
A CRITICAL ANALYSIS ON THE RELEVANCY AND QUESTIONABLE ETHICS OF STING OPERATION: AN EVIDENTIARY PERSPECTIVE

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ABSTRACT:

In the fields of law enforcement and investigative journalism, sting operations—covert actions intended to discourage illegal activity against public morality—have become increasingly common. The word "sting" comes from American police techniques and refers to the practice of laying traps to catch criminals. These activities are information-gathering missions designed to uncover hidden or misrepresented facts that avoid ordinary scrutiny. Sting operations are carried out with the goal of improving government accountability and openness, but they must balance protecting the public interest with protecting privacy. This article examines the contradictory character of sting operations, emphasizing both their ability to infringe upon the individual's privacy and their effectiveness in obtaining vital information. By referencing past legal decisions, such as those from the Supreme Court, it emphasizes the careful balance between preserving individual freedoms and right to privacy with that of the public's "right to know".

INTRODUCTION:

Sting Operation is a covert operation aimed at having a deterrence effect on criminals who engage in activities against the public morality. A Challenging confidence game that was carefully planned and carried out. The term "sting" comes from American usage and refers to a police undercover operation intended to catch criminals. The phrase "set a trap to catch a criminal" has the synonym "sting," which is how the term is used in this article. Investigative journalism or undercover journalism are more formal names for it. An information-gathering exercise called a "sting operation" seeks for facts that are either difficult to find through routine investigation and searches or that are actively being omitted, hidden, or distorted.

The primary objective of sting operation is to increase transparency surrounding the functions of the government and thereby create a sense of accountability in its legitimate space by disseminating information to the public in its prerogatives.

Sting operations by the media or any law enforcement agencies are conducted in cases where the information regarding the identification of the offender is absent and essentially the authorities will have to proceed with undercover investigative techniques by setting a trap using deceptive tools. Thereby in order to catch the offender red-handed, the undercover agent engaging in sting operation decides to operate proactively by setting some kind of trap

On the other hand, there are another class of sting operations that gravely violate the privacy of citizens as against working towards public interest. The independence and freedom of people would be hampered if such operations were permitted.

No democratic government "could possibly sustain itself without openness, and the fundamental idea of accountability is that citizens should have relevant information regarding the operation of the government," the supreme court concluded in *S.P. Gupta v. Union of India*¹.

¹ 1982 (2) SCR 365

The Supreme Court ruled in the case of *Romesh Thappar v. State of Madras*² that the need for people to be sufficiently informed in a democratic country so they can have an informed influence on decisions that may affect them stems from the public interest through freedom of discussion, of which freedom of the press is one element. In many situations, the fundamental concept of the people's right to know is in effect.

RESEARCH AIMS AND OBJECTIVES:

- To analyse the legal admissibility of illegally obtained evidence during sting operation in Indian Courts.
- To assess the impact of sting operations on the right to privacy of individuals who are targeted.
- To examine the potential for sting operation evidence to be manipulated or fabricated and to identify methods of detecting such manipulation.

RESEARCH QUESTIONS:

1. What is the evidentiary value of illegally obtained evidence through deception tools like wiretapping and to what extent the exclusionary principle applies in the Jurisdiction of India?
2. Whether the confessions obtained during sting operation attract the defence of right against self-incrimination under Article 20(3) of the Indian Constitution?
3. What are the tests to conclude the authenticity, reliability, and the veracity of the illegally obtained evidence in sting operations that necessarily flags fabrication or alteration of the evidence?

RESEARCH METHODOLOGY:

The project work entitled “A Critical Analysis on the Legality of Unregulated Sting Operations conducted by Media” is done by using Descriptive methodology, and comprises secondary sources which were collected from journals, articles and books related to this topic by distinguished and reliable authors. The existing literature on sting operations are reviewed which includes cases, regulations, guidelines and ethical considerations. Comparative

² 1950 SCR 594

Methodology is used to compare the regulatory framework adopted by Australia for evaluating the evidence obtained through sting operation with that of the Indian Jurisdiction.

HYPOTHESIS:

It is a very well-established principle that the judiciary has major discretionary powers whilst admitting illegally obtained evidence and thereby it is essential that the judiciary in its capacity maximum ensures to verify the authenticity and veracity of the illegal evidences submitted as a result of sting operations by mandating Digital forensic tests to recover and analyse data from electronic devices. Essentially, such forensic laboratories should be chosen that are accredited by the National Accreditation Board for testing and calibration laboratories (NABL). Furthermore, India needs to adopt a concrete framework in the evidence law to evaluate illegally obtained evidence instead of fully relying upon the discretion of the judiciary which is entirely subjective.

STATEMENT OF PROBLEM:

The Indian Criminal Justice system does not essentially mandate the principle of exclusionary rule and the doctrine of fruit of poisonous tree for the admissibility of illegally obtained evidence and thereby there are no statutory prohibition against illegally obtained evidence during the sting operation. Therefore, the judiciary has huge discretionary powers when it comes to allowing the admissibility of illegally procured evidence based on its relevancy. This has eventually led to Media Channels submitting fabricated evidences for the purpose of sensationalizing a particular piece of information solely for TRP purposes and conducting increased number of negative sting operations to keep the viewers interest intact. The Judiciary has majorly failed in its prerogatives to carefully verify the authenticity and veracity of the evidence and has been reckless to admit fabricated evidences in certain cases.

SCOPE AND LIMITATIONS:

The scope of this research paper primarily resorts to analysing the Evidentiary value of the illegally obtained evidence during Sting operation in Indian courts and as to whether the inherent process violates the right to privacy and whether a demarcation line can be drawn in such a way that does not give rise to privacy issues. Furthermore, the paper analyses the judicial discretion regarding the admissibility of the evidences obtained, the current stance and how judiciary perceives these unregulated undercover operations. As a result, the research paper tries to comprehend whether sting operations are truly necessary by weighing the positive and negative aspects of the same. The scope of the paper is only limited to a evidence perspective

and the privacy issues arising out of the same, thereby reflecting upon the ways to ascertain the reliability of these evidences.

CHAPTER – 1

THE ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE THROUGH DECEPTION TOOLS AS PART OF STING OPERATIONS: RELIABILITY AND RELEVANCY

Sting operations by media as an attribute of investigative journalism is conducted to expose crimes that massively endanger the public welfare and are not usually reported by victims referred to as victim-less crimes that necessarily does not have a direct victim. For instances, corruption, Drug offences, money-laundering, conspiracies, political battles, bribery, Human trafficking³ etc. Generally, the covert operations are conducted on public functionaries to place a check and balance upon them and thereby hold the government accountable in case the administration engages in malpractices that threatens the public autonomy. The sting operations conducted by media as part of the investigative journalism does not have any legal backing or statutory framework for regulating its conduct in any of the legislations. However, the Judiciary in ample number of judgements have upheld the validity of sting operations that are conducted in public interest as against their personal interest⁴

In *Raja Ram Pal v. Hon'ble speaker, Lok Sabha & Others*⁵ (2007), the Delhi High Court upheld the validity of a sting operation that led to expose of misconduct of 11 MPs which eventually led to their removal from the parliament. Similarly, the Delhi High Court once again re-iterated the validity of sting operations by media in *SB Media Pvt. Ltd v. State*, which exposed the corruption of members of parliament engaging in the activity of accepting bribes to make representations in the parliament. The judiciary whilst commenting upon the necessity of sting operations in the case, *State of UP v. Raj Narain*⁷, squarely held that the citizens

³ Andrew Ashworth, “What is wrong with Entrapment?”, Vol.40, SJLS, PP 296, (1999)

⁴ Mahendra Singh, Dr. Narayana Patirdar, Dr. Akhilesh Kumar Singh, “Perception of Viewers Towards Rationality of sting operations conducted by TV News Channels”. Vol.20, Issue 8, Levant Journal, pp-207-211, (2021)

⁵ (2007) 3 SCC 184

⁷ 1975 SCR (3) 333

inherently have a right to know about the public administration of the state machinery and this right is covered by the freedom of speech and expression under **Article 19(1)(a)** of the Indian Constitution. Thereby, it shall be noted that the judiciary essentially accepts the validity of sting operations being conducted by media provided it is conducted on the fundamental basis of upholding the public interest as against any monetary or commercial benefits. However, on several occasions, the court have held certain negative sting operations that don't essentially uphold the interest of the public and instead prioritize TRP sensationalization as invalid

1.1 INDIAN APPROACH TOWARDS THE VALIDITY OF ILLEGALLY OBTAINED EVIDENCE

The deliberations surrounding the admissibility of illegally obtained evidence during sting operations have been addressed by the judiciary in various pronouncements. In common parlance, illegally or improperly obtained evidence is a piece information extracted by breaching the human rights of the targeted person against the prescribed procedure of law⁸.

The legal framework of India does not essentially prohibit the admissibility of illegally obtained evidence either under the code of criminal procedure of 1973 or under the Indian Evidence Act of 1872 as long as it is relevant to the conviction of the accused. The India law does not follow the exclusionary principle that places a blanket ban on the admissibility of evidences obtained through theft, sting operations, wrongful search and seizure, unwarranted arrest, wiretapping etc⁹. Thereby the judiciary has major discretionary powers regarding the admissibility of illegally procured evidence which is decided solely on the basis of the relevancy of the evidence irrespective of the means through which it was obtained¹⁰.

As per the rules of evidence law, for evidence to be considered for the final adjudication in a trial it must fulfil three pre-conditions which are the pillars of admissibility in the court of law - **relevance, admissibility, and reliability**¹¹. The judiciary before deciding on the evidentiary value of the improperly obtained evidence should firstly consider whether the fact is relevant to the case, and secondly the admissibility of the evidence to be used to prove the fact and thirdly, reliability should be strongly established eliminating all the ambiguities regarding the

⁸ Devamshu Behl, "*Admissibility of illegally obtained Evidence*", Vol.4, IJLMH, PP 1915, (2021)

⁹ Janvi Johar, "*Admissibility of Sting Operations as Evidence*", Vol 4 Issue 6, Int'l J.L.Mgmt. & Human. pp 285, (2021)

¹⁰ Supra Note 8, pp - 1917

¹¹ Supra Note 8, pp - 1915

retrieved audio or video recording as part of the sting operation. The Supreme Court in **Umesh Kumar v. State of A.P.**¹² held that there was no bar upon a document procured through unlawful means provided it is relevant and essentially its genuineness shall be verified and furthermore it was re-iterated in another case **Poorna Mal v. Director of Inspection of Income Tax (Investigation)**¹³ which held that

“Unless there is an express or necessary implied prohibition in the constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out”

The deliberations regarding the legality of evidences procured through sting operations have come under scrutiny in **Sri Bharadwaj Media Pvt. Ltd. v. State of W.P.**¹⁴. in which the propriety of tape records from a sting operation was held admissible which essentially exposed corruption of members of parliament. However, the Apex court, **People's Union for civil Liberties v. Union of India**¹⁵ whilst dealing with wiretaps retrieved as part of sting operations, squarely held that wiretaps are grave violation of privacy of a person and thereby laid down extensive guidelines to be followed by the government before resorting to use wiretaps in investigation. However, the bench did not explicitly ban the evidence of tape record and it is to be noted that the admissibility of illegally taped conversations is decided on a case-to-case basis. The Telegraph Act of 1885 regulates wiretapping and thereby it should be noted that only the union home secretary has the authority to issue an order to tap and the government is held accountable to prove that the information obtained through wiretap shall not be obtained through any other means per se¹⁶.

However, the **Ram Singh & Ors. v. Ram Singh**¹⁷ case is the most significant one in terms of tape-recorded conversations. In this case, the apex court clearly outlined the requirements that must be met for a tape-recorded statement to be admissible, including:

- The speaker's voice must be properly identified by the person who made the recording and by others who recognise his voice.

¹² AIR 2014 SC 1106

¹³ (1974) 1 S.C.C.345

¹⁴ Supra Note 6

¹⁵ (1974) 93 I.T.R. 505 (S.C.) (India)

¹⁶ Supra Note 9 pp - 287

¹⁷ 1985 SCR (2) 399

- The person who made the recordings must provide adequate proof of the accuracy of the conversation that was taped, which may be either direct or circumstantial.
- A taped statement must be examined carefully for any signs of tampering or part-erasure; otherwise, the statement may be taken out of context and inadmissible.
- The statement must be pertinent in accordance with the Evidence Act's standards.
- The tape recording must be carefully sealed and kept in a secure location for official custody.
- The speaker's voice should be audible and should not be obscured or affected by other sounds or disruptions.

Thereby it shall be concluded that the judiciary enjoys major discretionary powers regarding the admissibility of illegally obtained evidence as part of sting operations that totally relies on the relevancy and reliability of the evidence. The 94th Law Commission Report was released with a focus on human rights, and the Indian Evidence Act's current legal provisions on the illegality of evidence collected illegally were examined in light of the broad application of Article 21 of the Constitution. Essentially, this report recommended for the addition of Section 166A to the Indian Evidence Act, which would provide judges the authority to deny the admission of any evidence that was obtained improperly or illegally if they felt that doing so would interfere with the administration of justice. The Section further suggests that courts consider the significance of the evidence, the gravity of the situation, and whether the conditions are appropriate before admitting or rejecting evidence¹⁸. As a result, this Section aims to provide judges the freedom to decide whether the crime is so shocking and terrible that it would be better for them to exclude the admissibility of the evidence.

1.2 CONFESSIONS OBTAINED DURING STING-OPERATIONS: RIGHT AGAINST SELF-INCRIMINATION

Essentially, self-incrimination refers to a declaration or statement made by an accused person during an investigation that implicates or exposes themselves, either openly or implicitly.

¹⁸ Aarushi Mehta, "A Study on the Admissibility of Evidence Obtained by Unlawful Means in Indian Courts in view of Right to Privacy as a Fundamental Right", Vol.3, Manupatra, (2021)

In general terms, it is a confession made during the course of a criminal investigation. In *Nandhini Sathpathy v. P. L. Dani*¹⁹, the court upheld the accused's right to remain silent and ruled that no one has the moral right to coerce an accused person to confess or make self-incriminatory statements admitting guilt

Article 20(3)– Right against self-incrimination – “No person accused of an offence shall be compelled to be a witness against himself/herself”²⁰

In accordance with Sections 25 and 26 of Indian Evidence Act, a confession given by an accused person while they are being investigated or detained by the police cannot be used to implicate them or establish their guilt. So, it is indisputable that confessional remarks made during an investigation are not admissible as evidence in court during criminal proceedings. The ultimate reason as to why all confessional statements are made inadmissible before the court of law would be to protect the accused from police abuse and harassment during the inquiry, there is a possibility that the police will pressure the suspects to admit guilt in order to quickly close the investigation²¹.

Section 27 they may still be used to prove an accused person's guilt if the confession can be substantiated with the subsequent discovery of a valid evidence through legitimate means relevant to the conviction of the accused. This is also known as the doctrine of confirmation by subsequent facts.

According to the "principle of confirmation by subsequent facts, the statements made while you were in custody are admissible to the extent that they can be supported by the facts that are later discovered. It is likely that, as opposed to their discovery through independent means, the information contained in the custodial statement will directly influence the eventual discovery of pertinent facts”²²

The legality of confessions obtained through sting operations necessarily depends on various factors and attributes like the circumstances in which the sting operation was conducted, the jurisdiction etc. In Common parlance, the confessions obtained in the due process of sting operations are considered as extra-judicial confessions and thereby can be admissible in the

¹⁹ 1978 SCR (3) 608

²⁰ INDIA CONST. Art 20(3)

²¹ A S Dalal & Arunava Mukherjee. “Constitutional and evidentiary validity of new scientific test”, JILI, Vol. 49, pp 531, (2007)

²² Supra Note 16, pp-533

court of law as long as they were not obtained in a gravely illegitimate manner²³. As seen before, the constitutional protection of right against self-incrimination applies only when the individual is being compelled to testify or provide evidence against themselves by the law enforcement agency. As a result, in case of sting operations, the confessions are not considered to be self-incriminating as the targeted individual is not compelled or coerced to confess against themselves and instead the individual is voluntarily confessing to the commission of crime as part of the sting operation that can be used to incriminate them.

Therefore, on the premises of the above-mentioned rationale and the doctrine of confirmation by subsequent facts, confessions obtained through sting operations are admissible in a court of law and does not amount of self-incrimination if essentially the facts can be verified by subsequent discovery of legitimate evidence to prove the guilt without any reasonable doubts.

CHAPTER-2

THE NECESSITY TO EVALUATE THE RELIABILITY AND CREDIBILITY OF EVIDENCES OBTAINED THROUGH STING OPERATIONS: FORENSIC PERSPECTIVE

A nuanced issue that becomes exponentially important whilst dealing with the admissibility of illegally obtained audio (or) video evidence during the sting operation is essentially the reliability of the evidence which qualifies as the second mandatory pre-condition for the admissibility of the procured evidence.

However, a major shortcoming would be the ambiguity regarding the genuineness of the audio (or) video evidence produced as a result of the sting operation. This issue can be elaborately captured with the help of the approach adapted by the judiciary in the landmark sting operation conducted in the case of Jessica Lal Murder Trial²⁴. During the prosecution of the accused in the Jessica Lal Murder Trial, although questions were brought up regarding the authenticity

²³ David Anthony Brooke, "Confessions, illegally/improperly obtained evidence and entrapment under the Police and Criminal Evidence Act 1984: Changing Judicial and Public Attitudes to the Police and Criminal Investigations", ProQuest, pp 55, (2017)

²⁴ Nandi, Kathakali, "*Investigative Role of Media: Responsibility to the society*", Vol.8, Global Media Journal, pp 5, (2011)

and genuineness of the evidences produced by the sting operation, the court recklessly refused to neither verify the genuineness of the evidence nor check the authenticity by way of laboratory forensic tests and thereby rendered the evidence admissible on the basis of the statement of the witness. The huge cloud of ambiguity surrounding the reliability of the evidence produced was unbothered²⁵.

A Second example would be the case of *R.K.Anand v. Registrar, Delhi High Court*²⁶, Despite specific pleas to this effect, the court once more felt it unnecessary to have the Digital recording certified by a forensic laboratory and instead decided the interpretation based on another unreliable audio recording. These two cases stand as illustrations of the major discretion the judiciary has in adjudging the veracity and genuineness of an admission. However, both of these cases also serve as examples of how carelessly the judiciary has handled digital evidence, to the point that their veracity is determined solely by the way that it seemed to the naked eyes²⁷. The court did not see it necessary to have these tapes authenticated, despite the fact that explicit objections were made to their veracity and requests were made to have a forensic laboratory examine them before relying upon them to pronounce the judgement.

In contrast, the Allahabad High Court established the proper way to handle evidence produced in sting operation in the case of *Raj Veer Singh v. State of U.P.*²⁸ in which A news agency had conducted a sting operation against the Forensic Laboratory, Agra officials. Before coming to any substantive conclusions, the court noted that the issue of the recording's authenticity was crucial to the case and needed to be taken into account. They were guided by a forensic report from the Anti-Corruption Unit that categorically stated that the recording had been manipulated and transformed, with several portions missing from even the purportedly unedited rawfootage. Hence, the court overturned the bribery accusations, but it nonetheless fined the laboratory officer for even hosting those who were interested in Bribing him. This instance demonstrates the benefit of having recordings authenticated before using them as evidence and how capable the media is of producing fabricated evidence out of sting operations to merely sensationalize a particular incident in order to lure the public's attention and thereby benefit from the same²⁹. One such example would be the fabricated sting operation conducted by the

²⁵ Supra Note 23 pp 6

²⁶ (2009) 8 SCC 106 (India)

²⁷ Dr.Sanjeev Kumar Chadha, "Role of Media in Sting Operation: An analysis", Volume 7 Issue 3, IRJMST, PP 2250- 2269, (2016)

²⁸ 2003 (4) AWC 3046

²⁹ ibid

Live India Channel, where Mrs. Uma Khuranna, a school teacher was wrongfully accused of getting associated in a sex racket that involved school girls. Investigation eventually revealed that the entire Sting operation was staged. In this instance, the court ruled that while sting operations may expose the truth to the public, they are illegitimate if they involve entrapment or false unwarranted evidence³⁰. These accusations incited violence amongst the mob, and as a result, the teacher was physically attacked by the group.

As mentioned above, the current legal framework of the Indian Criminal justice system authorises major discretionary powers to the judiciary regarding the admissibility of illegally obtained evidence and thereby leaves increased room for the potential of fabricated evidence resulting out of negative sting operations with the solve motive of gaining the attention of the viewers. The existing framework does not essentially mandate the statutory requirement of certificate of authentication from forensic experts for confirming its reliability for audio and video recordings. Only the certificate of 65-B is necessary for any digital evidence including E-mails, call detail data and even audio-video recordings³¹. Thereby in circumstances of sting operations, the protection offered by the 65-B certificate alone is not essentially sufficient. On the premises of the above-made observances regarding the reckless attitude of judiciary towards verifying the veracity and authenticity of the evidences obtained during sting operations, it is necessary that the judiciary takes maximum efforts in its prerogatives to verify the authenticity, genuineness and veracity of the evidence obtained before validating its admissibility by way of mandating forensic laboratory tests that essentially identify whether the digital evidences have been tampered and deducts minor technological tampering like duplication or frame dropping in addition to verifying the statements beheld with the help of voice recognition³². This protection of screening for digital traces and voice recognition is important since the technology that is currently available can generate full statements in someone else's voice without the need to trim or alter the original audio. Such unreliable recordings being included during court hearings will unjustly prejudice the defence's case. This is due to the fact that such a video may appear to be very probative on the surface, persuading the judge to grant admission. But the truth remains that its veracity and authenticity are

³⁰ Ahkam Khan & Parimal Kashyap, "*Sting Operations: The Role of Media as a Vigilante*", Volume 4, Indian J.L. & Pub, pp 65, (2017)

³¹ Supra Note 8 pp 1915

³² Nandi, Kathakali, "*Investigative Role of Media: Responsibility to the society*", Vol.8, Global Media Journal, pp 1-8, (2011)

necessary for both its admissibility and its probative value. Thus, the courts should be mandated to verify the legitimacy of such an incriminating piece of digital evidence before imposing it on the defence.

On the premises of the above dealt problem regarding the authenticity of sting operation evidences, it is necessary that central government passes regulations on authenticating digital evidence through certification from qualified persons.

CHAPTER – 3

THE DICHOTOMY BETWEEN RIGHT TO PRIVACY AND EVIDENCES PROCURED THROUGH STING OPERATIONS: ATTAINING BALANCE

There are always two sides to a coin, although the media exercises the freedom of press to conduct sting operations well within the ambits of Article 19(1)(a), it essentially should not encroach upon the right to privacy guaranteed under Article 21 of Indian Constitution. In a country's legal framework, no right to freedom irrespective of how valuable it is, can ever be appraised as absolute, unrestricted, or unqualified in all circumstances. Like any other right protected by the Constitution, the freedom of the press must be exercised well within its legitimate boundaries. Great power implies enormous responsibility. The freedom of press encompassed in Article 19(1) (a) should necessarily be exercised in such a way that it does not encroach upon the limits of privacy of the targeted individual or any other stakeholders for that matter³³.

The Indian Constitution guarantees Freedom of press but with strings attached. The word "reasonable" was added to the restrictions in Article 19(2) on June 18, 1951 by way of an amendment. However, the restriction placed upon the boundaries of freedom of press has to be legitimately reasonable. It must therefore not be excessive or inappropriate. Additionally, the restriction must be imposed in a just, equitable, and reasonable manner³⁴. The Supreme Court ruled in the historic *Sakal papers (p) Ltd. & Others v. The Union of India*³⁵ case that Article

³³ Om Prakash, "Right to privacy in Sting Operations of Media", Vol.8. Odisha Law Review, 2013, pp 56-60

³⁴ Anamika Ray, Ankuran Dutta, "Media Glare or Media Trial: Ethical Dilemma between two estates of India Democracy", Vol.5 – Issue 2, Online Journal of Communication and Media Technologies, pp-95, (2015).

³⁵ AIR 1962 SC 305

19(2) of the Constitution only enables the imposition of reasonable restrictions on Article 19(2) and on no other grounds. Hence, unless such action can be supported by the law falling under clause 2 of Article 19, it is not permissible for the state to restrict freedom of speech and expression for the purpose of enhancing the overall welfare of a section or a group of people. However, it is true that all sting operations violate the right to privacy to some extent because, generally, during a sting operation, the subject being filmed is unaware that a hidden camera is present. This indicates that he has not given his consent to be filmed, which is required in order to videotape someone. Yet, it could be claimed that a criminal conduct done by a public employee while on the job and in violation of his official duties does not warrant protection under the Right to Privacy Act³⁶. A public servant's actions while doing their duties are also open to the public. In certain situations, the public interest shall outweigh the right to privacy. If a person has no obligation to the general public, his or her immoral and unethical behaviour is not subject to public scrutiny unless the behaviour breaches the law.

According to Subba Rao J, the definition of "liberty" in Article 21 is broad enough to cover privacy. Although it is true that he did not specifically proclaim the right to privacy as a fundamental right, His Lordship emphasised that the right is a necessary component of personal liberty. Although it is viewed as a fundamental right, it is not absolute. It may be limited in accordance with a significant public interest over personal privacy³⁷.

Furthermore, The Delhi High Court ruled in **RK Anand v. Registrar**³⁸ referred to as the BMW Hit & Run case, that a person accused of a crime cannot assert that the person who revealed the wrongdoing had committed any alleged infringement. It would be a matter that needed to be dealt separately if the sting operation that came before it infringed in any manner on the rights of the targets of the stings. Everyone who believes they have been wronged is always free to seek justice in civil or criminal court.

However, In the **Rajat Prasad v. CBI**³⁹ case, the Supreme Court said that: "Sting action by television channels has been approved and even valued by the Supreme Court as a free criminal exposing system."

In **Aniruddha Bahal v. State**⁴⁰, Journalist Aniruddha Bahal, who were one of the first journalist to pioneer the sting in India and ran the Westend operation for Tehelka, presented a petition

³⁶ *ibid*

³⁷ *ibid*

³⁸ *Supra* Note 26

³⁹ 2014 (138) AIC 143

⁴⁰ 2010 172 DLT 269

before the court the Delhi High Court regarding the charges pressed against him for conducting sting operations. Bahal requested the dismissal of criminal accusations brought against him after he exposed the MPs through sting operation for engaging in bribery in order to make representations in the house of parliament. The police chose to pursue criminal charges against the journalists rather than looking into the Politicians. The Justice S.N.Dhingra concluded that the journalists were just carrying out their "constitutional" job and essentially the sting was in the "public interest". The judge held that,

*“In my opinion, the responsibilities outlined in the Indian Constitution for its citizens do authorise citizens to act as agent provocateurs to bring out, expose, and uproot the corruption that jeopardise the public welfare”*⁴¹

In the BMW Hit & Run case, six lives were lost in Delhi a decade ago as a result of Sanjeev Nanda, the son of an arms dealer, driving while intoxicated. An NDTV sting operation exposed the rich and prominent accused of trying to obstruct justice. The media trial verdict served as a morale lift for successful sting operations, however it did come with some cautions and restrictions. while applauding how a Television network exposed the crime of bribing a lawyer committed by a well-known criminal defence attorney. In reality, the NDTV was attempting to preclude the advocates attempt to engage in bribery in order interfere with the conviction of the accused, It exposed dishonest attorneys. Furthermore, Sanjeev Nanda, the accused, had nothing to do with the sting operations. The sting was really applauded by the court⁴².

Because it was their duty to guarantee a fair trial, the police are likewise greatly embarrassed by this revelation. R K Anand and I U Khan, two of the most well-known attorneys in the nation, were involved in this case. NDTV investigated the collusion between the prosecution, the defence, and Sunil Kulkarni, the only witness who has not gone hostile. This study has also shown how the high-profile BMW case may have involved legal system abuse. And the court successfully convicted the defendant in a hit-and-run case under Section 304 for the first time in order to demonstrate that no one can get away with breaking the law. Generally, the conviction is under Section 304 (1), which carries a two-year maximum penalty for acts of

⁴¹ Sudhanshu Jatav, *“Right to Privacy standing up against unregulated sting operations”*, Vol 10, *Supremoamicus*, pp 332-355, (2019)

⁴² Vol.8, Usha M. Rodrigues, Maya Ranganathan, *“Indian News Media: From Observer to Participant – Sting Journalism: A Sign of the times”*, SAGE publications, pp 65-86, (2014)

haste and negligence that result in death. But in this Hit & Run case, the accused was sentenced to 5 years of rigorous imprisonment. If the sting operation had not exposed the act of bribery, justice would not have been made to the family of the dead⁴³.

According to utilitarian principles, actions are "good" if they tend to increase happiness and "wrong" if they likely to have the opposite effect. The results of an action, how it impacts people, and whether it causes them pleasure or grief determine whether it is right or bad. According to this principle, decisions are assessed considering an event's results or repercussions⁴⁴. In the end, this concept would support the idea that a particular decision is ethical since the greater good is served by it if the positively benefited (those who benefit from the event) outnumber the negatively affected (people damaged by the event).

Thereby on the premises of the utilitarian principle and how far the string operations have been successful in exposing various scams and corruption in the society, it is essential that the scope of sting operations not be curbed in the context of right to privacy and thereby a healthy line of demarcation between Freedom of press and right to privacy should always be maintained.

SUGGESTIONS AND RECOMMENDATIONS:

Sting Operations which involve the use of Hidden cameras or other means to catch individuals engaging in illegal or unethical activities, have been increasingly popular in India in recent years. Proponents argue that sting operations can expose corruption, crime and wrongdoing that might otherwise go unnoticed or unreported and can serve as a powerful tool for investigative journalism and social justice.

However, critics argue that they can be unethical, entrapment, and can infringe upon individuals' privacy and rights. Moreover, sting operations in India have been controversial because of concerns about their accuracy, authenticity and legal admissibility leading to wrongful accusations and convictions. Firstly, it is an established observation that the judiciary enjoys unbridled power with respect to deciding the admissibility of illegally obtained evidence and this give rise to a necessity to insert statutory provisions for regulating the admissibility of those improperly obtained evidence in order to eliminate un-uniformity and furthermore the

⁴³ Vol.56, Ravi Sundaram, "*Publicity, Transparency and the Circulation Engine: The Media Sting in India*" University of Chicago Press, pp S181-S324, (2015)

⁴⁴ *ibid*

judiciary should take optimum efforts to ensure the authenticity of the evidence obtained through sting operations.

Therefore, it is important to strike a balance between the potential benefits and risks of sting operations, and to ensure that they are conducted in an ethical transparent and legally sound manner in such a way that does not encroach upon the right to privacy of the targeted individual giving rise to prejudice in a fair trial. However, it is necessary to make a note that the judiciary approves sting operations that violates the right privacy to a certain extent considering the lawful object of public interest and other negative sting operations concentrating upon the factor of sensationalisation and TRPs are cancelled. This may require guidelines and regulations for sting operations as well as oversight by independent bodies to ensure their integrity and accountability.

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