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**CASE COMMENTARY SWAPNIL TRIPATHI & ORS. V. SUPREME COURT OF INDIA & ORS.**

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***Abstract:*** *This landmark and recent judgment of the Supreme Court is a transformative judgment as through this judgment the Supreme Court of India opened its doors for live streaming of proceedings having some constitutional and national importance except in some matters which shall be discussed later in the analysis. This judgment embarks upon itself the concept of constitutionalism. Every citizen of Indian is guaranteed freedom of speech and expression under Article 19(1)(a) of the Constitution of India which includes right to know and receive information.*

*The present case begins with the filing of a petition filed by Senior Advocate Indira Jaising seeking from the court, a declaration having effect of permitting live court proceedings of cases having national and constitutional importance and further to issue relevant directions for making the infrastructure of the Court efficient to live court proceedings. Learned Attorney General of India, Mr. KK Venugopal, responding to the said petition thus submitted certain set of guidelines and his suggestions necessary for live court proceedings. The Court in the present case heavily relied upon the suggestions of AGI and the issued guidelines of the court in the present case are replica of suggestions by learned AGI.*

*In the present analysis the author would try to critically examine the ruling of the Supreme Court in the present judgment. The author would look upon the fallacies that may be warranted in terms of the implementation of the judgment by various subordinate courts. Moreover, the author would be commenting upon the efficiency of the judgment in terms of the contemporary situations. For the purpose of this case comment the author would be pursuing a doctrinal research analyzing the main texts of the present judgment and other relevant available literature in the field.*

## **MATERIAL FACTS OF THE CASE**

- Ms. Indira Jaising filed a petition in public interest under Article 32 of the Constitution of India before the Supreme Court of India demanding live streaming of Supreme Court proceedings and video recording of the cases considered of national importance.
- On July 09, 2018, the SC bench consisting of CJI Dipak Mishra, AM Khanwilkar, J and Dr. DY Chandrachud, J ruled on same lines in favour of the petitioner and observed that the live streaming of the proceedings except in rape cases will help the litigants seeking justice to seek information about his case and the performance of his lawyer.
- Subsequently a writ petition has also been filed by a law student, Swapniltripathi challenging the ban of entry of legal interns into the premises of Supreme Court on weekdays. One of the prayer made by the petitioner in this petition was to issue a writ of mandamus or any other writ/direction to make an infrastructure in the Supreme Court constructing rooms for live streaming of court proceedings and make them available to legal interns.
- On August 3, the SC refused to pass any orders in the said petition by SwapnilTripathi. However the CJI asked the petitioner to submit set of guidelines to the Attorney General of India, KK Venugopal with respect to creation of a room for live streaming of Court proceedings for the legal trainees and interns.
- In response to the petitions the learned AGI submitted his suggestions and made an observation that for the time being the live streaming of Court proceedings be done only of constitutional matters and certain matters as considered by the CJI barring other matters and thus the live streaming of the court proceedings should be done on experimental basis during initial stages.
- The Court thus clubbed the petitions of Indira Jaising and Swapniltripathi and some other petitioners into this petition and dealt accordingly in this case.

## **ISSUES/QUESTIONS RAISED**

- ***WHETHER THERE SHOULD BE LIVE DISSEMINATION OF PROCEEDINGS BEFORE THIS COURT WITH THE AID OF INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)?***
- If the answer to the above question is in affirmative, who will hold the copyright is such live streaming and recordings of the Supreme Court proceedings?
- What matters should be kept outside the ambit of live streaming?
- What will be the manner in which the live streaming of the proceedings be conducted?

## **PRINCIPLES INVOLVED**

### ***1) OPEN JUSTICE***

It has been the plea of the petitioners that the open justice system has been recognized in India and the citizens have right to know and receive information about the justice mechanism in the judicial tribunals which would in

fact strengthen the open justice system through the live streaming of proceedings. It has been submitted by the petitioners that the live streaming should be done with the aid of Information and Communications Technology (ICT) which would serve the cause of access to justice and open system of justice. This principle is the genesis for the contentions of the petitioners.

Moreover, the principle of open justice is the essence of rule of law. The rule against arbitrariness is the facet of the rule of law and our constitution aims to achieve this rule and the fundamental rights also guarantees that the action of state should not be arbitrary. The open justice principle subscribes within itself the rule against arbitrariness as if the justice system is open and fair, the scope of arbitrary action will be narrowed down.

## **2) ACCESS TO JUSTICE**

Access to justice has been recognized as a facet of right to equality under Article 14 of the Constitution of India in the case of **Anita Kushwaha v. Pushpa Sudan**.<sup>1</sup> In this case it has been held by a Constitutional bench of three judges that there is no restriction on the power of a High Court as provided under Article 142 to direct a transfer from the State of J&K to any other state.

Access to justice will be meaningful only if the public in whose spirit the mechanism of justice has been set up is accessible to such mechanism and one way of being available to such mechanism is through live streaming of proceedings and their recordings to be available in the public domain.

## **PRECEDENTS REFERRED**

- ***NARESH SHRIDHAR MIRAJKAR AND ORS. V.STATE OF MAHARASHTRA AND ORS***<sup>2</sup>

This case has been heavily relied upon by the petitioners to claim that through live streaming of the Court proceedings, the right to receive and seek information of the public at large would be strengthened. In this case it was argued that journalists have the right to attend the court proceedings as the same is protected under Article 19(1)(a) and Clause d. The court in Naresh Case notably held that open trial is an important and necessary requirement for proper and healthy administration of justice.

In the present case, Justice AM Khanwilkar in his opinion explained this case by opining that in this case the court expounded that open trial is a norm but at the same time the court warned that the in camera trials may also in same case be requirement of administration of justice. Thus if the principle of this case is to be applied in the present situation the most viable option is to work upon preparing a regulatory framework to balance the competing interests.

- ***LIFE INSURANCE CORPORATION OF INDIA V. PROF. MANUBHAI D. SHAH***<sup>3</sup>

In this case, Court looked upon the arguments of the petitioner who claimed to right to contribute to an in-house magazine which is published by a state instrumentality. The judgment is delivered by a 2 judge bench and it is

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<sup>1</sup>Anita Kushwaha v. Pushpa Sudan, MANU/SC/0797/2016

<sup>2</sup>Supra.

<sup>3</sup>Life Insurance Corporation of India v. Prof. Manubhai D. Shah (1992) 3 SCC 637

observed by Justice AM Ahmad that dissemination of information plays a vital role in democracy. Modern advancements in technology and dissemination of information through news and print media in a democracy plays an important role in public interest and to perfectly exercise the right of speech and expression under the Constitution within the restrictions of 19(2), emphasis should be given to such medium of exchange of information. The Court in the present also appreciated this judgment and J. AM Khanwilkar in his opinion observed that open courtrooms are means of allowing the public to watch justice happening. It gives an informed opinion to the litigants and the witnesses about the judicial process.

- **SCOTT V. SCOTT<sup>4</sup>**

The House of Lords in this judgment has drawn upon a balance between the rights of public and the privacy of witnesses involved in a judgment. It has been observed in this case that though access to justice is vital in public interest and it is ensured through broadcasting of court proceedings, broadcasting should not be done in certain matters so as to prevent the privacy of an individual involved in such matters such as in matrimonial matters, matters involving juveniles, matters concerning national security, etc.

The Supreme Court in the present case drawn an inspiration from the inclusive list set upon by the House of Lords in Scott v. Scott of some exclusionary matters which for the sake of privacy must be excluded from the ambit of broadcasting. The Court in the present case, also drawn upon list of matters which are to be excluded from broadcasting and for which no live streaming must be permitted. Even the guidelines of learned AGI recognized this concept of balancing the interests.

- **CHANDLER V. FLORIDA<sup>5</sup>**

This is a landmark reformation in the US as aftermath this judgment all the states in the US allowed the broadcasting of the court proceedings on television and also framed rules governing the same. In this case, the court held that the ban imposed in Estes is not an absolute bar and it is upon the states to lift the same and to frame rules governing the broadcasting.

### **CONCRETE JUDGMENT**

The Court broadly held that it is in public interest and in consonance of proper administration of justice that the project of live streaming of proceedings must be done in a phased manner and on experimental basis until a proper framework of live streaming through internet is developed. The live streaming should only be done of cases having constitutional importance and having national significance and are being argued before the Constitutional bench of the Supreme Court for final hearing. An advance permission for the same is required to be sought which should be in confirmation with the procedure. Moreover, prior consent of all the parties is required to be taken and the objections can be filed before the court, considering which the court will decide whether the live streaming should

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<sup>4</sup>Scott v. Scott, (1913) AC 417

<sup>5</sup>Chandler v. Florida 449 U.S. 560 (1981)

be permitted or not. The decision of the court would be non-appealable. A uniform agency such as Doordarshan should work upon the broadcasting of the live proceedings of the Court with certain frameworks consistent with the privacy of individuals involved. The Supreme Court Rules, 2013 should be suitably amended to incorporate the framework governing the live streaming of Court proceedings.

## **CONCLUSION & ANALYSIS**

The present judgment of the Supreme Court highlights that the live streaming of the Court proceedings manifests in itself the public interest, which has always been a prime part of our Constitution of India. Over the world, in other jurisdictions too the live streaming of proceedings is permitted in one way or other. The court also in the judgment has done a comparative analysis of the situation of live streaming of court proceedings in other countries. Besides, public interest the need of access to justice and open justice concept has been analysed by the Court in the present case. In the era of technological developments it is the need of hour and efficient that the live streaming of the court proceedings are made available to the public. Right to seek and receive information has already been developed by the Courts in India and live streaming of proceedings would also be a part of such right of an individual which is recognized under Article 19(1) (a).

However, every coin has two sides. Besides being in consonance with public interest and open justice, the problem with the observation of the judges in this case according to the author is that it would be difficult to implement the decision of the court practically. Though the guidelines enumerated in the judgment talks about the considerations which need to be followed by the Court in order to grant permission of broadcasting, one aspect in which the difficulty is in determining what matters to be excluded and what considerations need to be looked upon so as to balance the interests of the parties involved such as privacy issues and the public interest. Privacy has been evolved drastically by the Court. Aftermath the judgment of a 9 judge bench is KS Puttaswamy Case<sup>6</sup>, privacy has become a part of Article 21 of the Constitution of India, which is indispensable. A strict legislation is the need so as to balance these conflicting interests. Though the citizen's right to information has been upheld to a very fair extent, the discretion of a citizen to pick the privacy concern of a case is not. Besides, media never makes an effort to understand the parameter of personal liberty and the importance of the privacy circumference of individuals related to a situation being publicized. Hence, the right to fair transmission of information should be protected by not making any bias through propagating diluted, one-sided or vague news by the press and media. Hence, once the Sun truly reflects without the ambiguity of clouds, disinfection is definite.

Moreover, if we compare the position settled by the Court in this case with the US Model where the position is that the Supreme Court does not permit the broadcasting of the proceedings. The reason for such prohibition is that it could affect adversely the quality and character of the dialogue exchanged between the judges and attorneys. Only audio recordings are released of the proceedings in the USA. However, the restriction is with regard to and

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<sup>6</sup> Supra

limited to Supreme Court only and the District Court allows broadcasting and framed rules for the same. In India, where the Supreme Court is the uppermost level of judiciary, the same reasoning can be construed in arguing against the live streaming of proceedings. Thus the main argument against the reasoning of the Court is the implementation of its observations in the present case.

Effectuating the judgment of the Supreme Court in the present case, for the first time the Gujarat High Court announced commenced the live streaming of its Court proceedings on youtube from October 26, 2020. It is indeed a great initiative by the High Court of Gujarat. But the platform i.e, youtube on which the live streamings are broadcasted is of concern in the present scenario. Nowadays, there are third party apps which allow downloading of the videos on Youtube and thus chances of infringement of copyright is a serious scenario which in turn burdens the Courts. For such purposes it is suggested by the author that the Copyright Act, 1957 must be amended so as to exclusively deal with the copyright infringement related to Court proceedings.

