Handcuffing

HANDCUFFING

1. CONSTITUTION OF INDIA Arts. 21 & 14 —

Handcuffing of undertrial prisoners while taking them to Court – Without Court's permission – Undertrials educated persons and Court arrested while staging Dharana for public cause – Deprecated as violative of art. 21 – M.P. Police Regulations – Regulation 465(1).

The petitioners are educated persons and selflessly devoting their service to the public cause. They are not the persons who have got tendency to escape from the jail custody. In fact, petitioners 1 & 2 even refused to come out on bail, but chose to continue in prison for a public cause. The escort party without any justification had handcuffed the petitioners on April 22, 1989 on both occasions i.e. when taking the petitioners 1 & 2 from the prison to the Court and then from the Court to the prison. Hence, Government of Madhya Pradesh is directed to take appropriate action against the erring escort party for having unjustly and unreasonably handcuffing the petitioners 1 & 2 on April 22, 1989 in accordance with law.
This Court on several occasions has made weighty pronouncements decrying and severely condemning the conduct of the escort police in handcuffing the prisoners without any justification. In spite of it, it is very unfortunate that the courts have to repeat and re-repeat its disapproval of unjustifiable handcuffing. As is pointed out by Krishna Iyer, J. speaking for himself and Chinnappa Reddy, J. in Prem Shankar Shukla v. Delhi Administration, ((1980) 3 SCC 526 : 1980 SCC (Cri) 815)this kind of complaint cannot be dismissed as a daily sight to be pitied and buried but to be examined from fundamental viewpoint. In the same judgment, the following observation is made with regard to handcuffing : (SCC pp. 529-30, para 1 and p. 537, para 22)
"Those who are inured, to handcuffs and bar fetters on others may ignore this grievance, but the guarantee of human dignity, which forms part of our constitutional culture, and the positive provisions of Articles 14, 19 and 21 spring into action when we realise that to manacle man is more than to mortify him; it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security." …
"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 to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised. To prevent the escape of an undertrial 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 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. Where when do we draw the humane line and how far do the rules err in print and praxis ?"
Chinnappa Reddy, J. in Bhim Singh, MLA v. State of J&K ((1985) 4 SCC 677 : 1976 SCC (Cri) 47)has expressed his view that police officers should have greatest regard for personal liberty of citizens in the following words : (SCC p. 685, para 2)
"Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians
of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct."
[Sunil Gupta vs. State Of Madhya Pradesh ;1990-(003)-SCC -0119 –SC]

See also Maneka Gandhi v. Union of India ((1978) 1 SCC 248 : (1978) 2 SCR 621), Sunil Batra v. Delhi Administration ((1978) 4 SCC 494 : 1979 SCC (Cri) 155) and Sunil Batra (II) v. Delhi Administration. ((1980) 2 SCC 488 : 1980 SCC (Cri) 777)

2. Art.21 — Undertrial prisoner – —

Handcuffed and taken through the streets in a procession by police during investigation – Police officer was guilty of violation of fundamental right of an undertrial prisoner under art. 21 – Inspector cannot be made personally liable – He has acted only as an official
In Sunil Batra v. Delhi Administration ((1978) 4 SCC 494 : 1979 SCC (Cri) 155), a Constitution Bench of this Court held that : (SCC p. 568, para 213) "the convicts are not wholly denuded of their fundamental rights… Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed. " In Prem Shankar Shukla v. Delhi Administration ((1980) 3 SCC 526 : 1980 SCC (Cri) 815), this Court observed that : (SCC HN) "To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security. No prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort."
In Sunil Gupta v. State of M. P. ((1990) 3 SCC 119 : 1990 SCC (Cri) 440), this Court again reiterated following the principles laid down in Sunil Batra Case ((1978) 4 SCC 494 : 1979 SCC (Cri) 155), and other cases held that handcuffing is an act against all norms of decency and amounts to violation of principle underlying Article 21. This Court also directed the State Government to take appropriate action against the erring officials for having unjustly and unreasonably handcuffed the arrested persons.
[State Of Maharashtra vs Ravikant S. Patil;1991-(002)-SCC -0373 –SC]

3. Arts. 32 & 226 — Habeas-corpus — writ enlighten the wise exercise of constitutional power.

Constitution of India – Articles 21, 14 and 19 – Criminal Procedure Code, 1973 – Sections 46 and

49 – Handcuffs for under trials – Prima facie inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary – In extreme circumstances, handcuffs have to be put on the prisoner – Authority must record contemporaneously the reasons for doing so – Escorting officer, whenever he handcuffs a prisoner produced in Court, must show the reasons so recorded to the Presiding Judge and get his approval – Once the Court directs that handcuffs shall be off, no escorting authority can overrule judicial direction.
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 implicit in handcuffs or other iron contraptions. Indeed, binding together either the hands or the 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. Arbitrary conduct surely slaps Article 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Article 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 dangerious and desperate and the circumstances so hostile to safe keeping. Once one makes it a constitutional mandate that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort and this Court declare that to be the law the distinction between classes of prisoners becomes constitutionally obsolete. Ignominy, inhumanity and affliction, implicit in chains and shackles are permissible, as not unreasonable, only if every other less cruel means is fraught with risks or beyond availability. So it is that to be consistent with Articles 14 and 19 handcuffs must be the last refuge, not the routine regimen. If a few more guards will suffice, then no handcuffs. 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. Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material, sufficiently stringent, to satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control. It is hard to imagine such situations. It is unconscionable, indeed, outrageous, to make the strange classification between better class prisoners and ordinary prisoners in the matter of handcuffing. This elitist concept has no basis except that on the assumption the ordinary Indian is a subcitizen and freedoms under Part III of the Constitution are the privilege of the upper sector of society.
The officer handcuffing the undertrial has reasons to believe that the handcuff was used because the under trial was violent, disorderly or obstructive or acting in the manner calculated to provoke popular demonstrations or he has apprehension that the person so handcuffed was likely to attempt to escape or to commit suicide or any other reason of that type for which he should record a report in D.D. before use of handcuff when and wherever available.
Handcuffs are not summary punishment vicariously imposed at police level, at once obnocious and irreversible. Armed escorts, worth the salt, can overpower any unarmed under trial and extra guards can make up exceptional needs. In very special situations, one does not rule out the application of irons. The same reasoning applies to (e) and (f). The plain law of under trial custody is thus contrary to the unedifying escort practice. This Court remove the handcuffs from the law and humanise the police praxis to harmonize with the satwic values of Part III. The law must be firm,

not foul, stern, not sadistic, strong, not callous. The rule regarding a prisoner in transit between prison house and Court house is freedom from handcuffs and the exception, under conditions of judicial supervision Court has indicated earlier, will be restraints with irons, to be justified before or after. Supreme Court mandate the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other “irons” treatment and, if he has been, the official concerned shall be asked to explain the action forthwith in the light of this judgment. It is the basic assumption that all individuals are entitled to enjoy that dignity that determines the rule that ordinarily no restraint should be imposed except in those cases where there is a reasonable fear of the prisoner attempting to escape or attempting violence. It is abhorrent to envisage a prisoner being handcuffed merely because it is assumed that he does not belong to “a better class”, that he does not possess the basic dignity pertaining to every individual. Then there is need to guard against a misuse of the power from other motives. It is grossly objectionable that the power given by the law to impose a restraint, either by applying handcuffs or otherwise, should be seen as an opportunity for exposing the accused to public ridicule and humilitation. Nor is the power intended to be used vindictively or by way of punishment.
No one shall be fettered in any form based on superior class differentia, as the law treats them equally. It is brutalising 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.
If iron enters the soul of law and of the enforcing agents of law rather, if it is credibly alleged so this Court must fling aside forms of procedure and defend the complaining individual’s personal liberty under Articles 14, 19 and 21 after due investigation. Access to human justice is the essence of Article 32. The petitioner claims that he is a `better class’ prisoner, a fact which is admitted, although one fails to understand how there can be a quasi-caste system among prisoners in the egalitarian context of Article 14. It is a sour fact of life that discriminatory treatment based upon wealth and circumstances dies hard under the Indian sun. This Court hope the Ministry of Home Affairs and the Prison Administration will take due note of the survival after legal death of this invidious distinction and put all prisoners on the same footing unless their is a rational classification based upon health, age, academic or occupational needs or like legitimate ground and not irrelevant factors like wealth, political importance, social status and other criteria which are a hangover of the hierarchical social structure hostile to the constitutional ethos. The raw history of human bondage and the roots of the habeas-corpus writ enlighten the wise exercise of constitutional power in enlarging the person of men in unlawful detention. No longer is this liberating writ trammelled by the traditional limits of English vintage; larger diction. In India, as in the similar jurisdiction in America, the broader horizons of habeas corpus spread out, beyond the orbit of release from illegal custody, into every trauma and torture on persons in legal custody, if the cruelty is contrary to law, degrades human dignity or defiles his personhood to a degree that violates Articles 21, 14 and 19 enlivened by the preamble.
A prisoner who protests against his being handcuffed routinely, publicly, vulgarly and unjustifiably in the trips to and fro between the prison house and the Court house in callous contumely and invokes the writ jurisdiction of Supreme Court under Article 32 to protect, within the limited circumstances of his lawful custody.

A prisoner sent a telegram to a Judge of this Court (one of us) complaining of forced handcuffs on him and other prisoners, implicitly protesting against the humilition and torture of being held in irons in public, back and forth, when, as under trials kept in custody in the Tihar Jail, they were being taken to Delhi courts for trial of their cases. The practice persisted, bewails the petitioner, despite the courts direction not to use irons on him and this led to the telegraphic 'liltany' to the Supreme Court which is the functional sentinel on the qui vive where 'habeas' justice is in jeopardy. If iron enters the should of law and of the enforcing agents of law-rather, if it is credibly alleged so -this Court must fling aside forms of procedure and defend the complaining individual's personal liberty under Articles 14, 19 and 21 after due investigation. Access to human justice is the essence of Article 32, and sensitized by this dynamic perspective we have examined the facts and the law and the rival versions of the petitioner and the Delhi Administration. The blurred area of 'detention jurisprudence' where considerations of prevention of escape and a personhood of prisoner come into conflict, warrants fuller exploration than this isolated case necessitates and counsel on both sides (Dr. Chitale as amicus curiae, aided ably by Shri Mudgal and Shri Sachthey for the State) have rendered brief oral assistance and presented written submissions on a wider basis. After all even while discussing the relevant statutory provisions and constitutional requirements, court and counsel must never forget the core principle found in Article 5 of the Universal Declaration of Human Rights, 1948 :

No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

And read Article 10 of the International Covenant on Civil and Political Rights :

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Of course, while these larger considerations may colour our mental process, our task overflow the actual facts of the case or the norms in Part III and the provisions in the Prisoners (Attendance in Courts) Act, 1955 (for short, the Act). All that we mean is that where personal freedom is at stake or torture is in store to read down the law is to write off the law and to rise to the remedial demand of the manacled man is to break human bondage, if within the reach of the judicial process. In this jurisdiction the words of Justice Felix Frankfurter are a mariner's compass :

The history of liberty has largely been the history of observance of procedural safeguards.

And, in Maneka Gandhi, case (Maneka Gandhi v. Union of India, (1978) 2 SCR 621, 647 : (1978) 1 SCC 248) it has been stated :

The ambit of personal liberty protected by Article 21 is wide and comprehensive. It embraces both substantive rights to personal liberty and the procedure provided for their deprivation.

Has the handcuffs device – if so, how far – procedural sanction ? That is the key question.

The prisoner complains that he was also chained but that fact is controverted and may be left out for the while. Within this frame of facts we have to consider whether it was right that Shukla was shackled. The respondent relies upon the provisions of the Act and the rules framed thereunder and under the Police Act as making shackling lawful. This plea of legality has to be scanned for constitutionality in the light of the submissions of Dr. Chitale who heavily upon Article 21 of the Constitution and the collective consciousness relating to human rights burgeoning in our half-century.

The petitioner is an under trial prisoner whose presence is needed in several cases, making

periodical trips between jail house magistrate's courts inevitable. Being in custody he may try to flee and so escort duty to prevent escape is necessary. But escorts, while taking responsible care not to allow their charges to escape, must respect their personhood. The dilemma of human rights jurisprudence comes here. Can the custodian fetter the person of the prisoner, while in transit, with irons, may be handcuffs or chains or bar fetter ? When does such traumatic treatment break into the inviolable zone of guaranteed rights ? When does disciplinary measure end and draconic torture being ? What are the constitutional parameters, viable guide-lines and practical strategies which will permit the peaceful coexistence of custodial conditions and basic dignity ? The decisional focus turns on this know how and it affects tens of thousands of persons languishing for long years in prisons with pending trials. Many Shuklas in shackles are invisible parties before us that makes the issue a matter of moment. We appreciate the services of Dr. Chitale and his junior Shri Mudgal who have appeared as amicus curiae and belighted the blurred area of law and recognise the help rendered by Shri Sachthey who has appeared for the State and given the full facts.

The petitioner claims that he is a 'better class' prisoner, a fact which is admitted, although one fails to understand how there can be a quasi-caste system among prisoners in the egalitarian context of Article 14. It is a sour fact of life that discriminatory treatment based upon wealth and circumstances dies hard under the Indian sun. We hope the Ministry of Home Affairs and the Prison Administration will take due note of the survival after legal death of this invidious distinction and put all prisoners on the same footing unless there is a rational classification based upon health, age, academic or occupational needs or like legitimate ground and not irrelevant factors like wealth, political importance, social status and other criteria which are a hangover of the hierarchical social structure hostile to the constitutional ethos. Be that as it may under the existing rules, the petitioner is a better class prisoner and claims certain advantages for that reason in the matter of freedom from handcuffs. It is alleged by the State that there are several cases where the petitioner is needed in the courts of Delhi. The respondents would have it that he is "an inter-State cheat and a very clever trickster and tries to browbeat and misbehave with the object to escape from custody. "Of course, the petitioner contends that his social status, family background and academic qualifications warrant his being treated as a better class prisoners and adds that the court had directed that for the reason he be not handcuffed. He also states that under the relevant rules better class prisoners are exempt from handcuffs and cites in support the view of the High Court of Delhi that a better class under trial should not be handcuffed without recording of reasons in the daily diary for considering the necessity for the use of handcuffs. The High Court appears to have observed (Annexure 'A' to the counter-affidavit on behalf of the State) that unless there be reasonable expectation of violence or attempt to be rescued the prisoner should not be handcuffed. Section 9(2)(a) of the Act empowers the State Government to make rules regarding the escort of persons confined in a prison to and from courts in which their attendance is required and for their custody during the period of such attendance. The Punjab Rules, 1934 (Vol. III), contain some relevant provisions although the statutory source is not cited. We may extract them here :

26.22. Conditions in which handcuffs are to be used. – (1) Every male person falling within the following category, who has to be escorted in police custody, and whether under police arrest, remand or trial, shall, provided that he appears to be in health and not incapable of offering

effective resistance by reason of age, he carefully handcuffed on arrest and before removal from any building from which he may be taken after arrest :
(a) Persons accused of a non-bailable offence punishable with any sentence exceeding in severity a term of three years imprisonment.
(b) Persons accused of an offence punishable under Section 148 or Section 226, Indian Penal Code.
(c) Persons accused of, and previously convicted of, such an offence as to bring the case under Section 75, Indian Penal Code.
(d) Desperate characters.
(e) Persons who are violent, disorderly or obstructive or acting in a manner calculated to provoke popular demonstration.
(f) Persons who are likely to attempt to escape or to commit suicide or to be the object of an attempt at rescue. This rule shall apply whether the prisoners are escorted by road or in a vehicle.
(2) Better class under trial prisoners must only be handcuffed when this is regarded as necessary for safe custody. When a better class prisoner is handcuffed for reasons other than those contained in (a), (b) and (c) of sub-rule (1) the officer responsible shall enter in the Station Diary or other appropriate record his reasons for the considering the use of handcuffs necessary.
This collection of handcuff law must meet the demands of Articles 14, 19 and 21. In the Sobraj case (Sunil Batra v. Delhi Administration, ((1978) 4 SCC 494, 545 : 1979 SCC (Cri) 155, 206) the imposition of bar fetters on a prisoner was subjected to constitutional scrutiny by this Court. Likewise, irons forced on under trials must transit must conform to the humane imperatives of the triple Articles. Official cruelty, sans constitutionally degenerates into criminality. Rules standing orders, instructions and circulars must bow before Part III of the Constitution. So the first task is to assess the limits set by these Articles.
The preamble sets the humane tone and temper of the Founding Document and highlights justice, equality and the dignity of the individual. Article 14 interdicts arbitrary treatment discriminatory dealings and capricious cruelty. Article 19 proscribes restrictions on free movement unless in the interest of the general public. Article 21 after the landmark case in Maneka Gandhi (Maneka Gandhi v. Union of India, (1978) 2 SCR 621, 647 : (1978) 1 SCC 248) followed by Sunil Batra ((1978) 4 SCC 494 : 1979 SCC (Cri) 155) is the sanctuary of human values, prescribes fair procedure and forbids barbarities punitive or processual. Such is the apercu, if we may generalise. Handcuffing is prima facie inhumane and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised. 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, shuffle 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. Where then do we draw the humane line and how far do the rules err in print and praxis ?
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 implicit in handcuffs or other iron contraptions. Indeed, binding together either the hands or the feet or both has not merely a preventive impact but also a punitive hurtfulness. Manacies are mayhem on the human person and inflict humiliation on the bearer. The Encyclopaedia Britannica, Vol. II (1973 Edn.) at page 53 states “Handcuffs and fetters are instruments for securing the hands or feet of prisoners under arrest, or as a means of punishment”. The three components of ‘irons’ 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 vulgarise the viewers also. Iron straps are insult and pain writ large, animalising 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 trial prisoner ordinarily. The latest police instructions produced before us hearteningly reflect this view. We lay down as necessarily implicit in Articles 14 and 19 that when there is no compulsive 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 Article 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Article 19 (se Sunil Batra ((1978) 4 SCC 494 : 1979 SCC (Cri) 155)) 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 – the distinction between classes of prisoners becomes constitutionally obsolete. Apart from the fact that economic and social importance cannot be the basis for classifying prisoners for purposes of the handcuffs or otherwise, how can we assume that a rich criminal or under trial is any different from a poor or pariah convict or under trial in the matter of security risk ? 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 purposes 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 brutalising 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.

The only circumstance which validates incapacitation by irons – an extreme measure – is the otherwise there is no other reasonable way of preventing his escape in the given circumstances. Securing the prisoner being necessity of judicial trial the State must take steps in this behalf. But even here, the policeman’s easy assumption or scary apprehension or subjective satisfaction of likely escape if fetters are not fitted on the prisoner is not enough. The heavy deprivation of personal liberty must be justifiable as reasonable restriction in the circumstances. Ignomity, inhumanity and affliction, implicit in chains and shackles are permissible, as not unreasonable, only if every other less cruel means is fraught with risks or beyond availability. So it is that to be consistent with Articles 14 and 19 handcuffs must be the last refuge, not the routine regimen. If a few more guards will suffice, then no handcuffs. If a close watch by armed policemen will do, them no handcuffs. If alternative measures may be provided then no iron bondage. This is the legal

norm.

Functional compulsions of security must reach that dismal degree where no alternative will work except manacles. We must realise that our fundamental rights are heavily loaded in favour of personal liberty even in prison, and so, the traditional approaches without reverence for the worth of the human person are obsolete, although they die hard. Discipline can be exaggerated by prison keepers; dangerousness can be physically worked up by escorts and sadistic disposition, where higher awareness of constitutional rights is absent may overpower the finer values of dignity and humanity. We regret to observe that cruel and unusual treatment has an unhappy appeal to jail keepers and escorting officers, which must be countered by strict directions to keep to the parameters of the Constitution. The conclusion flowing from these considerations is that there must first be well grounded basis for drawing a strong inference that the prisoner that the prisoner is likely to jump jail or break out of custody or play the vanishing trick. The belief in this behalf must be based on antecedents which must be recorded and proneness to violence must be authentic. Vague surmises or general averments that the under trial is a crook or desperado, rowdy or maniac, cannot suffice. In short, save in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit – the onus of proof of which is on him who puts the person under irons – the police escort will be committing personal assault or mayhem if he handcuffs or fetters his charge. It is disgusting to see the mechanical way in which callous policemen, cavalier fashion, handcuff prisoner in their charge indifferently keeping them company assured by the though that the detainee in under 'iron' restraint.

Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material, sufficiently stringent, to satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control. It is hard to imagine such situations. We must repeat that it is unconscionable, indeed, outrageous to make the strange classification between better class prisoners and ordinary prisoners in the matter of handcuffing. This elitist concept has no basis except that on the assumption the ordinary Indian is a sub-citizen and freedoms under Part III of the Constitution are the privilege of the upper sector of society.

We must clarify a few other facets, in the light of Police Standing Orders. Merely because a person is charged with a grave offence he cannot be handcuffed. He may be very quiet well-behaved, docile or even timid. Merely because the offence is serious, the inference of escape-proneness or desperate character does not follow. Many other conditions mentioned in the Police Manual are totally incongruous with what we have stated above and must fall as unlawful. Tangible testimony, documentary or other or desperate behaviour, geared to making good his escape, alone will be a valid ground for handcuffing and fettering, and even this may be avoided by increasing the strength of the escorts or taking the prisoners in well protected vans. It is heartening to note that in some States in this country no handcuffing is done at all save in rare cases, when taking under trials to courts and the scary impression that unless the person is confined in irons he will run away is a convenient myth.

Some increase in the number of escorts, arming them if necessary special training for escort police, transport of prisoners in protected vehicles, are easily available alternatives and in fact are adopted in some States in the country where handcuffing is virtually abolished e.g. Tamil Nadu.

Even in cases where, in extreme circumstances, handcuffs have to be put on the prisoners the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 21 the procedure will be unfair and bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in court must show the reasons so recorded to the Presiding Judge and get his approval. Otherwise, there is not control over possible arbitrariness in applying handcuffs and fetters. The minions of the police establishment must make good their security recipes by getting judicial approval. And once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty. The ratio in Maneka Gandhi case (Maneka Gandhi v. Union of India, (1978) 2 SCR 621, 647 : (1978) 1 SCC 248) and Sunil Batra case ((1978) 4 SCC 494 : 1979 SCC (Cri) 155), read in its proper light, leads us to this conclusion.

We, therefore, hold that the petition must be allowed and handcuffs on the prisoner dropped. We declare that the Punjab Police Manual insofar as it puts the ordinary Indian beneath the better class breed (paragraphs 26.21-A and 26.22 of Chapter XXVI) is untenable and arbitrary and direct that Indian humane shall not be dichotomised and the common run discriminated against regarding handcuffs. The provisions in para 26.22(1)(a) that every under trial who is accused of a non-bailable offence punishable with more than 3 years' prison term shall be routinely handcuffed is violative of Articles 14, 19 and 21. So also para 26.22(1)(b) and (c). The nature of the accusation is not the criterion. The clear and present danger of escape (sic escape) breaking out of the police control is the determinant. And for this there must be clear material, not glib assumption, record of reasons and judicial oversight and summary hearing and direction by the court where the victim is produced. We go further to hold that para 26.22(1)(d), (e) and (f) also hover perilously near unconstitutionally unless read down as we herein direct. 'Desperate character' is who ? Handcuffs are not summary punishment vicariously imposed at police level, at once obnoxious and irreversible. Armed escorts, worth the salt, can overpower any unarmed under trial and extra guards can make up exceptional needs. In very special situations, we do not rule out the application of irons. The same reasoning applies to (e) and (f). Why torture the prisoner because others will demonstrate or attempt his rescue ? The plain law of under trial custody is thus contrary to the unedifying escort practice. We remove the handcuffs from the law and humanise the police praxis to harmonize with the satwic values of Part III. The law must be firm, not foul, stern, not sadistic, strong, not callous.

Traditionally, it used to be thought, that the seriousness of the possible sentence is the decisive factor for refusal of bail. The assumption was that this gave a temptation for the prisoner to escape. This is held by modern penologists to be a psychic fallacy and the bail jurisprudence evolved in the English and American jurisdictions and in India now takes a liberal view. The impossibility of easy recapture supplied the temptation to jump custody, not the nature of the offence or sentence. Likewise, the habitual or violent 'escape propensities' proved by past conduct or present attempts are a surer guide to the prospects of running away on the sly or by use of force than the offence with which the person is charged or the sentence. Many a murderer, assuming him to be one, is otherwise a normal, well-behaved even docile, person and it rarely registers in his mind to run

away or force his escape. It is an indifferent escort or incompetent guard, not the section with which the accused is charged, that must give the clue to the few escapes that occur. To abscond is a difficult adventure. No study of escapes and their reasons has been made by criminologists and the facile resort to animal keeping methods as an easy substitute appeals to authority in such circumstances. 'Human rights', seriousness losses its valence where administrator's convenience prevails over cultural values. The fact remains for its empirical worth, that in some States, e.g. Tamil Nadu and Kerala, handcuffing is rarely done even in serious cases, save in those cases where evidence of dangerousness, underground operations to escape and the like is available. It is interesting that a streak of humanism had found its place in the law of handcuffing even in the old Bombay Criminal Manual (Criminal Manual published by the Bombay High Court, Chapter 5 : HANDCUFFING OF) which no prevails in the Gujarat Sate and perhaps in the Maharashtra State. But in the light of the constitutional imperatives we have discussed, we enlarge the law of personal liberty further to be in consonance with fundamental rights of persons in custody.

There is no genetic criminal tribe as such among humans. A disarmed arrestee has no hope of escape from the law if recapture is a certainty. He heaves a sigh of relief if taken into custody as against the desperate evasions of the chasing and the haunting fear that he may be caught any time. It is superstitious to practise the barbarous bigotry of handcuffs as a routine regimen – an imperial heritage, well preserved. The problem is to get rid of mind-cuffs which make us callous to handcuffing a prisoner who may be a patient even in the hospital bed and tie him up with ropes to the legs of the cot ! Zoological culture cannot be compatible with reverence for life, even of a terrible criminal.

We have discussed at length what may be dismissed as a little concern. The reason is simple. Any man may, by a freak of fate, becomes an under trial and every man, barring those who through wealth and political clout, are regarded as V.I.P.'s are ordinary classes and under the existing Police Manual may be manhandled by handcuffs. The peril to human dignity and fair procedure is, therefore, widespread and we must speak up. Of course, the 1977 and 1979 'instructions' we have referred to earlier show a change of heart. This Court must declare the law so that abuse by escort constables may be repelled. We repeat with respect, the observations in William King Jackson v. D. E. Bishop (Federal Reports, 2nd Series, Vol. 404, p. 571) :

(1) We are not convinced that any rule or regulation as to the use of the strap, however seriously or sincerely conceived and drawn, will successfully prevent abuse. The present record discloses misinterpretation even of the newly adopted .....

(2) Rules in this area are seen often to go unobserved.

(3) Regulations are easily circumvented.

(4) Corporal punishment is easily subject to abuse in the hands of the sadistic and the unscrupulous.

(5) Where power to punish is granted to persons in lower levels of

PRISONERS, para 67 (and also para 213 of Criminal Manual Gujarat).

(1) Unless the court otherwise directs, no prisoner shall be handcuffed or bound while being taken from the court premises to a jail or a borstal school :

Provided that if a police officer escorting such prisoner from the court premises to a jail or a borstal school, considers it necessary to do so in exceptional circumstances such as violence on the part

of the prisoner after leaving the court premises, and cannot get the directions of the court, he may handcuff or bind such prisoner after leaving the premises.
(2) No prisoner shall be handcuffed or bound when being taken from a jail or a borstal school to the court premises unless the jailor of the jail or the superintendent of the borstal school otherwise directs in writing. If the jailor of a jail or the superintendent of a borstal school from which the prisoner is being taken to the court considers in the circumstances stated in clause (1) above necessary to bind or handcuff the prisoner he may direct in writing the officer incharge of the escort to do so and the officer shall obey such direction :
Provided that the officer incharge of the escort may handcuff and/or bind the prisoner when he considers it necessary to so in exceptional circumstances arising after leaving the jail or the borstal school premises and it is not possible to obtain a direction from the jailor or the superintendent of the borstal school or the court.
administrative authority, there is an inherent and natural difficulty in enforcing the limitations of that power.
Labels like ‘desperate’ and ‘dangerous’ are treacherous. Kent S. Miller, writing on ‘dangerousness’ says : (Managing Madness, pp. 58, 66-68)
Considerable attention has been given to the role of psychological tests in predicting dangerous behaviour, and there is a wide range of opinion as to their value.
Thus far no structured or projective test scale has been derived which when used alone, will predict violence in the individual case in a satisfactory manner. Indeed none has been developed which will adequately postdict let alone predict, violent behaviour …..
….. But we are on dangerous ground when deprivation of liberty occurs under such conditions.
…. The practice has been to markedly overpredict. In addition, the courts and mental health professionals involved have systematically ignored statutory requirements relating to dangerousness and mental illness. ..
…. In balancing the interest of the State against the loss of liberty and rights of the individual, a prediction of dangerous behaviour must have a high level of probability, (a condition which currently does not exist) and the harm to be prevented should be considerable.

A law which handcuffs almost every under trial (who presumably, is innocent) is itself dangerous.

[Prem Shankar Shukla vs. Delhi Administration; 1980-(003)-SCC -0526 –SC]

3. Constitution of India – Arts. 14 19 & 21 – CrPC, 1973 – Secs. 46 & 49 – Handcuffing of under trials and convicts – Not permissible –

The law laid down by Supreme Court in Prem Shankar Shukla’s case and Sunil Batra’s case and the directions issued the Supreme Court are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law – Magistrate may grant permission to handcuff the prisoner in rare cases

– Situation and relevant consideration when police and jail authorities handcuffing or putting prisoner under fetters inside or outside jail – Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given 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 – Directions issued by the Supreme Court.
Held The law laid down by Supreme Court in Prem Shankar Shukla Case and Sunil Batra Case and the directions issued by the Supreme Court are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law. The Court took judicial notice of the fact that the police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without any justification. If has, therefore, become necessary to give binding directions and enforce the same meticulously. The Supreme Court has categorically held that the relevant consideration for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. the peculiar and special characteristics of each individual prisoner have to be taken into consideration. The police and the jail authorities are under a public duty to prevent the escape of prisoners and provide them with safe custody but at the same time the rights of the prisoners guaranteed to them under Arts. 14, 19 & 21 of the Constitution of India cannot be infarcted. The authorities are justified in taking suitable measures, legally permissible, to safeguard the custody of the prisoners, but the use of fetters purely at the whims or subjective discretion of the authorities is not permissible. Handcuffs or other fetters shall not be forced on a prisoner – convicted or under trial – while lodged in a jail anywhere in the country 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 handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to Court and back. 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 practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner. 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 the Magistrate the person concern of shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand. When the police arrests a person in execution of a warrant of arrest obtained from 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. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given 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. Conclusion The law laid down by Supreme Court in Prem Shankar Shukla's Case and Sunil Batra's Case and the directions issued by the Supreme

Court are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given 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. Catchnote Constitution of India – Arts. 14, 19 & 21 – Handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is, inhuman and in utter violation of human rights guaranteed to an individual under the international law and the law of the land – The Court directed that the detenus in case they are still in hospital – Be relieved from the fetters and the ropes with immediate effect

There is no basis whatsoever for drawing an inference that the seven detenus who were lodged inside the ward of a hospital were likely to escape from custody. The antecedents of the detenus are not known. There is nothing on the record to show that they are prone to violence. General averments that the detenus are hardcore activists of ULFA and that they are accused of terrorist and disruptive activities, murder, extortion, holding and smuggling of arms and ammunition are not sufficient to place them under fetters and ropes while lodged in a closed ward of the hospital as patients. Security guards were posted outside the ward. It is not disputed that while in jail the detenus were not handcuffed. They cannot be in a worst condition while in hospital under treatment as patients. In any case to safeguard any attempt to escape, extra armed guards can be deployed around the ward of the hospital where the detenus are lodged. The handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is, inhuman and in utter violation of he human rights guaranteed to an individual under the international law and the law of the land.

The Handcuffing and in addition tying with ropes of the patient- prisoners who are lodged in the hospital is, inhuman and in utter violation of he human rights guaranteed to an individual under the international law and the law of the land.

The Court took judicial notice of the fact that police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without any justification. It has, therefore, become necessary to give binding directions and enforce the same meticulously.

[Citizens For Democracy vs. State Of Assam;1995-(003)-SCC -0743 –SC;1996-(083)-AIR -2193 –SC;1996-(102)-CRLJ -3247 –SC]

5. Constitution of India – Articles 32 & 21 – Handcuffing of tribals and commission of atrocities by police and local administration – Early reports of CBI observing handcuffing but not atrocities – CBI directed to investigate and register the cases against guilty persons – Human Rights

The CBI to investigate and register cases and prosecute of the officers however, high or low in the hierarchy of administration for these serious lapses. The trials of such cases shall take place outside the District of Jhabua at Indore District & Sessions Court.

Yet there is another important matter namely the handcuffing which is to be taken serious note of. This Court has come down upon handcuffing in Prem Shankar Shukla v. Delhi Admn. ((1980) 3 SCC 526 : 1980 SCC (Cri) 815 : (1980) 3 SCR 855) It was held at (SCR) page 872 as follows : (SCC p. 537, para 22)

“Handcuffing is prima facie inhuman and, therefore unreasonable, is overharsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict ‘irons’ is to resort to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised. To prevent the escape of an undertrial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand-and-food, fetter his limbs with hoops of steel, shuffle 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.”
In the same case at (SCR) pages 875-876 it was held as under : (SCC pp. 539-40, para 30)
“Even in cases where, in extreme circumstances, handcuffs have to be pout on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 21 the procedure will be unfair and bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval. Otherwise, there is no control over possible arbitrariness in applying handcuffs and fetters. The minions of the police establishment must make good their security recipes by getting judicial approval. And, once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty.”
The same principles are reiterated in Sunil Gupta v. State of M. P. ((1990) 3 SCC 119 : 1990 SCC (Cir) 440 it was held as follows : (SCC p. 129, para 23)
“Coming to the case on hand, we are satisfied that the petitioners are educated persons and selflessly devoting their service to the public cause. They are not the persons who have got tendency to escape from the jail custody. In fact, petitioner 1 and 2 even refused to come out on bail, but chose to continue in prison for a public cause. The offence for which they were tried and convicted under Section 186 of Indian Penal Code is only a bailable offence. Even assuming that they obstructed public servants in discharge of their public functions during the ‘dharna’ or raised any slogan inside or outside the court, that would not be sufficient cause to handcuff them. Further, there was no reason for handcuffing them while taking them to court from jail on 22-4-1989. One should not lose sight of the fact that when a person is remanded by a judicial order by competent court, that person comes within the judicial custody of the court. Therefore, the taking of a person from a prison to the court or back from court to the prison by the escort party is only under the judicial orders of the court. Therefore, even if extreme circumstances necessitate the escort part to bind the prisoner 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 direction. 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 of India. So 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’.”
These two pronouncements constitute the law of the land. The plea of ignorance of the law only is stated to be rejected. What is worse in this case is the Magistrate behaving in this way. We are of the view that Magistracy requires to be sensitised to the values of human dignity and to the restraint on power. When it allows an inhuman conduct on the part of the police, it exhibits both the indifference and insensitiveness to human dignity and the constitutional rights of the citizens. There could be no worse lapse on the part of the judiciary which is the sentinel of these great liberties. As Joseph Addison said :
“Better to die ten thousand deaths than wound my honour.”

If dignity or honour vanishes what remains of life ! In these circumstances to uphold human values and to protect the rights guaranteed under the Constitution, we hereby direct – (1) the CBI investigate and register cases and prosecute of the officers however, high or low in the hierarchy of administration for these serious lapses; (2) the trials of such cases shall take place outside the District of Jhabua at Indore District & Sessions Court.

[Khedat Mazdoor Chetna Sangath vs. State Of M. P.;1994-(006)-SCC -0260 -SC

1994-(100)-CRLJ -0508 –SC;1995-(082)-AIR -0031 –SC]

6. Handcuffing of a Kissan Leader without the Permission of the Court: Compensation awarded:

The petition was with a two fold prayer. Firstly, it has been prayed that a writ of habeas corpus be issued for their release and secondly that they be awarded effective costs and damages for they were unjustifiably handcuffed. It was pointed out by the State counsel that both the petitioners had been released on their furnishing bail bonds and that they were present in Court on their own. The prayer for the issue of a writ of habeas corpus was, thus, rendered infructuous.
The practice of handcuffing prisoners has been clearly deprecated by the Apex Court in Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535 : (1980 Cri LJ 930). It has been inter alia held that handcuffing is prima facie in human and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. “It has been observed that “tangible testimony, documentary or other, or desperate behaviour geared to making good his escape, alone will be a valid ground for handcuffing and fettering, and even this may be avoided by increasing the strength of the escorts or taking the prisoners in well protected vans.” Their Lordships have been further pleased to “mandate the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other ‘irons’ treatment and, if he has been, the official concerned shall be asked to explain the action forthwith in the light of this judgment.” This mandate of their Lordships of the Supreme Court has to be obeyed by everyone “from the Inspector General of Police ……. to the Escort Constable.”
It is no doubt true that the petitioners are accused of an offence under the Terrorist and Disruptive Activities (Prevention) Act, 1987. However, there is not even an averment in the affidavit which may

show that the petitioners had exhibited desperate behaviour or that they were geared to making good their escape. The affidavit filed on behalf of the respondents does not disclose any reason to justify the handcuffing of the petitioners.

The Punjab of 1994 is not the same as that of 1992. Earlier, on account of the peculiar situation that prevailed in the State, the high handedness of the police may have been socially accepted or otherwise overlooked. However, the police aberrations must not be allowed to become a habitual conduct. It has dangerous pretents. Already, even in Chandigarh, one notices unnumbered Gypsies being driven recklessly. These are a menace on the road. Any number of police vehicles can be found near various liquor vends in town. The presence is not always innocent. These spell an evil omen. These need to be checked before it is too late. It must be stopped forthwith.

In the present case, the respondents have shown no justification for their conduct in handcuffing the petitioners. The petitioners were clearly wronged. They must be compensated and the wrong doers punished. It is directed that the petitioners shall be compensated by payment of Rs. 10,000/- each. The respondents will do the needful within one month from the date of the receipt of a copy of this order.

[Ajmer Singh Lakhowal Vs State of Punjab;CrlJ 1995 page 565 Pb.]