

**HANDCUFFING OF ARRESTED PERSONS VIS-A-VIS THE HUMAN RIGHTS
- A CRITICAL ANALYSIS IN THE LIGHT OF THE PROVISIONS OF
CRIMINAL PROCEDURE CODE, 1973 AND THE JUDICIAL VERDICTS**

By

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Introduction:

The practice of fettering a person with irons is as old as the civilization itself. It was followed in ancient times in various countries of the world. Among the judicial circles this concept originally coined as “hands-off”, practiced against a person who committed a crime. It was considered as the salve of the State. The harshest blow to the old “hands-off” doctrine was struck in the United States by *Monroe v. Paper*, (1961) 365, US 167, 5 L Ed 2d 492 (See the judgment of the Supreme Court in *Sunil Bhatra* case, AIR 1978 SC 1675). In India too, binding a person with iron chains hands and legs through the body was a common practice against all those who are considered as the enemies of the State. Under the Prison’s Act, 1894, Section 56 empowers the Superintendent of Jail to part a prisoner in bar fetters when he considers it necessary, with reference either to the state of prison or character of the person, and for the safe custody of prisoners. This provision has become the harbinger of using “hand-cuffs” even in case of arrested persons, other than the prisoners.

Under the Code of Criminal Procedure, 1973 police are empowered amply to arrest a person on the accusation of any offence. The aftermath of arrest often witnesses appalling position when the police handcuff the arrested person in a whimsical manner as a means of ensuring that the arrested person

does not escape from their custody. It looks *prima facie* as an attack on the Basic Human Rights of persons under arrest. This practice is adopted often indiscriminately in respect of whether a person is accused or under-trial or a prisoner in spite of issuing of appropriate guidelines/directions by the Supreme Court of India, to the contrary.

A review of the various guidelines, directions and orders issued by the higher judiciary of the country indicates that handcuffing is *prima facie* illegal, barbaric and against the right to life assured under Article 21 of the Constitution of India. However and apparently such guidelines/directions *etc.*, are not only not paid any heed by the persons, especially the police, who are empowered to undertake arrest, but also no due publicity or awareness is brought among the people in general and police people in particular. As a result, handcuffing is followed as a usual procedure permitted under law. In such a situation, it is felt appropriate to undertake a review of the law and the judicial decisions relating to the subject, to ascertain the legality and illegality in following handcuffing as a measure of lawful detention of a person who is required to be brought before the competent authorities in the process of judicial administration. The present article examines these aspects and provides for suitable suggestions in meeting the growing need for protecting the Human Rights of the people

involved in the criminal law administration, and to evade the practice of handcuffing of persons under detention.

Law relating to handcuffing:

As already mentioned above, Section 56 of the Prison's Act, 1894 statutorily permits use of bar fetters for three purposes, namely, (i) when the Superintendent of the Jails considers it necessary, (ii) with reference either to the state of prison or character of person, and (iii) for the safe custody of the prisoners. Although there is no specific law relating to "Handcuffing" under the Cr.P.C., or in any other law, that concept has relevance to the term "Arrest". This is because; police adopt the practice of handcuffing in respect of an arrested person, with the sole objective of ensuring that the arrested person does not escape from the custody. Thus, it is pertinent now for discussing about the term "arrest" before going to discuss about the term "Handcuffing".

(a) Arrest - Its meaning and manifestation:

Chapter V of the Cr.P.C. provides a legal process for the arrest and detention of persons by the police. Sections 41 to 43 of the Code contemplate the situations under which police may arrest a person without a warrant. Section 46 provides for the manner in which arrest of a person can be made. Section 49 of the Code imposes restrictions on the police not to subject the arrested person to more restraint than is necessary to prevent his escape. Sub-section (3) of Section 46, emphasizes that a police officer or other person making the arrest will have no right to cause the death of an arrested person who is not accused of an offence punishable with death or imprisonment for life. This in other words also means that a police officer or other person can cause the death of an arrested person, if such arrested person is accused of an offence punishable with death or imprisonment for life. Of all these provisions, Section 49 of

the Cr.P.C. has relevance to the present study. However, before understanding the scope of Section 49, it would be pertinent to understand as to how an arrest shall be made. This aspect is covered under Section 46 of the Code. Section 46 of the Code reads as follows:

- (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
- (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to affect the arrest.
- (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

Analysis of Section 46

An analysis of sub-section (1) of Section 46 of the Code reveals the following aspects:

1. An arrest can be made by touching the body of the person to be arrested, or
2. An arrest can be made by confining the body of the person to be arrested. The term confining is not defined under this Code, and the dictionary meaning thereof is to keep within limits, restrict, to keep shut up, as in prison, in bed because of illness indoors, *etc.*" (See Webster's New World Dictionary, Third College Edition), and
3. The conditions contemplated in Item Nos.1 and 2 above are permissible only where the person to be arrested does not submit himself voluntarily to the custody by word or action.

Thus, if the person to be arrested does not submit himself to the custody by word

or action, the police officer or other person making the arrest shall touch or confine the body of the person to be arrested, but it does not permit the person causing the arrest to the extent of handcuffing the person to be arrested.

An analysis of sub-section (2) of Section 46 of the Code reveals the following aspects:

1. Where a person resists the endeavour to arrest the person to be arrested, or attempts to evade such arrest, the police officer or other person causing the arrest may use all means necessary to affect the arrest. That means, a police officer or other person causing the arrest may use all means necessary to affect the arrest, but he has no power to handcuff a person who is arrested.
2. Sub-clause (2) does not define what is meant by “use all means necessary to affect the arrest”.

An analysis of sub-section (3) of Section 46 of the Code reveals the following aspects:

1. Section 46 does not give a right to the police officer or other person causing the arrest to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life, and
2. Section 46 does give a right to the police officer or other person causing the arrest to cause the death of a person who is accused of an offence punishable with death or with imprisonment for life.

The above analytical information of Section 46 when read as a whole reveals that the said section has no relevance to the post-arrest methods, but envisage only pre-arrest methods facilitating the arrest of a person, and therefore it has no direct relevance to the present study, but the provisions of Section 49 of the Code are relevant. This section runs as follows:

“The person arrested shall not be subjected to more restraint than is necessary to prevent his escape”

Analysis of Section 49

An analysis of Section 49 reveals the following aspects, namely:

1. that there shall be a person under arrest (*i.e.*, a person has already been arrested),
2. that there is some possibility of the arrested person to escape from the custody of the person who caused the arrest/escort party,
3. that there is a need to restrain the escape of the arrested person,
4. that the person who caused the arrest/escape party has the knowledge as to the degree of restraint necessary to prevent the escape of the arrested person, and
5. that the proposed degree of restraint shall not be more than what is necessary to prevent the escape of the arrested person.

Thus, Section 49 imposes a duty as well as discretion on the person who causes the arrest/escort party not to subject the arrested person to more restraint than what is necessary to prevent the latter's escape. However, that section is silent to provide for any calculative procedure as to the degree of requisite restraint and it all depends on the facts and circumstances of each case. This is an area of legal lacunae.

(b) Persons who can be subjected to the practice of handcuffing.

Although there is no express provision under the Cr.P.C., to that effect, a perusal of the reported instances indicates that the practice of handcuffing provides that handcuffing is adopted in respect of the following categories of persons, namely:

1. handcuffing of an arrested accused, while in police custody,
2. handcuffing of a pre-trial detainee, and
3. handcuffing of the prisoners.

(c) Purposes for which the practice of handcuffing can be adopted

The report literature reveals that for the following purposes handcuffing practice has been adopted:

1. for keeping the arrested person in a more secured manner,
2. for restraining the escape of the arrested person while taking him from the place of arrest to the place of detention, and *vice versa*, and
3. for ensuring non-escape of the arrested person while taking from the place of detention to the Court and *vice versa*.

Judicial Trends on Handcuffing

A survey of the cases reported on the topic of "Handcuffing" reveals that the following are the important judgments rendered by the higher judiciary in the country, in the context of handcuffing (in a chronological order):

1. *Sunil Batra v. Delhi Administration and others, etc.*, AIR 1978 SC 1675 = 1978 Cri. LJ 1741.
2. *Prem Shanker Shukla v. Delhi Administration*, (1980) 3 SCR 855 = AIR 1980 SC 1535.
3. *Sunil Gupta v. State of M.P.*, (1990) 3 SCC 119.
4. *State of Maharashtra v. Ravikant*, (1991) 2 SCJ 54.
5. *Khedat Mazdoor Chetna Sangh v. State of Madhya Pradesh and others*, 1994 AIR SCW 4026 = AIR 1995 SC 31
6. *Citizen's for Democracy v. State of Assam*, AIR 1996 SC 2193 = (1995) 2 SCJ 308.

In the light of the judgments rendered in the above cases, the following aspects emerge:

1. *Handcuffing of under-trial prisoners is prima facie inhuman and against the Right to Life guaranteed under Article 21*

As early as in 1980, the Apex Court, speaking through Krishna Iyer J, for self and on behalf of O. Chinnappa Reddy, J, while dealing with the case of *Premshankar v. Delhi Administration*, AIR 1980 SC 1535, held, "Handcuffing is *prima facie* inhuman and therefore unreasonable, is over harsh and at the first flush, arbitrary". Absent fair procedure and objective monitoring to implicit "irons" is to resort to zoological strategies repugnant to Article 21. It was further held, "to prevent the escape of an under-trial is in public interest, reasonable, just and cannot by itself be castigated. But to bind a man hand-and-foot fetter his limbs with hoops of steel, scuffle him along in the streets and stand him for hours in the Courts is to torture him, defile his dignity, vulgarise society and foul the soul of our Constitutional culture. It was also further held that "A law which handcuffs almost every under-trial (who presumably be innocent) is itself dangerous. In this case, Pathak, J., while dissenting partly with the majority view, suggested to leave the matter as to whether there is the need to handcuff an under-trial, with the authority responsible with the custody of the prisoner. This finding of the Apex Court is declared mandatory under Articles 141 and 144 of the Constitution of India by the same Court in *Citizen's Democracy v. State of Assam*, AIR 1986 SC 2193.

While reiterating the principles laid down in the *Premshankar's* case (supra) the Supreme Court in *Sunil Gupta v. State of M.P.*, (1990) 3 SCC 119, further held that it is most painful to note that the Petitioners 1 and 2 who staged a 'dharna' for public cause and voluntarily submitted themselves for arrest and who had no tendency to escape had been subjected to humiliation by being handcuffed which act of the escort party is against all norms of decency and which is in

utter violation of the principle underlying Article 21 of the Constitution. We strongly condemn this kind of conduct of the escort party arbitrarily and unreasonably humiliating the citizens of the country with obvious motive of pleasing 'someone'. Even if extreme circumstances necessitate the escort party to bind the person in fetters, the escort party should record the reasons for doing so in writing, and it is for the Court to approve or disapprove the action of the escort party and issue necessary directions. (See also *Kbedat Mazdoor Chetna Sangh's case*, AIR 1995 SC 31).

2. *Handcuffing of hospitalized prisoners is against the international law and the law of the land*

In *Citizen's for Democracy v. State of Assam*, AIR 1996 SC 2193, the Apex Court of India held *inter alia* that handcuffing and in addition tying with ropes of the patient prisoners lodged in the hospital is inhuman and in utter violation of human rights guaranteed under the International Law and Law of the Land.

As held in *Sunil Batra's case* (supra), Section 56 of the Prison's Act does not permit the use of bar fetters for an unusually long period, day and night, when the prisoner is confined in secure cells from where escape is inconceivable. Use of bar fetters must be with reference to safety and security of the prisoner with due consideration of the character and propensities of the prisoner, after application of mind. The nature and length of sentence or the magnitude of the crime have no relevance.

3. *Handcuffing of prisoners - how and when permissible - Declaration of the Supreme Court*

In *Citizen's for Democracy v. State of Assam*, AIR 1996 SC 2193, the Supreme Court, while holding that the law declared by the Supreme Court in *Shukla's case* (AIR 1980 SC 1535 and *Sunil Batra's case*, AIR 1978 SC 1675) is a mandate under Articles 141 and 144 of the Constitution of India, binding on all concerned, further made the following declaration and rules which are obviously

statutory guidelines to be followed until the same are incorporated in the respective laws by means of an amendment:

1. Handcuffs or other fetters shall not be forced on prisoners - convicted or under-trials.
2. The police and jail authorities on their own shall have no authority to handcuffing of any inmate of a jail or during transport from one jail to another or from jail to Court and *vice versa*.
3. Where police/jail authorities have well grounded basis to infer the jumping or breaching out of custody by a prisoner, then such prisoner must be produced before the Magistrate concerned and seek permission to handcuff.
4. When the police arrest a person in execution of a warrant of arrest obtained from a Magistrate, the person arrested shall not be handcuffed unless the police to that effect obtain orders from the Magistrate.
5. Where a person is arrested by the police without warrant, the police officer may if he is satisfied, on the basis of guidelines given in the above para that it is necessary to handcuff such a person, he may do so till the time the arrested person is taken to the Police Station and thereafter his production before the Magistrate.
6. Violation of the above directions by Police Officials/Judicial Officials is summarily punishable under the Contempt of Courts Act, apart from penal consequences under law.
4. *Conditions under which a Magistrate can grant permission*

In the *Citizen's for democracy case* (supra), the Apex Court stipulated necessary conditions under which a Magistrate can grant permission to handcuffing, namely:

- (a) Producing proof regarding proneness to violence, escaping tendency, and that the arrested person is dangerous/desperate and
- (b) In case of 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 are obtained from the Magistrate at the time of granting the remand.

Conclusion and suggestions

(a) Conclusions

In view of the above discussion relating to law and judicial verdicts dealing with handcuffing, it can safely be said that the existing law and judicial decisions provide scope for handcuffing of a person under arrest/trial/imprisonment subject to the approval or permission of the Judicial Magistrates concerned. However, as already mentioned, there is a flaw in the provisions of the Cr.P.C., which permit the police/escort party to handcuff a person under their custody. Added to that provisions of Cr.P.C., are the judicial decisions that also allow such practice subject to the condition of obtaining prior permission of the concerned Magistrate. But in reality, there may be occasions where police initially cannot predict that the person under their custody may escape if handcuffs are not fixed, but on the way such person may attempt to escape thereby compelling the escort party to use handcuffs, whereby the police/escort party may not have sufficient time/opportunity to obtain the permission of the concerned Magistrate on the spot. Similarly, where, if the police/escort party is empowered to use handcuffs, they may misuse such power by handcuffing the persons under their custody

even if there is no scope for the escape of the person to be handcuffed. Therefore, there is greater need to look into this aspect and bring necessary changes in the Cr.P.C., as well as the Prison's Act, by appointing an Expert Committee and requiring it to make necessary suggestions to that effect.

(b) Suggestions:

Pending such an exercise as aforementioned, there is compelling need to modify Sections 46 and 49 Cr.P.C., paving a way for respecting the Human Rights, in the manner hereinafter provided:

1. Section 46: A new sub-section *i.e.*, sub-section (4) may be added in Section 46 which may read in the following words:

“(4) The provisions of Section 49 shall apply in respect of a person arrested under this section”.

2. Section 49: A new sub-section *i.e.*, sub-section (2) may be added, besides indicating that the existing part of Section 49 being treated as sub-section (1), which may be worded more so in the following manner:

(2) No person arrested shall be handcuffed except with the approval of the concerned Judicial Magistrate who shall record the reasons for such approval:

Provided where there is no opportunity for the person causing the arrest to obtaining the approval of the concerned Judicial Magistrate, and there is an attempt by the person arrested to escape, then the person causing the arrest or the head of the escort party, can use handcuffing, by recording the reasons for doing so, until the arrested person is produced before the concerned Judicial Magistrate.