

HANDCUFFING AS A FORM OF TORTURE: THE FRAMEWORK AND VIOLATION OF THE RIGHTS OF ARRESTED INDIVIDUALS

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INTRODUCTION

The treatment of arrested individuals is perceived as a primary test of a country's commitment to protect human rights and upholding the principles of dignity and humanity. A contested dispute in the realm of custodial violence is the practice of handcuffing. Handcuffing is generally viewed as a practice to prevent the escape of an accused. In India, Section 46 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)¹²⁵ states that an arrested individual cannot be subjected to more restraint than is necessary to prevent their escape. However, the practice of handcuffing is statutorily allowed under section 43(3) of the BNSS, where the police officer is given the power to handcuff certain individuals which is contingent on the nature and gravity of the offence committed by the accused.¹²⁶ However, the use of handcuffs under conditions which are not inscribed under section 43(3)¹²⁷ undermines the rights of the arrested individuals under section 46 as they cannot be restrained beyond necessity.¹²⁸

GRASP - EDUCATE - EVOLVE

¹²⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 46

¹²⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 43(3)

¹²⁷ Bharatiya Nagarik Suraksha Sanhita 2023, s 43(3)

¹²⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 46

The practice of torture and inhumane treatment is prohibited under International Human rights law and Conventions. Article 1 of the UN Convention against Torture states that “torture” encompasses any act which intentionally inflicts severe physical or mental suffering by a public official.¹²⁹ Unnecessary handcuffing leads to pain and humiliation, thus routine or excessive handcuffing, falls within the ambit of torture under Article 1 of the UN Convention Against Torture.¹³⁰ Handcuffing induces psychological stress on the accused which negates their dignity. The accused is subjected to treatment which puts them in a state of humiliation. Furthermore, handcuffing without any perceived threats or danger is viewed as a practice which violates human dignity due to the presence of judgements such as in the cases of *Raninen v. Finland*¹³¹ and *Prem Shankar Shukla v. Delhi Administration*.¹³² The court in both these cases held that routine handcuffing without any form of necessity is constituted as “degrading treatment”. Thus, when handcuffing as a form of restraint exceeds necessity, it constitutes torture.

MAIN BODY: ISSUE AND ARGUMENT:

The essay aims to primarily deal with the issue of everyday police practice of handcuffing, despite the safeguards under section 43(3) of the BNSS¹³³ which limits the use of handcuffs only to the individuals who are accused of serious offences such as organised crimes, rape and murder etc. violates the human rights of other accused individuals. Section 46 further establishes that “no unnecessary restraint” can be used on the arrested individuals.¹³⁴ In *Prem Shankar Shukla v. Delhi Administration*, the Supreme Court held routine handcuffing as “prima facie inhumane”, and ruled that

handcuffing must only be used in situations which entails a high-level risk.¹³⁵ In *Citizens for Democracy v. State of Assam*, the court held that unnecessary restraint violates Article 21 of the Indian Constitution.¹³⁶

Internationally, the cases of *Henaf v. France* held that use of restrains such as handcuffing constituted inhumane treatment.¹³⁷ The use of unnecessary methods of restrains were held to be violative of Article 3 of the European Convention on Human Rights (ECHR)¹³⁸ which prohibits torture. The case of *Shlykov and others v. Russia* which dealt with routine handcuffing held that this practice did not possess any reasonable justification which led to violation of Article 3 of ECHR.¹³⁹ Thus, despite Indian and International Jurisprudence against handcuffing, the use of handcuffs in India by police goes against the well-established principles of human dignity. The use of handcuffs against individuals who are not accused of any crimes under section 43(3) of the BNSS¹⁴⁰ entails violation of their constitutional safeguards such as freedom of movement and dignity, further even violating their rights under section 46 of the BNSS.¹⁴¹

Routine use of physical restraints leads to the institutionalisation of humiliation of the accused who is in police custody, this perpetrates the transformation of control into a system of structural violence.¹⁴² Thus, establishing the link between handcuffing and torture. Handcuffing leads to a negative public exposure which is met with forced immobility and denial of bodily autonomy. This forceful restraint leads to a punitive function rather than a suggestive reform.¹⁴³ A slight or brief restraint on the wrists of an individual can lead to nerve compression,

¹²⁹ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987, art 1

¹³⁰ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987, art 1

¹³¹ *Raninen v. Finland* ECHR App no. 20972/92 (ECHR, 16 December 1997)

¹³² *Prem Shankar Shukla v. Delhi Administration* AIR 1980 SC 1535

¹³³ Bharatiya Nagarik Suraksha Sanhita 2023, s 43(3)

¹³⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 46

¹³⁵ *Prem Shankar Shukla v. Delhi Administration* AIR 1980 SC 1535

¹³⁶ *Citizens for Democracy through its President v. State of Assam* (1996) AIR 2193 SC

¹³⁷ *Henaf v. France* [2003] ECHR Application no 65436/01

¹³⁸ European Convention on Human Rights 1950, art 3

¹³⁹ *Shlykov and Others v. Russia* App no. 178638/11 (ECHR, 28 July 1997)

¹⁴⁰ Bharatiya Nagarik Suraksha Sanhita 2023, s 43(3)

¹⁴¹ Bharatiya Nagarik Suraksha Sanhita 2023, s 46

¹⁴² Nirmal Heera, ‘Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India - A Critical Analysis’ [2021] 15(2) Indian Journal of Forensic Medicine and Toxicology

¹⁴³ R.S. Saini, ‘Custodial Torture in Law and Practice with Reference to India’ [1994] 36(2) Journal of the Indian Law Institute 166-192

bruising and psychological trauma as well.¹⁴⁴ Routine handcuffing thus falls under the ambit of “severe mental or physical suffering” of Article 1 of United Nations Convention Against Torture.¹⁴⁵ Restraining practices without any justification is associated with the treatment of detainee as objects of control rather than subjects of justice.¹⁴⁶

Section 43(3)¹⁴⁷ and 46 of the BNSS¹⁴⁸ intends to protect the dignity of the individuals, however police’s reliance on handcuffs as a method of restrain has undermined the provision as well as the Jurisprudence as mentioned in the arguments, nationally as well as globally. International Jurisprudence and Indian precedents have highlighted how routine handcuffing is a form of torture and despite procedural safeguards, it is being violated systemically.

INTERDISCIPLINARY ANALYSIS:

The continuous practice of handcuffing despite legislations and Jurisprudence restricting it, is a reflection of a strong disciplinary culture within the Indian Police Department. Michael Foucault’s theory of “*power and discipline*” in *Discipline and Punish* demonstrates how institutions in the modern era maintain order and control by using subtle methods of control, rather than stringent methods of violence.¹⁴⁹ Handcuffing epitomizes this theory as it is a mechanism which is visibly capable of disciplining the accused and the public.

In India, caste plays a significant role in determining the level of state violence and humiliation. The practice of handcuffing in public is significantly targeted towards the Dalit

and lower-caste individuals.¹⁵⁰ This can be explained by using the theory of “*micro physics of power*” which was developed by Michel Foucault, which entails the authority of the state by operating through subtle control of bodies. Section 46 of BNSS¹⁵¹ aims to restrict the use of violence, this becomes a legal pipeline for the police to use law as a form of discipline and not as a form of protection. The body of the accused becomes a medium for the state to enforce their sovereignty.

Handcuffing is a reflection of denial of individual dignity to uphold the supremacy and convenience of the state-run institutions which can be understood by applying Dworkin’s *theory of rights*. The state gives priority to structural dominance rather than personal liberty of the accused. This leads to eradication of dignity and the legally sanctioned reasonable force is used to justify the force which perpetrates humiliation. Unsanctioned use of force, which is disallowed under section 46 of the BNSS¹⁵² leads to the law internalizing violence which it sought to regulate.

CONCLUSION AND SUGGESTIONS:

Section 43(3) of the BNSS must be amended and should explicitly allow the use of handcuffs only under situations where there is a significant risk of escape or violence. BNSS must install a new section which imposes a statutory punishment upon the state, if the police implement the practice of handcuffing under normal circumstances, or under conditions other than the ones contained under section 43(3).¹⁵³ Human-rights commissions must be authorized to conduct inspections of police stations. It must be mandated for the police to record the use of handcuffs in their Daily Diary Report. Education and awareness regarding United Nations Convention against Torture must be made compulsory in Police Training

¹⁴⁴ Miriam Y. Neufeld, Sarah Kimball, Sondra S. Crosby, ‘Forensic evaluation of alleged wrist restraint/ handcuff injuries in survivors of torture utilizing the Istanbul Protocol’ [2021] Vol No.135 International Journal of Legal Medicine 583-590

¹⁴⁵ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987, art 1

¹⁴⁶ Layla Skins, Angela Sorsby & Lindsey Rice, ‘Treat them as human being: Dignity in Police Detention and its Implications for Good Police Custody’ [2020] 60(6) The British Journal of Criminology 1667-1688

¹⁴⁷ Bharatiya Nagarik Suraksha Sanhita 2023, s 43(3)

¹⁴⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 46

¹⁴⁹ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (trans Alan Sheridan, 2nd Vintage Books edn 1995).

¹⁵⁰ Gagan Preet Singh, ‘Caste and Policing’ Society and Space <<https://www.societyandspace.org/articles/caste-and-policing>> accessed 9 November 2025

¹⁵¹ Bharatiya Nagarik Suraksha Sanhita 2023, s 46

¹⁵² Bharatiya Nagarik Suraksha Sanhita 2023, s 46

¹⁵³ Bharatiya Nagarik Suraksha Sanhita 2023, s 43 (3)



Academies. The case of *Prem Shankar Shukla*¹⁵⁴ underscored how the use of handcuffs is a tool which degrades the humanity of an individual. The reforms suggested must be legally enforced as soon as possible to uphold the constitutional principles of life and liberty.



¹⁵⁴ *Prem Shankar Shukla v Delhi Administration* AIR 1980 SC 1535