

LEGAL ANALYSIS ON THE VALIDITY OF STING OPERATIONS IN INDIA

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ABSTRACT

Sting Operation is a secret operation formulated in order to prevent people committing a crime through deception. A complicated confidence game planned and executed with great care. The word sting derives its origin from American usage to mean a police undercover operation designed to ensnare criminals. The word sting is a synonym for the expression set a trap to catch a crook and this article uses the term in that sense. In more refined terms, it can be called Investigative Journalism or Undercover Journalism. Sting Operation is an information-gathering exercise; it looks for facts that are not easy to obtain by simple requests and searches, or those that are actively being concealed, suppressed, or distorted.

The backbone of democracy is an educated voter, and keeping the government accountable by voting and engagement necessitates investigative journalism, which cannot survive on asymmetric information dissemination. In certain cases, the targets of the reporting prefer that the details of the investigation remain hidden. Reporting on corruption and misdeeds by politicians and government officials is one of India's most common programmes. Many true stories of the day are reported in 'Candid Camera,' including the bribe that a police detective extracts from a crime suspect before promising to investigate, and the 'fee' that a government official owes for granting the order to build an electric connection, and a monetary payment made by a corporation to a member of Parliament in exchange for raising a legislative issue in the Lok Sabha.

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Do we need Sting Operations as a result of all of this? Around the same time, as clandestine tactics are used in forensic work, it poses questions that further blur the distinction between law and ethics. Is it permissible to deceive when the aim is to say the truth? Is any approach justifiable, regardless of the working conditions or the difficulty in obtaining data? Is it possible for news reporters to obtain a storey using concealed cameras? Is it possible for journalists to use fictitious identities to gain access to information? The crucial question that arises is how far should the media go and how much information can an individual have?

RESEARCH PROBLEM

Sting operations have been compromised of inquiries of objectivity and legitimacy that makes it difficult to manage because a journalist has already been pre-loaded with information for or against a person or something. The right place for sting operations cannot be estimated objectively because the journalist might be targeting a person where on a particular point he might be biased towards or against the target. Further, looking into the constitutional perspective on the question of legitimacy of information from the sting operations can be another significant issue for thought.

RESEARCH QUESTION

1. The Question of Admissibility of Evidence Obtained Through Sting Operations.

It is suggested that whenever in some cases there are pieces of evidence, which are supposedly to be procured by secretive or illegal means, courts must exercise discretionary powers when such means has influenced the dependability of the evidence, further, affecting the fairness of the trial. In order to secure the criminal justice system, it has certainly become essential to admit the evidence obtained through sting operations. The courts have decided in various judgements that the discretionary powers of the court should not only be used to for discipline of the procurer, it must also consider with the onus of protecting the right to a fair trial.

2. The Question of the positive or negative impact of sting operations in India.

Looking into the purpose, there is a possibility of delegation of sting operations can be put a question. Both the positive and the negative sides have dealt sting operations from a different viewpoint. The positive are in the light to maintain peace and order in the state. It has been looked to legitimate the overall concern to penetrate the cover of the government's working procedure. The other side do not actually benefit the general public, rather they have been sensationalized to build the viewership called as 'breaking news' by encroaching the privacy of the individual.

SCOPE

The scope of this study is limited to the study of Sting operations in India. The scope of this research paper shall extend to analyzing the challenges and problems faced by conducting sting operations in India.

OBJECTIVES

The objectives of this research paper are

- I. To analyze and define the purpose of sting operations.
- II. To study the provisions of Media Law in context with the sting operations in India.
- III. To examine the challenges faced by the Sting operations in India.
- IV. To study the admissibility of evidence from sting operations in the courts.
- V. To understand the question of the legality of sting operations in India.



LITERATURE REVIEW

1. **Devanarayanan, *Sting Operations through Journalism in India: A Legal Perspective, Lawbhoomi Publications***

The author describes that Journalism is often referred to as the voice of the voiceless. It brings into light everything that occurs in the darkness of nights and is hidden from the eyes of the citizens. Journalism has become a mode of spreading awareness and demanding justice against what is wrong. It has continued through its reports whether print or visual kept a keen eye on everything that goes on in society. One of the remarkable outcomes of Journalism is Sting Operations which revolves around social and is often termed to be the new age journalism. Print media refers to Sting operations as 'Expose'.

2. **Ravi M. Khanna Kumar, *Sting journalism, its perils and promises, Impactonnet.com/ Journals***

The author states that the journalists must understand that sting journalism seems to be an easy way, however it can make the media lose its credibility and legitimacy, further the media are being blamed for indulging in 'paid news'. Therefore, problems are in-built in the very nature of sting operations especially in India. The News Editors also do not have any way to verify the data collected from the reporters, hence they depend on the honesty and credentials of the reporters directly which sometimes might be risky.

3. **Shoma A. Chatterji, *Sting Operations and Ethics of Journalism, Media Journal Publications***

The author elaborates on sting operations that sometimes it is dramatized for manipulation of truth which becomes a delicate issue. It is strongly dependent on the media, to what extent the sting operations can be executed. If the media believes in keeping away such operations, then some essential truths might be unexposed to the public which could be the need off the hour. On the other side, if media members execute sting operations, it might lead to unnecessary controversy, questions raised by the society, suits filed by different parties and primarily the authenticity of the operation.

The current situation clearly states that political corruption is at its peak, be it the existing party or the opposition. It is extremely difficult to identify whether the sting operations are politically moved or not.

HYPOTHESIS

This Research paper contents that sting operations does put many hidden facts into the limelight of the general public, however, such operations must be put in a restricted sense as well.

RESEARCH METHODOLOGY

The research methodology adopted is a doctrinal form of research methodology. This research paper focuses predominantly on laws, statutes, and articles related to Media law.



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INTRODUCTION

Sting operations are carried out to determine the government's operations or to ascertain if any individual's actions are in violation of the public order. Sting Operations may be graded as positive or negative depending on their intent. Positive Sting Operation serves the greater good of society by piercing the government's cloak of secrecy. It is carried out for the benefit of the general public.

Society is benefited from a successful sting operation because it holds private and government bodies liable and accountable. It contributes to country's check and balance system. Negative sting operations, on the other hand, do not help the society; rather they harm the society and its people. It infringes on an individual's privacy unnecessarily and achieves little societal benefit. In India, freedom of the press is derived from freedom of speech and expression. The media has a responsibility to provide accurate information to the public, and therefore plays an important role in a democratic society. Journalism must always be in the public interest, and sting operations aimed at exposing corruption should do the same. A sting operation with a legitimate goal of raising awareness or bringing current corruption to light should not be prohibited. To protect the very essence of India's Constitution, a line must be drawn between sting operations that violate privacy and those that reveal corruption and others.

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Are Sting Operations required?

In a democratic society, the media plays a crucial role. It serves as the government's fourth pillar. Sting operations are methods for gathering information. Although the Indian Constitution does not expressly mention press freedom, it is clear that it is included in the freedom of speech and expression under Article 19(1). (a). Various constitutions have made freedom of press or media a fundamental right. The freedom of the press is a special right under Article 19(1)(a) of the Indian Constitution of 1950, but it is subject to certain restrictions. The degree of freedom enjoyed by the media in a given state is used to assess a country's democratic credentials. Furthermore, the media has the right to disseminate information to the general public.

Freedom of expression includes the ability to communicate, advertise, publish, or communicate ideas, as well as the dissemination of information. Furthermore, Art. 19(1) includes the right to receive information about any event, happening, or incident, etc. The public interest must be at the heart of journalism, and sting operations serve that purpose.

In **Romesh Thappar v. State of Madras Court**¹ said, the public interest in freedom of discussion (of which press freedom is one aspect) stems from the requirement that members of a democratic society be sufficiently informed to influence intelligently decisions that may affect them. As per some, the fundamental principle at stake here is the right of the people to know.

The Court found this concept of people's right to know, which was found to be so essential for democracy, in Article 19(1)(a) in **Bennett Coleman and Co. v. Union of India**², observing that "although Article 19(1)(a) does not mention freedom of the press, it is settled view of the Court that freedom of speech and expression includes freedom of the press and circulation."

The Supreme Court held: The press has a fundamental right to express itself; the community has a right to information; and the government has a responsibility to educate the people within the limits of its resources. In the case of **State of UP v. Raj Narain**³, Justice Mathews ruled, "The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries⁴."

In **S.P. Gupta v. Union of India**⁵, No democratic government can survive without accountability, and the basic principle of accountability is that the public should be informed about how the government operates.

In **Prabha Dutt v. Union of India**, The Supreme Court of India upheld the right claimed by the press to interview prisoners, ruling that the right claimed by the press was not the right to express any particular view or opinion, but rather the right to information through the medium of interviews with prisoners. In **Indian Express Newspapers (Bombay) Private Ltd. V. Union of India**⁶, the Court emphasised the importance of press and information

¹ globalfreedomofexpression.columbia.edu/cases/thappar-v-madras/

² lawtimesjournal.in/bennett-coleman-co-vs-union-of-india-case/summary

³ www.right2info.org/cases/state-of-uttar-pradesh-v.-raj-narain

⁴ www.legalserviceindia.com/article/I89-Right-To-Information

⁵ intolegalworld.com/article/s-p-gupta-v-union-of-india-30th-decemeber-1981

⁶ <https://www.legisscriptor.com/post/case-analysis-indian-express-newspaper-v-union-of-india>

freedom in achieving human rights. The court based its decision on Article 19 of the 1948 Universal Declaration of Human Rights.

Society against Sting Operations

The freedom granted by Article 19(1)(a) is inversely proportional to the duty not to violate any law. Every institution has the potential to be abused, and every liberty, if unchecked, has the potential to lead to disorder and anarchy. In order to boost their **Trade-Related Practices (TRP) ratings**, television networks are resorting to sensationalised journalism. Sting operations have now become commonplace. The execution of a sting operation may be an expression of the right to free press, but it carries with it an unassailable obligation to respect the privacy of others. In **Time v. Hill**, the U.S. Supreme Court said: The constitutional guarantee of freedom of speech to press is not for the benefit of the press so much as for the benefit of all the people⁷. Mathew, J. followed the same principle. **Bennett Coleman & Company v. Union of India**

Article 19(2) – An Exception to Article 19(1): It is important to note that freedom of speech and press expression is not absolute, but is subject to certain clearly defined limitations under Article 19(2) in the public interest.

In **Romesh Thappar v. the State of Madras**, and **Brij Bhushan v. State of Delhi** the Court firmly expressed its view that there could not be any kind of restriction on the freedom of speech and expression other than those mentioned in Art 19(2) made it clear that there could be no interference with that freedom in the name of public interest⁸, even when Clause (2) of Article 19 was later substituted under the Constitution (First Amendment) Act, 1951 by a new clause allowing the imposition of reasonable restrictions on freedom of speech and media expression.

Against Right to Privacy: The person who is the subject of a press or television "item" has his or her personality, reputation, or career shattered as a result of the media exposure. He, too, has a fundamental right to live in dignity and respect, as well as a right to privacy, as guaranteed by Article 21 of the Constitution. **Kharak Singh v. the State of UP** held that the right to privacy is inherent under Article 21. The Delhi High Court ruled that the right to

⁷ www.lawfinderlive.com/Articles-1/Article2

⁸ www.lawyersclubindia.com/articles/STING-OPERATION-A-GLANCE

privacy derived from Article 21 could not be applied to private entities. It cannot be denied that maintaining a precarious balance between the fundamental right to express oneself and the right to privacy is of practical importance.

The Supreme Court in **R. Rajagopal and Another v. State of Tamil Nadu and Others** are true reminiscence of the limits of freedom of the press concerning the right to privacy: A citizen has the right to protect his or her own privacy, as well as the privacy of his or her family, marriage, procreation, motherhood, childbearing, and education, among other things. Without his permission, no one may publish anything about the foregoing, whether true or false, laudatory or critical. If he does so, he will be violating on the person's right to privacy and will be liable in a civil action for damages. However, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy, the position may be different.

In another landmark judgment that addressed the issue of privacy was the telephone tapping case- **People's Union for Civil Liberties v. Union of India** the Court observed: The right to privacy is not explicitly mentioned in the Constitution⁹. As a concept, it may be too broad and moralistic to be judicially defined. The facts of the case will determine whether the right to privacy can be claimed or has been violated.

Against Public Morality: All sting operations involve persuading people into committing a crime they would not have committed otherwise, and are thus immoral. The classic ethical quandary that haunts all sting operations is whether you can hold someone accountable for a crime he would not have committed if you hadn't encouraged him to do so. Entrapment is defined as promising a man a reward for breaking the law and then apprehending him when he takes the bait.

It is against public morality and decency, and therefore comes under Article 19(2). In the 17th Law Commission, they have recommended that the Centre pass legislation to discourage the media from infringing on people's privacy rights.

⁹ indianexpress.com/article/opinion/columns/a-litmus-test-constitution-right-to-privacy

Drawbacks with Sting Operations

Would you keep someone accountable for a crime that he would not have committed if you hadn't encouraged him? This is the classic ethical dilemma that all sting operations face. Entrapment is described as promising a reward for violating the law and then apprehending him when he takes the bait. The accused's defense that the crime was performed as a result of inducement and that he (the accused) did not wish to commit, or, in cases where lack of consent constitutes the offense, such as rape, that the consent was implied by the inducement, where the implication given was that an offense had not been committed because of the 'trap' laid down for the accused.

Fundamental rights cannot be enforced against a person or a private entity: Maneka Gandhi lost her case against Khushwant Singh for allegedly violating her privacy by mentioning her in his autobiography Truth, Love, and a Little Malice. We have multiple Sing Operations almost every day as a result of this lack of regulation, invading individual privacy. Despite the growing infringement of privacy, there is no Indian law that specifically safeguards individuals' privacy rights from other individuals.

Conflict of Laws: While the Constitution grants the freedom of the press as a constitutional right, Article 105 (2) places limitations on the reporting of Parliamentary proceedings. The Supreme Court held in the well-known Searchlight Case that the publication by a newspaper of certain sections of House members' speeches that were ordered to be expunged by the Speaker constituted a violation of privilege.

Another big issue we face today is who is allowed to conduct sting operations. Some argue that it should be permitted against public employees. In Section 2(c) of the Prevention of Corruption Act, the term "public servant" is specified. Another issue arises: should we conduct sting operations against public employees while they are not performing their duties? There are several issues that occur as a result of the lack of proper legislation. We may assume that the lack of regulation is at the root of all of these issues, followed by something else.

Status of Sting Operation in India

We have no clear law in India that regulates such operations, and we also have no judicial pronouncements that direct such operations or media actions to this day. However, a person may go to court to defend his or her rights and freedom under various laws. Wiretapping, which is used in sting operations, is governed by the Telegraph Act of 1885. The Supreme Court ruled in a 1996 decision that wiretaps are a significant violation of an individual's privacy. The Court has established rules for government wiretapping, which specify who can tap phones and under what circumstances. A tap order may only be issued by the Union Home Secretary or his state counterpart. The government must also demonstrate that the requested information is not available by any other means. The Court ordered the creation of a high-level committee to investigate each wiretap's legality. In Indian courts, intercepted phone calls are not acknowledged as primary evidence. The Supreme Court has accepted a civil origin in addition to the common law. So, under The Law of Torts, a private action for damages can lie for an unreasonable invasion of privacy. These sting operations also infringe on the right to privacy, which is protected under Article 21 of the Constitution (right to life and personal liberty), according to the Supreme Court.

Since the right to freedom of speech guaranteed by Article 19(1)(a) is not absolute, the constitution includes Article 19(2), which safeguards public morality and decency. A person who accepts media intrusion into his life would find it more difficult to assert his right to privacy than a "private citizen." Even though the onus of proving that a particular publication was in the public interest rests with the publisher, there is a lot of space for interpretation, particularly with words like "private relations" and "public interest." The regulatory authority would make the interpretation, even though the onus of proving that a particular publication was in the public interest rests with the publisher. The Supreme Court's jurisprudence would undoubtedly affect interpretation. The Apex Court has always emphasized the value of a well-informed citizenry. A sting operation with a legitimate goal of exposing corruption cannot be forbidden or limited.

CONCLUSION

The Union Information and Broadcasting Ministry would support the inclusion of a provision in the Broadcasting Bill that addresses sting operations. The Ministry must distinguish between reports that constitute a privacy violation and those that reveal wrongdoing or have political ramifications. Sting operations that uncover corruption and tell stories of political consequences, on the other hand, would be permitted, as any attempt to prosecute them will be seen as an attempt to stifle the press.

Who would prosper as a result of the reporting is what journalists and editors need to figure out. If journalism is dedicated to democratic transparency, the question that must be raised is whether particular investigative findings help the public. Is the media upholding its social duty by exposing wrongdoing? What interests are in jeopardy? What privileges are being trespassed upon? Is the problem at hand a valid public interest issue? Who would gain from result of reporting will be determined by the regulatory body? Is the problem at hand a valid public interest issue? These are some of the questions that must be addressed before embarking on a sting operation or attempting to pass legislation on it.

The media's behaviour must be regulated, and the degree to which the media can sting a person's life and whom they can sting must be defined. Only the federal government and the FBI, for example, have the authority to use a concealed camera to conduct sting operations in the United States. In India, anyone like the CBI or any other body must only be authorized to execute sting operations, and their actions must be governed by laws. This body must not be exempt from legal action. There must be a proper authority, such as a judge or the Attorney General, who must grant permission based on sufficient evidence against the target of the operation. The target of such operation must have evidence of criminality.

Today's sting operations are conducted for financial benefit, so the Supreme Court should take notice of this. The issue with the media is that it only advocates for cases that cater to its audience and imagination, which can result in a positive public image. A code of conduct is required for sting operations to avoid falling into this pit. Laws should be enforced as well in this regard. Sting operations are perfectly legal if they are carried out according to the protocol that has been discussed.

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