

# THE RULE OF LAW OR THE LAW OF THE RULER?

## ***ABSTRACT***

The functioning of investigative agencies in a constitutional democracy must be anchored in neutrality, legality, and public trust and not in political pressures. Recent high-profile prosecutions involving political actors have, however, raised troubling questions about the exercise of arrest powers, prolonged pre-trial detention, and the timing of enforcement actions. This article in particular, examines whether such patterns reflect legitimate law enforcement or a deeper entanglement with political processes. Through an analysis of prominent cases and their judicial responses, it argues that the real concern lies '*not merely in legality, but in the perception and erosion of institutional fairness, with significant consequences for democratic accountability*'.

## ***INTRODUCTION***

The legitimacy of any criminal justice system rests not only on outcomes but also on its process. Institutions such as the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI) are vested with extraordinary powers, that must be exercised with restraint, transparency, and accountability. Yet, time and again, a recurring pattern has emerged in recent years, between arrests of political figures under stringent statutes, prolonged custody without trial, and investigative actions that appear to magically coincide with politically sensitive moments such as elections. While each case must be assessed on its own merits, the cumulative effect has been a growing public unease. The question is no longer confined to whether the law is being followed, but whether it is been applied in a manner consistent with constitutional morality.

The above concern is particularly visible in cases involving allegations under statutes such as the *Prevention of Money Laundering Act* and the *Prevention of Corruption Act*, laws that, by nature significantly favour the prosecution, and override the conventional safeguards under the CrPC and its successor, the BNSS.

## ***ENFORCEMENT, ARRESTS, AND THE CONSTITUTIONAL FRAMEWORK***

At the heart of this debate, lies a foundational principle: "*bail is the rule; jail is the exception*" this is not merely a procedural maxim, but an expression of constitutional values<sup>1</sup>. Personal liberty under *Article 21* cannot be sacrificed for investigative convenience. Even under special statutes like the PMLA and the PCA, which vest agencies with expansive powers and reverse the burden of proof on the accused, arrest must be grounded in necessity, not mere suspicion, and certainly not political convenience.

### ***Recent cases illustrate precisely how this principle has been tested:***

AAP political leader, *Arvind Kejriwal*, the then CM of Delhi, was arrested by the ED in March 2024 in connection with the Delhi excise policy case, but surprisingly, the ECIR was registered way back in 2022. The gap between registration and arrest (nearly 1.5 yrs. later) and its proximity to the general elections drew pointed observations from the Supreme Court<sup>2</sup>. What drew even more attention was, when interim bail was granted in the ED case, the CBI proceeded to arrest him on the very same day. While technically speaking, this practice is permissible, still such a move raises a legitimate question, is arrest being used as an investigative instrument, or as a mechanism to keep a political figure in custody regardless of legal relief?

While on the other hand, *Manish Sisodia* was kept in custody for approximately seventeen months without commencement of the trial. The Supreme Court, while granting bail, clearly stated that, the 'right to a speedy trial'<sup>3</sup> is inseparable from personal liberty under *Article 21* and continued detention where early trial completion is practically impossible converts pre-trial custody into punishment and this, is constitutionally impermissible.

The case of *Sanjay Singh* raises the question of prosecutorial discretion exercised without visible accountability. The ED in this case, did not oppose his bail on grounds of

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<sup>1</sup> Aryanjain55, and Legal Service India. "Arrest as an Exception, Not the Rule: Supreme Court Reinforces Safeguards Under the BNSS." *Legal Service India - Articles*, 8 Feb. 2026, <https://www.legalserviceindia.com/Legal-Articles/arrest-as-an-exception-not-the-rule-supreme-court-reinforces-safeguards-under-the-bnss/>.

<sup>2</sup> Thapliyal, Nupur. *Arvind Kejriwal Files Application In Delhi High Court Seeking Recusal Of Justice Swarana Kanta Sharma From Liquor Policy Case*. 5 Apr. 2026, <https://www.livelaw.in/high-court/delhi-high-court/arvind-kejriwal-files-application-in-delhi-high-court-seeking-recusal-of-justice-swarana-kanta-sharma-from-liquor-policy-case-529076>.

<sup>3</sup> Jain, Debby. *Supreme Court's Tryst With Politicians' Bail In 2024*. 1 Jan. 2025, <https://www.livelaw.in/top-stories/supreme-court-tryst-with-politicians-bail-in-2024-kejriwal-sisodia-soren-chatterjee-kavita-abbas-ansari-senthil-balaji-sanjay-singh-279777>.

"peculiar facts" present<sup>4</sup>. Following this, the Court then questioned the Enforcement as to, how can the arrest be justified, if the custody in itself was not essential in the first place, and as to what purpose can the prolonged custody really serve? Similarly, in the case of *Hemant Soren*, the High Court found no direct nexus between him and the alleged proceeds of crime, once again questioning the very basis of his arrest. Bail was granted to him and upheld by the Supreme Court. Hereafter, similar patterns appear across cases involving *V. Senthil Balaji*, *Partha Chatterjee*, and *Abbas Ansari*, arrests preceding trial by wide margins, bail delayed despite documentary evidence, and repeated judicial intervention to restore personal liberty<sup>5</sup>.

If all these cases are read together, they reveal a core systemic concern, that the procedural framework of special statutes which essentially contains voluminous chargesheets, overlapping agency jurisdictions, and reverse burdens, is being allowed to substitute for timely justice. It needs to be understood that procedural complexity does not and should not suspend constitutional rights. Lastly, the 'right to personal liberty' and the 'right to a speedy trial' cannot be withheld due to systemic inefficiency or investigative strategies.

### ***THE MEDIA QUESTION: REPORTING, RESPONSIBILITY, AND THE LIMITS OF FREE SPEECH***

Another important aspect of this debate is the role of 'media' and its 'trial', for this it is necessary to understand what the term actually means. The phrase "media trial" is a misnomer. "A trial is a formal judicial process governed by evidence, procedure, and adjudication, culminating in a reasoned verdict" and only a court can conduct one<sup>6</sup>. What the media actually conducts is a 'narrative'. Now, this distinction matters because narratives have consequences. Especially, in high-profile cases, media reporting frequently crosses the line between informing the audience and inflaming the issue - the practice of framing allegations as established facts, amplifying 'selective' details, and sustaining cycles of speculation that bear little relation to the judicial record/fact. The accused is convicted in public perception long before any court renders its verdict, many-a-times even before the trial even begins<sup>7</sup>.

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<sup>4</sup> Id at 3.

<sup>5</sup> Jain, Debby Supra at note 3.

<sup>6</sup> Ramkumar, Justice V. *Trial By Media*. 9 Sept. 2016, <https://www.livelaw.in/trial-by-media>.

<sup>7</sup> Garg, Rachit. "Media Trials and Its Impact on Society and Judiciary." *iPleaders*, 20 Nov. 2023, <https://blog.iPLEaders.in/media-trials-and-its-impact-on-society-and-judiciary/>.

Freedom of speech and expression under *Article 19(1)(a)* of the Constitution, is an important element to democracy, but it is still not absolute. The Constitution provides for reasonable restrictions, and beyond the legal limits one can also think about ‘professional responsibility’ of these media houses. The media is *not* an entertainment enterprise and hence, the distinction between a news organisation and an entertainment house must be preserved in all cases. Reporting that prioritises TRP over truth, or speculation over verification, does not merely mislead the audience; it causes direct harm to individuals, institutions, and public discourse at large.

## ***CONCLUSION***

The cases examined here do not stand in isolation. They reflect a question that goes to the very heart of democratic governance. It is not just about *what* the law permits, but *how* it ought to be exercised. It is possible that case might be technically lawful but still prove to be constitutionally flawed due to the manner in which it was conducted.

At the end of the day, it is not the institutions, political figures or even courts but, the ordinary citizen that are affected due to the flawed system. It is the public that loses faith in its institutions. It is the public that bears the cost when the ‘rule of law’ becomes indistinguishable from the ‘law of the ruler’. Restoring that faith requires more than judicial correction, it demands institutional introspection, a consciousness, on the part of enforcement agencies, to ask not just ‘*can we?*’ but ‘*should we really?*’ In essence, the true measure of justice is not whether a case can be made, but whether, if it is, is it made in a manner that the Constitution that authorises it.