

## Sting Operations: Legal or Illegal

By Vedangini Bisht

### Introduction

A sting operation can be defined as a deceptive operation which is undertaken and designed to catch a person while committing a crime.

The term "sting" was popularized in 1973 by the Robert Redford and Paul Newman movie *The Sting*, which features two grifters and their attempts at conning a mob boss out of a large sum of money.

An informed citizenry is an extremely crucial part of a democracy, in order to play an important part of policy making, holding the government accountable for their actions and subsequently, taking responsible decisions during the elections. The task of keeping the citizenry informed falls to a large extent on the media. Sting operations is one of the methods employed by the media to make known to the public such information in which the identity of the victim may be undisclosed and the actions of the perpetrator are recorded in secrecy.

In **S P Gupta v Union of India**<sup>1</sup>, Supreme Court held that, "No democratic government can survive without accountability and the basic postulate of accountability is that the people should have the information about the working of the government."

In **Romesh Thappar v State of Madras**<sup>2</sup>, Supreme Court stated that, "The public interest of freedom of discussion (of which the freedom of press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves. In some the fundamental principle involved is the people's right to know."

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<sup>1</sup> AIR 1982 SC 149

<sup>2</sup> 1950 AIR 124

**Sting operations are classified into two types: Positive and negative.**

1. **Positive Sting Operations** are the ones which are undertaken for the benefit of the society and makes known such cases which ought to be brought in the public domain since they are proved to be detrimental for the interest of the society.
2. **Negative Sting Operations** are in violation of the privacy of the individual and the organisation. They do not serve a benefit to the society and are detrimental to the person who has been caught on camera unnecessarily.

## **Ethical Righteousness**

Sting operations are fraught with moral and ethical concerns. Questions have been raised as to whether it should be allowed to provoke a crime which otherwise would not have occurred.

Apex Court Bench led by Justice P Sathasivam stated that “Being essentially a deceptive operation, though designed to nab a criminal, a sting operation raises certain moral and ethical questions. The victim, who is otherwise innocent, is lured into committing a crime on the assurance of absolute secrecy and confidentiality of the circumstances raising the potential question as to how such a victim can be held responsible for the crime which he would not have committed but for the enticement”.

Supreme Court further added that, “Another issue that arises from such an operation is the fact that the means deployed to establish the commission of the crime itself involves a culpable act”.

There is another moral issue that crops up with the operation of stings. With great power comes great responsibility. The freedom of the press is implied in the freedom of speech and expression provided in Article 19(1)(a) of the constitution. Every institution is vulnerable to the point of abuse and every liberty, if left unchecked and unbridled, may lead to disorder and anarchy.

Sting operations are sometimes conducted only to act as catalyst for the TRPs of the channel. The carrying put of sting operations may be an expression of the freedom of the press but it also carries a duty to respect the privacy of others.

## Legality in India

Sting operations have not been explicitly mentioned in any of our laws. There are no acts that govern such operations. Though there have been certain judicial pronouncements which pertain to specific cases, no judge has so far laid down rules or laws which guides such acts of the media. This does not mean that there is no remedy available for the aggrieved. A person can approach the courts under different laws to protect his rights and freedom. For instance, wire trapping, which is used as a part of a string operation, is regulated under the Telegraph Act of 1885.

In **People's Union for Civil Liberties v. Union of India**<sup>3</sup>, the Supreme Court made a decision which says that wiretaps are a “serious invasion of an individual’s privacy”. Apex Court also laid out guidelines for wiretapping by the government, which define who can tap phones and under what circumstances. Only the Union Home Secretary, or his counterpart in the state, can issue an order for the tap, that also when it has been sufficiently proved that the information could not be sought by any other method.

Though there is absence of an explicit law on the legality or otherwise of the sting operation, Delhi High Court in **Aniruddha Bahal v. State**<sup>4</sup> upheld stinging on the ground that it becomes necessary in order to realize the ideals of freedom struggle, a cherished aspiration enshrined in article 51A(b) of the Indian Constitution. The High Court said that right to sting, as it were, was an integral part of freedom of speech and expression especially in the context of striving towards a corruption free society. However, the view of the Hight Court is not uniformly shared by the other courts. The much-awaited Press Council guidelines on sting operations are yet to see the light of the day.

Concerns arise about the right to privacy. Right to privacy has been granted to the citizens of India under Article 21 – right to life and liberty. It has also been recently upheld by the Supreme court in the Puttaswamy case. The press cannot claim absolute freedom of expression under Article 19(1)(a) as it is limited by Article 19(2) which protects public interest and decency. Here, the difference lies between what constitutes a private and a public affair and the burden will be on the prosecution to prove that interference in his private life has been committed.

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<sup>3</sup> (2003) 4 SCC 399

<sup>4</sup> 2010 172 DLT 269

It also has to do with solving the conflict that rises out of the freedom of the press and the right to privacy.

Supreme Court addressed this well in the case of **R. Rajagopal and Another v State of Tamil Nadu**<sup>5</sup>, “A citizen has a right to safeguard the privacy of his own, his family, his 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 in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.”

Justice Mathew laid down in the case of **State of UP v Raj Narain**<sup>6</sup>, “The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. Their right to know is derived from the concept of freedom of speech.”

## **The state of Sting operations in other Countries**

Sting operations are legal in the United States of America. On the ground reality of the FBI, they are considered to be the bread and butter of the organisation. Entrapment, however, is not legal. It is when the law enforcement induces a person or a group to commit a crime that they would otherwise have been unlikely to commit.

But a lot of American scholars agree that the line between the two seems to be getting blur.

In fact, Human Right Watch highlighted in a report that FBI sting operations are over aggressive and premised on the racist profiling of Muslim communities.

In United Kingdom too, sting operations are considered to be legal, albeit in a limited manner.

In Sweden, sting operations are a big no-no.

## **Conclusion**

According to a leading writer on the subject, Sadia Tabassum, “Sting Operations were initially about exposing acts of an institution or individual that are against the public order. They were meant to empower society with enhanced awareness, but several instances over

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<sup>5</sup> 1994 SCC (6) 632

<sup>6</sup> 1975 SCR (3) 333

the years have been more about the pursuit of profit and short-term sensationalism. The carrying out of a sting operation may be an expression of the right to free press but it carries with it an indomitable duty to respect the privacy of others. In India we have no specific laws to govern such operations. There are no judicial pronouncements till date that specifically redress operations that have violated the rules of journalism.”

There has lately been a growing consensus that the Ministry of Information and Broadcasting should add a clause to address sting operations in the Broadcasting bill. Just like other countries, there needs to a definite law that lays down whether sting operations are legal or not. This will save us from the vacillating opinions that exists amongst the courts. Then we can come out with a specific statement that says whether sting operations are legal, illegal or beyond the scope of law. The American model that makes a distinction between sting operations and entrapment can be made. A proper balance between the freedom of the press and the rights of the citizens will help us go a long way in this regard.