



HANDCUFFING OF ACCUSED: BALANCING BETWEEN NECESSITY AND VIOLATION OF RIGHTS?

Tanushka Yadav*

ABSTRACT

“Handcuffing is prima facie inhuman act and, therefore, unreasonable; it should be the last resort, not the first kickback.”¹ Representation of arrest is deficient without a picture where the police are handcuffing the arrested person. This kind of scene has left such a permanent stain on our subconscious mind that we connect arrest with handcuffing. During the arrest, detention, and transportation of the accused, the practice of handcuffing came into the picture which shows the reality of laws that view handcuffing as inhumane and degrading. The new criminal law that is Bharatiya Nagrik Suraksha Sanhita (BNSS) governs criminal procedure and plays a crucial role in the context of handcuffing; this practice must also be examined in the light of various rights. As this paper shows, issues in respect of handcuffing were put to rest by the Supreme Court in various judgments. The enforced new criminal law acts as the incentive for this. BNSS grants the authority to police to use handcuffs in a wide range of cases. This paper also explores the interplay between BNSS and various rights and the importance of maintaining the balance between the necessity of law and the violation of accused rights.

KEYWORDS: *Handcuffing, inhuman act, BNSS, Necessity.*

UNDERSTANDING THE CONCEPT OF HANDCUFFING

Handcuffing refers to restraining an accused, to practice any punitive measure and preventive measure, and also for ensuring security but restraining an accused violates or infringes their rights. The new criminal procedure provides rules and regulations in respect of the use of handcuffs. The objective of the provision is to standardize practice on the other hand protect the rights of the accused. Handcuffing is specifically used for those persons who are repeat

*BA LLB, FOURTH YEAR, NIMS UNIVERSITY JAIPUR, RAJASTHAN.

¹ By Justice Krishna Iyer.

offenders or habitual offenders, who escape from custody, who have committed any terrorist act or organized crime, drug-related crime, acid assaulter, rape murder in short any heinous or serious offences. The new act specifies circumstances where handcuffing can be done.

PROVISION UNDER BNSS AND CRPC

According to BNSS, Section 43(3) it provides power to police officers to use handcuffs while making an arrest of a person or while a person is produced before the court but the power can be exercised when police officers keep in mind the nature and gravity of the offense, this provision also specified the person against whom handcuff may be used. The term used in BNSS 'repeat offender' creates a lack of clarity in the light of the nature of the offense i.e. whether in a heinous offense or a petty offense. But on the other side in respect of handcuffing, there was no provision in the old criminal procedure. Now the question is if there was no specific provision previously then is a police officer using handcuffs to arrest a person irrespective of the nature and gravity of the offense? Or, does a police officer have no power to use handcuffs? Both questions raised a valid point but, in that scenario, (Before the BNSS came into force) the judiciary played a crucial role in that case, The judiciary intervened and gave landmark rulings and appropriate guidelines in the matter of handcuffing an accused.

HANDCUFFING VIOLATES INTERNATIONAL DECLARATION AND RULES

Handcuffing is an inhuman treatment against an accused, whether he commits a heinous crime or any petty offense. The concept of handcuffing infringes the principles of the Universal Declaration of Human Rights (UDHR). This declaration recognizes the inherent dignity, and liberty of every human being whether he is accused or not irrespective of race, caste, sex, religion, or place of birth. Further, UDHR draws attention to a few principles of human rights which reflect how handcuffing is inhumane treatment. The principles of UDHR say that all human beings are born free and deserve equal dignity. Handcuffing is torture and cruel towards the person and UDHR protects from this kind of torture as well. In the case of *Regina v. Allan William Horden*², the court held that just because of the reason for escaping of such a person doesn't justify handcuffing in the court. Afterwards, there is an international standard which is the United Nations Standard Minimum Rules for the Treatment of Prisoners this is also known as the Nelson Mandela Rules, this rule was adopted by the United Nations General Assembly in 2015. Rule 47(1) states that the use of chains iron or any other instrument to restrain any

² 2009 EWCA Crim 388.

person must be prohibited because it is painful and degrading to the person. Sub-rule 2 gives a certain exception which states that the restriction can be done if it is authorized by law unless or until it harms that person.

HANDCUFFING VIOLATES FUNDAMENTAL RIGHTS

As we know fundamental rights are given to citizens as well as non-citizens but these rights are not absolute. The person who is in custody may be under trial or detainee or even if he is convicted deprived of his liberty by the law. The concept of handcuffing infringes article 21, 19(1)(d), 14. Handcuffing infringes upon the right to equality, it creates an unequal treatment of the prisoners. Also, it restricts the individual to move freely. Moreover, handcuffing an accused or using handcuff, such practice violates Article 21 because it is prima facie inhuman, unreasonable, and arbitrary. Such deprivation of liberty only if it is permissible by Article 21 of the Indian constitution. In various judgments, it was held that if there is an extreme need to handcuff any person the reason must be recorded for doing so. Handcuffing solely being a potential violation of personal liberty and dignity.

Several landmark judgments shaped the legal framework of handcuffing, these judgments only signify that there must be a balance between the degrees of necessity with the fundamental rights of an individual.

In the case of *Sunil Batra v. Delhi Administration*³ Supreme Court held that Article 21 prohibits the deprivation of personal liberty except by the procedure established by law and curtailment of personal liberty but to that extent which negates the deprivation. The court further held that the mere use of handcuff and other hoops infringes on the right to freedom of movement of an accused even when he is an under-trial prisoner. The main basis or core aspect of this case is to use handcuffs and other hoops like iron chains to present him to court this kind of cruel behaviour infringes the accused's fundamental rights. Fundamentally this kind of treatment reflects inhumane, unreasonable, and cruel towards an accused.

Another landmark judgment *Prem Shankar Shukla v. Delhi Administration*⁴, the core of this case regarding the examination of the rationality of handcuffing, which means if there is an extreme need to handcuff an accused then there should be a fair procedure and objective behind it. The objective of handcuffing is to prevent the escape of an under trial, the object is

³ AIR 1978 SC 1675.

⁴ AIR 1980 SC 1535.

concerning the public interest, just and reasonable, but to restrict a person whose charges are not proved yet still he has to suffer this kind of cruel treatment. This is unfair to an individual to bind a man for the public concern but it needs to be understood that the handcuffed person is also a part of the public or society and they have certain rights. The court observed that there is no mandatory provision to handcuff a person also handcuffing must be the last resort, not the routine regime, because if handcuffing is done on a casual basis, then it harms the dignity, and liberty of a man. The court also observed that there must be the use of handcuffs for a serious nature of crime if needed. Further, the court held that if any officer handcuffs a person, he has to show cause and a justified reason to handcuff such person.

After these judgments, the case came into the picture that is *Citizens for Democracy v. State of Assam and Ors.*⁵, the court heavily cited the reference of these two cases discussed above. This case is based on the suo motto which through a letter from the journalist court takes cognizance of this case. In this case, the court highlighted that their officers and other authorities used handcuffs to resort to the accused inside or outside the jail. Yet, the court issued orders and directions in respect of these scenarios and said that whosoever does not follow this direction is liable for the punishments or other penalties. The court issues the following directions:

- The court declares, directs, and lays down as a rule handcuffs and other hoops shall not be forced on a prisoner for the purpose of transportation from one jail to another jail even another country to the prisoner whether under trial or convicted.
- Any authority or officer on their own or under the obligation of law shall not use any handcuff or other fetters for transportation of the accused.
- When the police officer or jail authority has reason to believe that the accused must escape or jump from their custody then the prisoner must be produced before the magistrate and with the leave of the magistrate also pray in front of the magistrate to grant permission to use handcuffs.
- It is the discretionary power of the magistrate to grant permission because it is not a matter of right if the magistrate is satisfied with the reason of the police officer or jail authority then only the magistrate may grant permission.
- As per the procedure when the person is arrested within 24 hours the person must be produced before the magistrate and the person must not be handcuffed also during

⁵ 1995 (3) SCR 943.

police custody or judicial custody the person must not be handcuffed unless special order from the magistrate.

Thus, these directions gave liberty to the accused and an action by the court to maintain the dignity of the accused whether he is convicted or under trial. In 2012 a police officer was penalized and liable to pay 5000 rupees for detaining a person by using handcuffs without prior approval of the magistrate.

CONSTITUTIONAL AND LEGAL VALIDITY OF SECTION 43(3) OF BNSS⁶

Section 43 sub-section 3 of BNSS grants statutory power to police officers to use handcuff at the time of arrest or while producing the person before the court but in cases where the person is a habitual offender or repeat offender, or escape from custody, or if they commit any heinous nature of the offense. Under Crpc⁷ There is no specified provision in respect of the use of handcuffing towards the accused but BNSS categorizes a sub-section where they grant power to police officers. But there is an absurdity in this sub-section in the term 'habitual or repeat offender' where these habitual offenders may be in heinous offenses as well as in petty offenses, the particular differentiation is missing in the sub-section. This absurdity and vagueness create a lot of litigation.

Further, the sub-section of the said section grants power to police officers means now it becomes a discretionary power of police without any prior approval of the magistrate to handcuff an accused or not but in the old criminal procedure it's the discretion of the magistrate as we discussed in the above cases. Sub-section 3 of section 43 violates article 21 of the Indian constitution because it harms the dignity of the prisoner whether he is convicted or under trial, the various judgments of the Supreme Court have consistently upheld that handcuffing is an inhumane practice, unreasonable, and arbitrary.

HANDCUFFING: NECESSITY OR VIOLATION OF RIGHTS?

Handcuffing is a necessity as well as somehow violates the rights of an individual/accused it is necessary that there should be a balance between both of them. When a person commits any offense which is oblivious it must be against the public interest or society whether the offense is in the category petty or heinous, but on the other hand, if there are different punishments as

⁶ Bharatiya Nagrik Suraksha Sanhita

⁷ Old criminal act.

per the context of the offense or the gravity of the offense then why the treatment could be same. Handcuffing is a violation of fundamental rights as well as human rights but it is equally necessary for various reasons:

Preventing escape from custody – handcuffing of accused helps to prevent the unnecessary escape of a prisoner. Specifically in that situation where the accused is a habitual offender in grave or heinous offenses or particularly involved in offenses related to organized crime, terrorist acts, and national security concerns.

Safety measures for police officers and jail authority – if we talk about the safety, dignity, and liberty of an accused then on the other side the jail authority or police officer's safety is equally mandatory. If any accused is in danger and causes harm to the authorities, that's why handcuffing is necessary.

Insanity – if any person / accused is insane and unsound, it must be ensured that the activities of that person couldn't harm the other person. Handcuffing helps to prevent this kind of nuisance.

Approval/Permission of magistrate – where the magistrate grants permission to a police officer to handcuff an accused it becomes a mandatory rule for the authority.

To take preventive measures – where there is a need to take any preventive measure or prevent someone to not committing any crime again, handcuffing could be used.

The above various factors provide the necessary to use handcuff or other hoops if required but in all these factors the common part is when the accused commits any heinous crime, or he is a habitual offender otherwise when there is no necessity the handcuffing is considered as the violation of rights of accused.

CONCLUSION

In conclusion of this paper, the new criminal act that is BNSS authorizes or shifts power from magistrate to police officer to handcuff the accused or to detain a person even if they can be produced before the court with the handcuff. Fundamentally, this concept or practice undermines the severe protections for the accused's rights. Before BNSS handcuffing was often regarded as an inhuman, unreasonable, and cruel practice towards an individual which was adjudged by the judicial ruling because there is no provision in old criminal procedure. This

paper specifically dealt with the core issues that how handcuffing violates the rights of an accused and how it is necessary and there must be a balance between the necessity and violation of rights. Balancing between both is then required to maintain peace and harmony in society, although handcuffing is an inhuman treatment somehow it becomes necessary for the security and peace of society.