Trial by Media is a phrase which was coined in the late 20th century and early 21st century to describe the impact of television and newspaper coverage on a person's reputation, by creating a widespread perception of guilt regardless of any verdict in a court of law. In the United Kingdom, there is a heated debate between those who support a free press which is largely uncensored and those who place a higher priority on an individual's right to privacy and right to a fair trial. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but ensures that regardless of the result of the trial, the accused will not be able to live the rest of their life without intense public scrutiny. The counter-argument is that the mob mentality exists independent of the media which merely voices the opinions which the public already has. There are different reasons why the media attention is particularly intense surrounding a legal case. The first is that the crime itself is in some way sensational, by being horrific or involving women and children; the second is that it involves a celebrity either as victim or accused.

Although a recently used phrase, the idea that popular media can have a strong influence on the legal process goes back certainly to the advent of the printing press and probably much further. This does not include the use of a state controlled press to criminalize political opponents, but in its commonly understood meaning, covers all occasions where the reputation of a person has been drastically affected by ostensibly non-political publications.

One of the first celebrities in the 20th century to be arguably tried by media was Roscoe 'Fatty' Arbuckle who was acquitted by the courts but nevertheless lost his career and reputation due to the media coverage. Parallels
can be drawn between these cases and the trial of O.J. Simpson. The connection is less about guilt or innocence but about the promotion of the media coverage in the public mind above the status of the court. Another interesting case in the US was the Rodney King incident and subsequent trial of the police officers involved. Once again, an acquittal is challenged by the media reporting with violent consequences. What makes this case particularly important historically is the fact that it was amateur video footage which provided the key evidence of perceived guilt. As video cameras and their digital successors and CCTV become widespread, this type of 'caught on camera' incidents become more and more common. This can pose real problems for the legal system as the evidence they provide may be inadmissible for technical reasons but they give very strong images for the media to seize upon and the potential to manipulate by editing. Even where a criminal court finds somebody guilty, the media can still appear to sit in judgement over their sentence. Often, the coverage in the press can be said to reflect the views of the person in the street. However, more credibility is generally given to printed material than 'water cooler gossip'. The responsibility of the press to confirm reports and leaks about individuals being tried has come under increasing scrutiny and journalists are calling for higher standards. There was much debate over U.S President Bill Clinton's impeachment trial and prosecutor Kenneth Starr's investigation and how the media handled the trial by reporting commentary from lawyers which influenced public opinion. Another example was the investigation into biologist Steven Hatfill allegedly sending anthrax through the U.S. mail as a terrorist attack, which resulted in no conviction, but Hatfill went on to sue as his reputation was severely tarnished and career destroyed. Families and friends of persons convicted of crimes have apparently successfully used the power of the media to reopen cases, such as the Stephen Downing case in Derbyshire where a campaign by a local newspaper editor resulted in a successful appeal and his release after twenty seven years in prison.2

1 http://www.pbs.org/newshour/bb/media/july-dec98/lawyers_10-19a.html
2 http://www.jastor.com

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In India, trial by media has assumed significant proportions. It has had both positive and negative results. However, many would think that the overall impact is for the betterment of the society. Some famous criminal cases that would have gone unpunished but for the intervention of media are Priyadarshani Mattoo case, Jesica Lal case, Nitish Katara murder case, Naina Sahni Tandoor murder case and Bijal Joshi rape case. The media, however, drew flak in the reporting of murder of Arushi Talwar when it preempted the court and reported that her own father Dr. Rajesh Talwar and possibly her mother, Nupur Talwar, were involved in her murder. The CBI later declared that Rajesh was not the killer. In another case, the media – print, audio and visual all wrote about Sri Jayendra Saraswathi Swamigal, a Hindu religious leader, suggesting his guilt in a murder case, but the High Courts of Madras and Andhra Pradesh and the Supreme Court of India repeatedly found that there was no material evidence to find him guilty and came down heavily on the media and the Government of Tamilnadu for misuse of government machinery. Another case was of Uma Khurana’s fake sting operation which later proved to be gimmick to grab increasing TRPs (Television Rating Points).

**Sting: The New Face of journalism**

Sting Operations are generally implemented by undercover agents to apprehend criminals. It is a very complicated game, planned and executed with great care and confidence. In these types of operations, the police poses as criminals to trap law violators. Now a days, electronics and print media are very sensitive to sting operations.

However, the word sting derives its origin from 1930's American slang, meaning an act of theft or fraud, especially one that was carefully planned in advance and swiftly executed. The term then evolved in 1970's American usage to mean a police undercover operation designed to ensnare criminals. In this latter sense, "sting" is, therefore, a synonym for the expression "set a trap to catch a
crook”. Sting, as the dictionary defines, is a small sharp organ of an insect or a plant, capable of injecting a painful dose of poison.

In more refined terms, it can be called Investigative Journalism or Undercover Journalism. Sting Operation is an information-gathering exercise; it looks for facts that are not easy to obtain by simple requests and searches, or those that are actively being concealed, suppressed or distorted. An informed citizenry, the bedrock of a democracy, holding the government accountable through voting and participation, requires investigative journalism which cannot sustain itself on asymmetric dissemination of information.

In law enforcement, a sting operation is an operation designed to catch a person committing a crime by means of deception. A typical sting will have a law enforcement officer or cooperative member of the public play a role as criminal partner or potential victim and go along with a suspect's actions to gather evidence of the suspect's wrongdoing. Sting operations may be a component of a conspiracy; law enforcement may have to be careful not to provoke the commission of a crime by someone who would not normally be inclined to do so. In common law jurisdictions, the defendant may invoke the defence of entrapment.

The Use of New Technology

The advent of miniaturised audio and video technology, specially the pin-hole camera technology, enables one to clandestinely make a video/audio recording of a conversation and actions of individuals. Such equipment, costing between Rs 60,000 to Rs. 1,20,000 depending on quality, generally has four components – the miniaturised camera, often of a size of a 25 naye paise coin or even smaller (pin top size), a miniature video recording device, a cord to transmit the signals and a battery cell. The use of the cord can be avoided through wireless transmissions.
There are various ways of hiding the camera - inside a briefcase, or a pager or a cigarette lighter or a cellular telephone or a fountain pen or a smoke detector or in the nose frame of sunglasses or other spectacles, etc.

Where a briefcase is used, the recording equipment, the transmitting cord and the battery can also be concealed in it. In other cases, the remaining components are generally attached to the body of the user. In the sunglass/spectacles version, the connecting cord looks like the safety cord which some people use with their glasses. In other cases, an observant person can notice the telltale connecting cord. Most of these gadgets have either a self activation mechanism or a mechanism which has to be activated manually. The briefcase camera gets activated when the briefcase is kept in a particular position.

The visuals of Shri Bangaru Laxman recorded by Tehelka.com indicate that the camera was probably at a level higher than the waist of the journalist. The use of a briefcase, which would normally have been kept on the floor, seems unlikely. It was probably concealed in some other object of day-to-day use which he kept on the table without the connecting cord attracting the suspicion of Shri Laxman or, most probably, in the sunglasses/spectacles worn by the journalist in which case the cord would not have attracted suspicion.

Freedom of the Press and its Common Laws - Origin and Growth

The Constitution of India, in Article 19(a), guaranteed the freedom of speech and expression as a fundamental right of a citizen and the apex judiciary was quick to read the freedom of the press into this guarantee. So, any law that abridges this freedom had to validate itself by satisfying the provisions of Article 19(2) under which reasonable restrictions can be put. Consequently, these laws will need to bear a reasonable nexus to the grounds mentioned in 19(2); these grounds being the security and integrity of the nation, friendly relations with foreign states, public order, decency or morality or in relation to contempt of

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court, defamation or incitement to an offence. Furthermore, the restriction in question should be 'reasonable'.

The basic principle of democracy is that 'deliberative forces shall prevail over the arbitrary' and its foundations are on free election based on reason. Since no electorate is free unless it is informed, true representative democracy cannot exist without freedom of speech. Justice Holmes reflects that a 'marketplace of ideas' where free trade and competition in ideas ensure the discovery of truth, required that individuals be ever vigilant against attempts to check the expression of ideas that they loathe. The freedom of the press developed as a parallel concept, in the context of developments in mass communication. The growth and development of representative democracy was so intertwined with the development and proliferation of the press that it has long been considered an institutional limb of modern democracy. It was considered vital for the sustenance of a democracy that rival political parties be able to express alternatives to government opinion, unfettered and in public.

As soon as printing was invented in the 15th century, obstacles were set up in order to prevent the new invention from influencing public opinion through the free circulation of news and ideas. In the English-speaking world, Henry VIII introduced press licensing in 1536. Printers and writers were the first to fight for the simple right to print and the press in Internal Vigilance and Sting.

England was the first country in Europe to fight for press freedom. Newspapers and gazettes became part of the English political spectrum with the setting up of modern political institutions in the 17th century. Parliament gradually gave up enforcing the Licensing Act as from 1679, and it was finally abolished in 1694. Newspapers no longer needed state approval and no longer needed authorization to be published, a major landmark - in this respect, England can be seen as the cradle of press freedom.4

http://www.jour.sc.edu/news/convergence

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4 http://www.jour.sc.edu/news/convergence
The Right to Privacy: Theoretical foundations and the Interaction with the Freedom of Expression

In India, the right of privacy has a two-fold source. Apart from the common law, the Supreme Court has recognized a constitutional origin as well. So, firstly, a private action for damages may lie for an unlawful invasion of privacy. The 'right to be left alone' is also implicit in the right to life and liberty guaranteed by Article 21. However, this right is to be balanced with the freedom of expression guaranteed in Article 19(1)(a). Hence, the state cannot impose any prior restraint on the freedom of the press on the grounds that the concerned would offend the privacy of any individual. No remedy will lie before publication.5

Thus under Indian law, the extent to which a person can claim a right to privacy is dependant on his public status. A person who welcomes media interest in his life will not be able to claim a right to privacy as easily as a 'private individual'. Further, in the absence of any 'public issue', the publication of material that invades the privacy of any individual can invite an action for damages.

Needless to say, the interface between freedom of the press and privacy, in the context of a 'sting operation' is quite vague. For instance, does a Bollywood actor qualify as a 'public personality'? Is the expose of the 'casting couch' phenomenon a 'public issue'?

The Supreme Court of India has concluded that the fundamental rights to privacy and a fair trial flow out of the broader right to life contained in Article 21 of the Constitution. In Kharak Singh v. State of Uttar Pradesh, the Supreme

Court held that the right to privacy was an “essential ingredient of personal liberty” which is “a right to be free from restrictions or encroachments”.6

**Freedom of the Press in India**

Freedom of the press (or press freedom) is the guarantee by a government of free public press for its citizens and their associations, extended to members of news gathering organizations, and their published reporting. It also extends to news gathering, and processes involved in obtaining information for public distribution.

With respect to governmental information, a government distinguishes which materials are public or protected from disclosure to the public based on categorisation of information as sensitive, classified or secret and being otherwise exempted from disclosure due to relevance of the information to protecting the national interest. Many governments are also subject to sunshine laws or freedom of information legislation that are used to define the ambit of national interest.

In the Indian Constitution, the word "press" is not mentioned. The press in India derives its freedom as an interpretation of the Article 19(l)(a) of the Constitution which states:

"All citizens have the right to freedom of speech and expression".

Many restrictive and repressive laws have been used to curb the freedom of the press in India. Some of the more severe laws are the Official Secrets Act and Prevention of Terrorism Act (PoTA). Under PoTA, any person could be arrested and put into indefinite undisclosed detention by the police or the Army, if they felt that the person had been in contact with a terrorist or terrorist group and could be a danger to the state's security. This prevented journalists from using their full range of sources, and compelled them to use safer sources such as

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6 Ibid
government officials, which reduced the efficiency of the press dramatically. PoTA has since been abolished by the United Progressive Alliance government.

The notion of the press as the fourth branch of government is sometimes used to compare the press (or media) with Montesquieu's three branches of government, namely legislature and in addition to it the executive and the judiciary. Sir Edmund Burke is quoted to have said: "Three Estates in Parliament; but in the Reportpoopers' Gallery yonder, there more important far than they all, sits the fourth estate, The Press".\(^7\)

**Investigative Journalism and Sting Operation**

Setting a trap to nab wrong doers is no doubt an accepted method of a criminal investigative process. In corruption cases, apprehending the bribe-taker in the act is accepted as a clinching evidence of his culpability. But catching someone on camera engaged in the sex act does not necessarily establish any. If a sting operation of the kind set up by the private channel suggests anything at all it is the tendency of some officials and politicians to misuse their positions. That is neither proof of past misconduct or the certainty of such behaviour in future. In the novelty of catching some action on camera, one should not make the mistake of viewing a towards criminality as proof of actual wrongdoing.

However the following norms should be looked into going for any kind of sting operation:

1. Sting operations are to be mounted only on persons against whom some evidence of criminality exists and sting operation is considered necessary for getting conclusive evidence.
2. Permission for sting operations must be obtained from appropriate courts or the attorney general. This safeguard has been laid down since those who mount a sting operation themselves commit the offence of impersonation,

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\(^7\) Krishnamurthi, Nadig, Indian Journalism (Mysore: University of Mysore), 1966, pp. 41-49.
criminal trespass and making a person commit an offence. (Remember that 'Cheating by Impersonation' is a crime under Section 416 of the Indian Penal Code.)

3. Where there is evidence of editing of tapes and films, there is an automatic presumption that the recording is probably not authentic.

4. There must be a concurrent record in writing of the various stages of the sting operation.

Sting journalism is not new to India. Years ago, an operation by an online news site called Tehelka caught top politicians and army officers taking bribes from journalists posing as businessmen. It was widely praised as investigative journalism carried out in the public interest. Today, almost all television news channels in India routinely use spy cameras to expose corruption.

But in a society that remains more buttoned up than those in the United States or Europe, the Indian news media have been reluctant to report on the private lives of public figures. In the land that gave the world the Kama Sutra, the ancient guide to carnal relations, public displays of affection by couples are discouraged. Bollywood movies showed their first on-screen kiss only a decade ago, and television remains strictly controlled.

Investigative Journalism

Investigative journalism is a branch of journalism that usually concentrates on a very specific topic and typically requires a lot of work to yield results. It is an in-depth article or series of articles based on research and investigation, usually over a long period of time. The subject often involves legal or controversial issues, such as mafia, the tobacco industry; now-a-days political controversies are forming a major part of investigation.

During the 1972 campaign for the White House, when Richard Nixon was seeking a second term in office, five persons, acting on orders, broke into the Democratic national offices in the Watergate complex in Washington and planted
electronic eavesdropping devices. Their purpose remains unclear till date. Bob Woodward and Carl Bernstein, reporters with the Washington Post, became curious when a short news item appeared regarding a burglary at the Watergate office of democratic Party and began to make inquiries. Through their investigations, it was discovered that it was not a simple act of burglary but a case of political corruption and manipulation involving the highest office in the land.8

Investigative Journalism is a distinctive aspect of the work undertaken by the media. Essentially an information gathering exercise, it looks for facts that are not easy to obtain by simple requests and searches, or those that are actively being concealed, suppressed or distorted. Where such investigative work involves the use of covert methods, it raises issues that tend to further blur the line between law and ethics. An informed citizenry - the bedrock of a democracy - holding the government accountable through voting and participation, requires investigative journalism. In many cases, the subjects of the reporting wish the matters under scrutiny to remain undisclosed rather buried. A healthy democracy cannot sustain itself on asymmetric dissemination of information. The political elite are sensitive to news; and news about economic or political wrongdoing can trigger judicial or quasi-judicial scrutiny. Various methods are employed for their fact-finding – the study of often neglected sources like archives, phone records, address books, tax records and license records; anonymous sources; and going undercover. It is often suggested that anonymous sources are double-edged - on the one hand they may provide especially newsworthy information such as classified or confidential information about current events, information about a previously unreported scandal, or the perspective of a particular group that may fear retribution for expressing certain opinions in the press; but the downside is that the condition of anonymity may make it difficult or impossible for the reporter to verify the source's statements. By going undercover, the reporter tries to infiltrate a community by posing as somebody friendly to that community.

The Bhagalpur Blindings provide a lesson in the crucial contribution that journalistic research can make in creating public awareness of human rights, more so in a society in which entrenched abuse is likely to be overlooked. Over three years, from 1979 to 1982, policemen blinded 33 criminals in Bhagalpur Jail using acid. Codenamed Operation Gangajal, a report carried by The Indian Express, the incident became a national scandal and 14 policemen were suspended. Of the 14 policemen, 13 were acquitted and reinstated in service.

When The Indian Express brought the issue into national focus, the Supreme Court accepted it as a writ petition. In Bhagalpur, many people campaigned for the suspension of the policemen, arguing that such punishment deterred crime more effectively than protracted legal cases. It took a sustained campaign on the rights of prisoners along with the impact of the pictures of the blinded men to touch the public conscience.

A journalist once said, "News is something someone somewhere doesn't want to be published - all the rest is advertisement". That may be considered a far-fetched definition in today's media world which considers advertisements the lifeblood of journalism and a starlet delivering a baby more attractive news than a wave of suicides among exploited farmers.

However, any newsperson worth his/her salt knows that uncovering a hidden story is far more challenging and satisfying than covering a prime minister's foreign tour or hunting for Page 3 gossip in a celebrity party. Regrettably, this breed of committed reporters is fast vanishing, thanks to the bulldozing forces of the market that are converting the media profession in India into an enterprise like any other industry producing consumer goods.

Modern investigative journalism is a discipline, rigorous and demanding. Modern journalism, despite its many aberrations, is considered the most effective monitor and upholder of democratic values. And the powerful instrument to fulfill this obligation is investigative reporting. Democracy involves

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accountability of elected representatives and civil servants. There are many mechanisms for checks and balances, but these can be abused, circumvented, ignored or made ineffective. Investigative reporting steps into this vacuum to scrutinize and expose the wrong-doings of those in authority which hurt public interest, and make them accountable to the people.

The importance of the "organic" relationship, as described by Walter Lippman, between a healthy democracy and the free press need not be elaborated here. Enough it to say that one cannot sustain without the other. Indian media is so intoxicated with its so-called freedom (freest press in the world, one might say) that it fails to understand that it is also equally underdeveloped and fragile, that freedom carries certain grave responsibilities and that as upholder of democratic values and freedom (not just another profit making industry), it has some specific obligations and duties towards the society. It is so obsessed with itself that it does not realise that it is throwing to winds its credibility, respectability and power by not attending to its basic obligations.

For investigative reporting to flourish, what is required is: an independent and pluralistic media which is fearless, committed to democracy, universal human values; journalists with commitment who can identify problems and have the grit, perseverance, patience and skills to do research; owners and editors professionally non-partisan and without vested interests (above selfish ends).

What goes under the name of investigative journalism (with some honourable exceptions) in India, can hardly be taught in a journalism school as classic investigative journalism. The so-called investigative reporting in India in the Bofors case, Fodder scam, Jain Dairy Case, Petrol Pumps largesse scandal and even Satyendra Dubey's murder case, have been either rankly partisan political exercises or halfhearted attempts to show off the fearlessness of those media units. Has anyone followed Satyendra Dubey's case to the end? Who are the murderers? Are they arrested? Who leaked Satyendra's confidential letter
from the PMO? Is that person booked? And the mafia contractors of the Golden Quadrilateral? Has any paper or channel pursued them?

One remembers the sensation caused by Arun Shourie's series of 'investigative' stories on the then Chief Minister, A.R. Antulay of Maharashtra, in early 1980's. Shourie, then, was acknowledged as the pioneer of modern investigative journalism in India. One also remembers the first sentence of his first story. Paraphrased in memory, it ran something like this "...look at these political rats; how they run when cornered..." Now, any news editor worth his/her salt would spike that story. It broke all the tenets of not only investigative journalism, but also of ordinary reporting. Shourie's stories were written in a style that was blatantly partisan and spiteful. Moreover, he had not uncovered anything that had not been published earlier, that too, with much more detail, in local newspapers. Antulay's sins of omission and commission, his acceptance of cheques for his public trust in front of TV cameras, was public knowledge in the entire state of Maharashtra. But Shourie, instead of writing scathing comment pieces on the edit page, wrote 'investigative' news stories on the front pages of his newspaper!

Political Expedience

Bofors, St. Kitts, none of the stories were followed thoroughly and with the rigour that investigative journalism demands. The pursuit was half-hearted; the stories tapered off occasionally, but were revived vigorously whenever a political occasion demanded.

No doubt, there have been laudable attempts at exposing some major scandals at local or state levels. But, often, the exposure is made in one sensational burst and then the press loses interest. The story tapers off or is not followed at all. Clearly, the Indian media has not nourished the discipline of classic investigative reporting. The political, economic and social scenario of

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10 www.indianexpress.com
India is so complex and rotten and the media's credibility, despite its enormous power, is so low that even conscientious bureaucrats do not dare to blow the whistle. One whistle-blower who dared was murdered. And the press has nearly forgotten him.

Basic Requirements of Investigate Journalism

It is to be emphasized here even at the cost of repeating that for investigative reporting to flourish, what is required is: an independent and pluralistic media which is fearless, committed to democracy, universal human values, journalists with commitment who can identify problems and have the grit, perseverance, patience and skills to do research and owners and editors professionally non-partisan and without vested interests.

We have a fantastically free press, so free that it does not have a professional self-regulatory mechanism to monitor fundamental ethics of the press. Not even the journalists' associations; these are more interested in begging for more perks from the government and corporate bodies than in the health of their own profession. Many journalists may have the aptitude and skills for investigative journalism. But their owners and editors do not have the will, even if they have the resources, to encourage them. The owners and the editors, too, have multiple vested interests - in political parties, individual leaders, corporate bodies and so on.

The Ethics of the 'Sting' in Investigating Journalism

Most discussions about ethics in investigative journalism have focused on the methodology. What methods are valid to reveal wrongdoing? Is deception legitimate when the aim is to tell the truth? Is any method justifiable no matter if there are discouraging working conditions and presence of the difficulties in getting information? Can television reporters use hidden cameras to get a story? Can journalists use false identities to gain access to information?
Operation Westend brought some particularly acute questions to the fore. Many argued that a vast gulf existed between 'snaring' or 'tempting' people into accepting 'gifts' or 'bribes'; and the exposure of corruption regarding specific deals. Is it ethical to hold someone responsible for a crime that would not have been committed if the undercover journalist had not encouraged the act? Also, how ethical was it to use prostitutes in order to expose corruption in defense deals? Tarun Tejpal, Tehelka editor, had justified the methods by saying that 'extraordinary circumstances justified the use of extraordinary methods'.

Clearly, there can be no consensus on the ethics of sting operations when the methods and objectives of each operation vary so vastly. In fact, the legal implications of reporters' actions are, by far, more clear-cut than the ethical issues involved. Ethics, dealing with distinguishing right and wrong, uses philosophical principles to justify a particular course of action. Any action can be justified ethical, depending on what framework is used to justify it, and what values are prioritized. Fortunately for this particular dilemma, the media's cherished values are not a matter of much debate. What journalists and editors need to determine is - who will benefit as a result of the reporting? If journalism is committed to democratic accountability, then the question that needs to be asked is whether the public benefits as a result of specific investigative reports. Does the press fulfill its social responsibility in revealing wrongdoing? Whose interests are being affected? Whose rights are being invaded? Is the issue at stake a matter of legitimate public interest?

One can debate endlessly about the ethics of these issues, and not be any closer to resolution, except where motive is clear. Most people would consider the sting operation on Dilip Singh Judeo as unethical because it was motivated - not by concerns of informing the citizens, but for political one-upmanship. The 'reverse sting' on Ajit Jogi and his son falls in the same category.11

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At best, a case by case analysis may be undertaken to distinguish ethically right journalistic method from wrong. However, if one were to move beyond ethics and enter the realm of law, the determination of what is legally right method is easier. Such an enquiry is also apt in the context of the much anticipated Broadcasting Bill. Undoubtedly, the starting point for any such discussion has to be the freedom of the press.

In such circumstances, what does a restless committed journalist do? He takes a hidden camera with him and broadcasts countrywide bulletins of responsible people accepting bribes. If documents, receipts, accounts, papers or files are not forthcoming as proof, here's how the journalist furnishes the proof. Live on screen TarunTejpal and Tehelka's sting operation and subsequent imitations by others have raised a hornet's nest questioning the ethical propriety of this kind of journalism. A positive outcome indeed!

**Media Credibility**

The press is losing credibility because of its blatant partisanship and rank commercialism. So, take the camera and expose. Never mind, it is one-time exposure of a part. But the proof is there, clearly visible on the screen to make an impact on the minds of the people. This will at least shake the people and those who are concerned, out of their slumber.

No, this is not investigative journalism. But it is the sting. An occasional sting operation made with professional commitment may serve the cause for the time being. But that is no alternative to investigative journalism. To build its credibility and ensure its freedom under democracy, the media in India will have to turn to serious investigative reporting.

The Tehelka style of investigative journalism has brought about a change in the way one looks at news, amidst new notions of editorial freedom. Stirring stuff like the kind shown in stings has a fair amount of shock value.
There is no denying the fact that a sting operation is by far the most effective way of exposing the truth. With a society and a system of governance that defies transparency, the doubting public demands credible proof. Being 'caught in an act' on camera leaves little scope for evasive answers by those who shamelessly manipulate the system for vested interests.\textsuperscript{12}

Public figures are often reminded that they have nothing to hide from the public, which has a right to know everything. The stinging truth, however, is the easy conscience with which corruption is tolerated and allowed to plague the political system.

\textbf{Operation West End}

Newsgathering acquired a new meaning with Tehelka's, 'Operation West End', which left the common man with deep revulsion for the political system and contempt for those in the defence establishment who are willing to trade national interest for vested interests.\textsuperscript{13} It is not just governance but also other systems of everyday life, which if left unchecked, spell disaster for the common man. Also, the argument that it is virtually impossible to discover the real state of affairs through normal ways of investigation, deserves a fair hearing.

The most explosive sting by Tehelka in recent times is the one, exposing the twists behind the Best Bakery case. Zaheera Sheikh, who has become a symbol of the Gujarat carnage, has been continuously changing her testimony in the case. The Tehelka tapes allege that Zaheera was paid Rs 18 lakh by a BJP MLA.

\textbf{Effectiveness of Sting Operation}

They are familiar sights on our TV screens these days: The grainy, curiously distorted images, the awkward camera angles, the unclear audio and the


\textsuperscript{13} www.indiatoday.com
anchors promising startling revelations just ahead. They're sting operations; the exposes conducted by journalists in much the same manner as investigative agencies conduct undercover operations. And what's more, they're flourishing: Indeed, the current age could be called the year of the sting operation.

**Major Sting Operations in India**

*Aaj Tak*

Tihar jail Bani Ghoos Mahal: Officials at Tihar Jail taking bribes.
Ghoos Mahal- 82 employees of the Delhi sales tax office taking bribes.
Operation Duryodhan: 11 MPs caught taking bribes to raise questions in Parliament.

*Star News*

Ayaash IG: Jharkhand IG suspended for sexually exploiting a tribal woman.
Doctor selling infants from a hospital.
Operation Chakravyuh: MP's caught misusing MPLAD funds.
Wife caught on camera beating her husband.

*NDTV India*

Delhi policeman taking a bribe to hand over the body of a man to his family.
Railway Policemen extorting money from passengers

*India TV*

Bihar MLAs having sex with call girls.
Holy men sexually exploiting women devotees.
Operation Casting Couch: Actor Shakti Kapoor propositions journalist posing as actress.
Operation Casting Couch: Actor Aman Verma takes journalist posing as an actress to his bedroom.
Corruption in Delhi PWD.

Kokh Mein Qatl

Titled Kokh Mein Katl (murder in the womb) has highlighted the severity of the discrimination against the girl child and the risk involved in conducting such operations. The operation was launched by a team of journalists in Rajasthan. It was a campaign based on the personal commitment of the team. With this operation, the genre of sting operation has entered a new era.

Suppression and discrimination of women was the starting point of this operation run jointly by Sripal Shaktawat, the Bureau Chief, Rajasthan, Sahara News and Dr. Meena Sharma, a freelance journalist. Sripal Shaktawat has been crusading against the social malpractices and atrocities especially crime against women for over a decade while Meena has been a young freelance reporter committed to the social upliftment of the society. Both of them have given new meaning to the sting operations led by media. Meena left her assignments with the local media and her college lecturership to devote herself to the operation. They planned to launch a sting operation in February-March, 2005 to expose the breed of doctors conducting illegal abortions after sex determination in the state. They travelled a distance of 13,000 km across the districts of Rajasthan, MP, Gujarat, and Haryana.

This sting "Kokh Mein Katl" was telecast on Sahara channel from 4th April, 2006. The team had footage of about 100 doctors. Out of them, 80 were telecast. Some of the footages were held back because of the poor quality. Together, the team travelled a distance of 1300 km across the districts of Rajasthan, MP, Gujarat, and Haryana. There were pressures from the political and social circles but the team continued to resist all pressures to expose the killer.
Doctors. The local media and journalist associations and social groups came in open support of the sting team.14

*Shakti Kapoor Stung by Sting Operation*

Shakti Kapoor is one of the topmost villains of Bollywood. But one sting operation claims to have revealed that he is a 'bad guy' in real life too. He has been filmed purportedly making verbal and physical advances against a young woman and casting aspersions on several film personalities in a sting operation conducted by a private TV channel.

Kapoor did not deny making the advances but maintained he was set up (trapped). He claimed he had not made any specific statements about his fellow stars but only spoke in generalities. The sting was conducted by producer, Suhaib Ilyasi, for his "India's Most Wanted" programme that has now shifted to the India TV channel. The channel aired the 40-minute clip. In it, Kapoor is seen to be making sexually explicit verbal and physical suggestions to an India TV reporter posing as an aspiring film star. The reporter is told of various "services" that would have to be provided if she were to make it big. Kapoor then turns his wrath on Ilyasi and the cameraman when he discovers he is being filmed. "Kapoor had the choicest of verbal abuses reserved for us when he realised what happened. He threatened us with dire consequences and even said he would stab the girl," Ilyasi said. "It was a trap," Kapoor later told a press conference. "This girl had been in touch with me for close to five months, calling me up in the middle of the night and asking for roles. She even sweet-talked me into meeting her. Any man would fall for this," he claimed.

*Arushi Talwar Case*

The Arushi Talwar case has raised several troubling questions for the media and the police, questions that strike at the heart of the process of

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15 Ibid.
investigation and news reporting. When the CBI finally conceded it could not find any evidence against Talwar, many thought it was all over. But a day later - when Rajesh Talwar walked out of Dasna jail, there was more of the same. Fifty days on, and there's no sign of fatigue, no end in sight to the media frenzy. “Please let me spend some time with my family. In the past 50 days, I have not been able to share my grief with anyone,” Talwar said. The murder was a classic whodunit for the media. But it was the UP police that provided fodder for speculation. A press conference addressed by IG, Meerut Zone, Gurdarshan Singh, days after the murder added fuel to fire. “Arushi and Hemraj were aware of the extra-marital relationship of Doctor Talwar. And slowly they both developed intimate relationships,” he said. Friends of the Talwar Family, ordinary citizens as well as the Women & Child Development Minister expressed outrage. Renuka Chowdhary demanded that Singh should be suspended and charged for character assassination of the victim. Faced with a bungling police force, the media, in a way, decided to play cop. The two families - Talwars and Durranis - continued to be taunted and harassed the moment they stepped out of their house, by an army of reporters. After the CBI took over the case on June 1, it added two other suspects. But it was still Rajesh Talwar who was hounded by the media. When his bail application was rejected, most of the media and their viewers felt vindicated. Warnings from CBI Director, Vijay Shankar – “We will keep reminding the media what its limits are,” he said – did not help. New versions kept doing the rounds. Media critics say techniques such as reconstructions run the risk of distorting facts. “Any case that is still under investigation, I am not sure if you have the ethical right to do reconstructions and make a crime show out of it,” says media critic, Shohini Ghosh. India records over 30,000 cases of homicide every year. There have been floods, terror attacks and political developments of national significance. But none of these has been able to distract media's attention from the Noida double murders. In fact, according to a study conducted by the CMS, special programmes on the case hogged almost 40 hours out of a total 92 hours of prime time between May 16
and June 7. Just how much is too much? Going by the media's continued obsession with the case, it seems even too much is too little.\(^{16}\)

CNBC Awaz regularly conducts sting operations on issues concerning consumer rights and private sector malpractices. Stings have also become commonplace on crime shows, though these have no wider impact.

Nevertheless, the most publicized topic for stings remains government corruption. The Tehelka expose was on corruption in arms deals, Operation Duryodhan on MPs taking bribes to raise questions in Parliament, Operation Chakravyuh exposed misuse of the MPLAD fund, while Aaj Tak's "Ghoos Mahal" was on corruption in Tihar jail and a sales tax office. The CNN-IBN expose showed us a UP minister willing to transport narcotics. Kairali TV also recently carried out a sting exposing a state minister. All these sting operations dealt with misuse of power by the authorities - crooked politicians, government officials and policemen.

These are all remarkable examples of the power of the media. Sting operations have unflinchingly exposed the rot in the system and brought corruption into focus. Though a lot of what they reveal is depressing, none of it is especially surprising. Stings have only confirmed what were once mere suspicions or allegations. They have also put pressure on politicians and bureaucrats to take action against their colleagues caught with their hands in the till. News channels usually insist that their sting operations are done in public interest. They point out that stings are expensive, unpredictable affairs. Large sums of money go into paying bribes; budgets cannot be fixed in advance and can increase dramatically. And after all that, there is no guarantee of success.

**Violation of Law and Sting Operation**

Sting operations have raised many questions relating to citizen's privacy or violation of existing laws. Thanks to technology explosion, in the coming

\(^{16}\) www.merinews.com
years, India besides making progress in several fields, will also be entering the age of sting operations and phone tapping. At the rate at which politicians are vying with each other in claiming that their phones are being tapped, a time may come when anyone whose phone is not being tapped will probably feel deprived or convinced that he needs to do something drastic to get his phone tapped or become a victim of sting operations.

The feeling of being deprived and not being considered important enough to be target of a sting operation or telephone tapping may put you into a category of a second class citizen and force many to seek different ways to become a VIP who is a target of telephone tapping and sting operation. If one were to believe all the stories floating around, one will have to reach a conclusion that every second person in our cities is working for a detective agency or some state organization in the profession of telephone tapping for a fee.

The Government which was quick to act in case of cyber law by enacting legislation on the subject to prevent its misuse has not acted promptly enough in case of sting operations or telephone tapping. This requires action as these sensitive areas are no more the monopoly of public sector; many private players have entered the field. As indicated in a recent case, the network run by a private company was involved in phone tapping case. As such, the need for having proper legislation to make the process foolproof and to discourage its misuse.

As for the sting operations, every channel is competing to undertake such operations to improve their ratings or viewership despite recent disclosures that such operations have not added many in numbers. But as sting operations have become a fashion, no channel would like to be left behind. This has raised many important questions relating to citizen's privacy or violation of existing laws. There is no doubt that new technology which can be obtained for a measly sum of a few lakhs of rupees has made these operations easy and simple.

On the issue of phone tapping, Parliament must draft a law to lay down rules under which such operations can be undertaken. The authority which can
authorize such operations must be specified and the reasons for ordering such a probe specified. The private agencies should be debarred from indulging in the same and stiff punishments including closure of their professional operations should be made mandatory in case they are found guilty of undertaking such activities. It is strange that the mushroom growth of detective agencies, security agencies, indulging in illegal methods to recover bank loans are being allowed without any legislation to govern their working.  

Even the highest court in the country has commented on the misuse of data released by telephone companies which is used by many institutions including banks to harass the subscribers by making calls soliciting business at all odd hours and thus harassing them. This activity has neither been curtailed nor regulated despite observations by the Supreme Court on the subject. Telephone companies which allow the release of data for small gains probably could also be guilty of allowing tapping for considerations. The effective way to check this menace will be to ask agencies investigating such cases to also suggest legal amendments to safeguard the users of telephones.

As for sting operations, a time has come when media organizations like the Press Council of India should step forward and regulate this activity. In case they fail to do so, the job of censorship or regulating TV channels will fall on the Government which will be worse than the original crime as it would give them power to introduce censorship through the backdoor. In this entire debate, one must keep in mind the fact that as new technologies develop, they will provide many new benefits but will also open doors for their misuse by unscrupulous agencies in public as well as private sector.

The Government and media organizations must remain vigilant and deal with all such activities before they get out of control. The possibilities of invading the privacy of individuals have become very easy with new aids available. So, the temptations to use them for short-term gains will remain strong

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unless the regulators are equally alert. Recently, the controversy on these issues instead of trying to resolve the problems, has become a part of political upmanship with ridiculous demands being made to suggest that an inquiry be conducted by Chief Ministers.

The leaders occupying such offices may have many qualities but are, by no stretch of imagination, capable of conducting inquiry or doing so professionally. This work must be done by professionals. The politicians who, by misusing official agencies, create doubts about their bonafides. They are also the first to cry foul when they are at the receiving end. Solution lies in more active role by agencies like Election Commission and courts to preserve the independence of agencies who are expected to do such work as per our Constitution and laws of the country.

With India becoming a major economic power, several multinationals are in the fray and prospects of using the media to serve selfish interests have become real. Ethics in print or electronic media has become a live issue because of recent developments like increasing use of sting operations using hidden or miniature cameras, inducements like presenting live models and other forms of inducement by them. At the same time, in print media, the influence of industrial houses has become a major factor either through heavy investments or indirect help in the form of equity building. These dangers are expected to grow in days to come with laws governing foreign investments being relaxed everyday. Under the circumstances, a time has come when the Government and professional bodies of journalists should become aware of these dangers and take steps to check the menace before it starts undermining the credibility of Indian media.

The issues were very simple in olden times when the media was owned or controlled by a few big industrial houses called: "Jute Press": The situation has totally changed today as the media has become a huge empire requiring investments in several crores of rupees. In many cases, the reverse engineering has taken place where the newspaper barons have entered other industries to join
the category of large industrial houses. The result is that the shape of media is undergoing a change. This change will pick up fresh momentum when foreign investment caps are relaxed or removed altogether.18

As of now, the international magazines have started their local editions and giants like Wall Street Journal, New York Herald and Tribune have either started selling their services to local newspapers or started publishing their own editions. The old style protection provided to journalists has also disappeared as nearly all newspapers of standing are employing journalists on contract thus doing away with job security or professional protection. The entire edifice built under the guidance of Press Commissions and several Wage boards appointed by the Government has become a matter of history as it does not really exist anymore.

Under the circumstances, the dangers of media being misused by local industrialists or any foreign agencies has become real. After all, with India well poised to become a major economic power, several multinationals are likely to enter. The prospects of using the media to serve selfish (business) interests have become real. Such political manipulations were hinted at when, on the eve of last elections to the Lok Sabha, the ruling National Democratic Alliance (NDA) was accused of unduly influencing the media by launching a campaign "India shining" on the eve of elections which gave a bonanza in terms of several crores of rupees for the print as well as electronic media.

Yet another danger posed by such manipulations was hinted at during the Enron controversy when the American giant was reported to have spent several million dollars for so called "education of media and other decision makers".19 As the media become more and more of an industry with very little regulations, the dangers of such misuse will increase to the point where they can pose a serious threat to our economy and country. In recent times, many instances of misuse of

18 Ibid.
media have been brought to public notice, but not much has been done to check these abuses. For instance, the publication of pictures and items by newspapers for cash consideration in local pages is being practiced by some established newspapers. These newspapers have also reduced the office of Editor to being a product manager only. These developments have created a situation where more serious forms of media exploitation can take place to the advantage of a particular group.

The latest instance of such misuse has been brought out by several members of Parliament in their representation to Prime Minister, Dr Manmohan Singh, Finance Minister P. Chidambaram and other officials. They have pointed out in their letters that in the recent controversy between siblings of largest industrial house in India, Reliance, the large-scale misuse of media has taken place. It is no secret that selected channels like CNBC, Aaj Tak and newspapers like Asian Age were regularly publishing stories damaging to elder brother in control of RIL. Without going into the merits of the stand taken by newspaper or TV channel, one fact stands out that these were also beneficiaries of large investment from Reliance Capital, a company controlling mutual funds under the management of Mr Anil Ambani, the younger brother.20

The MPs have rightly demanded that such nexus between media and industrial houses needs to be investigated by official agencies like SEBI and others. At stake is not only the reputation of these channels and publications but of the entire media. The facts brought out by MPs clearly bring out that around the time when this campaign started, the organisations also benefited in terms of more investment by company under the control of one brother. The investments in these companies can hardly be justified on the basis of the sordid state of their finances or future prospects. It is certainly a case for the Press Council of India to look into and Government to investigate. As this is not the first or the last battle

being fought for control of an industrial empire, the role of media must remain neutral and transparent at all times.

Eminent Supreme Court advocate and member of Rajya Sabha from Jharkhand, R.K. Anand, is firmly of the opinion that to expose corruption in the high places, both the media and legal community are justified to use the sting operations as an instrument of exposure where gathering normal evidence under the normal provisions of the Indian Evidence Act is made impossible by the men and women in exalted positions.

Answering a question, Anand posed an equally strident question, "If a Prime Minister, a Home Minister or a Chief Minister is corrupt, how does one gather dependable information against them which can be cited in courts of law as reliable evidence? His own answer was that in such cases, the media, often with the support and collaboration of the legal profession, had resorted to sting operations. He cited the ruling of a British court in a sensational sting operation against a top British leader involved in bribery and sex scandal to expose corruption in high places, the media was justified in using sting operations. Since the Indian law is mostly based on the English law, the implementation is obvious (on British court ruling line).

Undercover Operations

An undercover operation is an investigative technique in which an operative either an undercover agent who assumes a covert identity or purpose, or a confidential informant who takes action to gain evidence or information which would be unavailable but for the target's reliance on the operative's covert role.

The undercover technique may be used in relation to criminal violations enforceable under the investigative jurisdiction of the IRS. The use of undercover operations is an essential technique in the detection and investigation of criminal activity involving tax and money laundering offenses. Undercover does not
include the temporary assumption of a pretext identity for the purpose of protecting the integrity of surveillance.

They may use undercover activities and conduct undercover operations, pursuant to these Guidelines, that are appropriate to carry out its law enforcement responsibilities. These guidelines do not apply to investigations utilizing confidential informants, cooperating witnesses or cooperating subjects, unless the investigation team also utilizes an undercover employee. The FBI, through the development of internal policy, may choose to apply these Guidelines to certain confidential informant, cooperating witness, and cooperating subject operations by referring such matters to the Undercover Review Committee pursuant to Section IV, Paragraph (D)(6).21

Under this authority, the FBI may participate in joint undercover activities with other law enforcement-agencies and may operate a proprietary to the extent necessary to maintain an operations cover or effectiveness. All joint undercover operations are to be conducted pursuant to these Guidelines.

Undercover activities are classified as either Group I or Group II. All Group I undercover operations must be approved by the Chief, Criminal Investigation (CI). Group II undercover operations are approved by the Director, Field Operations

**Authorization of Undercover Operations**

Any official considering approval or authorization of a proposed undercover application shall weigh the risks and benefits of the operation, giving careful consideration to the following factors:

1. The risk of personal injury to individuals, property damage, financial loss to persons or businesses, damage to reputation, or other harm to persons;
2. The risk of civil liability or other loss to the Government;

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3. The risk of invasion of privacy or interference with privileged or confidential relationships;
4. The risk that individuals engaged in undercover operations may become involved in illegal conduct restricted in paragraph IV.
5. The suitability of Government participation in the type of activity that is expected to occur during the operation.

Undercover Operations Which May be Authorized by the Special Agent

The establishment, extension, or renewal of all undercover operations to be supervised by a given field office must be approved by the SAC if the undercover operation does not involve any of the factors listed in paragraph IV.C.

(a) Initiation of investigative activity regarding the alleged criminal conduct or criminal enterprise is warranted under any applicable departmental guidelines;

(b) The proposed undercover operation appears to be an effective means of obtaining evidence or necessary information. This finding should include a statement of what prior investigation has been conducted and what chance the operation has of obtaining evidence or necessary information concerning the alleged criminal conduct or criminal enterprise;

(c) The undercover operation will be conducted with minimal intrusion consistent with the need to collect the evidence or information in a timely and effective manner;

(d) Approval for the use of any informant or confidential source has been obtained as required by the Attorney General’s Guidelines on Use of Informants and Confidential Sources;
(e) Any foreseeable participation by an undercover employee in illegal activity that can be approved by the SAC on his or her own authority is justified by the factors noted in paragraph H;

(f) If there is no present expectation of the occurrence of any of the sensitive or fiscal circumstances listed in paragraph C, a statement to that effect.

2. Undercover operations may be authorized pursuant to this sub-section for up to six months and continued upon the renewal for an additional six-month period, for a total of no more than one year. Undercover operations initiated pursuant to this subsection may not involve the expenditure of more than $40,000 ($100,000 in drug cases of which a maximum of $40,000 is for operational expenses).

3. The SAC may delegate the responsibility to authorize the establishment, extension, or renewal of undercover operations to designated Assistant Special Agents in Charge. The delegation of this responsibility by the SAC should be in writing and maintained in the appropriate field office.

Sensitive Circumstances

In all undercover operations involving any sensitive circumstances, the SAC shall submit an application. The application shall be reviewed by appropriate supervisory body or by personnel. If favourably recommended it would be sent to the Undercover Review Committee for consideration. The application shall then be forwarded to the Director or a designated Assistant Director, who may approve or disapprove the application.

For purposes of these Guidelines, sensitive circumstances are involved if there is a reasonable expectation that the undercover operation will involve -

(a) An investigation of possible criminal conduct by any elected or appointed official, or political candidate, for a judicial, legislative, management, or
executive-level position of trust in a Federal, state, or local governmental entity or political subdivision thereof;

(b) An investigation of any public official at the Federal, state, or local level in any matter involving systemic corruption of any governmental function;

(c) An investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media;

(d) Engaging in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a Federal, state, or local governmental entity;

(e) Establishing, acquiring, or using a proprietary;

(f) Providing goods or services which are essential to the commission of a crime, which goods and services are reasonably unavailable to a subject of the investigation except from the Government;

(g) Activity that is proscribed by local law as a felony or that is otherwise a serious crime - but not including the purchase of stolen or contraband goods; the delivery or sale by the Government of stolen property whose ownership cannot be determined; the controlled delivery of drugs which will not enter commerce; the payments of bribes which are not included in the other sensitive circumstances; or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exemption does not include any statement under oath or the penalties of perjury).

(h) A significant risk that a person participating in an undercover operation will be arrested or will supply falsely sworn testimony or false documentation in any legal or administrative proceeding;

(i) Attendance at a meeting or participation in communications between any individual and his or her lawyer;
(j) A significant risk that a third party will enter into a professional or confidential relationship with a person participating in an undercover operation who is acting as an attorney, physician, clergyman, or member of the news media;

(k) request to an attorney, physician, member of the clergy, or other person for information that would ordinarily be privileged or to a member of the news media concerning an individual with whom the news person is known to have a professional or confidential relationship;

(l) Participation in the activities of a group under investigation as part of a Domestic Security Investigation or recruiting a person from within such a group as an informant;

(m) A significant risk of violence or physical injury to individuals or a significant risk of financial loss;

(n) Activities which could result in significant claims against the United States arising in tort, contract or for compensation for the "taking" of property;

(o) Untrue representations by a person participating in the undercover operation concerning the activities or involvement of any third person without that individual's knowledge or consent.

Entrapment Defence

The entrapment defence is the principle means by which the government's use of "sting" operations are regulated. Where it applies, the entrapment defence exempts from criminal liability individuals who were encouraged by an agent of the government to commit what would otherwise be an offence. The critical issue is how to define the circumstances distinguishing "entrapment" from ordinary and acceptable undercover operations. Entrapment doctrine must draw some line, between permissible and impermissible undercover police tactics or between
defendants whose conduct in such circumstances does or does not justify conviction, or something else.

Most jurisdictions recognize a subjective test for entrapment, which exculpates a defendant whose crime was (a) encouraged or "induced" by the government, if (b) the defendant was not predisposed to commit such crimes. Inducement and predisposition are murky ideas. Inducement requires something more than creating a mere opportunity for the defendant to commit the crime. Courts often merge the inducement inquiry into the predisposition inquiry, by asking whether the police did enough to induce a non-predisposed individual to commit the crime. Where the courts treat inducement as a genuinely independent element, it seems mostly to eliminate the entrapment defense in cases where the government agent did not even encourage the crime. Thus, inducement means persuasion; if police are merely observing events, even when they created criminal opportunities, they have not induced the crime.

In practice, undercover agents often do encourage crime. The cases, therefore, routinely turn on predisposition. Courts often use predisposition to mean the defendant was willing, in the sense of not reluctant, to commit the crime. A typical jury instruction provides:

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, that person is a victim of entrapment, and ... the law forbids his conviction . . . . On the other hand, where a person is predisposed to commit an offense ... that is, ready and willing to violate the law at the first opportunity, the fact that these government officials or their agents afford him the opportunities to do so does not constitute entrapment.22

The government bears the burden of proving predisposition. Prosecutors tend to prove this element with evidence that the defendant exhibited no

reluctance when she accepted the government's inducement, possesses knowledge or abilities useful only for committing the offense, or has committed similar offenses or acts in the past. Thus, when the issue is raised, the prosecution can introduce otherwise inadmissible evidence concerning the defendant's reputation past crimes, and past bad acts.

**Law Enforcement Controlled Operations Bill**

Criminals will use any method to commit crimes and protect themselves and their ill-gotten gains. The purpose of this bill is to allow law enforcement agencies to use similar methods to fight crime while at the same time providing a strict system of accountability for the use of otherwise unlawful activities.

The bill provides for the authorisation, conduct and monitoring of operations involving what might otherwise be unlawful activities. These are to be known as controlled operations. This bill will achieve four things. Firstly, it will provide undercover officers with protection against criminal prosecution for offences committed in the course of a controlled operation. Secondly, it will put in place a tight accountability mechanism for the approval and oversight of controlled operations.

Thirdly, it will remove any doubt as to the legal status of evidence obtained in the course of a controlled operation. Controlled operations will be used by the Police Service, the independent Commission Against Corruption, Crime Commission and the Police Integrity Commission in the fight Against crime and corruption. Undercover operations are an important investigative tool. They allow law enforcement agencies to infiltrate criminal groups and to obtain evidence to prosecute for the crimes these groups commit. In some cases, undercover officers have to commit offences themselves in the course of investigation.

For example, in a drug operation, an undercover operative posing as a buyer cannot actually take possession of drugs without technically committing an
offence. Furthermore, evidence obtained in a controlled operation may be subject to challenge in court. The admissibility of evidence collected during undercover operations has been under a cloud since 1995.

**Policy on Use of Revenues for Undercover Operations**

The following three sources of revenue be designated as restricted: Drug Enforcement Administration Forfeitures, Controlled Substance Tax Funds, and Local Courts Undercover Restitution. These restricted revenues shall be spent only for law enforcement purposes and shall be used to enhance law enforcement, not to replace local dollars. These revenues shall be spent in the following order: (1) Drug Enforcement Administration, (2) Controlled Substance Tax Funds, and (3) Local Courts Undercover Restitution. The policy was adopted on May 6, 1991.

The justification for undercover operations generally has been expressed as follows:

Covert investigative techniques are often the most efficient, effective and, in the case of the most virulent strains of criminality, such as organised and major drug related crime, the only practical way of obtaining evidence for the purposes of prosecuting and convicting those responsible.

**Trial by Media**

The right to a fair trial is at the heart of the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, the right not to be compelled to be a witness against oneself, the right to a public trial, the right to legal representation, the right to speedy trial, the right to be present during trial and examine witnesses, etc. In *Zahira Habibullah Sheikh v. State of Gujarat*, the Supreme Court explained that a “[f]air trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for
or against the accused, the witnesses, or the cause which is being tried is eliminated.” However, sensationalised news stories circulated by the media have steadily gnawed at the guarantees of a right to a fair trial and posed a grave threat to the presumption of innocence. What is more, the pervasive influence of the press is increasingly proving to be detrimental to the impartial decision-making process of the judiciary. Such news stories cannot easily be defended under the auspices of freedom of expression.

Impact of pre-trial publicity

Sensationalised journalism has also had an impact on the judiciary. For example, in upholding the imposition of the death penalty on Mohammed Afzal for the December 2001 attack on the Indian Parliament, Justice P. Venkatarama Reddi stated, “the incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.” A ‘media trial’ began almost immediately after Afzal’s arrest. Only one week after the attack, on 20 December 2001, the police called a press conference during the course of which Afzal ‘incriminated himself’ in front of the national media. The media played an excessive and negative role in shaping the public conscience before Afzal was even tried. Similarly, S.A.R. Geelani, one of Afzal’s co-defendants in the Parliament attack case, was initially sentenced to death for his alleged involvement despite an overwhelming lack of evidence. Large sections of the Indian media portrayed him as a dangerous and trained terrorist. On appeal, the Delhi High Court overturned Geelani’s conviction and described the prosecution’s case as “at best, absurd and tragic”. Jayendra Saraswati, head abbot of Kanchi Kamakoti Peetham, was accused of killing two mill-workers as sacrifice, based solely on newspaper reports. The Andhra Pradesh High Court in Labour Liberation Front v. State of Andhra Pradesh held that the writ petition filed to force the authorities to investigate relied upon incorrect facts that should have been verified. The court observed that “once an incident involving

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23 www.merinews.com
prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts...”24

**Impact on the right to legal representation**

There has been extensive media coverage of police investigations of ‘serial-killings’ in Noida in the outskirts of New Delhi. The owner of the house where the corpses were found, Mohinder Singh Pandher, and his domestic help Surendra Kohli, are suspected of having committed these crimes. Influenced by media coverage, much of it proclaiming that the two men had already confessed to the killings, the local Bar Association announced that it had decided that no advocate from Noida would defend Pandher and Kohli in court. Likewise, when eminent lawyer Ram Jethmalani decided to defend Manu Sharma, a prime accused in a murder case, he was subject to public derision. A senior editor of the television news channel CNN-IBN called the decision to represent Sharma an attempt to “defend the indefensible”.25 This was only one example of the media-instigated campaign against the accused. The media assumption of guilt clearly encroaches upon the right to legal representation — a critical component of the right to fair trial — and may also intimidate lawyers into refusing to represent accused persons.

**Regulatory measures**

The Press Council of India (PCI) was established to preserve the freedom of the press and to improve the standards of news reporting in India. Under the Press Council Act 1978, if someone believes that a news agency has committed any professional misconduct, the PCI can, if they agree with the complainant, “warn, admonish or censure the newspaper”, or direct the newspaper to, “publish the contradiction of the complainant in its forthcoming issue.” Given that these measures can only be enforced after the publication of news materials, and do not involve particularly harsh punishments, their effectiveness in preventing the

25 www.CNNIBN.com
publication of prejudicial reports appears to be limited. Along with these powers, the PCI has established a set of suggested norms for journalistic conduct. These norms emphasise the importance of accuracy and fairness and encourage the press to “eschew publication of inaccurate, baseless, graceless, misleading or distorted material.” The norms urge that any criticism of the judiciary should be published with great caution. These norms further recommend that reporters should avoid one-sided inferences, but attempt to maintain an impartial and sober tone at all times. But significantly, these norms cannot be legally enforced, and are largely observed in breach. Lastly, the PCI also has criminal contempt powers to restrict the publication of prejudicial media reports. However, the PCI can only exercise its contempt powers with respect to pending civil or criminal cases. This limitation overlooks the extent to which pre-trial reporting can hamper the administration of justice and brand innocent people guilty.26

Heinous crimes must be condemned and the media would be justified in calling for the perpetrators to be punished in accordance with the law. However, the media cannot usurp the function of the judiciary and deviate from objective and unbiased reporting. While a media shackled by government regulation is unhealthy for democracy, the implications of continued unaccountability are even more damaging. Steps need to be taken in order to prevent media trials from eroding the civil rights of citizens, whereby the media have a clearer definition of their rights and duties, and the courts are given the power to punish those who flagrantly disregard them. The judiciary has been critical of the overactive and prejudicial reporting by the media. In the Labour Liberation Front case, Justice L. Narasimha Reddy lamented the “abysmal levels to which the norms of journalism have drifted.” In M.P. Lohia v. State of West Bengal, the Supreme Court cautioned the publisher, editor and journalist of a magazine that had reported the facts of a case that was sub-judice, thus “interfering with the administration of justice.” The Indian Law Commission’s recent report entitled Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure (Amendments to the Contempt of Court Act, 1971) has made recommendations to

26 Krishnamurthi, Nadig, Indian Journalism, op. cit., pp. 78-84.
address the damaging effect of sensationalised news reports on the administration of justice. While the report has yet to be made public, news reports indicate that the Commission has recommended prohibiting publication of anything that is prejudicial towards the accused — a restriction that shall operate from the time of arrest. It also reportedly recommends that the High Court be empowered to direct postponement of publication or telecast in criminal cases. The credibility of news media rests on unbiased and objective reporting. It is in the media’s interest to ensure that the administration of justice is not undermined.²⁷

Court concern over ‘trial by media’

Expressing concern over "trial by media," the Delhi High Court said that the functions of the court could not be usurped by any other authority in a civilised society. “Fairness of trial is of paramount importance as without such a protection, there would be trial by media which no civilised society can and should tolerate,"²⁸ Justice J.D. Kapoor observed while pronouncing the verdict in the Bofors pay-off case. Stressing that the streams of justice have to be kept clear and pure, the court said “there is nothing more incumbent upon courts of justice than to preserve their proceedings from being misrepresented, than to prejudice the minds of the public against persons concerned before the case is finally heard.” Terming the Bofors case “a nefarious example which manifestly demonstrates how the trial and justice by media can cause irreparable, irreversible and incalculable harm to the reputation of a person and shunning of his family, relatives and friends by the society," the court said such a person is ostracised, humiliated and convicted without trial. "All this puts at grave risk due administration of justice," Justice Kapoor observed. The court cited the recent case of Punjabi Pop singer Daler Mehandi, whose discharge was sought in a human trafficking case "after his humiliation and pseudo trial through media as

²⁷ www.jstor.com
²⁸ www.merinews.com
they (police) have not been able to find the evidence sufficient even for filing the chargesheet.”29

Jessica Lai Case

The Jessica Lal murder trial had peculiar feature of being reported in the Press and especially in Delhi newspapers. Instead of targeting the alleged killer, or worrying about the possibility of him going, now that all the main eyewitnesses claim to have seen nothing, most of our crime reporters are pointing the needle of suspicion at Bina Ramani and her daughter, Malini. Some newspapers have gone so far as to demand that the Ramanis be arrested. The demand is both bizarre and interesting because, just as when the murder took place on April 29, 1999, the Press seems to be playing an active role in trying to get Jessica’s alleged killer off the hook. At the time of the murder, please remember, most Delhi newspapers seemed to give their gossip columnists the task of investigating the case. This was apparently because Bina and Malini were celebrated socialites familiar on the gossip columnist circuit. Alas, once a gossip columnist always a gossip columnist, so instead of crime stories we got details of Bina’s glamorous parties and famous friends and Malini’s seductive clothing. We learned almost nothing about the ugly, little world of Manu Sharma nor did we hear anything about why the police work in the case was so shoddy as to amount to criminal negligence. So illogical was the manner in which Jessica’s tragic, needless murder was reported that if you were a casual reader, you may have ended up concluding from the stories that serving liquor without a licence — which Bina did in the Tamarind Cafe — was a bigger crime than murder. Something similar is beginning to happen again and this time round, it will almost certainly work towards getting Manu Sharma out of jail and off the hook. Let us examine what has happened since the trial began. The most important aspect of it is that four key eyewitnesses have stood up in court and said that they did not see Manu Sharma actually pull the trigger. That at least some of them are lying should be obvious to even the most of crime reporters and we should have

29 Ibid.

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had at least one story that attempted to investigate why they were suddenly afraid to stand by their earlier statements. But, nobody seems interested in this at all. Manu’s father is a powerful Punjab politician who, for many years, was one of the pillars of the Congress. It does not need much investigation to know that in our fair and wondrous land, politicians have many ways of influencing the police to go easy when it comes to getting their delinquent sons off the hook. Ever since Jessica was murdered, Delhi has buzzed with rumours of influence being used to change of the case but for mysterious reasons crime reporters seem either oblivious of these rumours or too scared to investigate them. So, instead of the Sharmas being targeted, it is the Ramanis they are going after. Most stories have hinted that the police have been protecting them by not charging them with “destruction of evidence”. No story so far has even attempted vaguely to point out that the “evidence” would be irrelevant any way if the police cannot find anyone who admits to seeing Manu pull the trigger. In Tamarind Café, Manu tried to escape. Bina’s husband, George, chased after him while she took Jessica to hospital. The police, for their part, took so long to arrive at the scene of the crime that Manu or one of his pals was able to return and drive his car away. The murder weapon also disappeared. Meanwhile, the small amount of blood that stained the spot where Jessica was shot was cleaned up - possibly in the routine course - by the restaurant’s staff. Now, the interesting thing about the Press demanding that the Ramanis be arrested and charged is that this would ensure that Manu goes free because if they are treated as co-accused, they cannot also be credible witnesses. So, there would be nobody left to give any evidence at all. If nobody admits to have at least seen the alleged killer in the Tamarind Café that night then the case is closed before it starts and Manu goes free. As it is, he will probably find it quite easy now to get bail. This has been the game the Sharmas have wanted, played all along and it has truly disturbed the Press, that it should become a vital part of it. Even more disturbing if you consider that this is far from being the only case in which the media has allowed itself to be used in this
fashion. Trial by the media has become so prominent these days that the police use it regularly to cover up for shoddy police work. 30

Priya Rajvansh Murder Case

In 2008, in Mumbai, newspapers played a willing and eager role in helping the police make its case against Chetan Anand’s sons in the Priya Rajvansh murder case. Neither of the two accused was physically present when she was killed but the police made a case against them on the alleged statement by a maid servant whom they had taken into custody. The Press made no effort to investigate what had really happened and the result was that the two Anand boys were tried and condemned so completely in the media that it is hard to see how they can hope now for an unprejudiced trial.

In every other country, there is respect for the idea of a case being subjudice which means that when a matter is under judicial deliberation it cannot be commented on. The Indian Press appears to have forgotten that the idea exists. The Indian justice system has become one of our most serious problems. It takes so long for justice to be done that even murder cases take between ten and twenty years to be decided. The result is a backlog in our courts that, according to conservative estimates, would take 324 years to clear. Justice so delayed can hardly be considered justice. The problem is so grave that it will need a monumental effort on the part of the government and the judiciary to deal with it. But, meanwhile, it has to be the responsibility of the Press to ensure that we do not add to the problem by allowing crime reporters to become willing handmaidens of the police in organising trials by the media.

The entire media has jumped to the instant conclusion, on the persuasion of the police and the political establishment, that Shah is guilty of playing footsie with the mob. In the process, they have ignored the actual evidence before the courts. Answering a mobster's telephone call is not exactly a crime. It was just

another way of staying alive. Yet the media has deliberately chosen to present the facts of the case in an unfair and prejudicial manner. Shah is guilty, but, till the courts decide, we must, in the best traditions of justice and fair play, presume him innocent. We cannot, in fact, we must not prejudge him. Unfortunately, that is exactly what the media has done and made it virtually impossible for him to get a fair trial.31

Chand Mohammad and Fiza

The questions after probing questions fired at Chand Mohammad and Fiza today were unsparing, but the couple survived the trial by media. The woman for whom Chand lost his chair showed flashes of her training as a lawyer when she counter-questioned a reporter who told her to recite a verse from the Quran if he could read one off from his scripture. “You look like a Hindu. Can you recite the Hanuman Chalisa?” Fiza shot back when the reporter told the couple, who had turned Muslim to marry, to prove their faith. “Do not bring religion into everything,” she continued angrily, her husband looking on uneasily at the raging war of words. The “missing” couple had surfaced some 10 days and announced on TV that they had converted to Islam and married. Chand, 43, has two children by first wife Seema and Fiza, 35, is a divorcee. Chand was sacked as Haryana deputy chief minister soon after the news broke. Fiza was fired as the assistant advocate-general. Today, at an event at Delhi Press Club, neither showed signs of any regret. “For love, I can sacrifice everything,” Chand said, appearing the milder of the two. Nettled by a journalist on whether he had converted only because Islam allows a man to take four wives, he merely said: “From childhood, I was inclined towards Islam.” If he was so keen, why did he delay his conversion so long? “My timing is my personal choice,” he replied, opting not to answer whether he intended to take a third and a fourth wife. Fiza gave her reply a more philosophical spin. “Parmeswar (God) or Allah comes into one’s life first and then people,” she said. Another reporter then fired the obvious question: What came into their lives first --- Allah or love? The couple replied that they did

31 www.timesofindia.com
namaaz every day. Fiza claimed she had “not done any injustice” to Seema as she “still respects” her. Chand said he was trying to meet Sonia Gandhi to explain why he had re-married. Fiza, who answered most of the questions on her husband’s behalf, suddenly went meek when asked if she would enter politics. “It is up to my husband. If he allows me, I will surely do so.”

Eral Family Massacre Case

A court in Godhra convicted 11 people for murdering a family in Eral village of Panchmahal district during the 2002 riots in Gujarat. Eight persons were awarded life imprisonment for burning alive the seven-member family and raping two of their girls in the village on March 2. The verdict gives a ray of hope to people fighting to get justice in courts hearing hundreds of riot cases. The verdict comes at a time when the media has again alleged Chief Minister Narendra Modi and his government’s complicity in the riots. A sting operation by Tehelka, the newsmagazine, on Friday showed people accused of murdering and attacking Muslims in the 2002 boasting that Modi shielded and encouraged them.

Does the conviction of the 11 people in the Eral family massacre case days after the Tehelka case indicate the media is building a moral pressure on the justice system? Salve, amicus curiae to the Supreme Court in the riots cases, said the media cannot influence the judiciary but it can certainly build pressure on the Gujarat police. “The manner in which the police has been investigating the riots is known to all. Our criminal justice is in such despair; thank God and the media for keeping issues alive.” Dholakia, director of Parzania, a movie on the riots which was banned in Gujarat, said many families who suffered in 2002 believe the law doesn’t care for them. “Like the family in my film, many people have not got help from the law. They named people who were involved in the riots but

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32 www.the tribune.com
33 www.hindustantines.com
there was no support from the law. So, yes, the media has played major role in keeping the issue alive,"34 said Dholakia.

Some Other Cases:

In the case of Nadeem Saifi. The British courts have actually admonished our investigators for the inept job they have done and yet the media, slavishly parroting the establishment, persists in painting him guilty. Shankar Sharma, accused of trashing Yashwant Sinha's dream budget. Ketan Parekh, charged with rigging the stock market. Fardeen Khan, caught with a gram of cocaine for his own use. Salman Khan, accused of diverting his local earnings into foreign exchange. All the people put through hell to make headlines that can sell their newspapers or lure viewers for the news shows. This is what the media has finally come to. Selling instant justice so that more people buy newspapers lured by hot headlines. So that more people watch the news and TRPs go up, more advertising revenue comes in. Media is only about making money.

There was a time when the media was more sedate but more responsible because it was not trying to hawk its wares in a competitive market where the shrillest shriek draws the most attention. It was trying to bring us the truth. The truth as it honestly saw it. Journalists were not under pressure to push up ratings or sales. So they did their work with serious intent, with conviction, with courage and integrity. They did not pronounce people guilty without making a serious attempt to study the charges, investigate them, come to their own independent conclusions, without fear or favour. They did not blindly print what law enforcers claimed, what the bureaucracy said or what politicians planted on to them. That is why people trusted them.

Everyone manipulates the media to serve his own interests or hurt his rivals. If they cannot do this on their own, they hire spin doctors. In the process, justice is compromised, fair play is lost, truth is injured. What we get are

34 Ibid.
doctored facts and convenient conclusions. We get planted stories that influence the course of justice and compromise our rights as citizens of free India. In fact, if the media is not careful, it could destroy the very foundations of this civil society.

With globalisation exposing the Indian media to the callousness in the functioning of the market at an international level, which provides greater as well as wider access to information, there is a need to understand the tendencies and practices that blur reality. In the changing world order media, needs to put in place systems that restore the confidence of the people. The media has yet to come to terms in resisting the temptation of building brand images, which blur the other aspects of reality on vital issues like combating communalism and problems of the common people. Media organisations must realise the need to draw out a system of control to prevent the necessary process of investigation degenerating into a "trial by the media".

The Director of the IDC, Pramod Kumar said that while in the era of globalisation, media has been able to question the creation of stereotypes, it also has a responsibility of reporting issues related to communalism, keeping in view the impact it can have on the sensibilities and reactions of the Indian diaspora. It is in this context where the "frog in a well, equipped with a telescope" syndrome needs to be understood, as he drew out the extreme localisation of news even by the established newspapers, which till recently claimed national credentials.  

*Facing Rape Charge, Goa Minister’s Son*

Panaji, December 10, 2008 (IANS) Counsel for Goa Education Minister, Atanasio Monserrate’s son, Rohit, told the court that his client has been harassed and convicted by the media for the rape of a 14-year-old German girl “even before the trial”. “The media has been investigating the case more than the police are. Rohit has been subjected to a lot of unfair media scrutiny even before the trial started,” Rohit Monserrate’s lawyer, Atmaram Nadkarni, told IANS.

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The case came up for hearing at the Panaji bench of the Bombay High Court after Chief Justice, Swatanter Kumar, took suo moto cognizance of the rape. At the last hearing on November 21, 2008, Justice Kumar, in his show-cause notice to the state, asked why the case should not be handed over to the Central Bureau of Investigation (CBI) for probe and why should not the bail granted to Rohit by a lower court be cancelled. The court also grilled the police as to why the other influential accused in the case, Warren Alemao, was not arrested by the police. Warren is nephew of two cabinet ministers, Churchill Alemao and Joaquim Alemao. Meanwhile, in an embarrassing disclosure, the Goa police, in an affidavit, told the court that Rohit was not absconding as was construed in the chief justice’s order of November 21, 2008. “Rohit was never absconding. The police did not want to arrest him as the victim was not willing either to give her statement or allow a medical examination,” Superintendent of Police (North) Bosco George told the court. In his submission to the court, state Advocate General, Subodh Kantak, said, Rohit was arrested before the girl’s statement was recorded by a local magistrate. The sensational rape case caught the attention of the national media as sons and kin of three ministers and one BJP legislator were probed, which was riddled with inadequacies. Justice Kumar and Justice S.A. Bobade of the Bombay High Court, while taking up the case, said: “If reports of the newspapers are correct even to some extent, then they demonstrate the apathy of the police machinery towards the rule of law. It is not only obligatory, but mandatory for the investigating agency to effectively and expeditiously progress with the investigation of a case once the FIR is registered.”

Uma Khurana Case

Among the numerous sting operations carried out since the revelation of the casting couch, the latest involving Uma Khurana stands out as one of the most disturbing. The sting alleged that Uma Khurana, a mathematics teacher at Sarvodaya Kanya Vidyalaya in Delhi, was pushing her students into prostitution. The sting, aired on the TV channel Live India, led to a large-scale riot on Asaf

36 Ibid.

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Ali Road. Uma Khurana was almost lynched by a violent mob. In the latest development, the police said that they have no evidence against Uma Khurana. The sting was a frame-up and was allegedly motivated by a petty dispute between Virendra Arora, a businessman, and Uma Khurana. Arora's friend, Prakash Singh, the journalist with LiveIndia channel who masterminded the sting, asked a friend, Rashmi Singh, a reporter with a small Noida newspaper, Nirbhik Prehri to pose as a student who was pushed into prostitution by Khurana. A study of the unedited tapes showed that Uma Khurana refused to admit to any prostitution ring or provide any students for prostitution. The police has now arrested Rashmi Singh for cheating. The whole sting was motivated by petty revenge on the part of the businessman who gave the journalist a tip-off and a desire for cheap publicity on the part of the channel. The operation focused chiefly on the sexual angle in the whole story, which is a whole deal more glamorous than say corruption in the education system. Corruption has been the country’s bane and it starts early--right in our schools. If the schools are a breeding ground for illicit liaisons and undue favors, is it surprising then that we have not been able to do away with corruption? But, somehow, the channels do not seem to highlight such instances. Growing up in small towns in the country, I know for a fact that teachers coerce students to join their private tuitions, lest the student should fail in exams. Some teachers resort to bribes to leak examination papers, while others look for favours in kind. Students oblige, parents give in. Who wants to take on a hassle for a few rupees more? There are sting operations that bring out corruption in the bureaucracy, but as the bureaucracy functions in India, these operations lead nowhere. Taking action on those found guilty is a long-winded process, and no one seems to have the patience, nor the inclination to wait for the outcomes. It's just convenient to bring out stories that do not deserve more than a day’s worth of attention. Close on the heels of the Uma Khurana sting operation in Delhi, comes another one from down south. Professor Suryanarayan of Osmania University met almost the same fate as the maths teacher from Delhi – minus the public thrashing. The charge here is the professor sought sexual favours from
students in lieu of a doctorate degree. Again, the focus of the story seemed sex, and not the moral responsibility education entails.37

Media is regarded as one of the pillars of democracy. Media has wide-ranging roles in society. It plays a vital role in moulding or at least influencing the opinion of the society and it is capable of changing the whole viewpoint through which people perceive various events. The media can be commended for starting a trend where the media plays an active role in bringing the accused to book. Freedom of media is defacto the freedom of the people as they should be informed of public matter.38 It is thus needless to emphasise that a free and a healthy press is indispensable to the functioning of democracy. In a democratic set up, there has to be active participation of people in all affairs of their community and the state. It is their right to be kept informed about the current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider to form broad opinion in which they are being managed, their issues tackled and society and business administered by the government and their functionaries. To achieve this objective, people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues, and select their future course of action. The right to freedom of speech and expression is contained in Article 19 of the constitution. However, the freedom is not absolute as it is bound by the sub-clause (2) of the same article. However, the right of freedom of speech and expression does not embrace the freedom to commit contempt of court.39 The media has again come in focus in its role in the trial of Jessica Lal murder case. The concept of media trial is not a new concept. The role of media was debated in the Priyadarshini Mattoo case and, likewise, many other high profile cases. There have been numerous instances in which media has been accused of conducting the trial of the accused and passing the ‘verdict’ even before the court passes its

37 www.merinews.com
judgment. Trial is essentially a process to be carried out by the courts. The trial by media is definitely an undue interference in the process of justice delivery. Before delving into the issue of justifiability of media trial, it would be pertinent to first try to define what actually the ‘trial by media’ means. Trial is a word which is associated with the process of justice. It is the essential component in any judicial system that the accused should receive a fair trial.

In Sushil Sharma v. The State (Delhi Administration) and Ors\(^40\) it was held by the Delhi High Court that: “Conviction, if any, would be based not on media’s report but what facts are placed on record. Judge dealing with the case is supposed to be neutral. Now if what petitioner contends, regarding denial of fair trial because of these news items, is accepted it would cause aspersion on the Judge being not neutral. Press reports or no reports, the charge to be framed has to be based on the basis of the material available on record. The charge cannot be framed on extraneous circumstances or facts but on the material available on record. While framing the charge, the Court will form prima facie view on the basis of the material available on record. The apprehension of the petitioner that he would not get fair trial is perfunctory and without foundation. None of the news items, if read in the proper prospective as a whole, leads to the conclusion that there is any interference in the administration of justice or in any way has lowered the authority of the Court. The Trial Court has rightly observed that after the charge sheet has been filed, if the Press revealed the contents of the chargesheet, it by itself and by no stretch of imagination, amounts to interference in the administration of justice.” Even in highly sensitive cases, the session trial has been conducted by the courts of Sessions without fear or favour. For example, to count a few cases which are commonly known as ‘Billa Ranga Case’, ‘Baba Nirankari’, “Sudha Gupta” and of “Shalini Malhotra” see the other aspect. One cannot gag the press. The Indian courts have emerged as the most powerful courts in the world with virtually no accountability. But every institution, even the courts, can go wrong. Every institution including the judiciary has its share of black sheep and corrupt judges are also there. The judiciary is peopled by judges

\(^{40}\) 1996 CriLJ 3944.
who are human; and being human, they are occasionally motivated by considerations other than an objective view of law and justice. It would be foolhardy to contend that none of them, at least some of them, and at least some times, are motivated by considerations of their own personal ideology, affiliations, predilections, biases and indeed even by nepolistic and corrupt considerations. In stifling all criticism by the threatened exercise of the power of contempt against media, the issue in a democratic society is not to insulate judiciary even when things go wrong. Ultimately, one of the issues of vital concern is the accountability of the judiciary itself. In order to stifle free speech and comments on the court judgements, even an occasional exercise of this power is enough to deter most persons from saying anything that might annoy their Lordships. Perhaps the most important reason for the lack of reforms in the judiciary is the reluctance of the Press to write about and discuss the state of affairs within it for fear of contempt.

In Saibal Kumar Gupta and Ors. v. B.K. Sen and Anr, it was held by the Supreme Court that: “No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case.”

The Ins and Outs of Media Trial - English View – is that High-profile civil litigation is not just decided in the courts; it also is decided in the court of public opinion. Courts and legal commentators are increasingly recognizing that the media, through the way it covers litigation, has a very real impact on the resolution of individual lawsuits. Common sense dictates that it is within a lawyer's role, therefore, to work with reporters on their stories to ensure accurate reporting. Many defence attorneys in high-profile cases, though, flinch at the idea

41 AIR 1961 SC 633.
of saying anything to reporters out of concern that such conversations could be misconstrued as an attempt to affect the jury pool or persuade a judge or jury. For this reason, rules and beliefs have developed as to how lawyers may appropriately engage the media to mitigate its impact on their clients.\(^{42}\)

Pro-Plaintiff Media Bias Litigation involving well-known companies or individuals always has grabbed the attention of the news media, especially when it involves sensational charges. The magnitude of the coverage and the filter through which the media reports on litigation can create a “clear plaintiff bias in civil cases.” While small companies can find themselves under the media spotlight in a particularly novel or “bet the company” suit, the media tends to focus on allegations against established and respected corporate defendants. These larger companies tend to have household names, and allegations against them can make good “copy” - even if the allegations are seemingly spurious, commonplace or unproven. The same is true for litigation involving celebrity defendants.\(^{43}\)

In covering litigation, particularly corporate litigation, the media has an inherent bias that favours plaintiffs. When charges are made public, the media automatically reverts to the basic elements of story telling and casts the lawsuit in traditional protagonist-antagonist terms. The defendant, simply by being on the wrong side of the “v,” becomes the "villain” to the plaintiff's “victim,” whether or not the actual charges have any factual basis or legal merit. Reports frequently lead with the plaintiff's injury or allegations and only include the corporate position as a response. These stories rarely are counterbalanced by positive stories about the defending company. Because companies would rather not draw attention to any litigation, they usually do not seek publicity for their victories.

\(^{42}\) Steven B. Hantler, et al., Extending The Privilege To Litigation Communications Specialists In The Age of Trial By Media, 13 CommLaw Conspectus 7 CommLaw Conspectus 2004.

\(^{43}\) Paul Pringle, Hush-Hush High-Profile Cases: Dome of Silence Caps Celebrity Cases; Authorities: It's in Defendants' Best Interests, L.A. TIMES, Mar. 22, 2004, at A1 (citing a lawyer as saying, “There seems to be an insatiable appetite for these trials.”).
Even if they did, reporters often would not see corporate litigation victories as particularly newsworthy. Goliath is supposed to beat David; that is not news.\textsuperscript{44}

\textbf{The nature of bias in High-Publicity Cases:}

A larger issue is the complex nature of juror bias and how that bias predisposes a juror towards one side in a case. It is no secret that we all have biases. The difficulty comes from understanding how those biases may ultimately affect the viewing of evidence and the deliberations in a case. Because the ramifications and remedies of this issue are far-reaching, the courts have elected to take the “I instruct you not to be biased” approach. As a result, the court can attempt to reform any juror who expresses bias by appealing to his or her fear or by appealing to the juror’s inherent sense of fairness (“Don’t you think you could set aside those initial impressions and only consider evidence from the witness stand?”). Rare is the juror who would not be intimidated by an admonishment from the court or who does not think of himself or herself as a fair and unbiased person. In fact, most jurors struggle mightily against their initial impressions.

Several issues make it more difficult for jurors in high-publicity cases. Jurors want to appear fair and unbiased in front of the court and the press. Jurors want to sit on sensational trials. Jurors have a hard time distinguishing between impressions formed by pre-trial publicity and impressions formed in court. Jurors mostly do not understand or acknowledge their own biases. They themselves sometimes do not know the strength of their impressions and opinions. When in a high-conflict situation, such as juror deliberations, jurors revert to their initial impressions, experiences, and opinions. The courts make it relatively easy to conceal or not reveal a conscious or unconscious bias. These issues were highlighted in Mr. Simpson's civil trial. Despite having stated numerous times in

\textsuperscript{44} As just one example, a Westlaw search shows that when a jury returned a verdict for $58.5 million dollars against Chrysler in Debbs v. Chrysler Corp. in 1999, many of the nation's daily newspapers covered the verdict and the allegations. When a Pennsylvania appellate court overturned that verdict in October 2002, the decision received scant coverage, which was mostly contained to legal trade publications. 810 A.2d 137 (Pa. Super. Ct. 2002).
their questionnaires that they believed him to have been guilty at various times during the presentation of the criminal trial, more than 30% of these jurors were not excused because they stated that they were not willing to put their opinions and impressions aside in the civil case.

**The additional pressure on Judges in High-Publicity Trials**

The media create a series of unconscious pressures on a juror in a high-profile trial. Jurors know that they are being watched by the world. They are not only making a decision for themselves, but they are making a statement for their family, co-workers, community and society as a whole. This elevates their verdict to a level beyond the evidence. In interviewing jurors after the trial of Hollywood, many jurors expressed how they hoped that the police would use their resources more wisely than to prosecute victimless crimes. When talking about the testimony of Dr. Irwin Golden, who was the coroner in the Simpson case, juror Marsha Rubin-Jackson said: “But it comes to the point in this particular case where Dr. Golden has made thirty errors. Now, you can’t tell me this man has not made errors on previous autopsies . . . But this just happened to be a case that came to the court as a ‘high-profile’ case and the problems were brought to everyone’s attention.”

It becomes clear that the media had a more negative influence rather than a positive effect (except for a few exceptions here and there). The media has to be properly regulated by the courts. The media cannot be granted a free hand in the court proceedings as they are not some sporting event. The Law Commission also has come up with a report on ‘Trial by Media: Free Speech vs. Fair Trial under Criminal Procedure (Amendments to the Contempt of Court Act, 1971)’ [Report number 200 prepared in 2006]. The report is still pending in the Parliament as such the researcher could not get a copy of the report. It will be available to the public once it is discussed in the Parliament.

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The most suitable way to regulate the media will be to exercise the contempt jurisdiction of the court to punish those who violate the basic code of conduct. The use of contempt powers against the media channels and newspapers by courts have been approved by the Supreme Court in a number of cases as has been pointed out earlier. The media cannot be allowed freedom of speech and expression to an extent as to prejudice the trial itself. What lessons does the Jessica Lal fiasco teach us? There is definitely a case for intensifying efforts to upgrade the quality of policing. There is at the same time a need to improve judicial performance. For instance, the Jessica trial took nearly seven years to get completed. Hardly anyone has commented on this. Will it be unreasonable to demand that this should be taken up by the Delhi High Court as a kind of case study to find out why there was such delay? The public would like to satisfy themselves that the failure was not because of judicial lethargy, but rather because of several extraneous factors such as police indifference and wanton delaying tactics on the part of the defence. The current popular perception is that judicial accountability is an unrealisable dream. It is for the judiciary to prove this perception wrong. The above analysis reveals the gravity of the situation as it persists in India. An ideal proposal will be that the Indian press and the Indian people are not at present democratic enough to allow the press to intrude in the judicial process. What will an ideal proposition be is not to allow the media trial at this moment. It’s definitely an ideal proposition to allow controlled media reporting of the cases, once the media is supposed to come out of the profit and sensational considerations. The media has to play the role of a facilitator rather than tilting the scales in favour of one or the other party.