



RIGHT TO PRIVACY STANDING UP AGAINST UNREGULATED STING OPERATIONS

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Abstract

Rights of the journalists to publish the wrongdoing with an aim to discover the truth should not stretch to an extent that it threatens an individual's privacy rights. In the guise of Sting Operations media, private investigation agencies and people on the path of greater good have neglected the need to respect an individual's personal space. There is a need for a better regulatory framework to keep sting operations on the side of serving public good and away from being used as a tool to disrupt public peace. Along with questioning the purpose of sting operations we need to understand its relevance as well, as said by Justice Mathew in the case of *State of UP v Raj Narain* (1975), "The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. Their right to know is derived from the concept of freedom of speech". With the change in understanding of public and private space we need an updated legal framework to cope up with it, a clear distinction is required between stories that expose corruption and political implications and those which amount to invasion of privacy. By drawing a comparison between US laws on sting operations with the ones in India, the author aims at coming up with suggestions and recommendations that will

help in better regulating sting operations without cribbing the right to information.

Keywords: Sting operations, media, privacy, journalist

Introduction

It is easier to choose between liberty and restraint, but to make a judgment call is much harder when two liberties are at odds with each other.

In the context of constitution and media, these two liberties are Right to Freedom of Speech & Expression, a fundamental right drawing its legality from the Indian Constitution and the Right to Privacy¹ also a fundamental right by the milestone judgment of the Supreme Court, declaring privacy a constitutional core of human dignity.²

Free speech and expression extends to media, their purpose is to put forward different understanding towards issues that the citizen of the country has, media either print or virtual works as a tool for different opinion from different masses of the society to be heard by everyone else. To keep these opinions from being manipulated, media enjoys the same freedom of speech as guaranteed to a citizen be that in India or US, the first amendment of the US constitution says, "Congress shall make no law...abridging (limiting) the freedom of speech, or of the press..."³ this amendment

¹ Constitution of India 15-16 (Eastern Book Company, 2018)

² Justice K.S. Putthaswamy and Ors. v Union of India and Ors, (2015) MANU/SC/1218

³ *The United States Bill of Rights: First ten amendments to the constitution*, ACLU,



strengthen the right against the fear of government restraint.

With great power comes great responsibility, media has a indomitable duty on them to make sure that they are not encroaching over the privacy rights of others while trying to enjoy their own freedom of expression.⁴

It has to be understood that over inquisitive media which is the product of over commercialization, is severely encroaching upon an individual right to privacy by crossing the boundaries of its freedom.⁵

At the epitome of this encroachment lies Sting Operations, an operation designed, planned and executed in a way to catch a wrongdoer in the act. A typical sting will have a law-enforcement officer or cooperative member of the public play a role as criminal partner or potential victim and go along with a suspect's actions to gather evidence of the suspect's wrong doing. The purpose behind conducting sting operations is to look into the working of the government for public interest.⁶ Due to evidence of both positive and negative impacts of sting operations we face the question of the change required in the regulatory framework of the Sting Operations if at all we need them.

Overlapping of Freedom of Speech & Expression with Right to Privacy

<https://www.aclu.org/united-states-bill-rights-first-10-amendments-constitution>

⁴ Dr. Poonam Kataria, *freedom of press vis-à-vis right to privacy*, Volume 1, Issue 10, 34-39 (2016)

⁵ Ibid.

⁶ Yogendra Aldak, *Sting Operation To be or not to be?*, Legal Services India, <http://www.legalserviceindia.com/article/1166-Sting-Operation.html>

Scope of Media's Freedom of Speech

Intention of the drafting committee was always to make free speech as a constitutive element of democratic government from free speech as a liberal or human right. As provided in Part III of the Indian Constitution, Article 19 (1)(a) reads, All citizens shall have the right to freedom of speech and expression. Since this right cannot be absolute law makers added reasonable restriction by way of Art 19 (2). Just like the citizen of India, press also derives its right to freedom of expression from the above mentioned articles.

A free press is a fundamental to a democratic society. It seeks out and circulates news, information, ideas, comment and opinion and holds those in authority to account. The press provides the platform for multiplicity of voices to be heard. At national, regional and local level, it is the public's watchdog, activist and guardian as well as educator, entertainer and contemporary.⁷

At US, institutional press have been much debated as well, whether media is entitled to greater freedom from governmental regulations or restrictions than are non-press individuals, groups, or associations.⁸

⁷ *Press Media- Why is it Important*, News Media Association (Last Accessed Sep. 6, 2018), <http://www.newsmediauk.org/Current-Topics/Press-Freedom>

⁸ *Freedom of Expression: is There a Difference Between Speech and Press*, Justia (Last Accessed Sep. 6, 2018), <https://law.justia.com/constitution/us/amendment-01/06-difference-between-speech-and-press.html>



As argued by Justice Stewart, “That the First Amendment speaks separately of freedom of speech of the press is no constitutional accident, but an acknowledgement of the critical role played by the press in American society. The Constitution requires sensitivity to that role, and to the special needs of the press in performing it effectively”⁹

When privacy and press collide

Sipple v. Chronicle Publishing Co¹⁰, a 1984 California case demonstrate dramatically just how far courts had come in sliding with journalists over privacy claimants. Risking his own life, former Marine Oliver Sipple had intervened to save the life of President Ford during an assassination attempt by Sara Jane Moore, knocking her gun away as she was about to shoot. He was hailed a hero. Shortly after the event, newspapers began to report that Sipple was gay. Sipple unsuccessfully sued for publication of private facts. The court held that Sipple’s sexual orientation was newsworthy because it helped to dispel the false public opinion that gays were timid, weak and unheroic figures and to raise the equally important political question whether the President of the United States entertained a discriminatory attitude or bias against minority group such as homosexuals.¹¹

The news for journalism is not all dire. Even today, most courts continue to side with the media in determining newsworthiness, sometimes even in cases involving deeply

⁹ Houchins v. KQED, INC., No. 76-1310 (1978)

¹⁰ Sipple v. Chronicle Publishing Co., 201 Cal. Rptr. 665 (1984)

¹¹ Amy Gajda, *Judging Journalism: The Turn Toward Privacy and Judicial Regulation of the Press*, CLR 1039, 1063 (2009)

private disclosures. But the emerging trends are towards narrower and less predictable judicial conceptions of the news. An approach that relies on ethics codes which judges and juries often simply do not understand will pose increasing hazards as society grows more anxious about the loss of privacy.¹²

Sting Operations: A necessary evil?

Sting Operations, in simple terms is a operation systematically designed to catch a person red handed committing a crime, through the means of deception. A sting operation usually involves an investigative agency such as the media or the police so that those who conduct the sting can lure the person to commit that crime, ultimately catching them in the act it is also seen as undercover journalism. In India, the purpose of sting has largely been to increase the transparency of the government machinery for the larger public good. The dark side of this is the operations conducted by private individuals who at most look forward to defame a person or look for profit making sensetionalization.

There exist both the good and evil of Sting operations which can be much clearer with the instances provided below:

In the year of 1981, an operation was planned by the Indian Express, to expose the sex work and buying and selling of women. This was done by the reporters of Indian express bought a woman in the Dholpur market of Madhya Pradesh, the validity of the news was dismissed. However, when the reporters of tehelka newspaper used hidden

¹² Ibid.



camera in an attempt to expose corruption, sting operations slowly came into focus.¹³

Although, there are some positives of Sting operations, the havoc it creates is of far more greater degree, a news item reported in the daily edition of Hindustan times dated 7th September, 2007 in the respect of a sting operation relating to one Ms. Uma Khurana. Prior to the said date, “Live India” a television news channel aired a programme about the above said sting operation, showing Ms. Uma Khurana, a teacher with a Delhi Government school, purportedly forcing a girl student into prostitution. Subsequent to the said telecast, aghast at the said act of the teacher, a crowd gathered at the school gate and started raising slogans demanding handing over of Ms. Uma Khurana to them. In the commotion and mayhem that followed some persons physically attacked Ms. Uma Khurana and even tore her clothes. Shocked by the aforesaid incident and consequent to public outcry the Directorate of Education, Government of Delhi first suspended Ms. Khurana and later dismissed her from service, in exercise of special powers vested in the Government. Police also sprung into action and started investigation. Later the aforementioned news item was published in the Hindustan Times which indicated that there was something more to the whole string operation than what met the eyes. In the aforesaid news item it was stated that the girl who had been shown as a student who was allegedly being forced into prostitution by Ms. Uma Khurana was neither a school

girl nor a prostitute but a budding journalist eager to make a name in the media world.¹⁴

How the judiciary see sting operations

Justice Mathews ruled in the case of *State of UP v. Raj Narain*¹⁵, ‘The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. Their right to know is derived from the concept of freedom of speech’.

It said unlike the U.S. and certain other countries where a sting operation is recognised as a legal method of law enforcement, though in a limited manner, the same is not the position in India.

In *Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors v. Union of India*¹⁶, the Court emphasized that the freedom of press and information were ‘vital for the realization of human rights’ and relied upon Article 19 of Universal declaration of Human Rights. The heart of journalism has to be public interest and sting operation serve it, most of the times.¹⁷

This being said, the problem in the opinion of the author is that a Sting operation to its fundamental nature is deceptive. Even though we consider that these operations are designed to nab criminal they still are weak

¹³ Economic and Political Weekly, *Media Sting*, EPW Vol 42 p-7, 7 (2008)

¹⁴ Court on its motion v State, (2008) 146 DLT 429 (India)

¹⁵ State of UP v Raj Narain & Ors, (1975) SCR (3) 333

¹⁶ Indian Express Newspapers v Union of India & Ors, (1984) 1985 SCR (2) 287

¹⁷ Palak Jain, *Sting Operations as Evidence in India*, Academike : Articles on legal issues, (Sept. 5, 2014), <https://www.lawctopus.com/academike/sting-operations-evidence-india/>



on the aspect of moral ethics.¹⁸ The individual who is the subject of operations may or may not be innocent but is lured into committing the crime. Also is it right holding that person responsible for committing the crime which he may not have committed in the regular course of events?

Changes in law: Need of the hour

India does not have a specific law regarding sting operations; neither do have judicial precedents that can help in better understanding Sting operations conducted by media. Though there are Supreme Court judgments that support privacy rights over sting operations such as, in the case of *Khadak Singh v. State of UP*¹⁹ said that, “right to privacy that flows from Article 21 couldn’t be invoked against private entities. It cannot be denied that it is of practical importance that a precarious balance between the fundamental right to expression and the right to ones privacy be maintained. ‘Right to Privacy’ has ceased to have any pragmatic value where ‘sting operations’ define the order of the day. The right to privacy is an alleged human right, which may restrain both government and private party action that threatens the privacy of individuals. It has been recognized as a

fundamental right by the Hon’ble SC under Article 21”.²⁰

In the case of *R.Rajagopal and Anr v. State of Tamil Nadu and Ors*²¹, Supreme Court further puts light on the limits of the freedom of press, “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.”²²

We still don’t have laws governing sting operations; there is the classic ethical problem that haunts all sting operations: can somebody responsible for a crime that he would not have committed if you hadn’t encouraged him? The essence of all entrapment is that you promise a man a reward for breaking the law and then, apprehend him when he takes the bait. All sting operations involve making people commit crimes that they would not

¹⁸ *Sting operation not a legal method of law enforcement: Supreme Court*, *The Hindu*, (June. 24, 2016), <https://www.thehindu.com/news/national/sting-operation-not-a-legal-method-of-law-enforcement-supreme-court/article5944283.ece>

¹⁹ *Khadak Singh v. The State of U.P & Others*, (1964) SCR (1) 332

²⁰Yogendra Aldak, *Sting Operation To be or not to be?*, Legal Services India, <http://www.legalserviceindia.com/article/1166-Sting-Operation.html>

²¹ *R. Rajagopal and Anr v State of T.N and Ors*, (1994) SCC (6)632

²²Yogendra Aldak, *Sting Operation To be or not to be?*, Legal Services India, <http://www.legalserviceindia.com/article/1166-Sting-Operation.html>



otherwise have committed and are therefore immoral. It is against the public morality and decency and hence falls within the purview of Article 19 (2).

Although there is no law governing them, sting operations still hold legality, drawing it from Art 19(1)(a) interpreting as right to know and dissemination of information. In the case of R.K Anand v. Registrar, Delhi High Court, court said that Sting operation is a necessary evil. Court cannot stop media from opening these doors. Therefore Sting Operations are legal in nature.

Not ignoring the fact that in R.K Anand case the court also said that Sting Operations are not acceptable in all cases, “a crime does not stand obliterated or extinguished merely because its commission is claimed to be in public interest. Any such principle would be abhorrent to our criminal jurisprudence. At the same time the criminal intent behind the commission if the act will be alleged to have occasioned the crime will have to be established before the liability of the person charged with the commission of crime can be adjudged.”²³ Still no guidelines were provided by the court, only after Uma Khurana sting court understood the need for guidelines. These guidelines asked the channel telecasting sting operations to obtain a certificate from the person who recorded it along with concurrent record in writing of the various stages of the sting operations.

The matter of concern in these guidelines in point 12 which says, “Channels must not use material relating to persons personal or

private affairs or which invades an individual’s privacy unless there is identifiable larger public interest reason for the material to be broadcast or published”²⁴

A matter of grave nature cannot be regulated by such vague guideline, as established before, media as far as sting operations in India is concerned includes an India citizen as well. Identifiable public interest has to be narrowed down to much more specific subjects.

Drawing inspiration from US Law

According to the criminal justice system of the United States, entrapment is when a person is coerced, compelled, or induced into committing a crime that they otherwise may not commit. This is different than a sting operation since, in a sting an atmosphere is developed by the people conducting sting where the victim may knowingly conduct a crime. These fine margins differentiate a sting operation from an entrapment.

As far as the US Law is concerned, law enforcement officers are allowed to engage in sting operations, whereby they create circumstances that allow individuals to take criminal actions that they can then be arrested and prosecuted for. These are considered “opportunities” for individuals believed to be involved in criminal behavior to commit crimes. An opportunity is considered very different from entrapment

²³ R.K Anand v. Registrar, Delhi High Court, (2009) MANU/SC/1310/2009

²⁴ Guidelines by Delhi High Court on Sting Operation, Unique Legal Database (Aug. 20, 2012), <http://www.lawweb.in/2012/08/guidelines-by-delhi-high-court-on-sting.html>



and involves merely the temptation to violate the law, not being forced to do so.²⁵

The office of US Department of Justice, published manuals developed on empirical data titled “Sting Operations: The Pros and Cons of such undercover operations”, which offer a conclusion that sting operations can be expensive, are demanding on personnel and generally offer limited relief from crime and disorder problems²⁶

Furthermore, this interpretation and analysis refers to the police departments and not to media functionaries or media practice. This is because in the United States, nobody except the Federal Bureau of Investigation is legally permitted to execute sting operations: the media is not. In India, the common link that the layman finds between a sting operation and the person who carry it out is the media and not the police²⁷

Conclusions and Suggestions

As said before, its easier to choose between liberty and restraint but to make a judgment call is much harder when two liberties are at odds from each other.

Freedom of speech and expression is the bulwark of a democratic government and is thus to be understood as the mother of all liberties mandated under the constitutional

framework.²⁸ In the present world the justification given for sting operations by media is that press has taken the responsibility to bring the criminals in the light of public view when the law enforcement agencies themselves are unwilling to do that. What we don't focus on is, since there is no code of conduct regarding sting operations it just becomes a instrument for gaining viewership and TRP. When an issue of grave serious nature is turned into a television series or seen as a spectacle the manipulative impact it has on individuals is unimaginable.

In India there is a dire need for a regulatory framework to manage sting operations, like United States where a private entity be that it is media or an individual cannot conduct a sting operation. The purpose of a sting operation is to bring out the truth which has public importance attached to it, when that is not the case its nothing more than a violation of privacy rights. Furthermore, as far as broadcasting is concerned, we need a solid self regulatory mechanism to monitor what media broadcast on live television, monitored preferably by an autonomous quasi-judicial body that has powers of both censure and enforcement. The Indian media does make pious noises in this regard, but it is not serious about subjecting itself to self regulation.

²⁵ Shoma A Chatterji, *Sting Operations and the Ethics of Journalism*, Kerala Media Academy (Last Accessed: Sept. 6, 2018), <https://mediamagazine.in/content/sting-operations-and-ethics-journalism>

²⁶ Ibid.

²⁷ Ibid.

²⁸ Report of the Second Press Commission, Vol. I, 64-35 (Last Accessed: Sept. 6, 2018)