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A Misconception about handcuffing prisoners

Riddhi Kapadni^a

^aMIT World Peace University, Pune, India

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The concept of Human Dignity is central to human rights law. Since the twentieth century, it has been significant in international documents. The concept of human dignity as used by Indian courts is ambiguous and lacks clarity in terms of content. Currently, Indian courts follow one of two approaches: (a) a deprivation framework in which the right to dignity implies “to-protect-life-limbs-and-faculties” and (b) a “right-to-life-is-more-than-mere-animal-existence” approach. Every citizen of India has basic rights protected by the Indian Constitution, and as a result, the nation is expected to provide a high standard of living to its subjects, the people. On the other hand, it is regrettable that a country like India does not properly implement prisoners' rights. This paper focuses mostly on prisoners' rights to be free of handcuffs and the failure to apply the Supreme Court's handcuffing guidelines.

Keywords: *prison, human, court.*

INTRODUCTION

The concept of Human Dignity is central to human rights law. Since the twentieth century, it has been significant in international documents. The concept of human dignity as used by Indian courts is ambiguous and lacks clarity in terms of content. Currently, Indian courts follow one of two approaches: (a) a deprivation framework in which the right to dignity

implies “to-protect-life-limbs-and-faculties” and (b) a “right-to-life is-more-than-mere-animal-existence” approach. Every citizen of India has basic rights protected by the Indian Constitution, and as a result, the nation is expected to provide a high standard of living to its subjects, the people. On the other hand, it is regrettable that a country like India does not properly implement prisoners' rights. This paper focuses mostly on prisoners' rights to be free of handcuffs and the failure to apply the Supreme Court's handcuffing guidelines. A layperson's mental image of a person being arrested or led to the court includes him being confined by handcuffs. For decades, cinema and mass culture have depicted arrests in this manner. Yet, the use of handcuffs, which was formerly common practice, has been limited by Indian Supreme Court directives. The sanctum sanctorum of the constitutional temple is the right to life and personal liberty, which is established in Article 21 of the Constitution.¹

Personal liberty is a term used in Article 21 of the Constitution with an express legal sense. It was observed by Justice Khanna that, Liberty advocates for the formation of an atmosphere in which human spirits are not suppressed and opportunities for the full development of human personality are not denied.² Human dignity is a precious virtue enshrined in the Indian Constitution that should not be traded away for the sake of trivial apprehensions harboured by jail officials. The frequent use of handcuffs and iron is indicative of an arbitrary attitude antagonistic to the Indian objective of human dignity and social justice. Accordingly, the Supreme Court has made multiple substantial pronouncements criticising and severely condemning the actions of police in handcuffing inmates or undertrials without explanation.

INFRINGEMENT OF FUNDAMENTAL RIGHTS

Existing laws already deprive an individual in custody of his liberty, whether he is on trial, a detainee, or a prisoner who is convicted. Article 21 of the Constitution³ specifies that no individual shall be deprived of his life or personal liberty except in conformity with legal procedure, and only such deprivation is permissible. The use of handcuffs at the whims of the escorting officer or jail authorities is not permitted by the Supreme Court's orders or the

¹ *Maneka Gandhi v Union of India* AIR 1978, SC 597

² *A.D.M. Jabalpur v S. Shukla* AIR 1976, SC 1207

³ Constitution of India, 1950, art 21

legislation, and the court's authorization or notice with reasons documented in writing is necessary. Any action restricting a person in police or judicial custody that is contrary to these directives and laws is a breach of the individual's right to life. It would also be a breach of Article 14's right to equality⁴ because being handcuffed or tied in irons implies that the individual is being treated differently than other convicts or detainees, therefore violating his basic right to be treated equally. We frequently see on news channels that when a high-profile person is detained or accused of committing an offence, he is never handcuffed while heading to the courts or police stations, presumably to safeguard his dignity. When a common man is handcuffed, he is often bound with a rope and dragged by officials like an animal. Isn't that person equally deserving dignity in society? It violates Article 14. Furthermore, handcuffing the prisoner because of his religion, colour, caste, gender, or place of birth would be a breach of Article 15 of the Constitution's⁵ basic right against discrimination.

Handcuffing is a cruel and humiliating punishment. It is implied in Articles 14 and 19⁶ that manacling a man when there is no compulsive need to bind his limbs demoralises him. The limited freedom of movement guaranteed to all detainees under Article 19 cannot be curtailed by the use of handcuffs. There must be a material that is substantially strict to convince a reasonable mind that there is a clear and present risk of the prisoner being transported escaping by breaking free from police control and joining the escort group or other tactic, and he cannot be held under control. In this case, the burden of evidence is on the person who puts the victim in irons. Thus, the unjustifiable use of handcuffs is a violation of fundamental human rights since it is viewed as a cruel, arbitrary, and authoritarian practice that humiliates the accused or convicted in the eyes of others. It is disrespectful behaviour that has no place in a 21st-century society that strives to protect human rights for all, regardless of their conduct, character, or financial status.

⁴ Constitution of India, 1950, art 14

⁵ Constitution of India, 1950, art 15

⁶ Constitution of India, 1950, art 14, 19

LAWS AGAINST HANDCUFFING

Handcuffing became a controversial topic in courts because it was seen as a needlessly muddled and humiliating exercise in which an accused or under trial is bound to be handcuffed and restrained, thereby depriving him of dignity, despite the risk of being found innocent by the court after trial. The goal of using handcuffs in the first place is to restrict the movement of someone who constitutes a flight risk. It is not necessary for every person on trial or accused to flee, and hence the humiliation of being shackled in handcuffs is an unfair practice that the courts concluded should be avoided except under exceptional situations and as a last resort.

The Supreme Court held in *Sunil Batra v Delhi Administration*⁷ - Article 21 prevents loss of personal liberty unless in conformity with the legal system, and reduction of personal liberty to the degree that it is a denial of it would constitute deprivation. The court found that the minimal freedom of movement guaranteed to all prisoners awaiting trial under Article 19 of the Constitution cannot be cruelly constrained by the use of handcuffs or other devices. The Court stated that the widespread use of handcuffs when transporting accused individuals to and from the court, as well as the practice of imposing irons on jail inmates, are both unconstitutional and must be stopped immediately, save in a very limited number of cases. Handcuffing and stringing in open lowers, humiliates higher senses, and is a disgrace to our society.

The court reviewed the rationale behind fetters in *Prem Shankar Shukla v Delhi Administration*⁸ and found that prima facie handcuffing is inhuman and thus unreasonable as well as arbitrary in the absence of fair procedure and objective supervision. Based on the judgment, the following guidelines for handcuffing prisoners have been established:

- “Whenever it is found that prisoner is desperate and dangerous and the police officer who arrests such person feels that in that particular case, handcuffing is essential a detailed report shall be recorded in the general diary by him specifying the reasons as to why handcuffing is essential in that particular case.

⁷ *Sunil Batra v Delhi Administration* AIR 1978, SC 1675

⁸ *Prem Shankar Shukla v Delhi Administration* AIR 1980, SC 1535

- The reasons should include previous criminal history, involvement in heinous/violent crimes, desperate nature or association (like a member of a notorious gang) any previously attempted escape, etc.
- Then only such persons should be handcuffed while being taken to be produced in the court.
- The escort from the police station shall take a copy of the general diary entry along with the remand papers to the court and produce the general diary entry through the public prosecutor attached with the court and get the permission of the presiding officer of the court for continuing the use of handcuffs when the accused is produced before the court at a later stage.
- When the presiding officer of the court approves the handcuffing, the fact that the particular prisoner shall continue to come in handcuffs shall be got mentioned on the warrant.
- Thereafter, it will be the responsibility of the Jail authorities to clearly indicate to the escort parties, taking the prisoner to court and back, that he is to be handcuffed or not and the in charge of the escort party will take action accordingly.
- In case the handcuffing is not approved by the Court in any particular case, the escort party shall write this fact in the General Diary on returning to the police station.
- In other cases, handcuffs will not be used.
- There will, however, be no bar to a prisoner being handcuffed if a situation arises while the prisoner is being escorted, giving rise to a reasonable apprehension of the prisoner escaping or being rescued or indulging in violence unless he is handcuffed.
- In such a case, a proper report will be got recorded explaining the specific circumstances in the lock-up/jail Guard entry Relief Book, as the case may be, and a copy of the same will be produced in the court when the prisoner is presented there.”

Aside from Supreme Court orders, prisons are administered under the Prisons Act of 1894⁹. The use of shackles is permitted under the Act, which has been amended from time to time if the Rules issued by the relevant State government allow it. The Act allows for the use of

⁹ Prisons Act, 1894

shackles as a punishment for offences committed in prison, as stated in section 45¹⁰. Assault, disorderly behaviour, intentional property damage, feigning illness, and other offences come under this category. One of the penalties stated is shackling; others include cellular imprisonment, flogging, hard labour, and so forth. The fetter punishment does not apply to female or civil prisoners.

According to state government guidelines, Section 56¹¹ enables the Jail Superintendent to confine a prisoner in irons for the safe custody of other detainees. Section 57¹² permits for detention under the sentence of transportation, which has since been obsolete since it was a penalty used in colonial periods when criminals were condemned to be transferred to a foreign place, away from society, primarily to the colonies of imperial powers. Such sentences are no longer meted out by courts in India. Section 58¹³ safeguards convicts against the aspirations of jail personnel to confine them. It reads, “No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent”.

In the case of *Bhimrao AshrujiMhaske v State of Maharashtra and Anr*¹⁴, The petitioner professes to be an active member of ChhatraYuvaSangharsha Vahini and to be working for the elevation and advancement of tribal people in Shirpur and surrounding regions. The petitioner stated that he and a group of young people have been working on behalf of the oppressed for several years. Naturally, they clashed with local entrenched and political interests. The age-old fight between the haves and have-nots continues in this backward region of the state, and it is the petitioner's grievance that the powerful state of society with political and economic clout uses the Government to harass the petitioner and prevent him from bringing injustice done to tribals to the attention of the people. The petitioner alleges that the police officials initiate one

¹⁰ Prisons Act, 1894, s 45

¹¹ Prisons Act, 1894, s 56

¹² Prisons Act, 1894, s 57

¹³ Prisons Act, 1894, s 58

¹⁴ *Bhimrao AshrujiMhaske v State of Maharashtra and Anr* [1990] (3) BomCR 671

after the other procedures against him using the provisions of Section 151 of the Code of Criminal Procedure¹⁵ and that he is imprisoned in detention for no fault of his own.

The petitioner alleged that on March 19, 1989, he was taken into custody by the Sub-Inspector of Police Shirpur police station in performance of Section 151 powers and then placed before the Judicial Magistrate, First Class. The petitioner argued that when he was presented before the Judicial Magistrate, First Class, Shirpur on March 20, 1989, and March 28, 1989, he was taken from detention in handcuffs, despite the fact that there was no reason to shackle the petitioner. By ruling dated March 28, 1989, the Magistrate stated that it is up to the police machinery to decide whether or not the petitioner should be brought into court in handcuffs. The Magistrate commented that because the police are trusted with maintaining peace and order, the Magistrate is unconcerned about how the petitioner was taken before the Court.

In the case of *Sunil Batra v Delhi Administration*¹⁶, the Supreme Court had considered the legislation governing the treatment of inmates. The Supreme Court stated that insurance against escape does not need handcuffing unless no other option is available. This verdict was reaffirmed in the case of *Prem Shankar v Delhi Administration*. It is now widely established that a person in custody has the right to human dignity, and it is not essential to handcuff him when producing before the Magistrate or returning the person to custody from the Magisterial Court in handcuffs unless the case requires it. It is not the Police Officer's sweet will to decide whether a person in custody should be shackled or not, but the Police Officer must make a judgement based on a reasonable apprehension.

Unfortunately, notwithstanding the rulings of the Supreme Court, police officers indiscriminately place handcuffs on people in detention while bringing them before the Court. The Bombay Police Manual, 1959, specifies the regulations for handcuffing a person in custody, although the restrictions are frequently broken by police officers. This is a very miserable scenario, and the practice is enforced by police officers on the presumption that every individual in detention is going to flee. In this case, Justice M. Pendse ordered the State

¹⁵ Code of Criminal Procedure, 1973, s 151

¹⁶ *Sunil Batra* (n 7)

of Maharashtra to pay the petitioner Rs. 1,000/- as compensation for illegally handcuffing the petitioner while producing before the Judicial Magistrate.

In the famous *Vikas Dubey encounter case*, the shooting of feared criminal Vikas Dubey caused an uproar since he was not obviously tied by police, despite the Supreme Court's disapproval of the practice in previous rulings, calling it “*inhuman, unreasonable, over harsh, and arbitrary.*”¹⁷ The police, have long favoured handcuffing in a variety of judicial situations, stating that it is particularly efficient in keeping a feared accused or convict from leaving jail. The Supreme Court has issued a flurry of recommendations on the procedure to be followed when handcuffing an undertrial, stating that handcuffing is unnecessary for preventing escape. Relating to Articles 14 (Equality before the law) and 19 (Freedom of expression)¹⁸, the Supreme Court stated that where there is no compelling reason to restrain a person's limbs, there is no need to restrain them, “it is sadistic, capricious, despotic and demoralizing to humble a man by manacling him”.

In addition, the arrests of former Jawaharlal Nehru University student leader Umar Khalid and activist Khalid Saifi highlighted how frequently SC guidance is ignored. In April 2021, the Delhi Police asked a court in the capital for authorization to transport Umar Khalid and Khalid Saifi in cuffs to their hearings on charges related to the 2020 Delhi riots, in which they are both accused. The men were classified as high-risk detainees by officials. The handcuffing of Khalid and Saifi was described in the Delhi Police plea. The authorities not only wanted the two in handcuffs, but the appeal also asked for authorization to use a “handcuff in both hands from behind.” The applications were rejected by the court in June 2021. In a brief order, additional sessions judge Vinod Yadav reiterated his April statement that the plea lacked substance. The ruling said that the two had no past convictions and were not gangsters. The judge said, “The applications appear to have been filed in a mechanical manner, without application of mind by the high echelon of Delhi Police and prison authority”.

¹⁷ ‘Inhuman, unreasonable’: Here’s what SC guidelines say on handcuffing criminals’ (*Hindustan Times*, 10 July 2020) <<https://www.hindustantimes.com/india-news/vikas-dubey-encounter-inhuman-unreasonable-here-s-what-sc-guidelines-says-on-handcuffing-criminals/story-eERAsML63mPgcGN4SEBJXN.html>> accessed 11 November 2021

¹⁸ Constitution of India, 1950, art 14, 19

STANDARD RULES FOR PRISONER TREATMENT

The regulations were adopted by the First United Congress on the Prevention of Crime and the Treatment of Offenders in Geneva in 1955 and were ratified by the Economic and Social Council through resolutions. The guidelines' objective is not to establish in detail a model system of criminal institutions. They attempt only to put forth what is widely recognised as a great principle and practise in the treatment of inmates and the management of institutions, based on contemporary thought's general agreement and the fundamental characteristics of today's most suited systems.

Given the world's diverse legal, social, economic, and geographic circumstances, it is obvious that not all rules can be enforced everywhere and at all times. They are, nonetheless, available to inspire a continual effort to overcome practical problems in their application, with the understanding that they reflect, in aggregate, the minimum circumstances that the United Nations regards as appropriate. One of the regulations mentions the Instruments of Restraint. Cuffs, chains, irons, and straitjackets, for example, should never be used as a form of punishment. Furthermore, chains or irons may not be used as restraints. Other restraint devices may be used exclusively in the following situations:¹⁹

“(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances, the director shall at once consult the medical officer and report to the higher administrative authority.”

CONCLUSION

The clear and genuine risk of avoiding police control is a decisive factor. And for this, there must be explicit substance rather than facile assumptions, a record of reasons, judicial scrutiny,

¹⁹ ‘Standard Minimum Rules for The Treatment of Prisoners’(UNODC)
<https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf> accessed 11 November 2021

a summary hearing, and court direction when the victim is introduced. Handcuffs are not summary punishment imposed vicariously at the police level that is both unpleasant and irrevocable. Armed bodyguards of their salt may easily overcome any unarmed defendant. A person cannot be handcuffed just because he is accused of a serious crime. He might be quiet and well-behaved. Many of the other requirements specified in the police manual are completely contradictory. It is comforting to note that in certain states in this nation, handcuffing is not used at all, save in true situations when transporting people to court, and the frightening idea that unless the individual is §kept in irons, he would run away is a handy lie.