

Sting Operation vis-à-vis Right to Privacy by Media: A legal analysis in Indian Context

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Abstract - Electronic media, as compared to print media, has an added advantage as visuals have greater impact and ramification. They directly and immediately influence the minds of the viewers. With the growth in the number of News Channels and the increasing practice of showing “breaking news”, the electronic media has come to play a major role in stirring public opinion and conscience as well. It is this potency to reach the public that enjoins on all the channels to understand and realise the heavy responsibility that is thrust on them. They should ensure that there is no case of misuse of the freedom. Keeping in mind the role a responsible media can play in disseminating information and creating awareness among masses without crossing the limits that a civilised society would expect, the electronic media should define its role.

Freedom of the media is indeed an integral part of the freedom of speech and expression; and an essential requisite of a democratic set up. The Indian Constitution has guaranteed this freedom by way of a Fundamental Right. The media, which is obligated to respect the rights of individuals, is also expected to work within the framework of legal principles and provisions so that the right to privacy of an individual is not unnecessarily infringed at any cost whatsoever.

Keywords- Indian Constitution, Fundamental Right, Media

I. INTRODUCTION

THE press is regarded as the fourth pillar of democracy and it is an institution meant for the welfare of the country and its people. According to Article 19 (1) A of the Indian Constitution, all citizens shall have the right to freedom of speech and expression. The press also enjoys this freedom of speech and is considered an institutional medium through which people of the country can ask for their rights.

The existence of a free, independent and powerful media is the cornerstone of any democracy, especially of a highly mixed society like India. Media is not only a medium to express one’s feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions.

The increased role of the media in today’s globalized and tech-savvy world was aptly put in the words of Justice Hand of the United States Supreme Court when he said, "The hand that rules the press, the radio, the screen and the far spread magazines, rules the country".

Democracy is the rule of the people, a system which has three strong pillars - the executive, the legislature and the judiciary. But as Indian society today tries to stabilise on its three pillars, the guarantee of Article 19 (1) (a) has given rise to a fourth pillar i.e. media. It plays the role of a conscience keeper, a watchdog of the functionaries of society and attempts to address to the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and taken suo motu cognizance of the matters in various cases after relying on their reports and news highlighting grave violations of human rights. The criminal justice system in this country has many lacunae which are used by the rich and powerful to go scot-free. Figures speak for themselves in this case as does the conviction rate in our country which is abysmally low at 4 percent. In such circumstances the media plays a crucial role in not only mobilizing public opinion but also bringing to light injustice which most likely would have gone unnoticed otherwise.

However, there are always two sides of a coin. With the increased role and importance attached to the media, the need for its accountability, responsibility and professionalism in reportage can not be emphasized enough. In a civil society no right to freedom, howsoever invaluable it might be, can be considered absolute, unlimited, or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the constitution has to be exercised within reasonable boundaries.

II. STING OPERATION VIS-À-VIS RIGHT TO PRIVACY

Article 19(2) of the Constitution of India provides that nothing in sub-clause (a) thereof 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 any matter which offends decency or morality or which determines the security of, or tends to overthrow the state.

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The Sting Operations done by the media in India covers mostly the working of the public servants in their offices. The official work of the public servants should be transparent and open to all as it is in the public interest. But the courts have held that the Right to Privacy does not cover this official work in its purview. Sting Operation began with a laudable objective of exposing corruption in high places and gradually degenerated into cheap entertainment.

A sting operation, as resorted by the law enforcement agencies, 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 a 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 wrongdoing. Now the question that arises is whether it is proper for the media to act as the 'law enforcement agency'.

The carrying out of a sting operation may be an exercise of the right of free press but it carries with it an indomitable duty to respect the privacy of others. The individual who is the subject of such a press or television 'item' has his or her personality, reputation or career dashed to the ground after the media exposure. He too has a fundamental right to live with dignity and respect and a right to privacy guaranteed to him under Article 21 of the Constitution.

Sting operations are also undertaken to establish adultery. Such Operations can also be useful in the arrest of terrorists and anti-national elements. The spy camera of media caught 11 members of the Parliament accepting bribe for asking questions in the Parliament. When the media gets all the evidence against the corrupt and the wrongdoer and the aim is public interest, why do media not file a case in the proper court and submit these as proof? This will lead to punishing of these wrongdoers. Or, even after getting such evidences, why no information is given to public authorities so as to make them take appropriate actions?

But, there exists an opposite view. Such cases cannot be filed in courts with these tapes- 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 the way it should function, that is why instances of sting operations are on the increase. In such circumstances, what is the point in taking it to the public authorities? On the other hand, when this is exposed by media, the general public becomes aware of the illegal business going on inside the "Government machinery". There is a pressure on the government agencies concerned to act. The news Broadcasters Association (NBA) justified Sting Operation as "legitimate journalistic tool". The correspondents who telecast sting operations argue that Sting Operation take place in public interest and where public money is involved. According to them 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 that one of the basic reasons to carry out Sting Operation is to increase the so called Television Rating Point (TRP) or in other words to 'interest the public' rather than 'in

public interest'. In view of this, the 17th Law Commission in its 200th report has made specific recommendations to the centre to bring a comprehensive legislation to prevent the media from interfering with the privacy rights of the individuals.

The ability to do a great good rarely comes without some power to do harm, and the free press is no exception to this general rule. The press should do what it can to minimize the abuse of power by the authorities. We should also try to understand with clarity as to how freedom of press can enrich human lives, enhance public justice, and even help to promote economic and social development. Technology can be used by the media to throw light upon truths which otherwise could never have been known to the public at large. However, the use of technology in a rightful manner needs to be adequately emphasized upon and proper guidelines should be framed for the same. Once the sting operation is carried out successfully, the story is telecast over the news channels by initiating a media trial invariably highlighting the so called evidences against the victim. Such trial by media has created a phenomenon which involves a tug of war between two conflicting principles i.e. Right of the free press and Right to free trial, both of which are of vital interest to the public. The freedom of the press stems from the right to freedom of speech and expression of the citizens in a democracy. This is the justification for investigative and campaign journalism. At the same time, the right to fair trial, i.e., a trial uninfluenced by extraneous pressures is recognized as a basic tenet of justice in India. Provisions aimed at safeguarding this right are contained under the Contempt of Courts Act, 1971 as well as under the Articles 129 and 215 of the Constitution of India. Of particular concern to the media are the restrictions which are imposed on the discussion or publication of matters relating to the merits of a case pending before a Court. A journalist may thus be liable for contempt of Court if he publishes anything which might prejudice a 'fair trial' or anything which impairs the impartiality of the Court to decide a case on its merits, whether the proceedings before the Court is a criminal or a civil proceeding.

Sting cases over the years have shown that while the pinch of the revelations of corruption is felt in some cases, sometimes they seriously violate the standards of journalism in the pursuit of short-term sensationalism and commercial gain. Among the numerous sting operations carried out since the revelation of the casting couch, the latest involving Uma Khurana, a teacher, stands out as one of the most disturbing. The sting operation conducted by a TV channel, who claimed to have revealed the so called sex racket alleged to have been run by the teacher luring her pupils into prostitution, was subsequently proved to be totally tailored, fabricated and distorted.

The incident is an example of how the sting operation can go wrong and play havoc to innocent persons even though the editor of certain TV channel claimed that if we were serious about the disclosure of certain problems there was no alternative but to use sting operations.

III. ROLE OF JUDICIARY IN MAINTAINING CHECK AND BALANCES

Since there is no comprehensive law to deal with the subject and the media is yet to evolve a code of conduct of its own, the judiciary is bound to play the role of an umpire. And it has done so on many occasions. Under our constitution there is no separate guarantee of freedom of press. It is implicit in the freedom of expression which is conferred on all citizens.[1] The right to acquire information includes the right of access to the source of information.[2] The freedom of press, under our constitution, is not higher than the freedom of an ordinary citizen.[3] It is subject to the same limitations as are imposed by Article 19 (2) and to those limitations only.[4] In a landmark judgement in the case of *Sakal papers*,[5] the Supreme Court held that Article 19(2) of the Constitution permits imposition of reasonable restrictions 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. However, freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as it would lead to disorder and anarchy. [6]

In *Romesh Thapar v State of Madras* [7] the Supreme Court laid down an important principle that clause (2) of Article 19 authorises the state to impose restrictions upon the freedom of speech only on certain specified grounds so that if, in any particular case, the restrictive law cannot rationally be shown to relate to any of the specified grounds, the law must be held to be void.

It is worthwhile to mention that all Sting Operations, even though carried out in the purported exercise of right under article 19 (2), do violate Right to Privacy, as guaranteed by the constitution, to a certain extent because during such Sting Operation, in nearly all cases, the person being filmed is not aware of the presence of a hidden camera. Thus the consent of the person concerned for such recording does not exist whereas without consent of a person, in ordinary course, no one has the right to film him. However, it may be argued that an illegal act being committed by a public servant during his office hours and in abuse of the spirit of his office, is not worthy of protection under Right to Privacy.

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.[8] The court, however, has limited it to personal intimacies of the family, marriage, motherhood, procreation and child bearing. [9]

The movement towards the recognition of right to privacy in India started with *Kharak Singh v. State of Uttar Pradesh and Others*, wherein the apex court observed that it is true that our constitution does not expressly declare a right to privacy

as fundamental right, but the said right is an essential ingredient of personal liberty. After an elaborate appraisal of this right in *Gobind v. State of Madhya Pradesh and Another*, it has been fully incorporated under the umbrella of right to life and personal liberty by the humanistic expansion of the Article 21 of the Constitution.

Today, it is seen that the over-inquisitive media, which is a product of over-commercialization, is severely encroaching on the individual's right to privacy by crossing the boundaries of its freedom. Yet another observation of the court which touched this aspect of violation of right to privacy of the individuals is found in the judgment of the Andhra Pradesh High Court in *Labour Liberation Front v. State of Andhra Pradesh*. The Court observed: "Once an incident involving a prominent person or institution takes place, the media is swinging into action virtually leaving very little for the prosecution or the Courts to examine in the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitments to the noble profession. The freedom of speech and expression, which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively".

The following observations of the Supreme Court in *R. Rajagopal and Another v. State of Tamil Nadu and Others* are true reminiscence of the limits of freedom of press with respect to the right to privacy: "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 to action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy".

The ever-increasing tendency to use media while the matter is sub-judice has been frowned down by the courts including the Supreme Court of India on the several occasions. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*, the Supreme Court observed: "There is the procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law".

The Hon'ble Supreme Court in the case of *Rajendra Sail v. Madhya Pradesh High Court Bar Association and Others*[10], observed that for rule of law and orderly society, a free responsible press and an independent judiciary are both

indispensable and both have to be, therefore, protected. The aim and duty of both is to bring out the truth. And it is well known that the truth is often found in shades of grey. Therefore the role of both can not be but emphasized enough, especially in a ‘new India’, where the public is becoming more aware and sensitive to its surroundings then ever before. The only way of functioning orderly is to maintain the delicate balance between the two. The country can not function without two of the pillars its people trust the most.

Matthew of Justice ruled in the case of *State of U.P. v. Raj Narain [11]*, “the people of this country have a right to know every public act. The right to know comes from the concept of freedom of speech.”

IV. CONCLUSION

With power comes responsibility. With great power comes great responsibility and therefore, the freedom of speech and expression under Article 19 (1) (a) of the constitution of India correlates with a duty not to violate the law. If citizens and organizations are left absolutely free and unchecked, it will lead to conflict of rights and ultimately end in disorder and anarchy. The news Channels in a bid to enhance their viewer ship resort to sensationalized journalism. Sting operations are bound to come on the agenda. Performing a sting operation with an attempt to attack the personality, reputation and carrier, especially when no national interest or public money is involved, may be an exercise of the right of freedom of expression, but it hits at the privacy of some other individual. Therefore, while exercising such rights of speech and expression, one should keep in mind the fundamental right to dignity and privacy of the individual concerned as guaranteed under Article 21 of the constitution of India.

SUGGESTIONS

1. A comprehensive legislation to regulate the right of press to conduct sting operations keeping in view the right to privacy of the individual enshrined in the constitution should be enacted by the parliament.
2. Till such legislation is enacted the media should evolve its self regulatory code of conduct for the guidance of its members in connection with sting operations.
3. The Information and Broadcasting ministry should set up a committee with adequate authority to permit after scrutiny sting telecast on channels. The job of the panel will be to issue no objection certificates only after being satisfied that the operation would serve public interest.

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