

**DE JURE NEXUS LAW JOURNAL**

Author:

Nimisha Saikia

Bangalore Institute of Legal Studies

BA. LL.B. (Hons.), 5<sup>th</sup> Year.**CASE ANALYSIS OF LIVE STREAMING OF COURT PROCEEDING**

The Indian Constitution confirms the social dignity of an Indian Citizen by underpinning the fundamental rights. Fundamental rights such as Right to 'Equality', 'Freedom', 'Cultural and Educational rights', 'Freedom of religion' and 'Constitutional remedies' are the intrinsic rights granted by the Indian Constitution which espouse the esteem of a human being.

De Jure Nexus

**GENESIS AND IMPLEMENTATION OF THE CONCEPT OF LIVE STREAMING IN THE HON'BLE SUPREME COURT OF INDIA**

The Learned Attorney General Mr. K. K. Venugopal submitted his argument for live streaming of court proceedings. Mr. K.K Venugopal was retorting to the Writ Petition No. 66 of 2018 filed by Senior Advocate Indira Jaising, who was seeking a declaration for allowing live streaming of the case proceedings within Hon'ble Supreme Court in cases that holds constitutional and national importance. She had also focused on framing of guidelines with reference to live streaming. The Hon'ble Supreme Court through a number of hearings interpreted the current situation of live streaming in courts throughout the world, assessing the Indian perspective as well. After the pronouncement of Judgments by the Hon'ble Supreme Court, there is an express stipulation in Article 145(4) of the Indian Constitution that such pronouncements shall be made in open Court. International Criminal Court also allows live streaming of the case proceedings. However United States of America does not permit such proceedings. Also, the Court held that

the **Ratio Decidendi** of the case in the point that 'live streaming of a case is basically the use of technology to virtually expand the courtroom area beyond the four walls of the courtrooms. This 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 courtrooms. A large segment of persons be it in the legal profession, journalists, civil society activists, academicians or students of law will be able to view live proceedings in propria persona on a real-time basis. Large number of viewers can ultimately epitomize transparency, good governance, and accountability. Since it was said that no person can plead ignorance of law, there is a corresponding obligation on the State to spread awareness about the law and the developments including the evolution of the law.

Relying on *Naresh Shridhar Mirajkar and Ors Vs. The state of Maharashtra and Ors* the situation arose to inter alia considering the contentions of journalists that they had a fundamental right to conduct their occupation under Article 19(1)(g) of the Constitution and had a right to publish realistic reports of the proceedings which they had witnessed and heard in the court as journalists under Article 19(1) (a) and also had a right to attend the proceedings in the Court under Article 19(1)(d) The Court stated that publicity is the very soul of justice. Hon'ble Supreme Court dragged the attention on the decision of the Advisory Council of the National Mission of Justice Delivery and Legal Reforms on the application to initiate audio-video recording on an experimental basis in the Courts. By virtue of Article 129 of the Constitution the publication of Court proceedings of the Hon'ble Supreme Court is a facet of the status of this Court as a Court of Record, whose acts and proceedings are enrolled for perpetual memory. Hence, live streaming of court proceedings in the prescriber digital format would be a declaration of the Constitutional rights bestowed upon the public and the litigants in particular.

Justice Chandrachud quoted Jeremy Bentham's Principal of Open Justice and mentioned that the prayer of live streaming of Court proceedings has its genesis in this principle. Initially project was taken up by the Court until a full-fledged mechanism of streaming is evolved. The primary motive or aim was to explore the opportunity of live streaming through allocated passwords in limited areas such as dedicated media room for clerks, litigants and interns, the Supreme Court Bar Association room and Advocates-on-Record Association room/lounge. The Hon'ble Court also laid down guidelines to safeguard as well as limit the recording and broadcasting of its proceedings to ensure better access to justice further holding right to modify the guidelines from time to time. However, few cases like matrimonial disputes,

sexual assaults, matters of national security etc. shall not fall under the scope or purview of live streaming.

## **ANALYSIS OF THE VERDICT IN LIGHT OF ARTICLE 19 AND**

### **ARTICLE 21:**

In October, 2018 The Hon'ble Supreme Court of India allowed the 'Live Streaming of Supreme Court case proceedings on issues being constitutional and of national importance having an impact on the general public at large. Right to know and receive information, it's by now settled, may be a facet of Article 19 (1) (a) of the Indian Constitution. On the other hand, Article 21 guarantees Right to Privacy to an individual. There is a core relation between the Article 21 and Article 19 that holds the dignity of the 'Live Stream proceedings of supreme court'. Live Streaming of Court proceedings is declared in public interest. Public interest has been preserved through the Constitution. The Constitution through Article 19 highlights 'Freedom of Speech and expression' as an important pillar of democracy. Freedom of press is often stated as a subset of freedom of speech and expression. Freedom of press basically means freedom to propagate ideas by way of circulation of press & media. Free expression with an unadulterated exchange of ideas is essential for regulating the democracy of India. However, the media and press have its right restricted into the private matters since, right to privacy is another important pillar of democracy, which though the Constitution does not expressly declare as a fundamental right but is an important ingredient of 'Right Liberty' under Article 21. The right to privacy was recognized in the case of *Kharak Singh vs. State of Uttar Pradesh & Others*. Through the landmark case of *Gobind vs. State of Madhya Pradesh & another*, right to privacy was incorporated under the umbrella of right to life and personal liberty by the humanistic interpretation and expansion of the Article 21.

Justice Chandrachud said that 'above all, sunlight is the best disinfectant'. Proceedings under the eye view of the nation develop a transparent bridge to the Justice. The nation has the right to know the rationale behind every ruling, but media, press and technology play the important vector in creating the other bridge between the media and the court. The common layman sees and absorbs what is being fed by the media. The recorded plot may be or may not be the genuine interpretation at the end, which is well expressed through the eye of the transmitter in the way a layman understands. Though guidelines are framed for the purpose of broadcasting,

but India does not have a bar on the Freedom of Press which is why statutes of defamation have never dominated freedom of expression. Not every matter which is of Constitutional or National importance can be assumed to not have the right to privacy of an individual preserved in it. Besides, media had never made an effort to understand the parameter of personal liberty and the importance of the privacy circumference of individuals related to a situation being publicized. Therefore, the right to fair transmission of information should be protected by not making any bias through propagating diluted, ambiguous, one-sided or vague news by the press and media. So, once the Sun truly reflects without the ambiguity of clouds, disinfection is definite.

### **LIVE STREAMING OF SUPREME COURT'S PROCEEDING**

The Supreme Court held that a live streaming is only an extension of the 'open court' system, where the general public can walk inside the courtroom and watch the court proceedings. However, with live court proceedings litigants, law students and the public can watch them as they happen and in their own comfort. Channel like the Rajya Sabha TV and the Lok Sabha TV which are proposed by the government for the Supreme Court.

#### **BENEFITS**

- Live stream of the case **would** help litigants follow the proceedings in their case and also assess their lawyers' performance. People staying far away from States like Karnataka etc; do not have to travel all the way to the national capital for a day's hearing.
- Live streaming would help to keep a check on lawyers' conduct inside the courtrooms. Thus, there would be less interruptions, raised voices and adjournments from the lawyers.
- Live-streaming will bring transparency to justice.

#### **CONCERNS**

- Live streaming cases can involve national security concerns that amount to a violation of the fundamental right to privacy in matrimonial disputes and rape cases.
- The agreements should be on a non-commercial basis no one should profit from the arrangement.
- The unauthorised live streaming of the videos is another cause for concern as its regulation will be very difficult at the government's end.

### **WAY FORWARD**

- Citizens have the right to information and technology to make a matter of constitutional and national importance available for the public viewership. Moreover, if live streaming of the top court's proceedings is not possible then alternatively video recording of the proceedings should be allowed.

### **UK SUPREME COURT PROCEEDINGS**

UK Supreme Court proceedings can now be viewed any time at any place with the launch of an on-demand archive of past hearings unveiled today to enrich the court's existing live streaming service. Lawyers, law students and anyone curious about the workings of the very best court within the land will now be ready to watch hearings of cases over the preceding year at their convenience. It will even be useful and informative tool for those considering a career within law.

Footage of the proceedings in court is going to be freely available via each case's page on the Supreme Court website, will be uploaded on the subsequent working day. Once judgment is delivered, footage of the case summary in court also will be published along the complete judgment text and press summary. The service will include footage of proceedings of the Judicial Committee of the Privy Council (or JCPC, which hears appeals from variety of Commonwealth countries, British Overseas Territories and Crown Dependencies). Footage will remain available for about one year after the court hearing. For copyright reasons, users will not be ready to download the footage for future storage or editing.

Court's streaming service enables hearings to be broadcast live from any of its three courtrooms, including sittings of the JCPC. Approximately over 15,000 people have used this service each month since it was launched in October 2014.

### **What Other Countries Do**

- UK live-streams cases in its Supreme Court.
- Live-streaming and recording of court proceedings is permitted in South Africa, Australia, New Zealand and Brazil.
- Apex court of Canada has webcast system in place where court hearings can be watched live.
- Federal Court in Canada started a pilot project of webcast last year on "interesting and important cases" streamed through Zoom. Participants could log in and watch a live feed. This was keeping with policy on public and media access. The main principle of Canada's open court that "court hearings are open to general public with exceptions". The federal court also accepts it has a responsibility to assist the media in achieving those goals
- Video recording or photography of court proceedings is not permitted in US Supreme Court. It basically releases audio transcripts of the oral arguments on the same day of the hearing.

### **CONCLUSION**

The Pandemic has presented the Supreme Court with both a challenge and a chance to adopt technology. As the consequences of the lockdown Court had to quickly find the technology and make protocols for virtual courts and e-hearings. Before this pandemic the judicial system assumed that litigants, judges, lawyers, and court staff could come together in a physical place for the administration of justice. There was an open courtroom that the general public could access; this protected the right to access justice, guaranteed under Article 21 of the Constitution. COVID-19 presents the judiciary with a chance to seek out ways to make sure access to justice even without a physical courtroom. The SC has chosen to play an influential role as an institution of constitutional governance. The public is rightly interested, and has a right to know, about court proceedings in constitutional courts as well as trial and appellate courts. Openness and transparency reinforce the public's faith in the judicial system.