

STING OPERATIONS IN INDIA : LEGAL PERSPECTIVE

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ABSTRACT

Sting operations can be classified into positive and negative sting operations based on their purpose. Positive sting operation takes place in the interest of the society, which helps to lift the purdah of the working of the government. On the other hand negative sting operation harm the society and its individuals. It unnecessarily violates the privacy of the citizens without any benefit to the society. Freedom of press in India has been derived from freedom of speech and expression. Journalism shall always be in public interest and sting operation for exposing corruption serve public interest. The author attempts to elucidate on this issue in detail.

INTRODUCTION

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

MEANING OF STING OPERATION.

When any person commits any crime by deceiving other then and operation is lay down in order to catch him, such operation is known as Sting operation. Often sting operation is referred to investigative journalism as the word sting marks its origin from America and is synonymous to 'trap or to catch'. Sting operations are deep investigation which are kept very confidential and are usually carried out to obtain information not easily accessible by people. They are generally undercover operations to unveil the information that have been concealed actively by people or have been kept suppressed under some political, monetary or other force.

TYPES OF STING OPERATIONS.

Based on the purpose that they are meant to serve sting operations are classified into two types : Positive Sting operations : these sting operations are meant for public purposes and are based on issues that are very important in public domain these are generally related to government functionaries or activities by government . Another type of sting operations are Negative Sting Operations: are not meant to serve the public domain. They encroach upon the privacy of the person who has been caught upon the camera and can even be harmful for society and its people.

STING OPERATION IN INDIA

The sting operations conducted in India are generally categorized as positive sting operations which are carried out with the motive to maintain public order and to target acts of individuals which are against public order but they may also turn out to be negative sting operations at times. These sting operations are also targeted to make the government more accountable. As democracy cannot survive without accountability and it is important that citizens are kept informed about government to retain this accountability.¹ India is a democratic country and thus being a democracy it is important that nothing in the country operates behind the scenes. Everything has to be crystal clear and informed to the citizens. Media being the biggest channel of communication plays a vital role of spreading and informing the citizens about what policies are being made and what the government is doing and acts as the strongest fourth pillar in a democracy. The efficiency of democracy is checked on the lines of freedom its press enjoys. In India freedom of press is impliedly incorporated under Article 19(1) (a)² of Indian Constitution. Also people's right to know has been recognized important by judiciary under article 19(1) (a) where it has been held by Supreme Court that freedom of speech and expression includes freedom of press and circulation.³ Justice Mathews while speaking on the necessity of sting operation told, certainly the public need to be informed about the acts of government and the public functionaries. This right to be informed is a part of freedom of the press.⁴ Thus in India despite the absence of specific laws for sting operations it is generally covered under Article 19(1) (a) of the Indian Constitution with reasonable restrictions.

LEGALITY OF STING OPERATION IN INDIA

In India there are no specific laws regarding sting operations. It is however dealt in under different provisions of different statutes. There has been a conflicting opinion of judiciary on sting operations and their legality. It has been widely analyzed that sting operations intervene in individual's privacy and are thus violative of article 21 under the Indian Constitution. Also they are seen violating public order and are a threat to decency and morality and thus are contrary to the provisions of article 19(2) of Indian Constitution.⁵

The Courts in many cases have dealt with the problems pertaining to the legality of Sting operations and have decided upon it in accordance with the facts of the case. In a sting operation carried out by "LIVE INDIA" it was alleged that Ms. Uma Khurana, a teacher, was involved in forcing the girls for prostitution. These allegations resulted in anger amongst the mob consequently leading to physical attacks on the teacher. The investigation carried out on the orders of the court however clearly stated that the allegations made under the sting operation were false and the teacher was falsely alleged of being a part of act. The court in this matter stated that spreading information in the society is important beyond doubt but cases of

¹ S.P. Gupta v. Union of India. [AIR 1982 SC 149]

² Freedom of Speech and Expression.

³ Bennett Coleman & Co. v. Union of India [1973 SCR (2) 757]

⁴ State of U.P. v. Raj Narain [AIR 1975 865]

⁵ 19 (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

entrapment like these should not be permitted. However in another instance the legality of sting operations was upheld by Delhi High Court which was conducted to expose corruption in union parliament by Annirudha Bahal and Suhasini Raj⁶. Courts in India have generally been of the opinion that sting operations are deceiving in nature. They are fake promises of confidentiality made by a person to trap the other for committing an act. They were declared illegal by Supreme Court and also a warrant was issued against those who conducted it.⁷ The Supreme Court has also stated that person who conducts the Sting operation can be held liable under section 12 of Prevention of Corruption Act for abatement of offence.⁸ Indian Courts on admissibility of sting operations have treated them as extra judicial confessions in certain cases like Naroda Patiya Massacre case where the sting operation was carried out by Ashish Khaitan and the operation has a high probative value and was accepted by court.

This ambiguity in the legality of sting operation needs to be clarified. A separate clause must be added stressing upon the difference between the sting operations that are genuine and those that encroach upon the privacy of others by Union Information and Broadcast Ministry. As Indian judiciary has always remained inclined towards the Right to life and liberty of individuals. It has been said by Supreme Court that publishing anything relating to the privacy of individual without his consent would be violation of right to privacy under article 21 irrespective of the fact that whether the content published is true or false.⁹ This is also important because the Indian judiciary from time to time has laid down the importance of circulation of information in a democratic country like India.¹⁰ Sting operation and freedom of press is one of the modes of this information circulation thus those sting operations which deal with genuine matters and are not against public order, decency and morality cannot be banned. It has become important to lay down rules and limitations governing the extent to which media can interfere in one's privacy because in the present scenario the sting operations are mainly carried out on topics which can attract the masses and increase channel TRPs. Thus it is an issue of immense importance that stricter and proper laws must be enacted to establish the definite legal status of sting operations in India and also to prevent the misuse of freedom of press by carrying out sting operations which disrespect the duty of maintaining others privacy. The laws must make sure that sting operations are carried out for the purpose that they are meant to serve that is public awareness and spreading information to citizens and do not become a threat to and individual by imposing false allegations and by collapsing his dignity , reputation in the society.

COMPARISION OF STING OPERATIONS IN INDIA AND OTHER COUNTRIES.

In countries like United States sting operations are considered to be legal and are treated as the bread and butter of the organizations. Entrapment is considered illegal in these countries.¹¹ It has been clearly stated that prosecution based on entrapment is the abuse of courts process.¹² Also defense of entrapment has not been considered as a substantive defense.¹³

⁶ Annirudha Bahal v. State [2010 172 DLT 269]

⁷ Vijayshekhar v. Union of India [2004 4 SCC 666]

⁸ Rajat Prasad v. CBI [AIR 2014 6 SCC 495].

⁹ R Rajagopal and another v. State of Tamil Nadu [1994 SCC (6) 632]

¹⁰ State of U.P. v. Raj Narain [1975 SCR (3) 333].

¹¹ Vedangini Bisht, *Sting Operations Legal or Illegal*, LatestLaws.com,(July21.2018),

https://www.latestlaws.com/articles/sting-operations-legal-or-illegal-by-vedangini-bisht/#_ftn1

¹² R v. Loosely ([2001] UKHL 53)

¹³ R v. Sang [1980 SC 402]

It is considered to be a clear and effective mode of crime prevention. It has been laid down in surveys that to trap the tax dodgers and drug dealers about 40 US agencies use the method of Sting operations. These operations need to be carried out by approval of authorities like FBI. The Courts in US also opine that freedom of speech to press is not for the benefits of press but it is for the benefit of citizens.¹⁴ However sting operations are not permitted in country like Sweden. In India however the position and legality of sting operation is subject to various conflicted opinions. Delhi High Court has upheld right to Sting as integral part of freedom of speech and expression to establish a corruption free society.¹⁵ However on contrary Supreme Court held that Sting operations cannot be deemed lawful method for law enforcement.¹⁶

DRAWBACKS OF STING OPERATIONS

The issue of sting operations is always seen surrounded by questions of morality, legality and ethics. The foremost concern arising out of sting operations is the violation of privacy of an individual. Where on one hand sting operations are a part of freedom of speech and expression under article 19(1) (a) of India Constitution on contrary they contravene the provisions of article 21 which provides right to life with dignity by collapsing the reputation and profession of a person on whom sting operation is targeted. It also encroaches upon his dignity as an individual.

The 17th Law Commission has even presented its recommendations to stop media interference in individual privacy through its 200th report. There are cases when these stings bring into limelight those individuals who are actually innocent but due to the influential nature of media the people tend to believe what is shown. It has also been found out in a survey that 72% viewers believe that sting operations serve the purpose.¹⁷ People tend to get influenced with the operations conducted as sting operations usually cover topics and target individuals about whom citizens are not aware and hence they are left with no option rather than to believe and get easily convinced. One of the major drawbacks of sting operations is that they do not reduce the rate of crime in any manner.

ACTIONS THAT CAN BE BROUGHT AGAINST STING OPERATIONS.

Sting operations have always been in question for their validity. In the absence of any proper laws governing it the actions can be brought under the provisions of different laws prevailing in the country. They are:

- 1) Violation of right to life under Article 21 of the Indian Constitution.
- 2) Violation of right to privacy under article 19(2) of the Indian Constitution regarding acts which are against public order, decency and morality.
- 3) For abatement of offence under Article 12 of Prevention of Corruption Act
- 4) For unlawful invasion under tort claim for damages can be made.

¹⁴ Time v. Hill 385 U.S. 374 (1967).

¹⁵ Annirudha Bahl v. State [2010 172 DLT 269]

¹⁶ R K Anand v. Registrar, Delhi High Court [2009, 8 SCC 106].

¹⁷ *Live News and Need of Broadcasting Regulation* ,

https://shodhganga.inflibnet.ac.in/bitstream/10603/126034/18/15_chapter%206.pdf

CONCLUSION

The coin of democracy when flipped results in right to privacy on one side and informed citizens on the other and media acts as a medium between the both. There may arise situation where conflict arises between both the sides of the coins as sting operations intervene into privacy of individuals to provide information to the citizens. To balance both there needs to be a proper set of rules or guidelines which govern the sting operations conducted by media and defines unambiguously the extent of their legality and boundaries of their operation. The American distinction between entrapment and sting operations can also be considered in India.