

DE JURE NEXUS LAW JOURNAL

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1st Year, BBA LL.B.**DK BASU VS. STATE OF BENGAL****COURT:** Supreme Court of India**CITATION:** AIR SC1997 610**CORAM:** Kuldip Singh A.S Anand**THEME:** Custodial Deaths in India**JUDGEMENT:** India**INTRODUCTION**

Custodial torture is quite frankly a naked violation of the human dignity and degradation which destroys to a very large extent the individual personality. Such torture besides being in violation of all constitutional rights of the Indian Citizen left the person at receiving remediless because it was perpetuated by the Police. Even after four decades of independence, there were no laws to prevent such abuse by the Police. The extent of trauma a person experiences is not only unimaginable but was beyond purview of law. Custodial violence and abuse of police power is not only relevant to India but was rather widespread. However, internationally this problem was addressed at various levels but in India it remained a challenge. India having gone through a series of historical tribulations that have shaped our Constitution into an embodiment of righteousness, equality, and morality. However, the same could not prevent the rampant evil of Custodial Torture in India.

It was a letter dated 26th August, 1986 by Shri D.K. Basu to the Chief Justice of India that resulted in the letter being treated as a Criminal Writ Petition that led to a landmark judgement by the Apex Court in the matter of D.K. Basu vs State of West Bengal on 18th December, 1996.

D.K. Basu v. West Bengal State is one of those cases that has broadened the definition of fundamental rights and this case law in particular tackles the significance and problems of a prevalent issue. By way of this analysis, I seek to examine not only the judgement but its follow up and present scenario.

It would be improper to not point out that according to facts and figures nearly 591 people had lost their lives in police custody in the year of 2015 out of these the majority did not even get a chance to be presented in front of a magistrate after their arrest had taken place. 2016 continued in 2015's footsteps and around 92 custodial deaths were accumulated according to the data stored with the government 60 out of which once again took place without them even reaching court. This has made an absolute mockery of sections 55A and 57 of the Code of Criminal Procedure (Cr.P.C.) which places the duties of care of the accused, and the production before a magistrate within 24 hours, to the person in custody.

FACTS

D.K. Basu, the Executive Chairman of Legal Aid Services, West Bengal, a non-political organization addressed a letter dated 26th August, 1986 to the Hon'ble Chief Justice Of India in order to draw his attention to the certain data posted in the leading newspaper The Telegraph regarding the upsurge of deaths under police custody. He felt it was an issue that needed to be resolved at the earliest and accordingly requested that the letter be treated as a Writ Petition under "Public Interest Litigation" and acknowledging the importance of the issue, the letter was treated as a writ petition by the Supreme Court of India and a notice was issued to the respondent/State Of West Bengal. Dr Abhishek Manu Singhvi was appointed as Amicus Curie (friend of the Court) in this matter and all States were asked to file their responses. The State on Bengal and almost all States filed a counter claiming that no police personnel were responsible for hushing up matters of lock up and death and that the writ petition so filed was simply misleading and untenable in law. Meanwhile when the writ petition was under consideration another letter was addressed to the Chief Justice of India drawing the court's attention towards the demise of Mahesh Bihari of Pilkhana, Aligarh and that too was further treated as a writ petition and was so directed to be listed along with the writ filed by D.K. Basu. This resulted in nearly all States, Union Territories resulted in responses not only by States but also by the Law Commission of India.

ISSUES RAISED

- The root cause for upsurge in custodial violence and deaths in lock ups.
- Arbitrariness of police personnel while arresting people.
- Importance of laying down guidelines in order to make any arrests.
- The real culprit behind these killings.

ARGUMENTS MADE BY THE PARTIES

Petitioner's Perspective

According to the Petitioner. Custodial violence or death was first and foremost violation of human rights that have been subject of so many International Conventions and Declarations besides being the cornerstone of our Constitution. They claimed that custodial torture is not only infliction of body pain but mental agony which a person undergoes within the 4 walls of a lock up whether it's by physical assault or mental torture. The extent of trauma person experiences is beyond the purview of law. They argued that compensation should be provided to the victim's families under Articles 21 and 22 of the constitution and the practice of such heinous crimes needs to be put to an end. It was also prayed that measures be defined to prevent such custodial torture,

Respondent's Perspective

The defendants stated that the writ petition was misconceived, inappropriate and misleading in law, thus denied the allegations raised against them.

In defence the counsel appearing for the other states asserted that "everything was fine" within their respective states, conveyed above their respective beliefs and provided useful assistance to this Court in examining various aspects of the problem and made certain suggestions for the formulation of guidelines by this Court to reduce, if not prevent, custodial violence and relatives of those who die in custody due to torture.

JUDGEMENT

The summary of Hon'ble Apex Court's decision is sought to be given below:

- (1). It is well established when a right is guaranteed by the state then the remedy for resolving the dispute must also be provided by the state if the obligations so imposed do not get fulfilled.
- (2) Article 21 states and I quote "no person shall be deprived of his life or personal liberty except according to procedure established by law" and this includes safeguard against torture by the state or its functionaries, Article 22 on the other hand provides protection against arrest and detention and states that no individual can be detained in custody without disclosing the grounds of their arrest and the individuals so arrested cannot be denied the right to consult and defend themselves with the medium of a legal practitioner of their choice.
- (3). The Court was of the view that the issue of custodial violence including death in lockups by the police personnel was a case of upholders of law breaking it with impunity and thus this type of torture was considered as one of the most heinous crimes in a civilised society and violates all rights provided and upheld by the Indian Constitution and laws framed thereunder.
- (4). Despite the constitutional statutory provisions given for safeguarding the life and personal liberty of an individual, the increasing upsurge of custodial torture still continued to remain a very disturbing practice.

(5). The infamous case law of NeelBaati's V. state of Orissa Help the Supreme Court in teaching that decision by basing their judgment on the idea that prisoners and detainees cannot be deprived of their fundamental rights as under article 21 and the restriction permitted by law could only be imposed on the enjoyment of the fundamental rights of the prisoners and detained.

GUIDELINES ISSUED IN THIS JUDGEMENT:

After the in depth analysis of the facts and figures so provided the court decided to issue 11 new guidelines in addition to the constitutional and statutory safeguards to be followed in all cases of arrest and detention that are 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 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 shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either 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 counter signed by the arrestee 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 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. 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 his right to have someone informed of his arrest or detention as soon as 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 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. 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.
8. The arrestee should be subjected to medical examination by the 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 concerned State or Union Territory, Director, Health Services should prepare such a panel 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 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 must be provided at all central district and state offices, where the arresting officer must communicate information about the arrest and the place of custody of the arrested, within 12 hours after the arrest and in the Police Control Room Board, must be displayed on a visible notice board.¹

CONCLUSION

With the facts and analysis provided to us from the given case law it can very strongly be said that '*D.K. BASU V. STATE OF BENGAL*' till date remains one of the most important landmark judgements in the history of our country's legal system. It's a case that has managed to showcase the importance each and every citizen's right to life and personal liberty holds according to the ideals laid down in our constitution. In addition to those this case is definitely one gem of a judgement which gave rise to protection of prisoners from undergoing torture and deaths in lock ups and preventing the State or functionaries from abusing their power. Through this case it can be observed that a law of such manner cannot be biased in its methodology and can't be held liable for denying basic rights to an individual even if she/he is in police custody.

Custodial violence is a matter of concern it is aggravated by the fact that it is committed by person who was supposed to be the protectors of the citizens. This is committed under the shield of uniform and authority within the 4 walls of a police station or lock up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free and civilised society.

Despite all the measures being taken the increasing incidence of torture and death in custody has assumed such alarmingly high proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed as despite the guidelines laid down it's still a long way to go in order for achieving absolute freedom from custodial deaths or torture of any sorts in lock ups.

¹ Available at: <https://www.khannapolice.org/dk-basu-case-guidelines.php>