Landmark Judgement

Case Study: State of West Bengal v. D.K. Basu, Ashok K. Johri (1997)



Overview

One of the most significant rulings in history, the D.K. Basu case established the rules to be adhered to when making arrests. Custodial deaths have always occurred in our nation, and in the past, no efficient legal framework was put forth to address the rising number of these deaths in India.

Citation: AIR 1997SC 610

Court: Supreme Court of India

Bench: Kuldip Singh and Dr. A.S. Anand

Appellant: Shri D.K. Basu, Ashok K. Johri

Facts

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DK Basu served as the Executive Chairman of the non-political Legal Aid Services, West Bengal. He wrote to the Supreme Court of India on August 26, 1986, alerting the court to a story about deaths in police custody and lockups that had appeared in the Telegraph Newspaper on July 20, 21, and 22, as well as the Statesman and India Express on August 17, 1986.

The letter encouraged the courts to investigate the situation so that the victims' families may receive some sort of restitution, pointing out that similar crimes of custodial brutality always remained unpunished despite the efforts made. He asked that the letter be handled under the "Public Interest Litigation" category as a Writ Petition.

The defendants were notified and the letter was regarded as a written petition due to the importance of the problems raised in it.

In a letter to the Chief Justice of the Supreme Court, Mr. Ashok Kumar Johri brought attention to the death of an Aligarh resident named Mahesh Bihari while he was in police custody while the writ case was being reviewed. Together with D.K. Basu's Request for Writing, the letter was also considered a Request for Writing.

All state governments received an order from the Court on August 14, 1987, and the Law Commission received a notice asking for suitable recommendations and guidelines within two months.

West Bengal, Orissa, Assam, Himachal Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra, and Manipur were among the states that filed affidavits in response to the announcement.

Additionally**, Principal Counsel Dr. A.M. Singh was designated as an Amicus Curiae to support the Court.**

Problems

alarming increase in deaths and incidents of violence against inmates.

Guidelines must be established and adhered to when making an arrest.

Police officers' arbitrariness in making arrests, frequently justifying torture and murder in detention as a tactic to get information or to do justice to those who have been wronged.

Who is accountable for these murders and abuses?

The petitioner's claims

Concerns were raised about the authority of the police, and it was said that any detention or physical or psychological suffering experienced by a person in a police station should be avoided.

It was suggested that if the victims' rights as stated in **Articles 21 and 22 of the Constitution were violated,** they should get compensation.

The level of the harm is beyond the scope of the law, regardless of whether there was a real physical assault, rape, mental torture, or anything else while in police custody.

The petitioner further argued that such horrible crimes have to be eradicated in a "civilized society."

The respondent's claims

In response, Dr. A M Singhvi and the attorneys for the several states stated that "everything was well" and that there was no space for error.

They gave their individual briefs, helped the Court analyze different aspects of the matter, and offered some recommendations for the creation of rules to reduce, if not completely

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eliminate, torture-related violence against detainees and their relatives.
The defendants contested the accusations made against them, claiming that the writ petition was improper, misguided, and legally deceptive.
The State of West Bengal attempted to defend the collapse of the administrative wing by claiming that there were no deaths in the confinements and that, in the event that there were, the perpetrator should be investigated.

Evaluation

The Supreme Court reaffirmed, using **the Neelabati Bahera v. State of Orissa decision, that prisoners** and detainees should not be deprived of their Fundamental Rights under Article 21 and that only legal restrictions may be placed on their enjoyment of those rights.
Despite the legislative measures to protect citizens' life and liberty, the court noted that custodial fatalities are among the greatest crimes in a civilized society and that their rising rate is a concerning factor.

In light of the Constitutional and statutory rules that were to be upheld in all cases of arrest and detention, the court provided a summary of eleven guidelines. The following are the rules:

The police officer who makes the arrest and conducts the arrestee's interrogation must wear name tags with their designations and accurate, visible, and unambiguous identification. Every police officer who conducts questioning must have their information entered into a registry.
At the time of the arrest, the police officer making the arrest must create a memo of arrest, which must be attested by at least one witness. This witness may be a member of the arrestee's family or a respectable neighborhood resident. It must include the time and date of the arrest and be countersigned by the person who was arrested.
A person who has been arrested and is being held in custody in a police station, interrogation facility, or other lock-up has the right to have one friend, relative, or other person who knows him or has an interest in his welfare informed as soon as possible about his arrest and detention in a specific location, unless the attesting witness to the arrest memo is the arrestee's friend or relative.
Within eight to twelve hours following the arrest, the police must telegraphically notify the local police station and the Legal Aid Organization in the district of the arrestee's next friend or relative who resides outside the district or town of the time, location, and custody of the

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arrestee.
As soon as the apprehended person is placed under custody or detained, he must be informed of his right to have someone informed of his arrest or imprisonment.

The name of his next friend who has been notified of the arrest, as well as the names and specifics of the police officers holding the arrestee, must be recorded in the case notebook at the detention facility.

At the moment of the arrest, the arrestee should be inspected upon request, and any injuries, both serious and small, must be noted. Both the arrestee and the police officer must sign the **"Inspection Memo,**" and the arrestee must receive a copy.
Every 48 hours while in custody, the arrestee should have a medical examination by a qualified physician from the panel of approved physicians chosen by the Director of Health Services of the relevant State or Union Territory. Such a penalty should be prepared for all Tehsils and Districts by the Director of Health Services.

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The magistrate should receive copies of every document, including the aforementioned arrest memo, for his records.
While being questioned, the arrestee may be permitted to meet with his lawyer, but not all the way through.

All district and state headquarters should have a police control room. Within 12 hours of making the arrest, the officer in charge of the arrest must provide information about the arrest and the arrestee's location of custody. This information should be posted on a notice board in the police control room.

The ruling makes it quite plain that disregarding these rules will result in both departmental measures against the officer and contempt of court proceedings in a High Court that has jurisdiction over the case.

In conclusion

The landmark case of D.K. Basu, Ashok K. Johri v. State of West Bengal served as a reminder to the state of its duty to defend the rights of all citizens, including those who are incarcerated and under arrest. DK Basu's appeal is praiseworthy since there is a high likelihood of the administrative wing abusing its power, particularly in a nation like India. Even if someone is in detention, the law cannot be biased in its application or deny them their fundamental rights.

Even with these precautions**, incidents of violence against detainees and disregard for the court's directives continue to occur**. In order to avoid criticism and action from the media, the general public, and the judiciary, the police department frequently attempts to conceal the evidence of torture in detention. Therefore, the officials should follow the instructions provided in this instance and no one should be allowed to enforce the law on their own.

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