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CASE COMMENTARY:- DK BASU VS. STATE OF WEST BENGAL

~ *Sakshi Mishra*

INTRODUCTION

The supreme law of the India that is Indian constitution does not only protect the rights of the Indian citizens but it protects the rights of any individual including the prisoners in India the prisoners do not lose dear fundamental rights upon conviction and continue to be entitled to the basic human rights as guaranteed by the constitution of India article 21 of the constitution ensures that right to life and the personal liberty which the supreme court has interpreted to include the right to life with human dignity even while incarcerated the modern prisoner manual 2016 and prisoner act 1894 for the provided for the rights related to the communication with family interviews wages for a work and protection from discrimination.

Although there are so many rights for the prisoners but we saw huge difference between the theoretical rights and its practical implementation because in 1986 a letter is written by the executive chairman of legal aid services in West Bengal to the honorable supreme court as an alert for the custodial death.

Custodial that is a death of a person while in the custody of a police jail authorities or any other state agencies it can happen during the interrogation demand or imprisonment. The case revolves around the rights of the prisoner and the custodial death.

CASE DETAILS:

1. Case Name: D.K. Basu vs State of West Bengal
2. Citation: 1997 (1) SCC 416
3. Date of judgment: December 18, 1996
4. Bench: Justice A.S. Anand and Justice Kuldeep Singh

FACT OF THE CASE:-

D.k. Basu served as the executive chairman of legal aid services in West Bengal ,a non political organisation.

He wrote a letter to the supreme court of India bringing to its attention news report about death in the police custody and lockup.

In later ,he highlighted that that such cases of the custodial violence often went unpunished, despite efforts made to address the issue.

He urged the court to investigate this matter and provide compensation to the families of the victims.

He requested that the later be treated as a writ petition (article 32 of the Indian constitution) under the category of public interest litigation.

Recognising the importance of the issue raised in the later the court treated it as a formal petition and the defendant were notified.

Another letter was followed from the Aligarh province detailing a death in a police custody.

The latter mentioned sending notices to all state government and law commissions for the suggestions.

The supreme court considered both the letters address to it and appointed Mr Abhishek Manu Singhvi as the amicus curiae for assisting the court in addressing the issues of the custodial violence .

The Apex court also took notice of the wide spread allegations related to custodial violence arising from the different state, finally giving very important suggestions and the guidelines.

Issues of the case

- 1.Is there increase in cases of custodial death and violence?
- 2.Is there a need for guidelines governing the arrest and custody of the detainees?
- 3.Should police officer be held responsible for custodial death and violence?
- 4.Does custodial death and violence constitute a violation of article 21 of the Indian constitution which violates the rights of the detainees?

Presented by petitioners

The petitioners argued that there was a need to have proper guidelines to stop the violence in custody as it violated human rights. They also argued that the right to life and personal liberty enshrined under Article 21 of the Constitution of India. The prisoners even though arrested and are behind the bars have the fundamental right to live. It was also argued that the state should perform

its duty to protect the rights of all individuals including those who are arrested and detained. If the state fails to perform its duty, it should be made vicariously liable for the wrongful acts of the police authorities.

The petitioners highlighted the pathetic scenario of ill treatment that goes behind the bars.

PRESENTED BY RESPONDENTS

The respondents on the other hand argued that there is necessity of these custodial procedures and it is necessary for proper enforcement of law and to prevent crimes. Imposing restrictions on the powers of the police authorities will cause hindrance on their part to properly implement the laws. It was also claimed that the conduct of the officers were presumed to be in accordance with the law until and unless proven otherwise. The various challenges faced by the law enforcement authorities like inadequate training, limited resources, pressure to solve a case within limited time were highlighted.

The respondents tried to justify their actions and practices in custody by emphasising the need for several procedures for law enforcement purposes.

JUDGEMENT OF THE CASE

The landmark judgement of *DK Basu vs. state of West Bengal* delivered on december. 18. 1996 and established a strict procedural safeguard, state liabilities for compensations and mandatory arrest guidelines to curb custodial violence and protect the human rights.

The supreme court also refers the case of *Neelabati Behera v. State of Orissa* (AIR 1993 SC 1960) reiterated that prisoners and detainees should not be deprived of their fundamental rights under article 21. Only legally permissible restrictions can be imposed on the enjoyment of their fundamental rights.

Apart from all of this the honorable supreme court also give 11 guidelines regarding to the arrest and custody so that it can save guard the rights of the detainees and prisoners.

GUIDELINES OF THE DK BASU VERSUS STATE OF WEST BENGAL

These guideline work as a milestone in the history of the India where the code recognise the rights of the detailed and the prisoners this case is a turning point for the criminal jurisprudence.

In the light of this, the Apex court laid down the following guidelines for the arrest of the detention of individuals:

1. Police officer involved in arrest and interrogation of an arrestee must wear clear, visible identification and name tags with their designation details of all police personnel handling the interrogation must be recorded in the register.

2. The police officer effecting the arrest must prepare a memo of arrest at the time of arrest. It should be witnessed by at least one person who may be a family member or a respected individual from the area where the arrest occurs the memo should also be counter signed by the arrested person and include the time and date of the arrest.
3. Any person arrested and held in custody has a right to have a friend, relative or someone known to them informed about their arrest and detention as soon as possible unless the witness to the arrest is such a friend or relative.
4. The police must notify the time, place of arrest and place of custody of the arrestee to the next of kin if they live outside the district or town. This notification should be made through the legal aid organisation in the district and the concerned area's police station within 8 to 12 hours after the arrest.
5. The person arrested must be informed of their right to have someone informed of their arrest or detention as soon as they are taken into custody.
6. An entry regarding the arrest must be made in the case diary at the place of detention this entry should also include the name of the person informed about the arrest (next of kin) and the name and details of the police official responsible for the arrestee.
7. The arrestee upon request should be examined at the time of the arrest and any visible injuries on their body major or minor should be documented both the arrestee and the police officer should sign an inspection memo and a copy should be provided to the arrestee.
8. The arrestee should undergo a medical examination by a qualified doctor every 48 hours during their custody these doctors should be on a panel of approved doctors appointed by the director of health services in the respective state or the union territory suchner should be prepared for all tehsils and districts.
9. Copies of the document including the memo of arrest should be sent to the magistrate for the year record.
10. The arrestee may be allowed to meet with their attorney during the interrogation, although not necessarily throughout the entire process.
11. Police control room should be established at all district and state headquarters. The officer in charge of the arrest must communicate information about the arrest and the place of custody of the arrestee to the control room within 12 hours of effecting the arrest. This information should be displayed on a visible notice board at the control room.

SUMMARY OF THE DK BASU VS. STATE OF WEST BENGAL

The DK Basu case is a landmark in the criminal jurisprudence. It is established the guidelines to protect the rights and the dignity of the individuals in a police custody. The supreme court emphasize the need for the visible identification of the police officers the preparation of an arrest memo and the right of the detainees to have a friend or a relative inform about their arrest.

The case led to the inclusion of these guidelines in the Bhartiya nagrik Suraksha sanhita 2023 (criminal procedure code in 2008). While it has helped reduce custodial death and violence, challenges in the enforcement remain, making it essential to ensure that these safeguard are consistently applied to protect the right and well-being of those in custody

CITATION

D.K. Basu v. State of W.B., (1997) 1 S.C.C. 416 (India).

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