

**Shri D.K. Basu,Ashok K. Johri vs State Of West Bengal, State Of U.P on
18 December, 1996**

PETITIONER: SHRI D.K. BASU,ASHOK K. JOHRI

Vs.

RESPONDENT: STATE OF WEST BENGAL,STATE OF U.P.

DATE OF JUDGMENT: 18/12/1996

Case analysis by: osheen murab

Student; jagran lakecity university, Bhopal

Facts

- The Executive Chairman, of Legal Aid Services, West Bengal, on 26th August, 1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published on 17th August, 1986 regarding deaths in police lock-ups and custody.
- The Executive Chairman after reproducing the new items submitted that it was necessary to examine the issue of “custody jurisprudence” in depth and to develop and formulate certain modal provisions for awarding compensation to the victim and/or family members of the victim for cruel acts and death caused in police custody .
- And to provide accountability and knowledge in matters of lock up deaths as crime goes unpunished and thus it flourishes.
- It was requested that the letter along with the new items be treated as a writ petition under "public interest litigation" category. Considering frequent complaints regarding custodial violence and deaths in police lock up, the letter was treated as a writ petition and notice was issued on 9.2.1987 to the respondents.
- In response to the notice, the State of West Bengal filed a counter. It was maintained that the police was not quite in any matter of lock-up death and that where ever police personnel were found to be responsible for such death, action was being initiated against them.
- The respondents characterised the writ petition as misconceived, misleading and untenable in law.
- While the writ petition was under consideration a letter addressed by Shri Ashok Kumar Johri on same issue drawing the attention of this Court to the death of one Mahesh Bihari of Pilkhana, Aligarh in police custody was received. That letter was also treated as a writ petition and was directed to be listed alongwith the writ petition filed by Shri D.K. Basu.
- During the course of hearing of the writ petitions, the Court felt necessity of having assistance from the Bar and Dr. A.M. Singhvi, senior advocate was requested to assist the Court as amicus curiae.
- The increasing incidence of torture and death in custody has assumed such alarming proportions that it was affecting the creditibility of the Rule of Law and the administration of criminal justice system. Thus on 1st August 1997 the judgement was delivered and 11 major guidelines regarding arrest had been laid down.

Legal Provisions

- **Article 21** provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life of personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.
- **Article 22** guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and shall not be denied the right to consult and defend himself by a legal practitioner of his choice.
- **Clause (2) of Article 22** directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.
- **Article 20(3)** of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against and unjustified assault by the State. In tune with the constitutional guarantee a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights of the citizens.
- **Chapter V. of Criminal Procedure Code, 1973** deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person.
- **Section 41, Cr. P.C.** confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate.
- **Section 46** provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person.
- Under **Section 49**, the police is not permitted to use more restraint than is necessary to prevent the escape of the person.
- **Section 50** enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence.
- **Section 56** contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay.
- **Section 57** echoes Clause (2) of **Article 22** of the Constitution of India.

- There are some other provisions also like **Section 53, 54 and 167** which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, **Section 176** requires the Magistrate to hold an enquiry into the cause of death.

Guidelines

On December 18, 1996 in *D.K. Basu Versus State of West Bengal* (1997 (1) SCC 416), this court laid down certain basic "requirements" to be followed in all cases of arrest or detention till legal provisions are made in that behalf as a measure to prevent custodial violence. The requirements read as follows. “

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. 3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. 4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. 5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. 6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. 7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the

arrest and its copy provided to the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

8. 8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
9. 9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illega Magistrate for his record.
10. 10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. 11. A police control room could be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."