
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**TORTURE AND DETENTION- SCRUTINIZING D.K. BASU'S CASE
IMPACT ON WEST BENGAL**

- Bhaswati Dhar¹

INTRODUCTION:-

The case of **D.K. Basu V State of West Bengal(1997)**² is one of the landmark judgement of Supreme Court, which emphasized upon the rapid increase of custodial death and violence during the last few decades.

The true meaning of Custody implies restricting an offender from committing further crimes as well as to facilitate the investigation procedures effectively. It also refer to the restriction of someone's freedom of movement which is held as fundamental right for every citizens by way of procedures established by law. On the other hand, Police officer's are generally known as a protector of law and order by punishing the offender to protect human rights, with a view to facilitate a smooth and efficient functioning of society. But sometimes, they often becomes the violators of such human rights. And thus, 'Custodial Violence' is the profound example of it.

In the present case, the accused in the custody has a right under Article 21 of the Indian constitution has been deprived off. And through the reports in 1980s and 1990s , there has been tremendous increase in the number of custodial death and violence, which has grasped the attention and led to the filing of the present case.

JUDGES BENCH:-

Justice Kuldeep Singh & Justice A.S. Anand

BACKGROUND OF THE CASE:-

¹ Student at George School Of Law(Calcutta University)

² AIR 1997 SC 610

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

Concept of Custodial Violence:

Before driving into the depth of the present case, it is very important to know its origin which had gave rise to this landmark judgement.

Custodial Violence, is often known as violence which includes physical abuse, tortures, death or even rape by police officials; and the result of such horrific things had contributed to the number of death cases . It is often seen that, as soon as the complaint had been filed against someone, ill treatment is inflicted upon the offender by the police officials before any further decree of the court. And its remain continued till the whole proceedings end. Even after the alleged got free from the clutches of the harassment to go back to their ordinary simple life, those flashback of such horrific abuse they cannot wipes it up till the end of their life.

Prior to the D.K. Basu's case, there is no such formal procedures on paying compensation to the victims and neither the police officials were held liable for the abuse of powers. The fundamental cases which has grasped the attention, **Neela Bati Behera vs State of Orissa (1993)**³, one of the landmark judgement clarified that the monetary compensation is applicable as a constitutional remedy for violating Article 21 of the constitution. It also imposes strict liability of the state for the custodial happenings.

Another judgement in **Rudal Shah vs State of Bihar (1983)**⁴, were against the supreme court judgement regarding illegal detention and award of compensation had came forward. Under this case, a man had been unlawfully detained for the period more than the specified punishment. The supreme court stated that unlawful detention led to the infringement of our fundamental right under Article 21 of the constitution, and the victim got compensated.

In spite of all this, the cases of custodial death and violence also increased that gave rises to many judicial decisions which seems both satisfactory along with dissatisfaction and thus it led to the emergence of D.K. Basu's case.

FACTS OF THE CASE:-

Due to the rapid increase of death and violence in custody, it has grabbed the attention of D.K. Basu , who was the Executive Chairman of Legal Aid Service, West Bengal. He issued

³AIR 1993 SC 1960

⁴ AIR 1983 SC 1086

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

a letter to the Chief Justice of India regarding the matter of custodial tortures and death which is often noticed through different pieces of news published in various newspapers. It was contended that this type of crimes had always gone unnoticed and unpunished, thus he urges the court to precisely scrutinize the matter and to make best possible efforts to eradicate this. Further stated, that there should be some remedial measures in order to compensate the member of the victim's

family for such types of humiliations and tortures. Therefore, this letter should be attended as a writ petition within the type of 'Public Interest Litigation'.

ISSUES RAISED:-

- Does the increase in custodial death and violence, results in violation of the fundamental right enshrined under Article 21 of the Constitution?
- Is there is any need of guidelines regarding police arrest and detentions?
- Whether the police officers will be held liable for such instances?
- To award compensation to the victims will be held on what basis?
- Is there is any increase in death and violence's in custody?

ARGUMENTS FROM BOTH SIDE:-

By Petitioners –

The petitioner argued that every person including the prisoners and detainers has a fundamental right to life and personal liberty guaranteed under Article 21⁵ of the constitution, and they should not be deprived of it even behind the bars also. He further contended that in order to protect the human rights, there is a need of mandatory proper guidelines to prevent the custodial violence cases. Also argued that the state should make possible efforts to prevent the heinous violation of human rights and to protect it. And if fails to do so, then the state will also be held liable for the acts of its servants.

By Respondents-

On the other hand, the respondent argued that for proper implementation of laws , this custodial procedures are necessary. Then the next point which had been pointed out, if

⁵The Constitution of India, art. 21.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

restrictions imposed upon the power of officers then it can create cons upon them to enforce laws. And therefore, it was stated that the act of the officers were in accordance with the law.

JUDGEMENT:-

A landmark judgement had been delivered by a bench of Justice Kuldeep Singh and Justice A.S. Anand. It has been observed that prisoners should not be deprived of their fundamental right even though they were behind the bars. Every person has right to live their life without implementing restrictions upon one's life. The infliction of restrictions should be only upon the enjoyment of such rights. And with regard to that, number of guidelines had laid down regarding police arrest and detentions and also broaden the concept of compensations for the victims.

OBSERVATIONS BY THE APEX COURT:-

- There is an infringement of fundamental right under Article 22(1)⁶ of the constitution. The article implies that the arrestee had a right to be informed regarding the grounds of their arrest and to be defended by legal practitioners.
- There is an infringement of the fundamental right under Article 21 of the constitution, which implies right to life and personal liberty even to the prisoners and detainees.
- Proper guidelines need to be there regarding arresting a person, proper memo of arrest and etc.
- There should be a transparency and fair visible accountability in the police's act, during arresting.

GUIDELINES NEED TO BE FOLLOWED DURING ARREST AND DETENTIONS:-

- The police officers who is in charge of the arrestee, must be in a clear, proper and visible identification along with name tags and designations. The particulars of such arrest must be recorded in a register.
- While carrying out the arrest, there must be a memo of arrest specifying its time and place, and must be attested by at least one witness (a member of a family or friend or any respectable citizen of a community who had an interest in it) along with a counter signed by the arrestee.

⁶ The Constitution of India, art. 22(1).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

- The person so held in the custody have a right to inform any one friend or member of a family about the arrest and detention place as soon as possible.
- In case of the next friend or relative resides outside the district; the time, place and venue of Custody should be informed through 'Legal Aid Organization' by the police within a period of 8-12 hours after the arrest.
- The person so arrested must be aware of his right to inform someone about his arrest and detentions.
- In a case diary, an entry must be made regarding the detention and arrest along with the friend name who is informed and also about the police officer who is in charge.
- The arrestee must be entitled to medical examination for any major or trivial injuries at the time of arrest. And the same must be recorded and signed by both, i.e. Arrestee and the Police official, and the copy of such must be provided to the arrestee.
- The arrestee must be subjected to medical check-ups by a trained doctor after every 48 hours.
- All the document copies along with the memo of arrest must be sent to the magistrate for its record.
- The arrestee must be permitted to meet his lawyer during interrogation and detention, although not through out the detention.
- All the district must be provided with a police control rooms and a state headquarters. The notifications regarding arrest and custody place shall be communicated by the officer in charge within 12 hours of such arrest and it must be displayed on a notice board

And thus, violation of this guidelines will not only amount to the departmental actions but also the contempt of the court proceedings.

OBSERVATIONS REGARDING COMPENSATION⁷:-

- It was held that the monetary compensation is the most effective remedy in 'Public law' for the violation of fundamental right along with basic human right.
- The state will be held strictly liable to pay compensation to the victims for the act of its police atrocities.

⁷DR. Babu Sarkar, *Legal Method & Legal Research Methodology* 276 (Moon Law Agency, Kolkata, 2nd edn., 2020, rep. 2024).

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

- The defense of 'sovereign immunity' will not be permitted, when it's servants violates the fundamental rights of the prisoners.
- The monetary compensation payable by the state, helps to curb the custodial violence and deaths by holding state liable.

CONCLUSION:-

If we look behind, it can be seen a number of instances on custodial death and tortures. But after the filing of the present case, it's effect is not only upon the flow of cases but also enabled the victims to get compensated for the custodial tortures by the police atrocities. Supreme court had also laid down 11 guidelines in relation to the arrest and detentions for securing transparency, efficiency and procedural work. But although the impact of this case caused reduction to the flow of instances, but it didn't stop.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>