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FREEDOM OF MEDIA IN INDIA

(Peer Reviewed)



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STING OPERATION BY MEDIA-A LEGAL ANALYSIS

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Abstract

The press and media being the biggest channels of communication of information to the public, plays a pivotal role in bringing necessary information on policy matters of Government and other departments to the society. Media takes up the responsibility to bring all news and matters to the public by broadcasting and telecasting them. Such rights are granted to the press and media by the Constitution of India under the Right to Freedom of Speech and Expression. Sting operation is one of the methods through which media can bring the truth before the society. If such sting operation resulted in discovering some secret agendas involving money or corruption, that would result in a positive sting operation by media. If it encroaches upon the privacy of any individual and resulted in violation of privacy under Article 21 of the Constitution of India, it would result in negative sting operation. Media and the journalists must follow self-regulation along with guidelines and standards given under Press Council of India, News Broadcasting Standards Authority, News Broadcasters Association etc.

Keywords: Press and media, Sting operation, Constitution, self-regulation, media ethics

Introduction

The Indian Constitution, under Article 19(1)(a), provides for "the right to freedom of speech and expression that also includes freedom of press". However, this right is subject to reasonable restrictions under Article 19(2), for reasons of "sovereignty and integrity of India, the security of the State and friendly relations with foreign States, public order, preserving decency and morality, contempt of court, defamation or incitement to an offence".² Under Article 105 (2) provides certain restrictions on the publications of the proceedings in Parliament.³ Even Official Secrets Act and Prevention of Terrorist Activities Act (POTA) also been used to limit the freedom

¹ Assistant professor SDM Law College, Mangaluru
² JN Pandey, (2014), The Constitutional Law of India, 50th ed, Central Law Agency, Allahabad.
³ Lama, Richin Jacob & Kanishka Shankar, Analysing Article 105 of the Constitution of India, Journal on Contemporary Issues of Law (JCIL), Volume 7 Issue no. 3, p.12.



exercised by the press. Even though POTA was repealed in 2006, the Official Secrets Act 1923 still in operation.⁴

Media is one of the important pillars of democracy. Media may be press or any audio-visual media that play a crucial role in finding the truth and bringing them before the general public.⁵ Media being the fourth estate of democracy, brings a connection between the people and the events happening anywhere around the globe. There are reporters and journalists in different corners of the world to reach the news to every place and they become part and parcel of democratic setup.

Freedom of Press and Media

The Fundamental Rights under the Constitution of India provides for Right to Freedom of Speech and Expression under Article 19, and freedom of press and media also granted under it. The Press Council has been reconstituted with the objective to maintain and improve the standards of newspapers and news agencies in India under the Press Council Act, 1978. There are certain code of conduct and ethics that are to be followed by the journalists and news agencies. Even though they are focused on print media, radio and television journalism must be brought under such codes.⁶ Press and media cannot act arbitrarily, they have their own ethics to follow. They must safeguard the information recovered and collected by them.

Media can discuss different opinions and ask for discussions on subject matters need to be made known to general public. In case of Indian Express Newspapers v/s Union of India⁷ freedom of press is upheld by the Supreme Court of India. In case of Romesh Thappar v. State of Madras⁸, the Supreme Court of India upheld that, circulation of newspaper is must to enjoy freedom of press. Freedom of press may include, freedom to spread information through print media, by broadcasting, or telecasting through electronic media. They have freedom to criticize on policies, programmes of Government and its officials but not to abuse. They have every

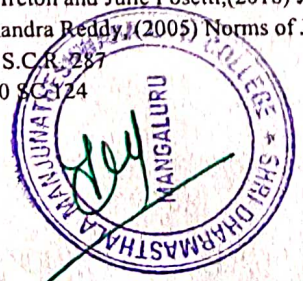
⁴ LAWZ -Volume 11 issue no-2, February 2010, & Soumya Krishnakumar, Freedom of Press, International journal of Law Management and Humanities, volume 4, Issue 2, p. 296

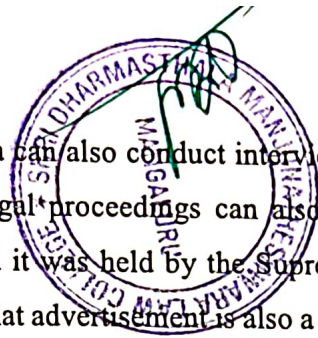
⁵ Cheryl Inreton and Julie Posetti, (2018) Journalism, Fake News and Disinformation, UNESCO, Paris, p.17

⁶ K Jayachandra Reddy, (2005) Norms of Journalistic Conduct, Press Council of India

⁷ (1985) 2 S.C.R. 287

⁸ AIR 1950 SC 124





to receive information from different methods. The media can also conduct interviews without any force on interviewee. Certain permitted news of legal proceedings can also be reported by the media. Media can act as advertising platform and it was held by the Supreme Court in case of Tata Press Ltd v. Mahanagar Telephone Nigam⁹, that advertisement is also a part of freedom of expression by the media. Freedom to broadcast and telecast is also a prominent right available to the press and media.

Sting operation and methods

News and other required information can be collected with different methods by the media. Sting operation is one of the final resorts through which information can be collected. To bring the truth and reality to limelight, sting operations are conducted by the journalists and the sting operation is tool to investigate the matter if any irregularity or malpractice is in existence in any department. So, it is named as undercover journalism or investigative journalism. The time when sting operations are done by the press and media as they have freedom of speech and expression, sometimes that may embark the privacy rights of an individual.¹⁰

The sting operations are usually carried out, to trap the corrupt practices, bribery, corruption, black money, scandals of different kinds etc. It can also be useful in the arrest of terrorists and anti-national elements. The gadgets generally used are camera, recording instruments, audio-video instrument and equipment. The media has used it to expose acts of politicians, different officials of departments and others, who are allegedly guilty of subverting the rule of law.¹¹

Sting operation can be conducted in two types. One is positive sting operation wherein information that are required to be brought before the general public especially on Governments accountability etc. The Government must have accountability to survive in a democratic form of administrative setup. If any minister or officer of a Government department demands bribe to perform his public duty, that can be brought before the society by a journalist through sting operation. In 1981, a news reporter gone for bid and bought a young woman, Kamala for

⁹ 1995 AIR 2438, 1995 SCC (5) 139.

¹⁰ Anjana Sharma, (2008) Sting operation and law, Mahaveer and sons, p.2

¹¹ Manorama Singh (2007) Sting operation, Discovery Publishing House, New Delhi.



Rs.2,300/- at a sale, in Madhya Pradesh, to establish trafficking in women and the involvement of bigwigs in the racket.¹² The Journalists Tarun Tejpal and Aniruddha Bahal, detected match fixing in cricket by wearing secret recording equipment and a pinhole camera. They became successful in tracking cricket match fixing-Tehalka issue.¹³ The Tehelka tapes gave us a sneak peek on the corrupt players and administrators who were complicit in tarnishing cricket in exchange of money.¹⁴

One more kind of sting operation is negative sting operation in which privacy of an individual will be taken away and intended to get more viewers by making the subject matter much sensational. If any individual earns name and fame in a platform can be destroyed by negative sting operation. Negative sting operation is not healthy to the society and it provides wrong information to the public and invades privacy of an individual without any positive substance. As a result of negative sting operation conducted by a TV channel in New Delhi in 2007 wherein a Government School teacher Uma Khurana was alleged that she was luring her students to prostitution and the Government based on sting operation report issued notice and police have taken an action against her. After enquiries, allegation was revealed to be fabricated and she was innocent.¹⁵

Justice Markandeya Khatju opined that more sting operations should be conducted to bring corrupt elements to light. Carrying out sting operations cannot be treated as criminal because this is only a way to expose corruption in society. ¹⁶The Operation Duryodhana was

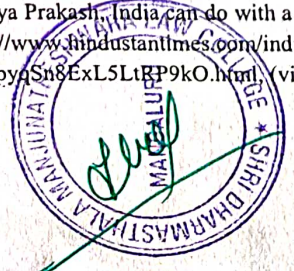
¹² When An Indian Express Reporter Broke Law and Purchased A Woman For Rs 2,300 To Write a Shocking Story on Trafficking, Outlook, available at <https://www.outlookindia.com/website/story/when-an-indian-express-reporter-broke-law-and-purchased-a-woman-for-rs-2300-to-w/306556>, (visited on 20th September 2023).

¹³ N S Jagannathan, (1999), Independence and the Indian press, Konark publications under the auspices of Media Foundation New Delhi

¹⁴ Deeptesh Sen, The Tehelka Tapes that shook Indian cricket, Sports 360

¹⁵ HC issues notice to Delhi government on sting operation, The Times of India, September 7, 2007, edition-New Delhi.

¹⁶ Satya Prakash, India can do with a few more stings: SC judge, Hindustan Times, 23rd August, 2008, available at <https://www.hindustantimes.com/india/india-can-do-with-a-few-more-stings-sc-judge/story-OtvcrrpySh8ExL5LrRP9kO.html> (visited on 2nd October 2023).





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...ed out by a cobra post Aaj Tak team, exposed eleven Members of Parliament accepting cash
...asking questions in Parliament, through a sting operation.¹⁷

The Operation Chakravyuh is a sting operation conducted by Star News-Detective Intelligence Guild, has showed former Chief Ministers and Members of Lok Sabha and Rajya Sabha involved in corruption, in allotting work for the Member of Parliament Local Area Development (MPLAD). The Star News released the transcripts and event descriptions collected through sting on a meeting with Members of Parliament.¹⁸

In Operation West End, a sting operation conducted by Tehelka in 2000-2001, specifically exposed the bribery and corruption involved in defense sector, particularly on dealing of arms from foreign country. Mr. Bangaru Laxman caught on camera allegedly taking bribe from fake arms dealers for facilitating a fictitious defence deal. The journalists posed themselves as representatives of a fictitious UK-based company West End International and were seeking his recommendation to the ministry for supply of hand-held thermal imagers for the Indian Army.¹⁹ As per the charge sheet framed by the Central Bureau of Investigation, Tehelka journalists had 08 meetings with Bangaru Laxman, from 23rd December 2000 to 7th January, 2001 to project themselves as supplier of defence-related products. He was caught on camera accepting money in 2001 by this sting operation.²⁰

India TV has taken up a sting operation that exposed unethical deal in Indian entertainment industry. In a sting operation India TV sent an undercover agent as struggler to the exposed actors Shakti Kapoor and Aman Verma. They were caught on tape seeking sexual favor from the reporter.²¹

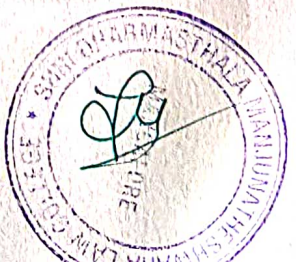
¹⁷ Sting: 11 MPs take cash to ask questions in Parliament, Times of India, 12th Dec, 2005, available at http://timesofindia.indiatimes.com/articleshow/1327921.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, (visited on 10th September 2023)

¹⁸ One more Sting-Outlook, available at <https://www.outlookindia.com/website/story/one-more-sting/229582>, (visited on 5th September 2023).

¹⁹ Tehelka sting case: Former BJP chief Bangaru Laxman convicted, India Today, 26th April, 2012.

²⁰ Sting Operation-West End, The Hindu-Mangalore Edition-April 27th, 2012.

²¹ India's Infamous and Sensational Sting Operations, Magazine-Silicon India, available at www.siliconindia.com/news/general/indias-infamous-and-sensational-sting-operations-nid-155959-cid- (visited on 28th September 2023).



Guidelines for Press and Media

Sting operation should not be conducted by any journalist as per their whims and fancies. They need to follow guidelines provided under the Code of News Broadcasters Association. It has provision to make the press and media reporters and journalists liable for their act. The Code of Ethics and Broadcasting Standards prescribe professional ethics to the press and media.²² They must act as trustees of general public and they should be provided with fair report with independence and integrity. As the press and media are the influencers of public opinion, they should be accountable to their readers and viewers.

Whenever press and media takes up any news to broadcast they must see to it that they are not hindering or promoting any one of the sides of controversy. Broadcasting a news is the main duty of them and forming an opinion against or favour is left to the general public in such situations. Dissemination of information must be prime focus of any media in a democratic country and not to create different dimensions of any news. News channels should present fair and complete information about any subject matter. They should not select such news that may create an apprehension of controversy that may disturb internal peace and security of the country.²³

Self-Regulation of Press and Media

To practice self-regulation the News Broadcasters and Digital Association has certain guidelines wherein editorial principles are laid down as the freedom of speech and expression mentioned under the Constitution of India. Self-regulation provides for affirmative declaration on the part of the journalists and they need to follow values and objectives of their news paper or news channels. No TV channels can telecast biased, inaccurate, malicious, misleading or harmful information to the society.²⁴

There are certain areas mentioned specifically to maintain self-regulation by the broadcasters.

- **To report impartially and with objectivity**-There must be accuracy and impartiality while broadcasting or telecasting any matter. Speedy reaching of news also requirement as per the aspirations of the viewers. If any error occurs, must be rectified and transparency also the need of any channel.



²² Neelamalar M, (2010), Media Ethics and Law, PHI Learning Pvt. Ltd. New Delhi.p.178

²³ Aggarwal, S. K. (1993), Media and Ethics. India: Shipra Publications

²⁴ Indian Journalism in a New Era: Changes, Challenges, and Perspectives. (2019). India: Oxford University Press

- **Ensure Neutrality-** Broadcasters should not side any party in any matter at issue. They must maintain neutrality and should strive to bring truth before the society.²⁵
- **While reporting any crime, ensure that crime or violence are not glorified-** Broadcasters should keep in mind always that they should not glorify or induce any violence or crime while broadcasting in their channels. Glorification of any criminal act may instigate people to follow the same and it may mislead the viewers. Visuals of any sufferings, pain, like suicide, accidents, or heinous crimes not to be shown as it is.
- **Intimidation against women and children-** Any sexual violence, trauma, aggression etc. occurred against women and children are not to be shown in visuals by any channels. Privacy of women must be maintained and address details are not to be presented before the viewers. Even, the juveniles reported to be involved in any crime or offence also not to be brought before the public through channels.²⁶
- **Sex and nudity-** Sexual violence or any activities are not be visualized by channels including nudity of the male or female.
- **Not to invade privacy-** Private life or personal affairs of any individual not to be intruded by the channels unless if it is warranted by the authorities in public interest.
- **Maintain national security-** No information that may endanger national security can be broadcasted by the channels and whichever terminology or maps of India is permitted by the Government to exhibit can only be used in the channel. Public interest and the national security not to be threatened by reporting something connected to national interest.
- **Not to encourage and support superstitious beliefs-** Glorification of any superstition and occultism by any channel is not allowed. Any supernatural acts, ghosts, personal deviations etc. not to be glorified and warnings or disclaimers should be present along with such broadcast.²⁸
- **Sting operations-** Sting operation should be always last resort to bring the truth out and present them before the general public. While using sting operation methods, self-regulation guides the world of journalism not to follow false or wrong methods by using



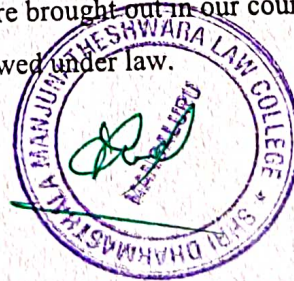
²⁵ Neelamalar M, (2010), Media Ethics and Law, PHI Learning Pvt. Ltd. New Delhi, p. 207
²⁶ Supra Note 25, at p. 208.
²⁷ Neelamalar M, (2010), Media Ethics and Law, PHI Learning Pvt. Ltd. New Delhi, p. 209.
²⁸ Tager, R. E., Ross, S. D., Reynolds, A. L. (2017). The Law of Journalism and Mass Communication. United States: SAGE Publications.

sex and sleaze to carry them out. Not to make any alteration or editing that may change the truth.²⁹

- **Corrigendum-** If any mistake happened during telecast, those mistakes must be rectified immediately and should be brought before the viewers. Correction in wrong publicity should also be made known to large number of viewers as the wrong publicity or broadcast was made. There should be an opportunity for the readers and viewers to present their feedback and there is responsibility with the press and media to respond to any queries or feedback provided by the public.

Conclusion

Even though, freedom is granted to the press and media to collect and disseminate information, they are under threat and freedom cannot be exercised against giant powers. Ethics are larger than that of law, they are not enforceable as law. A breach of ethics can at the most be censured, not penalized. But ethics should be followed in every profession to preserve the sanctity of profession. Press and media should be fair, objective, impartial, relevant, and truthful because they are playing roles in the minds of the people. Public interest should not be hampered accuracy of the news is more important than the speed. By sting operation many secret matters are brought out in our country, but negative sting operations invade privacy that is not allowed under law.



²⁹ A Handbook of Journalism: Media in the Information Age. (2018). India: SAGE Publications.