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Case Comment: DK Basu vs State of West Bengal

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INTRODUCTION¹

Custodial Violence is any kind of violence that takes place in the Lockup, police custody, or Judicial Custody. D.K. Basu Vs State of W.B. is the landmark judgment that acted as a scourge against custodial violence which transpires in disguise of rape, torture, deaths in police custody, or lockup. Therefore we assume custodial violence is though not a recent phenomenon yet even after the decades of its disapproval it hasn't been solved. The DK Basu case furnished the guidelines and obligatory precautions to be followed while making arrests and it is believed to be one of those first attempts taken by the judiciary to protect the rights of arrestees and restrict the unlimited power which the police started to exercise without being checked. The Judgement undoubtedly stated that custodial violence is an infringement of Articles 21, 22, and 32 which are our fundamental rights granted by the Constitution of India. The verdict also defined the term "torture" and said "torture is an instrument to impose the will of the "strong" over the "weak" by suffering". The judgment held, "third-degree methods are impermissible, and they are one of the nastiest crimes in a civilized society". The court also took cognizance of how custodial violence harms a person not only physically but also

¹ *DK Basu v State of West Bengal* [1997] 1 SCC 416

mentally. In the judgment, it was also declared that “custodial torture” is a visible breach of human dignity that acts as a degradation in the personality of the person.

BACKGROUND

Though the term custodial violence hasn't been defined under any statutory law or act after the ruling of DK Basu, the term custodial violence had a lot of clarity. This is the case where appropriate guidelines were made available to shield the person in custody and also limit the unnecessary growing power of the police. Some of the causes which can be seen for this custodial violence is firstly they believe that this a short cut method which is easy to implement secondly it has become a culture to make interrogation quick by using such violence, thirdly it can also be because of the pressure which the police have to bear from the authorities for quick solution of cases. Other factors can also be that some policemen may do it to extract money from innocent people or satisfy their inner arrogance or aggression.

The Historical Background of such kind of torture was instigated in England, where once upon a time “torture” was considered a normal practice to get information and confessions. But after the Royal Commission submitted some guidelines which were added in the Police and Criminal Evidence Act of 1984, the custodial violence has been reduced to a very large range.

RELEVANT FACTS

In West Bengal during that time the Executive Chairman of the Legal Aid Services of West Bengal was D.K. Basu. He sent a letter to the apex court whose aim was to draw attention towards deaths in police custody and lockups. The crime was also reported in various newspapers such as The Telegraph, The Statesman, and Indian Express. Upon his request and considering the significance of the issue brought up, the court treated the letter as a writ petition filed within “Public Interest Litigation”. While this was still into consideration, another letter was received on 29th July 1987 from Shri Ashok Kumar Johri addressing the Honorable Chief Justice of India. The letter focused on the death of Mahesh Bihari from Aligarh who died in police custody. Both the letters reported were taken seriously and treated as the Writ Petition.

The Apex court then issued an order for all state governments and a notice was given to the law commission to come up with appropriate guidelines within two months to solve this emergent issue. As a response, many states like West Bengal, Himachal Pradesh, Haryana, Tamil Nadu, Maharashtra, Meghalaya, and Manipur had submitted their affidavits regarding the same. In response to the notice, the law commission came up with the 113th Report which had some guidelines which it suggested to add in section 114-B of the Indian Evidence Act.

ISSUES

The matters raised in the present case were, first who would be liable for such violence and deaths, will it be the state or the individual policeman? Another issue was, that many a time the policemen arrest a person and commit such violence to extract information but is it justified, and to what extent? Another potential issue that was put up was the death and violence in custody have increased at an alarming rate, this is not merely a national issue but it has become a global one. The Universal Declaration of Human Rights in Article 5, stipulates the definition of custodial violence. Thus, the necessity to make guidelines that would be followed while arresting acted as the last issue.

APPLICATION OF RELEVANT LAWS

As we already know that Fundamental Rights play such a significant role in the lives of citizens and are proof that the people of India are sovereign. In the present case, the violation of Article 21 plays a dominant role along with 22 and 32.

Article 21 says that no person shall be deprived of his life or personal liberty unless there is an exceptional case where is taken by the procedure established by law. But suffering like torture, assault, violence, and harassment all act as the violation of such rights which was conferred in the current case. This right is not taken away from convicts, undertrials, and other prisoners who were also deliberated in the judgment. Any form of violence would act as an infringement of Article 21.

Another legal provision was Article 22(1) talks about that every person has the right to know the reason behind the detainment in custody and also the grounds of his arrest. Along with that, it guarantees the right to consult a legal practitioner of his or her choice and get defended. This is that article that protects the arrestee and prevents unreasonable discrimination.

Article 22 Clause 2 is another imperative article discussed in the present case. The article directs the person arrested should be made present informant of the magistrate within 24 hours of judicial custody. This article guards the person against being kept in jail pointlessly as this not only affects the arrestee physically but also mentally and Article 22 Clause 3, lays down the rule that the accused cannot be made the witness against himself. This protects the arrestee so that he is not subjected to as a coercive witness.

Along with the relevant constitutional provisions, some of the criminal provisions were also discussed. Even some of the sections of the Criminal Procedure Code defines the procedure of arrest and safety of the arrestee. Chapter 5 of the CrPC, 1973 deals with the power or arrest the person and it also talks about the protection that police must take care of while and after arrest. Section 41 of CrPc is the section where the police can make the arrest without any order or warrant granted by the magistrate. Procedure Of Arrest is a deal under Section 46 of the CrPC. Section 50, discusses the importance that the person should be fully aware of the grounds of his or her arrest. Article 57 of the CrPC echoes with Article 22 (2) of the Indian Constitution.

JUDGMENT

The court of law also suggested that there must be a check on the police power by maintaining a proper level of transparency and culpability. Also, there is a terrible need proper for modifications in the work culture and training of police officials. Referring to the case of Joginder Kumar² which was also quoted in the judgment laid down guidelines which had the procedures regarding the arrest. Another case which was discussed was Nilabati Bahera Vs

² *Joginder Kumar v State of UP* [1994] 4 SCC 260

state of Orissa³ , where the apex court observed that Fundamental right like Article 21 is not taken away from Prisoners during custody. There are only reasonable restrictions that are imposed on them and which are granted by Law.

Further, the court gave the judgment by laying down 11 guidelines for preventive measures which need to be followed during the procedure of arrest and detainment. Along with that, the author has also critically analyzed the guidelines.

1. The police officer who is responsible for arrest and interrogation must have proper identity proof, which must be accurate, visible, and identifiable. The record of the policeman who is handling the interrogation must be noted properly. This will help in the easy identification of the officer who is handling the case.
2. A proper memo must be prepared by the police officer who comes to arrest at the time of arrest, which must be signed by at least one witness. This can be a member of the family or a respectable person of that locality from where the arrestee belongs. The memo must contain the date and time of arrest with the signature of the arrestee. This will ensure that the arrest has been made with the procedure of law.
3. If the witness who has signed the memo is not a friend or a family member then the arrestee has the right to inform about his arrest one of his friends or family member or any other person knows to him as soon as possible. This is important for the safety of the arrestee so that their family knows where the accused is!
4. If the friend or relative lives outside the district or town then the time, place of arrest, and venue of custody must be notified within 8 to 12 hours after arrest through the district's Legal Aid Organization and the police station of that area. This will ensure the safety of the arrestee even if the accused has no relative of their own in the area or town.
5. As soon as the arrest is made the arrestee is granted the right of informing someone about his arrest or detentions. This will not only ensure the rights of the person but also if the family members are unaware of the arrest then they will come to know and thus can conduct a bail of the arrestee if possible.

³ *Nilabati Bahera v State of Orissa* [1993] 2 SCC 746

6. The name of the arrestee with the place of detention along with the person who is informed about his arrest and the police officials along with other particulars must be maintained in a diary. This will ensure a proper documentary of the arrestee so that it is easily presented in front of the court or any other place if required.
7. During the arrest, if the arrestee agrees then proper examination arrestee must be done along with the major or minor injuries must be recorded before the arrest. The “inspection memo” must be signed by not only the police officers but also the arrestee. This will ensure that no violence has taken place and along with that, the investigation did not take place with coercion.
8. Every 48 hours the arrestee must be exposed to medical examination during his detention by a certified doctor. This will ensure the health of the arrestee along with that also certify that no violence has been suffered by the accused.
9. The Illaqa magistrate must be sent copies of all the documents including the memo of arrest for the record. This will help in proper documentation of every detail and the violence can be minimized if a proper check is available.
10. Though not throughout the interrogation yet the arrestee has the permission to meet his lawyers during interrogation. This will help in the legal aid of the arrestee and ensure that if he is innocent then he gets easily bailed and doesn't have to face any unnecessary catastrophe.
11. For the proper communication of the details of the arrestee (name, place, etc.) there must be an establishment of a control room at all District and State Headquarters, and within 12 hours of the arrest, the control room must reflect the details on the notice boards. This will not only help the family members to know the place and time of record but also the police in times of need. This will act as a double-check.

If any police officer doesn't follow the above guidelines, then he can be made liable for contempt of court and action can be taken against him. The judgment also stated that the state will be held liable for its actions as they are the protectors of the citizens of the country. Consequently, if there is a breach of Fundamental rights then they won't be protected from sovereign immunity and thus will be liable to pay monetary compensation.

SUGGESTIONS

A positive conclusion is not taken well if the methods used were unfair and done to harm others. Custodial violence is not just a failure in the eyes of law but also society. Arresting a criminal and his interrogation though is an essential and legitimate right of the police yet the 3rd-degree methods to torture and get information and confessions are not defensible especially when we are a democratic country where the people are sovereign. Even after the two decades of the DK Basu Case yet we see that custodial torture still prevails in our society the mere reason for the same is the improper implementation of guidelines given in the case as the guidelines given in the case of DK Basu are competent and efficient and should be implemented and nobody has the authority to take the law into their hands and commit such crimes in the disguise of officials. Crimes such as rape and assault are not encouraged and should be looked into very seriously or else the people will lose their hope in law and order. The law should be made stricter and more transparent so that even policemen can be held responsible for their irrational actions towards the innocent.