

HUMAN RIGHTS *analysis*



RIGHTS *column*



Mandatory Handcuffing: Illegal and Inhumane

HUMAN RIGHTS FEATURE

At present, India has one of the most progressive and humane handcuffing regimes in the world. According to the Supreme Court, the use of restraints must be strictly limited, procedurally safeguarded and closely supervised by the judiciary. The use of handcuffs is the exception, not the rule. Unfortunately, there has recently been tremendous pressure by the police to make mandatory handcuffing the law. On 10 July 2002, the Bureau of Police Research and Development (BPR&D), in collaboration with the Institute of Social Sciences, organised a seminar titled "Use of Handcuffing: A Rational Approach." The seminar, attended mostly by police representatives from across India, provided an opportunity for the participants to discuss the guidelines for handcuffing. An overwhelming majority of them advocated legal reform to make handcuffing mandatory.

It is not disputed that, as the police argue, restraints are sometimes necessary for legitimate security reasons. Police work can be dangerous, and a small minority of arrestees and detainees are desperate and violent. Restraints, however, can also be dangerous. In India, they are frequently used, both publicly and privately, to humiliate, debase and intimidate arrestees and detainees.

In a recent incident in Punjab, Justice A.S. Bains, a former Haryana High Court judge, was arrested by the police and repeatedly placed in restraints even though there was no danger that he would attempt escape. Justice Bains brought a court case and was awarded Rs. 50,000 as compensation. The High Court held that his handcuffing and illegal detention was "definitely a violation of fundamental rights."

The Supreme Court of India condemns unnecessary handcuffing

The Supreme Court of India has repeatedly condemned the unnecessary use of handcuffs by the police as a violation of the right to personal liberty guaranteed by Article 21 of the Constitution of India. The landmark Supreme Court case on handcuffing is *Prem Shankar Shukla v. Delhi Administration* (1980). In this case, the validity of certain clauses of the Punjab Police Rules, which made handcuffing mandatory during arrest, was challenged. In his opinion, Justice Krishna Iyer eloquently stated: "The guarantee of human dignity which forms a part of our constitutional culture... spring[s] into action when we realize that to manacle man is more than to mortify him, it is to dehumanise him and, therefore, to violate his very personhood too often using the mask of dangerousness and security."

In *Prem Shankar Shukla* and other leading cases, the Supreme Court laid down strict procedural guidelines specifying both when and how the use of handcuffs is appropriate. According to the Court, handcuffing is legal only if the arrestee is (a) involved in serious non-bailable offences; and (b) previously convicted of a crime, of desperate character, likely to commit suicide, or likely to attempt to escape. The use of handcuffs and the reasons for their use must be recorded. It is illegal to walk fettered political prisoners through the streets. Furthermore, the police must gain judicial permission before they use restraints during an arrest or on a detainee. The human rights conscious court summed up its opinion of handcuffs in *Sunil Batra (II) v. Delhi Administration* (1980): "To fetter prisoners in irons is an inhumanity unjustified, save where safe custody is otherwise impossible. The routine resort to handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice." Despite these clear, specific and unambiguous judgments from the Supreme Court, the abuse of handcuffs continues.

Supreme Courts directives rarely followed

Unfortunately, the Supreme Court's directives are rarely being followed. Many police officers and other authorities are not even aware of them. Nirmal Kumar Azad, a Superintendent of Police in Siwan, Bihar, has collected data on the use of restraints through open-ended random

interviews with judicial officers, police personnel and members of the bar. His findings show that a large majority of members of the bar (83 percent) and police personnel (77.7 percent) are completely unaware of the Supreme Court's directives and rely entirely on police manual regulations to guide their use of restraints. Handcuffs are used frequently during transport from the jail to court, from the site of the alleged crime to the police station or to court, and from the jail/police station to the hospital. In a large majority of cases, the escorting authorities admit that judicial permission is not received and the reasons for using restraints are not documented in the police station diary. Mr. Azad also documented an increase in the frequency of escapees in the last decade. He views this increase as the result of negligence, laziness and a lack of alertness on the part of the escorting authorities and, in his expert opinion, these escapes are not at all connected to the use or non-use of restraints.



International human rights law on handcuffing

International human rights law is also relevant to the issue of handcuffing. Many international human rights instruments contain provisions detailing two interrelated rights: the right to be free from torture and other cruel, inhuman or degrading treatment and the right to be properly detained. These rights are fundamental and are closely linked to the concept of human dignity, which is one of the central concepts in international human rights law. It is well established that neither arrest nor detention strips an individual of their right to be treated with dignity. Handcuffing for the purpose of humiliating or intimidating individuals violates numerous international conventions, elaborate model standards and resolutions and one of the precepts underlying international human rights law: that the dignity and worth of every individual must be respected.

The right to be free from torture and cruel, inhuman or degrading treatment is documented in Article 5 of the Universal Declaration of Human Rights (UDHR), Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and forms the basis for the Convention Against Torture (CAT). The ICCPR also contains the related right of "[a]ll persons deprived of their liberty [to] be treated with humanity and with respect for the inherent dignity of the human person." These international instruments are all binding on India: The UDHR is considered part of customary international law and the Indian Government

has ratified the ICCPR (on 10 April 1979) and signed the CAT (on 14 October 1997).

The Human Rights Committee (HRC), in its General Comment on Article 7 of the ICCPR, has explained that "[t]he prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim." Those being arrested or detained by the authorities are often frightened, confused and vulnerable. The use of handcuffs, especially in public, can be humiliating and intimidating and may exacerbate their already fragile mental state. It is likely that this will frequently result in mental suffering, in violation of Article 7 of the ICCPR as defined by the HRC.

The Committee Against Torture, the treaty-body charged with monitoring the CAT, has specifically addressed the use of restraints that cause unnecessary pain and humiliation. In its concluding observations, the Committee expressed "concern about... [t]he use by prison authorities of instruments of physical restraint that may cause unnecessary pain and humiliation... [and] allegations of excessive use of force or degrading treatment by police forces or prison guards." Although this observation was addressed to Australia, it is equally applicable to India and demonstrates that the way in which handcuffs are used in India often violates the CAT.

Model standards of handcuffing

There are two model standards issued by the United Nations that are relevant to the issue of handcuffing. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations in 1955, addresses restraints in Sections 33-34. According to the Rules, instruments of restraints can never be used for punitive purposes or for longer than is strictly necessary. Although the Rules do allow the use of restraints during transfer to prevent escape, it is clear that the Indian police force's use of handcuffs to humiliate, intimidate and punish is unacceptable. The Code of Conduct for Law Enforcement Officials, adopted in 1979, states that "no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment..." The Code states "the term 'cruel, inhuman or degrading treatment or punishment' has not been defined... but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental." The breadth of the Code's definition of "cruel, inhuman or degrading treatment" suggests that the abuse of handcuffs by the Indian authorities violates the Code.

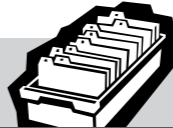
The view of European Court for Human Rights

The European Court for Human Rights has addressed the issue of whether handcuffing violates Article 3, which mirrors Article 7 of the ICCPR and Article 5 of the UDHR. In *Raninen v. Finland* the Court held that although "handcuffing did not normally give rise to an issue under Article 3" if the use of handcuffs was "unjustified... imposed in the context of unlawful arrest... visible to the public... [and] aimed at debasing or humiliating" it may be considered degrading treatment and thus violate Article 3. Therefore, the use of handcuffs by the Indian authority to humiliate arrestees in public clearly constitutes "degrading treatment" as defined by the European Court.

To summarise, both the Indian Supreme Court and international law have recognised that the abuse of handcuffs is illegal and inhumane. It is not acceptable to use restraints to humiliate, debase, intimidate or punish an arrestee or detainee. In order to prevent these illegal acts, it is absolutely essential that the Government implements the procedural safeguards and limits laid down by the Supreme Court. The police force must be educated to respect human rights and trained in proper arrest and detention procedures. The Indian Government should be proud of the progressive path blazed by the Supreme Court and should make every attempt to implement its directives.

Voice of the Asia-Pacific Human Rights Network (A joint initiative of SAHRDC and HRDC)

FACT *file*



Female prisoners are maltreated in country's jails

MAHFUZUR RAHMAN

There was hardly anything unusual at Amirabad village in Lohagara upazila of Chittagong district on the morning of March 29 this year. Farmers went to farmlands and women were busy doing household chores. The unusual thing happened later at about 11.30 IS when a middle-aged man, Neyamat Ullah (not his real name), came out of his house with a machete and swooped on a youth of his neighbouring house following a land dispute. As Nurjahan Begum, the mother of the youth, cried out for help, villagers rushed to the house and gave the crazy man a good beating. He later died from bleeding from wounds at local hospital. As soon as the man died, police swooped on the village and arrested eight women, including Nurjahan Begum, her neighbour Sakina Khatun and Sakina's two young daughters. "We are not responsible for the murder. The man died in a mass beating. As the police found no men on the scene, they picked up us and later showed us arrested in the murder case taking bribe from the victim's family members," Nurjahan said.

Beginning of a sad tale

"Then our plight began. From the police station to the hajjat in Chittagong Central Jail we received such inhuman behaviours that cannot be expressed in words," said Nurjahan adding, "I don't still know what does my future hold as I'm now out of jail on bail." Recalled Nurjahan: "One day one of my jail mates, a young girl, received fried rice and chicken from her home through police. As a female warden saw her taking the food, she rushed to her and kicked the plate down. She hurled abuses at the girl in a very rude way. Unnerved by the abusive behaviour, the girl broke down in tears. Except the victims, none can imagine what is going on in our jails."

Woman prisoner receives same treatment as a male prisoner

Once a woman prisoner is arrested in our country, she receives the same treatment as a male prisoner does. After arrest, police throw women and even children into prison vans along with men. There is a rule that when a woman is arrested, a female police officer must be present in the thana hajjat or the cell of local police station during her stay there at night. But in Bangladesh the number of policewomen cannot meet the requirement of all the police stations. Human rights organisations allege that police in the absence of such process abuse arrested women. As there is a provision to send the accused to court within 24 hours, women often get victimised by the middlemen who come in between the process to secure their release.

Most arrests in Bangladesh are made under Criminal Procedure Code (CrPC) and Special Powers Act (SPA) 1974. The most vulnerable part of the CrPC is section 54, which allows the police to arrest anyone who appears "suspicious" to them. SPA permits the law-enforcement officers to detain persons for a maximum period of one month. But there have been allegations that police misuse the section 54 of the CrPC and the SPA. In cases relating to women, the Section 54 of the CrPC and Section 74 of Dhaka Metropolitan Police Act are frequently used. Sigma Huda of BSHER said,

"Police arrest women under section 54 for their suspicious movement and file cases under Section 74 of the DMP Act to justify their arrests."

The plight of the jails of Bangladesh

According to statistics released by Odhikar, a human rights coalition, there is a total of 80 prisons in the country, out of which nine are central jails, 55 district jails and 16 thana (sub-district) jails. The central and district jails were built during the British Raj with inadequate facilities.



Statistics collected from government and non-government organisations showed that the total capacity of the country's jails is about 25,000 but now there are over 75,000 inmates in the prisons. Accommodation available for the female prisoners in the country's 64 prisons is 1051 but the number of inmates is 1,700. According to the latest information provided by Odhikar,

there are 236 female prisoners, including 184 under trial, 37 convicted and 17 in safe custody of Dhaka Central jail while the total number of female inmates in Comilla Central Jail is 79, including 32 under trial, 46 convicted and one in safe custody.

In Rajshahi Central Jail, there are 97 female prisoners, including 35 under trial, 59 convicted and three in safe custody, and the total number of women prisoners in Jessore Central Jail is 182, including 90 under trial, 84 convicted and 8 in safe custody. All the four central jails are overcrowded, as the registered capacity for female inmates is 84 in the Dhaka, 22 in Comilla, 41 in Rajshahi, 45 in Jessore central jails.

The prisoners are regulated by Bengal Jail Code 1937, which includes the Prisoners Act of 1894. The Bengal Jail Code was turned into Bangladesh Jail Code after the country's independence in 1971. No tangible change was made in the jail code, except the formulation of Children Act 1974. The Jail Code allows the under trial prisoners with permission of the appropriate authorities to keep in touch with their families, friends and lawyers through frequent visits, letters and interviews in jails. But the inmates are sometimes denied the visiting right and their families are turned away at the jail gate if they do not pay bribes.

In prisons, most women come from poor families and with rural backgrounds. They mostly comprise married, unmarried, divorced and estranged women involved in begging, odd jobs and prostitution. So they are vulnerable to harassment and sexual abuse. When women and children of the country get various development opportunities for their development and empowerment, jails have been kept totally out of this development equation.

Prison should be treated as correctional centre

The white paper, "Eliminating World Poverty", produced by UK Department for International Development notes, "Development must go hand in hand with the protection of human rights. There must be protection of those necessary for liberty and personal security. For example, the right to be free from arbitrary arrest or imprisonment, the right to a fair trial and freedom from torture and inhuman or degrading treatment or punishment."

During the British rule, the prison was used as a means of punishment. But later it was changed into a correctional centre. But in Bangladesh mental and physical tortures meted out to the prison inmates go far beyond punishment, diminishing the chance of correction.

In 1982, Justice MA Munim prepared the Jail Reform Commission Report with the concept, "They also wear a human face", meaning that the prisoners also deserve to be treated humanely and sympathetically rather than as criminals.

He put forward a good number of recommendations to reform the jail administration providing all kinds of facilities to the inmates. But no government since then has taken any effective steps to implement the recommendations.

However, there is a plan for construction of a separate jail for 200 convicted female prisoners with all modern facilities at Kashimpur in Gazipur.

News Network

ISHTIAQ AHMED

All rights should be defended according to a simple criterion. If it can be shown that by altering the existing laws and structure of rights the least advantaged will be benefited most then such change is justified. The notion of groups as repositories of privileges is older than the idea of individuals as autonomous bearers of rights. Indeed, the secular and religious legal systems in both ancient and medieval Europe as well as West and South Asia were premised on the naturalness of the community. The citizen of the Greek city-states and of the Roman Empire was a male member of a small, closed group. That group alone provided political leadership and participated in the making of laws and public decisions. Most other people constituting the total population were excluded from the category of citizens. Slavery was a regular feature of the ancient period and in the medieval Christian and Islamic orders, slaves were an integral element of a hierarchical social order. The evil institution of slavery survived in the West until the American Civil War and in parts of the Muslim world it was to be found as late as the first half of the 20th century. The Laws of Manu of Hinduism defined casteless and low caste people as less than humans. Also, women were invariably treated as inferior by Christian, Islamic and Hindu law. In short, social hierarchy was believed to be natural.

On the other hand, equality is a defining feature of modern political ethics and is associated with the rise and growth of inclusive citizenship from the time of the French Revolution. However, constitutional, legal and cultural barriers to equalitarian norms are still prevalent in many parts of the world. Until 1999 only ethnic Germans could normally acquire German citizenship. They could seek entry into Germany as a birthright from any part of the world even as aliens such as Turks who might have been born on German soil could not do so. In Israel the so-called Law of Return qualifies Jews from any part of the world to come and settle in the country, but not the former Palestinian refugees who fled their homes and villages during 1948 and afterwards, often as a result of Israeli terror. Saudi Arabia restricts citizenship to indigenous Saudis. Iran distinguishes between its Shia and other citizens. Pakistan has recently abolished separate electorates; however, the Ahmadis continue to be excluded from the category of proper citizens and that anomaly needs to be addressed in favour of a coherent policy on rights.

The challenging question is can one advance positive arguments in favour of group rights instead of only individual rights? In recent years, communitarian writers in the West have decried the individualistic basis of rights which they allege wrongly assume that individuals are complete by themselves. In reality, the communitarians insist, it is only as part of the community that individuals can lead a rich and meaningful life. Therefore, the community and the individual should be free to define their relationship and the state should keep out of such matters.

Non-Western criticisms of individual rights proceed along similar lines. It is associated with the religious or cultural community, family, tribe and so on are the real basis of affection and solidarity and not the modern secular state. Consequently, in Western Europe and North America, Muslim Diaspora communities have been demanding exemptions from the mainstream laws for matters related to their 'internal affairs'. Such affairs include, among other things, questions related to inheritance, marriage and divorce. The Western systems have not accepted such demands because they collide with their norms and standards which are based on modern human rights values and principles.

The classical liberal objection against all such group rights theories is that human rights are meant to enhance the freedoms and autonomy of individual vis-à-vis the state and religious establishment. If, now, instead of the state the community is to assume overriding authority over individuals then in practical terms the whole purpose of rights is defeated. From the left, objections to defining rights in particularistic terms are directed against the divisive nature of group boundaries. All ethnic and religious demarcations within the polity serve to alienate some section of the society from others. The left prefers a comprehensive package of rights which includes civil, political, social, economic, cultural and environmental rights for all citizens and denizens.

I would like to argue that the dichotomisation between individual and group rights is misplaced. In principle, some core fundamental rights should be non-discriminatory, universal and egalitarian and conferred on individuals. These should include the right to life (which would mean the right not to be hungry), freedom of conscience and belief and the right to express oneself freely. However, special affirmative action or positive discrimination is justified if it helps the weak who otherwise stand no chance of taking advantage of formal equal opportunities. All rights should be defended according to a simple criterion. If it can be shown that by altering the existing laws and structure of rights the least advantaged benefit most then such change is justified. Thus for example in India 22 per cent reservation of seats for the dalits and aboriginal tribes can be defended as a necessary group right because it helps alleviate the suffering of perhaps the most degraded group of people in history, even when more talented individuals from the upper castes are adversely affected by such reservation. There are good reasons to extend such reservations for poor Muslims and Christians too since they are often of dalit background.

Similarly in Pakistan, Bangladesh, Sri Lanka and other South Asian states disadvantaged minorities should be given special protection of their cultural rights and reservations in government employment should be introduced for them. South Asian male chauvinist traditions are thoroughly oppressive, irrespective of religion and region. Thus women in particular should be considered a historically disadvantaged group and special reservations should be introduced for them in parliaments, government employment and other sectors of public life.

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LAW *news*



Shivani murder case controversy..

DR. VINETA GUPTA

National Human Rights Commission of India (NHRC) has exposed the relevance of human rights commissions setup by the government at national and state levels by its stand in Shivani murder case controversy. NHRC turned down the plea for protection made by the family of senior IPS officer R. K. Sharma, accused in Shivani murder case. The argument said to be forwarded by the commission for refusal to consider the plea that "there was no occasion for NHRC to look into the matter since it was a case involving the family of an alleged absconder" is nothing short of total ignorance of basic human rights concept. From this, it seems NHRC itself needs some primary lessons in Human rights concept, law and language. Here the issue was of harassment and threat to life and liberty of the family of the alleged accused. Under human rights framework, even the accused has the rights to be dealt according to the law of the land and his basic human rights are protected even during arrest, after conviction and while serving sentence. Even a person sentenced to death has certain human rights. It is unfortunate and disgusting that a statutory body created for promotion and protection of human rights should take such a plea. NHRC should have considered the case on merits or jurisdiction. NHRC and State Human rights commissions have been reduced to quasi-judicial proceedings with poor people spending lots of money on the lawyers to represent them in hope of justice. It takes years for the commissions to ultimately drop the case or show helplessness, or decide jurisdiction. Rarely has these been able to dispense justice to victims of human rights violations and punish powerful violators.

Shivani murder case has become controversy of national level with alleged involvement of one of the most powerful IPS officer, political leader and minister very close to the Prime Minister. It has become essential for every citizen of the country to know about the truth behind the murder of a young woman journalist. It is of utmost concern for all statutory and all other human rights and civil liberty bodies to ensure that no under hand, undemocratic or inhuman means and methods are employed to hide the real conspiracy and culprits behind this murder. Nothing can justify harassment, intimidation and threats to life to the wife and young daughters of alleged accused, Mr. Ravi Kant Sharma by the police.

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