AIR 1980 SC 1535 : (1980) CriLJ 930 : (1980) 3 SCC 526 : (1980) SCC(Cri) 815 : (1980) 3 SCR 855

Supreme Court of India

Case No: Writ Petition (Civil) 1079 of 1979

Prem Shankar Shukla	APPELLANT
Vs	
Delhi Administration	RESPONDENT

Date of Decision: April 29, 1980

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 21, 32
- Criminal Procedure Code, 1973 (CrPC) - Section 46, 49
- Penal Code, 1860 (IPC) - Section 148, 220, 226, 75, 9(2)
- Prisoners (Attendance in Courts) Act, 1955 &m

Citation: AIR 1980 SC 1535 : (1980) CriLJ 930 : (1980) 3 SCC 526 : (1980) SCC(Cri) 815 : (1980) 3 SCR 855

Hon'ble Judges: V. R. Krishna Iyer, J; R. S. Pathak, J; O. Chinnappa Reddy, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

V.R. Krishna Iyer, J.
When they arrested my neighbour I did not protest. When they arrested the men and women in the opposite house I did not protest. And when they finally came for me, there was nobody left to protest. Porstor Miemoller.

This grim scenario burns into our judicial consciousness the moral emerging from the case being that if to-day freedom of one forlorn person falls to the police somewhere, tomorrow the freedom of many may fall elsewhere with none to whimper unless the court process invigilates in time and polices the police before it is too late. This futuristic thought, triggered off by a telegram from one Shukla, prisoner lodged in the Tihar Jail, has prompted the present "habeas" proceedings. The brief message he sent runs thus:

In spite of Court Order and directions of your Lordship in Sunil Batra v. Delhi handcuffs are forced on me and Ors. Admit writ of Habeas Corpus.

Those who are injured 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. This sensitized perspective, shared by court and counsel alike, has prompted us to examine the issue from a fundamental viewpoint and not to dismiss it as a daily sight to be pitied and buried. Indeed, we have been informed that the High Court had earlier dismissed this petitioner''s demand to be freed from fetters on his person but we are far from satisfied going by what is stated in Annexure A to the counter-affidavit of the Asst. Superintendent of Police, that the matter has received the constitutional concern it deserves. Annexure A to the counter-affidavit is a communication from the Delhi Administration for general guidance and makes disturbing reading as it has the flavour of legal advice and executive directive and makes mention of a petition for like relief in the High Court:

The petition was listed before Hon''ble Mr. Justice Yogeshwar Dayal of Delhi High Court. After hearing arguments, the Hon''ble Court was pleased to dismiss the petition filed by the petitioner Shri P.S. Shukla asking for directions for not putting the handcuffs when escorted from jail to the court and back to the Jail. In view of the circumstances of the case, it was observed that no directions were needed. However, it came to my notice that the requirements of Punjab Police Rules contained in Volume III Chapter 25 Rule 26,22,23, and High Court Rules and Orders Volume III Chapter 27 Rule 19 are not being complied with. I would also draw the attention of all concerned to the judgment delivered by Mr. Justice R.N. Aggarwal in Vishwa Nath Versus State, Crl. Misc. Main No. 430 of 1978 decided on 6-4-1979 wherein it has been observed that a better class undertrial be not handcuffed without recording the reasons in the daily diary for considering the necessity of the use of such a prisoner is being escorted to and from the court by the police, use of handcuffs be not reported to unless there is a reasonable expectation that such prisoner will use violence or that an attempt will be made to rescue him. The practice of use of handcuffs be followed in accordance with the rules mentioned above.

In plain language, it means that ordinary Indian undertrials shall be routinely handcuffed during transit between jail and court and the better class prisoner shall be so confined only if reasonably apprehended to be violent or rescued.

2. The facts are largely beyond dispute and need brief narration so that the law may be discussed and declared. The basic assumption we humanistically make is that even a prisoner is a person, not an animal, that an under-trial prisoner a fortiori so. Our nation''s founding document admits of no exception on this subject as 276776 has clearly stated. Based on this thesis, all measures authorised by the law must be taken by the court to

keep the stream of prison Justice unsullied.

3. A condensed statement of the facts may help concritise the legal issue argued before us. 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 humiliation 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 court''s direction not to use irons on him and this led to the telegraphic ''litany'' to the Supreme Court which is the functional sentinel on the qui-vive where ''habeas'' justice is in jeopardy. 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, 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 personhood of prisoner come into coneflict, 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 subjected to torture or to cruel, inhuman or degrading treatment or punishment.

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

4. Article 10: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

5. Of course, while these larger considerations may colour our mental process, our task cannot over flow 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 277828 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.

6. 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 relies upon Article 21 of the Constitution and the collective consciousness relating to human rights burgeoning in our half-century.

7. The petitioner is an under-trial prisoner whose presence is needed in several cases, making periodical trips between jail house and 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, maybe handcuffs or chains or bar fetters? When does such traumatic treatment break into the inviolable zone of guaranteed rights? When does disciplinary measure end and draconic torture begin? What are the constitutional parameters, viable guidelines and practical strategies which will permit the peaceful co-existence 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.

8. 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 hang-over 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 advantage 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 brow-beat 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 prisoner and adds that the court had directed that for that 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.

9. The fact, nevertheless, remains that even apart from the High Court"s order the trial judge (Shri A. K. Garg) had directed the officers concerned that while escorting the accused from jail to court and back handcuffing should not be done unless it was so warranted.

...I direct that the officers concerned while escorting the accused from jail to court and back, shall resort to handcuffing only if warranted by rule applicable to better class prisoners and if so warranted by the exigency of the situation on obtaining the requisite permission as required under the relevant rules.

Heedless of judicial command the man was fettered during transit, under superior police orders, and so this habeas corpus petition and this Court appointed Dr. Y.S. Chitale as amicus curiae. gave suitable directions to the prison officials to make the work of counsel fruitful and issued notice, to the State before further action. "To wipe every tear from every eye" has judicial dimension. Here is a prisoner who bitterly complains that he has been publicly handcuffed while "being escorted to court and invokes the court"s power to protect the integrity of his person and the dignity of his humanhood against custodial cruelty contrary to constitutional prescriptions,

10. The Superintendent of the Jail pleaded he had nothing to do with the transport to and from court and Shri Sachthey, counsel for the Delhi Administration, explained that escorting prisoners between custodial campus and court was the responsibility of a special wing of the police. He urged that when a prisoner was a security-risk, irons were not allergic to the law and the rules permitted their use. The petitioner was a clever crook and by enticements would escape from gullible constables. Since iron was too stern to be fooled, his hands were clad with handcuffs. The safety of the prisoner being the onus of the escort police the order of the trial court was not blindly binding. The Rules state so and this explanation must absolve the police. Many more details have been mentioned in the return of the police officer concerned and will be referred to where necessary but the basic defence, put in blunt terms, is that all soft talk of human dignity is banished when security claims come into stern play. Surely, no cut-and-dried reply to a composite security-versus-humanity question can be given. We have been persuaded by counsel to

consider this grim issue because it occurs frequently and the law must be clarified for the benefit of the escort officials and their human charges. Dr. Chitale''s contention comes to this : Human rights are not constitutional clap trap in silent meditation but part of the nation''s founding charter in sensitized animation. No prisoner is beneath the law and while the Act does provide for rules regarding journey in custody when the court demands his presence, they must be read in the light of the larger back drop of human rights.

11. Here is a prisoner-the petitioner-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 this Court under Article 32 to protect, within the limited circumstances of his lawful custody. We must investigate the deeper-issues of detainee''s rights against custodial cruelty and infliction of indignity, within the human rights parameters of Part III of the Constitution, informed by the compassionate international charters and covenants. 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 tramelled by the traditional limits of English vintage; for, our founding fathers exceeded the inspiration of the prerogative writs by phrasing the power in larger diction. That is why, 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.

12. The legality of the petitioner''s custody is not directly in issue but, though circumscribed by the constraints of lawful detention, the indwelling essence and inalienable attributes of man qua man are entitled to the great rights guranteed by the Constitution.

13. In Sunil Butra''s case (supra) it has been laid down by a Constitution Bench of this Court that imprisonment does not, ipso facto mean that fundamental rights desert the detainee.

14. There is no dispute that the petitioner was, as a fact, handcuffed on several occasions. It is admitted, again, that the petitioner was so handcuffed on 6-10-1979 under orders of the Inspector of Police whose reasons set out in Annexure E, to say the least, are vague and unverifiable, even vagarious.

15. Counsel for the respondent in his written submissions states that the petitioner is involved in over a score of cases. But that, by itself, is no ground for handcuffing the prisoner. He further contends that the police authorities are in charge of escorting prisoners and have the discretion to handcuff them, a claim which must be substantiated not merely with reference to the Act and the Rules but also the Articles of the Constitution. We may first state the law and then test that law on the touch-stone of

constitutionality.

16. Section 9(2)(e) 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 Police Rules, 1934 (Vol. III), contain some relevant provisions although the statutory source is not cited. We may extract them here :

26.22(1) Every male person falling within the following category, who has t

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 u/s 148 or 226, Indian Penal Code.

(c) Persons accused of, and previously convicted of, such an offence as to bring the case u/s 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 considering the use of hand-cuffs necessary.

This paragraph sanctions handcuffing as a routine exercise on arrest, if any of the conditions (a) to (f) is satisfied. ''Better Class'' under-trial prisoners receive more respectable treatment in the sense that they shall not be handcuffed unless it is necessary for safe custody Moreover, when handcuffing better class under-trials the officer concerned shall record the reasons for considering the use of handcuffs necessary.

Better class prisoners are defined in Rule 26.21-A which also may be set out here :

26.21-A. Under-trial prisoners are divided into two classes based on previo

officer in charge of the Police Station concerned to classify him as either "better class" or "ordinary". Only those prisoners should be classified provisionally as "better class" who by social status, education or habit of life have been accustomed to a superior mode of living. The fact, that the prisoner is to be tried for the commission of any particular class of offence is not to be considered. The possession of a certain degree of literacy is in itself not sufficient for "better class" classification and no under-trial prisoner shall be so classified whose mode of living does not appear to the Police officer concerned to have definitely superior to that of the ordinary run of the population, whether urban or rural. Under-trial prisoners classified as "better class" shall be given the diet on the same scale as prescribed for A and B class convict prisoners in Rule 26.27(1).

The dichotomy between ordinary and better class prisoners has relevance to the facilities they enjoy and also bear upon the manacles that may be clamped on their person. Social status, education, mode of living superior to that of the ordinary run of the population are the demarcating tests.

17. Paragraph 27.12 directs that prisoners brought into court in handcuffs shall continue in handcuffs unless removal thereof is "specially ordered by the Presiding Officer", that is to say, handcuffs even within the court is the rule and removal an exception.

18. We may advert to revised police instructions and standing orders bearing on handcuffs on prisoners since the escort officials treat these as of scriptural authority. Standing Order 44 reads:

(1) The rules relating to handcuffing of political prisoners and others are laid down in Police Rules 18.30, 18.35, 26.22, 26.23 and 26.24. A careful perusal of these provisions shows that handcuffs are to be used if a person is involved in serious non-bailable offences, is a previous convict, a desperate character, violent, disorderly or obstructive or a person who is likely to commit suicide or who may attempt to escape.

(2) In accordance with the instructions issues by the Government of India, Ministry of Home Affairs, New Delhi vide their letters No. 2/15/57-P-IV dated 26-7-57 and No. 8/07/74-GPA-I dated 8-11-74, copies of which were sent to all concerned vide this Hdqrs. endst. No. 19143-293/C&T dated 3-9-76, handcuffs are normally to be used by the police only where the accused/prisoner is violent, disorderly, obstructive or is likely to attempt to escape or commit suicide or is charged with certain serious non-bailable offences.

(3) XX XX XX

(4) It has been observed that in actual practice prisoners/persons arrested by the police are handcuffed as a matter of routine. This is to be strictly forthwith.

(5) Handcuffs should not be used in routine. They are to be used only where the person is desperate, rowdy or is involved in non-bailable offence. There should ordinarily be no occasion to handcuff persons occupying a good social position in public life, or

professionals like jurists, advocates doctors, writers, educationists"and well known journalists. This is at best an illustrative list; obviously it cannot be exhaustive. It is the spirit behind these instructions that should be understood. It shall be the duty of supervisory officers at various levels, the SHO primarily, to see that these instructions are strictly complied with. In case of non-observance of these instructions severe action should be taken against the defaulter.

There is a procedural safeguard in Sub-clause (6) :

(6) The duty officers of the police station must also ensure that an accused when brought at the police station or despatched, the facts where he was handcuffed or otherwise should be clearly mentioned along with the reasons for handcuffing in the relevant daily diary report. The SHO of the police station and ACP of the Sub-Division will occasionally check up the relevant daily diary to see that these instructions are being complied"with by the police station staff.

19. Political prisoners, if handcuffed, should not be walked through the streets (sub-para 7) and so, by implication others can be.

20. These orders are of April 1979 and cancel those of 1972. The instructions on handcuffs of November 1977 may be reproduced in fairness:

In practice it has been observed that handcuffs are being used for under-trials who are charged with the offences punishable with imprisonment of less than 3 years which is contrary to the instructions of P.P.R. unless and until the officer handcuffing the undertrial has reasons to believe that the handcuff was used because the undertrial was violent, disorderly or obstructive or acting in the manner calculated to provoke popular demonstrations or he has apprehensions 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.

21. The above instructions should be complied with meticulously and all formalities for use of handcuff should be done before the use of handcuffs.

22. This collection of handcuff law must meet the demands of Articles 14, 19 and 21. In the 276776 the imposition of bar fetters on a prisoner was subjected to constitutional scrutiny by this Court. Likewise, irons forced on undertrials in transit must conform to the humane imperatives of the triple Article s. Official crulety, sans constitutionality, 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 Article s.

23. 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 prescribes restrictions

on free movement unless in the interests of the general public. Article 21 after the landmark case in 277828 followed by Sunil Batra (supra) is the sanctuary of human values prescribes fair procedure and forbids barbarities, punitive or processual. Such is the apercu, if we may generalise.

24. 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 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 ?

25. 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. The Encyclopaedia Britannica, Vol. II (1973 Edn.) at p. 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 undertrial 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 (see Sunil Batra, supra) 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 circumstance so hostile to safe-keeping.

26. 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 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.

27. The only circumstance which validates incapacitation by irons--an extreme measure--is that otherwise there is no other reasonable. way of preventing his escape, in the given circumstances. Securing the prisoner being a 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. 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.

28. Functional compulsions of security must reach that dismal degree that 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 over 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 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 thought that the detainee is under "iron" restraint.

29. 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.

30. 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 desparate behavior, 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.

31. 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.

32. Even in cases where, in extreme circumstances, handcuffs have to be put 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 ratio in Maneka Gandhi''s case and Sunil-Batra''s case (supra), read in its proper

light, leads us to this conclusion.

33. We, therefore, hold that the petition must be allowed and handcuffs on the prisoner dropped. We declare that the Punjab Police Manual, in so far as it puts the ordinary Indian beneath the better class breed (paragraphs 26.21A and 26.22 of Chapter XXVI) is untenable and arbitrary and direct that Indian humans shall not be dichotomised and the common run discriminated against regarding handcuffs. The provisions in para 26.22 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 (b) and (c). The nature of the accusation is not the criterion. The clear and present danger of escape breaking out of the police control is the determinent. 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)(b), (e) and (f) also hover perilously near unconstitutionality unless read down as we herein direct. ''Desparate 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 extraguards can make up exceptional needs. In very special situations, we do not rule out the application of irons. The same reasoning appears to (e) and (f). Why torture the prisoner because others will demonstrate or attempt his rescue? The plain law of undertrial custody is thus contrary to the unedifying escort practice. We remove the handcuffs from the law and humanize the police praxis to harmonize with the satvic values of. Part III. The law must be firm, not foul, stern, not sadistic, strong, not callous.

34. 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 bait 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 loses 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 which now prevails in the Gujarat State 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.

35. 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 hand-cuffing a prisoner who may be a patient even in the hospital bed and tie him up with ropes to the legs of the cot.

36. Zoological culture cannot be compatible with reverence for life, even of a terrible criminal.

37. We have discussed at length what may be dismissed as of little concern. The reason is simple. Any man may, by a freak of fate, become an under-trial and every man, barring those who through wealth and political clout, are regarded as V.I.Ps, are ordinary classes and under the existing Police Manual may be man-handled 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 administrative authority, there is an inherent and natural difficulty, in enforcing the limitations of that power.

38. 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 behavior, and there is a wide range of opinion as to their value.

Thus far no, structured or protective 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 behavior....

...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 interests of the state against the loss of liberty and rights of the individual, a prediction of dangerous behavior must have a high level of probability, (a condition which currently does not exist) and the harm to be prevented should be considerable.

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

40. Before we conclude, we must confess that we have been influenced by the thought that some in authority are sometimes moved by the punitive passion for retribution through the process of parading under-trial prisoners cruelly clad in hateful irons. We must also frankly state that our culture, constitutional and other, revolts against such an attitude because, truth to tell.

each tear that flows, when it could have been spared, is an accusation, and he commits a crime who with brutal inadvertancy crushes a poor earthworm Rosa Luxemburg.

41. We clearly declare-and it shall be obeyed from the Inspector General of Police and Inspector General of Prisons to the escort constable and the jailwarder-that 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 we have indicated earlier, will be restraints with irons, to be justified before or after. We 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.

R.S. Pathak, J.

42. I have read the judgment of my learned brother Krishna Iyer with considerable interest but I should like to set forth my own views shortly.

43. It is an axiom of the criminal law that a person alleged to have committed an offence is liable to arrest. In making an arrest, declares Section 46 of the CrPC, "the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action." If there is forcible resistance to the endeavour to arrest or an attempt to evade the arrest, the law allows the police officer or other person to use all means necessary to effect the arrest. Simultaneously, Section 49 provides that the person arrested must "not be subjected to more restraint than is necessary to prevent his escape." The two sections define the parameters of the power, envisaged by the Code in the matter of arrest. And Section 46, in particular, foreshadows the central principle controlling the "power to impose restraint on the person of a prisoner while in continued custody. Restraint may be imposed where it is reasonably apprehended that the prisoner will attempt to escape, and it should not be more than is necessary to prevent him from escaping. Viewed in the light of the law laid down by this Court in 276776 that a person in custody is not wholly denuded of his fundamental rights, the limitations following from that principle acquire a profound significance. The power to restrain, and the degree of restraint to be employed, are not for arbitrary exercise. An arbitrary exercise of that power infringes the fundamental rights of the person in custody. And a malicious use of that power can bring Section 220 of the Indian Penal Code into play. Too often is it forgotten that if a police officer is vested with the power to restrain a person by hand-cuffing him or otherwise there is a simultaneous restraint by the law on the police officer as to the exercise of that power.

44. Whether a person should be physically restrained and, if so, what should be the degree of restraint, is a matter which affects the person in custody so long as he remains in custody. Consistent with the fundamental rights of such person the restraint can be imposed, if at all, to a degree no greater than is necessary for preventing his escape. To prevent his escape is the object of imposing the restraint, and that object defines at once the bounds of that power. The principle is of significant relevance in the present case. The petitioner complains that he is unnecessarily handcuffed when escorted from the jail house to the court building, where he is being tried for criminal offences, and back from the court building to the jail house. He contends that there is no reason why he should be handcuffed. On behalf of the respondent it is pointed out by the Superintendent Central Jail, Tihar, where the petitioner is detained, that the police authorities take charge of prisoners from the main gate of the jail for the purpose of escorting them to the court building and back, arid that the jail authorities have no control during such custody over the manner in which the prisoners are treated. Section 9(2)(e) of the Prisoners (Attendance in Courts) Act, 1955 empowers the State Government to make rules providing for 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 Police Rules, 1934 contain Rule 26.22 which classifies those cases in which handcuffs may be applied. The classification has been attempted some what broadly, but it seems to me that some of the clauses of Rule 26.22, particularly Clauses (a) to (c), appear to presume that in every instance covered by any of those clauses the accused

will attempt to escape. It is difficult to sustain the classification attempted by those clauses. The rule, I think, should be that the authority responsible for the prisoners custody should consider the case of each prisoner individually and decide whether the prisoner is a person who having regard to his circumstances, general conduct, behavior and character will attempt to escape or disturb the peace by becoming violent. That is the basic criterion, and all provisions relating to the imposition of restraint must be guided by it. In the ultimate analysis it is that guiding principle which must determine in each individual case whether a restraint should be imposed and to what degree.

45. Rule 26, 22 read with Rule 26.21-A of the Punjab Police Rules, 1934 draw a distinction between "better class" undertrial prisoners and "ordinary" undertrial prisoner as a basis for determining who should be handcuffed and who should not be. As I have observed, the appropriate principle for a classification should be defined by the need to prevent the prisoner escaping from custody or becoming violent. The social status of a person, his education and habit of life associated with a superior mode of living seem to me to be intended to protect his dignity of person. But that dignity is a dignity which belongs to all, rich and poor, of high social status and low, literate and illiterate. 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 humiliation. Nor is the power intended to be used vindictively or by way of punishment. Standing Order 44 and the Instructions on Handcuffs of November, 1977, reproduced by my learned brother, evidence the growing concern at a higher level of the administration over the indiscriminate manner in which handcuffs are being used. To my mind, even those provisions operate somewhat in excess of the object to be subserved by the imposition of handcuffs, having regard to the central principle that only he should be handcuffed who can be reasonably apprehended to attempt an escape or become violent.

46. Now whether handcuffs or other restraint should be imposed on a prisoner is primarily a matter for the decision of the authority responsible for his custody. It is a judgment to be exercised with reference to each individual case. It is for that authority to exercise its discretion, and I am not willing to accept that the primary decision should be that of any other. The matter is one where the circumstances may change from one moment to another, and inevitably in some cases it may fall to the decision of the escorting authority midway to decide on imposing a restraint on the prisoner. I do not think that any prior decision of an external authority can be reasonably imposed on the exercise of that power. But I do agree that there is room for imposing a supervisory regime over the

exercise of that power. One sector of supervisory jurisdiction could appropriately lie with the court trying the accused, and it would be desirable for the custodial authority to inform that court of the circumstances in which, and the justification for, imposing a restraint on the body of the accused. It should be for the court concerned to work out the modalities of the procedure requisite for the purpose of enforcing such control.

47. In the present case it seems sufficient, in my judgment, that the question whether the petitioner should be handcuffed should be left to be dealt with in the light of the observations made herein by the Magistrate concerned, before whom the petitioner is brought for trial in the cases instituted against him. The petition is disposed of accordingly.