

“THE HIDDEN THIRD EYE, AN ENCROCHMENT ON RIGHT TO PRIVACY”

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Abstract

Privacy is most intricate to delineate of all human rights. Mythologically only the Hindu Lord *Shiva* is having the third eye and whenever he opened, it carries the mass annihilation. Today the third eye found in form of hidden or Spy cameras. The primary objects of construction of hidden cameras were to ensure peace of mind and the safety of our family and business & property. In the era of rejuvenation, information & technology generally the third eye open by hidden camera that violates the privacy of individual/s or the modesty of one's private life. This paper concentrates on kind of sting operations, investigative journalism, live- recording of private moments/actions, interrogation /recording of statements, workplace surveillance, detective investigations which results into defamation, humiliations & blemishes the private & social life of an individual.

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Introduction

Historically the Privacy has deep roots. The Right to Privacy is most intricate to delineate of all the human rights.¹In Ramayana², God Rama deserts his loving younger brother Laxmana for violation of his privacy when Rama was communicating with Kaal, the God of Time. The copious references to privacy have also been given in Bible, Hebrew Culture³& ancient China⁴. These protections mostly focused on *the right to solitude*. The definitions of privacy are anecdotal according to context and environment. The Privacy protection is drawing the line at how far society can intrude into a person's affairs⁵ & it could be separated into the following facets:

- *Intimacy privacy* involves the protection of intimacy with anyone/ their private movements.
- *Corporal privacy* concerns with the protection of people's outraging their physical activities.
- *Privacy of Interactions* covers the security and privacy of mail, telephones, email and other forms of communication, string operations & data protection.
- *Territorial privacy*, concerns with setting of limits on intrusion into the domestic and other environments such as the workplace or public space.

Right to Privacy, the International & Indian Constitutional Perspective:

A Famous English writer observed, "*In one sense, all human rights are aspects of the right to privacy*."⁶The Privacy as a fundamental human right renowned in the United Nations Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR)⁷& in many other International and Regional treaties. Privacy underpins human dignity & other key values. The Privacy as a fundamental human right renowned in the United Nations Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR)⁸& in many other International and Regional treaties. Privacy underpins human dignity & other key values.

¹ James Michael, "Privacy and Human Rights" 1 UNESCO (1994).

² The Famous holy epic of Hindus.

³ Richard Hixson, "Privacy in a Public Society: Human Rights in Conflict" 3 (1987) and Barrington Moore, "Privacy: Studies in Social and Cultural History" 1 (1984).

⁴ *Ibid.* at 5.

⁵ Simon Davies "Big Brother: Britain's Web of Surveillance and the New Technological Order", 23 Pan, London (1996).

⁶ Volio, Fernando. "Legal Personality, Privacy & the Family" in Henkin (Ed.) The International Bill of Rights, New York: Columbia University Press, (1981).

⁷ A/RES/45/158 25 February 1991, Article 14.

⁸ A/RES/45/158 25 February 1991, Article 14.

The Universal Declaration of Human Rights (1948) U/Ar. 12 of defines Right to Privacy as—*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honor and reputation. Everyone has the right to protection of law against such interference or attack.* Ar. 8 of The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 states:

*(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2)*⁹

In the early 1970s, countries began adopting broad laws intended to protect individual privacy. Throughout the world, there is a general movement towards the adoption of comprehensive privacy laws that set a framework for protection. Most of these laws are based on the models introduced by *The Organization for Economic Cooperation and Development and the Council of Europe*. In the 1890s, future U.S. Supreme Court Justice Louis Brandeis articulated a concept of privacy that urged - it was the individual's "*right to be left alone.*" Brandeis argued that - privacy was the most cherished of freedoms in a democracy, and he was concerned that it should be reflected in the Constitution.¹⁰ It significant to note that various countries have not yet explicitly recognized the protection of privacy in the Constitution, for e.g. India, United States, & Ireland. Indian Courts have found that right in other provisions & enactments like Ar. 19(2) of the Constitution of India provides for *nothing in sub-clause (a) shall affect the operation of any existing law in so far as it relates to, or prevent the state from making any law relating to libel, slander, defamation, contempt of court or nay matter which offends decency or morality or which determines the security of, or tends to overthrow the state.*¹¹

The Supreme Court of India in case of *Romesh Thapar*¹² laid down an important principle & giving restrictive interference to clause 2 of Ar. 19, *having allowed the imposition of restrictions on the freedom of speech and expression for specified purposes... The 'Freedom of Press' has been held to be a part of the Fundamental Right of 'Freedom of Speech & Expression'*

⁹ (2) There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health of morals, or for the protection of the rights and freedoms of others.

¹⁰ Samuel Warren and Louis Brandeis, "The Right to Privacy", 4 Harvard Law Review, 193- 220 (1890).

¹¹ Modi Charu, B.A., LL.B. (Hons.) 2nd Yr. "Look If One Can Violate Your Privacy", An Overview Of Sting Operations", 5 RTR (2000).

¹² AIR 1950 S.C. 124.

guaranteed by Ar. 19(1)(a)¹³. It could be exercised so long as it does not harm the decency/morality of a person & so does *the privacy of a person*. *The right to privacy* flows from *right to life and personal liberty* guaranteed in Ar. 21 of the Constitution of India. Justice Subba Rao hold that - '*Liberty*' in Ar. 21 is *comprehensive enough to include privacy* it is true that he does not explicitly declare the *Right to Privacy as a Fundamental Right* but the right is an *essential ingredient of personal liberty*. It is respected as a Fundamental & can be restricted for compelling public interest.¹⁴ The Court, however, has limited to personal intimacies of the family, marriage, motherhood, procreation and child bearing¹⁵. Practically there is a clash in two major Fundamental Rights. These Fundamental rights are not absolute and can only be taken away under Article 19(2), under reasonable restrictions.¹⁶

Encroachment On the Right to Privacy:

The violations of privacy remain disquiet even with the adoption of legal and other protections. In many countries, laws have not kept up with the technology, leaving significant gaps in protections & enforcement. In the absence of adequate oversight and enforcement, the mere presence of a law may not provide adequate protection. There are extensive violations of laws relating to surveillance of communications, by illicit means in various countries. The U.S. State Department's annual review of human rights violations finds that over 90 countries engage in illegally monitoring the communications of political opponents, human rights workers, journalists and labor organizations.

In the Corporate world, the Companies regularly flaunt the laws, collecting and disseminating personal information by the help of investigation agencies. Consistently, populations throughout the world express fears about encroachment on privacy, prompting an unprecedented number of nations to pass laws which specifically protect the privacy of their citizens.

Hidden Camera, the meaning:

Hidden camera does not mean a special instrument or device for video recording. It signifies a device which is concealed i.e. without the knowledge of other person which might be

¹³ *Hamdard Dawakhana v. Union of India*, (AIR 1960 SC 554).

¹⁴ *Govind v. State of M.P.* (AIR 1975 SC 1378).

¹⁵ *P.U.C.L. v. Union of India* (AIR 1997 SC 568).

¹⁶ *Hamdard Dawakhana v. Union of India*, (AIR 1960 SC 554).

mechanical, electronic, automatic or digital device which is used to enter in privacy of anyone by video footage, clips inclusive of still photography that may of any size.

The Hidden Cameras, the double edged weapon for outraging Privacy:

Today we could find hidden or Spy cameras in almost anything. Hidden cameras are so small they are virtually invisible to a naked eye. The primary object of construction of hidden cameras were to ensure peace of mind and the safety of our family and business& it prevent employee, housekeeper or roommate by theft and keep eye on our movable or immovable properties and children by using hidden video surveillance cameras. Hidden cameras or nanny cams are becoming more and more popular because of their proven effectiveness like are employees actually doing their jobs while the boss is away? Has the secretary been tumbling into the petty cash? Are office staffs stealing valuables, such as inventory or office supplies? Parents may need a nanny camera to make sure their children are being well taken care of.

Modes of Encroachment on Privacy by hidden third eye:

Mythologically only the Hindu Lord *Shiva* is having the third eye and whenever it opened it carries the mass annihilation. Now in the era of rejuvenation, information & technology generally the third eye open by hidden camera that violates the privacy of individual/s or the modesty of one's private life. There are various ways /methods for encroachment on privacy which are as follows:

1. Sting Operations / Investigative Journalism by hidden cameras :

A sting operation is an operation designed to catch a person committing a crime by means of deception or exposing a wrong deed by a hidden camera. Sting Operations are intricate buoyancy game planned and executed with great care & caution. The word “*sting*” origin from American usage to mean- *a police undercover operation designed to trap criminals*. The word “*sting*” is a synonym for the expression “*set a trap to catch a crook*”. It is an information-gathering exercise; that looks for facts which are not easy to obtain by simple requests & searches, or those that are actively being concealed, suppressed or distorted.

A. The Sting Operations, the Violation of Freedom of Press by Media :

Sting operations are just one of the tools of investigative journalism. It is a matter of strife because there are multitude questions of ethics. The role of the media has been to change-infotainment is a necessity. Stings have been a part of UK's tabloid culture for a long time now. But in India, it is difficult to distinguish between serious and tabloid journalism, thus the situation is dangerous. The maltreatment of freedom of expression by the media violates all its restrictions, and endangers the rights of others. Media is conducting sting operations on the cases which are pending before the court of law, and trying to interfere in the administration of justice by media trial which¹⁷ affect the right to privacy of an individual. This freedom of media would affect the fair trial or right to privacy provided under our constitution. For e.g. in case of *R. K. Anand v. Registrar Delhi High Court*, the NDTV channel had conducted the sting operation about offering the money and in return of change of the testimony. Though the NDTV has done a good job, it harmed the reputation of the noted advocates. The Supreme Court of India has also stated in its judgment that media *i.e.* "NDTV should have carried out the operation only after obtaining the permission of the trial court or the Chief Justice of the Delhi high Court and should have submitted the sting materials to the court before its telecast. Instead of submitting the materials to the court, the TV channel had broadcasted it in its channel which shows that such an act was done to increase its TRP". Though when the judiciary fails in finding out the hidden evidences for the trial of any cases in court of law it is the implied duty of the media to help the judiciary to discover the hidden evidence & assist in accomplishing the purpose but not subject to the cost of infringement of the right to privacy of others. There are weekly TV shows full of stories obtained from hidden camera investigations like *Par-da-fash* or *Sansani's*. These are, beyond doubt, sensational, and are a gimmick to draw more eyeballs.

B. Evidential approach for sting operations:

As far as Indian Evidence Act, 1872 is concerned; it recognizes the records produced by the media as the valid evidence when the primary evidence is absent. Thus it is pertinent to infer

¹⁷ Harshwardhan Gouda Patil, "Why Sting Operations by Media should be discouraged?", <http://www.mightylaws.in/794/sting-operations-media> (Last Updated 14 May 2013)

from the above discussions that there are some provisions under Indian law to accept the concept of “*STING OPERATION*”, but some laws are to be made regarding the regulation of the right of media not to telecast any material under the sting operation which affects the right to privacy and any other fundamental rights guaranteed under constitution of India. In *Court on Its Own Motion v. State of Delhi*¹⁸, certain guidelines were given by the Delhi High Court as regards sting operations after there was false reporting of a school teacher, *Uma Khurana's* involvement in a prostitution racket. These include the following-

1. The right to privacy of every person is to be respected that could not be outraged unless there is a larger interest involved.
2. A channel proposing to telecast a sting operation had:
 - I. To obtain a certificate from the person who recorded or produced it saying that it was genuine to the best of his or her knowledge.
 - II. To obtain permission from a committee appointed by the Ministry of Information and Broadcasting to telecast the sting operation.
3. While the transcript of the recordings could be edited, so both edited and unedited tapes have to be produced before the Committee.
4. The chief editor of the channel has to ensure that all statutory requirements have been adhered to.
5. Reports or current events cannot deliberately be presented as true and any unverified or inaccurate facts must be avoided, so that the public does not get misled.
6. Deliberately overplaying certain parts while underplaying others is also not to be allowed.
7. Reports should not be such as to create alarm or panic or amount to incitement to commit any crime.
8. Media to observe general standards of decency, having regard of the sentiments of viewers, particularly that of children.

¹⁸ 429, 146 DLT (2008).

2. The Phenomenon of, Citizen Journalism:

The perception of Citizen Journalism which is also known as ‘ Democratic’¹⁹, ‘Public’, ‘Participatory’, ‘Guerrilla’²⁰, ‘Street’ journalism ²¹is based upon public citizens ‘playing an vigorous role in the process of collecting, reporting , analyzing & disseminating news & information.’²² Citizen journalism refers to an extensive range of tricks in which everyday people contribute information or commentary about news events. Over the years, Citizen Journalism has benefited from the development of various technologies. With the nativity of digital technologies, people now have unparalleled access to the tools of production and dissemination. By taking the brainwave from the present electronic media, they himself start investigation by any mean such like – tape recording , videos recording by hidden or spy cameras . They narrowly bothered about pro & cons of out-raging the reticence of others. So having the thirst of being the social activist they violate the limitations of laws. Citizen journalism epitomizes the belief that the experiences of people personally involved with an issue, present a different— &more complete—picture of events. Due to limitations of access and time—and in some cases ulterior motives to present just one side of a story. Now citizen journalists through blogs have broken stories about political corruption, police brutality, and other issues of concern to local and national communities.²³In over gusto people did not hesitate to outrage the privacy of citizens by using any unauthorized means.

3. Investigations of Individuals & Politician:

The targets of hidden Camera investigation are generally the Politicians, Corporate Firms, Police & Public Servants that provide enticements for the targeted offender, such as offering a bribe to a politician, presence of illegal drugs in open-air drug markets, the purchase of liquor by minors. The most common categorization of political scandals single out three types: sexual scandals, financial scandals and power scandals all of these examples assume that the offenders are “willing” offenders, but we could see, when police construct situations in which they offer people opportunities to commit a crime. Catching offenders in the act is a very persuasive feature

¹⁹ Baase, S. "A Gift of Fire". 3 Prentice Hall (2008).

²⁰ Case, J. A. "Recovering the Radical: Biocybernetic Subversion in Guerrilla Video Primer." *Paper presented at the NCA 93rd Annual Convention, Chicago, IL, November 14, 2007.*

²¹ Tamara Witschge (27). "Street Journalists v. 'Ailing Journalists?'" *Open Democracy - free thinking for the world.* open Democracy Ltd. Retrieved 21 May 2012.

²² Bowman, S. and Willis, C. "We Media: How Audiences are shaping the Future of News and Information." 2003, *The Media Center at the American Press Institute.*

²³ http://www.freebase.com/view/en/citizen_journalism (Last visited on March 13, 2013)

that impresses juries, who typically return guilty verdicts even though an element of deception is often involved. The Delhi High Court judgment on contentious case of *Anirrudh Bahal v State*,²⁴ and made sting operations legal. *Anirrudh Bahal and Suhasini Raj*, conducted a sting operation of some Members of Parliament, in which they were offered money for asking questions in Parliament and the act was caught in the camera. Soon after the operation was over it was aired on television to expose this practice to the public. But the pity was that after this entire incident no First Information Report (FIR) was filed by the Delhi Police against those corrupt politicians. The first FIR was filed one and half year later after this entire episode in which both of the journalists were charged as an accomplice for abetting the offence under Section 12 and 13 of the prevention of corruption act. This raised a pertinent question before the court that: *Whether a citizen of this country has right to conduct sting operations to expose the corruption by using agent provocateurs and to bring to the knowledge of common man, corruption at high strata of society?*

The Court considered it to be the fundamental duty of an ordinary citizen under *Ar. 51A (b), 51A (h) & 51A (j)* to expose such practices prevailing in the system and thus for this purpose any such act or operation conducted, with the intention of doing public good is justified.

The law with regard to such exposition of unauthorized acts of public officials is also very clear. The honorable Supreme Court of India in *R. Rajgopal v State Of Tamil Nadu*²⁵ has even held that in case of infringement of privacy of public officials, they have no remedy or damage available, In all such cases a public official cannot make claim for his right to privacy, if the act or conduct is associated with their official duty.

4. Live- Recording of Private Moments/Actions:

*"Noida couple's video clip loaded on porn websites, 2 operators held"*²⁶, this type of headlines usually read in the everyday newspapers. It is illegal to record hidden camera video in areas where a person have a reasonable expectancy of privacy those areas might include public &

²⁴ (MANU/ DE/2461/2010).

²⁵ 632, 6 SCC (1994).

²⁶ Noida, January 14, 2013, an executive of a Noida company had gone to Mathura, Jaipur and other towns along with his wife. At the Mathura hotel, a video clip was made using hidden cameras fitted in the couple's room, police said, alleging the porn website operators were behind the episode. <<http://indiatoday.intoday.in/story/couples-video-clip-loaded-on-porn-websites-website-operators-held/1/242248.html>>

private bathrooms and bedrooms, public changing rooms, hotel rooms, rental homes, apartments & private homes. Not every state expressly bans the use of hidden cameras in places where a subject might have a reasonable expectation of privacy. But that doesn't mean we should assume it's legal- or morally acceptable. It is illegal to record video (or audio) with the express purpose of blackmail or other "malicious intent. The young generation is very keen to outraging in privacy of the others & for that they go up to any extent. In era of technology it is not impossible got the means of implements of outraging privacy. Recently Noida Cyber Cell has arrested two porn website operators for allegedly loading a couple's obscene video on the website. They stayed there in hotel. That was an international racket. Hotel owners, porn website operators and service providers all are involved in the racket. The Noida couples, on hearing about their video clips uploaded on porn website, were very tense and had even thought of committing suicide.²⁷The clandestine moments of person are very delicate as a person can't remain every time formal & sophisticated. In another case a 44-year-old electrician has been arrested for allegedly installing a hidden camera in a water heater. He had fixed in his neighbors' bathroom. The Camera had a small radio AV transmitter which sent the images from the bathroom to the computer-linked receiver installed at the electrician's house. The man had allegedly been viewing the images from the bathroom for the last eight months.²⁸

Today the internet world is full & flooded with the porn hidden movies of newly wed couples, boy friend – girl friend etc. In certain cases we could also see that even the boy friend himself recorded his private moments with his partner & uploaded on porn websites & sometimes prepare CD's & sell in open markets.

5. Admission & Confession before hidden Cameras:

The fairness of the trial proceedings in criminal proceedings is guaranteed by law .The Indian Evidence Act is enacted by the England & the principle of fairness in also guaranteed in Section 78 PACE. In case of *R v Quinn*, Crim L.R. 581: "...The function of the judge is therefore to protect the fairness of the proceedings, and normally proceedings are fair if.. all relevant

²⁷ Noida couple's video clip uploaded on porn websites, Zee News India Pvt. Ltd. Tuesday, January 15, 2013, 08:52.

²⁸ <http://www.deccanherald.com>, Man held for installing hidden camera in neighbors' bathroom, Thiruvananthapuram, Feb 19, 2013.

evidence [is heard] which either side wishes to place before [the court], but proceedings may become unfair if, for example, one side is allowed to adduce relevant evidence which, for one reason or another, the other side cannot properly challenge or meet."Prosecutors should note that each case will turn on its own facts, and that the courts have resisted attempts to fetter their discretion.

The Law of Evidence determines how the parties are to convince the court of the existence of that state of facts which would establish the existence of the right or liability which they allege to exist.²⁹ The Evidence Law indicates what may be properly be introduced by a party (i.e. what is admissible,) and also what standard of proof is necessary (i.e. the quantity & Quality of evidence necessary in any particular case.)³⁰The Admissibility of evidence depends upon the evidentiary value/ gratitude of that evidence according to evidence law but law scarcely care of about the technique of receiving that evidence. The evidence of Admission & Confession often forms a crucial part of the prosecution's case against a defendant. When cases, in which party intend to introduce evidence of a confession, prosecutors should examine carefully the circumstances in which the confession was made to decide on its admissibility. There is an antique perception of – ‘*Saam Daam Dhandha Bhaid*’. The Admission & Confessions are also source of evidence. Confession is a complete acknowledgement of guilt in criminal proceedings; an admission is a statement of fact in either a civil or a criminal case. The *Involuntary Confession* came to be rejected as evidence under Indian law, and the burden of proving that a confession was *Voluntary* lay with the prosecutor. So in Order to take the alternative of the ‘*Voluntary Statement*’ parties worn all the illicit resources to enclose admission or confession before hidden camera by using all the unauthorized means & then produce those evidence before the Court of law. The party whose statement is recorded can in no way deny the genuineness of that secreted video footage. In cases the Admissions & Confession are received as competent evidence though tainted with involuntariness. For example, in the accused had made certain incriminating admissions which were recorded on a wire recorder and played to the jury over his objections. The Supreme Court of Idaho ruled *State v. Spe'ncer*,³¹ that the³² conjecture of ‘admissibility of evidence’ accepts any pertinent evidence even that is obtained by forbidden means.

²⁹ Sir James Fitzames Stephen, *An Introduction to the Evidence Act, London*, 10 (1872).

³⁰ 206, 17 *Hasbury 's Law of England*.

³¹ 74 Idaho 173, 258 P.2d 1147 (1953).

A person is having multiple personality in his social & delicate life so when he stayed at domicile and if someone infuriates the privacy of that person by using hidden cameras is serious encroachment on his fundamental life. The courts hardly take a care about mode & source of evidence & recognize that evidence even those are appose to the strategy of law. Constitutionally acceptance of self incriminatory is against the rule of 'Self Incrimination'. So according to the Rule Against self Incrimination i.e. Ar. 20(3) - *declares that no person accused of an offence shall be compelled to be a witness against himself*³³. The law must take about the mode of obtaining the evidence while deciding the admissibility of any evidence produced before the court.

6. Interrogation /Recording of statements u/sec. 161 Cr.P.C:

The process is largely outside the governance of law, though in the India relatively elaborate safeguards have been placed on police interrogatory powers in order to protect the rights of the accused.³⁴ Interrogation is a conversational process of information gathering. The intent of interrogation is to control an individual so that he or she will either willingly supply the requested information or, if someone is an unwilling participant in the process, to make the person submit to the demands for information. The latter can involve techniques of humiliation, intimidation, and fear. In more extreme cases in some countries, physical pain is inflicted. Police Interrogation, or the questioning of suspects in the custody of the police, plays a vital part in bringing offenders to justice is now an established feature of the Criminal process in India. Amendment 2009 of Sec. 161 of the Criminal Procedure Code, 1973 included proviso of the 'Audio or Video recording of the statement under this section'. The Recording of interrogation by hidden cameras is not allowed by this amendment but in order to adopt a easy way the police become more prominent in now a days. It has become the most controversial feature of the whole process of fair trial. According to Sec. 24 of the Indian Evidence Act, 1972....It highlighted unresolved clash. Underlying the expression of the current issue is a tension between the need to bring offenders to justice & the need to protect the rights & liberties of the suspects.

³² The Supreme Court of Idaho stated: "We are not concerned here with the necessity on the part of the state of proving that a confession was voluntarily made before the same is admissible in evidence....His statements did not constitute a confession but at most might be construed as admissions against interest There was no duty upon the state to put if proof of the voluntary nature of such admissions before the same became admissible in evidence".

³³ Ar. 20, Constitution of India, 1950.

³⁴ <http://www.answers.com/topic/interrogation> (Last updated March 25, 2013).

7. Detective Investigations into Private Life of Individuals & Case Opponent:

In the present multifaceted life, the human relations were blemished especially with his family, relatives & friends. The string of responsibility, trust, love & affection has broken in the family or marital ties. In case of convulsion of relations, men started investigation in to these matters by himself or by private detective investigation agencies for family relationships - partner and matrimonial investigations, surveillance, electronic surveillance, divorce enquiries, finding hidden assets and property. Private Investigation is the second, oldest profession in history. It is based on information, intelligence gathering, the gaining of prior information before taking action.

8. Hidden Cam Video Surveillance by Organizations & individuals:

Hidden Cam Video Surveillance (HCVS) System refers to a video, physical or other mechanical, electronic, digital or wireless³⁵ surveillance system or device that enables continuous or periodic video recording, observing or monitoring of personal information about individuals in open, public spaces (including streets, highways, and parks). Video surveillance system includes an audio device, thermal imaging technology or any other component associated with capturing the image of an individual. Any recorded data or visual, audio or other images of an identifiable individual qualifies as “personal information” under the law. Since hidden camera video surveillance (HCVS) systems can be operated to collect personal information for identification of individuals, organizations those must determine if they have the authority to collect this personal information in accordance with the law. No person shall collect personal information on behalf of an organization unless the collection is expressly authorized by law, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity e.g. the collection of personal information that is merely helpful and not necessary to the proper administration of a lawfully authorized activity would not meet the requirements of law. The Organizations must be able to demonstrate that any proposed or existing collection of personal information by a HCVS system is authorized by law. They also before deciding to use HCVS, it is recommended that organizations consider the following: A HCVS system should only be considered after other measures to protect public safety, detect or deter, or assist in the investigation of criminal activity have been considered and rejected as unworkable. HCVS

³⁵ Wireless Communication Technologies: “Video Surveillance Systems (Fact Sheet) available on the Office of the Information and Privacy Commissioner of Ontario’s website (www.ipc.on.ca).

should only be used where conventional means (e.g., foot patrols) for achieving the same law enforcement or public safety objectives are substantially less effective than surveillance or are not feasible, and the benefits of surveillance substantially outweigh the reduction of privacy inherent in collecting personal information using a HCVS. The use of each HCVS should be justified on the basis of verifiable, specific reports of incidents of crime or significant safety concerns. An assessment of privacy implications should be conducted of the effects that the proposed HCVS system may have on personal privacy, and the ways in which any adverse effects can be mitigated by examining the collection, use, disclosure and retention of personal information.³⁶

9. Workplace Surveillance by hidden Cameras:

Many employees understand their employers' need to monitor the workplace, so they understand the need for employers to install security cameras throughout their establishments. However, they will not accept their most private moments being recorded. In order to install cameras, the business owner must prove that they have a reasonable, legitimate business purpose. It is also required that the employer should notified its employees that the premises are under surveillance. Hidden cameras are generally not allowed. Large employers with unionized employees are usually required to negotiate with the union prior to installing hidden cameras. In fact, an employment contract may include a provision requiring that employees consent to video monitoring, even in private places like the bathroom. Because consent has been given, your employer would be free to install hidden surveillance cameras to observe employees³⁷. But monitoring of employees, where there is expectation of privacy, would lead to criminal liability for the violation of privacy. Putting up video surveillance without notice to employees or using hidden cameras at work may also violate employee privacy rights. Should an employer place cameras in inappropriate locations, violate notice requirements, or otherwise use cameras in the workplace improperly, it may leave them open to legal action for invasion of privacy or other similar types of lawsuits. Additionally, if an employer improperly uses cameras to create an impermissible hostile environment in the workplace, they may be subject to harassment or discrimination lawsuits. For this reason, it's important to always check state laws on this issue, or

³⁶ Ann Cavoukian , Information and Privacy Commissioner of Ontario 'Guidelines for the Use of Video Surveillance Cameras in Public Places' Sep. 2007.

³⁷ Laws on Surveillance Cameras? How, http://www.ehow.com/about_5480911_laws-surveillance-cameras.html (Last visited Feb18, 2013).

consult with an attorney with experience handling cases involving cameras in the workplace. In a recent Canadian case, *Colwell v. Cornerstone Properties Inc.*³⁸ an Ontario Judge recently ruled that *an employer who secretly installed a hidden camera in an employee's office without her knowledge and without a plausible explanation had constructively dismissed the employee. The judge ruled that an employer was liable for constructive dismissal of an employee based on a privacy violation.*³⁹ This case demonstrates that there is an implied right of privacy as a part of good faith and fair dealing in an employment contract.⁴⁰ The installation of surveillance cameras is not illegal as long as the intent passes muster. Employers cannot install cameras in restrooms or locker rooms where people change their clothes. Employees have the right to sue if they feel like their privacy has been wrongfully invaded in any way by *hidden surveillance cameras.*⁴¹

The Result of Hidden Camera Investigations / Operations: Defamation, Humiliations & blemish the Private & Social Life:

Hidden camera has adverse effect on relations, reputation of a person, and the effect can go to such an extent, where a victim may decide to end once life. It blemishes once professional and private life as it's not important that the way once showed on a screen, mean so as if a person cordial to once subordinate staff and in order to range the comfort he physically show propinquity which may seem physical though he may never intended so and in turn faces socially humiliated and as these days in era of IT one may met other on social networking sites and under sentiments turn physically and emotionally involved and other partner captures his personal moments for blackmailing than no one other than him can have idea of his state, social networking sites are filled with such videos which defames a person and spoil his whole life.

Conclusive Findings:

As has been mentioned earlier, great power comes with great responsibility and it is very essential to identify the manner in which it is to be used so that it does not create any nuisance to

³⁸ 66139 CanLII SC (2008).

³⁹ Rubin Tomlinson LLP, "Hidden cameras: a violation of privacy amounting to constructive dismissal" 7 Canada (2009).

⁴⁰ Privacy Rights Clearing House: "Workplace Privacy and Employee Monitoring", April (2011).

⁴¹ Video Surveillance Guide: "Security Cameras in The Workplace;" Lynn Bryant; July 23, 2008.

the other members of the society. For this one should identify one's limits over others rights like privacy, which is mainly dealt in such kind of operations. Employers may install surveillance cameras without fear of invading its employee's reasonable expectation of privacy by giving employees clear and specific notice. We recommend the following for employers:

- Identify and document the business reasons for having surveillance cameras. Legitimate reasons include health, safety, theft prevention, workplace productivity, and security.
- Give advance notice to employees of the cameras and give reasons for using them.
- Adopt a written policy reserving the right to monitor the workplace with visible & hidden cameras. The policy should reserve the right to use hidden cameras on the premises when the employer reasonably suspects health, safety or company policy violations.
- Consider limiting the times during the day the cameras will be in use to achieve the business purpose.
- Limit who can review the surveillance tapes, and keep that group on a "need to know basis."
- Do not put cameras in bathrooms or locker rooms where employees may change their clothes.

The pity is that both legislature and judiciary is silent on the subject. Where there is an urgent need of a law or any guidelines from the lawmakers of our country, they are standing as a mute spectator as if they do not have any responsibility to determine how exactly and in what circumstances the citizens of the country should exercise their freedom of speech and expression in this form. Punish the Hidden cam Installer irrespective of the Value of the information given by that person & the outraging the privacy is violation of human right & crime against humanity, is unreasonable. It should be made cognizable & non-bailable.
