to train judicial officers and administrative staff. The project is manned and managed by the court staff and the staff is trained in the use of computers. Some of them are also selected to be trained as system administrators.

C.3 Platforms created for service delivery

(i) e-Courts Portal: Online mechanisms 28 (websites) are available for

stakeholders such as litigants, advocates, government agencies, and the police to track case status, view cause lists, judgments and daily orders. The services.ecourts.gov.in portal is a one stop access point where a person can locate a case from any court across the country by using different search criteria available on the website. Data is available on the portal for disposed of and pending civil and criminal cases across the country. The portal also contains judgments and orders of the district judiciary.

(ii) Mobile App: e-Courts Services mobile app available on Android and iOS provides facility for all stakeholders including advocates and parties, to 28 Online services are available at (i) ecourts.gov.in, (ii) services.ecourts.gov.in and (iii) districts.ecourts.gov.in PART C create a portfolio of cases in which they are associated and track them for future alerts. A facility to search the case by a QR Code is also provided and the App has been downloaded multiple times.

(iii) SMS Push: Litigants and advocates get an SMS alert on their cell phones, in case of any adjournment, scrutiny, registration, transfer of case, disposal, uploading of orders, etc.

(iv) SMS Pull: This facility allows advocates and litigants to send the CNR number (which is a unique number tagged for every single case in the country) and receive a response with the current status of the case.

(v) Automated e-Mails: Litigants, advocates and police stations receive information on regular e-mails in relation to the cause lists, transfer of cases, disposal, copies of orders and judgments.

(vi) Touch Screen Kiosks and Service Centre: Dissemination of case status has been made simple with the installation of touch screen kiosks in various court complexes across the country. This allows litigants and advocates to view their case status at the touch of a button. The same information can also be obtained from Judicial Service Centres established in court complexes.

(vii) E-Payment: In order to facilitate ease of payments, online payment of court fees, fines, penalties and judicial deposits through the epay.ecourts.gov.in has been facilitated. Citizens can make payments online without the use of cheques, cash or stamps, with the help of this portal.

PART C

(viii) E-Filing: For convenience, facility for online filing of cases and case papers with the court registry has been provided. This facility is integrated with standard application software across all the districts and subordinate courts.

C.4 National Judicial Data Grid The NJDG is a public portal that provides a database of pending and disposed of cases in various High Courts and District Courts across India. The NJDG portal njdg.ecourts.gov.in provides transparency in the judicial system to all citizens by allowing them to view statistics of cases pending before various courts. The World Bank has also acknowledged NJDG

as a significant innovation. It serves as a national judicial data warehouse that may be used to shape legislative policy.

C.5 Other facilities created to speed up justice delivery

(i) NSTEP: National Software and Tracking of Electronic Process, is a mechanism that consists of a centralised service tracking application and a mobile app for court bailiffs. NSTEP has been created for speedy delivery of process and to reduce inordinate delays in judicial procedures. The mobile app, equipped with GPS location tracking assists the bailiffs in real-

time and transparent tracking of services. The mobile app also has the PART C facility to record the photo and signature of the receiver. In case of non-

service of notice or communication, the mobile application instantly communicates it to the central NSTEP server.

(ii) Video Conferencing: In an effort to speed up the judicial process, video-

conferencing facilities connecting courts and jails have been established in 488 courts and 342 jails across India.

C.6 Concept of Video-Streaming/Web-Cast Advancement in technology and increased internet penetration has facilitated transmission of live or pre-recorded video feed to devices like computers, tabs and mobiles. Live-webcast or streaming of court proceedings in real time can be implemented through available technological solutions. Live-webcast or streaming is the fastest method for communicating and is most suited for connecting geographically dispersed audiences.

C.7 Virtual reality as an extension of the open court The time has come for this Court to take a step further in adopting technology and to enable live-streaming of its proceedings. Live-streaming of courtroom proceedings is an extension of the principle of open courts. Live-streaming will have the ability to reach a wide number of audiences with the touch of a button.

PART C It will enable litigants and members of the public to have a virtual experience of courtroom proceedings even outside the courtroom premises.

18 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 PART C 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 PART D 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.

Major common law jurisdictions across the globe have already embraced the concept of live-streaming and broadcasting courtroom proceedings. It may be useful to look at the evolution of the concept in a few jurisdictions, and the practices followed by them.

D Comparative Law

19 This section takes a measured look at the development of the principle

of open justice in common law and other jurisdictions. It examines how courts in other countries have addressed concerns of privacy, confidentiality and sensitivity of litigants, witnesses and cases.

(i) United Kingdom The Supreme Court of UK permits broadcasting of its courtroom proceedings.²⁹ The Eighth Practice Direction of the Supreme Court permits video footage of ²⁹ The live-streaming proceedings of Supreme Court of United Kingdom. Available at: <https://www.supremecourt.uk/live/court-01.html> PART D proceedings before the Court to be broadcast where this does not affect the administration of justice. ³⁰ Three national broadcasters- BBC, ITN, and Sky News³¹ are permitted to film and broadcast the Supreme Court proceedings, in accordance with the protocol which has been agreed with. ³² The protocol prohibits recording of certain types of proceedings like private discussions between litigants and their counsel.³³ The footage is only allowed to be used for informational purposes in programs like news, current affairs, education, and legal training. ³⁴ 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.³⁵ 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.³⁶ Sky News airs live broadcasts of the UK Supreme Courts hearings. ³⁷ 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.³⁸ The presiding judge, however, retains full discretion to prohibit such ³⁰ The Supreme Court of United Kingdom, Practice Direction 8, para 8.17.1. Available at <https://www.supremecourt.uk/docs/practice-direction-08.pdf> ³¹ Supra note 16.

³² Supra note 30.

³³ Ibid.

³⁴ Supra note 16.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

PART D communications in the interest of justice.³⁹ The UK Supreme Court has its own Twitter handle (@UKSupremeCourt) which it uses to update the public about its judgments. ⁴⁰ It also has a YouTube channel where it showcases short summaries of judgments read out by the judges.⁴¹ In 2013, the UK permitted audio-visual coverage of the Court of Appeals (Civil and Criminal).⁴² 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.⁴³ According to British legal commentator, Joshua Rozenberg, the seventy seconds delay is favourable 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.⁴⁴ The court retains control over the live broadcast. A single video-journalist is authorised to record and regulate the live proceedings ⁴⁵ and is bound by the ³⁹ Ibid.

⁴⁰ The official Twitter handle of UK Supreme Court. Available at: <https://twitter.com/uksupremecourt> ⁴¹ The official YouTube handle of UK Supreme Court. Available at:

<https://www.youtube.com/user/UKSupremeCourt> ⁴² Ravid, Itay, Tweeting #Justice: Audio-Visual Coverage of Court Proceedings in a World of Shifting Technology (March 9, 2017). 35(1) Cardozo Arts and Entertainment Law Journal ⁴¹ (2017). ⁴³ Ibid.

⁴⁴ Joshua Rozenberg, Televising the Courts: The Time Has Come, The Guardian, 23 October 2013. Available at <https://www.theguardian.com/law/2013/oct/23/televising-courts-live-broadcasting-joshua-rozenberg> ⁴⁵ Ibid.

PART D courts orders.⁴⁶ Only the appointed journalist or his substitute is permitted to take pictures in court.⁴⁷ 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.⁴⁸ Only the appointed journalist or his substitute is permitted to take pictures in court.⁴⁹ 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 organisations pick only one court at a time for live broadcast.⁵⁰ The Court of Appeals was opened for broadcasting upon the recommendations of the Ministry of Justice, in its 2012 Report. ⁵¹ Making a case for extending technological change to the remaining courts in the UK, the Ministry of Justice had reasoned that:

In principle the majority of our courts are open to all members of the public who wish to attend, but in practice very few people have the time or opportunity to see what happens in our courts in person. In addition, the extent of press coverage of court cases, particularly in local courts has declined in recent years.

In cases of particular interest to the public, there may not be sufficient space in the public gallery for all those who wish to attend. ⁵² ⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

50 Ibid.

51 Supra note 16.

52 Ibid.

PART D The Ministry had recommended broadcasting the Court of Appeals proceedings as they do not involve victims or witnesses:

Cases in the Court of Appeal normally deal with complex issues of law or evidence, and victims and witnesses rarely appear in order to provide new evidence. Given the complexity of legal issues in Court of Appeal cases, we believe that allowing advocates arguments to be filmed in addition to judgments would be more likely to improve public understanding than judgments alone. We are therefore proposing to allow judgments and legal arguments from cases before the Court of Appeal to be broadcast.⁵³ Live-streaming of the Court of Appeals hearings opened the doors to other courts in the UK for broadcasting. The UK Parliament enacted the Crime and Courts Act, 2013, which, inter alia, enables recording of court proceedings with the approval of the Lord Chancellor and the Lord Chief Justice. This was enacted as a primary legislation to empower the Lord Chancellor, with the Lord Chief Justice, to set out in secondary legislation the specific circumstances in which the prohibition on cameras in courts will be disapplied.⁵⁴ In 2016, the Ministry of Justice launched a three-month pilot program to experiment with broadcasting the proceedings of eight England and Welsh Crown Courts.⁵⁵ This was limited to judges sentencing remarks and the footage was not made available to the public.⁵⁶ The question of broadcasting the Crown 53 Ibid.

54 Ibid.

55 Supra note 42.

56 Ibid.

PART D Courts hearings is currently pending consideration before the Ministry of Justice, as it involves larger issues of safeguarding witnesses and victims.⁵⁷

(ii) South Africa In South Africa, the presence of cameras in the courtroom is a recent development and is at a relatively nascent stage. In 2017, 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.⁵⁸ 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 emphasise

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.⁵⁹ Witnesses are granted the freedom to object to broadcasting their testimony, subject to the courts final discretion. This discretion, Ponna JA (speaking for the bench) emphasised, must be exercised by the courts on a case-by-case ⁵⁷The Telegraph, Crown Court sentencing being recorded for pilot projects that could bring judges comments to TV, 27 July 2016. Available at <https://www.telegraph.co.uk/news/2016/07/27/crown-court-sentencing-being-recorded-for-pilot-project-that-cou/> ⁵⁸The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & others (425/2017) [2017] ZASCA 97.

⁵⁹ Ibid at para 46.

PART D basis, by conducting an individualised enquiry.⁶⁰ Where the judge finds that the objections of the witness are valid, the court considers alternatives to regular photographic or television coverage.⁶¹

(iii) Canada The Canadian Supreme Court is considered a pioneer for adapting itself to technology and permitting audio-visual broadcasting of its proceedings. ⁶²In 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.⁶³ The Canadian Supreme Court permits the Canadian Parliamentary Press Gallery to live broadcast all appeals before it.⁶⁴ The Canadian Parliamentary Affairs Channel (CPAC) is also allowed to televise the appeal hearings of the Court, but at a later date. ⁶⁵The broadcasts are subject to guidelines which ⁶⁰Ibid at para 72.

⁶¹ Ibid at para 73.

⁶² Kyu Ho Youm, Cameras in the Courtroom in the Twenty-First Century: e U.S. Supreme Court Learning From Abroad?, 2012 BYU L. Rev. 1989 (2012).

⁶³ Ibid.

⁶⁴ Supreme Court of Canada, Access to the Court. Available at <https://www.scc-csc.ca/media/acc-eng.aspx> ⁶⁵ Daniel Stepniak, Audio Visual Coverage of Courts, A

Comparative Analysis, Cambridge University Press (2008).

PART D ensure that the Court retains control over the filming process.⁶⁶ Although the CPAC decides which cases to broadcast, the Supreme Court has the discretion to prohibit the filming of specific appeals. ⁶⁷ The CPAC is permitted to share the broadcast feed with other television networks, for use as snippets in news programs.⁶⁸ At present, four cameras are installed in the Supreme Court. ⁶⁹ The appeal hearings have been broadcast since 2009 and are archived on the Courts website. ⁷⁰ The cameras are installed by the Court and are operated by the Courts employees. Outside cameras are not permitted except for special events.⁷¹ The copyright over the proceedings is retained by the Court.⁷² Before any case can be filmed, the Supreme Court requires parties to consent to the recording and televising of the proceedings.⁷³ 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. ⁷⁴ ⁶⁶ Ibid.

⁶⁷ Supra note 62.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Supra note 65.

⁷³ Ibid.

⁷⁴ Ibid.

PART D

(iv) Australia

Australia follows an open court system, with courts in all Australian jurisdictions admitting television cameras into courtrooms. ⁷⁵ Since 2013, audio-visual recordings of the High Court of Australia have been made available to the public.⁷⁶ The entire process of filming and broadcasting is carried out by the Court staff.⁷⁷ Transcripts of the hearings are made available within a day or two

of most hearings. 78 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.79 Apart from the High Court, most Australian courts do not maintain a consistent policy on admitting television cameras into the courtroom.80 Filming is permitted on an ad hoc basis and is usually restricted to the recording of file and overlay footage or ceremonial sittings.81 75 See supra note 65.

76 High Court of Australia, Press Release, 01 October 2013. Available at: <http://www.hcourt.gov.au/assets/news/MR-audio-visual-recordings-Oct13.pdf>. 77High Court of Australia, Photography and Recording Guidelines. Available at:

<http://www.hcourt.gov.au/about/photography-and-recording> 78 Ibid.

79 Ibid.

80 Supra note 65 at page 210-211.

81 Ibid.

(v) New Zealand

New Zealand allows wide access to the media in courts and has one of the most progressive live broadcast policies among common law countries.

Traditionally, members of the media were only permitted to make hand-written notes of court proceedings, without the use of any electronic device.83 From 1996 to 1998, New Zealand conducted a three year pilot project which covered more than twenty cases.84 All courts in New Zealand were covered under the pilot, contingent on two main rules:

1. Material obtained from expanded media coverage which is broadcast shall be presented in a way which gives an accurate, impartial and balanced coverage of the proceedings and of the parties involved. Any such broadcast is to be without editorial comment and to be of at least two minutes duration per news item.
2. There shall be no use of material obtained from expanded media coverage otherwise than for normal news programmes or articles unless prior approval for that use has been given by the trial judge or, where that judge is unavailable, another judge of the relevant court.85 New Zealand

permits media houses to broadcast court proceedings with the approval of the court.⁸⁶ 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 ⁸² See supra note 65.

⁸³ New Zealand, Report to Chief Justice on In-Court Media Coverage (2015), at para 7. Available at https://www.courtsofnz.govt.nz/In-Court-Media-Review/In-Court-Media-Review/ReporttoChiefJusticeonincourtmediacoverageF6_7_15_20150720.pdf ⁸⁴ Ibid, at para 15.

⁸⁵ Ibid, at para 14.

⁸⁶ New Zealand, In-Court Media Coverage Guidelines (2016). Available at: [https://www.courtsofnz.govt.nz/going-](https://www.courtsofnz.govt.nz/going-to-court/media/rules-and-resources/INCOURTMEDIACOVERAGEGUIDELINES2016T.pdf)

[to-court/media/rules-and-resources/INCOURTMEDIACOVERAGEGUIDELINES2016T.pdf](https://www.courtsofnz.govt.nz/going-to-court/media/rules-and-resources/INCOURTMEDIACOVERAGEGUIDELINES2016T.pdf) PART D report of the hearing without publishing anything out of context.⁸⁷ They also provide for a ten minute delay in broadcasting audio and video recordings. ⁸⁸ 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.⁸⁹ The discretion of the court to grant permission is guided by the following considerations:

- a. the need for a fair trial;
- b. the desirability of open justice;
- c. the principle that the media have an important role in the reporting of trials as the eyes and ears of the public;

d. court obligations to the victims of offences; and e. the interests and reasonable concerns and perceptions of the parties, victims and witnesses.⁹⁰ The Supreme Court permits recording of its proceedings in majority of the cases, unless specifically objected to by the parties. ⁹¹ The Supreme Courts 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.⁹² ⁸⁷ Ibid.

⁸⁸ Ibid, at para 2.1.

⁸⁹ Ibid, at para 5.5.

90 Ibid at para 2.3.

91 Supra note 65, at page 347.

92 New Zealand Ministry of Justice, Supreme Court Media Guidelines (2004). Available at:

<https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/appendices/appendix-e/>

(vi) United States

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 weeks oral arguments are released on the courts website⁹³ at the end of the week.

Each Federal Court of Appeals has the discretion to provide audio or video recordings of its proceedings, subject to guidelines framed by the court. 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.⁹⁴ The media needs to take prior approval of the court to record the proceedings. ⁹⁵ 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.⁹⁶ The video and audio recordings of the federal judiciary are hosted on YouTube and are also available on the courts official website.⁹⁷ 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.⁹⁸ ⁹³ The official website of the Supreme Court of the United States. Available at: https://www.supremecourt.gov/oral_arguments/argument_audio/2017 ⁹⁴ The United States Court of Appeals for Ninth Circuit, Guidelines for Broadcasting, Recording, and Still Photography in the Courtroom. Available at:

https://cdn.ca9.uscourts.gov/datastore/uploads/news_media/camera.guidelines.pdf ⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ The official YouTube handle of US Courts. Available at: <https://www.youtube.com/user/uscourts>

⁹⁸ As held by the Supreme Court of the United States in Chandler v Florida, 449 U.S. 560 (1981).

(vii) Brazil

In 2002, the President of Brazil sanctioned a law enabling the creation of a public television channel dedicated to the judiciary and to the Supreme Court. 99 The court sessions of the Supreme Court (Supremo Tribunal Federal) are broadcast online¹⁰⁰ on either TV Justica¹⁰¹ or Radio Justica¹⁰² and operated by the Supreme Court. Aside from being aired on television and radio, the proceedings can also be streamed online as the Court maintains a Twitter account ¹⁰³ and a YouTube channel. ¹⁰⁴ The unique feature of the Brazilian Supreme Court is that cameras are permitted into the conferences where the judges deliberate.¹⁰⁵

(viii) International Courts 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.¹⁰⁶ The ICC has a YouTube channel where it broadcasts case proceedings, press conferences, and informative videos in different languages. ¹⁰⁷ In the European Court on Human Rights (ECHR), all hearings are permitted to be made public, unless specifically 99 Meet the Justice TV. Available at official website: <http://www.tvjustica.jus.br/index/conheca> ¹⁰⁰ Supra note 62.

¹⁰¹ TV Justica. Available at official website: <http://www.tvjustica.jus.br/> ¹⁰² Radio Justica. Available at official website: www.radiojustica.jus.br/ ¹⁰³ The official Twitter handle of Supreme Court of Brazil. Available at: https://twitter.com/stf_oficial ¹⁰⁴ The official YouTube handle of Supreme Court of Brazil. Available at: <https://www.youtube.com/user/stf> ¹⁰⁵ Supra note 62.

¹⁰⁶ Official website of International Criminal Court. Available at: <https://www.icc-cpi.int/> ¹⁰⁷ Official YouTube Channel of International Criminal Court. Available at:

<https://www.youtube.com/user/IntlCriminalCourt/videos> PART D disallowed by the Court.¹⁰⁸ The broadcast is available on the Courts 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 courts website on the day itself, from 14:30 (local time) onwards.¹⁰⁹ ²⁰ On examining the practices followed by the jurisdictions discussed above, it appears that broadcasting of courtroom proceedings emerged in several countries through judicial decisions. Further, most jurisdictions follow certain common practices such as (i) a minimal delay in live broadcast; (ii) retention of the copyright with the court; (iii) conducting a pilot project before introducing broadcasting for all cases; (iv) excluding certain categories of cases where the interests of justice warrant that the hearings should not be webcast or streamed; and (v) conferment of power on the presiding judge to regulate the live transmission. Every jurisdiction has a set of limitations to

which the broadcast is subject. Broadcast is usually not permitted when it impedes the administration of justice.

21 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-

108 Rule 63, Rules of Court, ECHR, 01 Aug 2018. Available at: https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf 109 ECHR, Webcast of hearings. Available at: <https://www.echr.coe.int/Pages/home.aspx?p=hearings&c=PARTD> 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 Justices 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).

22 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 this 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.

23 Live-streaming of proceedings is crucial to the dissemination of knowledge about judicial proceedings and granting full access to justice to the PART D 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 subserves diverse interests of stake holders and of society in the proper administration of justice.

24 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 PART D would have to determine the modalities for doing so by framing appropriate rules.

25 Comprehensive guidelines for live-streaming of Court proceedings have been submitted by Mr K Venugopal, learned Attorney General of India, Ms Indira Jaising, learned Senior Counsel, Mr Virag Gupta, learned Counsel and Mr Mathews J Nedumpara, learned Counsel. These have been duly considered in framing the model guidelines below. The model guidelines are based on the following broad principles:

a. Article 145 (1) of the Constitution provides:

Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court... Determining the modalities for live-streaming of the proceedings of this Court can appropriately be dealt with under the Rules which should be framed in pursuance of Article 145(1). Regulating, generally, the practice and procedure of the Court would extend to formulating Rules for live-streaming.

b. Not all cases may be live-streamed. Certain sensitive cases like matrimonial or sexual assault cases should be excluded from the process of live-

streaming;

PART D c. Live-streaming will be carried out with a minimal delay to allow time for screening sensitive information or any exchange which should not be streamed;

d. The final authority to regulate suspension or prohibition of live-streaming in a particular case where the administration of justice so requires, must be with the presiding judge of each court;

e. Live-streaming will be carried out only by persons or any agency authorized under the directions of the Chief Justice of India, or as contemplated in the Rules. The streaming and broadcasting will be hosted by this Court on its website with the assistance of the National Informatics Centre and the Ministry of Electronics and Information Technology;

f. The copyright over all the material recorded and broadcast in this Court shall vest with this Court only; and g. The recordings and broadcast may not be used by anyone for commercial purposes.

h. Archives shall be maintained of all live-streaming, to be hosted on the web-site of the Court.

26 The model guidelines are of a suggested nature and will not detract from the authority of the Court to frame Rules under Article 145(1) in order to determine all the modalities, including (i) the phases in which live-streaming PART E shall be introduced; (ii) the types of cases for which live-streaming of cases will be provided; (iii) authorising the use of appropriate technology; (iv) the agencies through which live-streaming will be implemented; (v) other facets for implementation; and (vi) laying down norms for the use of the feed.

E 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 PART E 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.

2. In addition to live-streaming of courtroom proceedings, the following events may also be live-streamed in future subject to the provisions of the Rules:

(a) Oath ceremonies of the Judges of the Supreme Court and speeches delivered by retiring judges and other judges in the farewell ceremony of the respective Supreme Court Judges; and

(b) Addresses delivered in judicial conferences or Full Court References or any event organized by the Supreme Court or by advocate associations affiliated to the Supreme Court or any other events.

B. Manner of live-streaming

1. Live-streamed and archived videos of the broadcast shall be made available on the official website of the Supreme Court. The recorded PART E broadcast of each day shall be made available as archives on the official website of the Supreme Court by the end of the day;

2. Live-streaming shall commence as soon as the judges arrive in the courtroom and shall continue till the Bench rises;

3. The presiding judge of the courtroom shall be provided with an appropriate device for directing the technical team to stop live-streaming, if the Bench deems it necessary in the interest of administration of justice;

4. Live-streaming of the proceedings should be carried out with a delay of two minutes;

5. Proceedings shall only be live-streamed during working hours of the court;

6. Courtroom proceedings will continue to be live-streamed unless the presiding judge orders the recording to be paused or suspended;

7. To give full effect to the process of live-streaming, advocates addressing the Bench, and judges addressing the Bar, must use microphones, while addressing the Court;

8. Recording of courtroom proceedings shall be done by the Registry with the technical support of National Informatics Centre or any other public/ PART E private agency authorised by the Supreme Court or the Ministry of Information and Technology; and

9. The portions of proceedings which are not broadcast online, on the direction of the presiding judge of the Bench shall not be made part of the official records and shall be placed separately as confidential records.

C. Technical specifications for live-streaming

1. Live-streaming shall be conducted by the Supreme Court with its own camera-persons or by an authorized agency. No person who is not authorized by the Supreme Court will be permitted to

record any proceeding;

2. Cameras should be focused only on the judges and advocates pleading before the Bench in the matter being live-streamed;

3. Cameras shall not film the media and visitors galleries;

4. Cameras may zoom in on the Bench when any judge is dictating an order or judgment or making any observation or enquiry to the advocate; and

5. The following communications shall not be filmed:

a) Discussions among the judges on the Bench;

PART E

b) Any judge giving instructions to the administrative staff of the courtroom;

c) Any staff member communicating any message to the judge or circulating any document to the judge;

d) Notes taken down by the judge during the court proceedings; and

e) Notes made by an advocate either on paper or in electronic form for assistance while making submissions to the court.

D. Archiving

1. The audio-visual recording of each days proceedings shall be preserved in the Audio-Visual Unit of the Supreme Court Registry;

2. Archives of all broadcasts of courtroom proceedings which have been live-streamed should be made available on the website of the Supreme Court; and

3. Hard copies of the video footage of past proceedings may be made available according to terms and conditions to be notified by the Supreme Court Registry. The video footage shall be made available for the sole purpose of fair and accurate reporting of the judicial proceedings of the Supreme Court.

E. Broadcast Room

1. The Registry will make one or more rooms or a hall available within the premises of the Supreme Court for the purpose of broadcasting the proceedings. Multiple screens along with the other necessary infrastructural facilities shall be installed, for enabling litigants, journalists, interns, visitors and lawyers to view the courtroom proceedings in the broadcast room(s). Special arrangements will be made for the differently abled.

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.

PART E I would like to acknowledge and appreciate the efforts and assistance rendered by Mr K K Venugopal, the learned Attorney General for India, Ms Indira Jaising, learned Senior Counsel, Mr Mathews Nedumpara, learned Counsel and by the law student, Mr Swapnil Tripathi, who also moved a petition under Article 32.

.....J [Dr Dhananjaya Y Chandrachud] New Delhi;

September 26, 2018.