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Research Article

COMPARISON OF HANDCUFF LAWS IN INDIA AND SINGAPORE

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ABSTRACT

Handcuffing is prima facie inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict irons is to resort zoological strategies repugnant to Art. 21. Thus, we must critically examine the justification offered by State for this mode of restraint. Surely, the competing claims of securing the prisoners from fleeing and protecting his personality from barbarity have to be harmonised. To prevent the escape of an under trail 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, shuffle him along 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. Insurance against escape does not compulsorily require handcuffing. There are other measures whereby an escort can keep safe custody of a detenu without the indignity and cruelty implicits in handcuffs or other iron contraptions. Indeed, binding together either the hands or feet or both has not merely a preventive impact, but also a punitive hurtfulness. Manacles are mayhem on the human person and inflict humiliation on the bearer.

INTRODUCTION

The Encyclopedia Britannica, Vol. II (1973 Edition) at p. 53 states "Handcuffs and fetters are instruments for securing the hands or feet of prisoners under arrest, or as a means of punishment."

The persons arrested by Law-enforcement Agencies and the Prisoners requiring to be produced before a Court, routinely require to be secured during transit. The arrest could be either in pursuance of a Warrant issued by Court or without a warrant in appropriate cases. In India, the basic law for arrest is laid down in Chapter V of The Code of Criminal Procedure 1973.

Sec 46(1) of the code states as: "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."

Sec 46(2) of the Code is: "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 me ans necessary to effect the arrest."

For Female arrestees the Code provides for special provisions as follow:

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Sec 46(1)- where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

Sec 46(4) - No women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Sec 49 of the Code further deals with Unnecessary Restraint - The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Sec 55-A. Of the Code was inserted by the Code of Criminal Procedure Amendment Act, 2008 - Health and safety of arrested person. – It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused.

The Rules for securing the arrested person are contained in the State Police Manuals, monstly in chapters dealing with the Police Station work or in Chapters dealing with Police Escorts.

As regards the attendance of prisoners for production before Court, the enabling provisions are contained in the

Attendance of Prisoners Act 1955. The State Governments are empowered to make rules to carry out the provisions of this Act. However the practical position is that the Prison authorities handover the prisoners required for production before court to the Police Escort Party at the Jail gate and then onwards it is the police which is responsible for securing the prisoner till the prisoner is again handed back to the jail or otherwise disposed off in accordance with Court Orders. They follow the Rules relating to Escorts contained in the State Police Manuals. It is these Rules and their implementation which has come to the adverse notice of Courts time and again.

Need For Securing the Arrested Person or Prisoner

Besides the important reason which is clear by section 49 of the Code that is to prevent his escape, there are other cogent reasons which are apparent on the face of the issue. Most important is that unsecured arrested person is easy to be forcibly taken away not only by the well-wishers of the arrested person but by his arch enemies also. Secondly it is also important to distinguish the arrested person and prisoner from other persons in the Crowd that is so common during Transit through train, Bus and other public transport and also in the Court Premises. Their inter-mingling with the crowd and possibility of melting away in the melee is not desirable. In any case the arrested person should not be tempted to develop a feeling that there are opportunities galore for his easy escape. Target hardening needs to be conspicuous. There have also been cases where after arrest an unsecured prisoner tried to commit suicide by jumping out from the vehicle or train or cause hurt to him.

All over the world, handcuffing is the preferred and most prevalent method of effecting arrest. While making arrest, not many countries make any confession from handcuffing even to women arrestees. In fact the copybook method of handcuffing is to handcuff both the hands tied together from behind. The law in most of the countries does not make a distinction on various methods of securing arrestee based on the gravity of the offence. If the arrest is to be made, it is mostly by immediate handcuffing. In most of the countries the arresting team has a vehicle ready for carrying the arrestee to the Police Station and after conducting a mandatory body search the arrestee is immediately placed in the vehicle. The occasion for parading in full public view with handcuffs on, does not arise at all. Another difference is that of the material of which the Handcuff is made of. Nowadays a modern handcuff is no longer the traditional Metal Handcuff as normally used in our country. We also still use manila rope to hold on to the Handcuffed person making him no better than the spectacle of performing monkey with reins in the hand of the Madaari.

The three components of "iron" forced on the human person must be distinctly understood. Firstly, to handcuff is to hoop harshly. Further, to handcuff is to punish humiliatingly and to vulgarize the viewers also. Iron straps are insult and pain writ large, animalizing victim and keeper. Since there are other ways of ensuring security, it can be laid down as a rule that handcuffs or other fetters shall not be forced on the person of an under-trail prisoner ordinarily. The latest police instructions produced before us heartrendingly reflect this view. We lay as necessarily implicit in Art 14 and 19 that when there is no compulsion need to fetter a person's limbs, it is sadistic, capricious despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Art 14 on the face. The criminal freedom of movement which even a detainee is entitled to under Art 19 cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe-keeping. Once we make it a constitutional mandate that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort and we declare that to be the law-distinction between classes of prisoners becomes constitutionally obsolete. An affluent in custody may be as dangerous or desperate as an indigent, if not more. He may be more prone to be rescued than an ordinary person. We hold that it is arbitrary and irrational to classify, prisoners for purpose of handcuffs, into "B" class and ordinary class. No one shall be fettered in any form based on superior class differentia, as the law treats them equally. It is brutalizing to handcuff a person in public and so is unreasonable to do so. Of course, the police escort will find it comfortable to fetter their charges and be at ease but that is not a relevant consideration."

Precents in India

CASE: Suo Motu Contempt Petititon no. 10 of 1996, CIV vs. Respondent (MP Dwivedi and Others) 1996 SCC (1) 718 Decided on 8/1/1996 by a Judge Bench

Contemnors were Supdt of Police Jhabua, SDPO Alirajpur, Town SI Alirajpur, SI Sendua, Head Constable Sendua PS, SDM Alirjpur, JM First class Alirajpur.

Issue: Handcuffing and Parading (in 1992/1993) the arrested members of Khedat Mazdoor Chetna Sangath working for upliftment of Tribals in District Jhabua, in streets of Alirajpur and producing arrestees in handcuffs before the JMFC. The under-trail had been arrested for agitating on the construction of dam (Sardar Sarovar Dam on River Narmada).

The handcuffing was sought to be justified in terms of MP Police Regulation Para 465 under the caption "the list of prisoners who has to be handcuffed". Further it was stated that the under-trails were likely to escape, and a large crowd collected could have forced their release.

Court ordered that MP Police Regulations be suitably amended so as to take note of Judgement in Prem Shankar Shukla v. Delhi Administrator's case and ordered entries in Personal files of Contemnors about Supreme Court's disapproval of their conduct in the case.

Case: Sunil Batra v. Delhi Administration and Others 1978 AIR 1675 decided on 30th August, 1978:

The Court examined if the power conferred on the Superintendent by s. 56 is unguided and uncanalised in the sense that the Superintendent can pick and choose a prisoner arbitrarily for being subjected to bar fetters desirable, punitive or otherwise. It said," A bare perusal of s.56 would show that the Superintendent may put a prisoner in bar fetters (i) when he considers it necessary; (ii) with reference either to the safe custody of the prisoner or character of the prisoner; and (iii) for the safe custody of the prisoner. Now we would exclude from consideration the state of prison requirement because

there is no material placed on record to show that the petitioner was put in bar fetters in view of the physical state of the Tihar Central Jail. But the Superintendent has first to be satisfied about the necessary of putting a prisoner in bar fetters and "necessity" is certainly opposed to mere expediency. The necessity for putting the prisoner in bar fetters would have to be examined in the context of the character of the prisoner and the safe custody of the prisoner. The safe custody of the prisoner comprehend both the after custody of the prisoner who is being put in bar fetters of his companions in the prison. We must here bear in mind that the Superintendent is required to fully record in his Journal and in the prisoner's history ticket the reasons for putting the prisoner in bar fetters. Thus the power conferred by section 56 is neither un-canalised nor unguided".

The Ruling given in above case was reiterated in Kishor Singh v. State of Rajasthan (AIR 1981 SC 625) in which there was inter-alia allegation that the prisoner was manhandled severely by the escort police while being brought to the Court. The Supreme Court ruled that the provision of Article 21 of the Constitution of India continue to apply to the prisoner. The respect for human person and sympathy for Humanist creed were underlined by the Court and asked for suitable changes in the Police and Prison Rules. In a subsequent case (Delhi Judicial Service Association v. State of Gujarat, AIR 1991 SC 2176) involving handcuffing of a Chief Judicial Magistrate, the Supreme Court has issued guidelines regarding arrest and detention of judicial officers. These guidelines inter-alia provided:

"(vii) There should be no handcuffing of a Judicial Officer. If however violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. But the burden would be on the establish the necessity for effecting physical arrest and handcuffing the judicial officer and if it is established that the physical arrest and handcuffing the judicial officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and / or damages as may be summarily determined by the High Court."

Case: Sunil Gupta and others v. State of Madhya Pradesh and Ors 1990 SCC (3) 119 decided on 02/05/1990: The issue was whether the Escort party followed the instructions for Handcuffing as contained in Madhya Pradesh Police Regulation Chapter VII Part III Rule 465-Prisoners-Handcuffs- use – of – as at all permissible. This Rule provides that "When a prisoner is to be taken from Court to Jail or Jail to court in the custody, the Magistrate or the Superintendent should give instructions in writing as to whether the prisoner will b handcuffed or not and the Escort commander shall follow the instructions. Further even if "the instructions are for not to handcuff the prisoner and thereafter due to some reasons if the Escort commander feels that it is necessary to handcuff the prisoner, he would do so in spite of the instructions to the contrary.

The Court (per Justice Pandyan S.R. for Justice Jayachandran Reddy and self) held that the handcuffing was unjustified and recorded its disapproval. The government of Madhya Pradesh was directed to take appropriate action against the erring escort party for unjustly and unreasonably handcuffing petitioners in accordance with law. It said that "even if the extreme circumstances necessitate the escort party to bind the prisoners in fetters, the escort party should record the reasons for doing so in writing and intimate the Court so that the court considering the circumstances either approves or disapproves the action of the escort party and issue necessary directions."

CASE: Prem Shukla v. Delhi Administration 1980 SCC 526

The under-trail prisoner had sent telegram to Supreme Court complaining about handcuffing while taking him to Court and back. While Delhi Administration pointed out the necessity of Handcuffing the petitioner as he was a crook wanted in a number of cases and could hoodwink the Escort Party in escaping, the petitioner claimed that he was a "better class" prisoner and deserved more respectable treatment as provided in Rule 26.21A of Punjab Police Rule.

Court ordered that "the practice of Handcuffing as a routine be strictly stopped forthwith. They should be used only when the person is desperate, rowdy, or is involved in a non-bailable offence. There should be normally no occasion to handcuff persons occupying good social position in public life, or professionals like Jurists, Advocates, doctor, writers, educationalists and well known journalists."

Court further held that "the only circumstance which validates incapacitation by irons – an extreme measure is that otherwise there is no other reasonable way of preventing his escape, in the given circumstances. Securing the prisoner being necessity of judicial trail, the State must take steps in this behalf. Heavy depreciation of personal liberty must be justifiable as reasonable restriction in the circumstances. So it is that to be consistent with Articles 14 and 19 handcuffs must be the last refuge not the routine regimen. If a close watch by armed policemen will do then no handcuffs. If alternative measures may be provided, then no iron bondage. This is the legal norm."

Justice R.S.Pathak stated as, "Now whether handcuffs or other restraint should be imposed on a prisoner a matter for the decision of the authority responsible for his custody. The matter is one in which the circumstances of the case may differ from one another and inevitably in some cases it may fall to the decisions of the escorting authority midway to decide on imposing a restraint on the prisoner. Court concerned could be informed by custodial authority and the court could work out the modalities and whether to handcuff or not could be left to be dealt with the Magistrate in light of his observations."

CASE: Citizens for Democracy v. State of Assam and Ors – 1995(3) SCC 743

The Court then laid down that

1. As a rule handcuffs or other fetters shall not be forced on a prisoner-convict or under-trial-while lodged in a jail 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.
2. 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.

3. 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.
4. When the police arrests a person in execution of a warrant of arrest obtained form a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.
5. 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. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

The Court directed all ranks of police and the prison authorities to meticulously obey the above mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law. The writ petition was allowed in the above terms. No costs.

Handcuff Laws in Singapore

Article 11(1) of the Constitution of Singapore provides that no person shall be made to suffer greater punishment for an offence than was prescribed by law at the time it was committed.

The police force is employed in Singapore for the maintenance of law and order, the preservation of the public peace, the prevention and detection of crime and the apprehension of offenders (s 8 of the Police Force Act (Cap 235)). The police force as part of its duties is required to take lawful measures for attending the criminal courts, keeping order therein, and escorting and guarding prisoners (s 38). Police officers are provided with staves, arms, ammunition and other accoutrements necessary for the effective discharge of duties. The exercise of police powers and the use of weapons and equipment provided to the police must be lawful. The governing principle can be gathered by reference to the provisions on the use of force when making an arrest.

Section 24 of the Criminal Procedure Code (Cap 68) ('CPC') requires a police officer or other person making an arrest, to actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action. If arrest is resisted, or an attempt made to evade the arrest, the officer may use all means necessary to effect the arrest. Where there is submission the use of force is not permitted.

Simultaneously, s 28 of the CPC provides that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape. The principle is clear:

Restraint may be imposed where it is reasonably apprehended that the prisoner will attempt to escape. The restraint should be sufficient and necessary to prevent escape. Weapons may be used only against prisoners using violence or when the police officer has reasonable ground to believe that a police officer is in danger of life or limb or that grievous hurt is likely to be caused to him.

A police officer who acts in the capacity of an escort or of a guard for the purpose of ensuring the safe custody of any prisoner or prisoners, is deemed to have all the powers and privileges granted to prison officers under s 31 of the Prisons Act (Cap 247). He may use any weapon against any prisoner escaping or attempting to escape and may continue to use the weapon so long as the attempt is actually being prosecuted. Weapons may be used against prisoners if the police officer has reasonable grounds to believe that the police officer or other person is in danger of life or limb, or other grievous hurt is likely to be caused to him.

Singapore Precedents

The court's approach to snapping handcuffs and interfering with the liberties of accused persons in Singapore courts is not without good precedents.

The accused persons in the case of ***Tan Kheng Ann v PP [1965] 2 MLJ 108,*** had vividly demonstrated their capacity for violence by tearing down a prison settlement by setting fire to buildings and killing four prison officers. The accused were only gagged and handcuffed in the jury trial, after they had destroyed exhibits and threatened to disrupt court proceedings after being warned. The handcuffs and gags were removed soon after the accused persons conducted themselves properly. There were more than 50 accused persons charged with murder and other offences.

Nearly 100 accused persons associated with a political party in an unlawful assembly case before a district judge became unruly at a hearing and damaged some court fittings. A special dock was constructed in a school hall. Benches were screwed down to prevent their removal. The riot police stood by and court proceedings took place. The accused refused to stand up when the judge appeared. The judge told counsel for the accused and the accused that he was adjourning proceedings and coming back. He made it plain that when he next appeared he expected the accused to stand up. And if they did not he would deal with them according to law. The accused did not stand up. They were sent back to prison. They were punished for contempt of court. The courts, even when provoked and dealing with accused who had demolished a penal settlement and killed prison officers, were slow to disregard the presumption of innocence that applies to all accused persons and ensures fair trials.

In a rape case, before the High Court before Choor Singh J, one of the accused threw his slipper at the judge. The Deputy Public Prosecutor applied for the accused to be handcuffed. The application was refused. The presumption of innocence

was respected by the court. The accused who sent his slipper hurtling towards the judge was punished for contempt of court at the end of the trial after he had been found guilty and convicted.

CONCLUSION

The safety of arresting / escorting team personnel from violence by arrested person/prisoner or his friends/enemies is a real possibility and not a figment of imagination. The prestige and comfort of prisoner / arrested person has to be balanced by the harsh realities of day to day crime situation in that area. The much touched use of video conferencing to mark the Prisoners presence in Court is not a practical or feasible solution considering large number of prisoners required to be produced before different Courts every day. Those not released on bail or personal bond by Police or released after questioning were produced before the court. Thus the problem of incident free arrest and safe carriage of prisoner is really gigantic for our country. The spread of technology required for such video coverage is also limited to big towns, whereas the Courts are also located in Moffusil areas. Its use is also dependant on stable power supply and noiseless communication channel both of which are not assured in rural areas.

The meaning that should be given to the words 'life' and 'liberty' in art 9 to quote Field J in the American case of *Munn v Illinois* 94 US 113 (1877) is:

Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

By the term 'liberty' as used in the provisions, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develop his capacities, and to give them their highest enjoyment.

References

1. http://mynation.net/docs/handcuffing/#sthash.D3tXmRh7.dpbs, seen on 01.09.2017.
2. http://lawrato.com/criminal-legal-advice/violation-of-the-guidelines-of-the-supreme-court-regarding-handcuff-36192, seen on 31.08.2017.
3. https://networkforimprovedpolicinginsouthasia.wordpress.com/2012/05/15/illegal-practice-of-handcuffing-continues-in-india/, seen on 02.09.2017.
4. https://lawmystery.com/2013/06/10/handcuffs-prisoners-india-human-rights-inhuman/, seen on 01.09.2017.
5. https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/, seen on 01.09.2017.
6. https://singaporelegaladvice.com/law-articles/police-arrest-procedure-in-singapore/, seen on 02.09.2017.
7. http://www.lawgazette.com.sg/2002-10/Oct02-inprac.htm, seen on 03.09.2017.
8. Text book on Criminal Procedure Code by R.V.Kelkar.

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