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DK BASU VS. STATE OF WEST BENGAL (AIR 1997 SC 610)

~*Meher Khan*

PETITIONER: Shri Dilip K. Basu etc. Ashok K. Johari

Vs.

RESPONDENT: State of West Bengal & Ors.

DATE OF JUDGMENT: 01/08/1997

BENCH: Kuldip Singh, A.S.Anand, JJ.

FACTS

1. The executive head of the Legal Aid Services of West Bengal, Dr. D.K. Basu, raised the issue of violence inflicted on individuals in custody through a letter addressed to the Chief Justice of India.
2. On August 26, 1986, Mr. Basu wrote a letter to the then Chief Justice of India, Justice Ranganath Mishra, highlighting several instances of deaths that had occurred in custody during the year 1986.¹
3. In his letter, Mr. Basu recommended that the Supreme Court should establish principles and guidelines related to custody and devise methods for awarding compensation in such cases.

¹ <https://main.sci.gov.in/jonew/judis/13877.pdf>

4. Considering the gravity of the matter, the Chief Justice treated Mr. Basu's letter as a writ petition, invoking the Supreme Court's original jurisdiction under Article 131 of the Indian Constitution.
5. An additional letter from the Aligarh province followed, detailing an incident of death in police custody.
6. The Supreme Court issued notices to all state governments and law commissions, seeking their suggestions on the matter.²
7. To assist the court in addressing the issue of custodial violence, the Supreme Court appointed Mr. Abhishek Manu Singhvi as the amicus curiae (friend of the court).
8. The Apex Court took cognizance of the widespread allegations of violence inflicted on individuals in custody, arising from various states across the country.
9. Ultimately, the Supreme Court provided crucial suggestions and guidelines regarding the prevention and handling of custodial violence.

ISSUES

1. Does the occurrence of violence and loss of life while in custody infringe upon the fundamental right to life and personal liberty guaranteed by Article 21 of the Indian Constitution?
2. Is there a pressing need to establish comprehensive and well-formulated rules and guidelines that law enforcement officials must adhere to during the process of arresting and handling individuals in their custody?³
3. Even while serving time behind bars, do prisoners retain their inherent right to life, and can instances of custodial violence and death be considered a violation of Article 21 of the Constitution?

² <https://blog.ipleaders.in/dk-basu-vs-state-of-west-bengal-1997-case-analysis/#Facts of DK Basu vs State of West Bengal 1997>

³ <https://www.alec.co.in/judgement-page/dk-basu-v-state-of-west-bengal>

4. Can law enforcement personnel be held legally accountable and liable for subjecting individuals in their custody to acts of violence?⁴
5. What criteria or grounds should be considered when awarding compensation to victims of custodial violence or to the families of those who have lost their lives due to such violent acts?

CONTENTIONS

RAISED BY PETITIONER

1. The excessive and unjustified use of physical force by police officers on individuals in their custody, with the intent of extracting confessions, must be prevented and curbed. The practice of employing third-degree methods, which involve torture or cruel treatment, should be strictly prohibited.
2. Acts of violence, including rape and physical assault, inflicted upon detainees cause severe psychological trauma that extends far beyond the scope of what the law aims to address. Such acts constitute a gross misuse and abuse of the powers entrusted to law enforcement authorities.⁵

RAISED BY RESPONDENT

1. The legal representatives of various state governments asserted that the matters pertaining to the issue of custodial violence were already well-established and adequately addressed within their respective state jurisdictions.
2. The states argued that there was no necessity for legal representation or counsel to be present during the arrest of an individual.
3. The states emphasized that they were already in the process of formulating and implementing measures to curb and control the problem of custodial violence within their respective law enforcement agencies.⁶

⁴ https://blog.ipleaders.in/dk-basu-vs-state-of-west-bengal-1997-case-analysis/#Facts_of_DK_Basu_vs_State_of_West_Bengal_1997

⁵ *Legal Method : Dr.Sanjeev Kumar Tiwari: 1st Edition,2012*

⁶ <https://www.lawinsider.in/columns/what-is-protection-against-arrest-under-article-22-of-the-indian-constitution>

4. Discussions were held regarding the accountability and responsibility of police officers in cases of custodial violence. The states contended that disciplinary action was initiated against police personnel found guilty of abusing their authority and powers.

ARGUMENTS

PRESENTED BY PETITIONER

1. The need for establishing comprehensive guidelines to prevent and curb the occurrence of violence against individuals in custody, as such acts violate fundamental human rights.
2. Highlighting that the constitutional right to life and personal liberty, guaranteed under Article 21, extends to prisoners as well, irrespective of their incarcerated status.
3. Emphasizing the state's duty to safeguard the rights of all individuals, including those arrested and detained, and holding the state vicariously liable if it fails to fulfill this duty, leading to wrongful acts committed by police authorities against individuals in custody.
4. Drawing attention to the deplorable conditions and ill-treatment endured by individuals behind bars, and the necessity of formulating mechanisms for awarding compensation to victims and/or their families who have suffered violence or lost their lives due to custodial violence.
5. Underscoring the importance of ensuring accountability, as efforts are often made to conceal instances of custodial deaths, allowing such crimes to go unpunished and perpetuating the problem.
6. Requesting the court to treat the letter, along with news reports on custodial violence, as a writ petition under the "public interest litigation" category, seeking the court's intervention to address this grave issue of national significance.

PRESENTED BY RESPONDENT

1. Denial of hushing up custodial deaths and assertion that disciplinary action was taken against police personnel found responsible for such incidents.
2. Characterizing the writ petition as baseless, misleading, and legally untenable, claiming that the situation was well under control within their respective states.

3. Justifying custodial procedures as a necessary measure for effective law enforcement and crime prevention, arguing that imposing restrictions on police powers would impede their ability to uphold the law.
4. Presumption of lawful conduct by police officers unless proven otherwise, highlighting challenges faced by law enforcement authorities, such as inadequate training, resource constraints, and pressure to solve cases promptly.
5. Emphasizing the need for various custodial procedures and measures to maintain law and order and combat criminal activities, justifying their actions and practices in custody.
6. Denying allegations of custodial violence while acknowledging the challenges faced by police personnel and claiming that action was taken against errant officers when necessary.

JUDGEMENT

The judgment by Justices A.S. Anand and Kuldeep Singh had two main objectives – laying down procedural safeguards and establishing a compensation mechanism for victims of police misconduct. The judgment underscored the global commitment to eradicating torture and affirmed that individuals in custody have fundamental rights that can only be restricted within the bounds of law.⁷

The Apex Court made the following crucial observations and directives:

1. Acts of custodial violence, such as rape, torture, and death, violate Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, as well as fundamental human rights.
2. Custodial violence infringes upon the right of arrested individuals, enshrined in Article 22(1), to be informed of the grounds for arrest and to be represented by legal counsel of their choice.
3. While interrogation is essential, it must adhere to scientific and humane principles, and the use of third-degree methods is strictly prohibited.
4. Transparency and accountability in police actions during arrests are imperative to prevent the abuse of power by law enforcement authorities.⁸

⁷ <https://www.alec.co.in/judgement-page/dk-basu-v-state-of-west-bengal>

⁸ <https://indiankanoon.org/doc/501198/>

5. In cases of custodial violence perpetrated by public servants, the State will be held vicariously liable for their actions. Police authorities must respect the rights of individuals under their custody.

6. Comprehensive training, encompassing proper arrest procedures and the treatment of individuals in custody, should be imparted to police officers before they undertake arrest duties.

7. Referring to **the Neelabati Bahera v. State of Orissa case**, the Supreme Court reiterated that prisoners and detainees cannot be deprived of their fundamental rights under Article 21, and any restrictions must be legally permissible.⁹

The Apex Court further laid down a set of guidelines to be followed during arrests and detentions, stating that non-compliance would result in departmental action and contempt of court proceedings. These guidelines covered various aspects, including the identification of arresting officers, preparation of arrest memos, informing relatives/friends of the arrestee, medical examination of the arrestee, provision of legal aid, maintaining records, and allowing the arrestee to meet their attorney during interrogation, among others.

The judgment aimed to establish robust procedural safeguards, ensure transparency and accountability, uphold the fundamental rights of individuals in custody, and provide a mechanism for compensating victims of custodial violence while acknowledging the necessity for humane and scientific interrogation practices.

THE GUIDELINES GIVEN BY THE SUPREME COURT IN CASES OF ARREST AND DETENTION:

1. Police officers making an arrest must wear visible name tags.
2. The arresting officer must prepare a memo detailing the arrest, attested by a witness and countersigned by the arrestee.¹⁰
3. The arrested person has the right to inform a close friend or relative about their arrest.
4. The time, place of arrest, and custody venue must be notified by the police.

⁹ <https://main.sci.gov.in/jonew/judis/13877.pdf>

¹⁰ <https://thelegalquorum.com/d-k-basu-vs-state-of-west-bengal-air-1997-sc-610/>

5. An entry must be made in the case diary at the place of detention, recording the arrest and the details of informed friends or relatives.
6. The arrestee should undergo a medical examination and be medically examined every 48 hours by a trained doctor.¹¹
7. The arrestee may be permitted to meet their lawyer during interrogation.
8. The police must communicate arrest details to the control room within 12 hours and display the information on a notice board.

¹¹ <https://ijcrt.org/papers/IJCRT2202277.pdf>