JUSTICE IN THE HANDS OF THE ENFORCER: ANALYZING MAGISTERIAL POWERS UNDER THE COMMISSIONERATE SYSTEM

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ABSTRACT

The Commissionerate System of policing, which is in operation in a number of large Indian cities, places a single person in the position of both executive magisterial and policing function, the Police Commissioner, in constitutional propriety, the rule of law, and civil liberties provoking fundamental concerns of structural amalgamation. This paper takes a methodical look at magisterial powers operated within the Commissionerate framework (including preventive and regulatory powers under the Bharatiya Nagarik Suraksha Sanhita, 2023, BNSS) and their constitutional basis, as well as the strains of concentration of power in the hands of the police. This article cites judicial pronouncements, parliamentary committee reports, and comparative administrative analysis and proposes that although the Commissionerate model can be warranted on operational efficiency, effective accountability, judicial review and precision of legislative language are essential to ensure that the administration of justice is not subjugated to the requirements of enforcement. The paper ends with proposals of reforms that can be used to tune the balance between security governance and constitutional liberties.

INTRODUCTION

Police-magisterial relations in India are among the most debatable and ancient aspects of the criminal justice system. The District Magistrate has been the central figure in the colonial period in the maintenance of order within the community as well as the administration of preventive justice and the police have been mainly a tool under the magisterial superintendence.[1] This arrangement is reconfigured in the basic Commissionerate System. In those metropolitan cities that have implemented the system such as Mumbai, Delhi, Hyderabad, Bengaluru, Chennai, Kolkata and more recently Lucknow and Kochi the powers of a District Magistrate are merged in a single office, the police and executive magistracy.[2] The justification has traditionally been based on the administrative pragmatism the dynamics of urban policing, the speed at which urban crime occurs and that the rapid preventive action in effect required a single command of law-and-order functions not mediated by police and district administration. This integration of structure has however received abundant criticism by police reform committees, constitutional scholars as well as civil liberties groups.[3] The application of magisterial powers especially those in Section 125, 127, 128, 152, 163, 164, and 165 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) by the police officers as opposed to judicial or quasi-judicial authorities poses a threat of uncontrolled executive power against citizens, political dissenters, and other vulnerable groups.[4]

This paper continues in the following way. Part II traces the historical development of the Commissionerate System and distinguishes it from the Magistracy-based policing model. Part III undertakes a provision-by-provision analysis of the principal magisterial powers exercised within the Commissionerate framework. Part IV examines constitutional constraints on these powers, particularly as they engage with fundamental rights. Part V surveys judicial review of Commissionerate magisterial action, identifying recurring themes of proportionality, procedural fairness, and jurisdictional excess. Part VI analyses structural accountability deficits. Part VII undertakes a comparative survey of foreign jurisdictions, drawing lessons from the United Kingdom, the United States, Australia, and South Africa. Part VIII analyses

[1] Bharatiya Nagarik Suraksha Sanhita, 2023, s 3 (India). The Cr.P.C. provides the foundational framework for magisterial powers in India, distinguishing between judicial and executive magistrates.
[2] K.S. Dhillon, *Police and Politics in India*: *Colonial Concepts, Democratic Compulsions: Indian Police 1947-2002* (Manohar Publications, 2024).
[3] Ribeiro Committee Report on Police Reforms, *Report of the Committee on Police Reforms* 12–15 (1998).
[4] Bharatiya Nagarik Suraksha Sanhita, 2023, ss 14–17 (India) (classifying Executive Magistrates and their appointment by the State Government).

the BNSS 2023 for continuity and the opportunity missed where reforms could have been made. Part IX examines emerging challenges posed by digital surveillance and artificial intelligence within the Commissionerate framework. Part X contains reforms and recommendations and Part XI concludes the article with its findings.

THE COMMISSIONERATE SYSTEM: ORIGINS AND STRUCTURE

The Commissionerate System traces its formal origins in India to the Presidency Police Acts enacted during the British colonial administration. The Presidency towns of Bombay, Calcutta, and Madras were regarded as sui generis entities, centres of commercial and political life where ordinary District Magistracy-based policing was considered insufficiently responsive. Accordingly, the British enacted separate police legislation vesting the Commissioner of Police with expansive executive powers, including those typically exercised by the District Magistrate. The constitutional framework of independent India added a new dimension of complexity. Article 50 of the Constitution directs the State to take steps to separate the judiciary from the executive in the public services of the State.[5] Although this has explicitly been formulated as a Directive Principle that is not strictly enforceable it has been thought of as a constitutional ideal that guides statutory interpretation and administrative organisation. The disaggregation of Article 50 is an anti-structural move against structural conflation on the Commissionerate paradigm.

In 1979 through to 1981, the National Police Commission admitted the Commissionerate System as an established administrative fact but, in its reports, felt concern regarding the lack of proper mechanisms to check the exercise of conjoined powers by the police.[6] The Commission suggested that, regardless of the model of policing that is adopted, the magisterial functions ought to be encumbered with strong procedural regulations and judicial oversights. In the case of *Prakash Singh v. Union of India*[7] Union of India instructed the States to engage in thorough reform of the police such as separation of investigative and law-and-order functions and the establishment of supervisory institutions. Although the Commissionerate System was not abolished directly by the judgment, it was clear that such a concentration of power in the

[5] Constitution of India, art. 50 (mandating separation of the judiciary from the executive in public services of the State).
[6] National Police Commission, *First Report of the National Police Commission* 27–34 (Ministry of Home Affairs, 1979) [*hereinafter* NPC First Report].
[7] *Prakash Singh v. Union of India*, (2006) 8 SCC 1 (laying down seven directives for police reforms, including constitution of State Security Commissions and separation of investigation from law-and-order functions).

police with no check was of doubtful constitutionality.

Structurally, the Commissionerate System is constituted under State police Acts or amendments thereto. The Bombay Police Act, 1951, for example, vests the Commissioner of Police in Mumbai with extensive regulatory and magisterial powers, including the power to grant or refuse licences for assemblies, regulate traffic, and issue orders analogous to those under Section 163 of the BNSS[8] Similarly, the Delhi Police Act, 1978 and the Kerala Police Act, 2011 have established Commissionerate structures with broadly defined magisterial competences.[9]

CATALOGUE OF MAGISTERIAL POWERS: STATUTORY ANALYSIS

A. Preventive Powers: Sections 125, 127, and 128 BNSS

Section 125 of the BNSS empowers an Executive Magistrate to require a person to show cause as to why they should not be bound over to keep the peace, upon information that such person is likely to commit a breach of the peace or disturb the public tranquillity.[10] In a Commissionerate city, these powers vest in the Police Commissioner or delegated police officers acting as Executive Magistrates. The procedural requirements like issuance of notice, production before a magistrate, an opportunity to show cause are intended to operate as safeguards. However, critics have pointed to the structural conflict of interest when the person initiating the security proceeding is also the adjudicating authority.

Sections 127 and 128 extend the preventive reach to vagrants and habitual offenders, permitting their detention or requirement to furnish security bonds for good behaviour.[11] These provisions have historically been invoked against the poor, homeless persons, and sex workers, populations with limited access to legal representation. When such powers are exercised by police commissioners rather than independent executive magistrates, the democratic accountability of the exercise is materially diminished.

[8] The Maharashtra Police Act, 1951, ss 37–38 (Maharashtra) (conferring powers of Magistracy upon the Commissioner of Police in Mumbai).
[9] The Delhi Police Act, 1978, ss 9–10 (India) (vesting police commissioners with regulatory and magisterial powers in the National Capital Territory of Delhi).
[10] The Bharatiya Nagarik Suraksha Sanhita, 2023, s 125 (India) (empowering Executive Magistrates to take security proceedings against persons likely to commit breach of peace).
[11] The Bharatiya Nagarik Suraksha Sanhita, 2023, ss 127–128 (India) (security for good behaviour from vagrants and habitual offenders).

B. The Emergency Power: Section 163 BNSS

Section 163 of the BNSS is perhaps the most frequently invoked and most constitutionally significant of all magisterial powers exercised within the Commissionerate System. It empowers an Executive Magistrate to issue orders in urgent cases of nuisance or apprehended danger, directing any person to abstain from a certain act or to take certain action when immediate prevention or speedy remedy is desirable.[12] Orders under Section 163 can be issued ex parte, without notice to the person affected, and operate immediately.

The Supreme Court in *Madhu Limaye v. Sub-Divisional Magistrate*[13] authoritatively held that Section 163 is essentially an emergency provision to be invoked only when the emergency is apparent, immediate, and cannot be adequately remedied by other means. The Court further held that the power must be exercised objectively, on the basis of material available to the Magistrate, and not as a routine instrument of crowd control. In the case of *Gulam Abbas v. State of U.P.*[14], the Supreme Court once more stated that necessity was the foundation of Section 163 and that the authority could not be taken as a precautionary action without reasonable concern of imminent threats. The magisterial powers of the police commissioner are singularly likely to confuse law-enforcement preferences and actual emergency conditions, particularly where a political protest or a religious disturbance is concerned. This issue was brought under the spotlight at *In Re Ramlila Maidan Incident*[15], which made it clear to the Supreme Court that the midnight police action that dispersed a peaceful gathering claiming to carry out a magisterial order was a serious breach of fundamental rights. The Court stressed that Section 163 should not be used as a means of discriminating against constitutionally guaranteed rights to assemble and to express oneself.

Recently in *Anuradha Bhasin v. Union of India*[16], The Court interpreted the principles of necessity and proportionality as implicit qualification of exercise of powers of Section 163, which they imposed on the Union of India, and demanded transparency and reviewability of

[12] The Bharatiya Nagarik Suraksha Sanhita, 2023, s 163 (India) (power to issue orders in urgent cases of nuisance or apprehended danger).
[13] *Madhu Limaye v. Sub-Divisional Magistrate*, AIR 1971 SC 2486 (Supreme Court interpreting scope of s 163 Cr.P.C. as an emergency provision).
[14] *Gulam Abbas v. State of U.P.*, AIR 1983 SC 1268 (Supreme Court reaffirming the need for immediate necessity for invoking s 163 Cr.P.C.).
[15] In Re Ramlila Maidan Incident, (2012) 5 SCC 1 (Supreme Court holding that s163 Cr.P.C. cannot be invoked to suppress lawful assembly and peaceful protest).
[16] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637 (Supreme Court reading necessity and proportionality as implicit conditions for exercise of s 163 Cr.P.C. powers).

the procedures. Such judicial exhortations take on an especial topicality in the Commissionerate scenario, where the combination of prosecutorial with adjudicatory roles poses a natural danger of excessive executive aggression.

C. Powers relating to Nuisance: Section 152 BNSS

Section 152 empowers the Executive Magistrate to make a conditional order for removal of nuisances including those endangering public health, safety, or convenience and to enforce compliance.[17] In the Commissionerate model, police commissioners exercise this power as part of their integrated urban governance mandate. While the provision has an ostensibly benign character directed at addressing public health or safety hazards, its broad formulation has facilitated selective enforcement against street vendors, slum dwellers, and informal urban settlements. The courts have consistently held that Section 152 is not a tool of town planning or urban redevelopment but is restricted to removal of specific public nuisances posing a direct and imminent threat.[18] This ability of police commissioners to exercise such powers without the balance of an autonomous civil administration is a cause of concern regarding equitable dispensation and overrepresentation of the marginalised communities.

D. Dispute Resolution: Sections 164 and 165 BNSS

The BNSS (section164 and 165) gives authority to the Executive Magistrate to arbitrate on any matters regarding land or water that is likely to result into breach of peace such as seizing the contested property and appointing a receiver until the dispute is sorted out. These give the Executive Magistrate the quasi-civil jurisdiction of a property-adjudicative nature. Such exertion of power by the police commissioners is especially anomalous, since the issue of property needs the objective evaluation of possessory title a role which does not suit a police officer whose main point of orientation is to enforce the law, not to evaluate the property ownership case.

CONSTITUTIONAL DIMENSIONS

The constitutional dimensions of magisterial powers under the Commissionerate System implicate multiple provisions of the Constitution of India. The most directly engaged

[17] The Bharatiya Nagarik Suraksha Sanhita, 2023, s 152 (India) (Conditional Order for removal of nuisance).
[18] *State of Rajasthan v. Bal Kishan*, (1960) 62 Bom LR 214 (interpreting the concept of public nuisance under s 152 Cr.P.C. and the administrative discretion available to Magistrates).

provisions are Article 50 (separation of judiciary from executive)[19], Article 19 (freedom of assembly and expression)[20], and Article 21 (protection of life and personal liberty).[21]

A. Article 50 and the Separation Mandate

Article 50, while a Directive Principle, has been characterised by the Supreme Court as an aspirational constitutional imperative that should guide statutory construction. Constitutional scholars have argued that the concentration of magisterial and policing powers in a single authority directly contravenes the spirit of Article 50.[22] The Law Commission in its 154th Report on the Cr.P.C. recommended that, where magisterial powers are conferred on the police in metropolitan areas, adequate judicial review mechanisms should be instituted as a compensatory safeguard.[23] V.N. Shukla notes that Article 50 was adopted in conscious recognition of the colonial experience where the executive and judicial functions were fused in the District Officer, and that the framers intended to progressively move towards a model of institutional separation. The Commissionerate System, by design, moves in the opposite direction concentrating, rather than separating, executive and quasi-judicial powers in the police.

B. Fundamental Rights: Articles 19 and 21

Magisterial powers exercised under the Commissionerate System most acutely engage Article 19(1)(b) (freedom of assembly) and Article 19(1)(a) (freedom of speech and expression) when deployed in the context of political protests and public meetings. The issuance of blanket orders under Section 163 by police commissioners to prevent political gatherings has been a recurring source of fundamental rights controversies.

The Supreme Court in *Maneka Gandhi v. Union of India*[24] expanded the scope of Article 21 to require that executive action affecting life or personal liberty must satisfy standards of fairness,

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[19] H.M. Seervai, III *Constitutional Law of India* 2489 (N.M. Tripathi, Mumbai, 1996) (on art. 19 and police regulatory powers).
[20] Constitution of India, art. 21 (protection of life and personal liberty; invoked against arbitrary executive action by Magistrates and Police Commissioners).
[21] V.N. Shukla, *Constitution of India* 412 (Eastern Book Company, Lucknow, 2013) (discussing art. 50 and separation of judicial and executive powers).
[22] D.D. Basu, *Shorter Constitution of India* 189 (LexisNexis, Gurugram, 2015).
[23] Law Commission of India, *154th Report on the Code of Criminal Procedure, 1973* 89–95 (1996) (recommending conferment of limited magisterial functions on police in metropolitan areas with appropriate safeguards).
[24] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (landmark case expanding art. 21 to include due process and procedural fairness standards applicable to executive magisterial action).

justness, and reasonableness, and not merely formal legality. This principle has been consistently applied to magisterial action: an order under Section 163 BNSS that is formally within the statutory language but issued for collateral purposes such as suppressing political dissent, would violate Article 21 as interpreted post-Maneka Gandhi.

the inherent conflict between the requirements of law enforcement and constitutional rights limitations, where the police as an institution are not schooled in the culture of judicial restraint that defines the judgment aspects of magisterial decision-making. This remark has its effect to-day, especially in the Commissionerate System in which the magisterial role has entirely been absorbed in the police mechanism.

JUDICIAL REVIEW OF COMMISSIONERATE MAGISTERIAL ACTION

The High Courts and the Supreme Court have created a use of jurisprudence scrutinizing the magisterial action by the Police Commissioners, solving the issues of proportionality, procedural fairness, and the jurisdictional excess. The judicial review is mainly done by the writ petitions pursuant to Articles 226 and 32 of the Constitution and criminal revisions and appeals pursuant to Cr.P.C. The Supreme court in the case of *Rakesh Kumar Paul v. State of Assam*[25]*,* State of Assam reiterated that preventive detention and other similar executive restraint measures must have strong adherence to procedural protection. Although the case was brought about in terms of preventive detention, the argument by the Court regarding the significance of independent review is directly applicable to Commissionerate magisterial action.

The expiry dates of Section 163 orders have also been taken up in courts. The provision specifies itself limiting orders to two months, which can be further extended to two months in particular cases. In a number of states, courts have prohibited the issuance of Section 163 rolling or perpetual orders as a standing administrative order by police commissioners. These orders, when not appealed, criminalise simple social gathering to the extent that the law does not require.

[25] *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67 (discussing preventive detention and the importance of procedural safeguards in executive action).

STRUCTURAL ACCOUNTABILITY DEFICITS

The Commissionerate System is afflicted with a few structural accountability shortcomings which compound the risks that may be encountered with the blending of policing and magisterial power. These shortcomings are associated with institutional autonomy, transparency, redress of grievances and oversight of the community.

To begin with, a Police Commissioner is not as institutionalized as the District Magistrate who, although he or she resides under the Revenue Department of the State Government, he or she does not have a degree of institutional disconnection with the police. The incentive system of Commissioner career progress, departmental appreciation, upholding of law and order statistics contributes pressure structures which can be enduringly anticipated to tilt magisterial decision-making towards law enforcement value issues as opposed to civil liberty ones.[26]

Second, it is an issue of magisterial decision-making by Commissionerate that is opaque. Orders made pursuant to Section 163 are often made without written justification, referring to the intelligence reports or information received, which is not published in the public space. This was identified by the Second Administrative Reforms Commission as a grave lapse in governance with a suggestion that executive orders against fundamental rights require an explanation order that can be disclosed publicly.[27]

Third, there is a structural lack of the grievance redressal architecture. Complaints against magisterial action by Police Commissioners are typically addressed to the same police hierarchy or to the State Home Department, which lacks the independence and expertise to conduct impartial adjudication. The National Human Rights Commission has documented numerous complaints against the misuse of Section 163 BNSS by police commissioners, finding that the absence of an independent review mechanism is a systemic problem.

Fourth, the Model Police Act, 2006, developed under the aegis of the Bureau of Police Research and Development, recommended the constitution of an independent Police Complaints Authority at the district and state level with powers to investigate complaints of misconduct, including magisterial overreach.[28] However, the adoption of this recommendation has been

[26] Second Administrative Reforms Commission, *Public Order: 5th Report* 78–80 (Government of India, 2007) [*hereinafter* ARC 5th Report].
[27] *Supra* note 27 at 83.
[28] Model Police Act, 2006, ss 79–85 (Bureau of Police Research and Development) (recommending transparency,

partial and inconsistent across States that have the Commissionerate System.

Fifth, the absence of dedicated training for police officers exercising magisterial powers is a fundamental deficit. Magisterial decision-making requires appreciation of constitutional law, procedural fairness, and judicial temperament attributes that standard police training does not develop.[29] S.K. Ghosh observed that the police officer, however efficient as a law enforcement functionary, does not operate within the same epistemic and institutional framework as a judicial or even a non-police executive magistrate.

COMPARATIVE PERSPECTIVES: LESSONS FROM FOREIGN JURISDICTIONS

Synergies brought about by the Commissionerate System are not peculiar to India. A number of common law and civil law jurisdictions have had to grapple with similar dilemmas posed by the accretion of policing and quasi-judicial capacity in a single executive, and the way in which their legislatures and jurisprudence have handled these dilemmas provides some insightful comparative information. The survey of the United Kingdom, the United States, Australia, and South Africa indicates a range of policies towards the regulation of police power, all demonstrating different constitutional traditions and institutional backgrounds, but one which shares some common values of oversight, proportionality, and protection of rights.

A. Human Rights Act Framework and United Kingdom: Judicial Authorisation.

The best-developed example of statutory and judicial regulation of executive police authority in the common law world is the United Kingdom. The Police and Criminal Evidence Act 1984 (PACE), together with the Human Rights Act 1998 (HRA) incorporating the European Convention on Human Rights, establishes a framework in which significant police powers including stop and search, detention, and dispersal are governed by detailed statutory codes of practice, subject to independent review by the Independent Office for Police Conduct (IOPC) and ultimately reviewable by the courts applying Convention rights standards.[30]

The Serious Organised Crime and Police Act 2005 and the Public Order Act 1986 confer upon senior police officers powers to impose conditions on public processions and assemblies,

accountability and citizen oversight of police powers).

[29] S.K. Ghosh, *Police Administration in India* (Ashish Publishing House, New Delhi, 1981).

[30] Police and Criminal Evidence Act 1984, c. 60 (UK); Human Rights Act 1998, c. 42 (UK) (incorporating the European Convention on Human Rights into domestic law and requiring public authorities, including police, to act compatibly with Convention rights).

including requiring that they take a specified route or not exceed a specified duration. However, these powers are expressly conditioned upon reasonable belief of serious disorder, serious disruption to the life of the community, or intimidation, and they are subject to immediate judicial review under s.6 HRA, which requires public authorities, including police officers, to act compatibly with Convention rights. The contrast with the Indian position, where Section 163 BNSS orders may be issued on the basis of undisclosed "information received" without contemporaneous judicial scrutiny is instructive.[31] The House of Lords in *R (Laporte) v. Chief Constable of Gloucestershire Constabulary* held that the police power to prevent a breach of the peace could not be exercised pre-emptively to detain persons who had not yet done anything unlawful, absent an imminent and real threat.[32] This doctrine of imminence which is very similar to the necessity doctrine used by the Indian Supreme Court in Anuradha Bhasin is a reflection of common law traditions in limiting executive overreach by law enforcers. The experience in the UK highlights that strong common law ideals of proportionality, backed up by statutory codes and independent regulatory agencies, can be effective in policing the exercise of quasi-magisterial authority by police without undermining the institutional structure of urban policing.

B. The United States: Fourth Amendment Doctrine and Civilian Oversight

The judicial branch of power is not allowed to be exercised by any administrative authority of the United States because the constitutional regime of the country is modeled according to the separation of powers and the Bill of Rights. The Fourth Amendment necessitates search and seizure warrants conducted by the courts and even though the exigent circumstances doctrine gives exceptions, the federal courts interpret the exceptions very literally. The principle of a police officer conducting the adjudicatory role of a magistrate as a structural issue is constitutionally inadmissible in the American federal system.[33] But the experience in the US with civilian police oversight boards is educative directly. Based on the long-term campaign by civil rights groups, other cities, such as New York, Los Angeles, Chicago, and San

[31] Serious Organised Crime and Police Act 2005, c. 15, ss 132–138 (UK); Public Order Act 1986, c. 64, ss 12–14 (UK) (conferring powers on senior police officers to impose conditions on public processions and assemblies, subject to judicial review under Human Rights Act 1998, s. 6).
[32] *R (Laporte) v. Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55 (House of Lords holding that the police power to prevent a breach of the peace cannot be exercised pre-emptively against persons who have not yet done anything unlawful, absent an imminent and real threat).
[33] U.S. Const. amend. IV (requiring warrants issued by courts upon probable cause for searches and seizures); see also *Katz v. United States*, 389 U.S. 347 (1967) (establishing that the Fourth Amendment protects people, not places, and that warrantless searches require exigent circumstances narrowly construed).

Francisco, have also created Civilian Complaint Review Boards (CCRBs) that have differing levels of investigative and disciplinary offices. The New York Civilian Complaint Review Board, a granting body to the New York City Charter, has independent investigative powers over claims of excessive force, misuse of authority, discourtesy, and the use of offensive language by NYPD officers, and has the power to refer disciplinary recommendations to the Police Commissioner. Although the usefulness of these bodies has been argued, the institutional model, a civilian-led, independently staffed oversight body with statutory powers offers a compelling template that can be used in the Indian reform context.[34] The consent decree mechanism, created as part of federal civil rights lawsuits under 42 U.S.C. s 14141 and implemented in cities such as Los Angeles, Chicago, and Baltimore to require systemic reforms in the police, has been overseen by independent court-appointed compliance monitors and has on multiple occasions yielded quantifiable results in use-of-force procedures, community engagement, and data transparency. The Indian constitutional adaptation of the consent decree model could provide a means to reform Commissionerate magisterial practices in those cities where a history of abuse is reported.[35]

C. Australia: The Police Ombudsman and Independent Commission Models

Australia presents a rather topical comparative example, as its federal system is supported by a Westminster constitutional culture and common law heritage shared with India. Queensland Police Service and the New South Wales Police Force both share powers in some aspects comparable to the Indian Commissionerate magisterial powers, especially on how they manage order in society and preventive policing. The Australian reaction to accountability issues has focused on independent oversight commissions with wide investigative mandates. In the State of Queensland, the Crime and Corruption Commission (CCC) established under the Crime and Corruption Act 2001 has authority to investigate cases of corruption among police officers involving misconduct and abuse of authority in the use of discretionary powers; the CCC is independent of the police force and is answerable directly to a Parliamentary Committee, forming a multi-layered accountability system.[36] Likewise, the Law Enforcement Conduct

[34] New York City Charter, s 440 (establishing the Civilian Complaint Review Board with independent investigative authority over NYPD misconduct complaints including excessive force, misuse of authority, discourtesy, and offensive language).
[35] 42 U.S.C. s 14141 (authorising the Department of Justice to bring civil actions against law enforcement agencies engaging in patterns or practices of unconstitutional conduct and to obtain court-enforceable consent decrees requiring systemic reform).
[36] Crime and Corruption Act, 2001 (Qld) (Australia) (establishing the Crime and Corruption Commission with independent authority to investigate police corruption and misconduct, accountable to the Parliamentary Crime

Commission (LECC) in New South Wales has an oversight function over complaints against the NSW Police Force and the NSW Crime Commission, and has jurisdiction to conduct independent in-motion investigations and inquiries. The Australian experience shows that independent oversight commissions with sufficient statutory powers, resources, and a good relationship with parliament can effectively police the police, a lesson that squarely applies to the Indian Commissionerate environment. The conceptual inspiration for the proposed Police Complaints Authorities under Part X of this article is drawn from the CCC and LECC models, adapted to the particular context of Indian federalism and the accountability deficits of the Commissionerate System.[37]

D. South Africa: Constitutional Supremacy and the Independent Police Investigative Directorate

The post-apartheid South African constitutional order provides a compelling example of constitutional design aimed at preventing the recurrence of state violence justified by executive police authority. The Constitution of the Republic of South Africa, 1996 contains an extensive Bill of Rights directly enforceable against the state and private actors and expressly provides in Section 206(6) for a civilian secretariat for police service to function under the direction of the Cabinet member responsible for policing. The Constitution further mandates the establishment of an independent mechanism to ensure oversight of the South African Police Service. The Independent Police Investigative Directorate (IPID), established under the IPID Act 1 of 2011, is constitutionally mandated to investigate deaths in police custody or as a result of police action, torture, rape by a police officer, and corrupt activities. The Constitutional Court in *McBride v. Minister of Police and Another* reinforced that the independence of the IPID was a constitutional imperative, striking down statutory provisions that subjected its head to ministerial removal powers incompatible with institutional independence.[38] The South African model emphasises constitutional entrenchment of oversight, a lesson relevant to India, where police accountability bodies currently exist only at the level of statutory or executive

and Corruption Committee).

[37] Law Enforcement Conduct Commission Act 2016 (NSW) (Australia) (establishing the Law Enforcement Conduct Commission with jurisdiction to oversee and independently investigate complaints against the NSW Police Force and the NSW Crime Commission).

[38] Constitution of the Republic of South Africa, 1996, s206(6) (mandating civilian oversight of the South African Police Service); Independent Police Investigative Directorate Act 1 of 2011 (South Africa); *McBride v. Minister of Police and Another* [2016] ZACC 30 (Constitutional Court affirming that the independence of the IPID is a constitutional imperative and striking down provisions subjecting its head to ministerial removal).

instruction and lack constitutional protection against dismantling by subsequent legislation.

THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: CONTINUITY AND MISSED OPPORTUNITIES

The Code of Criminal Procedure, 1973 was replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1 July 2024.[39] The BNSS represented a significant legislative exercise, re-numbering, reorganising, and in several respects amending the provisions governing criminal procedure in India. The enactment of the BNSS presented a legislative opportunity to address the structural problems of the Commissionerate System identified in this article an opportunity that was, for the most part, not taken.[40]

The preventive powers that were contained in Sections 125, 127, 128, 152, 163, 164, and 165 of the BNSS are substantially replicated in the BNSS renumbered as Sections 125, 127, 128, 152, 163, 164, and 165 respectively without substantive modification to the conditions of exercise, procedural safeguards, or mechanisms of oversight.[41]The BNSS makes no special provision in regard to the exercise of these powers by Police Commissioners under the Commissionerate System, or the necessarily of a post-issuance judicial review of orders made by police officers instructing as Executive Magistrates. At that, the BNSS is a lost chance to reform legislation. The BNSS has some changes that are worth mentioning. Section 163 of the BNSS, which is identical with Section 163 of the BNSS, now states that orders under the same must be sent to the State Government within twenty-four hours of their issue, and that the State Government must confirm or rescind the order within seven days.[42]This requirement on notification though a small step will provide some form of executive accountability previously unavailable. But the necessity of communication to the State Government is inherent in the

[39] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act 46 of 2023), notified vide Ministry of Home Affairs Notification S.O. 2458(E), Gazette of India Extraordinary, 1 July 2024 (India) (bringing the BNSS into force, replacing the Code of Criminal Procedure, 1973).

[40] Department-related Parliamentary Standing Committee on Home Affairs, *One Hundred Ninety-Seventh Report on the Bharatiya Nagarik Suraksha Sanhita, 2023* 18–22 (Rajya Sabha, 2023) (noting that the Committee recommended procedural safeguards for preventive powers but the majority of reform proposals were not incorporated in the final enactment).

[41] Compare Code of Criminal Procedure, 1973, ss 125, 127, 128, 152, 163, 164, 165 (India) *with* Bharatiya Nagarik Suraksha Sanhita, 2023, ss 125, 127, 128, 152, 163, 164, 165 (India) (the BNSS provisions are in substance identical to their Cr.P.C. counterparts, with no additional procedural safeguards or oversight mechanisms introduced for Police Commissioner exercise of these powers).

[42] Bharatiya Nagarik Suraksha Sanhita, 2023, s 163(2) (India) (requiring the Executive Magistrate to report to the State Government within twenty-four hours and the State Government to confirm or rescind the order within seven days; this notification requirement was not present in the equivalent provision of the Code of Criminal Procedure, 1973).

executive hierarchy, and is not of itself a judicial check and control. A State Government made up of the same political unit as the municipal police apparatus is structurally unlikely to repeal the orders which are profitable to the political interest of the government. The BNSS also retains the power that allows police officers of specified ranks to be appointed as Executive Magistrates in designated regions and this is the legal foundation of the grant of magisterial powers in the Commissionerate System. The fact that this provision is retained, but not altered or any further protection provided, is a further testament to the fact that the structural fusion that underlies the Commissionerate model is a form of action that is under legislative sanction in the future as can be foreseen.[43]

EMERGING CHALLENGES: DIGITAL SURVEILLANCE, ARTIFICIAL INTELLIGENCE, AND THE COMMISSIONERATE

The responsibility issues of the Commissionerate System have taken new dimensions in the age of digital surveillance and policing with the help of artificial intelligence. A number of Commissionerate cities have implemented, or are implementing, technologically advanced surveillance infrastructure such as closed-circuit television systems, facial recognition systems, social media monitoring systems, and predictive policing algorithms that increase police surveillance and data gathering capacities significantly with hardly corresponding changes in legal or institutional controls.

The Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the right to privacy was identified as a fundamental right in Article 21 of the Constitution.[44] According to the Court, the invasion of privacy by the state should meet the parameters of legality, legitimate purpose, proportionality, and procedural protection. The deployment of facial recognition technology and predictive policing tools by Police Commissioners in Commissionerate cities raises serious questions of compliance with these standards, particularly in the absence of a dedicated data protection framework governing police use of biometric and behavioural data.[45]

[43] Ministry of Electronics and Information Technology, *National Guidelines on Digital Evidence and Algorithmic Auditing* (Government of India, June 2025), *available at:*

[44] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (nine-judge bench unanimously holding that privacy is a fundamental right under Article 21 of the Constitution and that State intrusion must satisfy the triple test of legality, legitimate aim, and proportionality).

[45] Digital Personal Data Protection Act, 2023 (Act 22 of 2023) (India) (granting broad exemptions to Central and State Governments for processing of personal data in the interests of national security and public order under s7(b), without prescribing specific procedural safeguards for law enforcement use of biometric surveillance data).

The integration of artificial intelligence into policing decisions, particularly predictive algorithms that identify individuals as likely to commit offences represents a qualitative extension of the preventive policing logic that underlies Sections 125–128 of the BNSS If Police Commissioners are able to invoke their magisterial powers on the basis of AI-generated risk assessments rather than human intelligence, the already thin procedural safeguards of preventive detention proceedings become even more attenuated. The targeted person would have no effective way of contesting the fact that the algorithmic input that produced the assessment is not transparent, in a situation where the Commissioner is the same person who acts as the investigating authority, adjudicating magistrate, and the repository of the data.

The DPDP Act, which was granted the presidential assent but the substantive provisions of which are yet to be notified, has exemptions of state processing of personal data in connection with law enforcement, national security, and promotion of order that are broadly phrased. These exemptions and the concentration of the magisterial and policing power structures within the Commissionerate structure produces a possibility of the utilization of digital surveillance tools as an instrument of social control devoid of any real legal regulation.[46] This new convergence needs immediate legislative and regulation focus.

In particular, the codification in statute of the Commissionerate magisterial powers provided in Recommendation One must specifically provide that the use of algorithmic and surveillance data as the foundation of magisterial action, that such data must be independently validated and its quality measured before they may be relied on to be the basis of a proceedings under Sections 125-128 or 163 BNSS. Moreover, the suggested Police Complaints Authority must be endowed with the power to probe the allegations of illegal surveillance by Commissionerate police, and have the ability to view digital data and audit algorithmic algorithms employed in predictive policing.

A. Synthesis: Common Principles from Comparative Analysis

The comparative survey, which was conducted above, shows that there are several convergent principles that go beyond the specifics of the constitution of one jurisdiction. The substantial

[46] Personal Data Protection Bill, 2019, Joint Parliamentary Committee Report 112–115 (2021) (flagging the risk of state surveillance through facial recognition and predictive policing technologies absent a dedicated data protection regime for law enforcement); *see also* Internet Freedom Foundation, *Faces of Surveillance: Facial Recognition Technology in India* 22–28 (2021) (documenting deployment of facial recognition infrastructure in several Commissionerate cities without legislative basis or independent oversight).

exercise of the executive restraint powers of police officers can only be exercised in accordance with a set of legislative specificity; that is, elaborate legislative specification of the circumstances of exercise, of procedural conditioning, and of time limitations, which neither the general and discretionary terms of the Cr.P.C. nor of its replacement BNSS provisions will offer. Second, external checkpoint institutions that cannot be influenced by politics or legislation are essential; this internal redress in the police hierarchy is systemically ineffective. Third, disproportionate executive action can best be checked by swift judicial review, either by approving it in advance or reviewing it post-enactment; the preventative purpose of judicial review has a prospective effect, not a reactive one that occurs only under the rare circumstances when a case is subsequently subjected to appellate courts. Fourth, it is the significance of training and institutional culture: jurisdictions that have taken steps to develop a rights-conscious policing culture such as mandatory human rights courses in police training curriculum, exposure to constitutional jurisprudence and promotion standards that reinforce restraint as well as efficiency are more likely to adhere to proportionality standards than those that do so only through external control. Fifth, and lastly, entrenching major accountability provisions in the constitution offers a barrier to the regressive legislative change; and the Indian constitutional structure, though not stating that the independent police oversight body is necessarily so enshrined, does afford the necessary textual ground in Articles 50, 19 and 21 to permit the courts to insist on structural protections as a condition to the constitutional validity of Commissionerate model.

The Commissionerate System does not have to be abolished to become constitutionally acceptable; it only needs the superimposition of institutional protections which have long been in operation in similar jurisdictions, and whose lack in the Indian scheme of things is a chronic governance failure on the part of the legislature, the executive, and the judiciary, and must be resolved unanimously.

REFORM RECOMMENDATIONS

The analysis above indicates the presence of a system that is constitutionally and institutionally problematic but organisationally convenient. The recommendations below aim to maintain the effectiveness of the Commissionerate System in terms of value to operation, but significantly increase accountability, procedural rigour and protection of rights.

First, some prompt statutory codification of the magisterial powers which Police

Commissioners exercise by Commissionerate-specific State legislation is necessary in place of the ad hoc granting of such powers by manifestation or delegation. The codification in legislation should state the conditions under which it is exercised, the procedural conditions, the maximum time period of the orders, and the necessary mechanisms of review and thereby minimize the dependence on the general provisions of the Cr.P.C. which are not created with the exercise, in the police commissioner.

Second, the use of powers in Section 163, 164, and 165 BNSS by Police Commissioners must be reviewed under compulsory post-use by an independent judicial body within 24 hours of the order a Judicial Magistrate or a nominated Metropolitan Magistrate. This would maintain the same speed of operation but give an immediate balance to acting disproportionately. Several comparative jurisdictions, including the United Kingdom under the Human Rights Act 1998 regime, require rapid judicial authorisation for executive action curtailing fundamental freedoms.

Third, Police Commissioners must be obliged to make reasoned and written directives in all acts of magisterial powers which must be published in the public domain within 24 hours after doing so. In cases where the orders are formed on the basis of the intelligence reports, a summary of the grounds should be given that is duly redacted in such a way that the sources are not compromised. This action will satisfy the ARC 5th Report recommendation regarding transparency.

Fourth, every Commissionerate must be obliged to form a Police Complaints Authority that is independent, whose membership is solely civic with a chair of retired High Court Judge with the authority to receive and adjudicate grievances of magisterial overreach.

Fifth, the curriculum of police training academies in States with the Commissionerate System should be substantially reformed to incorporate modules on constitutional law, magisterial jurisprudence, and fundamental rights adjudication. Officers designated to exercise magisterial powers should be required to pass a qualifying examination demonstrating competence in these areas before assuming such functions.

Sixth, the Law Commission of India should undertake a comprehensive review of the operation of the Commissionerate System across States, examining the frequency and pattern of magisterial power exercise, the outcomes of judicial review, and the comparative human rights

performance of Commissionerate and non-Commissionerate cities.

Seventh, the constitutional aspiration of Article 50 should be given greater operational content by legislatively establishing an independent Executive Magistracy even within Commissionerate cities for the exercise of particularly sensitive magisterial functions including those under Sections 145, 146, and habitual offender proceedings under Sections 127 -128 BNSS This would be a partial yet significant re-establishment of the separation which the framers had in mind.

CONCLUSION

The Commissionerate System is a long-standing conflict that is at the core of Indian criminal justice administration: the conflict between the needs of good city administration and the constitutional obligation of separation of powers, rule of law, and basic human rights. Magisterial powers granted to the police commissioners are not in themselves constitutionally inadmissible but the lack of effective procedural controls, external checks and balances and enforceable judicial tests of proportionality have enabled magisterial powers to be used as a tool of administrative convenience and not justice.

The Madhu Limaye, Ramlila Maidan and Anuradha Bhasin case law represents the history of a judicial attempt to interpret constitutional limitations into the uses of magisterial authority even by the police commissioners. Such requirements as necessity, proportionality, procedural fairness, and transparency have to be institutionalised by a legislative reform and not remain solely to post-hoc judicial redress, available only to individuals with the means and knowledge to bring a case forward. The constitutional vision endorsed in the Preamble of the Constitution is justice, which cannot be provided by force. The adjudicating enforcer is in a structural conflict position that undermines both functions. Regulatory and institutional measures which preserve the working structure of the Commissionerate System, but which once again put the magisterial aspects of it under an independent check, are not only desirable they are simply mandatory in the constitution itself.

The necessity to eliminate these structural tensions will only increase with the increasing urbanisation of India and even more of the cities that will fall under the Commissionerate jurisdiction. The model offered in this paper attempts to make that determination not by eliminating an established model of administration, but by making sure that they work in a process that is in line with the constitutional values that shape the Indian Republic.