



The Concept of Open Justice and Open Court: An Appraisal of Indian Legal System

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Abstract

The concept of open justice requires that all trials before the court must be held in public. Open and transparent proceeding before the court boost the confidence level among the public by getting opportunity to view the courtroom proceedings. Recently, a good initiative is taken by the Supreme Court permitting live streaming of its proceedings. This move may enhance the concept of openness and transparency. However, a careful balance has to be achieved between the concept of open court and open access justice, and the cry for privacy. There could be no totalitarian application of either one concept as that would defeat the purpose of both equally valid concepts. The imperative need for public justice was emphatically stressed by Jeremy Bentham when he said, 'Publicity is the very soul of justice. It keeps the judge, while trying, under trial.' The paper examines the provisions of open court provided under the different laws of India is being adhered for fair administration of justice. Further, it envisages the public trial in open court is constitutional mandate of due process of law. Because the law belongs to the people. The principle of open justice is the cornerstone for ensuring that law fulfils this role, and does not become a tool for arbitrary power. Open justice exists in order to ensure that decisions in court are served properly and effectively. The researcher will apply the doctrinal research methodology for the work and data collection may be primary and secondary based on authentic information.

Keywords: Fair administration; Justice; Live-streaming; Openness; Public trial.

Introduction

The trial proceedings in Indian courts are British legacy of openness or open justice. Since we have adopted the English practices of conducting trials in public with a few exceptions. This concept is very primitive and assure the liberty of the individuals. The great jurist, Bentham, used to express this principle as the soul of Justice. Since, openness and publicity place the checks on judicial injustices. Therefore, the position of Indian courts is not contrary to the position of English courts. In Indian democracy, open justice and transparency is fair, just and reasonable procedure of trials. Indian judicial system facilitates and exhibits it with the constitutional mandates. The Supreme Court, in *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors*, 1966 SCR (3) 744, laid emphasis on the strength of open trials for maintaining the authenticity and viability of the Courts. It contributes in the confidence building and support of the public. In the case of, *Mohammed Shahabuddin v. State of Bihar*, (2010) 3 SCALE 204, it was observed that "that open trial is the universal rule and must be scrupulously adhered to".

The courts' proceedings be held in public is treated as universal principles of justice. Openness is the very soul of justice. Open courts really cultivate public confidence by permitting litigants

and members of the public to observe courtroom trials. It guarantees the judges apply the law in a fair and unbiased way. Recently, the Supreme Court (SC) has allowed live streaming of its proceedings. Advancement in the field of science and technology opens the path of live streaming of court proceedings. It is being adopted in other jurisdictions across the world. It virtually expands the court room areas beyond the actual four walls of the Court rooms. Therefore, public right to know may be effectively enforced through live streaming of court proceedings. It will bring more transparency and openness in judicial proceedings. All types of cases whether civil, criminal, or others, must be held in open Court. The expression 'procedure established by law' itself includes public trial in open court. As is essential for the healthy, objective and fair dispensation of justice. Faith of the public in the dispensation of justice is of such great importance that there can be no two views on the broad postulation. The court, in discharging their functions as judicial body, must hear cases in open. It must permit the public admission to the court room. There is an express provision in Article 145 (4) of the Constitution that the declaration of judgments by the Supreme Court shall be made in open Court. Undoubtedly, no such express arrangement is found in the Constitution in regards to open Trial before the Supreme Court. It can be traced to provisions such as Section 366 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and Section 153-B of the Code of Civil Procedure, 1908. However, there are some provisions which provide *in camera* proceeding, are laid down in Section 53 of the Indian Divorce Act, 1869, Section 22 (1) of the Hindu Marriage Act, 1955 etc.

Open Justice under Indian Legal system

Open justice advocates the rule of law and fair play in action. The right, whatever may be, provided in the law is not an absolute one. Similarly, the right to open justice is not an exhaustive one. It is a cardinal principle of law that the trial shall be held in Open Court, the Order XVIII Rule 4 of Civil Procedure Code, 1908 provides as thus – “The evidence of the witnesses in attendance shall be taken orally in open court in the presence and under the personal direction and superintendence of the judge.” Therefore, sub-section (2) of section 366 of the BNSS lays down that the inquiry into and trial of an offence under Section 64, 65, 66, 67, 68, 70 or 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 shall be conducted *in camera*. There are occasions when the right of accused is displaced by a superseding public interest. In *Vineet Narain v. Union of India*, AIR 1998 SC 889, the submissions tendered by the Solicitor General, accepted and held that a part of the proceedings be held *in camera*, Verma C.J. held that “it is settled that the requirement of a public hearing in a court of law for fair trial is subject to the need of proceedings being held in camera to the extent necessary in public interest and to avoid prejudice to the accused”.

In many common law countries, open justice system is considered as the fundamental principle of justice. Viscount Hewart, Lord Chief Justice of England, opined the famous words in 1924: “Justice should not only be done, but should manifestly and undoubtedly be seen to be done.” In the historic judgment of *Scott v Scott*, (1913) AC 417, which is one of the most significant mandates on the subjects relating to public hearings, Lord Atkinson stated:

The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses... but all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial and efficient administration of justice, the best means of winning for its public confidence and respect.

Similarly, the Supreme Court in *Khuja v Times Newspapers Ltd*, (2017) 3 WLR 35, has recently stated that: It has been recognized for many years that press reporting of legal proceedings is an extension of the concept of open justice, and is inseparable from it. In reporting what has been said and done at a public trial, the media serve as the eyes and ears of a wider public which would be absolutely entitled to attend but for purely practical reasons cannot do so.

In *Swapnil Tripathi v. Supreme Court of India*, 2018 (11) SCALE 475, the SC held that proceedings should be broadcasted live to have the access of information to the public. Since, it is a part of the right to access justice under Article 21 of the Constitution. The SC has reiterated the importance of open Court principle on many occasions. Further, the Court observed that live streaming of Court proceedings is an enlargement of open court principle. The Court held that:

Technology could 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.

Article 21 of the Constitution confers the right of access to justice. It would be significant provided that general society gains admittance to the procedures. This would instruct them about the issues which come up for thoughtful consideration of the Court. The right to get information and expression is one of essential elements of Article 19 (1) (a) of the Constitution. Therefore, the public is qualified for witness court procedures including issues affecting general society at large. In *Naresh Shridhar Mirajkar (supra)*, this Court emphasized that open trial is the rule. Simultaneously, warned that there might be circumstances where the administration of justice itself might make it important for the Courts to conduct *in camera*.

Live-Streaming as an Extension of Open Justice

The idea of an open court expects that information pertaining to a court proceeding must be accessible in the public sphere. Recently, the SC given its support for the live streaming of its proceedings. In order to get the right of live streaming of court proceedings, two PILs were filed by Senior Advocate of SC and a law student from NLU Jodhpur. An educational objective can be achieved by an open court proceeding. The court turns into a place for common public to know how the useful application of the law influences upon their rights. In *Swapnil Tripathi v. Supreme Court of India*, a three Judge Bench pushed upon the significance of live streaming judicial procedures. One of judges (D.Y. Chandrachud, J) examined the point of reference according to comparative viewpoints:

82. [...] Through these judicial decisions, this Court has recognized 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.

The SC in *Indira Jai Singh v. Secretary General of Supreme Court & Others*, (2017) 9 SCC 766, has *inter alia* held that: (i) it is essential to underline the importance of live-streaming as an expansion of the concept of open justice and open courts; (ii) The course of live-streaming ought to be exposed to carefully framed rules, (iii) Initially, a small-scale project may be tried for about three months by live-streaming. (iv) Only cases of national and constitutional importance which can be expanded in due course with availability of infrastructure.

In *Santhini v Vijaya Venketesh*, (2018) 1 SCC 1, D Y Chandrachud, J. in his dissenting opinion, examined the significance of utilizing innovation to improve the delivery of justice:

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 maximize efficiency and develop innovative methods for delivering legal services. Technology-based solutions must be adopted to facilitate access to justice.

As per Article 145 (1) of the Constitution of India, 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. 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) of Constitution.

Denial of Open Justice and Open Court

The Supreme Court described the open trial is the rule. Simultaneously, warned that there might be circumstances where the administration of justice itself might make it important for the Courts to conduct in camera. Applying the basic standards, it very well might be suitable to have a legitimate and balanced administrative structure before the idea of live streaming of procedures of this Court. Any other court in Country may set this technology in motion. The virtual courts may contribute in the expansion of the concept of open justice and open court in India. The virtual hearings of court proceedings may provide easier and speedy justice to public. However, there is apprehension that the arrangement for open court procedures is being endangered considering different arrangements provided in Article 145(4) of the Constitution which directs that no judgement shall be delivered by the SC of India save in open court. Section 366 of the BNSS necessitates that criminal courts require to be open courts to which public approach other than exemption provided in rape cases and others. Similarly, section 153-B of the C.P.C. lays down that the place of trial shall be considered to be open court to which the general public has access to, other than the exemption that is privilege of the presiding judge which is not satisfied through virtual trials.

The SC issued direction, in *N. D. Jayaprakash v. Union of India*, 2016 (2) Scale 468, to provide peaceful and just conduct of trial where the accused was a student leader charged of sedition as additional circumstance has emerged pertaining the security of the apprehended student leader and passage to the court was confined by the SC in a writ petition. Sometimes, it has been seen that the presence of public and press in the court room may cause increased tension and stress on the accused.

There might be circumstances where a court may proceed in camera in order to protect the privacy and reputation of accused. The presence of press and media persons may cause adverse impact on the mind of the accused, and therefore, the accused under such situation does not want his trial to be conducted in open court. In addition to the exception to open justice, a witness may be directed to pull out in case he might manage the evidence by hearing the evidence of others. Rule 2 of the Order XXXII-A of the C.P.C provides for proceedings to be held in camera. In every suit or proceeding to which suits relating to matters concerning the family applies, the proceedings may be held in camera if the Court so desires and shall be so held if either party so desires. Section 11 of the Family Courts Act 1984 contain similar provisions on the point. Section 153-B Proviso C.P.C. inserted by Amending Act No.104 of 1976 also lays down: - “Provided that the presiding judge may if he thinks fit, order at any stage of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room of building used by the Court.”

With passage of time and considering the various aspects of witness examination and increasing incidents of vulgar or obscene questions in cross-examination of witnesses or parties of the suit, the legislature leaned to make the law mandatory in matters of matrimonial disputes and sexual offences. The Marriage Laws Amendment Act 1976 introduced section 22(1) in Hindu Marriage Act 1955, which provides as follows: - “Every proceeding under this Act shall be conducted In Camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.” The proviso to Section 366 (1) of the BNSS contains a provision similar to that in the proviso to Section 153-B of C.P.C.

Hence, situations require that the vulgar or obscene matters and facts must be kept away from public access and hearing. It may be related with civil or criminal proceedings. Such matters shall not be printed and published in any newspaper, magazine, periodical, Pamphlet, book or otherwise to save our tender age men and women from having an ugly feature of our society. There might be chances of poisoning their minds through having the access of these materials. When it comes to the offence under The Protection of Children from Sexual Offences Act, 2012, it would cause a great impact not only on the body of the child, but also to its soul, and therefore, trials must be conducted in camera.

The publication of the identity of a victim of certain criminal offences is prohibited by law. No one can unauthorizedly prints or publishes the name or any matter which may make known the identity of any person against whom an offence rape or other sexual offence is alleged or found to have been committed. Whoever is found the guilty of such publication or print shall be punished with imprisonment of either for a term which may extend to two years and shall also be liable to fine.

The SC, in support of in camera trial, observed in *Ujjam Bai v. State of U.P.*, (1963) 1 S.C.R. 778, that the power to prevent publication of court trial is necessarily the same as the power to conduct a trial in camera. It is a legitimate law and is not contrary to the fundamental right of liberty of speech. In addition, it observed that the proceedings of court may be conducted in camera where the facts and circumstances of the case may require it. While underscoring the significance of public proceedings, we cannot disregard the way that the essential capability of the court is to grant justice between the parties who bring their cases before it (*Superintendent & Remembrancer v. Satyen Bhowmick and Ors*, AIR1981 SC 917).

In *Chief Election Commissioner of India v. M.R Vijayabhaskar & Ors.*, 2021, the SC held that Courts must be open both in the physical and figurative sense. However, there is some exceptional situations where open court proceedings are not feasible like child sexual abuse or matrimonial proceedings bearing on issues of marital privacy. The Indian legal system is based on the concept of open access to court which protects the fundamental constitutional liberties of individuals. Hence, the open court frameworks are ordinary court procedures followed where each individual is permitted to watch the procedures in the court; whereas the in-camera proceedings are applied in some criminal cases like Rape, offences related to child sexual abuse etc., where it becomes imperative to protect the modesty and identity of the victim of the case.

Access to Justice as a Fundamental Right

The maxim, *Ubi jus ibi remedium*, signifies the spirit of access to justice. In other words, what is the meaning of a right if its violations do not get remedied? The rights guaranteed by the constitution would be meaningless unless there is a system of judicial mechanisms, which ensures effective remedies against it. Judicial mechanism cannot be effective and useful unless it is backed by fair, just and reasonable process of justice delivery system. It must be open, effective and transparent. Access to justice can never be complete without the litigant being able to see, hear and understand the course of proceedings first hand. Live-streaming of proceedings is crucial to the dissemination of knowledge about judicial proceedings and granting full access to justice to the litigant.

In *Anita Kushwaha v. Pushpa Sadan*, (2016) 8 S.C.C. 509, the Supreme Court explicitly recognized access to justice as a fundamental right under Articles 14 and 21. Not only this, the court outlined four elements for 'access to justice' -

- a) The state should establish an effective judicial system.
- b) Judicial systems should be established keeping in view the reasonable distance.
- c) Judicial process should not be slow. Let there be dynamism in it.
- d) The judicial process is convenient for both the plaintiff and the defendant.

The promises given in the Constituent Assembly are the rules of this country and the Constitution has entrusted the responsibility of removing the obstacles coming in the way of reaching justice, to achieve the goal of justice. Access to justice means - to make it easier to reach the court so that as soon as any Indian citizen feels threatened on his rights or constitutional values, he can easily reach the court.

Judicial Openness in Digital Era

Justice in contemporary times has not only served from the closed corridors of laws and legal structures but it has been radically transformed. It is more transparent today and judgments can be secured from the dedicated websites of the courts which are available to everyone. Noting the significance of technology the judiciary extended the practice of live-streaming in the landmark judgement of *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 628. Live streaming means and includes a live television link, webcast, audio-video transmissions via electronic means or other arrangements whereby any person can view the proceedings as permitted under these rules. It is considered as an extension of the principle of ‘open justice’ and ‘open courts’.

The Supreme Court, expressing its opinion, our legal system subscribes to the concept of universally accepted principle of open court hearings and the live streaming is an important facet of a responsive judiciary. It accepts and acknowledges its accountability to the concerns of those who seek justice. Open courts foster public confidence and ensure that the Judges apply the law in a fair and impartial manner. In *Indira Jai Singh v. Secretary General of Supreme Court & Others*, (2023) 8 SCC 1, the SC observed the significance of live-streaming as an extension of the principle of open justice and open court. The court emphasized the process of live-streaming should be subjected to carefully structured guidelines. Initially, live-streaming may include the cases of national and constitutional importance which can be expanded in due course with availability of infrastructure.

It held that the live streaming proceedings are part of the right to access justice under Article 21 of the Constitution. In October 2020, the Gujarat High Court was the first high court to livestream court proceedings followed by Karnataka high court. Currently, the Jharkhand, Karnataka, Madhya Pradesh, Orissa, and Patna High Courts live stream their proceedings. The e-Committee of the Supreme Court has set up a committee to draw up Standard Operating Procedure (SOP) for Live Streaming. Additionally, under the guidance of e-Committee, Supreme Court of India, a sub-committee was constituted for framing Model Rules for Live Streaming. The e-Committee, Supreme Court of India envisages a judicial system that is more accessible, efficient and equitable for every individual who engages with the justice delivery system. The right to access justice, guaranteed under Article 21 of the Constitution, encompasses the right to access live court proceedings. To imbue greater transparency, inclusivity and foster access to justice, the e-Committee has undertaken the project of live streaming of court proceedings on priority.

Normally, all proceedings will be live streamed by the court except those proceedings which are exclusively excluded by the model rules of live streaming namely matrimonial cases, Cases concerning sexual offences, Cases concerning gender-based violence against women, matters registered under (POCSO) and under the Juvenile Justice Act, 2015, matters registered under the Medical Termination of Pregnancy Act, 1971 etc shall have no public access during the trial. The final authority to regulate suspension or prohibition of live-streaming in a particular case must be with the presiding judge of each court.

The Indian legal system is built on the concept of open court and the SC is an institution of constitutional governance so the public has the right to know about court proceedings which will be open to all now. This will be in consonance with the principle of open court established under Article 145(4), and in furtherance of fundamental right of access to justice.

However, there are fears that irresponsible or motivated use of content could spread disinformation among the public. The lack of technical infrastructure, internet connectivity in particular, is a major concern and the technical glitches can make it worse. Although, live streaming is considered as an extension of the principle of ‘open justice’ and ‘open courts’, only nine out of the 25 High Courts in the country have opened their virtual doors to the public.

Conclusion

The principle of an open court expects that information pertaining to a court trial must be accessible in the public zone. Individuals have a right to get the information of court proceedings which unfolds over court trials. The right to get information and expression is one of essential elements of Article 19 (1) (a) of the Constitution. Even, live streaming is considered as part of the right to access justice under Article 21 of the Constitution. The SC had opined that live streaming would appear to expand the court beyond the four walls of the courtroom. Justice D. Y. Chandrachud had expressed his view that live streaming of court proceedings would be real accomplishment of the open court arrangement in which common people would have access to court. The live streaming is the demand of the time that would result in maximum access to justice. It will not only confine in the principle of open access to justice and grants justice, is not only done but it is seen to be done.

The Constitution of India mandates that the judgment of the supreme court shall be given in open court. Some preventive laws also give emphasis on the open court trial. The concept of open court proceeding is an essential aspect of the comprehensive principle of open justice. The general persons should have the option to enter any court to see that justice is being done in the court. It must be exhibited that justice is being done as per the law. The Supreme Court has said that, “Sunlight is the best disinfectant,” and live streaming of court proceedings will bring in transparency and serve the public interest.

Thus, all courts are open to the common people. These courts function as open and award open justice to all except when the administration of justice demands public access to the court to be confined. There are some exceptions of open court and open justice that are in the interest of just, fair and reasonable administration of justice. Openness can help to deter corruption and ensure fair and impartial justice. This provides a better understanding of how the courts work and how justice is administered. Open justice and open court promote transparency, accountability, and public trust in the judiciary. Hence, protecting the privacy of individuals involved in legal proceedings can be a challenge, requiring a balance between transparency and individual rights.

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