



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

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# **RULE OF LAW IN CRIME INVESTIGATION** **– A DISTANT REALITY**

AUTHORED BY - S. ARRIVAZHAGUY<sup>1</sup>

Police functioning has become complicated and highly specialised in a globalised world. Police are the authority to enforce the will of the state. Manifestation of rule of law can be measured by the way the police function, i.e. the index of liberty.

The more specific right to equality is one of the core concepts of rule of law. It essentially means equality before law and all individuals being subjected to the same laws in the same measure.

How for the police and the criminal justice system enforce law in society, protect innocent citizens and use coercive power to ensure compliance of law to ensure peace are the tests in application of rule of law.

Whether individuals are suspected of a minor offence or a serious crime or socio-economic crime or recent increasingly pervading cyber crime, the right has to be equally secured to everyone as guaranteed in our Indian Constitution.

Sociologists of the criminal law believe that there will always be some lurking threat to equal treatment. Certain police officials who exercise some measure of discretion at any point of time may decide the fate of an individual. The police play an important role in exercising discretion at pre-trial and post-trial stages. This discretion is exercised mostly at the pre-conviction stage leading to inequality in criminal investigation.

This paper attempts to analyse the applicability of rule of law in pre and post-trial investigation in different types of criminal cases with the aid of doctrinal method.

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## **Introduction:**

The aim and objective of The Police Act of 1891 was to reorganise the police to make it more efficient in the prevention and detection of crime in the society. As years passed by, the police were entrusted with the responsibility to maintain law and order by ensuring the internal security of the state.

Police in their duties to maintain law and order or in detection, investigation, prosecution of cases directly deals with the public and without public co-operation they cannot discharge their duties effectively. But the role of police is indispensable in maintaining peace in any society. But there is no equality in criminal investigation, due to the intervention of Influential public person. In addition, sensitive criminal cases filed against influential persons is given special attention and priority in disposing, or else inordinate delay in such cases are viewed seriously than in other cases. Hence they will come under special scrutiny.

## **Role of Police:**

The sanction behind state power is the use of force. Police are the authority to enforce the will of the state, the way the police function is an index of liberty and The enforcement of rule of law and liberty in any democratic society can be measured by the way the police function. When the police powers are abused, the weak tend to be more oppressed. Whether it is corruption in the police forces or indeed in the general run of the administration, or criminalization of polity, it is always the poor, under-privileged, weak, and disadvantage sections of society that are at the receiving end.

Police functioning day by day has become increasingly complicated and highly specialised. Each function requires specialization such as training, knowledge based, skill and sophistication which are not possible to sustain when many are centralised in the same force. In the absence of specialisation, the police force have to depend on more outside resources and spend time to achieve the same results in any given area of work.

Certain areas of functioning have to be necessarily under political control and monitoring whereas certain other functions have to be independent of political supervision and are in fact quasi- Judicial in nature. Since, the functions are all clubbed in one police force, it is

impossible to separate control of one function from another. As a net result, they have been playing a very prominent role in and protector of the people.<sup>2</sup>

Even today, nearly half of the population is functionally illiterate. It is easy to recognize, a few segment of the people who engaged in organised sector are socially educationally and politically influential than the rest. More than that, employment of police is in the state sector with colonial hangover and undue prestige and fear evoked by government, such employees wield disproportionate power in the society.<sup>3</sup>

### **Police and Minority Groups:**

It is a peculiar problem that the relationship between the police and the minority groups based on religion, race, or language. Politicians support the dominant majority group for vote bank and the police being in the hands politicians, the minorities are bound to have some real or imaginary grievances against them. Another factor of inequality is that the minority groups are almost weaker in economic condition. And they are not given equal protection by the police. The instances of real or supposed occurrences of police atrocities on Harijans are legion.

In the like manner grievance among the muslims during communal disturbances are quite often pitted more against the police force rather than the other community. It is experienced during the riots in Bhivandi, Moradabad, Meerut, Maliana and other places.<sup>4</sup> The Madan commission which inquired the riots concluded that the policemen had disgraced their uniforms.

### **Police and Politics:**

In India, discharging crime investigation without political intervention is impossible. As criminalization of politics, and politicization of crime have both become the order of the day,

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<sup>2</sup> law commissionofindia.nic.in/reports/report239.pdf

<sup>3</sup> http.academic.ouc.com/jla/

<sup>4</sup> The same tragedy has been repeated in communal riots in the wake of the Ayodhya problem which rocked the towns of Aligarh and Bijnor during December-January 1990-91. In fact, the general Muslim opinion against the PAC [provincial Armed Constabulary] has never been more bitter before and a demand has been made to abolish the force. (also available at Ahmad Siddique, Criminology, Eastern Book Company, Fifth Edition)

the influence of criminals in governance of the state has increased manifold. The election commission has recorded that more than 700 of the 4072 legislators in all the states of India have a record of crime against them.

Such persons can wield considerable influence by virtue of their political affiliations and proximity to ruling party. This creates the need to bestow special attention by the police and the Court system. Needless to say that such cases have social ramification, because those persons in spite of their criminal disposition can pervasively enter and influence the political and democratic process. If this situation is allowed to remain, the fundamental right of citizens to have a clean democratic process will be in jeopardy. It is, therefore, necessary to keep a tab on such cases only to ensure that the course of justice is not obstructed or deflected by extraneous influences. If the accusations against such persons remain uninvestigated or investigated in a slipshod manner, it gives rise to a reasonable suspicion that the police is in the grips of their influence. If the things are left out to take their own course without any scrutiny or monitoring at higher levels, the criminal justice process will be disastrous and become irreparable and throw up a challenge to the rule of law. Such situations should, therefore, be taken care of and in doing so; the authorities concerned should not adopt any discriminatory treatment.

Politicization of crime and criminalization of politics are the inevitable consequences of our governance crisis. The most important reform measure to be undertaken in the police forces is the separation of crime investigation from other branches of policing. Several mechanisms and models have been suggested by various committees and commissions to create an independent wing of police force fully in-charge of crime investigation, which should obviously be controlled by, and be accountable to, an independent constitutional machinery devoid of political intervention.

### **Rule of law in Indian Constitution:**

The term 'rule of law' means the principles of legality which refers to a government based on principles of law and not of men. The expression rule of law was given prominence by Dicey. According to him, the rule of law is one of the cardinal principles of the English legal system. He attributed the following three meanings to the doctrine;

1. Supremacy of law
2. Equality before law; and
3. Predominance of legal sprit.<sup>5</sup>

Rule of law is the fundamental principle of governance of any civilised liberal democracy. It is the anti-thesis of arbitrariness. Dicey's rule of law has been adopted and incorporated in the Indian Constitution. The rule of law has rightly been argued to be part of the basic structure of the Indian Constitution. The preamble itself enunciates the ideals of justice, liberty and equality. In part III of the Constitution, these concepts are enshrined as fundamental rights and are made enforceable. The Constitution is supreme and all the three organs of the government, viz, legislature, executive and judiciary are subordinate to and have to act in accordance with it. The principle of judicial review is embodied in the Constitution and the subjects can approach the High Courts and the Supreme Courts for the enforcement of fundamental rights guaranteed under the Constitution. If the executive or the government abuses the power vested in it or if the action is malafide, the same can be quashed by the ordinary courts of law.<sup>6</sup> The constitutional bench in *G.V.K. Industries Vs ITO*<sup>7</sup> observed that "Our Constitution charges the various organs of the state with affirmative responsibilities of protecting the interests of, the welfare of and the security of the nation.... powers are granted to enable the accomplishment of the goals of the nation. The powers of judicial review are granted in order to ensure that such power is being used within the bounds specified in the Constitution. Consequently, it is imperative that the powers so granted to various organs of the state are not restricted impermissibly by judicial fiat such that it leads to inabilities of the organs of the government in discharging their constitutional responsibilities. Powers that have been granted, and implied by, and borne by the Constitutional text have to be perforce admitted. Nevertheless, the very essence of constitutionalism is also that no organof the state may arrogate to itself powers beyond what is specified in the Constitution. Walking on that razors edge is the duty of the judiciary. Judicial restraint is necessary in dealing with the powers of another coordinate branch of the government; but restraint cannot imply abdication of the responsibility of walking on that edge."

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<sup>5</sup> Administrative Law, Upathyay

<sup>6</sup> C.K.Thakkar , Administrative Law, EBC.

<sup>7</sup> (2011)4 SCC 36

No person shall be deprived of his life and personal liberty except according to procedure established by law<sup>8</sup> or of his property save by authority of law.<sup>9</sup> The executive and the legislative powers of the State and the Union have to be exercised in accordance with the provisions of the Constitution.

The government and the public officials are not above the law. The maxim, The King can do no wrong does not apply in India. There is equality before the law and the equal protection of laws.<sup>10</sup> The government and the public authorities are also subject to the jurisdiction of ordinary courts of law and for similar wrongs are to be tried and punished similarly. They are not immune from ordinary legal process nor is any provision made regarding separate administrative courts and tribunals.<sup>11</sup> In public service also the doctrine of equality is accepted.<sup>12</sup>

The right to equality before the law and the equal treatment by the law, or in other words, the principle of non-discrimination, condition the interpretation and application not only of human rights law strict sense, but also of international law.

On the other hand, the principle of equality or the prohibition of discrimination does not mean that all distinctions are forbidden, and in this respect the Human Rights Committee has held that differential treatment between people or groups of people “must be based on reasonable and objective criteria”<sup>13</sup>

The specific right to equality before the Courts is a fundamental principle underlying the right to a fair trial, and can be found express verb is in Article 14 (1) of the International Covenant on Civil and Political Rights, according to which “all persons shall be equal before the courts and tribunals”<sup>14</sup> The principle of equality before courts means in the first place

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<sup>8</sup> Art.21

<sup>9</sup> Art. 300-A

<sup>10</sup> Art. 14

<sup>11</sup> It may, however, be noted here that by the Constitution (42<sup>nd</sup> Amendment ) Act, 1976, Parliament was empowered under Part XIV –A (Art. 323-A and 323-B) to set up various administrative tribunals for dealing with subjects ranging from disputes of government servants to foreign exchange and production and distribution of foodstuffs and other essential commodities; (C.K. Thakkar, Administrative Law, EBC, 2<sup>nd</sup> edition)

<sup>12</sup> Art. 16

<sup>13</sup> Waldmar Vs. Canada

<sup>14</sup> Art. 5(a) of the 1996 International Convention on the Elimination of All racial Forms of Discrimination.

that, regardless of one's gender, race, origin or financial status, for instance "every person appearing before the court has the right not to be discriminated against either in the course of the proceedings or in the way the law is applied to the person concerned". Further, whether individuals are suspected of a minor offence or a serious crime, the rights have to be equally secured to everyone.

### **Rule of law in Criminal Justice:**

Criminal justice has to be administered with even hand and there cannot be a different treatment for different classes of accused. The fundamental premise of the rule of law is that every human being, including the worst criminal, is entitled to basic human rights and due process. Rule of law essentially means equality before law, and all individuals being subjected to the same laws in the same measure. The ultimate test of rule of law is the way the police and the criminal justice system enforce law in society, protect innocent citizen and use coercive power to ensure compliance of law to ensure peace.

Three percent of the population are engaged in organised sector and they are socially, educationally and politically more influential than others. They are the one who wield disproportionate power in the society. When that employment is with the police force with the uniform as the symbol of authority and prestige the habitual use of force is almost entirely unchecked, with hardly any instruments of accountability. This situation is further complicated by an increasingly illegitimate political and electoral system. Illegitimate political system is inclined to use the police force illegally to buttress itself. As the police force are still largely controlled by the political executive, the tendency to abuse the police force for partisan and personal ends is irresistible in an otherwise immature polity.<sup>15</sup>

The judiciary is a co-equal branch of the government within India's democratic and constitutional framework, along with the legislature and executive. The role of courts in society is not merely to adjudicate disputes between parties, but also to protect the rights and liberty of individuals. This is especially important in criminal matters, where an individual

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<sup>15</sup> Ap.loksatta.org/documents/advocacy/policing.pdf. Dr.Jayaprakash Narayan, Policy in India – Challenges of the future.

ispitted against the might of the state.<sup>16</sup>

The rule of law cannot exist without an effective judicial system, which is capable of enforcing rights in a timely and proportionate manner in a way that inspires public confidence in the administration of justice.

Criminal justice as a lengthy process that starts with the initial legislative criminalization of certain act, and continues through a series of stages that include investigation, arrest, pre-trial, trial, sentencing and service of sentence.

We can describe this process as a chain of ten decision points:

1. Legislative criminalization
2. Investigation
3. Arrest
4. Detention
5. Charging
6. Pre-trial
7. Trail
8. Sentencing
9. Infliction of punishment
10. Termination of punishment

At any point, in a given case, if some officials or group of officials exercise some measure of discretion, it may decide the fate of an individual. It is evident that any of these officials may exercise their discretion in a biased or in egalitarian manner. Legislators may produce statutes that, while facially neutral, have disparate impact; investigators may make biased decisions; arresting officers may make biased decisions; and so may prosecutors, judges and on down the line. Punishment is not the only point at which inequalities may occur. wherever, official discretion appears, there is threat to equal treatment, and equality before law becomes a distant reality.

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<sup>16</sup> Chapter 6: The right to fair trail: Part I – From investigation to trail.

Moreover the process of criminal justice is a hydraulic system said by specialists and the efforts to control discretion at any one point in the criminal process may simply displace the exercise of discretion to another point. For example shifting discretion from judges to prosecutors<sup>17</sup> It is for this reason that many critics have viewed the determinate sentencing movement as a thoroughly naïve effort to guarantee equality in the criminal law.

Sociologists of the criminal law believe it as an insolvable problem. There will always be discretion somewhere in the system, which means that there will always be some lurking threat to equal treatment. It is simply practical impossibility to police the discretion of all potentially biased officials at work at all the stages of the criminal law process.<sup>18</sup>

It may seem obvious that justice in the criminal law must mean equal treatment of offences. Should not a given offence receive the same punishment every time it is committed. We should judge people for what they have done, not for who they are.

Different offenders are the products of different life histories. Some, to take the simplest and most familiar contract, are the children of privilege and some the children of deprivation. Some are more dangerous than others. These sorts of concerns have always led criminal justice officials to seek means of individualizing – means of taking into account the myriad differences that seem to distinguish one individual offender from another. Late nineteenth century insisted on the necessity of individualization.<sup>19</sup>

Now of course one could simply declare that any official who takes into account such individual differences has made a mistake. If we wish to achieve equality before the criminal law, the question we must ask is thus not how to eliminate official discretion. Instead, we must ask which kind of discretion as exercised by which officials, presents which kind of dangers. We must also ask which efforts to control which kind of discretion entail which consequences and costs.

It is also equally important to distinguish the stage at which the discretion is used and it leads

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<sup>17</sup> <https://academic.oup.com/jla/article>

<sup>18</sup> <http://academic.oup.com/jla/article>

<sup>19</sup> <http://academic.oup.com/jla/article>

to inequality in criminal investigation. We have seen that the discretion is everywhere at any decision points of procuring criminal justice. For easy understanding we may divide the decision points into two stages i.e., pre-trial and post-trial. It is noteworthy to state that the dominant role of police mainly occurs at the stages of pre conviction. It covers the decision points such as criminalisation, investigation, arrest, detention and charging and it simply crosses over the stages from filling FIR to pre-trial stage.

### **The Role of Police in Pre – Trial Equality:**

Criminal investigation commences when the police come to know of the commission of a crime. Police enjoy unbridled power in the matter of investigation. The power to investigate conferred under Sec 157 of the Criminal Procedure Code does not necessarily flow from judgment of FIR prescribed under Sec. 154 of the Criminal Procedure Code and the police officer is entitled to undertake investigation from information received.

The investigation of criminal case is completely under the domain of the police and the learned Magistrate has no power or authority or jurisdiction under the code of criminal procedure to direct the investigating officer to investigate any case in a particular way including giving direction to the Investigating officer to take step for recording the statement afresh at the stages of investigation.<sup>20</sup>

Investigation of an offence is the field exclusively reserved for the Police officers whose powers in that field are unfettered as long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions falling under chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bound.<sup>21</sup> Indeed a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how the investigation is to be conducted<sup>22</sup>. But if a investigating officer improperly and illegally exercised his power to breach the provisions

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<sup>20</sup> Indrajit Mukerjee vs State of West Bengal and others 1995 CrLJ 3250 at p3252

<sup>21</sup> P. Venkatesh's Police Diaries, Premier publishing company, 3<sup>rd</sup> edition, p.176

<sup>22</sup> Ibid.,p. 187-188

causing serious prejudice to the personal liberty and property of the citizen, then the court on being approached by the aggrieved person, has to consider the nature and extent of the breach and pass appropriate orders.

Now we consider the powers of police regarding arrest. Investigating officers possess the authority to arrest without warrant. No discrimination is available to an investigation officer so as not to arrest one accused or suspect in one case and arrest another accused or suspect in another case. The words “if necessary” in Sec. 157 may at best make available a discretion to an investigating officer in a given case to defer arresting an accused or suspect if there is reasonable doubt about his identity. It is not possible to subscribe to the view that the words “arrest is made discretionary”<sup>23</sup> Arrest is not a must in every cognizable case. It is the discretion of the police officer to arrest or not to arrest, and the discretion cannot be an arbitrary one but must be guided by the principle laid down by the Supreme Court in *Joginder Kumar Case*.<sup>24</sup>

The next stage of arrest is detention or the custody. A police officer has powers to take any person into custody without a warrant. Sec 34 of the Police Act empowers the police to impose fine that can be extended to Rs. 50/- and imprisonment for eight days, whereas under section 510 of Indian Penal Code the fine up to Rs.10/- and the maximum imprisonment can be of 24 hours. In fact, if it is a non-cognizable offence and the police has no power to arrest without a warrant. In other words while arresting a person for an offence it is the duty of the police to ask the person concerned to furnish security.

The paragraphs deal about the pre conviction stage reveals that police have unbridled power in crime investigation. Investigation of offences under the provisions of Cr. P.C. is the exclusive domain of the police, the Judicial Magistrate should have a limited role to play to counter the moves of persons in influential positions to subvert the effective process of investigation. If police treats different public persons in different ways by exhibiting favour to one and hatred towards another, it attracts discrimination. Any differential treatment would attract the wrath of Article 14. There shall be uniform application of criminal law irrespective of the status of

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<sup>23</sup> Dr. Vinod Narain Vs. State of U.P. and others, 1996 Cr.LJ 1309 at pp 1343-1344

<sup>24</sup> 1994 Cr.LJ. 1981

the accused. The investigation is not being done swiftly at the instance of such influential public men or they are resorting to dilatory or intimidatory acts. Rule of law prohibits discrimination. When the power given to them are misused or abused it is against the rule of law. In a democratic society every public functionary is merely a public servant whose primary duty is to discharge the functions entrusted to him without bias and to promote public good. However, a society in which abuse of power is the norm, it is vital to institute effective safeguards against such abuse of public office. Particularly it is necessary to have effective checks in relation to the functioning of the police.

An important check in case of crime investigation is that all charge sheets are filed only upon the independent prosecutors' clearance. Similarly no case shall be dropped or closed without a directive from the independent prosecutor with appropriate institutional checks within the prosecution wing. The most despicable acts of the police are brutal torture of persons detained leading to custodial deaths.

In *Sunil Batra Vs. Delhi administration*,<sup>25</sup> the supreme court did not find itself handicapped by the absence of any specific provision against torture in the constitution and gathered support from Articles 14 and 19 in holding against the permissibility of torture vis-à-vis persons suspected and accused of such crime. All this notwithstanding, the use of third-degree methods by the police continues unabated as should be evident from some of the cases heard by the supreme court. In *Ragbir Singh Vs. State of Haryana*,<sup>26</sup> where the violence employed by the police to extract a confession resulted in the death of a person suspected of theft, the court observed, "The State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police methodology. Otherwise the credibility of rule of law in our republic vis-à-vis the people of the country will deteriorate." In *Kishore Singh Ravinder Dev Vs. State of Rajasthan*,<sup>27</sup> The Supreme Court observed that, "Article 21, with its profound concern for life and limb, will become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article."

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<sup>25</sup> (1978)4 SCC 494

<sup>26</sup> (1980)3 SCC 70, 71, 72

<sup>27</sup> (1981)1 SCC 503, 505

All such cases irrespective of the wing in which they are detected, should be entrusted to the prosecution wing. All custodial deaths should be investigated by a special cell directly reporting to the judicial head of the prosecution wing. Only when such independent and impartial quasi-judicial mechanisms are in place can confidence in police functioning be resorted.

### **Post – Trial Equality:**

It is needless to say about the role of police in post -conviction stage, because the steps involved in post- conviction are sentencing, imprisonment of punishment and termination of punishment and further the role of police is not much important and their discretion is not at all possible at this stage. The only area where the Police could either use or abuse their power in post -conviction stage is prison administration. It is prevalent that prison is a place where innocent under trial prisoner become notorious person. This is because of the friendship developed by them with habitual criminals inside the prison. The Police officials too allow the criminals to interact among themselves by violating Law and ignoring their duty towards the society.

Recently, there was a flutter that Tmt. Sasikala a close aid of late J. Jayalalitha, Chief Minister of Tamil Nadu who was convicted by the Supreme Court in Disproportionate asset case and lodged in jail in Karnataka was given special treatment inside the jail. Similarly prison officials of Puducherry were suspended for allowing Ezhilarasi, accused of several murder cases to meet with murder Manikandan, another murder accused to sort out plan to eliminate her rivals.

This type of special treatment enjoyed by the politically influenced criminals, paves way to use the prison as a place for planning to commit a new crime. Thus implementation of rule of law inside the prison becomes a distant reality. In India the role of police in maintaining harmony in the society is in a mess. Hence the prosecutors and the judges at this stage are in a position to exercise their discretion thus upholding justice to the common man. In certain cases involving large scale financial loss or those which are highly sensitive, special courts are set up for speedy trial.

Special Courts are set up quite often in cases involving large scale financial scams and diversion of public funds by those in public offices or corporate management. Similarly cases connected to terrorism are tried by special courts. But, any blanket direction to set up Special Courts wherever influential public personalities holding high offices are involved ought to be avoided, especially when viewed from the point of Article 14 of our Indian constitution. Special and extra-ordinary situations should be present, apart from the accused being in an influential position in public life.<sup>28</sup>

It is noteworthy to mention the quoting of Justice Krishna Iyer, in *Re Spl. Courts Bill, 1978*<sup>29</sup> and *Ganesh Narayan vs. S. Bangarappa*<sup>30</sup> “Courts are less to blame than the Code made by Parliament for dawdling and Government are guilty of denying or delaying basic amenities for the judiciary to function smoothly. Justice is a Cinderella in our scheme. Even so, leaving V.V.I.P. accused to be dealt with by the routinely procrastinating legal process is to surrender to interminable delays as an inevitable evil. Therefore, we should not be cynical about absolute procedural equality and must be creative in innovating procedures compelled by special situations”. The constitutional validity of that Article 143 i.e., the legality of setting up of Special Courts to investigate the offences committed by persons who held high public or political offices was substantially upheld.<sup>31</sup>

It is trite that expeditious investigation of offences and trial is a facet of rule of law and a component of Article 21 of the Constitution. The society at large has legitimate interest that the persons accused of serious crimes should be proceeded against with promptness and expedition and the process should not get tainted by undesirable or extra-legal practices. Further, viewed from the point of view of the accused, speedy trial is a fundamental right under Article 21. Only for achieving these objectives, it does not matter who the accused is, whether he is an important person or a common man. Public interest demands that investigation, prosecution and trial ought not to be allowed to drag on for years together. The bottlenecks coming in the way of prompt investigation and speedy trial should be removed. Special Courts for the so-called influential persons cannot be constituted without reference

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<sup>28</sup> Supra Note. 2.

<sup>29</sup> 1979 (1) scc

<sup>30</sup> (1995) 4 SCC 41

<sup>31</sup> Lawcommissionofindia.nic.in/reports/report239.pdf

tonature of offences or class of offences as it would be against the basic principles of criminal justice.

### Conclusion.

The police force of a country cannot be very different from the rest of the society. Police in India may be corrupt to some extent; it may be brutal and inefficient also. We could see the brutality of police power in *Salwa Judam case (2011)*<sup>32</sup> and also in *Gou rakhshas*. In this the Supreme Court held that the primordial value is that it is the responsibility of every organ of the State to function within the four corners of constitutional responsibility. This is the ultimate rule of law. Some of the policemen may be rude but then politeness is not a very common phenomenon in other areas of life either. What is therefore need is a positive and sympathetic attitude towards the police and their problems. One positive record we should keep in mind is the report released by the Rule of law index, the U.S. based World Justice project<sup>33</sup> which analyses 102 countries worldwide. According to this, India's performance for criminal justice places it at 44 rank globally, **Number 1** in South Asia and number 4 among lower middle income countries. Police encounters have become one of the common factor which contribute to our low rank on 'rule of law index'. However, India did comparatively better in peoples' minds in terms of government freedom.<sup>34</sup> Police should function independent of political executive and insulated from peer pressure. In the interest of public, our police force certainly requires to be reformed and improved to ensure rule of law. However mere tinkering is of no use. Serious and far reaching institutional changes based on sound principles alone can ensure that the police will function as public servants.

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<sup>32</sup> Nandini Sunder Vs. State of Chattisgarh

<sup>33</sup> The project analyses whether the criminal investigation and adjudication system is effective, whether it was impartial and free of corruptions and whether the rights of he accused were protected.

<sup>34</sup> [www.thehindu.com](http://www.thehindu.com). Rule of law index: India scores a mixed bag dated June 03, 2015