

An Analysis Of Judicial Philosophy On Handcuffing In India**Dr H.S.Rai****Associate Professor****Department of Law****Meerut College****Meerut**

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Hand-cuffing and Bar-fetters are method used for a person who is most likely to escape or who is most dangerous in behavior and there is every chance of his causing threat to the peace as well as life of other people. In normal course hand-cuffing and bar-fetters is prohibited in law but it is not unusual to see police-men walking with hand-cuffed prisoners proudly displaying their authority. Both hand-cuffs and bar-fetters are seen as authority of the police and used in spite of the law against it in the normal course. The United Nations Standard minimum rules for the treatment of prisoners also known as the Nelson Mandela Rules were adopted by the United Nations General Assembly unanimously in 2015. Under Rule 47 (1), it states that the use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.

In the *Sobhraj Case*,¹ a foreigner under trial prisoner pleaded that the order of the Superintendent of jail putting him in to bar fetters since the date of his detention, in spite of the recommendation that the bar fetters should be removed, is hit by Article 21. It was further pleaded that Section 56 of the Prisons Act under which prison authorities has been given uncontrolled powers to put a person into bar fetters is unconstitutional being hit by Articles 14 and 21.

It was held by the Supreme Court that Section 56 of the Prisons Act is not unconstitutional as it prescribes certain preconditions for its applicability. In the present case these conditions did not exist, hence, this section has no applicability in the present case. The provision of bar fetter is not applied to general cases but to extreme cases when there is no other alternative left to secure the safe custody of a prisoner.

¹*Charls Sobhraj v. Suptd. Tihar Jail, New Delhi*, AIR 1978 SC 1514.

The court also stated that the continued bar fetters for days, reduces a prisoner from human being to a mere animal and amounts to cruel and unusual punishment which is not only prohibited by the Human Rights Declaration but is also hit by Article 21 where any unfair and unreasonable procedures are being condemned.

After Sunil Batra case² it is no more open to debate that convict are not wholly denuded of their fundamental rights. However, a prisoner's liberty is in the very nature of things circumscribed by time very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial. Conviction for a time does not reduce the person into a non-person whose right are subject to the whim of a prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards.

"Hand-cuffing is *prima-facie* inhuman and therefore unreasonable, over harsh and at the first flush, arbitrary" echoed the Apex Court in *Prem Shankar Shukla v. Delhi Administration*³. The Court held that it should be used in the rarest of the rare case and they were to be used only when the person was 'desperate', rowdy or the one who was involved in non-bailable offence. Elaborating the principle, the Court said that hand-cuffing should be resorted to only when there is clear and present danger of escape breathing out the police control and for this there must be clear material not merely an assumption.

In spite of it, the cry was not heard and hand-cuffs continued with vengeance. In *Aeltemesh Rein v. Union of India*,⁴ an advocate was arrested on the charge of an offence and as hand-cuffed while he was being taken to the Court. The Supreme Court was surprised and issued guidelines to the Union of India regarding the hand-cuffing of the accused. The Apex Court speaking through *Venkataramiahi J.* observed⁵:

We accordingly directed the Union of India to frame rules or guidelines as regards the circumstances in which hand-cuffing of the accused should be resorted to in conforming with the judgement of this Court referred to above and to circulate them amongst all the State Governments and the Government of Union Territories. This part of the order shall be complied within three months.

²*Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579.

³ AIR 1980 SCC 1535.

⁴ AIR 1988 SCC 1768.

⁵*Id.* p. 1769.

In *Sunil Gupta* case,⁶ the Court directed to the Government of M.P. to take appropriate action against the erring escort party for unjustly and unreasonable handcuffing the petitioner. The Court observed that it is painful to note that the petitioners who staged 'a dharna' for public cause and voluntarily submitted themselves for arrest had been subjected to humiliation by being handcuffed which act of the escort party is in utter violation of the principles underlying Article 21 of the Constitution of India.

In *Harbans Singh v. State of U.P.*⁷, certain Sikh undertrial prisoners were being kept in fetters. The Deputy Jailer stated that these accused were received in the Central Jail on transfer from other Jail, in fetters and keeping in view the security instructions contained in para 427 of the U.P. Jail Manual, due to multifarious cases pending against them for heinous crimes they were kept in fetters for otherwise they were security hazards. Court observed

We fail to understand why proper security arrangement cannot be made in jail to guard these undertrials. Armed guard can be posted to guard them if security reason so demand but it seems, inhuman to keep them in fetters while they are awaiting trial which is delayed notwithstanding this Courts order to expedite them. We are, therefore, of the opinion that while they are in jail proper arrangement may be made but it is not necessary to keep them in fetters all the time. It would, however, be open to the authorities to place extra security restriction of the type they consider appropriate, when they are required to be taken out of fetters in jail.⁸

The Court emphasized in *Kishore Singh*⁹ case, that no solitary confinement and imposition of bar fetters should take place, "save in the rarest of rare case" and with strict adherence to procedural safeguards. Articles 14, 19, and 21 operate within the prison. Human dignity is not to be ignored even in prison.

The Highest Court was again shocked, in *State of Maharashtra v. Ravikant Patil*,¹⁰ in which undertrial suspect of a murder case was hand-cuffed. Both his arms were tied by a rope and paraded through main squares of city for the purpose of investigation. The Court held it to be

⁶ (1990) 3 SCC 119.

⁷ AIR 1991 SC 53.

⁸*Ibid.*

⁹*Kishore Singh V. State of Rajasthan* AIR 1981 Sec. 625.

¹⁰ (1991) 2 SCC 373.

violation of Article 21 and awarded compensation to the victim. It also directed to the authorities to hold enquiry into the matter and punish the guilty in accordance with law.

In spite of it, information of hand-cuffing and bar-fetters was not exception for the Court. *Khedat Mazdoor ChetraSangath v. State of M.P.*¹¹ and *Harbans Singh*¹² are some other shocking cases which have come before Apex Court in which unjustly hand-cuffing came to the knowledge. The Court has continuously relaxed the rigor of the procedural formalities in entertaining the cases questioning the constitutional validity of hand-cuffing. The high handedness of police functioning can be visualized from the case of *Delhi Judicial Service Association v. State of Gujarat*¹³ wherein a judicial officer was not spared by the police. In *Citizens for Democracy v. State of Assam*¹⁴; journalist and human rights activist Kuldip Nayar wrote to the Supreme Court about the dismal condition of undertrials being treated in a hospital in Assam. The police had handcuffed and chained them in the hospital, claiming that they were members of a terrorist organisation, the Union government and the Assam government justified the cruel measures by listing terrorists who had escaped from hospitals in the state. Not convinced by this reply, the court categorically ruled that no prisoner, whether convicted or undertrial, should be handcuffed by the police except after receiving permission from a magistrate.

The court heavily quoted from both Sunil Batra and Prem Shukla judgements as both had elaborately dealt with the extreme situation when the police and jail authorities can resort to handcuffing of the prisoners inside and outside the jail. Yet, the court was compelled to issue more directions while observing, “The directions given by this Court are not being followed and are being treated as a pious declaration. We take judicial notice of the fact that the police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without any justification. It has, therefore, become necessary to give binding directions and enforce the same meticulously.”

Thus, in the strongest words, the court declared :

- We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner – convicted or under-trial-while lodged in a jail anywhere in the

¹¹ (1994) 6 SCC 260.

¹² *Harbans Singh V. State of U.P.* AIR 1991 Sec. 531.

¹³ AIR 1991 SC 2176.

¹⁴ AIR 1996 SCC 2193.

country or while transporting or in transit from one jail to another or from jail to court and back.

- The police and the jail authorities, on their own, shall have no authority to direct the hand-cuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.
- Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate.
- Save in rare cases of concrete proof regarding proneness of the prisoner to violence, 'his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.
- In all the cases where a person arrested by police, is produced before the Magistrate and remand – judicial or non-judicial – is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.
- When the police arrest a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police have also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.
- Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guide-lines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate.

Conclusion

Thus, the stand of the highest court in the country is clear on the use of fetters for restraining prisoners. It considers it to be a humiliating practice that is to be the last resort and only with the permission of the Magistrate and is not left up to the discretion of the police. In the arena of human rights any incident of police brutality creates a great danger to human dignity and

constitutes an inroad into the right to life and therefore, prohibitive of Article 21 of the Constitution. It is, however, imperative to recall that the police in India have to perform a difficult and delicate task as the horizon of human rights of individuals during and after arrest, is expanding and at the same time the law and order situation, dominated by communal riots, violent organised crimes by proclaimed underworld 'dons' and 'armed' gangsters, and terrorist acts, is deteriorating at an unprecedented pace. In these circumstances, it is necessary to strike a balance between the security of the society and human dignity of an individual. That is why instead of imposing a complete ban on the handcuffing and bar fetters, the apex court has allowed its limited use in the rarest of rare cases.