

Executive Magistrate vs Judicial Magistrate

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Why in news?

The detention of CJP leaders has brought the powers of Special Executive Magistrates (SEMs) into focus amid protests against the Special Intensive Revision (SIR) of electoral rolls.

Executive Magistrate (EM)

- **Appointment** - EMs are appointed by the concerned State Government and do not exercise judicial powers.
- One EM may be designated as the District Magistrate (DM).
- Their promotions, increments and seniority of service depend on their superiors within the Executive.
- **Hierarchy** - The senior-most Executive Magistrate in a district is the District Magistrate (DM), followed by Sub-Divisional Magistrates (SDMs) in charge of sub-divisions, and Tahsildars or senior police officers appointed as Special Executive Magistrates (SEMs).
- **Legal framework** - Executive Magistrates are governed by Sections 14-17 of BNSS, 2023.
- Section 15 allows appointment of Special Executive Magistrates (SEMs) for specific functions and periods.
- **Powers** - EMs have limited powers, primarily relating to preventive measures to maintain public order and to prevent breaches of peace, but they cannot conduct trials.
- **Limitations** - They cannot conduct criminal trials, do not function as regular courts, and their actions are subject to judicial scrutiny.
- **Special arrangement** - Traditionally, EMs have been revenue or administrative officers.
- In the national capital, the Delhi Police Act empowers the central government to authorise the Police Commissioner and subordinate officers, not below the rank of ACP, to exercise powers of district and special executive magistrates.

Judicial Magistrates (JMs)

- **Administration** - JMs are part of the subordinate criminal judiciary, administered by the High Courts.
- **Hierarchy** - Includes the Chief Judicial Magistrate (CJM), Judicial Magistrates of the

First Class (JMFC), and Judicial Magistrates of the Second Class (note that the separate "Metropolitan Magistrate" class was abolished under the BNSS structure).

- **Legal framework** – Judicial Magistrates are governed by Sections 9-13 of BNSS, 2023.
- **Role** – Adjudicatory and judicial; they are presided over by officers from the state judicial service appointed and trained under High Court oversight.
- **Powers & Functions**
 - They conduct criminal trials.
 - Establishment of Judicial Magistrate Courts,
 - Appointment of Chief Judicial Magistrates and Special Judicial Magistrates.
 - Granting regular or police/judicial remand of arrested persons and deciding bail applications.
- **Law Commission's views** – The Law Commission debated whether preventive powers should remain with Executive Magistrates or be transferred to Judicial Magistrates.
- While earlier reports favoured the executive, the 41st Law Commission Report (1969) recommended vesting these powers in Judicial Magistrates, as they affect personal liberty.

Basis	Judicial Magistrates	Executive Magistrates
 Primary function	Adjudication of criminal cases , including taking cognizance of offences where legally authorised, examining evidence, deciding bail applications and conducting trials.	Preventive, administrative and public-order functions , including initiating proceedings to maintain peace, requiring bonds for keeping the peace and issuing urgent preventive orders under Section 163 of the BNSS, 2023.
 Key legislation	BNSS, 2023 , particularly Sections 9–13.	BNSS, 2023 , particularly Sections 14–17.
 Appointment	Presiding officers of Judicial Magistrate courts are appointed by the High Court under Section 9(2).	Appointed by the State Government under Section 14.
 Administrative control	Judicial hierarchy , subject to the constitutional control of the High Court over subordinate courts.	Executive hierarchy , with statutory subordination under Section 17.
 Conduct of criminal trials	Conducts criminal trials within the jurisdiction conferred by law.	Does not conduct criminal trials as a Judicial Magistrate.
 Preventive powers	Exercises judicial powers assigned by law, including in preventive proceedings brought before the court.	Exercises preventive powers specifically conferred by the BNSS and other applicable laws.
 Independence	Protected by judicial independence and constitutional safeguards.	Functions within the executive hierarchy, subject to statutory limits, procedural safeguards and judicial review.
 Constitutional principle	Judicial independence and separation of the judiciary from the executive.	Executive responsibility for public administration and public order, subject to constitutional limits.

Reference

[Indian Express | Difference between Executive Magistrate and Judicial Magistrate](#)

