

SHRI DILIP K. BASU VS STATE OF WEST BENGAL & ORS

Harsh Mittal***Citation:** AIR 1997 SC 610**Judge Involved:** Dr. A.S. Anand and Kuldeep Singh**Date Decided:** 18 December 1996**Type –** Petition**Petitioner -** DK Basu, Mr. Ashok Kumar Johri**Respondent –** State of West Bengal**FACTS**

1. On August 29, 1986, DK Basu, Former Executive Chairman of Legal Aid Services, West Bengal wrote to the Supreme Court of India requesting an investigation into the news of the Telegraph article about deaths while in police custody. He requested the court to treat the letter as a “Public Interest Litigation”. By looking at the seriousness of the issue the court decided to take this letter as a writ petition and the court then sent notice to the defendants on the same case.

2. Around the same time another person named Mr. Ashok Kumar Johri filed another writ petition to the Chief Justice of India calling attention to the death of a person named Mahesh Bihari who was under the custody of police during the time of his death. Because of this, he was included with DK Basu to fight on the same case.

3. The court ordered all the state governments along with the law commission on 14 Aug 1987 to provide recommendations to the court within two months. Various state governments like Orissa, Himachal Pradesh, West Bengal, Manipur, Maharashtra, and Haryana in response to the same issue, submitted affidavits

4. In order to help the court, Dr. Shivji's Chief Advisor was appointed Amicus Curiae.

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ISSUES INVOLVED

1. The first and foremost issue involved was why are the number of deaths in police custody increasing in India.
2. The legality of a police arrest in India.
3. The need to formulate specific guidelines related to the arrest in India.

ARGUMENTS

I. Arguments by Petitioner

- I. The petitioner argued that the number of cases of violence or mental trauma or bodily pain is increasing in the police station.
- II. The petitioner said that whether the incident in police custody involved physical violence or rape., the scope of these traumatic experiences is outside the law.
- III. The petitioner argued before the honorable court that there is a need for a much more civilized nation, and the country needs to take some serious steps to completely eradicate deaths in police custody from the country.

II. Arguments by Respondents

1. The counsel on the other hand was led by Dr. A. M. Singhi, who presented the case on behalf of different states. The counsel argued that the happening reported or highlighted by the petitioner is not happening in their states.
- II. The defendant made some recommendations for the formation of some specific guidelines by the court to decrease, if not prevent, abuse committed while in custody and the families of those who passed away in custody as a result of torture. They also provided this Court with useful assistance in studying different aspects of the subject.
- III. The West Bengal state attempted to emphasize or indicate that there are no fatalities during public custody in the state and if there are any, the state will find out the reason for the death and provide the information related to it to courts as well.

JUDGMENT OF THE COURT

The Court defined "custodial torture" as a blatant violation and humiliation of human dignity that destroys the victim's self-respect and even his character. The court based their judgment on the basis of decisions in the cases of *Joginder Kumar v. State of U.P. and Ors.*¹ and the case of *State of M.P. v. Shyamsunder Trivedi and Ors.*². The court held that even though an individual has a right to individual freedom, but also the State's mandate to interrogate perpetrators or arrestees in the interests of the State takes precedence over individual liberties. The court held that action taken by courts should be reasonable and fair. The court also ruled that despite several constitutional and legislative protections for people's rights to life and liberty in India, the system has flaws that allow torture and decapitation of prisoners. The court said that any sort of cruel torture, or inhuman treatment falls within Article 21³ and it should not be denied to undertrials convicts except in some cases and that in accordance with the guidelines set forth by the courts and with reasonable limits permitted by law. The court said that Article 22⁴ guarantees protection from arrest and detention. It stipulates that no one who has been arrested may be held in jail without knowing the reason for their detention and that they are not denied the right to consult with and use a representative when a lawyer of their choosing.

The Court found the growing number of deaths and cases of torture in police custody a worrying factor, despite constitutional and legal safeguards put in place to protect the individual liberties and lives of its citizens. recognized to be. In *Smt. Nilabati Behera alias Lalita Behera v. State of Orissa*⁵, the Supreme Court ruled that detainees and prisoners cannot be denied basic rights under Article 21 and their ability to exercise these rights can only be restricted by law. made a judgment.

In order to promote openness and accountability, the Court believed it would be beneficial and effective to set up the proper apparatus for all arrests and detentions to be recorded and communicated in real-time. Together with the constitutional and statutory safeguards, the court also established a list of 11 guidelines that must be adhered to in every instance of arrest and detention.

¹ *Joginder Kumar v. State of U.P* (1994) SCC (4) 260

² *State of M.P. v. Shyamsunder Trivedi and Ors* (1995)

³ Constitution of India 1950, Art 21

⁴ Constitution of India 1950, Art 22

⁵ *Smt. Nilabati Behera alias Lalita Behera v. State of Orissa* (1993) SCR (2) 581

THE 11 GUIDELINES ARE

1. The court required police conducting searches and arrests to provide name tags that accurately, visibly, and clearly marked their designation. And police interrogating detainees are required to enter the relevant information in a register.
2. That the police officer who is going to carry out the arrest should draught the memo of arrest in the presence of at least one witness, who might be a family member or a polite or reasonable local person, at the time the subject is arrested. The memo should be the date and time of the arrest and must be signed by the detained person
3. That the person who has been detained or put under police custody should have at least one person notify him about the arrest and know about him. The known person should be provided with appropriate information like the place where he/she is detained.
4. Within 12 hours of arrest, the police are required to notify the detainee's next of kin outside the city or district of the date, place, and time of detention of the inmate via the district legal assistance program and the relevant local police.
5. As soon as someone is arrested, the arrested person should be provided with the right to inform anyone about as soon as he is placed in prison, his arrest or detention or is arrested.
6. The police at the place of arrest must keep a diary about the person's arrest, and the diary must also include the names of the arrestee's closest friends who were informed of the arrest. A police officer's name was found.
7. Detainees should be examined for serious or minor injuries during police custody. This will be recorded on the inspection report and must be signed by both the police officer and the arrestee.
8. A physician selected from a group of licensed physicians by the relevant State or Federal Territory Director of Health Services must medically examine an arrested person every 48 hours while the person is in custody. Such penalties should also be introduced by the Director of Health to all schools and districts.
9. That copies of all relevant documents should be sent to the district magistrate for their record. The copies should include a memo of the arrest.

10. That the arrestee should be allowed to meet his lawyer during the interrogation.

11. That the police officer who made the arrest should give the necessary details about the arrest. and the place where the police custody is going to happen to the police control room which is to be created in all district and state headquarters. The same should be done 12 hours after the arrest was made. The same should be published on a prominent notice board.

CRITICAL ANALYSIS-

Today after 27 years of this landmark judgment, still the number of custodial deaths in India is quite high. Uttar Pradesh currently has the greatest number of custodial deaths in the country. Quite often police treat the arrestee as a third-class citizen and easily violate their basic fundamental rights. The police should note down that arrestees are not criminal or wrong until the same is proven by the court. In modern times, the guidelines provided by the court are binding on police stations but because they do not involve Stricker implications, the police often break these guidelines while carrying out the interrogation. These guidelines need to be made stricter and mainly police should be made liable for all those mishappenings that are happening during police custody.

