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JUDICIAL ACCOUNTABILITY AND DEMOCRATIC WILL

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ABSTRACT

Judicial accountability is a cornerstone of democratic governance, particularly in India, where the judiciary plays a critical role in safeguarding constitutional rights and mediating state-individual disputes. While judicial independence is vital, it must be balanced with transparency and accountability to maintain public trust. Symbolic reforms, such as removing ceremonial robes and unveiling a new Lady Justice statue without a blindfold, reflect a shift toward openness and recognition of societal inequalities. The Doctrine of Open Justice, endorsed by judgments like Mohammed Shahabuddin v. State of Bihar, emphasizes fairness, media access, and public scrutiny to ensure legitimacy.

With an emphasis on open justice concepts, this chapter examines the connection between public scrutiny and judicial accountability. The legal foundation for open justice, judicial openness, and restrictions on public access to court proceedings are all covered. The chapter highlights the significance of citizen involvement and the public's role in influencing justice changes. It also examines the necessity for public understanding and involvement in judicial procedures, as well as how public apathy might impede justice reforms. The chapter highlights the conflict between privacy and openness while offering a thorough grasp of the legal, moral, and practical facets of judicial responsibility and public scrutiny.

Key Words: Judicial accountability, judicial independence, open justice, transparency, sealed cover, live streaming, public trust, constitutional democracy, media scrutiny, Supreme Court of India

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INTRODUCTION

Judicial accountability is crucial for maintaining public trust in the judiciary while ensuring its independence, particularly in democracies like India. Democratic judiciaries have significant authority, often mediating disputes involving the state and individual rights, necessitating accountability without compromising independence. The Indian Constitution lacks specific judicial accountability mechanisms akin to those for the executive and legislature. The framers emphasized judicial review but were cautious of potential overreach, as Dr. B.R. Ambedkar noted regarding judicial discretion and bias.[721] This concern is reflected in cases like A.K. Roy v. Union of India, where the Court acknowledged the importance of legislative intent within constitutional boundaries.[722] The framers explicitly ruled out the judiciary's role in assessing legislative competence beyond constitutional limits. The democratic structure relies on the elected representatives of the people, highlighting that citizens' liberties face threats from government encroachments.[723] Judicial accountability in a constitutional democracy like India underscores the principle that, although the judiciary is independent from the executive and legislative branches, it must remain answerable to the citizens, who are the true bearers of sovereign power. The traditional image of judges as untouchable figures adorned in ceremonial robes is increasingly seen as outdated, especially in light of growing judicial misconduct and declining public confidence. Measures such as eliminating these symbolic garments are considered ways to foster transparency and bring the judiciary closer to the public. When judicial conduct goes unchecked, it poses a risk to both justice and the democratic framework. Hence, the judiciary, like all institutions in a democracy, must operate within constitutional limits and be subject to public accountability to uphold the moral and democratic foundations of the nation.[724]

The Supreme Court of India's newly unveiled statue of Lady Justice, featuring uncovered eyes and holding the Constitution instead of a sword, symbolizes a shift toward judicial transparency and accountability.[725] The removal of the blindfold represents the judiciary's evolving role in acknowledging social inequalities rather than ignoring them. This change aligns with the Doctrine of Open Justice, emphasizing public access to judicial processes.[726] Landmark cases like Mohammed Shahabuddin v. State of Bihar reinforce that fairness and transparency are essential to public trust.[727] The redesigned statue highlights a move from punitive justice to a system rooted in constitutional values and the protection of rights.

Public scrutiny enhances judicial legitimacy and transparency through mechanisms such as accessible judgments, media coverage, and academic critiques, warranting a careful balance to preserve judicial independence.[728] Proposed reforms, including performance indicators, transparent appointments, and post-retirement guidelines, could bolster accountability while shielding judges from populist influences.[729] In a constitutional democracy, judicial accountability is essential. While judicial independence must be safeguarded, mechanisms to ensure scrutiny and responsibility are necessary to maintain the judiciary's integrity.

The management of justice requires the active involvement of multiple stakeholders, which can enhance judicial accountability. Public monitoring of judges and the judicial system is

[721] B.R. Ambedkar, Constituent Assembly Debates, Volume VII, (30 May 1949) at 953
[722] *A.K. Roy v. Union of India*, (1982) 1 SCC 271.
[723] *A.D.M. Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521, at 613 (India).

[724] V.R. Krishna Iyer, *Judicial Accountability to the Community: A Democratic Necessity*, 26 **Econ. & Pol. Wkly.** 1808 (1991), http://www.jstor.org/stable/41498506 (last visited Apr. 10, 2025).
[725] Nandini Singh, Justice will no longer be 'blind': Supreme Court embraces new symbolism, Business standard, Oct 17 2024 , available at: https://www.business-standard.com/india-news/justice-will-no-longer-be-blind-supreme-court-embraces-new-symbolism-124101700305_1.html
[726] Supra note 5.
[727] *Mohammed Shahabuddin v. State of Bihar*, (2010) 4 SCC 653.
[728] See further, Jason John Bosland & Judith Townend, *Open Justice, Transparency and the Media: Representing the Public Interest in the Physical and Virtual Courtroom*, 23 **Comm. L.** 183 (2018), https://ssrn.com/abstract=3336948.
[729] Ibid

essential for transparent governance. Matters of importance to society should be addressed by the populace.[730] Chief Justice Spigelman[731] underscored that open justice is critical for guaranteeing judicial accountability. [732]

Article 6(1) of the European Convention on Human Rights provides that, Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal that is established by law when their civil rights and obligations or any criminal charges against them are being determined. While judgments must be delivered publicly, the court may exclude the press and public from all or part of the proceedings when necessary to protect morals, public order, or national security in a democratic society, to safeguard the interests of minors or the privacy of the parties, or when publicity would otherwise undermine the interests of justice.[733]

Chief Justice of India D. Y. Chandrachud emphasized the importance of public confidence and legitimacy for the credibility of the judiciary. He noted that judges should steer clear of decisions driven by populism, as such influence can undermine judicial independence. He stated that courts must maintain public trust, which is vital for a successful constitutional system.[734]

Yet, in the early 21st century, this principle encountered difficulties from two primary factors. The first is an increasing emphasis on privacy as a right, which safeguards individuals, especially vulnerable groups such as rape survivors and children, from public exposure during legal proceedings. The second factor pertains to national security, which at times requires certain court cases to be conducted in secrecy.[735]

OPEN JUSTICE

As J. Woolf wrote, an open justice means[736] 'A principle of the common law that proceedings ought to be open to the public, including the contents of court files and public viewing of trials'[737] The words open court means, 'a court which the public have a right to be admitted'[738] The principle of open court means that legal proceedings, evidence, and documents should be open for public viewing, and judges and juries should announce their verdicts publicly. Not everything must be transparent; judges' discussions can remain private, and some evidence may be protected.[739] Open justice is important for three reasons:

- it helps find the truth and educates the public,
- it promotes accountability and reduces misconduct, and
- it reassures people that justice is served.[740]

1) Open justice permits the public to offer additional witnesses and may result in public criticism, which may suggest that justice has not been rightly administered.[741] In criminal trials, human rights take precedence above all. The community has a valid interest in witnessing the event where a violation is determined definitively. The guilty should face public condemnation, while the innocent must be exonerated and released from suspicion.[742] Public exposure transforms the temple of justice into a foremost educational institution, where

[730] Hyman, 1952, P.221
[731] Chief Justice Of New South Wales (2002).
[732] Colbran (2003). Available At: Https://Pubmed.Ncbi.Nlm.Nih.Gov/14564556/
[733] European Convention on Human Rights art. 6(1), Nov. 4, 1950, 213 U.N.T.S. 221., available at: https://www.echr.coe.int/documents/d/echr/convention_ENG [Accessed 28 March 2025]
[734] Public Trust Is Central To Judiciary, Says Cji D.Y. Chandrachud, Published - October 12, 2024 08:23 Pm Ist - New Delhi, The Hindu Bureau Available At: Https://Www.Thehindu.Com/News/National/Public-Trust-Is-Central-To-Judiciary-Says-Cji-Dy-Chandrachud/Article68746461.Ece
[735] Dr. Lalit Dadwal, 'Open Justice And Rule Of Law: Indian Scenario', Volume 06, Issue 1, Ijrar. Available At: Https://Www.Ijrar.Org/Papers/Ijrar19j1430.Pdf
[736] Lord Woolf, *Access to Justice: Final Report* § 17 (1996).
[737] Ibid.
[738] R V. Lewes Prison (Governor), Ex P Doyle, [1917]2 Kb 254
[739] Scott v. Scott, [1913] A.C. 417 (H.L.) (U.K.)
[740] Supra Note 6.
[741] In Tukaram Vs. State Of Maharashtra, Air 1979 Sc 185, (Popularly Known As Mathura's Case), Where The Character Of The Victim Was Questioned Public Raised Their Eyebrow To Criticize That The Trial Was Of Rape And Character Of The Accused Was Not To Be Questioned. Only Matter To Be Decided Was The Rape Was Committed In Police Station By Public Servants And In The Said Matter, To Decide The Responsibility Of The Government Servants.
[742] Supra Note 5.

significant aspects of morality are upheld.[743] Consequently, open trials serve as a means of education, encapsulating the tenets of criminal law.

This tradition of open justice dates back to England before the Norman Conquest and has spread to common law regions and civil law societies.[744] The British legal system supports open trials, known as "Ostis apertis",[745] which ensures transparency in the judicial process. This principle is rooted in common law, emphasizing a defendant's right to a quick and public trial.[746] In the seventeenth century, Lord Coke highlighted the importance of open hearings[747], while legal thinkers Bentham and Blackstone acknowledged the benefits of public trials.[748]

Open Justice Under Indian Law

The Supreme Court of India recently unveiled a redesigned statue of Lady Justice, originally gifted by the British Government. Commissioned by Chief Justice of India D.Y. Chandrachud, the new statue features two notable changes: the absence of the traditional blindfold and the replacement of the sword with the Indian Constitution.[749] These modifications symbolize a broader transformation within the Indian judiciary—from conventional portrayals to a stronger focus on transparency, accountability, and public trust. The removal of the blindfold, in particular, can be seen as a powerful representation of the Doctrine of Open Justice, which has progressively developed within India's legal system.

The Doctrine of Open Justice in India is grounded in Article 21 of the Constitution, which guarantees the right to life and personal liberty.[750] The judiciary has interpreted this to include the right to a fair and transparent trial. Landmark cases such as Naresh Shridhar Mirajkar v. State of Maharashtra[751] and Mohammed Shahabuddin v. State of Bihar[752] emphasized the importance of public access to trials, while allowing for exceptions in the interest of justice. Section 327 of the CrPC further ensures public trials in criminal cases.

The scope of Article 21 was expanded in Maneka Gandhi v. Union of India,[753] asserting that legal procedures must be fair and just. In Prabha Dutt v. Union of India,[754] the Supreme Court upheld the media's right to cover court proceedings, linking open justice to Article 19(1)(a)'s guarantee of free speech.

A major development came in Swapnil Tripathi v. Supreme Court of Indi,[755] where the Court approved live streaming of hearings in cases of national importance, marking a progressive step toward judicial transparency and public engagement through the use of technology.

The principle of open court, which permits public attendance at court sessions, has been acknowledged by Indian law and the judiciary.[756] As per the Indian Constitution, the Supreme Court's decisions must be rendered in an open court.[757] This focus on open justice is further supported by provisions in the Civil Procedure Code, indicating that evidence should be introduced in open court and that civil court venues are typically accessible to the public.[758] The same principle stressed in criminal law also.[759]The Constitution also safeguards freedom of speech and expression[760], encompassing press freedom[761], and guarantees that trials are open and just[762]

[743] J. Bentham, 'Draught Of A Code For The Organization Of The Judicial Establishment In France', In John. Bowring (Ed.), 'The Works Of Jeremy Bentham', Edinburgh, U.K. Vol. Iv, 1843, P. 317
[744] Supra Note 6.
[745] Nilay V. Anjaria, "Interaction Between Press Freedom And Accused's Rights: A Developing Jurisprudence Of Fair Trial", Cr. L.J., 2003, Journal Section, P.34.
[746] Harold L. Cross, The People's Right To Know, 1953, Pp.155-175.
[747] Ibid.
[748] Ibid.
[749] Nandini Singh, Justice will no longer be 'blind': Supreme Court embraces new symbolism, Business standard, Oct 17 2024 , available at: https://www.business-standard.com/india-news/justice-will-no-longer-be-blind-supreme-court-embraces-new-symbolism-124101700305_1.html

[750] India Const. art. 21.
[751] Naresh Shridhar Mirajkar v. State of Maharashtra, (1966) 3 S.C.R. 744,
[752] *Mohammed Shahabuddin v. State of Bihar*, (2010) 4 SCC 653.
[753] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[754] *Prabha Dutt v. Union of India*, AIR 1982 SC 6.
[755] *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639.
[756] Supra Note 6.
[757] The Constitution Of India, 1950, Art. 143(4),
[758] The Civil Procedure Code 21 Act No. 5 Of 1908, Order 18 Rule 4.
[759] Code Of Criminal Procedure, 1973 (Act No. 66 Of 1984), S. 327,
[760] Romesh Thapar V. State Of Madras, Air 1950 Sc 124
[761] Bennett Coleman & Co. V. Union Of India (1972)
[762] Maneka Gandhi V. Union Of India 1978 Air 597

In his judgment, Justice Bachawat emphasized the importance of open justice by referencing classical thinkers. He noted that Plato, in his *Laws*, advocated for citizen involvement and attentiveness in legal proceedings. Similarly, Hegel, in his *Philosophy of Right*, asserted that court processes should generally be conducted in public, as the purpose of the judiciary is to uphold justice—a universal entitlement—except in exceptional situations. Therefore, the workings of a court should ordinarily be open to public scrutiny.[763]

EXCEPTION OF OPEN JUSTICE

The criterion employed by the courts in achieving that equilibrium relies on the origin of the right. The overarching principle is that a deviation can solely be warranted if it is essential for the appropriate management of justice. In rare cases, the hearings are conducted in private. Public judging of trials is permitted by Article 6 of the European Convention on Human Rights;[764] however, the court believes that the public and press may be excluded for reasons of morality, public order, national security, juvenile protection, or private life protection in a democratic society, or in exceptional situations where publicity would taint justice.[765]

In the words of House of Lords[766] – "The main point is that courts should prioritize justice above all else. While publicity is usually important, it is secondary to achieving justice. Those who want to change the usual rule of public hearings must prove that justice would be at risk without a private hearing. To allow a hearing in camera, it must be shown that the goal of serving justice would truly be threatened without the order."[767] Sir Jack Jacob pointed out two main exceptions to the clear public process of civil proceedings. The first is pre-trial meetings held "in chambers," where only the parties and their advisors can attend, keeping the public and press out. The second is parts of the trial held "in camera," where the court decides to close the proceedings to the public and the press.[768][769] Nevertheless, there are exceptions to the open court principle, including private trials (in-camera), limitations on media reporting, and measures to protect the identities of witnesses and accused persons.[770]

Private Trials (In-Camera)

2.1 Sarkar J. indicated that the High Court possesses the authority to hold trials privately, or "in camera," to stop the dissemination of trial procedures. While the Code of Civil Procedure does not explicitly reference this authority, the court may bar the public if excessive exposure could result in unfairness. This implies that if a situation demands it, the court can issue such a directive. Furthermore, any order issued by a court is legitimate, even if it is later determined to be incorrect, provided that the court had the power to issue that order.[771] In the case of Ujjam Bai v. State of U. P.[772], "it was decided that the power to stop the publication of proceedings is similar to holding a trial in private, which is lawful and does not violate free speech rights. Further, it was held that, the court may need to conduct private trials in specific instances to guarantee justice."[773] While public trials are significant, the primary function of the Judiciary is to provide equitable results for the parties concerned.[774]

Application Of Private Trials (In-Camera) In Indian Law

- In situations concerning youthful offenders, hearings are generally

[763] Naresh Shridhar Mirajkar v. State of Maharashtra, (1966) 3 S.C.R. 744, 781–82 (India) (Bachawat, J.)
[764] Supra Note 4.
[765] The European Convention On Human Rights, 1950, Article 6(1), Available At Https://Fra.Europa.Eu/En/Law-Reference/European-Convention-Human-Rights-Article-6
[766] Scott V Scott [1913] Ac 476.
[767] Ibid.
[768] J.A. Jolowicz, On Civil Procedure, Cambridge University Press, Published 2000, Available At: Https://Core.Ac.Uk/Download/Pdf/79425306.Pdf Accessed: 16/03/2025.
[769] Sir Jack I. H. Jacob, 'The Fabric Of English Civil Justice', Eastern Law House Private Ltd., New Delhi, 1987, P. 22
[770] Supra Note 6.
[771] Naresh Shridhar Mirajkar And Ors V. State Of Maharashtra And Anr, Air 1967 Sc 1.
[772] Ujjam Bai V. State Of U. P [1963] 1 S.C.R. 778
[773] Ibid
[774] Superintendent & Remembrancer V. Satyen Bhowmick And Ors, Air1981 Sc 917.

conducted in confidentiality. As per the Juvenile Justice (Care and Protection) Act[775], youthful offenders are adjudicated before a Juvenile Board[776], rather than traditional courts. This board comprises a chairperson, who serves as a Chief Judicial Magistrate, along with two social workers. The limited capacity of the board rooms restricts public presence. Hence, although the law does not indicate that the proceedings are to be in-camera, the essence of the law implies that it ought not to be adjudicated in standard courts.[777]

- In matrimonial cases, trials can occur in-camera, meaning they are conducted away from public view. This pertains to issues such as judicial separation, divorce, and matters involving cruelty, desertion, impotency, adultery, and specific diseases.[778] The reasons for these cases may damage the reputation of those implicated and disclose personal details about their lives, which can deter individuals from pursuing legal assistance or being honest due to fear of criticism.[779]The Family Courts Act of 1984 permits family court proceedings to be held in-camera if one party requests it. This provision is crucial as it protects sensitive information from being accessed by the public.[780] Section 153B OF the Civil Procedure Code[781] also empowers judges to restrict public access to particular court sessions to safeguard the parties involved. The tradition of conducting matrimonial cases in-camera persisted until the Marriage Laws Amendment Act[782] was passed. Section 22(1) of this Act requires that "all proceedings under its jurisdiction must take place in-camera and forbids the dissemination of any related materials without the court's authorization, with the exception of judgments from superior courts." Section 22 (2) which states that if a person violates courts order and publish any proceeding held in-camera than he shall be punishable with fine which may extend to one thousand rupees.[783]
- Criminal trials generally occur in open court, though there are exceptions. According to Indian law, Section 327(3) of the Criminal Procedure Code[784] specifies that "'Where any proceedings are held under Sub-section (2)[785], no individual may print or publish anything associated with specific court proceedings without the court's authorization." Should someone breach this law, they may face penalties under Section 228 of the Indian Penal Code[786], which also safeguards the identities of

[775] The Juvenile Justice (Care And Protection) Act Of 2000 (Act No. 56 Of 2000)
[776] Ibid At S. 4.
[777] Naresh Shridhar Mirajkar And Ors Vs State Of Maharashtra And Anr 1967 Air, 1 1966scr(3) 744.
[778] Dissolution Of Muslim Marriages Act 1939, (Act No. 8 Of 1939). S. 2.
[779] Azizur Rahman, "Proceedings-In-Camera", Judicial Training & Research Institute Journal, December 2012.
[780] Janaki Ballav V. Bennet Coleman And Co. Ltd, Air 1989 Orissa 225
[781] The Civil Procedure Code 1984 (Act No. 66 Of 1984).
[782] Marriage Laws Amendment Act 1976, (Act No. 68 Of 1976).
[783] Contempt Of Courts Act, 1971 Is Act No. 70 Of 1971.
[784] The Criminal Procedure Code 1973 § 22(2) (Act No. 2 Of 1974).
[785] Ibid At S. 327 (2) States 'Notwithstanding Anything Contained In Sub-Section (1), He Inquiry Into And Trial Of Rape Or An Offence Under Section 376, Section 376a, Section 376b, Section 376c Or Section 376d Of The Indian Penal Code 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.'
[786] The Indian Penal Code 1860 (Act No 45 Of 1860).

victims in particular situations such as rape.[787] In a case involving rape, trial "shall" be held in camera.[788] In these instances, trials are conducted in camera (privately), though the court may grant access to certain individuals upon request. In a case involving the Securities and Exchange Board of India[789], the court needed to weigh the public's right to be informed about court cases against the privacy rights of the victims and the accused. In this instance, the state sought an in-camera trial, and it was established that the media should refrain from revealing the accused's identity. This Ratio was also confirmed in Sakshi v. Union of India and Ors.[790] The requirement for in-camera trials is further endorsed by the Unlawful Activities (Prevention) Act, which permits the court to safeguard witnesses by conducting private sessions. It also forbids the publication of proceedings without authorization, rendering violations a criminal act.[791]

Limitations On Media Reporting

Lord Denning M.R [792]"In order to be deserving of freedom, the press must show itself worthy of it. A free press must be a responsible press. The power of the press is great. It must not abuse its power."[793] In weighing the competing interests, freedom of speech and the press takes precedence… no experienced judge would be swayed in any way by criticism in the newspapers, even if he read them, or on television, even if he watched.[794] The 200th Law Commission of India report from August 2006[795] recommends "educating media personnel on important legal topics. This includes understanding the rights under Article 19(1)(a) and restrictions under Article 19(2). Media professionals should also learn about constitutional law, human rights, and laws regarding contempt." various media guidelines in India, these include the Press Council of India's norms for journalists,[796] the NBSA Code of Ethics for broadcasting, and additional NBSA guidelines.[797] It also mentions specific guidelines regarding sexual assault reporting, accreditation for legal correspondents in Delhi, Punjab and Haryana, Kerala, and Himachal Pradesh.[798]

In a democratic society governed by the rule of law, the media has both the right and responsibility to collect and share information with the public, including commentary on the judicial process—before, during, and after a trial—provided this does not undermine the presumption of innocence. The principles of a fair trial and the presumption of innocence are central to criminal law. While journalists have the freedom to investigate, they must not declare someone guilty or pre-empt the outcome of a trial. Ensuring the accused has a genuine chance to prove their innocence is the cornerstone of a fair trial, which serves both the individual and society. Any conviction based on an unfair trial contradicts the very notion of justice.[799]

In India, the media enjoys freedom, but there are three primary limitations. These consist of

[787] The Indian Penal Code 1860 (Act No. 45 Of 1860), S. 228- A.
[788] Supra Note 40 At S. 327.
[789] Estate Corporation Limited And Ors. V. Securities And Exchange Board Of India And Anr (2012) 10 Scc 603
[790] Sakshi V. Union Of India And Ors 2004 (5) Scc 518
[791] The Unlawful Activities (Prevention) Act Of 1967 (Act No. 37 Of 1967), S. 44.
[792] R. v. Metro. Police Comm'r, ex parte Blackburn (No. 2), [1968] 2 Q.B. 150, 155 (C.A.) (U.K.) (Denning, M.R.).
[793] Ibid
[794] Ibid
[795] 200th Report On Trial By Media Free Speech And Fair Trial Under Criminal Procedure 1973. Available At: Https://Indiankanoon.Org/Doc/42810882/
[796] Press Council of India, *Norms of Journalistic Conduct* (2022), https://presscouncil.nic.in/
[797] News Broadcasters & Digital Association, *Code of Ethics & Broadcasting Standards* (2008), https://www.nbdanewdelhi.com/ .
[798] Justice Gita Mittal, Former Chief Justice, High Court Of Jammu & Kashmir, 'Judiciary & Media Need For Balance'. Available At: Https://Www.Nja.Gov.In/Concluded_Programmes/2021-22/P-1281_Ppts/3.Judiciary%20and%20the%20media.Pdf
[799] Shashi Tharoor v. Arnab Goswami, 2021 SCC OnLine Del 3817, Para 41 (India).

defamation[800], which damages an individual's reputation, incitement to offence introduced into the Constitution,[801] and contempt of court[802], which pertains to publishing content that weakens the court's authority or process. Courts may issue postponement orders and privacy injunctions in certain situations. Moreover, several laws govern media coverage of legal proceedings. These regulations can penalize the disclosure of a victim's identity, restrict publications that negatively affect a child's reputation, or empower judges to mandate private hearings and impose reporting bans.[803]

Measures To Protect Identities of Witnesses and Accused Persons

A summary of legal measures regarding the safeguarding of victims and sensitive cases in India. Section 228A of the Indian Penal Code (IPC)[804] "prohibits the disclosure of victims' identities in specific serious crimes, with penalties of up to two years of imprisonment and fines." The POCSO Act[805] highlights that "the media must refrain from reporting on cases that might damage a child's reputation without verified information. This is echoed in Section 23(2), which is consistent with Section 228A of the IPC." According to the UAPA[806]," courts have the authority to limit the publication of proceedings that are considered to be in the public interest."

Likewise, Order XXXII Rule 2 of the Civil Procedure Code[807] permits "family-related matters to be conducted privately if there is a request. Several marriage and divorce laws stipulate that related cases must be handled privately, forbidding any public distributions of associated information." Finally, "the Protection of Women from Domestic Violence Act[808] allows magistrates the discretion to conduct proceedings in private based on the specific situation of the case, provided either party makes such a request."

THE HIGHER JUDICIARY NEEDS TO OFFER A DEMOCRATIC OUTLET BY SHARING INFORMATION

There is growing acknowledgment that individuals ought to engage in the removal process, as they are directly impacted by the results of the judiciary. Wuerthner[809] pointed out that public indifference obstructs justice reforms, and it is vital for jurists, attorneys, and citizens to play an active role in bringing about necessary changes.[810] Philosopher Jeremy Bentham emphasized the importance of transparency in justice by stating that without public access, true justice cannot exist. He argued that openness is the essence of justice—it motivates diligence and acts as the strongest safeguard against dishonesty. Public scrutiny ensures that even judges are held accountable while they preside over cases.[811]

The House of Lords strongly upheld the principle of open justice in *Scott v. Scott*, where Lord Atkinson acknowledged that public hearings can sometimes be uncomfortable, embarrassing, or even offensive to the parties and witnesses involved—particularly in criminal cases where the details might be morally disturbing. However, such discomfort is accepted because public trials are seen as the most effective way to ensure a fair, impartial, and competent justice system, and to earn the trust and respect of the public.[812] ,

In the Canadian Supreme Court case *MacIntyre*, Justice Dickson (later Chief Justice) emphasized that while parties often argue for

[800] Indian Penal Code 1860 (Act No. 45 Of 1860), Sss. 499, 500, 502
[801] Added To Article 19(2) Under The First Amendment To The Constitution Of India 1951.
[802] Contempt Of Courts Act, 1971, (Act No. 70 Of 1971)
[803] Supra Note 51.
[804] Indian Penal Code 1860 (Act No. 45 Of 1860),
[805] The Protection Of Children From Sexual Offences Act, 2012 (Act No. 32 Of 2012), S. 23.
[806] The Unlawful Activities (Prevention) Act, 1967 (Act No. 37 Of 1967), S. 44(3),
[807] The Code Of Civil Procedure, 1908 (Act No. 5 Of 1908)
[808] Protection Of Women From Domestic Violence Act, 2006, S.16.
[809] Julius J. Wuerthner. Former Member, Montana Senate & Montana House Of Representatives.
[810] Julius J. Wuerthner, Minimums Of Judicial Standards, 12 Mont. L. Rev. (1951). Available At: Https://Scholarworks.Umt.Edu/Mlr/Vol12/Iss1/1
[811] Jeremy Bentham, *Draught of a New Plan for the Organisation of the Judicial Establishment in France*, in 4 *The Works of Jeremy Bentham* 316 (John Bowring ed., 1843).
[812] *Scott v. Scott*, [1913] A.C. 417, 463 (H.L.) (U.K.) (Atkinson, L.)

privacy in legal proceedings, the prevailing legal principle is that courts should remain open to the public, with secrecy being the rare exception. He noted that transparency enhances public trust in the judiciary and promotes understanding of how justice is administered. Generally, the personal sensitivities of those involved are not sufficient grounds to exclude the public from courtroom proceedings.[813]

The Indian Supreme Court intends to hear a case concerning whether the Right to Information Act of 2005[814] (here in after RTI Act) is applicable to its judges. The RTI Act permits citizens to seek information from public authorities and mandates these authorities to proactively disclose information. Nevertheless, the Act does maintain certain information as confidential and exempts specific bodies from its regulations. Although the higher judiciary is not formally exempt, the Supreme Court seeks to assess how the Act pertains to its functioning. This is important because a former Chief Justice K G Balakrishnan raised concerns regarding the inclusion of judges under this transparency law, contending that they are constitutional authorities, not public servants.[815] Following a Delhi High Court decision indicating that the Supreme Court is subject to the RTI Act, the Supreme Court decided to appeal that ruling.[816] This action echoes previous efforts by the executive branch to constrain the RTI Act's scope.[817]

Institutions are accountable to their constituents, such as the State, Parliament, and Executive. The judiciary, as an instrumentality of the State, is a public institution, serving as a public servant to the electorate and Parliament. This raises the question of whether judges are public servants.[818]

From the very commencement of the IPC, "Every Judge" finds a place in the categories of "public servant" defined under Section 21 of the IPC.[819] The expression "Every Judge" used in the third category of Section 21 indicates all Judges and all Judges of all Courts.[820] Section 21 of the IPC includes twelve categories of persons, including State and Central Government employees, judges, jurymen, assessors, and arbitrators. Each category is different from the others, and there is hardly any relationship between master and servant in some of the categories.[821]

In his dissent view on K. Veeraswami's case[822], J.S. Verma, J. contends that High Court and Supreme Court judges ought to be excluded from the definition of public servant, in accordance with the constitutional framework and current law. He critiques the suggested guidelines as insufficient and emphasizes important unresolved matters. Verma favours granting the appeal, in contrast to the prevailing opinion. The ex-Chief Justice of the Madras High Court, firmly backs Justice Verma's dissenting view that judges serve as constitutional functionaries rather than public servants. He claims that judges personify the court, serving as an essential third branch of the State. Veeraswami supports reevaluating the prevailing opinion for the sake of the judiciary's public interest.[823]

Justice K. Jagannatha Shetty in the case of K. Veeraswami[824] observed that, 'The traditional

[813] Att'y Gen. (N.S.) v. MacIntyre, [1982] 1 S.C.R. 175, 183 (Can.) (Dickson, J.).
[814] Right to Information Act, No. 22 of 2005, INDIA CODE (2005).
[815] Rti Act Does Not Apply To My Office: Cji, Times Of India (Apr. 20, 2008, 12:34 Am), Https://Timesofindia.Indiatimes.Com/India/Rti-Act-Does-Not-Apply-To-My-Office-Cji/Articleshow/2964678.Cms The Chief Judge Later Clarified His Statement On Ndtv, Stating That It Depends Upon The Interpretation Of The Rti Act As To Whether The Chief Justice Of India Office Comes Within The Scope Of The Law. See Ndtv, Rti Could Extend To Judges: Cji, Youtube (May 10, 2008), Https://Www.Ndtv.Com/Video/Rti-Could-Extend-To-Judges-Cji-28793
[816] Sc To Appeal Against Hc Verdict, Indian Express (Jan. 12, 2012, 8:33 Pm), Http://Www.Indianexpress.Com/News/Sc-To-Appeal-Against-Hc-Verdict/566544
[817] Vinita Deshmukh, 'The Rti Act Has Been Systematically Assaulted By Successive Governments To Blunt Its Efficacy', The Hindu , Updated - January 30, 2021 08:58 Pm Ist Available At: Https://Www.Thehindu.Com/Society/The-Rti-Act-Has-Been-Systematically-Assaulted-By-Successive-Governments-To-Blunt-Its-Efficacy/Article33692735.Ece
[818] G. Neetika & Yashasvi Singh, Judicial Accountability Bill: A Watchdog For A Watchdog? Available At: Https://Nliulawreview.Nliu.Ac.In/Wp-Content/Uploads/2021/12/Volume-Ii-Issue-Ii-51-66.Pdf Accessed: 18/02/2025
[819] Indian Penal Code, 1860, § 21, No. 45, Acts of Parliament, 1860 (India)
[820] Ibid
[821] Ibid
[822] K. Veeraswami V. Union Of India, [1991] 3 S.C.R. 189
[823] Veeraswami, Whither Law And Justice 23 (Eastern Law House, New Delhi) (2001).
[824] Ibid

master-servant dynamic recognized in common law is not applicable to the Judges of the higher judiciary and the Government. Generally, a master instructs the servant, controlling both the duties and the techniques. The servant must comply with sensible commands, risking defiance. Nonetheless, judges are not subservient to the Government; they are not obligated to follow governmental directives while performing their duties. If judges permit the Government to sway their responsibilities, they stop executing their judicial duties properly. This autonomy is crucial for preserving the integrity of the judiciary free from government influence.'[825]

This viewpoint seems both impressive and amusing, aiming to free the higher Judiciary from responsibility. Since judges serve the public, they are accountable to the people. A judge, serving as a tool of the court, does not represent 'the court.' This ruling demonstrates the judiciary's unchecked interpretive authority, taking on an exceptional position that conflicts with democratic ideals.

LIVE-STREAMING

Traditionally, court proceedings in England and Wales were shielded from public broadcasting to maintain courtroom decorum, protect witnesses, and ensure fair trials.[826] The Criminal Justice Act of 1925, specifically Section 41, introduced a firm prohibition on courtroom photography.[827] However, with advancements in technology, these stringent limitations have come under increased scrutiny for clashing with the common law principle of open justice.

India saw a major development in this area through the 2018 Supreme Court decision in *Swapnil Tripathi v. Supreme Court of India*.[828] The ruling permitted live-streaming of court proceedings, affirming it as part of the constitutional right to access justice under Article 21. Initially limited to constitutional matters in the Supreme Court, the practice was officially launched in 2022 and subsequently adopted by various High Courts, with the Gujarat High Court being the pioneer.[829]

Live-streaming is intended to promote judicial transparency, increase public awareness, and improve access to the legal system—particularly benefiting underrepresented and disadvantaged groups. It also offers educational value and helps alleviate practical issues like travel burdens and courtroom congestion.[830] Nevertheless, there are valid concerns surrounding the potential invasion of privacy, national security risks, misuse of footage, and the impact on courtroom participants. The Attorney General has advised exercising caution by excluding emotionally charged or sensitive cases from live broadcasts to safeguard the integrity of judicial outcomes.[831]

Ultimately, a nuanced approach is required—one that supports the ideal of open justice while ensuring live-streaming is managed under the oversight of judges, supported by legal provisions and constitutional protections, to ensure it strengthens rather than undermines the justice system.[832] Live-streaming of court proceedings significantly improves public access to the justice system, helping to overcome earlier barriers related to infrastructure and logistics. However, this practice also brings certain challenges, including the heightened risk of contempt of court, potential compromise of judicial impartiality due to public sentiment, and

[825] Supari note 86
[826] DANIEL STEPNIAK, AUDIO-VISUAL COVERAGE OF COURTS - A COMPARATIVE ANALYSIS11-12 (Cambridge University Press 2008).
[827] Criminal Justice Act 1925, 15 & 16 Geo. 5 c. 86, § 41 (UK).
[828] Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639
[829] Explainer: Now, you can watch Supreme Court live, THE TIMES OF INDIA (Sept. 27, 2022, 03:41 PM), https://timesofindia.indiatimes.com/india/explainer-now-you-can-watch-supreme-courtlive/articleshow/94467488.cms.
[830] Aditi Raj, Live Streaming Court Proceedings in India: A 'Double-Edged' Sword?, Law chakra, 30 September 2024, 10 Available at: https://lawchakra.in/blog/live-streaming-court-india-double-edged-sword/#:~:text=The%20push%20for%20live%20streaming,role%20in%20a%20modern%20democracy.
[831] Bikash Singh, Manipur Violence: Unrest triggered after HC order to recommend quota for Meiteis, THE ECONOMIC TIMES (May 6, 2023, 12:42 AM), https://economictimes.indiatimes.com/news/politics-andnation/manipur - v iolence-unres t - triggered-after -hc -order - to-recommend-quota- for - meiteis/articleshow/100022219.cms?from=mdr .
[832] See further 'Model Rules for Live Streaming 2022'. Available at: Model Rules for Live-Streaming and Recording of Court Proceedings

possible breaches of privacy, especially in cases that are still under trial.[833]

As the legal framework for live-streaming remains in its early stages, it is crucial that judges exercise thoughtful discretion when determining which cases should be broadcast. Protecting the integrity of court proceedings and the privacy of individuals involved must remain a priority. In some scenarios, recording the proceedings for later use might be more appropriate than real-time streaming.[834]

Introducing live-streaming to lower courts requires extra caution, as these courts often handle sensitive testimonies from victims and witnesses. It is the responsibility of the High Courts to establish comprehensive protocols for such broadcasts, drawing insights from their existing experiences with live-streaming.[835] Since the presence of cameras in Indian courtrooms is a relatively new development, more empirical research is needed to study its effects, particularly behavioural changes influenced by being observed—known as the Hawthorne Effect. While live-streaming represents a step toward greater transparency and modernization, implementing it without careful planning could disrupt judicial processes. Therefore, a thoughtful, research-driven strategy is essential to integrate live-streaming effectively and responsibly.[836]

CONCLUSION

Justice must not only be administered but also appear to be administered.[837] Open Justice allows the community to observe how justice is conducted and guarantees fairness by being subject to public and media oversight.[838] Trials should take place in open court so that everyone, including the media, parties involved, and witnesses, can witness the proceedings. Jeremy Bentham underscored the significance of publicity in justice, asserting that it keeps judges accountable during trials. Advocates of open justice highlight several advantages: it helps in uncovering the truth, increases accountability, and provides assurance that justice has been obtained. Nevertheless, practical issues such as privacy, expenses, and national security can sometimes conflict with the concept of open justice. A Delhi court has stopped the media from reporting on a case involving former Odisha high court judge Justice I. M. Quddusi, who is accused of bribery related to medical admissions. The court emphasized that free speech cannot be used for defamation and highlighted that the accusations are considered "false and unsubstantiated" before the trial begins.

This situation raises concerns about whether all criminal cases should be reported on before verdicts are reached. Protecting the dignity of all defendants, including judges, is important to ensure justice is seen to be served.[839] There is a trend of courts placing restrictions on reporting. For example, a restriction in the Sohrabuddin Sheikh case[840] was overturned by the Bombay high court, stressing the media's watchdog role.[841] In the sexual harassment case against R. K. Pachauri, the court required that reports mention the case is sub judice[842]. The Supreme Court has also limited media

[833] Supra note 110.
[834] Supra note 112.
[835] Virtual court to deal with traffic challan to be launched today, The Hindu, Published - August 16, 2019 10:51 pm IST – GURUGRAM, available at: https://www.thehindu.com/news/national/other-states/virtual-court-to-deal-with-traffic-challan-to-be-launched-today/article29113273.ece Accessed: 22/03/2025.
[836] Prof. Jyoti J. Mozika, Diganta Roy. EXPERIMENTING WITH CAMERAS IN THE COURTROOM: LIVESTREAMING COURT PROCEEDINGS AND CONCERNS OF CONTEMPT OF COURT, Dehradun law review, 15(1) DLR (2023). Available at: https://www.dehradunlawreview.com/wp-content/uploads/2024/02/XPS_Law-Review-119-132.pdf accessed: 22/03/2025.
[837] R v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, 259 (Eng.).
[838] Ibid
[839] Abhishek Angad 'Delhi Court Gags Media From Covering Former-Judge's Bribery Case'. The Indian Express, New Delhi | April 22, 2018, Available At: Https://Indianexpress.Com/Article/India/Delhi-Court-Gags-Media-From-Covering-Former-Judges-Bribery-Case-5146901/#:~:Text=Stating%20that%20constitutional%20guarantee%20of,Quddusi%2c%20an%20accused%20in%20the
[840] Narmada Bai Vs. State Of Gujarat & Ors., (2011) 5 Scc 79.
[841] Bombay Hc Scraps Trial Court Gag: Public Has Right To Know, Press Most Powerful Watchdog, By: Express News Service New Delhi | Updated: January 25, 2018, Available At: Https://Indianexpress.Com/Article/India/Sohrabuddin-Sheikh-Killing-Case-Bombay-Hc-Quashes-Order-Banning-Media-From-Reporting-Proceedings-5037461/
[842] Sexual Harassment Case: Delhi Tribunal Dismisses Appeal Against Icc's Findings Against R K Pachauri, The Hindu, July 10, 2023. Available At: Https://Www.Thehindu.Com/News/National/Sexual-Harassment-Case-Delhi-Tribunal-Dismisses-Appeal-Against-Iccs-Findings-Against-R-K-Pachauri/Article67061765.Ece

coverage in some cases, questioning how public comments might affect trust in the judiciary.

Additionally, the Supreme Court has received sealed information in several cases, like the National Register of Citizens[843] and the Rafale deal[844], which signals a troubling lack of transparency that could harm democracy. This situation is concerning as it distances citizens from the judicial process. It is suggested that making justice more accessible, such as through live-streaming cases, could help restore trust in the judiciary. Courts need to explain any deviations from open justice to maintain public awareness of cases and evidence. The Court has expressed discontent regarding the practice of using sealed covers for submitting information. In March 2022, Chief Justice Ramana condemned the Bihar government for employing this method in the Muzaffarpur Shelter case.[845] On that same day, a Bench headed by Justice Chandrachud also interrogated this practice while removing a stay on MediaOneTV, mentioning that they would evaluate the legal legitimacy of utilizing sealed covers.[846] However, in India, the tenet of open justice appears to be waning. Although the nation has sought to uphold transparency in its legal system, courts have become less accessible, and there are increasing limitations on reporting proceedings in sensitive cases.

Open justice is particularly vital for three reasons. First, it contributes to public education. Second, it discourages misconduct by ensuring court accountability. Third, it provides assurance that justice is being delivered. In certain instances, particularly in criminal and family matters, additional factors may need to be weighed alongside the necessity for open justice.

The author believes that live streaming court hearings could enable the public to observe trials they would otherwise be unable to attend due to practical obstacles. This technology would improve access to justice, allowing a broader audience, including law students and reporters, to watch real-time proceedings. The landmark rulings in the cases of Swapnil Tripathi[847] and Indira Jaisingh[848] have greatly advanced transparency in the Supreme Court, assisting the public in understanding the justice delivery mechanism.

[843] Assam Public Works Vs Union Of India, Air 2019 Sc 2258. *In Re: Section 6a Of The Citizenship Act, 1955,*

[844] *Manohar Lal Sharma V Narendra Damodardas Modi, Wp (Crl.) 225/2018; Rp (Crl.) 46/2019*

[845] 'Cji Ramana Criticises Practice Of Filing Reports In 'Sealed Covers'' The Wire Staff, 23/Mar/2022. Available At: Https://Thewire.In/Law/Cji-Ramana-Criticises-Practice-Of-Filing-Reports-In-Sealed-Covers

[846] Ajoy Karpuram, 'Judgement Pronouncement: Mediaone Broadcast Ban', Sco, 5th Apr 2023. Available At: Https://Www.Scobserver.In/Journal/Judgement-Pronouncement-Mediaone-Broadcast-Ban/

[847] Swapnil Tripathi Vs Supreme Court Of India, Air 2018 Sc 4806.

[848] Indira Jaising Vs Supreme Court Of India, 2017, 9 Scc 766.