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RE-INTRODUCING HANDCUFFS: STRIKING A BALANCE BETWEEN HUMAN RIGHTS AND STATE NECESSITY

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ABSTRACT

In the year 1978, in the seminal judgment of *Sunil Batra*, the Hon'ble Supreme Court held that handcuffing a citizen is inhuman, and later, in *Prem Shankar Shukla*, categorically declared unnecessary handcuffing as violative of fundamental rights. However, instances of handcuffing individuals continued, prompting the Supreme Court in 1995 to take cognizance of *Kuldeep Nayar's* letter regarding accused persons being chained to hospital beds and laying down guidelines on handcuffing, making it a duty of the court to take active steps to ensure that the persons in custody are not unnecessary put into shackles. Despite multiple judicial precedents outlawing unnecessary handcuffing, violations persist, with courts frequently reminding the police of the need for justification before resorting to such measures. Even as the data of prisoners escaping custody does not show any steep rise in number of cases, the newly promulgated *BharatiyaNagrik Suraksha Sanhita, 2023* (BNSS) introduces a statutory provision under Section 43(3), explicitly outlining circumstances under which the police may handcuff an individual in custody. As no provision for handcuffing existed in the Code of Criminal Procedure, 1973, this provision marks a legislative departure from previous jurisprudence and raises critical questions regarding the necessity for giving statutory approval to handcuffing, its alignment with constitutional principles, and its potential conflict with human rights and dignity. This article critically examines the law surrounding handcuffing in India and explores whether the new provision under BNSS aligns with constitutional principles and international human rights standards, or risks legitimizing excessive police actions. Through this analysis, the article aims to contribute to the broader discourse on the contours of the new BNSS, human rights and preventive state action.

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1. THE LAW OF HANDCUFFING

Handcuffing is a widely used mode of restricting a person by using a device on the hands of the person so restrained, making it improbable for him to move his arms freely. It has been defined as "*Instruments for securing the hands or feet of prisoners under arrest, or as a means of punishment"*[3]. The history of Handcuffs is rather old and goes as far as 4th century Greek soldiers using them to control the prisoners of war[4] and presently is used by law enforcement agencies to prevent a person subject to the process of law from escaping. Though the Code of Criminal Procedure, 1973[5] (Hereinafter CrPC 1973) had no provision for imposition of handcuffing, it has been a part of the Indian legal system for long and is governed by state authorities rules and orders. Once a handcuff has been imposed, it is an offense to remove the same without due authority as per The Prisons Act, 1894[6].

As stated earlier, neither the CrPC 1973, nor 1898 had any provision for handcuffing. The CrPC 1973 granted power to use all means necessary to effect an arrest[7], however, also stated that no unnecessary restraint should be used.[8]The Central legislation The Prisons Act, 1894 provides power to the impose handcuffs and fetters as a preventive or punitive measure[9] however, exempts women and civil prisoners from handcuffing.[10] and leaves it to States to make rules and regulations to provide the scope for handcuffing. The Prisons Act while under Section 56 grants discretion to the Superintendent to impose irons, Section 58 of Prisons Act specifies that no prisoner should be ironed without necessity. A combined reading of both Sections, makes it clear that *"Handcuffing would be permissible in rare cases only, where strong grounds exist to*

3*Philip John vs State Of Himachal Pradesh* [1984] SCC OnLine HP 54.
4 BLUELINE, "A History of Handcuffs",<https://www.blueline.ca/a_history_of_handcuffs-2396/> assessed 22 March 2025.
5 Code of Criminal Procedure, 1973.
6 The Prisons Act, 1894, s. 45.
7Code of Criminal Procedure, 1973,s. 46 (2).
8ibid s. 49.
9ibid s. 46.
10ibid s. 46 Proviso.

entertain a reasonable belief that no alternative measures would suffice. Sections 56 and 58 of the Act also lay down a clear legislative policy that confinement in irons or mechanical restraint is not a rule but an exception and that such confinement is permissible only in certain cases and subject to certain limitations."[11]

Different Acts and enactments provide for handcuffing in different situations keeping in view the provisions of the Prisons Act. The Ministry of Home Affairs have also released a Model Prison Manual 2016[12] which may be followed by different States for framing their own rules. Under the Model Prison Manual, the undertrials are not to be handcuffed except when they are notorious, violent, flight risk, accused of serious offense[13] and when produced in court, they can be handcuffed only with the permission of court[14]. In State Regulations, most noted, The Punjab Police Manual provides specific directions for the imposing of handcuffs and states that Handcuffs may be applied to prisoners in three ways: (a) on the wrists in front, day or night, for up to 12 hours at a time with at least 12-hour breaks between periods, for no more than 4 consecutive days or nights; (b) on the wrists behind, during the day only, for up to 6 hours per 24-hour day, for no more than 4 consecutive days; or (c) by securing the wrists to a staple in front, during the day, for up to 6 hours daily with a minimum 1-hour break after 3 hours, for no more than 4 consecutive days.[15]Along with the Manual, The Punjab Prisoners (Attendance In Courts) Rules, 1969 permits handcuffing and fettering of both, undertrial and convicted prisoners while travelling.[16]

Following the Punjab rules The Standing Order of Delhi Government permits handcuffing when *"a. prisoner is a desperate character, is rowdy or dangerous and the police officer arresting such a person feels that in that particular case, hand-cuffing would be essential,."*[17]But also states that handcuffing should not be done in a routine manner. If an accused is presented in the court, The public prosecutor will present the daily diary to the court, seeking approval from the

11*Philip John* (n 1), para 7.
12 Model Prison Manual for the Superintendence and Management of Prisons in India, 2016.
13ibid para 24.28.
14ibid para 24.29.
15 Punjab Jail Manual, 1996,s. 550.
16Punjab Prisoners (Attendance in Courts) Rules, 1969, r. 10.
17 Delhi Police Standing Order No. 44 [1976],Para II(b).

presiding officer for continued handcuffing of the accused in future court appearances.[18] The Circular however, makes a rule that *"jurists, advocates, doctors, writers, educationists and well-known journalists"* and other similar individuals who occupy good positions in society, should not be handcuffed ordinarily[19] but in cases of a reasonable apprehension of escape, rescue, or violence a prisoner may be handcuffed during escort. In such cases, a detailed report must be recorded and shall be submitted to the court upon the prisoner's production.[20] The power to handcuff desperate or dangerous criminals with a history of escape was reiterated in another circular in 2011.[21] However, in 2012, it was noted by the Office of Commissioner of Police that despite having the power to handcuff in exceptional cases, the police refuse to handcuff criminals who had in the past tried to escape or are violent, probably fearing contempt action, and while reiterating the guidelines in Citizens of Democracy case, had to remind yet again that the police can note the antecedents of escape or violence against police in Daily Diary, and handcuff the person so apprehended if necessary.[22]

Very similar to Punjab Police Manual, the West Bengal Jail Code provides handcuffing in front as a minor punishment[23] and behind the back as a major punishment[24]. Handcuffs may be imposed with specific time restrictions: on the wrists in front for up to 12 hours at a time, with at least 12-hour intervals, for a maximum of four consecutive days; or on the wrists behind, only during the day, for up to six hours in any 24-hour period, also for a maximum of four consecutive days. No additional restraints beyond standard handcuffing is permitted. These two forms of punishment cannot be alternated, and prisoners under such restraint must be fully sheltered from the sun[25] However, Females, minors, and civil prisoners cannot be handcuffed.[26] Again, the handcuffing is permitted only when the prisoner is deemed a threat due to history of violence to others or to himself.[27]

18ibid para II(c).
19ibid para IV.
20ibid para V.
21 Office of the Commissioner of Police, Delhi [2011] Circular No. 33/2011.
22 Office of the Commissioner of Police, Delhi [2012] Circular No. 78/2012.
23 West Bengal Jail Code, 1967,s. 703(A)(6).
24ibid s. 703 (B) (6).
25ibid s. 717.
26ibid s. 730.
27ibid s. 981.

The Karnataka Police Manual has been noted to be more lenient than Punjab Rules and more intune with the Supreme Court's Guidelines, however, it has no force of law[28]. The manual makes it clear that *"The use of handcuffs not only causes humiliation to the prisoner but also destroys his self-respect and is contrary to the modern notions in the treatment of offenders."*[29]The manual further states that Prisoners should not be handcuffed unless they are violent, disorderly, or there is a risk of escape[30] andany instance of handcuffing must be recorded.[31]

There are other state rules and regulations, but most reiterate the same principles as given above and draw their power to handcuff from the Prisons Act, 1894. Overall, The statutory intent and principles underlying the imposition of handcuffs is as below-

1) Handcuffing can be punitive as well as preventive
2) As a preventive measure it is to be only used under exceptional circumstances
3) The imposition of handcuff is an executive decision
4) Judicial Supervision is an essential safeguard

it is rare that a law that grants coercive power is used without excesses. The issue of excessive use of handcuffs has always been noted in India. The Report of the Committee on Prison-Discipline to the Governor General of India[32] had also highlighted that the regulations in India grant *Thannadars* discretion in handcuffing prisoners who were sent to the Magistrate, based on security concerns but also observed that prisoners are generally very docile and means like and including handcuffing and irons are not necessary in most cases. The Committee suggested establishing clearer rules by specifying offenses that warrant handcuffing while allowing discretion in other cases. The policy of Government of India as per a circular[33] has always been to handcuff only the violent, flightrisk or non-bailable offense accused persons. However, the

28*Jaswinder Singh And Ors. vs State OfKarnataka*,[2002] SCC OnLine Kar 193.
29 Karnataka Police Manual, 1965, s. 831.
30ibid s. 831 (1).
31Iibid s. 83.
32 India Commission on Prison-Discipline, *Report of the Committee on Prison-Discipline to the Governor General of India in Council* (8 January 1838).
33 Ministry of Home Affairs(Government of India), Circular Letter No. F. 2/13/57 P. IV (26 July 1957).

same circular notes that It is, however, observed that in practice, police often handcuff prisoners routinely causing them humiliation and harming their self-respect.

The misuse of handcuffing has been brought to the notice of the Supreme Court through three letters. These letters, highlighting the inhumane and degrading treatment of prisoners, served as a catalyst for judicial intervention and the subsequent evolution of jurisprudence on the point of handcuffing in India.

Sunil Batra, a prisoner in Tihar, wrote a letter to the Supreme Court complaining about torture in prison. Reiterating the opinion of *Justice Chandrachud* that merely because someone is convicted, they are not stripped of all the fundamental rights, the Supreme Court took cognizance of the letter, and *Justice Krishna Iyer* in the case of ***Sunil Batra v. Delhi Administration***[34] held that *"The indiscriminate resort to handcuffs when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in a small category of cases…."*[35]and even if imposed for the reason of security, it shall be under judicial scrutiny. The Court did not hold Section 56 of the Prisons Act, 1894 as unconstitutional but held that it must be trimmed according to rule of law.

Next,In ***Prem Shankar Shukla v. Delhi Administration***[36] The Supreme Court took cognizance of a telegram written from jail by prisoner *Prem Shankar Shukla* who complained that he and other prisoners were being forced to wear handcuffs, and protested against the humiliation and suffering of being shackled in public while being taken from Tihar Jail to court for their trials. *Justice Krishna Iyer* speaking for himself and *Justice Reddy* opined that handcuffs dehumanize the prisoners under the guise of security and safety and not only is arbitrary handcuffing unconstitutional, it could be punishable under Section 220 of the Indian Penal Code[37] if done maliciously. Further, The Rule 26.22, along with Rule 26.21A of the Punjab Police Rules, 1934, which created two categories of undertrial prisoners, "Better Class" and "Ordinary" on the basis of social status, education, and lifestyle etc, were held unconstitutional. The ordinary undertrials

34*Sunil Batra v. Delhi Administration*[1978] 4 SCC 494.
35ibid Para 197-B.
36*Prem Shankar Shukla v. Delhi Administration* [1980] 3 SCC 526.
37 Indian Penal Code, 1860.

were subject to regular handcuffing while Better Class undertrials were not, noting that the right to dignity is a right that belongs to everyone whether of a higher social status or lower, the court held that the distinction between better class and ordinary undertrials was arbitrary. The Court also declared the Punjab Police Manual Chapter XXVI, para 26.22, which states that all undertrial prisoners accused of non-bailable offences punishable with more than three years of imprisonment should be handcuffed as a routine practice, violative of fundamental rights.

In *Prem Shankar Shukla*, The court directed that the judicial officer, before whom a prisoner is produced, must inquire whether the prisoner has been subjected to handcuffs or iron treatment. If the prisoner reveals that he was handcuffed, the concerned officer must immediately provide an explanation.

Despite the watershed judgement in *Prem Shankar Shukla*, the Court came face to face with a horrid reality again when noted Journalist *Kuldeep Nayar* wrote a letter to the Supreme Court, revealing that 7 TADA Accused persons were tied to a rope and handcuffed to the bed while being treated in a hospital in Guwahati, Assam. In ***Citizens for Democracy v. State of Assam***[38]The Supreme Court, again laid down several guidelines, making it mandatory to obtain order from a magistrate to handcuff a person while producing for remand, or executing an arrest warrant. If the police arrest a person without a warrant, they may handcuff in light of necessity only till the time the person is taken to the police station. Once, the person so arrested reaches the police station, any further handcuffing would require a magistrate's order. Any violation of these guidelines would be punishable under the Contempt of Courts Act.

Three letters, thus, shaped the jurisprudence of handcuffs and fetters in India, leading to the development of a more human rights based approach. The law as laid down in the three judgements, were not mere guidelines, rather the fact that their violation would amount to contempt of court of the orders of the Supreme Court, gave them a punitive force. As held in ***R.P. Vaghela***[39] by a 5-judge bench of Gujarat High Court, not only Supreme Court itself, but the High Courts are also empowered to take cognizance of violation of Supreme Court's directions

38*Citizens for Democracy v. State of Assam* [1995] 3 SCC 743.
39*R.P. Vaghela v. State of Gujarat*[2002] SCC OnLine Guj 34.

for handcuffing. The Himachal Pradesh High Court[40] and Calcutta High Court[41] have also laid down their guidelines for handcuffing, which is in tune with the guidelines of the Supreme Court.

On many occasions the Courts have sprung into action against police officials for violation of the law of handcuffing as declared by the Court. In ***Sunil Gupta v. State of MP***[42], the Court had directed enquiry against erring officials for handcuffing protestors and parading them in public while taking them from court to jail. The Court held that even though the petitioners had shouted slogans outside court, no necessity arose for them to handcuff them. Further, not only the police officials, but erring judges also have faced consequences for violating the guidelines and duties as given in ***Prem Shankar Shukla*** and ***Citizens for Democracy***In***Re: M.P. Dwivedi***[43] the Supreme Court initiated *Suo Motu* contempt proceedings against seven officials, including a Judicial Magistrate, for not taking any action against the handcuffing of undertrials despite being reminded of the Supreme Court's decisions. The Supreme Court viewed this as a grave lapse on the part of the Magistrate, who was responsible for safeguarding the fundamental rights of citizens. However, taking into account the Magistrate's young age, the Court adopted a lenient approach and did not impose any punishment.

Along with contempt of court, Several cases have seen courts ordering costs and compensation for handcuffing arrested persons without any reason. Costs serve functions similar to contempt of court, as they are not only done to compensate the persons so handcuffed illegally, they also act as a deterrent. Even though the Supreme Court in ***Ravikant S. Patil***[44] had held that police personnel cannot be personally held liable to pay compensation to the arrestee, the high courts have found that imposition of costs and compensations acts as a deterrent. The Guwahati High Court in ***Sabah Al Zarid***[45] had held that compensation for unreasonable handcuffing is based on strict liability and *"The imposition of compensation should also be such that the concerned police officer should follow the applicable law in both letter and spirit and are put on notice that*

40*Philip John* (n 1).
41*Soumen Biswas v. State of West Bengal*, [2013] SCC OnLine Cal 13711.
42*Sunil Gupta v. State of MP* [1990]3 SCC 119.
43*Citizens for Democracy In Re: M.P. Dwivedi & Ors*., [1996] 4 SCC 152.
44*State Of Maharashtra v. Ravikant S. Patil*,[1991] 2 SCC 373.
45*Sabah Al Zarid v. The State of Assam*[2023] SCC OnLine Gau 4244.

non following of applicable law could result in they being liable to make payment of monetary compensation to the arrestee."[46]Similarly, Karnataka High Court in ***Suprit Ishwar Divate***[47]while ordering compensation of Rs. 2,00,000/- for unreasoned handcuffing,had held that while imposing compensation, along with the loss and damage of reputation, the Court must also consider imposing compensation as a deterrent for Police Officers who fail to discharge their duties. In ***Suresh Kumar Satija v. Balwinder Singh Touri***[48] The Punjab and Haryana High Court ordered the respondent to pay a cost of Rs. 1,00,000/-, for illegal handcuffing, to be deposited in the Punjab and Haryana High Court Employee's Welfare Association.

Alas, One of the most murky part of our criminal justice system is that many human rights violations continue till they aren't discovered by a Court. Despitethe rigour of Contempt action, departmental inquiry and costs, meritless handcuffings continue and in 2024, the Supreme Court in ***Vihaan Kumar***[49]found that the story of *Citizens for Democracy* has been repeated and it was found that police had handcuffed the accused to the hospital bed during treatment. The court held that such an act amounted to violation of Article 21 and directed the state government to issue necessary directions to ensure that such incidents never happen again.

The summary of this entire discussion till this point makes it clear that the handcuffing is not something that either legislature, or judiciary took in a light manner. Handcuffs without reason come in direct conflict with Article 14, 19 and 21 of the Indian Constitution and thus, any power to impose handcuffs has to be applied in a very judicious and calculated manner. There are precedents in which handcuffing has been approved on the basis of necessity.[50] The approach of both the organs of the government till now has been '*Necessity Based Approach*' where handcuffs have been approved only when exceptional necessity arises, and it must be under judicial scrutiny, backed by records and reasons.

46ibid para 28.
47*Suprit Ishwar Divate v. State of Karnataka* [2022] SCC OnLine Kar 1133.
48*Suresh Kumar Satija v. Balwinder Singh Touri*[2024] 2024 :PHHC : 001961-DB.
49*Vihaan Kumar v. State of Haryana* [2025] SCC OnLine SC 269.
50*Court On Its Own Motion v. Milkhi Ram*[1992] CRILJ 2130; See Also, *Jaswinder Singh And Ors. vs State Of Karnataka*[2002] CRILJ2154.

2. HANDCUFFING IN OTHER JURISDICTIONS

Several other countries have provisions that authorize their police personnel and lawenforcement agencies to use handcuffs and other restrictive measures and it would be beneficial for this discussion to take a look at a few jurisdictions for a proper understanding of international standards.

2.1 Handcuffing Law in Bangladesh

In our neighbour jurisdiction Bangladesh, there is no specific law that governs the use of handcuffs,rather, it is a combination of colonial laws, judicial precedents and regulations by the police, in harmonious construction with constitutional and humanhuman rights.

The Constitution of People's Republic of Bangladesh[51]ensures Fundamental Rights to all its citizens, which indirectly influences the use of handcuffs.

The Constitutionreflects the important principle of *"right to protection of law"*[52]by stating therein, that *"no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."*[53]it further guarantees right to life and personal liberty[54] and safeguard against *"torture and cruel, inhuman or degrading treatment or punishment"*.[55]

The colonial-era legislation The Code of Criminal Procedure, 1898[56] is still prevalent in Bangladesh and allows a police officer to employ "*all means necessary*"[57] to cause a person's arrest if the person resists or attempts to evade. Even though this provision does not explicitly mandates the use of handcuffs, it is broad enough to incorporate the use of handcuffs, when deemed necessary. Section 49 categorically states that an arrested person *"should not be subjected to more restraint than is necessary to prevent escape"*[58]. This indicates that handcuffing should be proportionate and justified, based on conditions like risk of flight or danger posed by the person.

51Constitution of the People's Republic of Bangladesh 1972.
52Const. of the People's Republic of Bangladesh 1972, art. 31.
53ibid.
54Const. of the People's Republic of Bangladesh, 1972, art. 32.
55Const. of the People's Republic of Bangladesh, 1972, art. 35.
56The Code of Criminal Procedure, 1898 (Bangl.).
57The Code of Criminal Procedure, 1898, s. 46 (Bangl.).
58ibid.

The Police Act[59] of Bangladesh gives power to the police to maintain order and apprehend offenders, but does not specifically address handcuffing. However, the Police Regulations, Bengal (PRB), 1943[60], which remain prevalent in Bangladesh with appropriate adaptations, provide assistance to understand the underlying rule of handcuffing.Itadvises against unnecessary use of handcuffs or ropes, stating that they *"should not be used on women, the elderly or those controlled due to age or infirmity unless absolutely necessary"*.[61] This highlights the concept of "minimal restraint" of handcuffs, thereby reflecting that *"the use of ropes or handcuffs is often an unnecessary indignity"*.The regulation furtheremphasizes on avoiding *"unnecessary harassment during investigation or interrogation, which could extend to the use of restraints like handcuffs"*.[62]

In ***BLASTvs. Bangladesh***[63], the High Court division of the Supreme Court of Bangladesh, emphasized on the '*humane treatment of detainees*' and issued detailed guidelines with respect to exercise of powers of arrest and remand by the police, but did not provide any details regarding handcuffing. Additionally, in July 2018, a bench of *Justices Salma Masud Chowdhury & AKM Zahirul Haque*, directed police to use caution while handcuffing after a student was handcuffed to a hospital bed during treatment.[64] The High Court had taken up the matter suo moto, after a report by The Daily Star[65] highlighted the incident, questioning the legality of such actions when escape was unlikely. This order reassured the fact that handcuffs should not be misused and inferred that they are not appropriate in situations where escape is not an actual concern

2.2 Handcuffing Law in South Africa

South African legal laws draw their authority from both English common law and Roman-Dutch civil principles for handcuffing procedures but no specific legislation exists for handcuffing

59The Police Act, 1861 (Bangl.).
60The Police Regulations, Bengal, 1943 (Bangl.).
61ibid. Reg. 330.
62Police Regulations, Bengal, 1943, Reg. 260.
63 BLASTvs. Bangladesh, 55 DLR (2003) 363.
64 Use Handcuffs with Caution, Bangladesh High Court Directed to Police, The Daily Star (July 9, 2018), https://www.thedailystar.net/city/use-handcuffs-with-caution-bangladesh-high-court-directed-to-police-1599358.
65 Handcuffed to Hospital Bed, The Daily Star (May 29, 2017), https://www.thedailystar.net/top-news/news/handcuffed-hospital-bed-1412242.

cases. Handcuff practices in South Africa follow constitutional requirements that combine with statutory laws and common law principles alongside police procedures to determine lawful handcuff use. The health-oriented handcuff usage by South African Police Services and other law enforcement officials creates a complicated scenario between fundamental human rights regarding dignity and liberty and the need to prevent inhumane confinement.

South African law follows the Constitution of the Republic of South Africa[66] as its foundational document while the Bill of Rights within this Constitution strongly shapes handcuffing regulations. The fundamental right to "human dignity"[67] dictates that all persons maintain inherent dignity as well as the right to receive protection for their dignity. All forms of violence together with any form of torture and cruel inhuman treatment or degrading conduct conflicts with **Section 12(1)** which ensures freedom and security of person rights. The Constitution establishes distinct rights related to treatment of people who are being arrested or detained or facing charges while detailing their requirement for fair legal procedures.[68]The constitution provides scope for limitation on the rights enumerated *"to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors"*[69]. Handcuffs used for physical restraint need to satisfy the requirements set by the constitution. The courts can examine such cases as violations of dignity or degrading treatment when handcuffing exceeds reasonable standards.

The Constitution sets the general guidelines but statutes create detailed regulations for law enforcement agencies regarding their power operations including force measures along with custodial procedures. Under South African law, the Criminal ProcedureAct, 1977[70] (hereinafter referred to as "CPA") serves as the main legislation which controls arrests alongside their related procedures. The CPA authorizes police officers to *"make arrests either with or without warrants under defined circumstances involving reasonable force for effectuating the arrest."*[71]Section 49 delineates *"the legal basis for deadly force usages when arrestees try to escape or endanger the officer or public but only when such force is legitimate."*[72] Handcuffing has become an accepted

66Constitution of the Republic of South Africa, 1996.
67The Constitution of South Africa, 1996, s. 10.
68ibid s. 35.
69ibid s. 36.
70The Criminal Procedure Act, 1977 (South Africa).
71ibid s. 39.
72ibid s. 49.

essential law enforcement tool used for arrests thus making it part of "reasonable force" under South African law.

Through **South African Police Service Act, 1995**[73] (hereinafter referred to as "SAPS Act"), the SAPS was formed to preserve order and execute legal standards. Police officers have authority to execute their tasks through *"such force as may reasonably be necessary."*[74] The written law allows handcuff use whenever it becomes necessary to ensure safety or security needs. The Act does not establish any regulations regarding handcuffing methods which result in wide-ranging police freedom to decide by personal choices and organizational standards.

Under the **Correctional Services Act, 1998**[75] the laws pertaining to restraint usage appear mostly in relation to incarcerated people instead of detainees during arrest. It empowers the *"mechanical restraints including handcuffs for correctional settings during authorized use when inmates present escape or harm risks according to the instructions of the Prison's Head."*[76] This provision of the law post-arrest demonstrates a fundamental government objective to control restraints according to human rights principles.

The SAPS has developed multiple internal policies together with national standards which direct officers in their handcuff use. The **National Instruction 1 of 2016 on Use of Force**[77] offers *"complete guidance about when and how to use force together with handcuffing practices. Handcuffs exist as a legal tool to prevent escape while ensuring security of themselves and the suspect but must be removed as soon as the safety risks disappear."*[78]**The National Standards of Policing for Municipal Police Services** establish rules regarding arrested person treatment by demanding handcuffing needs proportionate justification dependent on the situation. [79] Compliance with these policies depends on training and oversight since they support constitutional requirements but function without legal binding force of statutes.

South African courts have applied their jurisdiction to define the handcuffing law through their interpretation of statutory powers with consideration of constitutional rights. Related principles

73South African Police Service Act, 1995.
74ibid s. 13.
75Correctional Services Act, 1998(South Africa).
76ibid s. 31.
77South African Police Service, *National Instruction 1/2016*: *The Use of Force in Effecting an Arrest* (Legal Services: Governance, Policy and Legislation Management, Consolidation Notice 2/2016).
78ibid.
79 Government Notice 4794, *National Standards of Policing for Municipal Police Services* (May 10, 2024) (SouthAfrica)

concerning handcuffing emerged through case law about use of force and dignity even though no specific case has directly addressed handcuffs as an individual topic. In ***Minister of Safety and Security v. Sekhoto***[80] the Constitutional Court determined police under the CPA need to exercise their powers while respecting constitutional freedoms and individual dignity. According to the Court the level of restraint needs to match the danger level posed by the suspect.In ***S v. Williams***[81] established that under Section 12[82] corporal punishment constitutes an illegal cruel inhuman and degrading treatment. The judicial system treats excessive or unnecessary public handcuffing as a style that breaches constitutional freedoms establishing parallel similarities to physical restraint violations under constitutional regulations. Judicial reviews pertaining to bail and arrest cases have forced police departments to prove their rationale for handcuffing through legal directives.Courts consider handcuffing non-violent persons in public locations improper except when officers record strong reasons however, they are within authority to handcuff dangerous transportees.[83]

2.3 Handcuffing Law in the United Kingdom

Handcuffing practices by the British police exist within the boundaries of practical common sense and established the guidelines through police powers and human rights alongside judicial guidance. Under the Police and Criminal Evidence Act, 1984 (hereinafter referred to as "PACE"), Section 3 confers "authority to police officers for using reasonable force while detaining or preventing individuals from escaping."[84] Handcuffing people follows no specific guidelines since practical needs take precedence over handwritten regulations in each incident.

The Human Rights Act, 1998[85] keeps things in check, tying police actions to the European Convention on Human Rights (ECHR) Article 3[86] (no inhuman treatment) and Article 5[87] (right

80*Minister of Safety and Security v. Sekhoto* [2011] (5) SA 367 (CC).
81*S v. Williams*, [1995] (3) SA 632 (CC).
82The Constitution of South Africa, 1996, s. 12.
83G.P. Mishra,Preventive and Corrective Measures of Custodial Torture: A Socio-Legal Study [2021] (unpublished Ph.D. dissertation, [BBD University]). ; Ira P. Robbins,Kidnapping Incorporated: The Unregulated Youth-Transportation Industry and the Potential for Abuse, (2014) 51 Am. Crim. L. Rev. 563.

84 Police and Criminal Evidence Act 1984, c. 60, Sec. 3 (UK).

85Human Rights Act 1998.
86Human Rights Act 1998, art 3.

to liberty). Hence if a police officer in the UK handcuffs someone, just because they feel like doing it, they will be sanctioned with immediate effect.The courts in UK have had their say too. In ***R (on the application of Roberts) v Commissioner of Police of the Metropolis*** (2014)[88], where a woman argued her handcuffing was overkill, the Supreme Court gave the police a nod, saying they can cuff someone if they genuinely think it's needed, even without a fight breaking out. But the concept is clear that handcuffing is not a routine, rather it is a last resort.

Handcuffs serve as standard equipment for British police officers who require guidance to determine each particular scenario. The police method starts with lowering tensions before resorting to handcuffs since statistics indicate most arrests do not lead to actual detention. The main purpose of handcuffs is management control which comes with strict rules regarding their proper use. As an instrument the United Kingdom police uses it as a modest adaptive method which integrates human rights principles but India adopts an active combination of limitations with specific exemptions controlled through judicial interpretations and new legislative designs. Each system operates through steady control or through balanced operations with added creativity.

The analysis of handcuffing laws across Bangladesh, South Africa, and the United Kingdom reveals a common trend of balancing law enforcement needs with human rights protections. While all three jurisdictions recognize the necessity of restraints in maintaining law and order, they also emphasize the principles of necessity, and dignity. Bangladesh, influenced by colonial laws, retains broad discretionary powers for police but has increasing judicial scrutiny to prevent misuse. South Africa, shaped by its history of apartheid-era abuses, enforces a more rights-centric approach with judicial oversight, ensuring that handcuffing aligns with constitutional protections against degrading treatment. The United Kingdom, with its structured police powers and human rights framework, limits handcuffing to situations where officers can justify its necessity, reinforcing the principle that it should not be a routine practice. A clear trend emerges wherein legal systems restrict arbitrary handcuffing, subjecting it to judicial scrutiny and human rights considerations, signaling more towards restraint and accountability in law enforcement practices, as well as sanctity of human rights.

87ibid art 5.

88*R (on the application of Roberts) v Commissioner of Police of the Metropolis*, [2014] EWCA Civ 69.

3. HANDCUFFING UNDER BNSS

Coming into force on July 1st, 2024 the BharatiyaNagrik Suraksha Sanhita[89] has made an unprecedented move in India, by explicitly providing a general power to handcuff a person by arresting or escorting officers. The Provisionstates *"The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency-notes, human trafficking, sexual offence against children, or offence against the State."*[90]

A breakdown of the provision reveals that the provision has a 'may' clause. Justice GP Singh in his seminal work on interpretation of Statutes has noted that 'may' is an enabling word and it confers capacity, power or authority and implies a discretion.[91] Thus, on a literal interpretation, the statute gives a discretionary power to the police officials, where they, in exercise of their discretion, can handcuff an individual. The Odisha Police's Circular[92] also notes that the provision is obligatory and not mandatory.

The provision covers two situations - 1) while making an arrest, 2) while taking to the court. The provision leaves out situations where the person so arrested is being taken from the court to the jail, implying that the verdict of ***Prem Shankar Shukla*** and ***Citizens for Democracy*** still holds the water in this regard and police will require the order of a magistrate to handcuff an individual while being escorted from court to the jail. The Odisha Circular also notes that for situations like medical examination, recovery investigation, crime scene recreation, order of the court is required.[93]

89Bharatiya Nagarik Suraksha Sanhita, 2023.
90ibid s. 43 (3)
91 G.P. Singh, *Principles of Statutory Interpretation* (14th edn, 2016) 467.
92 Odisha Police CID Crime Branch, *CB Circular 05-24 on SOP for Handcuffing* (2024), https://odishapolicecidcb.gov.in/sites/default/files/CB%20Circular%2005-24%20on%20SOP%20for%20Handcuffing.pdf.
93 ibid para. 2(b).

The interpretation of the whole section read together means that while apprehending or escorting, the officer may see the two factors :-

1) The character of the offender,
2) The category of offense,

Both the factors have to be looked into while keeping the nature and gravity of the offense in mind. The Section does not keep a residuary clause, and the list of offenses given are exhaustive. Further, in the nature of the offender, only two factors are enumerated - whether he is a habitual offender, or a flight risk. Interestingly, the offender being of violent nature, or has previously assaulted police officers or not, or can commit suicide, has not been given in factors to be considered. Further, the provision enumerates no requirement to record reasons for handcuffing, or any scope for judicial supervision.

4. ANALYSIS

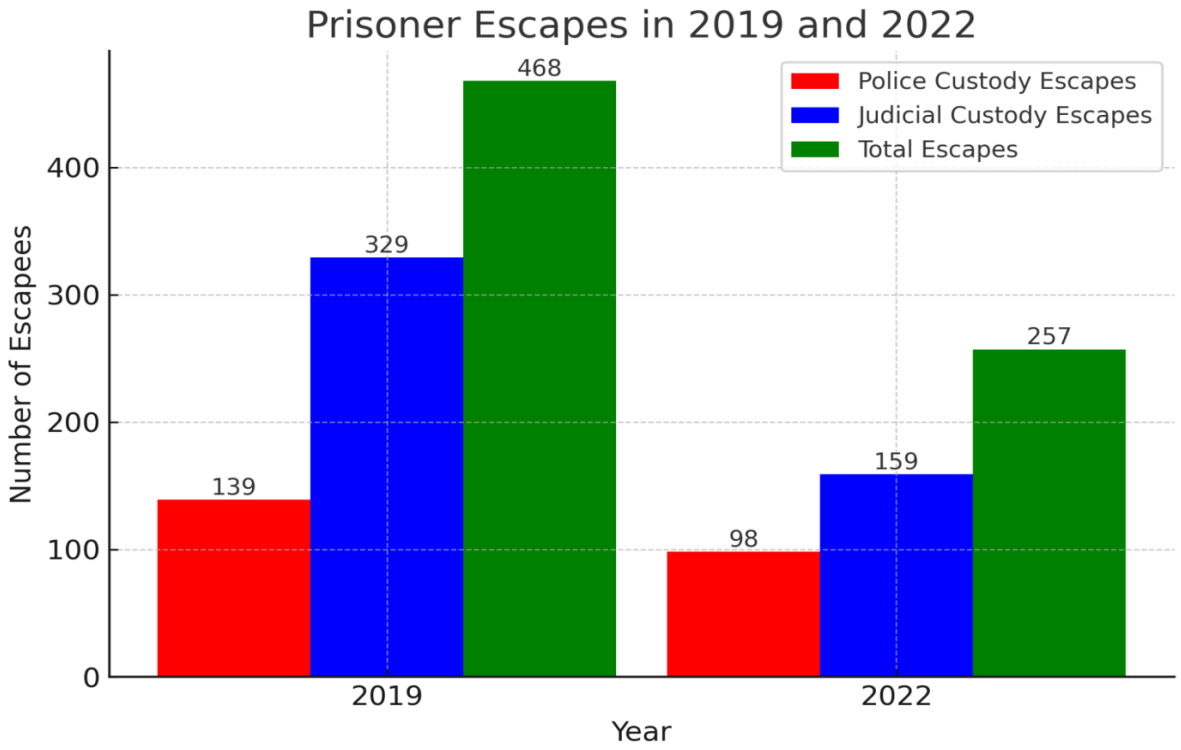
A statute is best interpreted when we know why it was enacted.[94] According to Prison Statistics 2019[95] and 2022[96] prisoner escapes decreased from 468 in 2019 to 257 in 2022, with police custody escapes rising proportionally while judicial custody escapes declined.

Figure 4.1

94*RBI Vs. Peerless General Finance and Investment Co. Ltd.*[1987] 1 SCC 424.

95 National Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics India – 2019* (2020), https://ruralindiaonline.org/en/library/resource/prison-statistics-india---2019/.

96 National Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics India – 2022* (2023), https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf.

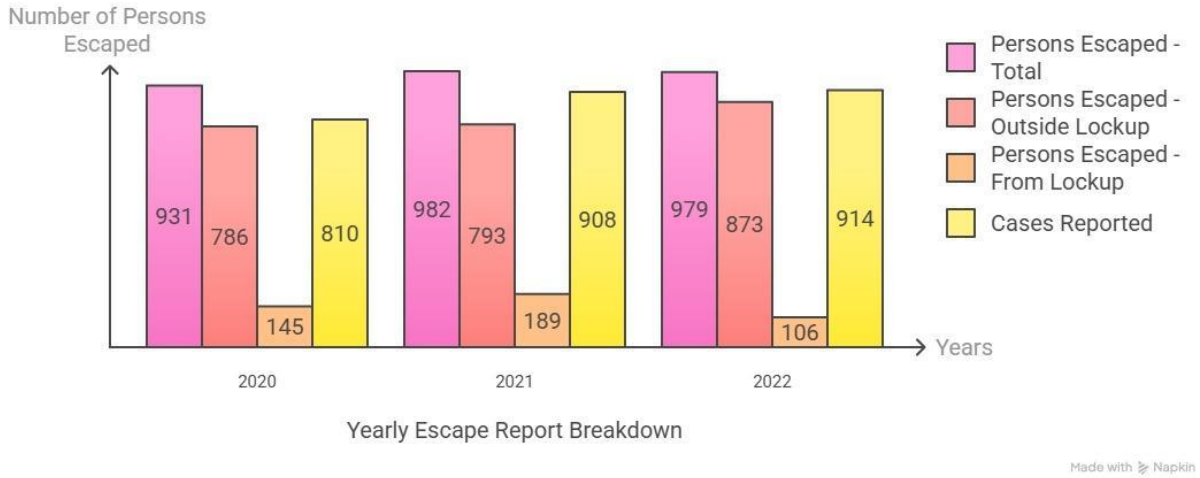


Further, the NCRB Data from the year 2020[97] to 2022[98] from Crime in India shows that there hasn't been much significant change in the rate of escape from custody. There has been some increase in the number of escapes from outside the lockup, but the number of escapes from lockups have gone down, and the total number of prisoners escaped also went down in 2022 compared 2021, but by a very low margin.

Figure 4.2

97 National Crime Records Bureau, Ministry of Home Affairs, S*tate/UT-Wise Escape from Police Custody During 2020* (2021), https://www.data.gov.in/resource/stateut-wise-escape-police-custody-during-2020.

98 National Crime Records Bureau, Ministry of Home Affairs, State/UT-Wise Details of Escape from Police Custody During 2022 (2023), https://www.data.gov.in/resource/stateut-wise-details-escape-police-custody-during-2022.



Even though the number of escapes from police custody, and from outside lockups have gone up, the number is not so varying that it shows a sudden or drastic rise in escapes from apprehension. The law thus does not seem to answer any urgent rise in cases of escape, rather it has been inserted to fill the long-standing legislative vacuum on the point.

Prior to the seminal guidelines by the Supreme Court, the law on handcuffing was largely vacant and had to be filled by an exercise of laying down guidelines, which necessarily is an act of judicial legislation.[99] In **Madras Bar Association v. Union of India**[100] The Supreme Court had held that *"The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment."*[101] In **A. Manjula Bhashini v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Ltd.**[102]It has been explained that a legislature *"can, in exercise of the plenary powers conferred upon it by Articles 245 and 246 of the Constitution, render a judicial decision ineffective by enacting a valid law fundamentally altering or changing the conditions on which such a decision is based."*[103] A judicial legislation, thus can be nullified by a legislative enactment. When the legislature enacts a statutory provision on a point which was dealt with under judicial legislation earlier, and a conflict arises between them, the legislation shall prevail as it is the legislative function and

99 A Comprehensive Analysis on Judicial Legislation in India, *SCC Online Blog* (4 March, 2022), https://www.scconline.com/blog/post/2022/03/04/a-comprehensive-analysis-on-judicial-legislation-in-india/. assessed 18 March 2025.

100*Madras Bar Association v. Union of India*[2022] 12 SCC 455.

101ibid para 50.1.

102*A. Manjula Bhashini v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Ltd. [*2009] 8 SCC 43.

103ibid para 68.

wisdom to lay down the law, and it cannot be encroached upon unless its *ultra vires* to the Constitution of India.

A critical analysis of this provision can be done efficiently if we look at the provision in light of its approach, its intent, and its alignment with overall criminal and constitutional jurisprudence. First thing first, the provision 43 (3) of BNSS seems to be very vaguely drafted. Two important reasons for the same are that there cannot be any sense in not providing for handcuffing of violent persons. Violence prone accused persons have always been the first to be handcuffed, and judgements of Supreme Court, as well as various state regulations permit the same. Leaving out violent individuals from the scope of handcuffing, appears to be a lapse in drafting of the provision as there appears to be no reason to intentionally leave out the same. Even the standing committee on the new criminal laws had opined that handcuffing is necessary for protection of officers, however, the committee also did not suggest to include handcuffing of violent criminals[104]

Secondly, the statute states that A person "*who has committed offence"* enumerated, may be handcuffed. Since BNSS is a law of procedure and does not provide for any reverse burden of proof, A person "*who has committed offense*" means a person who has been held guilty of that offense, since the statute does not use the word 'alleged'. It has been held by the Supreme Court that "*It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent."* [105] However, The provision currently in hand requires that it should be given a purposive interpretation to include undertrials in its ambit otherwise, in its literal sense, it would only apply to convicts and may end up defeating its legislative intent. It has been noted by the Supreme Court that *"more often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted."*[106] Given that the heading of Section 43 is 'Arrest How Made', under the Chapter V of 'Arrest of Persons', it is plainly unimaginative to assert that the

104 Parliament of India, Rajya Sabha, Department-related Parliamentary Standing Committee on Home Affairs, *247th Report on the Bharatiya Nagarik Suraksha Sanhita, 2023* (10 November, 2023) para 3.5.2.

105*Ali M.K. v. State of Kerala* [(2003] 4 SCALE 197.

106*Sarah Mathew v. Inst., Cardio Vascular Diseases*[2014] (1) SCC 721.

sub-clause 3 of Section 43, talks about convicts and not accused persons when the remainder of the chapter is about apprehending persons accused of an offense, and not already convicted.

The provision of the BNSS has to be considered a substantial departure from the previous human rights based approach that has been in India till now as the Section 43(3) substantially abandons the *'Necessity based approach'.* Prior to BNSS, it has been the law that the handcuffs can be imposed only when it becomes a necessity in order to prevent the arrestee from violence or escape. It has been held in Prem Shankar Shukla that *"Securing the prisoner being a necessity of judicial trial, the State must take steps in this behalf*[107]however, since handcuffing comes dangerously close to unconstitutionality, the *'Necessity based Approach'* brings it in consonance with Articles 14, 19 and 21. Relying on the judgement of Maneka Gandhi[108] and Sunil Batra, The Judgement of Prem Shankar Shukla has made it amply clear that if handcuffing has been done without ensuring fairness, reasonableness and justice in mind, it would amount to breach of Article 21. It has been noted that the sum and substance of the verdict of Prem Shankar Shukla is that *"the clear and present danger of escape, breaking out of police control is the determinant factor. And, for this, there must be clear material, no glib assumption, record of reasons, and judicial oversight and summary hearing and direction by the court where the inmate is produced."*[109]The said necessity based approach has been done away with the insertion of Section 43(3) where the statute does not require necessity to be a guiding factor, rather the *'Offense and Offender Approach'* has been introduced that gives the police the power to handcuff an individual accused of a particular offense, without reading in any necessity for the same. Even the prison and police manuals and rules noted in the above discussion have stated that handcuffing should not be done in a routine manner but only when it is necessary. The offense and offender based approach is largely contrary to the judgement of Citizens for Democracy and Prem Shankar Shukla. In Prem Shankar Shukla it had been held that *"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."*[110]Merely because someone has been alleged of an offense, does not mean that there is a necessity to handcuff the said person and to

107*Prem Shankar Shukla* (n 34) para 25.
108*Maneka Gandhi v. Union of India* [1978] 1 SCC 248.
109 Sudipto Roy, Violations of the Rights of the Accused and the Convicted in India, (1997) 5 *KRIMINOLOGIJA i SOCIJALNA INTEGRACIJA* 83.
110Prem Shankar Shukla (n 34) para 28.

put the limb and liberty in irons of a person, like an unruly animal, on mere accusation of an offense, stands contrary to the presumption of innocence and the right to live with human dignity. Presumption of Innocence has been considered as part of Article 21.[111] A person, if handcuffed, is paraded before the society in shackles and is punished by this humiliation though he may be acquitted later, and is contrary to the presumption of innocence.[112]

Another aspect of Section 43(3) of BNSS is that there is complete absence of any Judicial Supervision. It has been noted by the Bombay High Court that *"Even when the exceptionality of a case warrants putting of handcuffs on the arrestee or prisoner, recording of the reasons for doing so is an absolute necessity."*[113]it is trite rule that *"The intention of legislature has to gather from what has been said and what has not been said"*[114]. Whatever the law has explicitly not provided, has to be understood that the legislature did not intend that it should be the part of the law. Explicitly not providing for any diary entry, or judicial order requirement for handcuffing means that the legislature has decided to overrule this aspect of the law of handcuffing. The judicial magistrate and the courts in India have been given the sacrosanct duty to oversee that the rights of an individual are not violated without any reason.[115] The new Section does not provide any scope for an overseeing of handcuffing by any court or magistrate while apprehending or while escorting to the court. This makes the section prone to abuse without any overseeing authority to remedy the same.

It had been noted in the preliminary understanding of BNSS that it is a 'May' clause and handcuffing is largely discretionary under it. However, it must be remembered that not every 'may' provision implies discretion. It has been held that *"to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself*."[116] Justice SN Dwivedi in **Ram Surat Singh vs Rent Control And Eviction Officer**[117] had held that *"when an authority which is already possessed of discretion "may" act in a particular way when certain circumstances exist, it means that it "must", the word "may" used with particular circumstances*

111*NoorAga v.State of Punjab*[2008] 16 SCC 417; See also, *Naresh Kumar v. State of Himachal Pradesh*, [2017] 15 SCC 684.
112 R.S. Saini, Custodial Torture in Law and Practice with Reference to India, (1994) 36 J. Indian L. Inst. 166, 180.
113 *Kisan v. The State Of Maharashtra* [2013] SCC OnLine Bom 1117.
114*JP Bansal v. State of Rajasthan*[2003]5 SCC 134.
115 *Krishna Lal Chawla v. State Of U.P.* [2021] 5 SCC 435.
116*Poppatlal Shah v. The State Of Madras*[1953] SCR 677.
117*Ram Surat Singh v. Rent Control And Eviction Officer*AIR 1965 ALL 49.

converts the discretion into obligation." The Supreme Court in **M/S Delhi Airtech Services Pvt. Ltd vs State Of U.P.**[118] had held that in order to understand whether a statute is mandatory or directory, legislative intent has to be seen, and if holding a statute discretionary defeats its purpose, it should be considered mandatory. The Press Release by the Ministry of Home Affairs makes it amply clear that the BNSS was enacted with the safety of society and victims in mind.[119] An explicit '*Offense and Offender based approach*' shifts the focus from '*Necessity Based Approach*' and makes the provision even more stringent as it casts an obligation on the apprehending or escorting officer to use his discretion and handcuff a person who has committed offenses enumerated. Even though it is an exercise of discretion, the legislative intent behind the same makes it a duty.

In the United Kingdom, the handcuffing's decision is largely left to the executive officers who, in theirs own wisdom, consider a situation's necessity but in India, It is a dangerous proposition to give the police an extended hand in handcuffing while arresting as now they are not subject to punitive action for handcuffing without necessity. In **Bhim Singh v. State of J&K**[120]Justice Chinappa Reddy had held that police officers should have the greatest regard for prisoners rights, but it has been noted for India that *"The existing dilemma in the genuineness of police actions is also contributed by several other factors. One of the major reasons for difficulty in drawing a delicate balance betweenpolice actionsand human rights' protectionis thelack of education, especially at the lower level.*[121] In India, not only at lower level, but at senior level also, police officials stand unaware of the law and the delicate duties at hand, which also signals a systematic failure. On 4th June, 1984 in **Philip John v. State of Himachal Pradesh**[122]the High Court of Himachal Pradesh had laid down a sum of 7 guidelines for handcuffing based on the law as declared in *Prem Shankar Shukla*, and had directed that a copy of this Judgement along with the *Prem Shankar Shukla* Judgement be circulated to Inspector General of Police, all jail superintendents and all police superintendents within 15 days of the order. However, later in

118*M/S Delhi Airtech Services Pvt. Ltd v. State Of U.P.* [2011] (9) SCC 354.

119 Press Information Bureau, Ministry of Home Affairs, Govt. of India, Press Release on [Union Home Minister and Minister of Cooperation, Shri Amit Shah replied to the discussion on the Bharatiya Nyaya (Second) Sanhita, 2023, the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 and the BharatiyaSakshya (Second) Bill, 2023 in the Lok Sabha today, the house passed the bills after discussion] (6 February, 2024), https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1988913. assessed 24v March, 2025.

120*Bhim Singh v. State of J&K*[1985] 4SCC 677.

121 Dr. Sandeepa Bhat B., Judicial Activismin Regulating 'Human Rights Violations' by Police Authorities in India (2017)5(2)*Kathmandu School of Law Review* 69.

122*Philip John* (n 1).

1986[123] it was found that such was not circulated to the Inspector General of Police. In **World Human Rights Council vs Suresh Arora**[124] the court observed that in the Prem Shankar Shukla case, the Supreme Court had declared Rule 26.21A and 26.22B (1), (d), (e), and (f) of the Punjab Police Rules unconstitutional, yet the Superintendent of Police continued to rely on these provisions, and the Assistant and Deputy District Attorneys under him seemed unaware of this ruling. In **M.Elango vs The Superintendent[125]** The Madras High Court observed that even after 14 years of the Supreme Court's judgment in *Prem Shankar Shukla*, the Superintendent of Police remained unaware of it, highlighting a failure by the Department of Home and higher policeofficials in ensuring compliance with a binding order under Article 142 of the Constitution. Despite years of passing judgements on handcuffing, the police have often been found violating basic human rights of the arrested persons, unaware of their own excesses. The case of ***Vihaan*** is an example that even in 2024, the Supreme Court still needs to remind that handcuffing without necessity amounts to violation of fundamental and human rights. With now an extended discretion, and absence of scrutiny, the entire scheme of handcuffing has become more prone to being misused.

Given that **Sunil Batra**, **Prem Shankar Shukla** and **Citizens for Democracy** read human rights into Article 21, taking a stand contrary to the said judgements puts the provision against not only fundamental rights but also universally recognized human rights. The Supreme Court in aspects of handcuffing has rightly been described as human rights conscious[126] and it has been noted that the provisions of the Constitution have received benevolent interpretation by the Supreme Court, making the criminal justice system more 'Human'.[127] Handcuffs are prima facie, violative of human rights to presumption of innocence, which is explicitly given the Universal Declaration of Human Rights[128], as well as has been included in the ambit of Article 21. The very first Article of the UDHR states that *"All human beings are born free and equal in dignity and rights."*[129]In Prem Shankar Shukla the court had considered the aspect of accused persons escaping, and still

123*Court On Its Own Motion vs State Of Himachal Pradesh* [1986] SCC OnLine HP 31.
124*World Human Rights Council vs Suresh Arora*, C.O.C.P.- 3411-2017.
125*M.Elango vs The Superintendent* [2010] SCC OnLine Mad 2424.
126 Paramjit S. Jaswal & Nishtha Jaswal, Right to Personal Liberty and Handcuffing: Some Observations,(1991) 33 *Journal of the Indian Law Institute* 246.
127 P. Parameshwar Rao, The Human Face of Criminal Justice in India, (2001) 33 (2) Peace Research 51.
128UNGA Res 217A (III), *Universal Declaration of Human Rights*(10 December 1948) art 11.
129UNGA Res 217A (III), *Universal Declaration of Human Rights*(10 December 1948) art 1.

opined that not every case requires handcuffing to prevent a person from escaping.[130] Keeping the progressive human rights in mind, the BNSS provision can be seen failing to provide adequate safeguard against its potential misuse and abuse, and can be considered a step back in upholding human rights. Nobody denies that law enforcement personnel have the right to safeguard themselves and they should not be forced to put their safety at risk, which is why the handcuffing was never made outright unconstitutional by the Constitutional Courts, rather, its usage was made subject to judicial scrutiny and necessity.

5. CONCLUSION

An aspect as delicate as handcuffing was not dealt with by the legislature for a long period of time, and when it has been dealt with, it has not been properly drafted to make the legislative intent clear and language unambiguous. Handcuffs remain a crucial tool for law enforcement, ensuring safety of the police personnel, public, as well as sometimes, the accused. However, it has long been settled that their application must always be balanced against fundamental and human rights. While state necessity justifies their use in certain circumstances, excessive or unjustified application can lead to human rights violations. The legislation on handcuffs as under Section 43(3) BNSS fails to strike a fair balance between public safety and Human rights. The case of Vihaan in 2024 is a stark reminder that the apprehension of misuse of 43(3) is not an outcome of paranoia, rather it's a dark reality of our criminal law enforcement system. When there was no legislation permitting handcuffing, the police personnel were subject to judicial scrutiny, contempt of court, and cost, then also courts have seen instances of unnecessary and humiliating treatment through the use of handcuffs.Now that the Judicial Guidelines stand diluted due to the new provision, we are left with nothing but time, to witness its use and misuse, further analyse its consequence *vis-a-vis* human rights, and advocate for necessary reforms.

130 Sudipto Roy (n 107) 86.