

LOOK IF ONE CAN VIOLATE YOUR PRIVACY

(An overview of Sting Operations)

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A question mark is raised on Human Rights Commissions by the reputed News Channel Star News in a Sting Operation where Police Officials in a police station of Haryana and Agra are ready to torture anyone if money is given to them. For then Human Rights Commission is a non-existent body. It can be said that



the state bodies meant for the purpose are non-functional or it do not want to take cognisance Human Rights. So, the role is taken by media of exposing such felonious act in the society through Sting Operations. But, at the same time this is called violation of a major Human Right by media, i.e., Right to Privacy, as in some way they intrude the privacy of a person. Privacy is what is demanded by and for each and every person in his or her life. And this privacy literary means nothing but being aloof from society on some issues of personal life. But, the question is, can Sting Operation, known as '*Dansh Patrakarita*' in Hindi, can take away this privacy and make it public. This is the most burning issue in the entire world today. 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.*

Sting Operation vis-à-vis Right to Privacy

Article 19(2) of the Constitution of India provides for nothing in sub-clause (a) shall affect the operation of any existing law in so far as it relates to, or prevent the state from making any law relating to libel, slander, defamation, contempt

of court or nay matter which offends decency or morality or which determines the security of, or tends to overthrow the state.

In *Romesh Thapar Case*¹ the Supreme Court laid down an important principle and giving restrictive interference to clause 2 of Article 19 having allowed the imposition of restrictions on the freedom of speech and expression for specified purposes, any law imposing restriction which are capable of being applied in causes beyond the express purposes cannot be held to be constitutional or valid to any extent.

On the other hand, '*Freedom of Press*' has been held to be a part of the Fundamental Right of '*Freedom of Speech and expression*' guaranteed by article 19(1)(a) to the citizens of India. It had been held that '*Freedom of Press*' is necessary for exercise of fundamental freedom of citizens of 'speech and expression'.² And so '*Freedom of Press*' cannot be termed as unconstitutional and void. And as the Constitution says this can only be exercised till it does not harm the decency/morality of a person.

The Constitution of India gives full liberty to press but with stings attached. On 18th June, 1951 Amended Article 19(2) by adding "*reasonable*" to restrictions. The restriction must be reasonable. In other words, it must not be excessive or misappropriate. The procedure and the manner of imposition of the restriction also must be just, fair and reasonable.

In a landmark judgement in the case of *Sakal papers*,³ the Supreme Court held that Article 19(2) of the Constitution permits imposition of reasonable restrictions on the heads specified in Article 19(2) and on no other grounds. It is, therefore, not open for the state to curtail the *Freedom of Speech and Expression* for promoting the general welfare of a section or a group of people unless its action can be justified by the law falling under clause 2 of Article 19. And moreover it is valid point that at a certain point all Sting Operations do violate *Right to Privacy* in some degree because during a Sting Operation, in nearly all its cases, the person being filmed is not aware of the presence of a

¹ AIR 1950 S.C. 124

² *Hamdard Dawakhana v. Union of India*, AIR 1960 S.C. 554

³ AIR 1962 S.C. 305

hidden camera. This means that he does not consent to be filmed, without which, in ordinary course, no one has the right to film anyone. However, it may be argued that a illegal act being committed by a public servant during his office hours and in abuse of spirit of his office are not worthy of protection under Right to Privacy law. Besides, what a public servant does while discharging his duty is in public domain. In such cases, public interest does seem to weigh heavier compared to *Right to Privacy*. If a person has no duty towards general public, his morality questionable conduct is not open to public scrutiny unless he violates the law by such conduct.

Right to Privacy is implicit to Article 21. According to Subba Rao J '*liberty*' in Article 21 is comprehensive enough to include privacy. His Lordship said that although it is true that he does not explicitly declare the *Right to Privacy* as a Fundamental Right but the right is an essential ingredient of personal liberty. It is regarded as a Fundamental Right but cannot be called absolute. It can be restricted on the basis of compelling public interest.⁴ The court, however, has limited to personal intimacies of the family, marriage, motherhood, procreation and child bearing.⁵ On the other side, in the Sting Operations done by the media in India, only the working of the public servants in their offices is covered. The official work of the public servant should be transparent and open to all as it is in the public interest. But the court's decision the *Right to Privacy* does not cover this official work into the purview of its definition. Sting Operation began with a laudable objective of exposing corruption in high places and degenerated into cheap entertainment.

Sting Operations are generally carried out to trap the corrupt, the underworld dons and spies. They are also undertaken to establish adultery. Sting Operation can also be useful in the arrest of terrorists and anti-national elements. The spy camera of media caught 11 M.L.A.s accepting bribe for asking question in the parliament. When the

⁴ *Govind v. State of M.P.* (1975)2 SCC 148, AIR 1975 S.C. 1378

⁵ *P.U.C.L. v. Union of India* (1997)1 SCC 301, AIR 1997 S.C. 568

media gets all the evidence against the corrupt and the wrongdoer and their aim is public interest, why do media not file a case in court and submit these as proof? This will lead to punishing of these wrongdoers, which is in public interest. Or, even after getting such evidences, why no report is given to public authorities and make them take some actions? By interviewing Mr. Prakash Tiwari, Bureau chief, Sahara Samaya, Bhopal, and Mr. Brajesh, a correspondent of Star News, Bhopal and Mr. Rajendra, a correspondent of Zee News, Bhopal it was found that Sting Operations are a good way to get evidences for exposing things and submitting these in court. It is a way of helping law, as media is the fourth estate of governance.

But, on the other hand, such cases cannot be filed in courts with these tapes, or audio or video recording as evidence or proof because courts do not consider these as credible evidence and proof. Moreover, as the Government Machinery is not functioning properly, that is why such instances are increasing and so what is the point taking it to public authorities. Apart from this, when all this is exposed by media, the general crowd gets aware of the illegal business going on in the so called “Government Machinery”. The news Broadcasters Association (NBA) justified Sting Operation as “illegitimate journalistic tool” . In a discussion with Mr. Kumar Shakti Shekhar, a correspondent of N.D.T.V., Bhopal, he said that Sting Operation 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.

But, it can easily be made out from all these interviews that one of the basic reasons to carry out Sting Operation is to increase TRP ratings or to ‘*interest the public*’ rather than ‘*public interest*’. Hence the 17th Law Commission in its 200th report has made recommendations to the centre to enact a law to prevent the media from interfering with the privacy rights of the individuals.

Which Fundamental Right is more Important?

Freedom of Press is derived from the *Freedom of Right to Speech and Expression* guaranteed in article 19(1)(a) of the Constitution of India. Moreover, *Right to Privacy* flows from *Right to Life and Personal Liberty* guaranteed in article 21 of the Constitution of India. Both these come under Part III of the Constitution, i.e. , the Fundamental Rights. So there is a clash in two major Fundamental Rights guaranteed by the Constitution of India. Although, these Fundamental Rights are not absolute and can only be taken away under Article 19(2), under reasonable restrictions.⁶ This leads to burning debate between the two major Fundamental Rights which the makers of Constitution would never have thought of.

⁶ Hamdard Dawakhana v. Union of India, AIR 1960 S.C. 554