

HANDCUFFING, A JUDICIAL TAP, AND THE LONG ARM OF THE LAW

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

'If any malice is found behind the use of handcuffs, it needs to be dealt with strongly' | Photo Credit: Getty Images/iStockphoto

Recently, the Karnataka High Court passed a verdict on handcuffing, which is significant. In *Suprit Ishwar Divate vs The State of Karnataka*, while awarding two lakh rupees as compensation for handcuffing an accused, without recording the reasons in the police case diary, it gave liberty to the state to recover the amount from the delinquent police officer.

The High Court held that an accused, in normal circumstances, need not be handcuffed on arrest. It is only under exceptional circumstances (such as the possibility of escape and/or the possibility of causing harm to himself or others), that handcuffing an accused can be resorted to. Further, when there is such handcuffing, the arresting officer must record the reasons, which then would have to stand judicial/court scrutiny. The petitioner in this case was a law student against whom five criminal cases had been filed for offences under the Negotiable Instruments Act, 1881 for the dishonour of cheques. He had been arrested in furtherance of a non-bailable warrant issued by a magistrate.

There can be three occasions when a person can be (legally) handcuffed, i.e., an accused on his arrest and before he is produced before the magistrate; an under-trial prisoner during transit from jail to the court and back; and a convict being transported from jail to the court and back. The law with regard to handcuffing was settled in 1980 when the Supreme Court of India, in *Prem Shankar Shukla vs Delhi Administration*, held that 'the only circumstance which validates incapacitation by irons — an extreme measure — is that otherwise there is no other reasonable way of preventing his escape'. It said that where an arrestee or a convict can be prevented from escape by increasing security, such an increase is to be a norm rather than handcuffing.

The Court mandated that in case of handcuffing, the reasons for this have to be recorded in writing and it is the duty of the court to make inquiries with the person arrested as to whether he had been handcuffed or not and then approve or reject the reasons. The Supreme Court passed similar directives in another case with regard to under-trial prisoners. Thus, irrespective of whether the person to be handcuffed is an accused or an under-trial prisoner or a convict, the principles governing handcuffing remain the same. However, if such a person is under the judicial custody of the court, the court's permission is required for handcuffing except under emergent circumstances.

The next point is about who should pay compensation. It is an established principle that the relief of monetary compensation for an 'established infringement of the fundamental right guaranteed under Article 21 of the Constitution is a remedy available in public law, which is based on the strict liability for contravention of the guaranteed basic and inalienable rights of the citizens'. The constitutional courts are empowered to grant such relief 'against the state or its servants in the purported exercise of their powers'. So, who should pay such compensation?

In *State of Maharashtra vs Ravikant S. Patil* (1991), when there were allegations of handcuffing and the parading of an under-trial prisoner of murder on the streets, the Bombay High Court held the Inspector of Police responsible for violation of Article 21, ordering him to pay 10,000 as

compensation. However, the Supreme Court (though it upheld the judgment of the High Court directing compensation) held that the police officer was not personally liable as he had acted in his official capacity.

The top court modified the order to that extent and directed the state (and not the police inspector) to pay the compensation. Therefore, the judgment of the Karnataka High Court (discussed above) as far as payment of compensation by the police officer is concerned, does not appear to be in sync with the ratio of the Supreme Court judgment. The police officer might have failed to implement the court's directives, but he was not acting in his personal capacity.

However, the High Court rightly said that it is the state's responsibility to equip all police stations with adequate and necessary police personnel to discharge their obligations. Therefore, in absence of the required infrastructure, the blame of non-compliance cannot be shifted only to the police officer.

It is undisputed that a police station or a reserve police line is often unable to provide sufficient escort to jail authorities in the transportation of under-trial prisoners to court, the reasons being a lack of manpower or urgent law-and-order duties. It may also become difficult at times to predict the conduct of an arrestee on the spot.

A National Crime Records Bureau publication (Ministry of Home Affairs) on 'Crime in India-2020' shows that 810 cases of prisoner escape from police custody (against 931) were reported in the year 2020. No less than 117 cases were registered against negligent police officers as well. These numbers may not be very high, but are sufficient to substantiate the fact that the use of handcuffs is generally done to prevent escape and not to dehumanise criminals.

Nonetheless, if any malice is found behind the use of handcuffs, it needs to be dealt with strongly by the department. Similarly, there cannot be a justifiable excuse for not mentioning the reasons for handcuffing in the case diary.

The Supreme Court, in the Ravikant S. Patil (supra) case, had rightly said that the authorities concerned may, if they think it necessary, hold an inquiry and then decide on action against the police inspector. Therefore, the right approach would be to initiate disciplinary action against the errant officer under service conduct rules, rather than to order the payment of compensation.

It would also be appropriate for State governments to review the mobility of the police, the requirement of additional manpower and technical gadgets (such as body cameras, as recommended by the Karnataka High Court) periodically, and exempt at least the police department from the ban on recruitment. Per contra, the enforcement agencies and lower courts are duty bound to implement, in letter and spirit, the Supreme Court's directives on handcuffing.

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