

Should Supreme Court proceedings be live-streamed?

In the light of technological advancements, why shouldn't millions of people be allowed to watch the rich deliberations that transpire in the halls of justice? File | Photo Credit: [The Hindu](#)

As Kautilya said in the Arthashastra, and during that time, when judges delivered a judgment, they did so in an open court. From then until now, the visual setting of the justice delivery mechanism hasn't changed much. While the Indian legal system is built on the concept of open courts, which means that the proceedings are open to all members of the public, the reality is different. On any given day, only a handful of people can be physically present and are allowed in the courtroom.

Given the technological strides made in every possible field of work, the natural question is, why shouldn't the legal system benefit from technology? While the courts are now opting for digitisation, with online records of all cases, a provision for filing FIRs online, an automated system of case rotation, etc., there is still a need to push the bar much higher.

In the light of these technological advancements, why shouldn't millions of people be allowed to watch the rich deliberations that transpire in the halls of justice? As they say, justice should not only be done, it should also be seen to be done. This cardinal principle is at the heart of the petition filed by senior advocate Indira Jaising.

First, note that live-streaming is neither called for in all types of matters nor in all courts. The emphasis is to make those matters that are of great public importance available for all to see. Therefore, matters which have a privacy dimension, such as family matters or criminal matters, or matters with legal procedural intricacies, such as most trial court matters, are out of its scope. But matters which have a bearing on important public interest issues such as entry of women to the Sabarimala temple, or the scope of the right to the choice of one's food, or the constitutionality of the Aadhaar scheme, or the legality of Section 377 of the Indian Penal Code, all of which are pending before the Supreme Court, should be available for all to watch.

Further, note that to promote transparency, live-streaming has been allowed for both Lok Sabha and Rajya Sabha proceedings since 2004. Similarly, the recording of videos in the highest courts in Canada and Australia, as well as in some international courts, most notably in the International Court of Justice, shows that this exercise is neither novel nor so difficult.

The right to information, access to justice, the need to build the right perception, along with the need to educate common people on how the judiciary functions are all strong reasons in favour of allowing live-streaming of court proceedings. Add to this the need to avoid multiple versions or wrong projections of facts, or the menace of fake news or faulty reporting, and you have a solid case for allowing live-streaming/recording of videos.

Think of the technical glitches (which can be resolved with some effort and proper guidelines), fear of the court being reduced to a spectacle (why fear if the courts are supreme and the judges do their best in every case?), too much information (what does that even mean in a democracy?) and you see why the argument against live-streaming/recording is weak. Lamenting the lack of infrastructure, an overburdened judiciary, or the difficulty in deciding how to implement this should not be rolled out as run-of-the-mill responses.

This petition presents the hope of new India, where technology promises to be the game changer if those in power understand its importance and use it right. It also presents a hope for the Indian

legal system to finally deliver on its promise to empower the masses, not be scared of them. After all, why build walls where we can build bridges?

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The role of the judiciary cannot be equated with the roles of the legislature and the executive. While broadcasting parliamentary proceedings may be good for ensuring accountability, this is not the case with the courts. The reason is simple. In democratic governance, the public is sovereign, and the public judges its representatives. But the public cannot judge the judges. Judges are accountable neither to the general public nor to the sovereign. They are accountable only to the rule of law and to the Constitution, as established by law.

However well-intentioned it may be, the unwanted public gaze caused by live-streaming will tend to make judges subject to popular public opinion and accountable to the general public. This has its inherent danger in a democratic set-up. While the impetus to act for the executive and the legislature lies in popularity, the courts have to carry out justice even if it involves one person against everyone else. Constitutional courts are meant to protect against the excesses that the legislature and the executive may commit against a minority. The individuality of judges is more likely to become a subject of public debate through live-streaming, creating problems of its own. The focus should be on the judgment delivered.

Live-streaming may also create practical problems. There is a greater likelihood of lawyers aspiring to publicise themselves through their addresses to the Bench. Advocates debate on the premise of law and logic to assist the court in arriving at a just and rational conclusion. The more dispassionately one gets involved in this debate, the more the likelihood of fairer administration of justice. With live-streaming, there is a strong possibility that lawyers will tend to address not only the judges but also the public watching them. This will only hamper their objectivity.

Another important aspect is that debates inside a courtroom, especially before Constitution Benches of the Supreme Court, require reasonable expertise to be understood. The debate is not like the television debates that we are familiar with. Also, during hearings, judges make oral observations and ask questions which may not be a formal expression of what they are thinking. Many times, contradictory observations are made to elicit the version of rival parties. Live-streaming will do away with the medium of responsible reporting by those lawyers and journalists who are experts in the field. An irresponsible debate on an oral observation of a judge may make the judge conscious, and this will affect the normalcy of the proceedings.

Instead of live-streaming, audio and video recordings of court proceedings would reform the administration of justice. These can be used at the time of review or appeal of a case, especially when the submissions of a lawyer are not properly recorded in the judgment, or a judge is acting in a whimsical manner. The Supreme Court had already passed an order in *Pradyuman Bisht v. Union of India* (2017) directing all High Courts to ensure CCTVs and audio and video recordings in subordinate courts. This order should be extended to the Supreme Court and High Courts, and a copy of the recordings should be made available to the parties concerned and to the general public under the Right to Information Act.

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Those who advocate this remedy are well-intentioned, but live-streaming may not address the root problem for which other proposals may be better suited. They also do not adequately account for the uniqueness of the Indian Supreme Court, its structure and processes, and the underlying problems that impede its effectiveness.

Judges have historically been reticent about live-streaming court hearings. While speaking to a university audience in April 2017, U.S. Chief Justice John Roberts was asked to respond to a proposal for the live telecast of proceedings before the Supreme Court. He replied that while oral hearings are open to the public, they are designed for a specific purpose: to help judges reach good decisions. He argued that there is educational value of broadcasting court proceedings. But then, can judges be uninhibited in asking questions — even politically incorrect ones — which would enable them to improve the reasoning advanced in their judgments? He asserted that cameras would invite grandstanding on the part of lawyers and judges, as well as a tendency to play to the gallery.

Cameras have been allowed in courts in many countries, but this typically occurs in trial and lower courts of appeal. The Canadian Supreme Court does allow the recording of its hearings, which are also available on its website. However, it is, at present, a global outlier among apex courts.

While the logic employed by those arguing for live-streaming of Supreme Court proceedings has force, the Indian Supreme Court may well be unique in terms of the cases it takes on, and the logistics involved in setting up cameras within it. The Canadian Supreme Court may well have successfully experimented with recording its hearings, but it had an average case load of 500-600 from 2006 to 2016. In each of these 10 years, it decided between 60 and 80 of these cases. The Constitutional Court of South Africa, where this measure has been proposed, decided an average of 20 cases in its first decade (1995-2005) and delivered 51 judgments in 2017. Both courts sit as one body. On the other hand, the Indian Supreme Court on any given day is actually 12-13 panels of judges hearing cases simultaneously, and had more than 55,000 pending cases as of November 2017. It issues a far higher number of judgments than any comparable court. Given the pressure, the judgments issued tend to be hurriedly reasoned and poorly articulated.

Lawyers and judges before the Supreme Court tend to rely extensively on an 'oral' culture where much less emphasis is placed on written briefs and documents or on thorough preparation in advance of hearings. Lawyers in India arguably get more time to argue their cases than in any other jurisdiction. Given these realities, it is not clear that televising the proceedings would entail any great benefit to the public, even as it runs the risk of adversely affecting court proceedings.

Before we think of cameras in courts, more fundamental reforms need to be effected. These include greater reliance on written briefs and the significance accorded to them, page limits for briefs (and, perhaps, also for judgments), time limits for oral arguments (and for judges to issue judgments), and a greater emphasis on preparation in advance. The judiciary must also employ a press officer to liaise with the media, and issue simultaneously one or two page summaries of its judgments to facilitate greater public understanding.

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Marriage is a civil contract — adultery or divorce should have only civil consequences

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