



Media, Technology, and the Erosion of Privacy Rights of Public Figures

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Abstract

Media plays a pivotal role in disseminating the information and is acting as a potent weapon against corruption. On the other side of the same coin media encroaches the private spaces of people which adversely affect the dignity of the individuals. The public figures especially celebrities faces such situations due to media-saturated environment. The right to privacy is one the fundamental rights guaranteed under Article 21 of the Constitution of India. This article explores the legal framework of privacy rights of public figures, especially celebrities in India. The paper provides a comprehensive legal examination of the issues involved, analysis of legal provisions, relevant cases and it ultimately concludes with recommendations to address the problem in the era of technology.

Key words: Right to privacy, media freedom, public figure, public interest, sting journalism

Introduction

The right to privacy is a fundamental right guaranteed under Article 21 of the Constitution of India.¹ The media enjoys the freedom of speech and expression under Article 19(1)(a) of the Constitution of India. The media justifies the invasion into the privacy right of individual on the ground that it contains public interest which is required to be exposed to the public. The public figures are mainly confronted with the issue of the violation of privacy right by the media. With the emergence of new media techniques, it is very easy to intrude into the private life of an individual. Maintaining the balance between free expression, right to information and right to privacy is a challenging strategy. The paper examines how far the media can publicize the personal information of public figures which are important in terms of public interest.

Public Figures as an icon of Attraction

The people are often so much curious for knowing the personal matters of famous figures. The media is not an exception to this. The public figures include political figures, celebrities, victims, offenders etc. The term 'public figure' means the person who obtained publicity either voluntarily or involuntarily. A person who by his accomplishments, fame or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doing, his affairs, and his character, will become a public personage. It includes anyone who has attained public attention out of any reason.² There is a limit to the extent to which the public figure can waive his right. The invasion of privacy right can be justified only to the extent which is necessary and reasonable which means that waiver of right to privacy is not extended to those things in personal life which do not expose anything on the question of competency for the office.

The figures fall under this category are persons holding a public office and they play a role in public life, whether in politics, economy, arts, social sphere or in any important domain.³ Their conduct is mostly under public discussion if it is related to the discharge of official duties.⁴ In these situations, they cannot raise the claim that the reporting has been violated the privacy right.

In *Phoolan Devi v. Shekhar Kapoor*⁵ the Delhi High Court held that the term 'public figure' for purposes of determining standard to be applied in defamation cases, means artists, athletes, business people, dilettantes and anyone who is famous or infamous because of his position in society and the nature of the act done by him.⁶ The court also observed that for the purpose of libel actions, the category of public figures will cover those persons who have assumed roles of special prominence in society. The persons who made controversies for the public purpose also come under this category.⁷

While balancing the competing interests such as privacy right, freedom of expression, freedom of information in *S.Rangarajan v. P.Jagjivan Ram*⁸ the court observed that balancing two rights as of equal value is not welcomed. It is an age old principle that the freedom of expression cannot be put under stress unless there is a compelling public interest. There should be a proximate connection between the damage caused thereby and the free expression. In *Life Insurance Corporation of India v. Manubhai D Shah*⁹ the court was of the view that the public has the right to know whether the LIC had satisfied the internal requirements to protect the interest of stakeholders. In this case an article had been published in the newspaper disclosing certain unfair practices adopted by LIC against policy holders. A counter article was published by an LIC member in the same newspaper. The LIC did not allow the respondent to publish his rejoinder in the magazine of LIC, while LIC allowed publishing the member of LIC in the same magazine. The Supreme Court by upholding the decision of Gujarat High Court adopted the fairness doctrine and directed the LIC to publish the counter. Again in *R. Rajagopal v. State of Tamil Nadu*¹⁰ an attempt to disclose the misconduct and corruption of police officers had been made by the author of autobiography. The court observed that if the publication is based on the public record it could not be restrained. It is enough that he had published the autobiography after reasonable verification of facts. Such a discourse would be very much helpful to bring the corrupt officials into the limelight. The court said that in India the public officials enjoy the same level of privacy protection as any other citizen has.¹¹ Therefore, there is nothing wrong in knowing the information of public officials in the information falls under public interest. In the same background the citizen has the right to know the antecedent and criminal actions of candidate so that the voter can decide to elect him or not. It is not against privacy principles.¹²

In United Kingdom the privacy right of public figures is protected more efficiently after the enactment of Human Rights Act, 1988 which is in line with the provisions of ECHR.¹³ In *A v. B (a company)*¹⁴ the Court of Appeal laid down certain guidelines to prevent disclosure of private life of public figures. It had been said that a public figure was entitled to get the protection in respect of his personal life matters. But he should understand that due to his public position he had to expect that his actions would be more closely scrutinized than that of an ordinary person. Even trivial might be subjected to discussion in the case of public figures. Comparatively a high standard of conduct is expected by the public from these persons. If the public figure had explored public attention he had less ground to object the intrusion.¹⁵

Paparazzi Culture as a Threat to Public Figure

It is not disputed that media should publish that information which contains the element of public interest. If it is so, the intrusion into the private life of an individual by the media is justified. The disclosed matter should have the character of news, current affairs, information or a documentary and also the commentary of the above.¹⁶ But the media often publish private facts of individuals, celebrities or politicians in order to increase its rating. They make use of the publicity of public figures to boost their rating.

The Indian media now started the paparazzi culture by peeping into the private affairs of cine artists, politicians and other famous or infamous people. United Kingdom witnessed the sad demise of the Princess Diana due to an accident caused by paparazzi.¹⁷ Indian media is not guided by any proper rules or principles to curb the menace that is caused by the unjustified activities of paparazis. There is no adequate regulatory measure to tackle the issues at present.

Public Figures and Galella Doctrine

In the United States the land mark case of *Galella v. Onassis*¹⁸ discussed the activities of paparazzi which utterly disturb personal life of the celebrities. Here it was held that the interference by the media in the privacy of the individual can be greater than that is necessary to protect the overriding public interest.

In this case, Galella, a photographer was arrested when he was trying to photograph Jacqueline Kennedy Onassis and their children. The court was of the view that the photographer was guilty of the harassment, intentional infliction of emotional distress, assault and battery, commercial exploitation of Onassis's personality and invasion of privacy. The claimant had been granted injunction to restraint the defendant from publishing the picture of Onassis and her children. He had been restrained from using their images in the advertisements. It was concluded that even though the photographer was acted in the course of his duty, they had a duty to act within the bounds of law. Therefore it was a case in which the court used the balancing test for granting injunction against the media on the ground of public interest. It can be said that both general public and celebrities entitled to enjoy the privacy right.

The term public interest is closely connected with the term 'newsworthiness'. In order to determine whether the information is newsworthiness or not, the test laid down by the U.S.Court in *Galella v. Onassis*¹⁹ is used. It involves three factors.

- a. The social value of item published
- b. The depth of the intrusion into exclusively private affairs and

c. The extent to which the party voluntarily assumed a position of public notoriety.²⁰

The public curiosity is not the same thing as the public interest. If the matter published is related to private information of a person, media should justify that the publication was necessary in order to protect the interest of the public. If a person who is promoting morality and good conduct in the society is expected to lead such life. The exposition of his immoral private life, that is his real life, can be justified and the public figure cannot claim that the disclosure had violated his privacy right.

Voluntary Public Figures

The celebrities, performers, sports personnel, corporate executives, politicians etc. come under the first category of voluntary public figures. Here the issue is whether anything reported about public figures can be considered under the term 'public interest'. The persons who are not famous also attract the attention of media when they become involved in a public controversy.

The person who voluntarily places himself in the public eye and he is engaging in public activities cannot escape from public attention. The people who assume an important role in institutions or engaging in activities having general economic, cultural, social or similar public interest should also face the same position. The person, who subjects himself for the judgement of the public, cannot complain that the media had published his private life and invaded his privacy right. Sometimes the legitimate interest of the public may extend beyond those matters which themselves made public.²¹

Involuntary Public Figures

The persons who come under the category of involuntary public figures cover those people who do not seek publicity but became persons of public interest. For example, the murderers, persons in grief, sexually abused persons, relatives of convicted persons etc. Where the crime is reported, the persons who were involved in such cases would become a centre of attraction. Their loss of privacy is sometimes justified on the basis of theory of public accountability. It says that the dissemination of information is necessary to assess the significance of the incidents in which such persons have become involved. However, the intrusion is not justified if there is no distinct relationship to the public events that require explanation.²²

The individuals who are in grief and shock often become the centre of attraction of media to increase their publicity. The people caught up in emergencies, victims of accidents or those suffering from the personal tragedies should not be caught in the camera even if they are in public places. Even though these principles are accepted by the media, it is not strictly followed. The words, images or actions filmed or recorded in or broadcast from a public place which are so private in nature and do not carry any element of public interest should not be published.²³

Navigating Right To Information Of Media And Personal Privacy

The freedom of information is not an absolute right. Since the freedom of information is the part and parcel of the freedom of speech and expression under Article 19(1)(a) of the constitution of India, the former is subject to the same restrictions under Art 19 (2) of the constitution. Therefore, the right to information can be restrained on the ground of security of the state, health, morality, decency etc. In *Prabha Dutt v. Union of India*²⁴ the Supreme Court was of the view that the right of a journalist to get information did not mean she had unrestricted access to information. In *The Secretary, Information and Broadcasting v. Cricket Association of Bengal*²⁵ the apex court observed that free speech could be restricted in the interest of the nation or in the interest of the society even though the expression 'national interest' or 'public interest' has not been mentioned under any of the exceptions provided under Art 19(2) of the constitution.

Under the Right to Information Act, 2005, the public authorities should provide information to any person subject to the formalities provided under the law. The word 'information' is defined as any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.²⁶

The word "personal" means appertaining to the person; belonging to an individual; limited to the person; having nature or partaking of the qualities of human beings, or of movable property.²⁷ Therefore, "personal information" under the Act, means the information that is related to a person. The information need not be related to any public activity or public interest.

Section 8 (1) (j) of the Act restricts the disclosure of information on the ground that the disclosure would amount to violation of privacy right. However, the right to privacy will not be affected if the disclosure is required for the protection of larger public interest. The court in *CPIO, Supreme Court of India v. Subhash Chandra Agarwal*²⁸ analysed the rapport between privacy and the right to information. The case involves the dispute relating to disclosure of assets of the judges of High Court and Supreme Court. The court examined the question of whether the disclosure of assets would encroach upon privacy right of the stakeholders. The court elucidated that both a private citizen and a public official enjoy the same level of privacy right unless there is any other justification. But the degree of privacy is in a higher level for a private individual than that of a public figure. It is assumed that the public figures are answerable to the society because of the nature of duty that they are performing. The factor of public interest is the deciding parameter which justifies the intrusion into the privacy right. The test applied in these situation is-

- a. Whether the disclosure of personal information is to provide information for the proper discharge of official duties.
- b. Whether the information is solely related to personal affairs which are unconnected with the official duty.
- c. Whether the disclosure is required to establish accountability and transparency in respect of the public fund.

The invasion of 'invasion of privacy' occurs when a person who intentionally physically or otherwise intrudes, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.²⁹ If the information sought is strictly personal information and the disclosure of which result in the serious invasion of privacy, it need not be disclosed. If the information sought is not related to any public activity and could not be said that the matter was a public spirited one.³⁰

The Delhi High Court laid down certain parameters in *UPSC v. R.K.Jain*³¹ for the disclosure and non-disclosure of information which are summarized as follows.

- (i) information sought must relate to "personal information". If the information sought does not qualify as personal information, the exemption would not apply;
 - (ii) personal information should relate to a third person, i.e., a person other than the information seeker or the public authority;
 - (iii) information sought should not have a relation to any public activity or public interest. If the information sought relates to public activity of the third party, i.e. to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted.
- (b) disclosure of the information would cause unwarranted invasion of the privacy of the individual, and that there is no larger public interest involved in such disclosure.³²

When the media reports programmes they should take into consideration the aspect of public interest. The visualization of the events will have a great impact and if any information intrude into the privacy of an individual, the humiliation and harassment that is created would be great. The media should be alert by the above principles in terms of public interest.

Similarly, when the information is once published no one can claim the privacy right. Because once it is published, it fell into the public domain and it loses the character of private. In the case of media publication, the place of private activity where it is done, the nature of the activity and the extent of publication etc. are the factors to decide the public domain character of the information. In the case of *Theakson v. MGN*³³ a newspaper published information of encounter happened in a restaurant between a prostitute and a television personality. The action was failed on the ground that the information fell in the public domain and lost the character of private information as it had happened before the public.³⁴ An opposite attitude can be seen in Douglas case where the claimant succeeded in House of Lords in getting relief against the magazine which published the wedding photos of Michael Douglas and Catherine Zeta Jones. Here the court opined the spreading of news to a small section of society would not lose the right to privacy.³⁵ There should be a precision with respect to a number of person or the extent of the reach of information to the public, which would make the audience public or private..³⁶

Balancing Privacy Right and Media Freedom

The judiciary often seek the help of to balance these two rights such as clear and present danger test and proportionality test.

a. Clear and Present Danger Test

This test was first stated by Justice Oliver Wendell Holmes in *Schenck v. United States*³⁷ and he explained that speech could be suppressed if it posed a threat of bringing about "substantive evils" that the government has a right to prevent. This case established the idea that in times of war, certain expressions or actions that might be acceptable in peacetime

can be lawfully restricted.³⁸ In *Sahara India Real Estate Corpn. Ltd v. SEBI*³⁹ the court said that values enshrined in the Constitution was to ensure liberties which sometimes may conflict with each other. Since no values are absolute, they should be qualified and balanced against other important competing values. The Sahara case involved the issue of reporting of court proceedings and observed that prior restraint in the form of postponement orders may be issued to protect the interests of justice. The court took into account clear and present danger test to determine the balance of inconvenience. At the same time, the real and substantial risk to the proper administration of justice, necessity and proportionality should be taken into consideration.⁴⁰ If the media freedom has to be restricted over right to privacy, under this doctrine, there should be a clear danger if media is allowed to publish the information.

Proportionality Test

Lord Diplock in *R v. Goldstein*⁴¹ observed that the proportionality test is concerned with the prioritizing of rights when there is a conflict of interest. For doing so, the relative importance of the factors should be considered. The test says that if a right is overridden without any sufficient objective justification it is not proportionate to the object which sought to be achieved by the restriction. Therefore the level of infringement of privacy should be decided on an objective basis.⁴² It consists of two tests namely a balancing test and a necessity test. The balancing test looks into the level or degree of intrusion. It also sees a clear imbalance of relevant considerations of public interest or any other competing right. The necessity test considers the extent to which the publication was a matter of public interest.

To balance the conflicting interests, two principles such as the principle of social utility and the harm principle also may be taken into account. The principle of social utility says that the decision which promote social welfare should be chosen rather than alternative actions or policies.⁴³ Secondly, harm principle advocated by John Stuart Mill says that society should not interfere with an individual's liberty except to prevent harm to others.⁴⁴ Therefore, if the disclosure would cause great harm or injury to the individual the media should not be allowed to invade the privacy right.

The case of *Justice K Puttaswamy v. Union of India*⁴⁵ Kaul J referred the principle of the proportionality and legitimacy in case of violation of privacy right by state entities. The test involves:-

- a. the action must be sanctioned by law
- b. The proposed action must be necessary in a democratic society for a legitimate aim;
- c. The extent of such interference must be proportionate to the need for such interference;
- d. There must be procedural guarantees against abuse of such interference.⁴⁶

Privacy in Public Places

The traditional view says that one loses his privacy protection when he exposes in the public places. It is very difficult to draw the line between the private and the public life, especially in the case of public figures. India lacks a comprehensive law to address the issues of privacy right in the case of public figures. In *Von Hannover v. Germany*⁴⁷ the issue was relating to the prevention of publication of images that were clipped without consent. The German Court observed that the claimant as a public figure, can claim privacy right in the public places if she was in a secluded place with an intention of being alone. In U.K., the Press Complaints Commission Code of Practice prohibits taking of still images of individuals in private places. It says that the private places are public or private property where there is reasonable expectation of privacy.⁴⁸

The responsibility of the media to act as a watch dog arises only when the matters in question are of public importance. Even in a public place there is a zone of interaction by one person to others which may fall within the scope of 'personal space'.⁴⁹ Only because of the fact that the person is a public figure, there is no justification to put them under the fear that he or she may be photographed at any time in the public place. An individual can claim the privacy protection even if he or she is in the public places. Therefore, there will be a legitimate expectation of privacy of private life of public figures in the public places.⁵⁰ William Prosser in his famous article 'Privacy'⁵¹ highlighted certain factors for claiming the privacy in public places.

i. Nature of Place

It is accepted that one cannot expect or claim the right to privacy if he is in the public places. But if there is only few numbers of persons, one can expect reasonable expectation of privacy. He can claim the right to privacy if he is with close relatives and friends even though he is a public place. The examples are yoga centers, hospitals, health clubs etc. In India, when compared to other countries the people are hesitating to lodge complaint even though they are humiliated so much due to public disclosure of private matters.

ii. Nature of Activity

The right to claim privacy also depends on the nature of activity that is carrying on in the public place. It was discussed in the English case of *Peck v. U.K.*⁵² wherein the claimant was captured in CCTV cameras when he was in a distress condition holding knife in his hands in a public street very late at night. Later, the photos taken from the footage was telecasted in television. Upholding the right of privacy of the claimant, it was held that the widespread publication of photograph of someone, who is in a state of severe pain, grief etc would amount to the invasion of privacy right even if it was taken in a public place. The court based its finding on the proposition that the disclosure through CCTV was not proportionate.⁵³

The public is very eager to know the intimate, embarrassing and traumatic incidents for example, persons who happened to be the victims of accidents, persons who participated in sports events etc. But if one becomes a part of an incident in public, he cannot claim that there is reasonable expectation of privacy where the activity does not invite public discussion.

iii. Mode of Obtaining Information

With the development of modern technologies, it is very easy to dissipate information within a span of one minute. Without the consent of individual, the media often use the technological devices to intrude into his private life. In India, the use of devices to capture intimate moments of individuals and reporting of commission of crime are not regulated by any law. In *Murray v. Big Pictures (UK) Ltd*⁵⁴ the court considered the following questions to deal this issue.

- a. The attribute of the claimant
- b. The nature of activity in which the claimant was engaged.
- c. The place at which it was happening
- d. The nature and purpose of intrusion
- e. The absent of consent and whether it was known or could be inferred
- f. The effect on the claimant and the circumstances in which and the purpose for which the information came into the hands of the publisher.⁵⁵

Even though the matter is said to be in public domain, the extent of spread of information in public should also be taken into account. Therefore, in *Brown v. Associated Newspapers*⁵⁶ the court took the view that there should be distinction between the information which is made available to a person's circle of friends or work colleagues and that which was widely published in a newspaper.

The question whether an individual concerned is already in public eye is a factor to be considered when assessing whether he has a legitimate expectation of the right to privacy. The people in the public eye may in some circumstances have a lower expectation of privacy. In USA, the public figures are considered as public property. It is believed that they should have a moral duty to lead the people. Therefore, their moral character is of the public concerns to ensure the public accountability.⁵⁷

Where the public figure is a voluntary public figure, he can claim privacy right to the extent to which the information relating to personal life does not contribute a debate of public importance. In the case of involuntary public figures the media should not air any form of information if the matter does not carry an element of public interest.

b.

News

Business, Public Interest & In The Interest Of Public

The 'news' is something, which falls within the scope of legitimate public concern and often it is interpreted by publishers and broadcasters as acting in accordance with the ethnicity of the community.⁵⁸ News is the chief source of the opinion by which government proceeds.

The term 'news' denotes '1. new information about anything, information previously unknown 2.a) reports, collectively, of recent happenings, esp. those broadcast over radio, or TV, printed in a newspaper, etc. b) any person or thing thought to merit special attention in such reports, 3) short for newscast-make news to do something that is apt to be reported as news'⁵⁹. It also means new tidings, new information of recent events, and new occurrences as a subject of report or talk.⁶⁰ As already pointed out, news is a commodity. News media nowadays consider it as a means of enlarging the production and circulation of newspapers, broadcasting etc. The optimistic theorists consider that the news should be given prime importance for the maintenance of a democratic country. The pessimist theorists consider news as a means which support the existing political system in a country. It plays a functional role in the society. The news has a role to play in balancing the society by interacting with other social institutions and make people aware of the events of public importance.⁶¹ News is a social construct which is a thing, or commodity, and newsworthiness is a cognitive construct, a mental judgment. The newsworthiness decides the nature and the content of the news. It is only one of a vast collection of factors that influence what becomes the news and how significantly events are covered.⁶²

A line should be drawn between the news carries information to which the public is entitled and those carry merely sensational private life of others which does not carry any kind of public importance. The media should give due regard to the feelings of the people who were exposed to the society without any justification.⁶³ They should verify whether the news aired carries anything affecting the rights, health, or finances of the public at large. The public interest is a common concern among citizens in the management and affairs of the local, state, and national government.

The newsworthiness is considered as a test to decide the legality of invasion of privacy right by the media. The test of newsworthiness had been subjected to criticism as it had no proper meaning.⁶⁴ Recently, the Madras H.C made an observation in *Kalanidhi Maran v. Aditya Sinha*⁶⁵ in connection with the issue of balancing media freedom and privacy right of public figures. In this case the plaintiff/applicant who was carrying on the business of television network and chairman of Solution group of companies. The plaintiff /applicant sought an injunction and damages restraining the defendant for publishing defamatory article in 'Dinamalar' under the heading 'Escape'. The plaintiff contended that the article was defamatory and it referred the private life of him and his family. Also, the article was published without ascertaining the truth. The court referred the leading cases of Supreme Court of India such as *R.Rajagopal case*⁶⁶, *Sakal Papers case*⁶⁷, *Kharak Singh cases*⁶⁸ etc. The view was that the persons holding the public offices should not be thin skinned to the comments made on them. Even though they know that the observations are undeserved and unjust they must bear with them and submit to be misunderstood for a time. They must restrain themselves from giving importance to the same by prosecuting the person responsible for it.

In *Autoshankar* case, speaking on the restriction, the court said that the citizen has the fundamental right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters and none can publish anything in reference to the above matters without his or her consent whether laudatory or critical. If the article contains personal life of a public official, the publication should be after a reasonable verification of facts. The situation will be different if the plaintiff voluntarily invites himself into a controversy.⁶⁹

An extended version of privacy right enables highly reputed public figures to prohibit the public from knowing the public appearance. The persons who are engaged in public activities naturally draw the public attention and it is deemed that they have consented to the disclosure. The scrutiny of private life of public figures who has fame in society is incidental and there is no privacy claim in the publication which involve public interest in his existence, experiences, words, or acts. Because, the use of the name or the picture of a person is deemed privileged.⁷⁰ However, the people would expect that the public figures should be a role model and they are supposed to be not involved in activities which are against the ethics and the morals of the society.⁷¹

Sting Journalism As A Rival To Privacy

The term 'sting journalism' is originated in American literature especially from the movie 'The Sting', the theme of which was luring a person to commit a crime.⁷² The sting journalism is also known as investigative journalism. In India, there is no specific law which deals with sting journalism. The sting operation is good in cases where it is helpful to expose corruption and crimes. However, it put society and persons in trouble when it results in violation of the privacy right. In sting operation media uses surveillance devices and they try to trap the criminals often known as 'honey trap' and sting them by arrest. Also the suspected individuals are encouraged to commit the crime, otherwise they would not have committed the crime. The 200th Report of Law Commission⁷³ has suggested that the Indian legal system need a proper law to tackle this issue of sting journalism.

The sting journalism became popular after the incident of Tehalka issue. In the operation conducted by the news portal Tehalka.com, the former political party leader was caught on camera accepting money.⁷⁴ The *Court on Its Own Motion V. State*⁷⁵ laid down certain guidelines for sting operation. In this case, a teacher in a Delhi School was dismissed from service due to sting operation done by Live law India news channel alleging that she had forced a girl for the prostitution. Later it was proved that the allegation was false. Therefore, the court pointed out that the situation need a good law to solve the problem. The Cable T.V. Networks (Regulation) Act, 1995 provides for the regulation of the airing of the programmes and stipulates for complying of programme code in corresponding Rules.

A tripartite test has been recognized in *Keith Jacobson vs. United States*⁷⁶ to justify the sting journalism.

- i. The information must be sufficiently vital to the public interest to justify the deception.
- ii. Journalists should not engage in masquerade unless there is no other way to get the story.
- iii. Journalists should convince the audience the grounds for doing sting journalism

In *Aniruddha Bahal v. State*⁷⁷ the Delhi High Court upheld the sting operation by journalists to expose corruption in Parliament. In this case the court took into consideration the intention of the journalists that led to expose corruption.

As a safeguard prior to publication, the media should give a certificate to the effect that what had been captured is original, authentic and public spirited one. The media should get a prior permission from appropriate authority, especially from Ministry of Information and Broadcasting before telecasting the content of sting operation. In *R.K.Anand v. Registrar, Delhi High Court*⁷⁸ the Supreme Court convicted the lawyer Anand for influencing the prosecution witness in the BMW hit run case. It was recorded by the staff of NDTV with a secret camera as a part of the sting operation. The Supreme Court pointed out that the sting operation is acceptable if it has been done as a matter of the public interest. It was also observed that the NDTV through sting operation, helped the administration of justice and rejected the argument that the act should be considered as trial by media. The court laid down following guidelines.

1. A sting operation by a private person or agency is, by and large, unpalatable or unacceptable in a civilized society. A sting operation by a State actor is also unacceptable if the State actor commits an offence so that an offence by another person is detected.
2. A State actor or a law enforcement agency may resort to hidden camera or sting operations only to collect further or conclusive evidence as regards the criminality of a person who is already suspected of a crime.
3. The law enforcement agency must maintain the original version of the actual sting operation. Tampering with the original video or audio clips of a sting operation may lead to a presumption of the spuriousness of the entire operation.
4. A sting operation cannot be initiated to induce or tempt an otherwise innocent person to commit a crime or entrap him to commit a crime.
5. Normally, if a private person or agency unilaterally conducts a sting operation, it would be violating the privacy of another person and would make itself liable for action at law.
6. A sting operation must have the sanction of an appropriate authority. Since no such authority exists in India, and until it is set up, a sting operation by a private person or agency, ought to have the sanction of a court of competent jurisdiction which may be in a position to ensure that the legal limits are not transgressed, including trespass, the right to privacy of an individual or inducement to commit an offence etc.⁷⁹

In the United States, it is permitted to do it to a certain extent as proper method of law enforcement. It is evident from *Sherman v. United States*⁸⁰ that the court found differences between 'the trap for unwary innocent and the trap for unwary criminal'. In the former case of the trap for unwary innocent the case of *Sorrell v. United States*⁸¹ observed that the defence of entrapment is a valid one. But in U.K, the defence of entrapment is not so much accepted. In *R v. Sang*⁸² and in *R v. Loosely*⁸³ the court was of the view that a person could not be prosecuted after he had been trapped. It would amount to an abuse of the proceedings of the court. It is an encroachment into the private life of the person and is infringement of privacy right. In U.K. the Federal Bureau of Investigation is authorized to adopt the sting operation.

Recently, Justice Sadasivam in *Rajad Prasad Jain v. CBI*⁸⁴ observed that the sting operator would be prosecuted under section 12 of Prevention of Corruption Act for abetment of to commit an offence. The court went on to say that privacy right of individual should be protected. The cardinal question in such cases are whether the victim had been lured for the commission of crime. Otherwise he would not commit the offence. The situation should be differentiated from those where the person would be compelled to commit the crime. Sometimes he may be given assurance that the information would be kept in absolute secrecy and confidentiality. Another issue is whether the means employed to establish the commission of the crime itself involves a crime or not.⁸⁵

One of the prime duties of media is to tell the truth. Here the question arises is whether media can use surreptitious methods to gather truth by violating privacy right. The media should balance the obligation of the dissemination of truthful information and the method of gathering information. The sting operation without a proper legal backing would result in violation of privacy right and it adversely affects the justice delivery system.

CONCLUSION

The role of media in a democratic set up involves collection and dissemination of information. The democracy will fail if the people are ignorant about the issues of the society. In a democratic country people has the right to know the activities of the representatives of the people and it should be publicly known. Because the wide attention of the activities of the government is powerful disinfectant and it is a powerful tool against corruption. The free flow of information and ideas promote the political debate. It facilitates the exposure of errors in the governance and administration of justice.

It is commonly accepted that the information which involve public interest should be published by the media. But now a days, it is alleged that the media is involved in publishing the information which satisfy the curiosity of the public rather than that of public interest for the sake of increasing the circulation and rating. It is also stated that in the public place also the individual enjoy the privacy right when he is engaged in the activities in which the public need not be worried. The issue of balancing the privacy right with the right to information of media is always a challenging one.

The media can very well absolve from the liability under the wide ambit of privacy right. The public figures faces the infringement of privacy right when the media communicate the news without giving due regard to their privacy right. It is a debatable question to what extent the public figure can enjoy privacy right that is enjoyed by the private individuals. He enjoys privacy right as a facet of publicity right. In this context what amount to public interest is a grey area which requires further clarification. The media is now engaging in sting journalism without taking into account the injury caused to the person when his privacy right ought to be violated. The development of technology should be used in a useful manner without violating the privacy rights which is considered as dignified right.

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