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CASE COMMENTARY: D.K. BASU V. STATE OF WEST BENGAL

~ *Anshika Singh*

CITATION: AIR 1997 SUPREME COURT 610, 1997 (1) SCC 416

BENCH: Kuldeep Singh and Dr. A.S Anand, JJ

INTRODUCTION:

The said case pertains to the time of 1980s when the Chairman of Legal Aid Services, West Bengal raised an alarm against rising custodial violence and death cases. The issue was raised in front of the Supreme Court of India which considered a letter in this concern as a writ petition. The court recognised that unnecessary custodial violence violated the fundamental rights especially Articles 20, 21 and 22 engraved in the Constitution. The landmark judgment is also recognized for establishing the **D.K. Basu Guidelines**—a strict set of rules and regulations that law enforcement agencies must follow during any arrest or detention.

FACTS OF THE CASE:

- The Executive Chairman (Mr. D K Basu), Legal Aid Services, West Bengal, registered under the Societies Registration Act¹, on 26-08-1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items Indian Express regarding torture and deaths in police custody. The chairman submitted that it was crucial to examine this issue and to develop “*custodial jurisprudence*”. The letter also stated that these matters of custodial deaths are often concealed and thus this serious crime goes unpunished and flourishes.

¹ Societies Registration Act, 1860, No. 21, Acts of Parliament, 1860 (India).

- This issue was given due importance, the Court considered the rising complaints and thus the letter was considered as a writ petition and a notice was issued to the respondents.
- In response to this notice the State of West Bengal filed a counter which stated that no such matter of custodial death has been hushed up and the officials responsible for such deaths are being held responsible, due action is taken against them. The respondents categorized the writ petition as misconceived, misleading and unsustainable.
- In response to several other letters received, the Court issued notice to all the State Governments and to the Law Commission of India with a request that suitable suggestions be made in the matter.

ISSUES RAISED:

- a) Whether custodial violence and death in police lock-ups violate the right to life and personal liberty mentioned under Article 21 of our Constitution?
- b) Do prisoners have a right to life even while they are behind bars and does custodial death and violence constitute a violation of Article 21 and other fundamental rights?
- c) Is there a need for well-framed regulations and guidelines which must be followed by police officers while arresting and detaining the detainees?
- d) Can police officials and related authorities be made liable for causing custodial violence?
- e) The basis on which compensation will be awarded to the victims?

CONTENTIONS RAISED BY THE PETITIONERS:

The petitioners contended that as the custodian of the fundamental and human rights of the citizens, it is the duty of the Court to ascertain that an individual is protected from custodial torture. It is aggravated by the fact that it is committed by the persons who are supposed to be the protectors of citizens. Violence including physical assault or rape causes severe mental trauma to the prisoners which extend beyond what the law tries to address. Causing unnecessary violence leads to misutilisation of the powers conferred upon the police authorities.

CONTENTIONS RAISED BY THE RESPONDENTS:

The major argument on behalf of the police authorities was that some measures are necessary for proper enforcement of law and prevention of crimes. Imposing restrictions on these procedures will hinder implementation of law. The state contended that sufficient action was initiated against the police who misused their power.

JUDGEMENT IN THE CASE OF DK BASU V. STATE OF WEST BENGAL:

The judgement comprised of **two parts**: establishing **procedural safeguards** and evolving a system for **compensation for victims** of police abuse.

The Court recognised that dehumanising torture especially during the course of investigation is an alarming issue. The *Third Report of the National Police Commission* expressed its deep concern with demoralising effect with custodial torture was creating on the society as a whole. It made some useful suggestions.

The Court in *Joginder Kumar vs. State*², opined: "No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another. No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter."

In *Nilabati Behera vs. State of Orissa*³, the Court pointed out that prisoners cannot be deprived of their fundamental rights under Article 21 and it is only the restrictions which are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenues. It is an obligation of the State to ensure that there is no infringement of the inalienable rights of a citizen, except in accordance with law.

GUIDELINES ESTABLISHED BY THE COURT: The court therefore, issued the following requirements to be followed in all cases of arrest and detention till legal provisions are made in that behalf as *preventive measures*:

² Joginder Kumar Vs. State, 1994 (4) SCC, 260

³ Neelabati Behera Vs. State of Orissa, 1993 (2) SCC, 746

- 1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear **accurate, visible and clear identification** and name tags with their designations. The particulars of all such police personnel who handle interrogation must be recorded in a register.
- 2) That the police officer carrying out the arrest shall **prepare a memo** of arrest at the time of arrest, such memo shall be attested by atleast one witness, who either may be a member of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be **counter signed by the person arrested** and shall contain the time and date of arrest.
- 3) A person who has been arrested or detained and is being held in custody in a police station, **shall be entitled to have one friend or other person known to him**, 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) 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) The **person arrested must be made aware of this right** to have someone informed of his arrest or detention as soon he is put under arrest or is detained.
- 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 person who has been informed of the arrest, the names and particulars of the police officials in whose custody the arrestee is.
- 7) The arrestee should 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 in charge of the arrest and its copy provided to the arrestee.
- 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 the Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

- 9) **Copies of all the documents** including the memo of arrest, referred to above, should be sent to the **Illaqa Magistrate** for his record.
- 10) The **arrestee may be permitted to meet his lawyer during interrogation**, though not throughout the interrogation.
- 11) A **police control room** should 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.

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action; also render him liable to be punished for contempt of court.

CONCLUSIVE ANALYSIS OF THE JUDGEMENT:

Till date, the decision taken by the Court holds on the ground of equity, justice and good conscience, therefore protecting the fundamental and human rights of the detainees. The guidelines laid down by the Court in this case have brought significant changes in the scenario of custodial violence, although some guidelines still need proper implementation. The judgement raised awareness about the torture made by police officials in custody among the law enforcement agencies as well as the public at large. Loopholes in the Legal framework like delays in the procedure of investigation have resulted in ineffective implementation of the guidelines pronounced in the judgement.