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### **Effective Executive Control for better Human Rights Compliance**

*“The Doctrine of Precedent does not compel your Lordships to follow the wrong path until you fall over the edge of the cliff. As soon as you find that you are going in the wrong direction, you must at least be permitted to strike off in the right direction, even if you are not allowed to retrace your steps. And that is what I ask your Lordships to do.”* .....Lord Denning

The issue of Magistracy-Police relationship in India has come up for close scrutiny whenever sporadic breakdown of law and order has taken place or when human rights violations by local police officers have been reported. A number of Commissions set up by various Governments have examined this issue, and their views have varied from *abolishing altogether the role of the magistracy in police matters* to *greater control and supervision by magistrates to check abuse of power and human rights violations*. Alternatively, there have been demands for setting-up of parallel local authorities (e.g. representatives of the National/ State Human Rights Commissions at the district level) for checking human rights violations<sup>1</sup>.

The view that the role of the magistracy in police matters should be curtailed was contained in the Fifth Report of the National Police Commission (1979-1981), where the Commission had inferred some sort of “interference” by the District Magistrate (DM) when he actually exercises “general control and supervision” over the subordinate office of the district Superintendent of Police (SP) as envisaged under the Indian Police Act, 1861. This Commission intended to limit the DM’s role to one of *co-ordination* instead of *supervision*; and also intended to further isolate the DM’s office by allowing only the District Inquiry Authority (DIA) to inquire into complaints against the Police<sup>2</sup>. The proposal for introduction of the Police Commissionerate system in cities also is based on the idea of removal of DM’s powers of superintendence over the office of the SP. The First Report of the Ribeiro Committee (1988) also supported this view, and envisaged a District Police Complaints Authority (DPCA) to be headed by the Principal District and Sessions Judge for looking into complaints of police excesses, custodial violence etc.

The other view of strengthening the position of the Magistracy can be found in the Report of the Administrative Reforms Commission (ARC), Government of Rajasthan<sup>3</sup>. The ARC was of the view that there is a need for independent and local supervision over the functioning of the district police, and that the office of the DM hitherto exercising notional control should now play a more active and formal part. The Padmanabhaiah Committee on Police Reforms<sup>4</sup> had also envisaged a stronger role for the magistracy in recommending that there should be a District Police Complaints Authority (DPCA) to be chaired by the DM, and that this Authority should act as a second forum of appeal against first-level inquiry by the Police Department itself.

While it is undeniable that police actions require *constant* and *local* supervision to check abuse of power and to ensure enjoyment of democratic rights by citizens, there are a number of alternatives as stated earlier. The search for the best alternative has therefore to be made from the available choices of intra-organisational supervision, supervision by the local magistracy, third-party supervision as

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<sup>1</sup> As advised by the National Human Rights Commission, in its letter dated 24<sup>th</sup> June 1999, to Chief Ministers of all States.

<sup>2</sup> The DIA was to be headed by an Additional Sessions Judge, an officer who actually functions as a Court with original jurisdiction in certain heinous criminal matters.

<sup>3</sup> Volume II of the Report of the ARC, published March 2001, Government of Rajasthan.

<sup>4</sup> Report published in the year 2000.

suggested by the Human Rights Commissions, or a combination thereof; within the overall democratic control of the State. A study of the working of this relationship is therefore critical to understand whether the existing systems themselves can be suitably strengthened to better human rights record, and whether any further third-party intervention is required at all. Here, it would also be pertinent to take note of the development of the institution of magistracy, and the nature of functions that it performs.

In many areas of British India, the office of the DM included the office of the District & Sessions Judge (DJ), the District Superintendent of Police (SP), and in some cases, the office of the Civil Surgeon as well. Over a period of time, with increasing number and diversification in the nature of public matters required to be attended to by the State, these functions were separated into distinct offices. The office of the DM, however, remained supreme, being the repository of all local supervisory powers of the Government, and this office continued to function as an arbitrator with a great degree of finality in its decisions in the case of local issues and problems. But with the advent of modern democracy, alternate State structures gained in power and strength. While the political system as such became more democratic, the capability of the institution of the DM to finalise and resolve local problems became limited to that extent. The continuing erosion in democratic institutions over the years has now critically compounded the problems faced by the magistracy in achieving tight and strict control over the functioning of local district officers and early resolution of local developmental issues.

This traditional system of administrative and police authorities in India is different from the western system in substance and in structure. In terms of democratic control over local police units, this control is more direct in the west, where the Mayor and the Sheriff would be locally and directly elected. This control is rather indirect in India, where a State electorate elects its political leadership, which in turn makes appointments of magistrates and police superintendents for various districts out of the members of select services. The developmental, policing and human rights issues that are dealt with by these administrators are also different, in that Indian administrators are constantly under pressure to deal with alternate choices resulting out of severe land pressures and the differing requirements of various social and politico- religious groups on control over existing resources and planned infrastructure. They also regularly deal with situations of budgetary restraints that are unique to developing countries, and with the availability of financial and administrative powers now being more and more restricted to various departments at the State level, or with local autonomous bodies; the ability of local administration to plan and implement longer term solutions to issues like child labour, rehabilitation of project affected/ displaced persons, and discrimination against disadvantaged sections of the society has been severely hampered.

A study of the existing procedures regarding control and supervision of policing would be in place, alongwith a discussion of the actual working of the same to appreciate the differences between theory and practice. As per section 4 of the Indian Police Act of 1861 (the "Act"), the administration of the police throughout a police district vests in a district SP, under the general control and direction of the DM<sup>5</sup>. However, this jurisdiction is coterminous with that of an Inspector General<sup>6</sup> (IG) of Police, who enjoys this jurisdiction over the entire State. The Act itself thus creates an overlap, which has been further compounded by the fact that in actual practice, the DM exercises virtually no control over policing matters. Decisions regarding postings and transfers of local police personnel, functioning of police stations, as well as police arrangements in normal and law & order situations, are all made by District SPs working under the control of the concerned Deputy Inspector General of Police (DIG), who in turn reports to the IGs and the DGP. The role of the DM is completely absent in postings,

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<sup>5</sup> In addition, rule 58(b) of the Rajasthan Police Regulations 1948, inter-alia, provides that the SP is subject to the general control of the DM who is responsible for the criminal administration of the district. Under these regulations, the DM is competent to direct an enquiry to be made into any case of misconduct by a police officer {**Note:** This position of the DM vis-à-vis the police has not changed with the coming into operation of the Rajasthan Police Rules in 1965}. Similarly, the Code of Criminal Procedure Code, 1973 specifies that district police officers are subordinate to the DM.

<sup>6</sup> This term of "the IG" is what appears in the Act, but the Director General of Police (DGP) actually exercises these powers.

transfers, and disciplinary matters of police officers; and is advisory at best in other cases connected with police functioning.

In so far as police investigation of crime is concerned, once again, there is no role provided for the DM in practice, notwithstanding the strict legal position that makes him in-charge of criminal administration of the district. Supervision of investigation remains the sole jurisdiction of the SP and higher police authorities. In fact, the field investigation and prosecution in courts in India is further divided between the offices of the SP and the Public Prosecutor, where interaction between these has been found to be severely lacking. This multi-layered structure in criminal investigation, with no provision for local supervision over police authorities, has also sometimes been manipulated by interested political forces to shield criminal elements from a full and independent investigation and concomitant prosecution.

In matters of maintenance of law and order, the role of the magistracy is more prominent, where the powers for imposition of curfew and other prohibitory orders regarding processions etc., or restraining public in general or individuals in particular continue to be exercised by the DM or his subordinate magistrates. While aberrations remain of police action without reference to the magistracy, these cases have been by and large few in numbers. One of the main reasons for continuation of this superior role of the magistracy in such matters has been the unstated understanding within the superior administrative and political structures that these powers would be more judiciously and effectively exercised by the DM with his high degree of involvement in developmental and public matters. Contrasting this with the lack of any independent role for the DM in criminal matters over the police/ prosecution mechanism, it may be said while criminal activity as such has increased substantially and successful prosecution as such has become rare; the supervisory and independent role of the magistracy has been an important factor in ensuring a generally peaceful law and order situation. The ability of DMs in controlling law and order situations has been curtailed only in the rare cases when politics has played a role in their decision-making, or where the magnitude of the specific riotous situation is such that local infrastructure is not sufficient to deal with the large-scale planning and organisation that may have been undertaken by the perpetrators<sup>7</sup>. Similar problems have occurred where public grievances have originated out of particular situations, the solution of which was/is beyond the administrative or financial jurisdiction of the DM<sup>8</sup>.

In so far as the authority of DMs to deal with other police issues like jail administration, prosecution in arms offenses, withdrawal from prosecution of petty criminal offences, release from parole and other criminal matters are concerned, the general distancing of this institution from that of the SP has resulted in a situation where neither office subjects these matters to rigorous examination. This problem of systemic failure is not unique to this relationship; it has been observed in various other cases of dual- or multi- layer systems where roles are not clearly demarcated, for instance, in crime-fighting where investigation and prosecution are completely independent and isolated from each other, and in public sector bank loaning procedures where involvement of too many offices has led to dilution of responsibility for failures.

Needless to say, the position of the DM in practice is far less effective than envisaged under the Police Act. Supervision has remained nominal and notional. The actual position of the DM has been one of responsibility but little authority. The position of the police, on the other hand, has become one of authority without adequate independent and local supervision. In fact, apart from the deterioration in the capacity of magistracy to check human rights violations, their ability to resolve other human rights issues like child/ forced labour and social or economic discrimination has also been severely hampered due to strengthening of local "representative" institutions on one hand, and centralisation of administrative and financial powers at the State level on the other. With more and more powers being devolved to local political structures, and experience with political institutions in India being what it is, it is likely that timely and fair resolution of local public issues will become more strained.

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<sup>7</sup> The Bombay Riots of 1993 is a case in point, where the entire exercise had been meticulously planned by a network of criminal elements with resources far outnumbering the controlling capacity of the **local** administration.

<sup>8</sup> Examples are the cases of disputes over proper rehabilitation of people affected by large-scale projects.

The setting up of National and State Human Rights Commissions has helped in checking police excesses and other human rights violations to some extent, but local exercise of their powers is required in order that timely and effective interventions are made in sufficient number of such cases. One option that has been suggested is that of appointing district representatives of these Commissions. But exercising this alternative is likely to lead *only* to mushrooming of local institutions, and also to greater hostility between them for power and space. A much more effective alternative would be to strengthen and consolidate the existing institutions, while simultaneously isolating them from political interference in the manner that has been suggested by the National Police Commission, the Ribeiro Committee, and the Padmanabhaiah Committee<sup>9</sup>.

To this end, the office of the SP itself should be strengthened by providing it with full powers in intra-district transfer and in disciplinary matters concerning his officers and staff, and also a greater say in blocking unnecessary transfer of cases pertaining to criminal investigation outside the District<sup>10</sup>. Simultaneously, police officers should be protected from arbitrary and unwarranted evaluation of the "propriety" of their local actions by external authorities. This evaluation of whether a particular action taken, for instance in the case of police firing, should remain limited to local levels, and to this end, the office of the DM could be entrusted with the task. Similarly, the offices of the public prosecutor could be amalgamated within the office of the SP, to function under the SP's day-to-day control, and overall supervision by the DM. The supremacy of the office of the DM would have to be re-established, so that digressions and aberrations, if any, are quickly and suitably corrected.

The DM currently chairs a number of committees entrusted with the task of grievance redressal. The authority of these committees is presently hampered due to lack of finality in their decisions, since various local officers have greater loyalty to their own departmental rules than to the collective wisdom of these Committees<sup>11</sup>. There is therefore a need to bring in greater degree of finality to these local decisions, and these bodies chaired by the DM could be further entrusted with more administrative and financial powers so that local issues can be swiftly addressed. Simultaneous delegation of certain powers of the National and the State Human Rights Commissions to the office of the DM or to these local committees<sup>12</sup> will also strengthen this process of grievance redressal, bring in closer interaction between the Commissions and the local field officers, lead to greater trust and co-operation, thus bringing in more effectiveness in bettering human rights situations. This close interaction between the Human Rights Commissions and the field officers will certainly mean dual loyalties of these officers, but then, addressing human rights issues of the recurrent nature that are so peculiar to developing countries requires a co-operative and consultative approach rather than a legal and confrontationalist one.

At the same time, there is need to integrate the various Human Rights, Women's, SC & ST, and the Minorities Commissions so that there is consolidation both at the National and the State level. This

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<sup>9</sup> Broadly speaking, they recommended setting up somewhat State-level Boards for selections and transfers of higher Police Officials (the Police Establishment Board and other bodies as suggested by the Padmanabhaiah Committee, the Police Performance and Accountability Commission as suggested by the Ribeiro Committee, and various panels as suggested by the National Police Commission). This principle could be equally applied to the case of transfer and selection of District Magistrates, since they are and will remain the key officers expected to ensure the task of law enforcement and maintenance of public order and resolution of various important developmental issues.

<sup>10</sup> Allegations that this power of transfer of cases is actually abused to shield politically powerful interests are not uncommon.

<sup>11</sup> For instance, the DM holds regular meetings with district officials of the Water Supply Department and Electricity Boards for resolving public problems connected with these two vital issues. However, the DM can neither transfer nor initiate disciplinary proceedings against any official/ worker of these departments. He does not even have the requisite administrative & financial powers to sanction schemes, or to modify or supersede impugned departmental orders so that early relief can be provided to affected public.

<sup>12</sup> The powers of summoning concerned officials, for instance, could be delegated, as also the power to sanction relief to victims of harassment. Delegation of the power **even** to advise the Government through the National or the State Commission, as the case may be, will certainly mean greater role in Governmental decision-making.

will also check against any institutions doing identical work. One single Commission at the National level is adequate to deal all such issues, since the rights of Minorities, Women, SCs and STs and other disadvantaged classes are an integral part of the overall Human Rights scenario. Bundling of these institutions will bring in a more focussed intra- disciplinary approach<sup>13</sup>, and also increase governmental recognition and acceptance of their advice.

To sum up, strengthening of the office of the district SP, together with a strong supervisory role for the DM will bring in a system where there are both intra- departmental as well as external mechanisms for checking human rights violations. Distancing of these institutions from political interference in their day-to-day working will lead to greater fairness in their actions, while delegation of certain powers of the Human Rights Commissions and administrative and financial strengthening of the committees chaired by the DM will mean quicker and more effective responses. Betterment of human rights record requires authority, consultation and trust; and strengthening of the district executive and their positive and constant dialogue with the National and the State Human Rights Commissions will certainly lead to better enjoyment of human rights and more effective redressal of public grievances.

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<sup>13</sup> For instance, the rights of women belonging to Minority Communities could then be addressed in a more holistic manner.