



Submission on “Draft model rules on live-streaming and recording of court proceedings”

by

The Bachchao Project

30 June 2021

I. Preliminary

This submission presents comments by The Bachchao Project (hereinafter “**TBP**”) on the “Draft Model Rules for Live-Streaming and Recording of Court Proceedings” (hereinafter “**the Rules**”)¹, dated May 28, 2021, released by the e-Committee, Supreme Court of India, (hereinafter “**the Committee**”).

This submission is divided into three main parts. The *first* part, ‘Preliminary’, introduces the document; the *second* part, ‘About TBP’, is an overview of the organization; and, the *third* part, ‘Submissions on the issues’ contains our comments on the Rules.

II. About The Bachchao Project

The Bachchao Project is a techno-feminist collective that undertakes community-centric efforts to develop and support open source technologies and technical frameworks with the goals of mitigating gender-based violence and working towards equal rights for women, LGBTQIA+ people, and gender-diverse people. We conduct research and advocacy in all the above areas and guide communities in determining appropriate technological interventions for themselves. Website: <http://thebachchaoproject.org>

This submission has been prepared by Rohini Lakshané and Mythri Prabhakara on behalf of The Bachchao Project on **June 30, 2021**. It was submitted via email to: [ecommittee \[at\] ajj.gov.in](mailto:ecommittee@ajj.gov.in)

III. Submission on the issues

Overarching comments

1. Digital divide

We submit that the overall vision for eCourts to create “an infrastructure for the judicial system that is natively digital” as stated in the *Digital Courts Vision & Roadmap Phase III of the eCourts Project*² should take cognizance of the digital

¹ Draft Model Rules for Live-Streaming and Recording of Court Proceedings <https://ecommitteesci.gov.in/document/draft-model-rules-for-live-streaming-and-recording-of-court-proceedings/>, e-committee, Supreme Court of India, 2021

² E-Committee Supreme Court Of India, *Digital Courts Vision & Roadmap Phase III of the eCourts Project* (5)

divide in india. We urge that the Rules consider “inclusivity and access to justice”³ as mentioned in the preface to the Rules on live-streaming proceedings for, particularly,

- persons with disabilities
- neurodivergent persons
- persons who are not possess any digital literacy or are not adequately digitally literate⁴
- the large population of India without access to Internet and/or unreliable internet connectivity, especially those residing in remote areas, rural areas and semi-rural areas
- persons who cannot afford access to infrastructure (computers, smartphones, microphones, web cameras)
- persons without access to a reliable internet connection that offers the speeds required for video conferencing and live-streaming services to work smoothly.

This suggestion is in line with the founding vision and roadmap of Phase III of the eCourts project⁵ that states that “...the use of technology in the judiciary is animated by... access and inclusion... combined with... equity and efficiency.”

2. Internet shutdowns

India experiences the highest number of state-initiated Internet disruptions in the world every year⁶⁷. TBP has researched and documented the impact of Internet shutdowns in some regions of India⁸⁹. In some cases, Internet shutdowns have lasted for prolonged durations, for example, in Kashmir¹⁰. We seek clarifications about the measures that will be adopted in places that are experiencing intentional or unintentional Internet shutdowns, especially when the shutdowns are frequent or prolonged or both.

3. Data protection and digital security

We further submit that the Rules should provide clear directions for data protection and digital security of the recordings of court proceedings, and clarify the recommended data storage facility where the recorded files will be stored, and the system for recording, retrieval, access and erasure of the files.

4. Free, informed, prior consent

<https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2021/04/2021040344.pdf> accessed June 27, 2021

³ *Supra* note 1.

⁴ Barboni, G., Field, E., Pande, R., Rigol, N., Schaner, S., & Moore, C. T. (2018). A Tough Call: Understanding barriers to and impacts of women’s mobile phone adoption in India. *Boston, Massachusetts: Harvard Kennedy School*. Retrieved June 12, 2021 from https://epod.cid.harvard.edu/sites/default/files/2018-10/A_Tough_Call.pdf

⁵ *Supra* note 2.

⁶ Shattered dreams and lost opportunities: A year in the fight to #KeepItOn, Access Now <https://www.accessnow.org/keepiton-2020-report> Last accessed June 29, 2021.

⁷ How India lost \$2.8 billion to internet shutdowns in 2020, The Times of India, January 6, 2021 <https://timesofindia.indiatimes.com/business/india-business/how-india-lost-2-8-billion-to-internet-shutdowns-in-2020/articleshow/80127719.cms> Last accessed June 29, 2021

⁸ Of Sieges and Shutdowns, 2018 <http://thebachchao.org/of-sieges-and-shutdowns/>

⁹ Even the 301 whitelisted sites in Jammu and Kashmir are not entirely accessible: An analysis, Medianama, January 28, 2020

<https://www.medianama.com/2020/01/223-analysis-of-whitelisted-urls-in-jammu-and-kashmir-how-usa-ble-are-they/>

¹⁰ India restores internet in Kashmir after 7 months of blackout, Al Jazeera, March 5, 2020

<https://www.aljazeera.com/news/2020/3/5/india-restores-internet-in-kashmir-after-7-months-of-blackout> † Last accessed June 29, 2021

We request that the Rules for live-streaming state how consent would be sought and recorded from litigants, advocates and all other parties involved. Specifically for publicly available and live-streamed recordings, we urge that the steps to take consent involve explicitly informing the involved parties that the proceedings will be recorded and live-streamed and the recording will be made publicly available.

We note that the option of “Consent Revocation” exists in the Electronic Consent Framework as defined by MEITY.¹¹

5. Implementation

We submit that all institutional issues as identified in the legal framework for electronic service delivery¹² especially Capacity Building, Training, Change Management, Awareness and Sensitization, Upgrades and Version Control, and Cyber Security be addressed for efficient implementation of these rules.

6. Use of FLOSS

We urge that the Rules consider the adopting of free, libre and open source software (FLOSS) for recording, live-streaming, storage, erasure and management of files in keeping with the Policy on Adoption of Open Source Software¹³.

7. Authorised persons and entities

We submit that the Rules specify:

- the job titles of personnel authorised to access any part of the recordings during the course of live-streaming proceedings and after the live-stream is over, and
- the criteria for selecting the personnel responsible for maintaining the storage and the digital security and integrity of the archives of proceedings.

Under rule 3.2, we urge that the Rules specify the steps taken to train the officer(s) of the Court, technical experts and video-recording experts on the importance of data protection and digital security of the recordings.

We also submit that further information be specified regarding their duty to maintain the confidentiality of the sensitive information with respect to the developments of the case as well as the personal details of the accused (where applicable) and the deponent/ witness that they will have access to during the course of their job.

Under rule 3.4, we urge the Committee to specify the duties, powers, the process of selection, tenure and qualifications required of the members of the IT Committee in depth.

Under rule 4, we seek clarifications regarding the data that the technical experts have access to during the live-stream and after it is over.

8. Technical standards and specifications

¹¹ Electronic Consent Framework,

<http://dla.gov.in/sites/default/files/pdf/MeitY-Consent-Tech-Framework%20v1.1.pdf>, MEITY

¹² Legal Framework For Mandatory Electronic Delivery of Services,

https://www.meity.gov.in/sites/upload_files/dit/files/Consolidatep_PPT_02122010.pdf, MEITY

¹³ Policy on Adoption of Open Source Software for Government of India,

https://www.meity.gov.in/writereaddata/files/policy_on_adoption_of_oss.pdf, MEITY, 2016

We request that the technical standards and specifications used for archival recording, storage, and retrieval as mentioned in rule 7.1 and 7.3 be specified.

Responses to specific Rules

2. Hardware – Placement & Control:

2.2 In the event that the Court has employed an *electronic evidence presentation* system, an *additional feed shall be captured therefrom*.

We submit that information about the digital system for storing evidence, the methods of storage, and the risk of personal information being publicly linked to such evidence be enumerated by the Honorable Committee.

2.4 *Advocates, witnesses, accused, or any other person permitted by the Bench, shall use appropriate microphones while addressing the Court.*

We would like to draw your attention to existing research that shows that the process of giving evidence via audio-video conferencing is likely to become intimidating for neurodivergent persons, for example, persons on the autism spectrum, which can impact the quality of their statements.¹⁴

We humbly suggest that the Committee, in consultation with qualified psychiatrists and psychologists, make such requirements more inclusive by providing alternatives to neurodivergent people in order to ensure their access to justice since 2.68 crore persons are disabled in India.¹⁵

2.6 *Where Proceedings are conducted through weblinks, including video conferencing services, appropriate software and hardware will be employed, if necessary, to generate an integrated feed for Live-streaming.*

We urge the Committee to specify:

- the video conferencing services that will be used.
- if the litigants have the right to ownership of their personal information, including video, text chat, case information, and identity that is shared during the course of the proceedings conducted through weblinks.

We also request that the Rules specify the technical nature of “appropriate software and hardware” in keeping with “8. Technical standards and specifications” in the section entitled “Overarching comments” above, and submit that access to the service or software itself be free of cost for the end-users. For example, they should not need to buy a software license in order to be able to use the service.

We further urge that the video conferencing service be agnostic of the operating system, that is, it should work on different operating systems such as Linux, Windows, Mac, Android, and iOS, which form the majority of the operating system market share in the country.

¹⁴ Spain, D., Sin, J., Linder, K.B., McMahon, J. and Happé, F., 2018. Social anxiety in autism spectrum disorder: A systematic review. *Research in Autism Spectrum Disorders*, 52, pp.51-68.

¹⁵ Disabled Population in India as per census 2011 (2016 updated), <https://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/> August 28, 2017

5. Live-streaming and Recording of Proceedings

5.2. The following will be excluded from Live-streaming:

- i. *Matrimonial matters, including transfer petitions arising thereunder.*
- ii. *Cases concerning sexual offences, including proceedings instituted under Section 376, Indian Penal Code, 1860 (IPC).*
- iii. *Cases concerning gender-based violence against women.*
- iv. *Matters registered under or involving the Protection of Children from Sexual Offences Act, 2012 (POCSO) and under the Juvenile Justice (Care and Protection of Children) Act, 2015.*
- v. *In-camera proceedings as defined under Section 327 of the Code of Criminal Procedure, 1973 (CrPC) or Section 153 B of the Code of Civil Procedure, 1908 (CPC).*
- vi. *Matters where the Bench is of the view, for reasons to be recorded in writing that publication would be antithetical to the administration of justice.*
- vii. *Cases, which in the opinion of the Bench, may provoke enmity amongst communities likely to result in a breach of law and order.*
- viii. *Recording of evidence, including cross-examination.*
- ix. *Privileged communications between the parties and their advocates; cases where a claim of privilege is accepted by the Court; and non-public discussions between advocates.*
- x. *Any other matter in which a specific direction is issued by the Bench or the Chief Justice.*

We seek clarification in case of digital proceedings for cases i, ii, iii conducted through weblinks regarding the steps taken to ensure that the providers of video-conferencing and other services have purpose-limited access to litigants' personal information, such as the phone number or email address used to access the video conference.

5.6. *The final decision as to whether or not to allow the Live-streaming of the Proceedings or any portion thereof will be of the Bench, however, the decision of the Bench will be guided by the principle of an open and transparent judicial process. **The decision of the Bench shall not be justiciable.***

We urge the Committee to reflect about whether this rule would create circumstances in which litigants who would prefer not to live-stream their proceedings, for reasons including but not limited to their personal safety, liberty or privacy, would be required to give up their access to the court.

7. Storage and Access

7.2 *Recordings may be **uploaded, wholly or in part, on the Courts' website** or made available on other digital platforms, as directed by the Court.*

We urge the Committee to consider taking free, prior and informed consent of all parties involved including litigants and advocates before uploading the recordings of proceedings to the court's website and other digital platforms.

7.3 *Access to copies of the Recordings not uploaded will be sanctioned by the Designated Officer, who will act as per law. **An application for copies of Recordings shall be made in the form prescribed in Schedule III.***

We request further clarity about who can make such applications, and the grounds on which the applications are approved or rejected. We further suggest that the certification of the authoritative recording should meet the requirements of Section 65B of the Indian Evidence Act¹⁶, *i.e.*, it should be possible to rely upon the recording, if required in later proceedings.

8. Relay of Proceedings and Recordings

8.1 General Precaution: -

*Personal information such as **date of birth of parties, home address, identity card number, bank account information, and the personal information of related parties, such as close relatives, witnesses and other participants**, will be deleted or muted during Live-streaming. Inter alia, any one of the masking techniques, as provided in Rule 6.8, may be adopted. However, such Proceedings will be preserved in the Archival Data.*

We urge the Committee to consider that this general precaution is not foolproof and is not adequate to protect personal information and identity, for example, according to the above paragraph, face could be pixelated but voice could still be audible. Based on other factors, such as the opposition, lawyer etc, it would be easy to identify the person.

8.2 *The advocates and litigants-in-person may request the Bench to redact personal and sensitive information inter alia of the kind referred to in Rule 8.1.*

By identifying privacy of information as a subset of the right to privacy, the Indian Supreme Court's remarkable judgment in Justice K.S. Puttaswamy (Retd) v. Union of India¹⁷ established that privacy lies at the center of liberty and individual autonomy. The 9-judge bench unanimously held that the fundamental right to privacy is intrinsic and instrumental to human dignity. We submit that the advocates and litigants should not have to ask for their personal information to be redacted. We urge the committee to ensure that all digital proceedings are conducted in such a way that their personal and case related information is safe by default.

9.2 *Prohibitions and Restrictions on usage of the Recording or Live -stream:*

i. No person/entity (including print and electronic media, and social media platforms) other than an authorised person/entity shall record, share and/or disseminate Live-streamed Proceedings or Archival Data.

This provision shall also apply to all messaging applications.

We seek clarifications regarding why the archives are being published on the court's website. We also urge the Committee to address whether advocates have the option to refuse to live-stream the proceedings but still handle the case. We also urge the Committee to clarify what the course of action a case would take if only one advocate or party agrees to live-stream the proceedings.

We further submit that there should be penalties for non-compliance with this provision.

¹⁶ Sec 65B "Admissibility of electronic records" <https://indiankanoon.org/doc/1953529>

¹⁷ Justice K. S. Puttaswamy v Union of India WP (C) 494/2012

iv. The Court, inter-alia to disseminate news and for training, academic and educational purposes. Authorised recordings handed over for the aforesaid purposes shall not be further edited or processed. Such Recordings will not be used for commercial, promotional purposes or advertising in any form.

We urge that free, prior and informed consent of the litigants and advocates be taken before this material is given to others for training, academic and educational purposes.

We request clarifications regarding redactions (for live-streaming or dissemination) in order to remove personal information from the recordings that may infringe on personal privacy -- for example, a testimony where a person's health status or a part of their residential address is mentioned. Additionally, we seek clarifications regarding the penalties imposed in the case of non-compliance with this provision.

10. Transcription and Access: -

10.3. Recordings that are uploaded will be made accessible for **differently-abled persons**.

We humbly submit that "differently-abled persons" are not a homogenous group¹⁸. We urge the Committee to consider the needs of persons with different kinds of disabilities and explicitly state the measures taken to prevent the exclusion of such persons, in consultation with qualified psychiatrists, psychologists and other experts so that persons with cognitive, developmental, intellectual, mental, physical disability can all equally access and comprehend the recordings.

¹⁸ Disabled Persons in India - A statistical profile 2016, http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf, Ministry of Statistics and Programme Implementation, 2016