

Investigative Journalism And Sting Operations By Electronic Media Vis-A-Vis Right To Privacy

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“The hand that rules the press, the radio, the screen and the far special magazine, rules the country”

Justice Hand

INTRODUCTION

In a democracy, accountability and transparency are two important components of a healthy and real democracy. Transparency and accountability demand freedom of expression which is implicit in right to know. As Media is considered to be the fourth pillar of democracy, so it is obligatory on the part of government to allow media in performing their role as a savior of democracy to preserve the values & basic principles of democracy. Journalism through its investigatory means peeps into private lives of people in the name of investigative journalism, which in some cases violates the precious right of privacy which is also part of right to life. In this paper I would like to discuss the role of electronic media in conducting sting operations in the name of investigative journalism to unearth misdeeds of the government institutions as well as private individuals.

Investigative Journalism

Investigative Journalism is when a journalist uses his or her investigative skill to uncover or find a story that is reported in depth to the public. With the kind of journalism, the journalist is often in the field reporting, as they research clues and hints that will help them further to uncover their story. Like most investigations, journalists typically start with something very small. This might include a witness who saw an event taken place, a document that was released to the public, or something similar. Using these details journalists launches an investigation into the matter. It is followed by talk to other witnesses, try to interview key players, research public domain material or even receive tips from inside sources. Investigative journalists might report

from a court proceedings that is taking place or from a scene of a crime that has been committed or even the home of person of interest.¹

All Investigative journalism is basically against the system. Investigation journalism “Comfort the afflicted and afflict the comfortable”. In journalism, every report has to be investigative otherwise you are a stenographer. In Indian Context, investigation is through inducement or in real scene.² Thomas Griffith described the role of journalist in just one sentence, “discovery in his job”.

Investigative journalism has to necessarily take the help of surreptitious methods and intrusive operations. Without intruding into the domain of wrongdoers, and surreptitiously securing the documents or key information, the scandals cannot be exposed. Scam hunting, being a very important component of investigative reporting, is an essential feature of media. Investigative journalism brought out bitter truths like ‘Bhagalpur blinding’ in Indian Express, ‘Boforse exposure’ in the Hindu, ‘Commercial exploitation’ of a Prime Minister Indira Gandhi’s name which collected donations from industrial houses and cement manufacturers by a Chief minister A.R. Antuley), favouritism in allotment of government accommodation and petrol pump licenses etc.³

Sting Operations

The word ‘sting’ derives its origin from 1930’s American slang. It means an act of theft or fraud, especially one that was carefully planned in advance and sifly executed. The term then evolved in 1970’s American usage to mean a police undercover operation designed to ensnare criminals. In this latter sense, ‘sting’ is therefore a synonym of the expression ‘set a trap to catch a crook’. Sting, as the dictionary defines, is a shall sharp organ of an insect or a plant, capable of injecting a painful does of poison.⁴ Sting operation is a new face of journalism.

A sting operation also known as Dansh-Patrarita in Hindi is an operation designed to catch a person committing a crime by means of deception. A typical sting will have a law enforcement officer or co-operative member of the public plays a role as criminal partner or

¹ Carter Kristi, *Investigative Journalism 101*, available at: <http://www.suite101.com/referemce.investigative.Journalism>. (visited on dated March 25, 2015)

² Promoting International Investigative Journalism vis-à-vis. Indian Investiagative Journalism, available at: www.worldbank.org.pdf. (Visited on March 25, 2015).

³ Dr. Sridhar Madabhushi, *The Law of Expression (An Analytical Commentary on Law for Media)*, 726 (Asian Law House, Hyderabad, 2007).

⁴ Available at: www.wikipedia.com. (visited on March 27, 2015).

potential victim and go along with a suspect's actions to gather evidence of the suspect's wrongdoing.⁵

Sting operations by Media

Indian Media has played a critical role for stirring up the conscience of the people. Media has achieved great heights with the latest technology. The presence of media in our society assures us, the justice in every way. Sting operations by media reveal the truth about the corrupt politicians, big bureaucrats, under world dons, spies, two facet policemen etc.⁶ The official work of the public servant should be transparent and open to all as it is in the public interest. Sting operations began with a handable objective of exposing corruption in high places and degenerated into cheap entertainment.⁷

The News Broadcasters Association (NBA) justified sting operations as “illegitimate journalistic tool”. Mr. kumar Shakti Shekhar, a correspondent of N.D.T.V., Bhopal said, sting operations take place in public interest where public money is involved. Sting operations are carried out in hospitals which bring out the problems of paucity of doctors in hospitals, absence of medicines and medication.

The most famous sting operation in India is the Tehalka case. In this sting operation the aim was to expose the corruption underplaying India's largest defence contracts by using spy cameras. In Tehelka tapes, the reporter Mathew Samuel poses as a representative of the fictitious large arms supplier West End. Total 105 tapes were shot by reporter. Tapes showed several political figures as well a army top officials, eagerly accepting and handling out bribes. The result was that Defence Minister George Fernandes gave resignation, after the tapes were made public. Part of the tapes show the treasurer of his party talking about accepting bribes upto 10 million rupees from an ex-naval officer. The Government instead of acting on the evidence, accused Tehelka of fabricating allegations. Five years later CBI filed charges against George Fernandes and others.⁸ CBI in its appeal to the Supreme Court emphasize that any individual conducting a sting operation to expose public official, must be penalized, that person must

⁵ Ajay Dash, *Sting Operation and Law*, 52-53 (Discovery Publishing Pvt. Ltd., 2007).

⁶ Rakesh Chopra, *Is Sting Operation Justified?* Available at: www.liveindia.com/news/sting/html. (Visited on March 28, 2015).

⁷ Charu Modi, *Look if one cannot violate your privacy (An Overview of Sting Operation)*, available at: www.rmlnl.ac.in/notic_pdf/charu-article. (visited on March 26 2015).

⁸ Suhani Jain; *Undercover Reporting JMSC0019 : Media Law and Ethics*, available at: www.slidefinder.net/s/section_hidden_camera_undercover (Visited on March 31, 2015)

inform a competent law enforcing agency. This notification must be made either before or immediately after the operation is conducted. Such an agency needs to be independent from the Government and free from any pressure. Otherwise, it will impede the achievement of justice and disclosure of truth. The primary reason stated by the CBI for its appeal is that 'law enforcement' is the government's and judiciary's responsibility. Moreover, allowing the private citizen to take law into their own hands may result in complete anarchy in the society. The CBI went on to justify that authorizing sting operation will encourage individuals to satisfy their vested interests, which may be political or commercial, on the pretext of exposing a crime of corruption. This may result in chaos and disorder in society.⁹

So in some cases using deceptive means for investigating a public interest story is required and therefore, even though it is deceptive in absolute terms; it is investigative journalism in actual terms. When a certain wrongdoing is going on secretly, then the journalism needs to become a part of the system to reveal the concealed flow in the system. The interests are not simply to investigate an individual's private life or get a 'scoop', but it is to expose the shortcomings in an important institution of society.

Jessica Lal murder Case

In this case, Tehelka carried out sting operation following Manu Sharma's release. This uncovered details of the witnesses coercion process, and alleged that money was being paid directly by Venod Sharma (Ex-M.P.) offices to some of the witnesses. Venod Sharma was directly mentioned by several people, such as a friend of eye-witness Karna Rajput.

Some other Major Sting operation by Electronic Media

Aaj Tak

1. Tihar Jail Bani Ghos Mahal: Officials at Tihar Jail taking bribes.
2. Ghos Mahal: 82 employees of the Delhi tax office taking bribes.
3. Operation Duryodhan: 11 MPs caught taking bribes to raise questions in parliament.

Star News

1. Ayaash IG: Jharkhan IG suspended for sexually exploiting a tribal woman.
2. Doctor selling infants from hospital.
3. Operation Chakravyuh: MP's caught misusing MPLAD funds.

⁹ *Ibid.*

India TV

1. Bihar MLAs having sex with call girls.
2. Holy men sexually exploiting women devotees.
3. Operating Casting Couch: Actor Shakti Kapoor Propositions Journalist posing as actress.

NDTV India

1. Delhi policeman taking a bribe to hand over the body of a man to his family.
2. Railway policemen extorting money from passengers.

Sahara Samay

1. Corruption in Delhi PWD
2. Kokh Mein Katl (Murder in Womb) expose the breed of doctors conducting illegal abortions after sex determination in the State.

Landmark Judgment on sting Operation

In the landmark judgment in R.K. Anand v. Delhi High Court¹⁰ the Supreme Court examined important questions relating to trial by the media. The case arose out of a sting operation carried out by a private television channel, NDTV to expose the unholy nexus between the prosecution, its witness and the defence in the infamous BMW hit and run case resulting in the death of six persons by a speeding BMW car driven by the scion of a wealthy and influential family.

Sting Operations and Television Rating Points

One of the basic reasons to carry out sting operations is to increase Television Rating Point (TRP) rating or to “interest the Public” rather than “Public Interest”.¹¹ Sting operation is on increase on almost every channel of electronic media. The purpose is to show something different for exposing corruption and social evils prevailing in the society. Every channel has appointed special investigator equipped with sophisticated special equipments and hidden cameras. No doubt, these sting operations of media has been forcing the Government and its officials to act diligently and in a transparent manner but this role of public awareness also thrust a heavy responsibility on media to act without crossing the limits. Otherwise an individual has to pay its price against whom the sting operation was telecast.¹²

¹⁰ (2009) 8 SCC 106.

¹¹ Supra n. 8.

¹² Tyagi R.P., *Trial by Media (Sting Operation)* 19 Mass Media in India, Publication Division, Ministry of information and Broadcasting, Government of India (2009).

One of such case, in which a teacher was to pay the price against whom sting operation was telecasted is of Ms. Uma Khorana's case.¹³ She was a teacher in Delhi Government School. Sting operation was telecast against her on 'Live India' a television news channel on 30.8.2007 in which she was dubbed as racketeer of prostitution who was purportedly forcing a girl student into prostitution. After this telecast she was beaten by the public at the gate of her school who also tore her clothes. Police sprung into action and saved her from public outrage and arrested her. Due to public outcry after seeing her sting operation, the education department of Delhi Administration hurriedly, first suspended her and later dismissed her from service. Later on, it was revealed that the girl who has been shown as a student was not school girl but a budding journalist and one of the conspirator behind this sting operation had some monetary dispute with MS. Khurana.

The Hon'ble Delhi High Court suo moto took cognizance of this fake sting operation and issued notice to Delhi Administration and Delhi Police. The Police gave clean chit to Ms. Uma Khurana and charged the conspirators.

In *Court on its Own Motion v. State*¹⁴ The Hon'ble Delhi High Court observed in its order, "such incident should not happen and false and fabricated sting operation directly infringing upon a person's right to privacy should not recur because of desire to earn more and to have higher TRP rating".

"There is no doubt and there is no second opinion that truth is required to be shown to the public in public interest and the same can be shown whether in the nature of sting operation or otherwise but what we feel is that entrapment of any person should not be resorted to and should not be permitted"

"Sting operations showing acts and facts as they are truly and actually happening may be necessary in public interest and as a toll for justice, but a hidden camera cannot be allowed to depict something which is not true, correct and is not happening but has happened because of inducement by entrapping a person".

"No doubt the media is well within its rightful domain when it seeks to use tools of investigative journalism to bring us face to face with the ugly underbelly of the society. However, it is not permissible to the media to entice and try to actively induce an individual into

¹³ *Court on its own motion v. State* Writ Petition (Crl. No. 1175/2007).

¹⁴ Writ Petition (Crl. No. 1175/2007).

committing an offence, which otherwise he is not known and likely to commit. In such cases there is no predisposition. If one were to look into our mythology even a sage like ‘Vishwamitra’ succumbed to the enchantment of ‘Maneka’. It would be stating the obvious that the media is not to test individuals by putting them through what one might call the ‘inducement test’ and portray it as a scoop that has undercover a hidden or concealed truth. In such case, the individual may as well claim that the person offering inducement is equally guilty party to the crime that he/she is being accused of. This would infringe upon the individual’s right to privacy.¹⁵

Undercover, Using of hidden cameras or microphones: A deception?

An undercover operation is an investigative technique. In this there is an operative who may be an undercover agent, who assumes a covert identity or purpose, or a confidential informant, who takes action to gain evidence. The journalist is using a fake identity and telling false facts in order to extract information that may not usually be available to him. The use of undercover operations is an essential technique in the detection and investigation of criminal activity involving tax and money laundering offences.¹⁶

It brings up issues of infringement on privacy and using false identity. Using of microphone or camera, without the person’s consent is an infringement of his privacy. It is considered unethical. Going undercover is a deception.¹⁷

Sting Operation and Right to Privacy

Article 12 of the Universal Declaration of Human Rights and Article 17 of International Covenant on Civil and political rights recognize privacy as a valuable human right.¹⁸

American Supreme Court defined Right to privacy as “the right to be let alone, the most comprehensive right and the most valued by civilized men”.¹⁹

The Supreme Court of India defined Right to privacy as “The state of being free from intrusion or disturbance in one’s private life or affair”.²⁰

¹⁵ *Ibid.*

¹⁶ *Supra* n. 5, p. 55.

¹⁷ *Supra* n. 9.

¹⁸ Universal Declaration of Human Rights 1948, Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

International Covenant on Civil and Political Rights, 1966, Article 17: (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation; (2) Everyone has the right to protection of the law against such interference or attacks.

¹⁹ *Olmstead v. United States* (1927) 277 US 438.

The right to privacy is engraved as a fundamental right under Article 21 of the Constitution which ensures 'Right to life and personal liberty'.²¹ However, Right to privacy is not recognized as a distinct right under the constitution but the apex Court has declared that it is implicit in the right to life and emanates from it. In *Govind v. State of Madhya Pradesh*,²² it was held that the right to personal liberty and the right to move freely could be described as contributing to the 'right to privacy'.

In *R. Raja gopal v. State of Tami Naidu*²³ the Supreme Court again confirmed that right to privacy is implicit under Article 21 of Constitution. The court observed: A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, mother hood, child bearing and education among other matters. None can publish anything covering the above matters without his consent-whether truthful or other wise 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 for damages.

Article 19(2) of the Constitution of India provides that nothing in Sub-clause (a) of Article 19(i) shall bring defamation to a person. The media who got the freedom of speech and expression is also bind by the restrictions. So it has no right to violate the privacy of an individual and defame him.

Sting operations have raised many questions relating to citizen's privacy or violation of existing laws. As video cameras, their digital successors and CCTV become wide spread; this type of 'caught on camera' incident becomes more and more common. The use of unauthorized and unauthenticated camouflaged cameras poses real problems. The evidence they provide may be inadmissible for numerous reason. Like the probabilities of editing, lack of clear audio and video imaging, unavailability of exact dates, times and places etc.²⁴

Tapping of telephones and Right to Privacy

It is most common incidence of invasion of one's privacy. It is an easiest way to track the information about others private affairs. Telephone conversation or communication through telephone is an indispensable part of modern man's life. A lot of business whether personal or

²⁰ *Sharda v. Dharampal*, JT 2003 (3) SC 399.

²¹ The Constitution of India- Protection of life and personal liberty, Article 21: No person shall be deprived of his life and personal liberty except according to procedure established by law.

²² AIR 1975 SC 1378.

²³ AIR 1995 SC 264.

²⁴ "Sting Operations- An Invasion of Privacy" CNN 39-41 Vol. 3, No. 9, September 2005.

professional is done on telephones. SO one has a right to hold telephone conversation in the privacy of one's home or office without interference. Hence any interception, is an intrusion in one's privacy, except the provisions of the Indian Telegraph Act, 1885.²⁵

In *People Union for Civil Liberties v. Union of India*,²⁶ the apex court held that telephone conversation could certainly be claimed as right to privacy. It is an important fact of man's private life. Therefore telephone tapping would infract Article 21, unless it was permitted under the procedure established by law.

News Broadcasting Association

Represents the private television news and current affairs broadcasters. The News Broadcasting Association (NBA) has established commonly accepted content guidelines as a way of practicing self-regulation. The purpose is to define editorial principles which are consistent with the tenets of the freedom of speech articulated in the Constitution of India; the regulatory framework; common sensibilities of television viewers.²⁷

In some of the areas where the broadcasters seek to self-regulate are Impartiality and objectivity in reporting; Ensuring Neutrality; Reporting on crime and safeguards to ensure crime and violence not be glorified; Depiction of violence or intimidation against women and children; sex and Nudity; Privacy; Endangering national security; Refraining from advocating or encouraging superstition and occultism; sting operations; Corrigendum; Viewer feedback.

As a guiding principle, sting and undercover operations should be a last resort of news channels in an attempt to give the viewer comprehensive coverage of any news story. News channels will not allow sex and sleaze as a means to carry out sting operations, the use of narcotics and psychotropic substances or any act of violence, intimidation, or discrimination as a justifiable means in the recording of any sting operation. Sting operations will also abide by the principles of self-regulation mentioned above, and news channels will ensure that they will be guided, as mentioned above, by an identifiable larger public interest. News channels will as a ground rule, ensure that sting operations are carried out only as a tool for getting conclusive evidence of wrong doing or criminality, and that there is no deliberate alteration of visuals, or

²⁵ The Indian Telegraph Act, 1885, Section 5 (2), It empowers the Central government or the state government or any specially authorized officer, to intercept messages if satisfied/that it is necessary or expedient to do it in the interest of the Sovereignty and Integrity of India, Security of the State, Friendly Relation with Foreign States, public order or preventing incitement to the commission of an offence.

²⁶ AIR 1997 SC 568.

²⁷ http://www.nbanewdelhi.com/pdf/final/NBA_code-foethics_english.pdf (Visited on 23 March, 2015)

editing, or interposing done with the raw footage in a way that it also alters or misrepresents the truth or presents only a portion of the truth.

The power of pen and urge to look beyond the mirror has given birth to investigative journalism. The hidden cameras which catch the reality, give hard time to the ones who befool others, such a move of the media is criticized as it is an intrusion and illegal way of obtaining evidence. Investigation is the job of investigative agencies like CBI. Media instead of concentrating on the facts of case, has started sensationalizing the cases particularly the criminal cases. Such trial by media has been criticized by courts. Media handles such a portfolio where it has to play its very responsibly. The law does require the players in this activity to keep within certain limits. These limits flow from: the right to reputation, the right to privacy and the law of contempt of court. “Paparazzi” by media is another stunt by media. It is following celebrities with cameras, in order to know what is going on his/her life. The publicity stunt causes irreparable damage to one’s privacy.²⁸

Conclusion

It is clear from the discussion that electronic media is playing pivotal role in preserving and protecting the basic principles upon which democracy is established, continuous surveillance upon the commissions and omissions of government and non-governmental institutions is must for survival of accountable and transparent governance. It has been noticed that sometime electronic media in the name of unearthing scams, scandals and misdeeds of the government institutions encroach upon the private lives of the individuals which is being objected as illegal and immoral act. In the end, I am of the view that balance should be maintained in upholding the freedom of media especially electronic media as well as right to privacy for a healthy and sustainable democracy. Media must go back to trenches and rediscover the basics. An excessive zeal to praise or blame cannot be the basis of good reporting. Every democracy gets the government it deserves and every society its media. It should act as torch bearer for the society.

²⁸ Radhika Thapar, “Right to Privacy under Indian constitution” *Insight Legal Essays* 83 (Shreeram Law House, Chandigarh 2010).