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**CHAINS OF DISCRETION: A CONSTITUTIONAL CRITIQUE OF
HANDCUFFING UNDER BHARATIYA NAGARIK SURAKSHA
SANHITA**

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Abstract:

The introduction of Section 43(3) in the Bharatiya Nagarik Suraksha Sanhita, 2023 marks a regressive shift in India's criminal procedure, granting police officers unchecked discretion to use handcuffs during arrests in a wide range of serious offences. This legislative provision absent in the former Code of Criminal Procedure, 1973 not only reinstates a colonial-era policing tool but also raises serious constitutional questions. The provision's vague and expansive wording, particularly the use of the discretionary term "may," opens the door to potential misuse, arbitrariness, and violation of fundamental rights.

This research critically examines the constitutional validity of Section 43(3) in light of established Supreme Court jurisprudence. Landmark decisions such as *Prem Shankar Shukla v. Delhi Administration* and *Citizens for Democracy v. State of Assam* have categorically held that handcuffing without judicial sanction violates Articles 14, 19, and 21 of the Constitution, particularly the right to dignity and personal liberty. By codifying a power that the judiciary has repeatedly restricted, Section 43(3) undermines the balance between state authority and individual rights.

In addition to domestic legal analysis, this paper provides a comparative perspective by examining handcuffing laws and human rights safeguards in jurisdictions such as the United States, United Kingdom, and Canada. These jurisdictions, despite facing similar law enforcement challenges, have evolved stringent procedural checks against indiscriminate handcuffing, often requiring reasonable justification and legal oversight.

KEYWORDS: Handcuffing, Human Dignity, Right to Life

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INTRODUCTION:

In the pursuit of preventing crime and ensuring the apprehension of criminals, police agencies across the world resort to various physical restraint methods. Among these, the use of handcuffs and bar-fetters remains one of the most visible and controversial tools of coercive authority. These instruments are often employed when a person is perceived to be dangerous in behavior, likely to escape custody, or poses a threat to public peace and safety. Although in principle, their use is intended to be limited to exceptional situations, in practice, the display of handcuffed individuals often in public has become almost normalized, sometimes even serving as a performative assertion of police power.

This contradiction between legal restraint and operational practice lies at the heart of the debate over handcuffing in India. Both handcuffs and bar-fetters are increasingly seen not only as tools for maintaining custody but also as symbols of control and subjugation. Despite judicial efforts to curb their routine use, it is not unusual to witness law enforcement personnel parading accused individuals in handcuffs, reflecting a deeply entrenched culture of punitive visibility and public humiliation.

As noted in the Encyclopaedia Britannica, “*handcuffs and fetters are instruments for securing the hands or feet of prisoners under arrest, or as a means of punishment.*”³ Similarly, the Collins Dictionary defines handcuffs as “*two metal rings which are joined together and can be locked round someone’s wrists, usually by police during an arrest.*”⁴ Proponents of handcuffing argue that such restraints are essential for preventing escape, protecting officers and the public, and ensuring the integrity of custodial operations. Yet, critics challenge this justification, asserting that the practice—particularly when carried out arbitrarily or in non-threatening circumstances—amounts to degrading treatment, violating basic standards of human dignity and rights.

Indian jurisprudence treats handcuffing as an exception, not the rule. The Supreme Court of India has clearly held that handcuffing should be carried out only in extraordinary circumstances, and must be justified, reasonable, and fair. Even in the case of hardened or dangerous criminals, the Constitution guarantees certain inalienable rights, and any action that undermines those rights without legal justification constitutes a gross violation of human dignity. From a ground-level perspective, police officers and prison personnel often face

³ Encyclopaedia Britannica, Volume II (1973 Edition), at page 53.

⁴ HANDCUFF, Definition & Translations, Collins English Dictionary
<https://share.google/4K8WG6sFO3N2jbGBi> (Last Accessed on 25/07/2025).

significant challenges in preventing escapes, especially given the increasing complexity of criminal operations and organized crime. In many cases, the use of handcuffs is prompted by the real or perceived risk posed by the accused or their associates. This operational reality creates a paradoxical situation: while handcuffing may be seen as a necessary measure for security, it also exposes law enforcement to allegations of human rights violations and misuse of authority.

This paper aims to explore the legal position and evolving jurisprudence surrounding the use of handcuffs in India, particularly in light of the reintroduction of handcuffing under Section 43(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023. It further seeks to develop a balanced understanding of the tension between ground-level policing needs and the constitutional imperative to uphold human dignity, especially in a democratic society governed by the rule of law.

EVOLUTION OF HANDCUFFING FROM COLONIAL CONTROL TO MODERN LEGAL CHALLENGES:

The practice of restraining individuals using handcuffs dates back as far as 400 BCE, where such instruments were predominantly employed to subjugate and transport prisoners of war. Their primary function was to exert control, often symbolizing domination and enslavement. In modern times, the design and use of handcuffs began to take a more structured and systemic form around 1912, largely for the purpose of securely escorting accused persons between police stations, courts, and jails.

During the colonial period in India, handcuffing and leg shackles were extensively used by the British authorities to suppress revolutionary activities. Freedom fighters and political dissidents were often subjected to these forms of restraint, not merely to prevent escape, but as a symbol of power and humiliation. Yet, as the colonial administration evolved, even the British rulers began to acknowledge the moral and legal implications of indiscriminate handcuffing. Notably, Section 12 of the Police Act, 1861⁵ empowered the Inspector-General of Police to establish rules concerning the administration and conduct of the police force. Exercising this authority, the British introduced the "Police Regulations Bengal, 1943," which explicitly restricted the use of handcuffs in routine cases, labeling it as an "unnecessary indignity." The regulations further clarified that handcuffs should only be used in exceptional circumstances and that under no situation should a woman be handcuffed.

⁵The Police Act 1861, No. 5, Acts of Parliament, Sec. 12 (India).

This early recognition of human dignity and restraint in the use of force marked a progressive shift even before India attained independence. However, paradoxically, after independence in 1947, Indian law enforcement began to use handcuffs more visibly often as an assertion of authority rather than necessity. This practice gradually came under judicial scrutiny.

The Supreme Court of India, in a series of landmark judgments, condemned the casual and arbitrary use of handcuffs, holding that such treatment violated fundamental human rights, particularly the right to life and personal liberty under Article 21 of the Constitution. The Court emphasized that handcuffing should not be a matter of routine but must be guided by reasoned justification, proportionate to the risk posed by the accused.

Despite this jurisprudential shift toward a more humane approach, the legislative landscape took a surprising turn with the enactment of the *Bhartiya Nagarik Suraksha Sanhita*, 2023 replacing the Criminal Procedure Code of 1973, formally reintroduces the use of handcuffs in the criminal justice process. While it purports to regulate their use through statutory provisions, concerns have been raised about the potential erosion of constitutional safeguards and the resurgence of a custodial culture that prioritizes control over dignity.

JUDICIAL RESPONSE TO RESTRAINTS: THE CONSTITUTIONAL TIMELINE

The Indian judiciary has consistently emphasized that the use of handcuffs and fetters must be viewed through the lens of constitutional morality, procedural fairness, and human dignity. A close examination of landmark cases reveals the evolution of judicial thought from passive acceptance of administrative discretion to a more active stance in curbing arbitrariness, particularly in the context of custodial practices.

In the *Sobhraj case*,⁶ the Supreme Court was confronted with the claim of a foreign national who had been subjected to bar fetters continuously since the beginning of his detention, despite recommendations for their removal. The petitioner argued that such treatment violated Article 21 of the Constitution, which guarantees the right to life and personal liberty. He further challenged Section 56 of the Prisons Act, which permits the imposition of bar fetters, claiming it conferred uncontrolled and arbitrary power upon prison authorities and was violative of Articles 14 and 21. The Court, however, held that Section 56 was not unconstitutional as it prescribes specific conditions for its applicability. The Court emphasized that the provision is intended for extreme cases those posing a serious threat to

⁶Charles Sobhraj v. Suptd. Tihar Jail, New Delhi, AIR 1978 SC 1514.

security and should not be applied as a general rule. Importantly, in this case, those conditions were found not to exist, and the Court held that continued fettering in such circumstances was not legally justifiable.

The Court's observation in *Sobhraj* that prolonged use of bar fetters can degrade a person to the status of an animal underlines a significant constitutional principle: punishment or restraint must not cross the threshold of human dignity. The use of bar fetters, especially without periodic review or judicial oversight, was seen as amounting to cruel and unusual punishment, prohibited not only under international human rights instruments like the Universal Declaration of Human Rights but also under Article 21, which demands just, fair, and reasonable procedures.

This sentiment echoes the landmark ruling in *Sunil Batra v. Delhi Administration*,⁷ where the Court categorically held that prisoners are not stripped of their fundamental rights merely because of incarceration. While their liberty is naturally curtailed by the fact of confinement, the residual liberties they retain are constitutionally protected. The Court stressed that any significant restriction or punitive measure imposed on a prisoner must adhere to procedural safeguards and cannot be at the arbitrary discretion of prison authorities. Conviction does not transform a citizen into a "non-person." As such, solitary confinement, handcuffing, or the imposition of fetters requires strict legal justification.

The principle was further strengthened in *Prem Shankar Shukla v. Delhi Administration*,⁸ where the Supreme Court categorically held that handcuffing is *prima facie* inhuman, arbitrary, and excessive. The Court asserted that it should be resorted to only in the rarest of rare cases specifically, where the accused is considered desperate, violent, or likely to abscond. Crucially, the Court stated that such assessments must be based on concrete material evidence, not mere assumptions or generalized fears.

Despite these rulings, violations persisted. In *Aeltemesh Rein v. Union of India*,⁹ an advocate accused of an offence was handcuffed while being taken to court. The Supreme Court expressed dismay at this treatment and issued directions to the Union of India to formulate uniform rules and guidelines on handcuffing, in line with the constitutional principles and previous judgments of the Court. These rules were to be circulated among all states and union territories within a fixed timeframe to ensure compliance.

⁷Sunil Batra v. Delhi Administration AIR 1980 SC 1579.

⁸Prem Shankar Shukla v. Delhi Administration AIR 1980 SCC 1535.

⁹Aeltemesh Rein v. Union of India AIR 1988 SCC 1768.

The Supreme Court again reiterated its commitment to the constitutional protection of liberty and dignity in *Sunil Gupta v. State of M.P.*,¹⁰ where individuals arrested for peacefully protesting by staging a dharna were subjected to handcuffing. The Court held that such an act was a gross violation of Article 21 and was particularly humiliating given the peaceful nature of the protest and the fact that the accused had voluntarily submitted to arrest

In *Harbans Singh v. State of U.P.*,¹¹ undertrial prisoners were kept in fetters based on a jail manual provision and their alleged involvement in multiple heinous crimes. The Court rejected the argument that mere security concerns justified the indiscriminate use of fetters, and observed that alternative security arrangements such as armed guards could have been made. The Court condemned the practice of automatically applying fetters without individualized assessment, especially when trial delays—contrary to judicial directives—prolonged the accused's incarceration.

In *Kishore Singh v. State of Rajasthan*,¹² the Court further emphasized that solitary confinement or the use of bar fetters must be avoided unless absolutely necessary, and only when accompanied by strict procedural safeguards. The decision reaffirmed that Articles 14, 19, and 21 are fully operative within prisons and that human dignity cannot be suspended at the prison gates.

The Court's disapproval reached a peak in *State of Maharashtra v. Ravikant Patil*,¹³ where an undertrial accused of murder was not only handcuffed but publicly paraded with ropes tied around his arms. The Supreme Court denounced this as a clear violation of Article 21, holding it to be both degrading and unconstitutional. The Court awarded compensation to the victim and directed a formal inquiry into the misconduct of the escorting officers.

Despite such directions, arbitrary handcuffing continued, as seen in cases like *Khedat Mazdoor Chetna Sangath v. State of M.P.*¹⁴ and *Delhi Judicial Service Association v. State of Gujarat*.¹⁵ The latter shocked the legal community when even a judicial officer was handcuffed and mistreated by police, a glaring abuse of power that prompted the Court to issue sharp warnings and further clarify procedural protections

¹⁰Sunil Gupta v. State of M.P. (1990) 3 SCC 119.

¹¹Harbans Singh v. State of U.P.AIR 1991 SC 53.

¹²Kishore Singh v. State of Rajasthan AIR 1981 SCC. 625

¹³State of Maharashtra v. Ravikant Patil (1991) 2 SCC 373

¹⁴Khedat Mazdoor Chetna Sangath v. State of M.P. (1994) 6 SCC 260

¹⁵Delhi Judicial Service Association v. State of Gujarat AIR 1991 SC 2176

One of the most authoritative pronouncements came in *Citizens for Democracy v. State of Assam*,¹⁶ a case triggered by a letter from journalist Kuldip Nayar regarding the inhuman treatment of undertrials chained and handcuffed in a hospital. Justifying their actions, the police cited prior cases of terrorist escapes. The Court, however, remained unconvinced and issued binding directions affirming that handcuffing of any prisoner, convicted or undertrials prohibited without prior judicial approval. The Court noted with regret that previous guidelines had been treated as “pious declarations” and stressed the need for strict enforcement.

SECTION 43(3) OF THE BNSS:

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant shift in India’s criminal procedural framework, replacing the colonial-era Code of Criminal Procedure, 1973. Among the most controversial provisions of this new statute is Section 43(3), which explicitly reintroduces the practice of handcuffing during arrests - a practice previously curtailed and viewed with skepticism by the judiciary on grounds of fundamental rights and human dignity.

According to Section 43(3) of the BNSS, a police officer is empowered to use handcuffs while arresting an individual, keeping in view the "nature and gravity of the offense." The provision enumerates a specific list of circumstances in which handcuffing may be applied:

1. When the accused is a habitual or repeated offender.
2. If the individual has escaped from custody or has attempted to do so.
3. When the person is accused of serious offenses such as:
 - a. Organized crime
 - b. Terrorist acts
 - c. Drug trafficking
 - d. Illegal possession of arms and ammunition
 - e. Murder
 - f. Rape
 - g. Acid attacks
 - h. Counterfeiting currency or coins
 - i. Human trafficking\

¹⁶Citizens for Democracy v. State of Assam AIR 1996 SC 2193.

- j. Sexual violence against children
- k. Offenses against the State¹⁷

While the BNSS attempts to bring clarity and specificity to the use of handcuffs, this re-legitimization stands in stark contradiction to the judicial precedents set by the Supreme Court of India, which has time and again condemned arbitrary handcuffing as a violation of Articles 14, 19, and 21 of the Constitution. In landmark judgments such as *Prem Shankar Shukla v. Delhi Administration*¹⁸ and *Sunil Batra v. Delhi Administration*¹⁹, the apex court clearly held that handcuffing is *prima facie* inhuman, unreasonable, and arbitrary. It mandated that no individual should be handcuffed unless there is a clear and present risk of escape or violence, and that reasons must be recorded in writing. Moreover, the prior approval of a judicial magistrate was emphasized as a safeguard to prevent misuse. However, the BNSS fails to incorporate any of these judicially mandated safeguards. It does not require police officers to seek prior judicial approval for the use of handcuffs, nor does it obligate them to record specific reasons justifying such restraint. This legislative omission amounts to a regressive step, undermining both the spirit of constitutionalism and the jurisprudence of human dignity in India.

CONSTITUTIONAL DIMENSIONS OF HANDCUFFING UNDER SECTION 43(3) OF THE BNSS:

The constitutional validity of Section 43(3) of the BNSS, 2023, which authorizes the police to use handcuffs during arrest or while producing an accused before a court under specific circumstances, was challenged before the Supreme Court of India in the case of *Mannargudi Bar Association v. Union of India*.²⁰ This provision permits handcuffing based on the gravity of the alleged offence, criminal antecedents of the accused, or the risk of escape. The petitioners contended that such an unfettered grant of discretion to the police violates fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution of India, particularly the right to dignity, equality before the law, and protection from arbitrary state action. They argued that the provision disregards established jurisprudence laid down in *Prem Shankar Shukla v. Delhi Administration* and *Sunil Batra v. Delhi Administration* which mandated strict judicial oversight and exceptional justification for the use of handcuffs. The matter was first heard on December 18, 2024, by a division bench comprising Justices Surya

¹⁷Bhartiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, Sec. 43(3) (India).

¹⁸Supra Note at 7.

¹⁹Supra Note at 6.

²⁰*Mannargudi Bar Association v. Union of India* W.P. (C) No. 625/2024.

Kant and Ujjal Bhuyan, where the Court refrained from issuing any interim stay but made significant oral observations. Justice Surya Kant questioned the sweeping challenge to Section 43(3), remarking whether hardened criminals, terrorists, acid attack perpetrators, and repeat offenders should be treated “like saints.” His observations reflected a judicial concern for balancing constitutional liberties with public order and custodial security. While not ruling on the merits at this stage, the Court directed the petitioners to submit a comparative study of restraint practices in other jurisdictions, thereby signaling a broader constitutional and policy-level engagement. Thus, the preliminary hearing in this case marked the beginning of a critical judicial examination into the compatibility of coercive policing powers under BNSS with India's constitutional guarantees of human dignity and procedural fairness.

HANDCUFFING AND INTERNATIONAL HUMAN RIGHTS STANDARDS:

The act of handcuffing is not merely a procedural restraint but often serves as a symbol of public humiliation and a grave affront to human dignity. Rooted in a punitive mindset, it has been criticized not only on moral and ethical grounds but also as a violation of fundamental human rights.

Article 5 of the UDHR clearly states: "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*"²¹ This article directly implicates the use of practices like handcuffing especially when executed arbitrarily, unnecessarily, or in public view as degrading acts that strip individuals of their self-worth and violate their personal dignity. Further strengthening this position is Article 10 of the ICCPR, which states: "*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*"²² This provision underscores the obligation of states to treat detainees and accused persons with compassion and respect, not contempt. Handcuffing, when done mechanically or excessively, stands in stark opposition to this standard. It dehumanizes individuals before guilt is even established and compromises the core principle of presumption of innocence.

This position finds judicial backing in the landmark case of ***Regina v. Alan William Horden***,²³ Lord Justice Hughes held that while the risk of escape might exist, it cannot alone justify the use of handcuffs, particularly in the courtroom setting. In this case, the accused, charged with possession of heroin with the intent to supply, was brought into the witness box

²¹ Universal Declaration of Human Rights. 1948, art.5

²² International Covenant on Civil and Political Rights, 1966, art. 10

²³ Regina v. Alan William Horden [2009] EWCA Crim 388.

in handcuffs. The court noted that such measures, when visible to a jury, could prejudice the accused's right to a fair trial unless supported by concrete evidence justifying their necessity. It stressed that any decision to restrain a person in such a demeaning way must be based on specific, articulated reasons not on vague notions of security or routine police discretion.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, commonly referred to as the Nelson Mandela Rules, were officially adopted by the UN General Assembly in 2015 as a global benchmark for the humane treatment of incarcerated individuals. These rules represent a critical international framework aimed at protecting the dignity and rights of prisoners, while also guiding prison administration and penal reform across nations.

Rule 47(1) of the Mandela Rules categorically prohibit the use of physical restraints that are inherently cruel, degrading, or inflict pain, such as chains or irons. This reflects the international consensus that such practices amount to inhuman or degrading treatment and are incompatible with modern standards of prison management. However, Rule 47(2) introduces a limited exception: other forms of restraints may be used only under strict conditions. These include situations where the restraint is specifically permitted by law, and its application is justified, such as during the transfer of prisoners to ensure security, or it becomes necessary as a last resort, for instance, to prevent the prisoner from causing harm to others, inflicting self-injury, or causing serious damage to property, but only after other less invasive methods have failed.²⁴ This distinction strikes a balance between security needs and the principle of human dignity, emphasizing that restraint should not be used as punishment, nor as a routine measure, but strictly in exceptional circumstances and under legal oversight.

EXCLUSION OF ECONOMIC OFFENCES FROM THE AMBIT OF SECTION 43(3) OF BNSS:

As per the original text of Section 43(3) of the BNSS Bill, police were authorized to use handcuffs while arresting individuals accused of a specified set of serious offences, which included terrorism, organized crime, murder, rape, counterfeiting, and notably, "economic offences." This inclusion sparked critical debate as it provided sweeping discretionary power to law enforcement, grouping economic offences many of which are non-violent in nature—with heinous and physically dangerous crimes. The term "economic offences" was perceived

²⁴J.P. Associates, Reintroduction Of Handcuffing In Indian Criminal Justice System, <https://www.mondaq.com/india/crime/1539010/reintroduction-of-handcuffing-in-indian-criminal-justice-system> (Last Accessed on 26/07/2025).

as overbroad and vague, potentially covering a wide range of activities from petty financial irregularities to high-value corporate fraud. Recognizing the risks of misuse and the constitutional implications for personal liberty and dignity under Article 21.

The Parliamentary Standing Committee on Home Affairs examined the clause and recommended that the term “economic offences” be entirely removed from the ambit of Section 43(3).²⁵ The committee observed that while economic offences may have serious consequences, they do not typically involve immediate threats of violence or attempts to escape that justify the humiliating and coercive act of handcuffing. Moreover, the sweeping nature of the term could lead to arbitrary and disproportionate application, violating the principle of proportionality in criminal justice. The committee’s recommendation was grounded in the need to uphold constitutional safeguards and prevent the stigmatisation of individuals accused of economic wrongdoing without due process. This intervention reflects a broader commitment to ensuring that the procedural arm of the new criminal law regime is fair, restrained, and in line with contemporary human rights standards. By distinguishing between offences that pose a real threat to public safety and those that are financial in nature, the committee reinforced the idea that coercive police measures must be strictly necessary and narrowly tailored. Thus, the recommended exclusion of “economic offences” from Section 43(3) serves as a vital safeguard against executive overreach and signals a more nuanced approach to balancing state interests with individual freedoms in the reformed criminal justice framework.

PHYSICAL AND PSYCHOLOGICAL IMPACT OF HANDCUFFING ON ACCUSED PERSONS:

Extensive empirical evidence underscores that being handcuffed can lead to both physical and psychological harm for accused persons. A systematic review found that nerve injuries—especially compression of the superficial radial nerve—are the most common complication of metal or plastic restraints, affecting up to 82 % of examined wrists and sometimes resulting in permanent sensory deficits or chronic pain.²⁶ A prospective study also documented neuropathies in dozens of detainees: among 41 evaluated individuals, 22 sustained superficial

²⁵Press Trust of India, No handcuffs for economic offenders, parliamentary panel recommends amendment, INDIA TODAY, <https://www.indiatoday.in/india/story/parliamentary-panel-accused-in-economic-offences-handcuff-serious-crimes-2462252-2023-11-13>.

²⁶ Miriam Y Neufeld a, Sarah Kimball a,b, Andrew Stein a, Sondra S Crosby, Forensic Evaluation of Alleged Wrist Restraint/Handcuff Injuries in Survivors of Torture Utilizing the Istanbul Protocol, National Library of Medicine, <https://pubmed.ncbi.nlm.nih.gov/33409560/> (Last Accessed on 26/07/2025).

radial nerve damage, and many experienced persistent symptoms and weakened sensory function even months later.²⁷ Beyond nerve injury, osseous damage is well-documented: fractures of the radial styloid or scaphoid occurred in several cases, often linked to overtightening or improper application of rigid cuffs. In extreme scenarios, improper cuffing and prolonged restraint have led to severe ischemic injuries or even amputation such as a case where a man lost his hand after being left in excessively tight cuffs for hours.

Psychologically, being restrained is frequently experienced as deeply distressing and dehumanizing. Reviews of restraint in healthcare and custody settings reveal themes of shame, helplessness, and trauma: individuals often report feeling ignored, punished, or subhuman during and after physical restraint.²⁸ One qualitative synthesis highlighted emotional responses including fear, anger, demoralization, and re-traumatization—that compound the physical impact of such restraints. Even short-term use can provoke distress, especially when restraints are improperly applied or left unchecked.

Moreover, one pilot study comparing rigid handcuffs found that while most injuries were classified as minor and self-limiting, a notable proportion of detainees still experienced wrist abrasions, bruising, and nerve-related symptoms that required medical attention. Importantly, longer durations of cuffing particularly exceeding 3–4 hours were significantly associated with neurological symptoms, especially among intoxicated or semiconscious individuals.²⁹ Ill-fitting cuffs, particularly on slender wrists, exacerbate pressure and discomfort: anecdotal reports note painful bruising and lasting marks in such cases. Together, these findings make clear that handcuffing carries measurable risk to detainees ranging from nerve compression injuries and fractures to emotional trauma and loss of autonomy. Proper application (including double-locking), monitoring duration, and ensuring correct fit are essential to mitigating these harms.

POTENTIAL MISUSE OF HANDCUFFING:

²⁷Shawn Khan et al., Hand and Wrist Injuries Associated With Application of Physical Restraints: A Systematic Review, National Library for Medicine, <https://pubmed.ncbi.nlm.nih.gov/35778878/> (Last Accessed on 26/07/2025).

²⁸Pauline Cusack, Frank Patrick Cusack & Sue McAndrew, An integrative review exploring the physical and psychological harm inherent in using restraint in mental health inpatient settings, *International Journal of Mental Health Nursing*, Volume 27, Issue 3, pp. 1162-1176.

²⁹Miriam Y Neufeld a, Sarah Kimball a,b, Andrew Stein & Sondra S Crosby, Forensic Evaluation of Alleged Wrist Restraint/Handcuff Injuries in Survivors of Torture Utilizing the Istanbul Protocol, <https://pmc.ncbi.nlm.nih.gov/articles/PMC9074820/> Last Accessed on 26/07/2025).

The use of handcuffs, though justified in exceptional cases of flight risk or violence, has increasingly come under scrutiny due to its arbitrary application and its potential for misuse as a tool of humiliation and state coercion. Two recent cases in India starkly illustrate how handcuffing can be misused to stigmatize individuals and manipulate public perception, often outside the bounds of legal necessity.

In the case of Vikas Dubey, a notorious gangster from Uttar Pradesh, a disturbing pattern of extrajudicial conduct emerged. Although not handcuffed during his supposed escape attempt in July 2020, the incident raised serious concerns about custodial practices and police narratives. He was shot dead in what the authorities called a retaliatory encounter after allegedly attempting to flee. Legal experts and civil society questioned why a high-profile and dangerous criminal like Dubey was neither handcuffed nor adequately secured during transit. This selective restraint or lack thereof hints at a premeditated outcome, using the absence of handcuffing as a convenient cover for custodial killing. The case exposed the arbitrary and discretionary application of handcuffing, where its absence in one scenario and its excess in others serve calculated ends.³⁰

On the opposite spectrum is the case of Umar Khalid, a former JNU scholar and activist, and Khalid Saifi, both of whom were charged in connection with the 2020 Delhi riots. During a routine court production, the Delhi Police sought to handcuff them, a move that the court promptly rejected, observing that “they are not criminals.” The judicial response underscored the misuse of handcuffs not for reasons of security or risk, but seemingly to convey a message of guilt and criminality. In high-profile political cases such as this, handcuffing becomes a performative act—a tool of public shaming rather than legal necessity, undermining the presumption of innocence.³¹

Judicial responses to such misuse have increasingly been grounded in the constitutional guarantee of dignity under Article 21. Indian courts have, on several occasions, not only condemned unjustified handcuffing but also ordered monetary compensation for the violation of personal liberty. In the case of *State of Maharashtra v. Ravikant S. Patil*,³² the Bombay High Court imposed personal liability on the police inspector who ordered handcuffing,

³⁰Vikas Dubey's killing raises handcuffing issue vis-a-vis SC guidelines on 'inhuman' practice, <https://timesofindia.indiatimes.com/india/vikas-dubeys-killing-raises-handcuffing-issue-vis-a-vis-sc-guidelines-on-inhuman-practice/articleshow/76892357.cms>.

³¹Anand Mohan J, Umar produced in court in handcuffs, judge takes note, issues notice to jail authorities, <https://indianexpress.com/article/cities/delhi/umar-produced-in-court-in-handcuffs-judge-takes-note-issues-notice-to-jail-authorities-7779092/>.

³²State of Maharashtra v. Ravikant S. Patil (1991) 5 JT 442.

awarding ₹10,000 as compensation. The court ruled the act violated Article 21 and declared that state officers could not claim immunity for unconstitutional conduct. In *Satish Banwarilal Sharma v. Union Territory of Diu, Daman and Dadra*,³³ the Bombay High Court awarded ₹4 lakh in compensation to a journalist who was handcuffed and paraded by police after being arrested on extortion charges in 2009. The court found the act a violation of the journalist's fundamental rights, particularly his right to dignity and personal liberty. Similarly, in *Sabah Al Zarid v. State of Assam*,³⁴ the Gauhati High Court directed payment of ₹5 lakh to an advocate who was handcuffed without lawful justification. The court made it clear that no individual regardless of charges should be subjected to humiliating restraints unless strictly required by law and circumstances. In *Suprit Ishwar Divate v. State of Karnataka*,³⁵ a law student was wrongfully arrested and handcuffed, prompting the Karnataka High Court to grant compensation, affirming that such restraint, especially when imposed arbitrarily, erodes public trust in the rule of law.

Together, these cases point toward a disturbing pattern where handcuffing is not merely a means of ensuring custody but often becomes a symbolic act of state dominance, dehumanization, and punitive display. The judiciary's intervention offers a necessary check, but the recurring nature of such incidents calls for codified safeguards, strict procedural accountability, and a shift away from colonial legacies of coercive policing.

INFLUENCE OF HANDCUFFING IN JUDGMENTS:

The article titled "Looking Guilty: Handcuffing Suspects Influences Judgements of Deception" by Zloteanu et al.³⁶ explores how the act of handcuffing suspects affects the accuracy and perception of deception judgments by both laypersons and trained police officers. Drawing from psychological research that suggests people often rely on faulty nonverbal cues like fidgeting or lack of eye contact to assess truthfulness, the study investigates whether restraining suspects physically interferes with these observational judgments. Through a controlled experiment involving video recordings of suspects giving truthful or deceptive responses either handcuffed or not the researchers found that handcuffing significantly reduced the observers' ability to accurately distinguish truth from

³³Satish Banwarilal Sharma v. Union Territory of Diu, Daman and Dadra SLP (Criminal) 6448/2017.

³⁴Sabah Al Zarid v. State of Assam 2023 SCC OnLine Gau 4244.

³⁵Suprit Ishwar Divate v. State of Karnataka 2022 SCC OnLine Kar 1133.

³⁶Mircea Zloteanu, Nadine L. Salman, Eva G. Krumhuber, Daniel C. Richardson, Looking guilty: Handcuffing suspects influences judgements of deception, Journal of Investigative Psychology and Offender Profiling, Volume 19, Issue, pp. 231-247.

lies. Interestingly, this reduction in accuracy was consistent across both laypersons and police officers, suggesting that even trained professionals are susceptible to biases introduced by situational factors like physical restraint. While handcuffing did not create a statistically significant lie-bias (a tendency to believe someone is lying), it did limit the suspects' gestural expressiveness and potentially primed criminal stereotypes, which in turn blurred the behavioral distinctions between truthful and deceptive suspects. Furthermore, while police officers reported higher confidence in their assessments compared to laypersons, their actual detection accuracy did not improve highlighting a concerning overconfidence in professional judgments. The authors argue that such contextual elements, including the visual cue of restraints, may unconsciously shape evaluators' perceptions and introduce judgment errors, regardless of intent or training. These findings carry significant implications for legal and investigative procedures, emphasizing the need to reconsider the routine use of restraints during interviews or interrogations. Over-reliance on visual cues compromised by handcuffing not only undermines the credibility of assessments but may also contribute to wrongful assumptions and miscarriages of justice. The research ultimately calls for a reevaluation of interrogation environments and better training to mitigate the subconscious influence of such non-diagnostic contextual factors in the pursuit of fair and accurate truth assessment.

CONCLUSION:

"Handcuffing is prima facie inhuman and, therefore, unreasonable; it should be the last resort, not the first reflex." - Justice Krishna Iyer

The modern handcuff, first manufactured in 1780 by Hiatt & Co. in Birmingham—an enterprise notorious for producing not only hand restraints but also slave collars—was never born out of a desire for lawful order or peaceful administration. Instead, it was a tool forged in the crucible of imperial violence and mass enslavement, designed to dehumanise and subjugate.³⁷ Over time, the handcuff became a symbol of colonial authority, a marketable object of control that commodified coercion and embedded social subjugation into the institutional fabric of governance. By legitimising the use of such tools, the colonial state entrenched the handcuff as an instrument of systemic domination, normalising its use as a mechanism of fiat and fear.

³⁷Rishav Sharma, BNSS: The New Penal Bracelet, <https://www.newsclick.in/bnss-new-penal-bracelet> (Last Accessed on 27/07/2025).

Against this historical backdrop, the Bharatiya Nagarik Suraksha Sanhita (BNSS), which purports to decolonize India's criminal justice system, must be critically evaluated. While the stated objective of the BNSS is to shed colonial legacies, the reintroduction of handcuffing—now under the discretionary power of the police—stands in stark contradiction to that very aim. Granting unilateral authority to police officers to handcuff individuals risks perpetuating the same arbitrary and oppressive practices once wielded by colonial administrators. This is not a call for the total abolition of handcuffing, but rather a principled demand that its use be subject to judicial oversight and limited to exceptional circumstances—such as when there is a demonstrable and immediate threat of escape or violence. Without such safeguards, the BNSS risks preserving the very colonial logic it seeks to dismantle.

RECOMMENDATIONS:

In order to harmonise the practical needs of law enforcement with the constitutional mandate of dignity and humane treatment, there is a pressing need to lay down structured guidelines on the use of handcuffing under Section 43(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023. Judicial pronouncements, while categorical in condemning routine handcuffing, have left operational ambiguities that often result in misuse. Therefore, this paper proposes a Model Guideline on Handcuffing that may serve as a template for police authorities, State Governments, and the Ministry of Home Affairs to adopt as part of a formal standing order.

MODEL GUIDELINES ON THE USE OF HANDCUFFING:

A. GENERAL PRINCIPLES

1. Handcuffing shall not be used as a routine measure; it is an exceptional practice to be resorted to only when strictly necessary.
2. The use of handcuffs is permissive and not mandatory under Section 43(3) of BNSS, 2023. Officers must provide sufficient justification in every instance.
3. Handcuffs shall never be applied in a manner that causes unnecessary pain, injury, or humiliation.
4. Handcuffing shall not be used as punishment, coercion, or public shaming.
5. Prolonged handcuffing without adequate cause shall be strictly avoided.
6. Officers shall ensure that all decency, decorum, and human dignity are preserved during restraint.

B. CATEGORIES OF PERSONS

1. Children (Below 18 years): No child shall be handcuffed under any circumstances.
2. Young Adults (18–21 years): Shall ordinarily not be handcuffed. In exceptional cases, written approval of the Court shall be obtained.
3. Elderly, Sick, Disabled, or Mentally Ill Persons: Handcuffing shall be avoided unless extraordinary necessity is demonstrated. Reasons must be recorded in writing
4. Women Accused: Shall not be handcuffed routinely. Only in exceptional cases, with written reasons and intimation to a supervising officer, may restraint be used.
5. Hospitalised Persons: Handcuffs are discouraged. Alternative measures such as enhanced guard deployment are to be preferred.
6. Non-Threatening Individuals: Persons posing no risk of escape, violence, or harm must not be handcuffed

C. TYPES AND METHODS OF HANDCUFFING

1. Front Handcuffing: Default method where restraint is necessary; suitable for individuals with medical vulnerabilities.
2. Back Handcuffing: Reserved for high-risk accused such as gangsters, violent offenders, or escape-prone individuals.
3. Single-Hand Cuffing with Escort: One wrist cuffed and held/linked to escorting officer in controlled situations.
4. Single-Hand Cuffing to Vehicle: Permitted in exceptional circumstances, ensuring no injury or humiliation.
5. Leg Irons/Fetters: Absolutely prohibited except with prior written judicial authorisation in extraordinary situations.

D. ADJUSTMENTS FOR HUMAN NEEDS

1. Restroom Use: Handcuffs must be loosened/removed; if risk persists, one hand may remain cuffed under escort.
2. Meals: Accused must be permitted to eat with dignity. One hand shall be freed or restraints adjusted.
3. Medical Examination/Treatment: Handcuffs shall not obstruct medical care. In hospitals, guard deployment shall be preferred over restraints.

E. PROCEDURAL SAFEGUARDS

1. Officers must conduct a risk assessment before handcuffing, considering criminal history, behavior, escape risk, medical conditions, disabilities, age, gender, and mental health.
2. Every instance of handcuffing shall be entered in the Station Diary, detailing grounds, method, duration, risk classification, and authorisation details.
3. Written reasons shall be annexed to the Command Certificate of escorting officers.
4. Supervisory officers shall periodically review records to prevent misuse.

F. MEDIA AND PUBLICITY RESTRICTIONS

1. No photographs, videos, or images of accused in handcuffs shall be released to or captured by the media prior to conviction.
2. Accused shall not be paraded in handcuffs before cameras.
3. Violations shall attract disciplinary action and, where appropriate, contempt of court.

G. TECHNOLOGICAL AND ALTERNATIVE MEASURES

1. Deployment of additional escorts in place of handcuffing.
2. Secured custody vehicles with lockable compartments.
3. Electronic GPS monitoring devices where feasible.
4. Escort officers equipped with body-worn cameras, with footage retained for a minimum of 48 hours.
5. Soft restraints (Velcro/fabric) in medical or psychiatric cases.
6. Tactical escort formations instead of physical restraints.
7. Use of surveillance technology for transfers.

H. ACCOUNTABILITY

1. Unlawful or unjustified handcuffing shall be treated as misuse of authority and invite departmental action.
2. Courts are empowered to award compensation for unlawful handcuffing.
3. Senior officers shall conduct random audits of handcuffing practices to ensure compliance.