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Dehumanising the Human Rights

Maurya Vijay Chandra
EMPOWERING PEOPLE THROUGH PANCHAYATI RAJ

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Besides general articles, articles on the above mentioned themes (typed in double space) are also invited. The length of the article should not exceed 2500 words. The publication of the article depends on the quality and availability of space and subject to editor's final discretion. You may send your articles through email also.

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The dream for decentralisation of power in order to empower people at the grassroots level, particularly, to enable rural masses to join the mainstream and claim rightful participation in the process of their own development and governance attained its fulfillment on 24th April, 1993. We, the people of India, took over four decades to realise this dream of Mahatma Gandhi.

Approximately 38 years ago the first Prime Minister of Independent India—Pt. Jawaharlal Nehru in his 1959 Madurai speech—said “80 per cent of our people live in villages. India is poor because the villages of India are poor. India will be rich if the villages of India are rich,” and further emphasised that “... Panchayats should be given greater power. For we want the villager to have a measure of real swaraj in his own village....”

It may recalled that the Constitution (Seventy-third Amendment) Act, 1992 is not just a political process but a vital tool for social and economic change especially for the poor and the downtrodden. Whereas the desire to organise the Indian social structure into self-governed units at village level through panchayati raj had received awe-inspiring recognition in Article 40 of the Constitution but in real terms it was only after 73rd Amendment that the scope and expanse of panchayat was spelled in earnest. Nevertheless there seems to be an ongoing debate over the role of State Legislature to “endow the Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government”. On the other hand the State Legislature has the qualification that it “may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to (a) the preparation of plans for economic development and social justice, (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the XI Schedule”. The confusion, it appears, persists as to whether the latter qualification dilutes the objective of self-government and reduces these Panchayats to work for development functions only or will it augment the role of Panchayats to achieve a wider goal of self-governance. For almost half a century the country was governed by a two-tier governmental system—the Union and the States. The points of discussions generated by Balwantary Mehta Report - 1957, Ashok Mehta Report - 1978 and the following related Amendments precipitated the workability of a third stratum. It remains to be seen that without making considerable amendments into the existing provisions of the two-tier scheme of governance how successful and effective Panchayats can be to wriggle out itself from the clutches of this Delhi-centric-unitary system? Experience has also shown that Panchayats have been dissolved with every change of government at the State as politicians feel challenged by these emerging power centers.

The Act is now four years old but in the cuddling grasp of bureaucratic incubators. It has yet to attain maturity and take charge of its own affairs. It was a common perception that as soon as this child—Panchayati Raj would be born it would stand on its own and shoulder responsibilities instantaneously. In spite of the fact that grave problems like caste domination, poverty, political and economic crisis will have a lasting effect on the future of Panchayati Raj Institutions, the 73rd Amendment envisages periodical elections, reservation of one-third seats for women, reservation for the SCs and the STs, reservation for the office of chairperson, power to raise resources and constitute Finance Commission as a major breakthrough in the Constitutional history of India. However, only a strong and firm political will followed with minimum interference by the government would be the deciding factor to define the new role of Panchayati Raj Institutions in our society. Complete autonomy to panchayats in identifying their local problems, preparing programmes, carving out schemes, raising required resources and allowing necessary space to implement and monitor their actions rationally would be a sine qua non for a healthy and long life of these units of self government.

JUNE 1997
Two submissive souls appearing docile to the core—one 14 year old Manoj with his wrist in one of the hand cuffs while another wrist locked up with that of Jawahir, a 30 year old lean and thin man. These unusual mates stepped down from an Auto with a constable. I say mates because they were sharing the load of the iron chain wrapped around in layers. We could not believe ourselves that all this could happen in the heart of the capital, at Deen Dayal Upadhyay Hospital, Delhi.

We were too shocked to respond when two helpless souls and a constable of Delhi Police walked across us at the Emergency reception of the Hospital. By the time we could get our acts together we realised that their routine medical examination was almost complete and their thumb impressions were being taken.

For nearly two years now, we have been fed with the idea that cruelty is involved in indiscriminate handcuffing. During our Legal Aid Project and Literacy Programmes in Tihar Jail, I am reminded of the hot discussion on the judgment of Prem Shankar Shukla’s case. [(1980) 3 SCC 526]

Justice Krishna Iyer in this case observed that “handcuffing is prima facie inhuman and, therefore, unreasonable, is overharsh and at the first flush, arbitrary. ... to bind a man hand and foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the court is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture.”

As we know that Articles 21, 14 and 19, the soul of the Constitution protects the life and liberty of a person from every arbitrary action. The development of human rights jurisprudence across the world has given a new dimension to these fundamental rights. Undoubtedly life with full human dignity is one of the most fundamental rights guaranteed to a person. While on the one hand the dignity of an individual must be respected on the other the interests of administering criminal justice has also to be balanced, which requires to secure the accused from fleeing. Keeping this aspect in mind the learned judges in Prem Shankar Shukla’s case observed that handcuffing must be the last refuge, not a routine exercise. If alternative measure may be provided then no iron bondage need be awarded.

The court further held that “for using iron fetters the nature of accusation is not the criterion. There has to be a clear and present danger of escape, breaking out of the police control that is the determinant. And for this there must be clear material, not glib assumption, record of reasons and judicial oversight and summary hearing and direction by the court where the victim is produced.”

In Citizens for Democracy vs. State of Assam [(1995) 3 SCC 743], the Supreme Court categorically held that no iron fetters shall be on any person by any police officer of any rank, except with the written and specific order of the Magistrate.

The court directed all ranks of police and the prison authorities to meticulously obey the mentioned directions. Any violation of which by any rank of police in the country or prison establishment shall be summarily punishable under the Contempt of Court Act apart from other penal consequences.

The apex court has in many cases decreed unjustified use of handcuffs. In re: M.P. Dwivedi [(1996) 4 SCC 152], the court took suo moto
contempt action and condemned police personnel and magistrate for using iron fetters without valid justification.

In spite of repeated disapproval of handcuffing, this unfortunate practice is not a rare occurrence in the capital itself. Needless to say anything about the remote areas of the country. In this Deen Dayal episode, of which we were a witness, we asked the constable why he had put cuffs on such persons. “It is my duty to bring them” he replied. “I got the permission of I.O.” (investigating officer). Apparently and admittedly he was totally unaware of Supreme Court’s rulings in this regard. When we talked to the doctors on duty at the casualty reception of the Hospital they unequivocally and spontaneously replied that bringing the accused in handcuffs is not an unusual thing. “If you sit here for another two hours you can find more of such cases”--the doctors replied. They admitted their unawareness of the Supreme Court’s ruling on handcuffing too.

The Deen Dayal episode induced us to fathom the realities in other hospitals and that took us to the Bara Hindu Rao, the Ram Manohar Lohia and Lok Nayak Jayprakash Hospitals.

**Experience at the Bara Hindu Rao Hospital**
1. The doctors on duty at casualty put the percentage of cases arriving with handcuffs at 10. They informed in no uncertain terms that persons who come from Tihar Jail--almost all come in iron fetters.

2. The constable on duty at the police post in the hospital put the number of such cases as 25 percent of the total number of arrested persons brought for medical examination. The constable replied “it is lift to the escort as how to bring a person ... whether to use cuffs or not.” The constable was totally ignorant of Prem Shanker Shukla’s case ruling.

**Experience at the Ram Manohar Lohia Hospital**
1. The Junior Doctor on duty told us that except in intoxication cases invariably all arrested/accused people were brought in handcuffs.

2. According to a senior lady doctor daily one case comes with iron bondage. “Sometimes people consume too much liquor and they become uncontrollable and hence they are brought with iron fetters,” she said.

3. A senior doctor informed that inmates from Jail usually come in iron bondage.

4. The police man at a police post said “Handcuffing is no longer a usual practice but the police escort can use it when the need is felt in discharge of duty to tackle the accused.” It was evident that he had some vague idea about law on this point.

**Experience at the Lok Nayak Jayprakash Hospital**
1. The lady doctor divided cases into two categories:
   (a) Cases from Tihar Jail invariably arrive with iron fetters, whereas
   (b) Cases from Police station usually don’t.

2. The police man on duty at the Post in LNJP was fully aware of Supreme Court’s rulings. However, the constable said doctors object to the use of handcuff. Here I recall the incident when in 1989 during Mandal agitation I was put to wear iron and made to walk for half a kilometer from the police station to court.

We are, therefore, in a position to point out that in spite of a watchful court the safety of human dignity is exposed to inhuman behaviour. The main reason it appears is the ignorance and indifference of the majority of policemen. In order to avoid its reoccurrence a necessary suggestion to the government is that it should take necessary steps to make the police sensitive towards citizens’ human dignity and human rights. It may be suggested further that the attention of doctors should also be attracted on these legal positions so that the human rights of the accused are safeguarded in vulnerable situations.