

NEED TO PROTECT AND REGULATE A NOBLE IDEA OF STING OPERATION FOR ENVISAGING PUBLIC INTEREST

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1. Introduction

“There are only two forces that can carry light to all the corners of the globe- the Sun in the heaven and the associated press (media) down here.” - Mark Twain (American author)

The status of the democracy can be calculated on the freedom given to the media and the independence that they enjoy. With these credentials the responsibilities on the shoulders of the media increases. Media which manifests social transformation through noble ideas and its activism entail careful attention in its regulation. Media helps society in ensuring that those in important and influential positions remain transparent and accountable for their actions which is possible through media activism.

It is one of the responsibilities of the media to expose social evils and help to eradicate it, and we consider sting operation is one of the weapons from the quiver. Therefore on the same time while discussing such role of the media, we need to focus on its Constitutional, legal and ethical aspects. There arises a need to protect and regulate a noble idea of sting operation for envisaging Public Interest. For the same, we must analyse the problems and loopholes which become hurdles for it and then try to overcome it with the solutions already present with us and future implementations of it.

Investigation Journalism

Investigative journalism is the branch of journalism which aims at uncovering complex and often little-known facts of interest and relevance to the public through thorough research.² It is an attempt to reveal the truth in respect to a crime or other misdemeanour's exposure which would be benefited to the society as a whole. There is a thin line between undercover investigation and sting operation. Undercover investigations need not necessarily expose someone's criminal intent or catch someone in the process of committing a criminal act.³ For instance, showing insanity for getting admission to mental asylum to expose the condition, status and treatment there comes under undercover investigation. Considering the Indian situation undercover investigations and sting operations are not different but the same. Media uses 'Sting' to 'set a trap to catch a crook'.

However, each coin has its two sides. With the increase in the importance of media in the public interest, there arise a need for regulations and control. Indians had also witnessed the uncontrolled fateful stings and how they ruined life of someone who was innocent and also seen stings which not only helped judiciary and executives but the public at large. This shows that when we control and make good use of it, it can get standard output out of it. The constitution of India gives all the answers for it. It provides origin, control and regulation of sting operations but we need some more.

2. Sting operation entails careful attention in its legal motion

“The media is the most powerful entity on the Earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power; because they control the minds of the masses.”⁴ - Malcolm X (Human Rights activist)

Sting operations are carried out to protect the public interest. It makes the government and its officials more transparent, more accountable and more responsible. Activity of sting operation helps to eradicate corruption and some helps us in finding the evidences against wrongdoer. But there arise

problems when operations are not regulated, not aiming public interest and only for personal gains. When the intention is not good, operations fails and attracts legal consequences. This shows there is need to regulate such operations. There is no comprehensive law on controlling sting operations but the Constitution of India as the law of the land provide, protects and secure the rights given under it and given by interpretation of it.

Sting operations carried out in ultra-sound centres helps in curbing the problem of female foeticide. Operations catching politicians, army officers and people on higher post and position in various governmental departments taking bribe help society in eradication of corruption from the society. Operations relating to investigation in criminal cases help judiciary in achieving justice to the victims. It creates awareness among the people in the society. But at the same time operations which are carried out for personal gains, competition among the media and to increase Television rating point fails to achieve the goal of public interest and objective behind the role of media. Here, it is notable that the operations which are regulated and according to law conveys good message to society and helps in envisaging public interest but if operations are not regulated and in contrary to law threaten the people and create fear about such operations. Thus it entails careful attention in its legal motion.

3. Sting Operation: Constitutional Discourse and Legal Implications

Regarding sting operations, number of questions arises like whether these operations are legal? Whether the method of false identities is justifiable? Isn't it violating the right to privacy? Are Right to information, Right to Privacy and Freedom of Press intervening into each other and creating conflicts? To what extent can the media go?

And the Constitution of India is having all the answers to large extend. It not only provides the right but also guarantees its protection and security. Let us discuss various components of Constitution of India intersecting with sting operations and providing and protecting such noble ideal which envisages public interest.

a. Freedom of press

Freedom of press is a fundamental right and it is provided and protected in most of the nations in the world. The Constitution of India though not expressly mentions about the freedom of press but it is to be interpreted under Article 19(1)(a) which gives freedom of speech and expression. Therefore freedom of press is a derivative of freedom of speech and expression which includes freedom to communicate, advertise, publish or propagate ideas. As this freedom is not an absolute right, Article 19(1) (a) provides restrictions on to it. It shows at one side it provides and on the other side it protects and regulates the freedom of press.

b. Legality of sting operation

There is no clear law allowing or legalising sting operation as well, but the Delhi High Court in the case of *Anniruddha Bahal v. State* held it as a legitimate exercise and derived right to conduct sting operation under Article 51A(b) of Constitution of India. Court said, "It is built-in duties that every citizen must strive for a corruption free society and must expose the corruption whenever it comes to his or her knowledge and try to remove corruption at all levels more so at higher levels of management of the State."⁵ Article 51A (b) provides that it is fundamental duty of every citizen of India to cherish and follow the noble ideals which inspired our national struggle for freedom. The court mentioned that to eradicate the corruption sting operation exposing corruption should be

allowed. Thus Article 19(1)(a) read with Article 51A(b) gives the media right to conduct the sting operation with the restriction mentioned under Article 19(2) which protects public interest, morality and decency.

c. Right to Privacy and sting operation

The right to privacy can be defined as the right of a person to enjoy his own presence by himself and decide his boundaries of physical, mental, and emotional interaction with other.⁶ A private individual has the right to limit sharing his personal information with other individuals or entities or the media. Article 12 of Universal Declaration of Human Rights (1948) defines Right to Privacy as- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence not to attack upon his honour and reputation. Everyone has the right to protection of law against such interference or attack. In India again there is no express provision and no law on to it, but it is given by interpreting Constitution of India. Article 21 of it talks about protection of life and personal liberty and right to privacy is implicit to this article. Justice Subbha Rao opined that 'Liberty' in article 21 is comprehensive enough to include privacy. Though he does not explicitly declare it as a fundamental right, right to privacy is an important component of personal liberty and therefore it is not an absolute right but restricted on the basis of public interest. The official work of the public servant should be accountable and there should be transparency in conducting public affairs and it should be open to all as well. Thus it shows that right to privacy do not cover official work at first instance and secondly public interest is given upper hand than the privacy right. Therefore, sting operation is subjected to Article 21 for right to privacy. And when it comes to public interest, it can be subjected to such interest instead of privacy with due care and caution.

d. Right to information and sting operation

Constitution of India gives right to information embodied in right to freedom of speech and expression and right to life. The Right to Information Act is enacted in 2005 deals explicitly with right to information and access to information. It is true that every citizen has right to get access to information but this right is subjected to reasonable restriction and personal information is excluded from the purview of right to know. Sting operations deal with the access to information which is otherwise unable to find out with simple ways and searches. Here the term Public Interest also plays an important role. Sting operations are extent to the public interest only. While interpreting section 8 of Right to Information Act, the court described that information in relation to any public activity or interest can be disclosed otherwise not. Information violating privacy for unjustified reasons can be disclosed. Applicant has to establish sufficient public interest to disclose such information. Therefore while dealing with legality of sting operation when it comes to right to information, Public interest and justified reason is necessary.

4. Judicial discourse and judicial activism

In case of the BMW hit and run, January 1999, Sting operation conducted by media was well appreciated as it brought to light how rich and high profile accused attempted to crush justice and court sentenced him to five year rigorous imprisonment. Though it created lot of questions regarding sting operation but this wouldn't be possible if the sting operation had not revealed the truth behind it. "This would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under Article 19(1) of the Constitution. This is, however, not to say that media is free to publish any kind of report concerning a sub-judice matter or to do a sting on some matter concerning

a pending trial in any manner they please. The legal parameter within which a report or comment on a sub-judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment," Said the Court.

In Jessica Lal Murder Case, 1999, when prime witnesses were hostile because of money and muscle powers, the criminals were acquitted but when sting operation was carried out and revealed the truth behind it. Media collected credible evidence and helped the victim, the court in collecting evidence and protected justice from its miscarriage by sentencing the criminals with life imprisonment in 2006.

Most important case of sting operation where it failed in its ethics and seriously violated the rules of journalism and put an example of the consequences occurred by non regulation of such operation and that is the case of Uma Khurana. The TV channel claimed to have exposed a sex racket run by Uma Khurana who was a government school teacher and this incident becomes an example of how innocent person can be trapped for personal gain. The Court issued guidelines and from then various regulations came into existence.

In death of AMU's Gay Professor, 2010 the sting operation conducted in violation of right to privacy without any public interest ruined the life of professor. The cameras were strictly placed in his apartment and the tape was circulated among university authorities. He was found dead in his home and investigation is still going on. This sting operation played important role in his death. It was seen that it was conducted by the newly launched channel to come into limelight.

A Bench comprising Chief Justice M K Sharma and Justice Sanjeev Khanna said, "Such incidents should not happen and false and fabricated sting operation, directly influencing upon a person's right to privacy, should not recur because of desire to earn more and to have higher TRP."⁷ The bench further added, "No doubt the media is well within its right domain when it seeks to use tools of investigative Journalism to bring us face to face with the ugly underbelly of the society." The court opined, "There is no doubt and there is no second opinion that truth is required to be shown to the public in their interest and the same can be shown whether in the nature of sting operation or otherwise but we feel that entrapment of any person should not be resorted to and should not be permitted."⁸

The Supreme Court in R Rajagopal and another vs. State of Tamil Nadu limits the freedom of press with respect to the right to privacy as, "A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. No one can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy."⁹

This shows that Supreme Court also admitted the acceptance of sting operations which are abide by laws available till the date.

5. Code of Conduct

After fateful incidence of Uma Khurana Supreme Court giving guidelines¹⁰ say that the subject

matter of reports or current events cannot a) deliberately present as true any unverified or inaccurate facts, so as to avoid trial by media, b) present facts and views in such a manner as is likely to mislead the public about their factual inaccuracy or veracity by mixing fact and fiction in such a manner that the public is unlikely to distinguish between the two, c) present a distorted picture of reality by over-emphasising or underplaying certain aspects that may trivialize or sensationalise content, d) make public any activities or material relating to an individual's personal or public affairs, or which invades a person's privacy, unless it involves an identifiable, large issue of public interest, e) create public panic or unnecessary alarm that is likely to encourage or incite the public to commit crime or otherwise lead to disorder or be offensive to public or religious feeling. Media have to observe general community standards of decency and civility in news content, due accuracy and a greater degree of responsibility should be exercised.

News Broadcasters Association setup an authority called News Broadcasting Standards Authority which considers and adjudicates upon complaints about broadcasts. It aims at ensuring privacy and responsible sting operations by news channel. NBA's Code of Ethics and Broadcasting Standards gives the principles of self regulation along with the guidelines to conduct a sting operation.¹¹ Accordingly, prior approval by head of the editorial team is needed along with the persons who will be the responsible for all the consequences. It permits sting operation only if it warranted in public interest and only for exposing a wrong doing opted only when no means for collection of information is available. It is stated in the guidelines that it should not be used to intervene in to individual's privacy. It also prevents media from indulging in to inducing a person to commit a wrongful act. It confers duty upon such media who conducts sting operation regarding safety of such recording with edited and unedited footage without any tampering, manipulating and altering the same. A sting operation must not offend against the provisions of section 5 of The Cable Television Networks (Regulation) Act, 1995 and Rule of The Cable Television Networks Rules, 1994 relating to 'Programme Code' or any other law in force for time being, including Section 24 of the Prevention of Corruption Act, 1988. Telecasting or publishing of such operations must be done only when there is ample evidence to prima facie demonstrate the culpability of a wrong-doer. And if such operation is found false or fabricated, all persons concerned with conducting it could be liable for punishment.

The concept of Mr. Big or the Canadian technique is used for undercover police investigation in Canada and Australia to solve cases and regulated by police procedure.

U.S. Department of Justice, Office of Community Oriented Policing Services published Guide for sting operations in October 2007.¹² Though the sting operations are conducted by Police in U.S.A., the guidelines given to police there can be the useful asset to the Indian Media while conducting such operations. They define it as deceptions with some or the other exceptions. They use deception techniques and tools like disguise, storefronts, professional informers, advertising, sometimes false, the internet, bait cars, surrogates, surveillance and all these is with control and regulations. There are two goals of such operation one is investigation and second is reduction or prevention of specific crimes. And all these provides benefits to police departments as well as fosters a cooperative spirit between prosecutors and police and therefore it increases arrests and decreases crime rate.

6. Conclusion and Suggestions

A sting operation is composed of three separate stages and at each state it should follow the rules and regulations laid down by the court as well as by the various authorities

- a. Before- deciding to conduct a sting operation: It should be according to the guidelines prescribed above. The information if unable to access by simple ways then only the option is followed
- b. During- Conducting the sting operation: It should follow reasonable restrictions and should not violate right to privacy.
- c. After- Editing and using the material gathered from the sting: Credentials should be cross checked, preservation of all footage with edited and unedited forms.

While conducting sting operation the following things should be taken into consideration

- a. Right to conduct sting operation is interpreted under Article 19(1) (a) therefore it is subjected to reasonable restrictions given in Article 19(2)
- b. Public Interest
- c. Right to Privacy of an individual should not be violated
- d. Justified reasons
- e. Guidelines given by the court and the authorities

Constitution is the source of sting operation in providing, protecting and regulating it. But we need comprehensive law to deal with sting operation especially when it comes to legality of it and problem of privacy. The guidelines are not enough but there is a need of an authority established by law to control and regulate such operations. Sting operation needs no adjustment or abolition as per its public interest is concerned but what is required is the regulation which will regulate the mind and heart of media in its true sense.

As Mahatma Gandhi said, "*The spirit of democracy is not a mechanical thing to be adjusted by abolition of forms. It requires change in the heart.*"¹³

(End notes)

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- 5 2010 172DLT 269
- 6 Karnika Seth, Computers Internet and New Technology Laws, 279 (1st ed., 2013)
- 7 Court on its own motion v State, 146 (2008) DLT 429
- 8 Ibid
- 9 AIR 1995 SC 264
- 10 Court on its own motion v. State, 146(2008)DLT429
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