

Independent studies

International Comparative Analysis of Anti-Shackle Reforms

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Objective of Study:

This research compiles international legal precedents and human rights standards to urge the elimination of shackling practices in Thailand. Globally, courts have acknowledged that shackling constitutes a breach of fundamental human rights, including the rights to personal freedom and human dignity. India's landmark cases upheld that restraints must only be employed in extraordinary situations and subject to rigorous supervision. Likewise, the Federal Shariat Court of Pakistan denounced shackling as inherently cruel and urged its abolition. Nations such as Germany, Canada, South Africa, and the United States have also put in place indisputable limitations, restricting restraints to narrowly tailored circumstances essential for security or safety.

This research offers a comparative examination of these international approaches and identifies their application to Thailand's correctional system. Thailand's 2017 Corrections Act already demonstrates a commitment to international alignment with standards such as the United Nations Mandela Rules and the Bangkok Rules, both of which restrict the use of shackles. Yet, recent practice has demonstrated a disconnect between legal frameworks and practice. By reviewing legal reforms and best practices from other countries, this research seeks to ensure that Thailand's detention standards are fully aligned with international human rights obligations.

1. Pakistan

Anti-Shackle Findings – [Shariat Petitions \(Consolidated Judgment\)](#)

Consolidated cases Shariat Petition No. 61/I of 1992, No. 62/I of 1992, No. 12/I of 1999, and No. 4/I of 2004.

Findings:

1. Condemnation of Shackles and Restraints

The Court held that there is no moral or legal justification to subject prisoners to shackling or bar fetters. The judgment states: "The conditions in which a condemned prisoner spends a trying period extending over a few years are simply deplorable, inhuman and unpardonable." (S.P.No.61/I of 1992, p. 165)

2. Inspection Reports Highlighting Cruelty

A Sindh High Court inspection compared prisoners' conditions to caged animals: "The manner in which they were kept in a cell, having an area of few feet, in solitary confinement with bar-fetters on. If a comparison of the conditions of these prisoners is possible, then it can only be made with the animals who are kept in zoo. It can be said without any hesitation that even the animals in the zoo are better placed as they have no bar-fetters inside the cage and they are provided with better facilities." (p. 183)

3. Violation of Religious and Constitutional Rights

The judgment emphasized that shackling violates prisoners' ability to practice religious obligations: "This practice is violative of a large number of injunctions of Holy Quran and Sunnah which need not be cited as they are numerous and well known." (p. 251-252)

The Court also noted that prolonged solitary confinement constitutes an unlawful additional punishment contrary to sections 73 and 74 of the Pakistan Penal Code.

4. Prolonged Solitary Confinement

The Court described the uncertainty and harsh conditions faced by death-row prisoners as cruel and human stating: "the agony through which he passes as a condemned prisoner must be reduced to minimum possible period. A period which is essential for all practical purposes." (p. 168)

5. Call for Reform

The Court directed that bar fetters, link fetters, and handcuffs should be abolished or severely restricted, declaring It: "examined the various provisions of prison discipline in the matters agitated... It is not our obligation alone but the Legislature as well as the Executive is equally bound to erase every such provision which smacks of Zulm. (oppression)." (p. 196)

2. India

Prisoners' Rights: Aparna Chandra - Fourth Edition

1. Prem Shankar Shukla v. Delhi Administration (1980) - Page 48-70

- a. *Prem Shankar Shukla v. Delhi Administration* (1980) is a landmark decision by the Supreme Court of India that addressed the use of handcuffs and fetters on undertrial prisoners. The petitioner, Prem Shankar Shukla, was an undertrial who challenged the routine practice of being handcuffed while being taken to court, arguing that it violated his fundamental rights under the Constitution. The Court took this opportunity to examine the broader issue of custodial practices and the balance between state security and individual dignity.

The Supreme Court held that the use of handcuffs is a serious restriction on personal liberty under [Article 21 of the Constitution](#), which guarantees the right to

life and personal liberty. It ruled that handcuffs should not be used arbitrarily or routinely and must only be applied when there is a clear and specific justification, such as a credible threat of escape or violence. The Court emphasized that any such decision must be supported by written reasons and be subject to judicial scrutiny. This case established important procedural safeguards and reaffirmed the constitutional principle that even individuals in custody are entitled to dignity and humane treatment.

- i. “Handcuffing can only be resorted to on reasonable grounds and cannot be routinely used” (45).
- ii. “Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture” (45).
- iii. High Court’s order by trial Judge Shri A.K. Garg: “... I direct that the officers concerned while escorting the accused from jail to court and back, shall resort to handcuffing only if warranted by rule applicable to better class- prisoners and if so warranted by the exigency of the situation on obtaining the requisite permission as required under the relevant rules.” (53)
- iv. “A law which handcuffs almost every under trial (who presumably, is innocent) is itself dangerous.” (66).

2. **Kishore Singh Ravinder Dev & Ors. v. State of Rajasthan (1981)** - Page 71-76

- a. *Kishore Singh Ravinder Dev & Others v. State of Rajasthan* is a landmark case in Indian constitutional and criminal jurisprudence, addressing custodial violence and the rights of accused persons. The petitioners were subjected to severe torture while in police custody, and the case brought attention to the inhumane treatment often inflicted on individuals during criminal investigations. The Supreme Court was called upon to assess whether such treatment violated constitutional protections and legal safeguards.

The Court held that the use of third-degree methods, torture, or any form of inhuman or degrading treatment by the police is a direct violation of [Articles 21](#) and [22](#) of the Constitution, which protect the right to life and liberty and provide safeguards during arrest and detention. It emphasized that every individual, including those accused, must be treated with dignity and respect. The Court condemned the practice of custodial torture as illegal and unjustifiable, reaffirming that confessions or information extracted through such means are inadmissible. This judgment reinforced the principle that law enforcement must operate within constitutional boundaries and that human rights cannot be suspended, even in the pursuit of criminal justice.

- i. “Solitary confinement or the use of fetters in prisons is impermissible except in extreme cases of compelling necessity such as for the security of

- other prisoners or to prevent escape, and only after complying with rules of natural justice.” (45-46)
- ii. “This Court has frowned upon handcuffs save in the “rarest of rare” cases where security will be seriously jeopardized unless iron restraint is necessarily clamped on the prisoner.” (71)
- iii. Para 443 of the Kerala Police Manual, 1970, Vol. II, reads: “The use of handcuffs or ropes causes humiliation to the person subjected to the restraint, and is contrary to the modern policy regarding the treatment of offenders. Therefore, handcuffing and/or binding shall be restricted to cases where a person in custody is of a desperate character, or where there are reasons to believe that he will use violence or attempt to escape or where there are other similar reasons necessitating such a step.” (71).
- iv. British Governments White Paper: *People in Prison*: “A society that believes in the worth of individual beings can have the quality of its belief judged at least in part by the quality of its prison and probation services and of the resources made available to them.” (72).

3. Aeltemesh Rein, Advocate, Supreme Court of India v. Union of India (1988) -Page 77- 78

- a. Aeltemesh Rein petitioned the Supreme Court of India to address two key issues affecting justice and constitutional rights. First, he highlighted the continued and unjustified use of handcuffs on undertrial prisoners, despite earlier Supreme Court rulings that restricted such practices. He argued that authorities were failing to follow the legal guidelines established in cases like *Prem Shankar Shukla v. Delhi Administration*, where the Court had made it clear that restraints could only be used with specific justification and under judicial oversight.

Rein called attention to the government's prolonged delay in notifying Section 30 of the Advocates Act, 1961. This provision was meant to give all advocates the right to practice law across India, but it had never been implemented. The Supreme Court responded by directing the central government to issue clear regulations on the use of handcuffs within three months and to formally review and act on Section 30 within six months. The judgment reinforced that the executive branch must act within the bounds of constitutional and statutory duties. It affirmed the judiciary's responsibility to safeguard individual liberties and ensure that legal provisions meant to protect rights are not left unenforced.

4. Sunil Gupta & Ors. v. State of Madhya Pradesh & Ors. (1990) - Page 79-85

- a. The Supreme Court of India addressed the improper treatment of undertrial prisoners who were being transported in handcuffs and kept in jail conditions that violated their dignity. The petition was filed to challenge the authorities' practice

of routinely handcuffing prisoners without prior judicial approval and without any assessment of whether the individual posed a flight risk or threat to others.

The Court reaffirmed the constitutional protection of personal liberty under [Article 21](#) and emphasized that handcuffing is not a matter of routine or administrative convenience. It held that handcuffs can only be used when absolutely necessary and must be authorized by a magistrate with proper reasoning. The judgment reinforced earlier decisions, particularly *Prem Shankar Shukla v. Delhi Administration*, and emphasized that the dignity of individuals in custody must be respected. The Court also criticized the prison authorities for failing to uphold these standards and directed that proper procedures be followed going forward. This case contributed significantly to the jurisprudence surrounding prisoners' rights and custodial safeguards in India.

- i. "Handcuffing is *prima facie* inhuman and, therefore, unreasonable, is over-harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons', is to resort to zoological strategies repugnant to Article 21." (83).
- ii. "To bind a man hand-and-hand, fetter his limbs with hoops of steel, shuffle him along the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture." (83).

5. State of Maharashtra & Ors. v. Ravikant S. Patel (1991) - Page 86-87

- a. The Supreme Court of India addressed the disturbing practice of parading an undertrial prisoner through public streets in handcuffs and rope. Ravikant Patel was an accused in a murder investigation who was taken through the city of Solapur in August 1989. The Court noted that this public display was admitted by the police and observed by many citizens.

The Court concluded that treating an accused in this way violated his right to dignity and personal liberty under Article 21 of the Constitution. It held that handcuffs or other restraints could only be used when strictly necessary and must be supported by a written justification from a competent authority. Routine or humiliating treatment of suspects was impermissible. The Court directed that disciplinary proceedings be initiated against the officer responsible instead of awarding compensation. This judgment reinforced the principle that even during criminal investigations, an accused person retains fundamental rights and must be treated with respect and fairness.

6. Gurdeep Singh @ Deep v. A state (Delhi Admin) (2000) - Page 92-96

- a. The Supreme Court of India dealt with the high-stakes appeal of Gurdeep Singh, who had been convicted in a terrorist bombing in Noida that killed three people

and injured others. The Court examined in detail the reliability of a confession made by Gurdeep Singh, a crucial piece of evidence, and evaluated whether procedural safeguards were upheld during interrogation and arrest. It applied established principles from criminal jurisprudence to ensure fairness in the evaluation of statements made by accused persons.

The Court reaffirmed the strict standards for admitting a confession under [Section 164 of the Criminal Procedure Code](#) and cautioned against relying on evidence extracted under duress or without proper judicial oversight. After reviewing the case record, witness testimonies, and forensic evidence, the Court upheld Gurdeep Singh's conviction, finding that the prosecution had established guilt beyond a reasonable doubt. The judgment reinforced the importance of balancing rigorous anti-terror enforcement with constitutional protections for accused individuals.

3. Germany

- Basic Law (Grundgesetz), Article 1(1): Protects human dignity as inviolable.

- Article 1

[Human dignity – Human rights – Legally binding force of basic rights]

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

(3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

- Article 104(1): Limits deprivation of liberty and mandates judicial oversight.

- Article 104

[Deprivation of liberty]

(1) Liberty of the person may be restricted only pursuant to a formal law and only in compliance with the procedures prescribed therein. Persons in custody may not be subjected to mental or physical mistreatment.

(2) Only a judge may rule upon the permissibility or continuation of any deprivation of liberty. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The police may hold no one in custody on their own authority beyond the end of the day following that of the arrest. Details shall be regulated by a law.

(3) Any person provisionally detained on suspicion of having committed a criminal offence shall be brought before a judge no later than the day following that of his arrest; the judge shall inform him of the reasons for the arrest, examine him and give him an opportunity to raise objections. The judge shall, without delay, either issue a written arrest warrant setting forth the reasons therefor or order his release.

(4) A relative or a person enjoying the confidence of the person in custody shall be notified without delay of any judicial decision imposing or continuing a deprivation of liberty.

- Use of restraints must be necessary and proportionate; blanket shackling is unconstitutional.

Court Decision:

- Federal Constitutional Court (BVerfG), 2 BvR 1516/99 (2001): Held that routine shackling of defendants in court without individualized justification violates human dignity.

Source:

<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2016/bvg16-004.html>

https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html

4. United Kingdom

- Human Rights Act 1998 - Schedule 1:

<https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

- “Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

- Prison Rules 1999: <https://www.legislation.gov.uk/ukssi/1999/728/article/49/made>

- **49.**—(1) The governor may order a prisoner to be put under restraint where this is necessary to prevent the prisoner from injuring himself or others, damaging property or creating a disturbance.

(2) Notice of such an order shall be given without delay to a member of the board of visitors, and to the medical officer or to a medical practitioner such as is mentioned in rule 20(3).

(3) On receipt of the notice, the medical officer, or the medical practitioner referred to in paragraph (2), shall inform the governor whether there are any medical reasons why the prisoner should not be put under restraint. The governor shall give effect to any recommendation which may be made under this paragraph.

(4) A prisoner shall not be kept under restraint longer than necessary, nor shall he be so kept for longer than 24 hours without a direction in writing given by a member of the board of visitors or by an officer of the Secretary of State (not being an officer of a prison). Such a direction shall state the grounds for the restraint and the time during which it may continue.

(5) Particulars of every case of restraint under the foregoing provisions of this rule shall be forthwith recorded.

(6) Except as provided by this rule no prisoner shall be put under restraint otherwise than for safe custody during removal, or on medical grounds by direction of the medical officer or of a medical practitioner such as is mentioned in rule 20(3). No prisoner shall be put under restraint as a punishment.

(7) Any means of restraint shall be of a pattern authorised by the Secretary of State, and shall be used in such manner and under such conditions as the Secretary of State may direct.

Case Law:

- R v Vratsides [1988] Crim. L. R. 251 CA, R v Horden [2009] 2 Cr. App. R. 24

- “Unless there is sufficient reason (which means a real risk of either violence or escape), a defendant ought not to be visibly restrained by handcuffs or otherwise either in the dock or in the witness box. Even if there is some relevant risk, alternative forms of avoiding it ought to be investigated before resort is made to visible restraint.”

<https://www.cps.gov.uk/legal-guidance/handcuffing-defendants>

5. France

https://www.guidedroitshomme.fr/en/themes/prisons/prison-order-security-measures/use-of-force-and-security-measures/restraints-and-other-security-measures?utm_source=chatgpt.com

- “Degrading or unnecessarily painful means of restraint, like heavy chains, must never be used against you. Physical restraint must never be used as a means of punishment!”
- Handcuffs and other methods of restraint may be used against you only if it is necessary to ensure the safety of other persons or yourself and order in the prison, or if you are likely to try to escape from prison.
- The prison staff can only use measures that are expressly allowed for by law and under the conditions stated under the law. In France, these conditions can be found in the [Code of Criminal Procedure - Article 803](#) and in the [Penitentiary Code - Article R226-1](#)
- Only relevant case law in France related to restraints in medical settings (i.e. hospital) but shackles are not used in courts and excessive restraint is explicitly forbidden.

6. South Africa

- Constitution: <https://www.justice.gov.za/legislation/constitution/>

- Chapter 2: Section 10 - Human Dignity “Everyone has inherent dignity and the right to have their dignity respected and protected.”

- Chapter 2: Section 12(1) - Freedom and Security of the Person:

(1) Everyone has the right to freedom and security of the person, which includes the right—

(a) not to be deprived of freedom arbitrarily or without just cause;

(b) not to be detained without trial;

(c) to be free from all forms of violence from either public or private sources;

(d) not to be tortured in any way; and

(e) not to be treated or punished in a cruel, inhuman or degrading way.

- Chapter 2: Section 35(2)(e) - Rights of Arrested, detained and accused persons:

“Everyone who is detained, including every sentenced prisoner, has the right— to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment”

- Correctional Services Act 1998: (link below has the pdf available for download:)

<https://www.gov.za/documents/correctional-services-act>

- Section 31 - Mechanical Restraints:

(1) If it is necessary for the safety of a prisoner or any other person, or the prevention of damage to any property, or if a reasonable suspicion exists that a prisoner 40 may escape, or if requested by a court, a correctional official may restrain a prisoner by mechanical restraints as prescribed by regulation.

(2) A prisoner may not be brought before court whilst in mechanical restraints except handcuffs or leg-irons, unless authorised by the court.

(3) (a) When a prisoner is in solitary confinement or in segregation and mechanical 45 restraints are to be used, such use of mechanical restraints must be authorised by the Head of Prison and the period may not, subject to the provisions of paragraphs (b) and

(c), exceed seven days. Commissioner may extend such period for a maximum period not exceeding 30 days after consideration of a report by a medical officer or psychologist.

(4) All cases of the use of such mechanical restraints except handcuffs or leg-irons 5 must be reported immediately by the Head of Prison to the Area Manager and to the Inspecting Judge. . .

(5) A prisoner who is subjected to such restraints may appeal against the decision to the Inspecting Judge who must decide thereon within 72 hours after receipt thereof. 10

(6) Mechanical restraints may never be ordered as a form of punishment or disciplinary measure.

- Section 32: Use of Force

32. (1) (a) Every correctional official is authorised to use all lawful means to detain in safe custody all prisoners and, subject to the restrictions of this Act or any other law, may use force to achieve this objective where no other means are available.

(b) A minimum degree of force must be used and the force must be proportionate to the objective.

(2) Force may be used only when authorised by the Head of Prison, unless a correctional official reasonably believes that the Head of Prison would authorise the use of force and that the delay in obtaining such authorisation would defeat the objective.

(3) If, after a correctional official has tried to obtain authorisation, force is used without prior permission, the correctional official must report the action then to the Head of Prison as soon as reasonably possible.

(4) Any such permission or instruction to use force may include the use of non-lethal incapacitating devices or firearms, subject to the restrictions set out in sections 33 and 34.

(5) If force was used, the prisoner concerned must undergo an immediate medical

examination and receive the prescribed treatment.

- Section 2: Purpose of correctional system (human dignity)

The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by—

- (a) enforcing sentences of the courts in the manner prescribed by this Act
- (b) detaining all prisoners in **safe custody whilst ensuring their human dignity**;
- and
- (c) promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

7. United States

- Deck v. Missouri, 544 U.S. 622 (2005): <https://supreme.justia.com/cases/federal/us/544/622/>

- “The Constitution forbids the use of visible shackles during a capital trial’s penalty phase, as it does during the guilt phase, unless that use is “justified by an essential state interest”—such as courtroom security—specific to the defendant on trial. Holbrook v. Flynn, 475 U. S. 560, 568–569. Pp. 3–10.”

- “the Fifth and Fourteenth Amendments prohibit using physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that restraints are justified by a state interest specific to the particular defendant on trial.”

8. Norway

- Norwegian Constitution: <https://lovdata.no/dokument/NLE/lov/1814-05-17>

- Article 92 “The authorities of the State shall respect and ensure human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway.”

- Article 93 “No one may be subjected to torture or other inhuman or degrading treatment or punishment.”

- Article 94 “No one may be taken into custody or otherwise be deprived of their liberty except in the cases determined by law and in the manner prescribed by law. Deprivation of liberty must be necessary and must not constitute a disproportionate infringement.

Persons arrested shall as soon as possible be brought before a court. Others who have been deprived of their liberty have the right to bring their deprivation of liberty before a court without unjustified delay.

Those responsible for the unwarranted arrest or illegal detention of a person shall be answerable to the person concerned.

9. Canada

- Canadian Charter of Rights and Freedoms: <https://laws-lois.justice.gc.ca/eng/Const/page-15.html>

- Section 7: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

- Section 12: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”

- [Use of Shackles and Handcuffs on Accused](#) (link includes relevant court cases)

- General Summary: “When accused persons are brought into the courtroom, handcuffs should be removed as soon as they are placed into the dock unless the court officers are aware of a security concern respecting that particular accused. If that is the case, the officers should notify Crown counsel, preferably in advance, so that he or she may make the appropriate application before the presiding judge.”

- Court must approve any and all uses of shackles and they are only to be used in rare circumstances.

10. Namibia

- Chains/leg-irons are prohibited and human dignity is an absolute right, therefore, this may not be violated under any legal justifications:
- [Article 8:](#) “Respect for Human Dignity: (1)The dignity of all persons shall be inviolable. (2)(a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

- [Namunjepo v CO, Windhoek Prison 2000 NR 271 \(SC\):](#)

<https://namiblji.org/na/judgment/supreme-court/2000/6>

- The Court held that placing prisoners in chains or leg-irons—as implemented—constituted degrading treatment and violated Article 8(2)(b) of the Namibian Constitution (right to dignity and prohibition on cruel, inhuman or degrading treatment).

- UN Mandela/ European Rules: pdf attached via email
<https://www.coe.int/en/web/prison/european-prison-rules>

11. Kenya

- Constitution of Kenya: <https://www.klrc.go.ke/index.php/constitution-of-kenya>

- Article 28 - Human Dignity - “Every person has inherent dignity and the right to have that dignity respected and protected.”

- Article 29 - Freedom and Security of the Person - “Every person has the right to freedom and security of the person, which includes the right not to be--

- (a) deprived of freedom arbitrarily or without just cause;
- (b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;
- (c) subjected to any form of violence from either public or private sources;
- (d) subjected to torture in any manner, whether physical or psychological;
- (e) subjected to corporal punishment; or
- (f) treated or punished in a cruel, inhuman or degrading manner.”