

DK BASU V STATE OF WEST BENGAL 1997 1 SCC 416 1

Panya Sethi***INTRODUCTION**

The bench comprising Kuldeep Singh and A.S. Anand gave the verdict, and Justice A.S. Anand presided over the proceedings. Dr. D. Anand authored the ruling. In this matter, Ashok K. Johri and Shri DK Basu are the petitioners. West Bengal and Uttar Pradesh, two states, are the respondents. Kuldeep Singh and Dr. A.S. Anand, J.J. are among the esteemed judges. Advocates N.M. Ghatate, Tapas Ray, K. Amareswari, and Abhishek Manu Singhvi, together with Solicitor General V.R. Reddy, will be representing the parties in court.¹

FACTS

Shri DK Basu, On August 26, News accounts of deaths in police custody and guardianship appeared in the Message on July 20, 21, and 22, 1986, and the Legislator and Indian Express on August 17, 1986. The Executive Director of Lawful Guide Administrations of West Bengal, a non-political association registered under the Social Orders Enrollment Act, contacted the Central Equity of India to convey his consideration on these matters. Because of the reprinting of the news articles, the Executive Chairman argued for a thorough investigation of the problem, the creation of "custody jurisprudence," and the establishment of procedures for compensating victims and their families for abuse and death sustained while in police custody, as well as for holding those officers responsible for such abuse and deaths.

The petitioner requested "a Writ Petition be filed under the "Public Interest Litigation" category. Notice was sent to the respondent, and his letter was formally classed as a Writ Petition based on the strength of his arguments. Mr. Ashok Kumar Johari wrote a second letter to the Chief Justice about the death of Pikhana resident Mahesh Bihari while in Aligarh Police custody while the aforementioned plea was being considered. We treated these two letters as Writ Petitions" and approved them. On August 14th, 1987, the Court notified all of the States via an Order to provide appropriate recommendations within two months. Because of this, several states responded to the notice by filing affidavits; they include "West Bengal, Assam,

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¹ SCC ONLINE, DK Basu v. State of West Bengal 1997 1 SCC 416,

<http://www.sconline.com/Print/30U1pnBn>

Orissa, Haryana, Meghalaya, Maharashtra, Manipur, and Himachal Pradesh.” The government of West Bengal has refuted the accusations. Sometime later, The Honorable Dr. A.M. Sanghavi, Senior Advocate, was appointed by the Court to participate in this matter as an Amicus Curiae.²

LEGAL ISSUES

1. There has been a rise in the number of people dying while in police custody.
2. Arbitrariness while making police arrests.
3. Monetary Compensation for redressing the rights of the victims.

RULES

Article 20(3), 21 and 22, 32 and 226 of the Constitution of India, 1950

Section 41A, 41B, 41C, 41D, 46, 49, 53 54, 56, 57, 167 of Criminal Procedure Code, 1973

Sec 302, 304, 330, 331, 34, and 342 of the Indian Penal Code, 1860

CRITICAL ANALYSIS OF CUSTODIAL VIOLENCE AND DEATHS IN INDIA

One of the greatest crimes that may be committed in a lawful and civilized society is the death of an individual while in police custody. Articles 21 and 22(1) of the Constitution provide fundamental rights that must be fiercely guarded. Article 21 applies to any act of torture, regardless of whether it happens during an inquiry, an interrogation, or any other circumstance. Having government officials flout the law sends a message of disdain for the rule of law and promotes a culture of lawlessness and anarchy. During an arrest, authorities cannot violate a person's right to life. The right to life and liberty, as guaranteed in Article 21, is basic and may not be deprived to anybody in custodial detention, including defendants awaiting trial, detainees, and anyone else, unless in conformity with the procedure authorized by law. Further, Article 20(3) of the Constitution protects citizens from being forced to incriminate themselves.³

² D.K. Basu vs. State of West Bengal (18.12.1996 - SC) : MANU/SC/0157/1997
http://d2.manupatra.in/ShowPDF.asp?fname=DK_Basu_vs_State_of_West_Bengal_18121996_SC0114s970827C OM946524.pdf

³ Aashka Shah, D.K. BASU V. STATE OF WEST BENGAL: CASE ANALYSIS CRIMINAL LAW RESEARCH & REVIEW (2020),
<https://crlreview.in/2018/02/13/d-k-basu-v-state-of-west-bengal/> (last visited June 3, 2023).

Not only are police brutality and arbitrary detention common, but it is endemic throughout the nation. In its third report, India's National Police Commission voiced serious concerns about this issue and said that arresting suspects during the commission of a cognizable violation might be justifiable in the event of a very serious crime.

Detainees who suffer severe torture or other forms of physical, emotional, or mental stress while in police custody are said to have died as a result of custodial circumstances. Since 1993, 893 cases have been filed against police officers, and 358 officers have been charged with criminal offenses, all according to NCRB data. On the other hand, official statistics reveal that just 26 police officers were convicted throughout this time.

According to NCRB statistics, just 428 FIRs were filed in the 1,022 custodial fatalities that occurred between 2000 and 2016, despite the fact that the vast majority of the inmates had been detained and had not been brought before a magistrate within the required time frame. The provisions of Criminal Procedure Code Articles 55A and 57 are therefore wholly compromised (Cr.P.C) which provide that the person making the arrest is responsible for the custody of the accused and for bringing them before a judge within 24 hours.

However, India has been through many tests in its history, and these experiences have helped shape our Constitution into a model of fairness, justice, and moral rectitude. When considering custodial violence, one of the most important of these judgments was *D.K. Basu v. State of West Bengal*, 1997. This case expanded the protections afforded to prisoners.

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RIGHTS OF ARRESTED PERSON

This case is being heralded because it provides a piece of organized machinery (already described) for transparency and accountability documenting and informing instances of arrest or detention.

Articles 41B, 41C, and 41D of the Criminal Process Code were interpreted as establishing the procedure for making an arrest and the rights of the arrested individual. Additionally, subsection 56 requires authorities who have made an unlawful arrest to bring the suspect before

a judge. Other sections of the Criminal Procedure Code that also serve as procedural protections include sections 53, 54, and 167.⁴

As a step to avoid "Custodial Violence," the court in this decision outlined minimum standards that must be met in every arrest or detention until specific legislation is enacted. The highest court in the land made the observation "custodial violence is an attack on human dignity directly. Even after a lot of recommendations and policies, there have been a lot of deaths and reports of torture in police custody and they are still growing in numbers". The "right to question a perpetrator and arrestee in the interest of the country must take priority over the individuals' rights to personal liberty," it said. However, this can only occur if the state takes action that is right, reasonable, and fair. Even while interrogation is necessary, it must be based on scientific principles, and the use of torture of any kind, especially in the third degree, is strictly forbidden.

The following rules have been established for investigating and regulating police officers in *D.K. Basu v. State of West Bengal*.

- (1) The arresting officer and any other police officers who will be questioning the detainee must clearly display their identity badges and names. All police officers who question an arrestee must have their names and badge numbers documented in a central log.
- (2) The official making the capture should write up a note of the capture at this same moment, and it should be witnessed by another person. This person might be a friend or family member of the suspect or just a reliable neighbor. A captured person should sign it as well, and the time and date should be recorded.
- (3) "If the arrestee's next of kin reside outside of the area, the police will notify them of the arrestee's time, location, and care facility through sent warning within 8 to 12 hours of the arrest via the local chapter of the Lawful Guide Association and the local police headquarters.
- (4) If the suspect asks for it, he or she must also be examined at the moment of arrest, and any "serious" or "minor" injuries that are present must be documented. Both the person

⁴ Garv Singh, DK BASU GUIDELINES ON CUSTODIAL VIOLENCE AND ITS RELEVANCE IN PRESENT TIMES YLCUBE (2020), <https://ylcube.com/c/blogs/dk-basu-guidelines-custodial-violence-and-its-relevance-present-times/> (last visited June 3, 2023).

being arrested and the police officer making the arrest are required to sign the "inspection note" and provide a copy of it to the person being arrested.

- (5) While in custody, an arrested person must get a medical checkup at least once every 48 hours by a doctor who is on the list of authorized physicians established by the Director, of Health Services of the State or Union Territory in question. The Director of Health Services has to assemble a similar committee for each tehsil and administrative district.
- (6) The Illaqa Magistrate needs copies of everything mentioned above, including the warrant for arrest.
- (7) The suspect may be allowed to confer with his attorney before or after questioning, but not during questioning.
- (8) Each municipality and the State Police Headquarters shall have a central command center, The arresting officer is responsible for communicating the details of the arrest and the detainee's whereabouts to the Police Control Room within 12 hours of the arrest being made, at which time the information should be posted on a prominent Notice board.
- (9) If an official fails to meet the aforementioned conditions, he or she will face disciplinary action from the relevant department in addition to any other consequences that may arise. may have him arrested and tried for contempt of court in any country's highest court that has jurisdiction over the case.

RELEVANCE OF DK BASU IN THE CONTEXT OF HUMAN RIGHTS

As outlined in the D K Basu v. State of West Bengal ruling, the police are required to follow certain protocols to ensure that their detainees are treated with respect established a general law that requires that prisoners be treated with dignity and cared for in accordance with fairness and the law. However, as we all know, this general law is rarely followed as we recently saw in the custodial death case in Tamil Nadu, and this was just one of hundreds of similar situations that nobody ever hears about.⁵

⁵ D.K. Basu vs State of West Bengal (Supreme Court guidelines on arrest, custodial death and detention), LAW CIRCA, <https://lawcirca.com/d-k-basu-vs-state-of-west-bengal/> (last visited June 3, 2023).

The worst thing is that police officials often try to rationalize their own wrongdoing by pointing to flaws in the ruling or in the way the system itself works. Rules have undoubtedly been established, but the justice bar insists that if even one innocent person is wrongly punished in a society where there is no rule of law, then there is no justice in that society.

The haughty and inflexible administrations of the accusing authorities have aided in the recent uptick in violence; therefore, a law is needed that is both more stringent in its actual application and more likely to have the desired effect of discouraging future wrongdoing by making offenders permanently cognizant of the correct guiding philosophy, whose ultimate goal is the respect of the dignity of each individual life. Nothing will change merely because details are written down until everyone who commits atrocities reaches this level of self-awareness and reflection.

RATIO DECIDENDI

“Where right is one guaranteed by the state, it is against the state that the remedy must be sought if there has been a failure to discharge the constitutional obligations imposed.”

The Court gave weight to a number of previous rulings from both Indian and international courts. A "fair, right, and just" approach on the part of the state was promised and fulfilled. Torturing a person in order to get information out of them is never acceptable and is a clear violation of Article 21. Criminal suspects have the right to be questioned, but they cannot be tortured. By considering the current processes established in *Joginder Kumar v. State of UP*, the Court⁶ established procedures to be followed in the event of an arrest or detention and clarified the distinction between the mere existence of arrest authority and the rationale for its use. There must be reasonable satisfaction, following an inquiry that a complaint is real and has merit before an arrest is made.

FOR PUNITIVE MEASURES

The court reasoned that it often has difficulty meeting the social expectations of its residents, whose interests the law protects, and that it is thus obligated to take action to do so. Punishments alone are not enough to provide closure to the victim's loved ones, and civil

⁶ 1994 CriLJ 1981

damages are a frustrating legal procedure. If the victim was the only provider for his or her family, then simply financial recompense would suffice as restitution.

In the case of *Nilabati Behara v. Province of Orissa*, the court agreed with this assessment. As it relates to *Nilabati Behara v. Province of Orissa*, the court "agreed with this assessment." It is not usually sufficient to consign him to the standard cure of a common suit to guarantee harms for the tortious demonstration of the State, as that cure in confidential regulation to be sure is accessible to the bothered party, in order to award assistance to the heirs of a custodial death victim for the violation or attack of his freedoms ensured under Article 21 of the Constitution of India. Inmates are protected from harm and denied their basic human rights.

It is not permissible to tell a person who has filed a complaint alleging a violation of his indefeasible right under Article 21 of the Constitution that he has no recourse under public law for a proven violation of his right to life. Since prerogative writs are the backbone of public law proceedings, courts must develop "new instruments" to provide relief in public law by adapting the law to specific fact patterns in order to safeguard the Rule of Law.

The respondents have been convicted under **Sections 304 and 34 of the Indian Penal Code**, In 1860, compensation was mandated as the method of payment for crimes including culpable homicide. Therefore, the Supreme Court agreed with the appellant and upheld the respondent's conviction, finding that the citizen's claim rested on the concept of strict responsibility. It was also decided that if a citizen's basic right, such as that guaranteed by Article 21, is violated, the state is liable for damages, and the sovereign's immunity from such culpability does not apply.

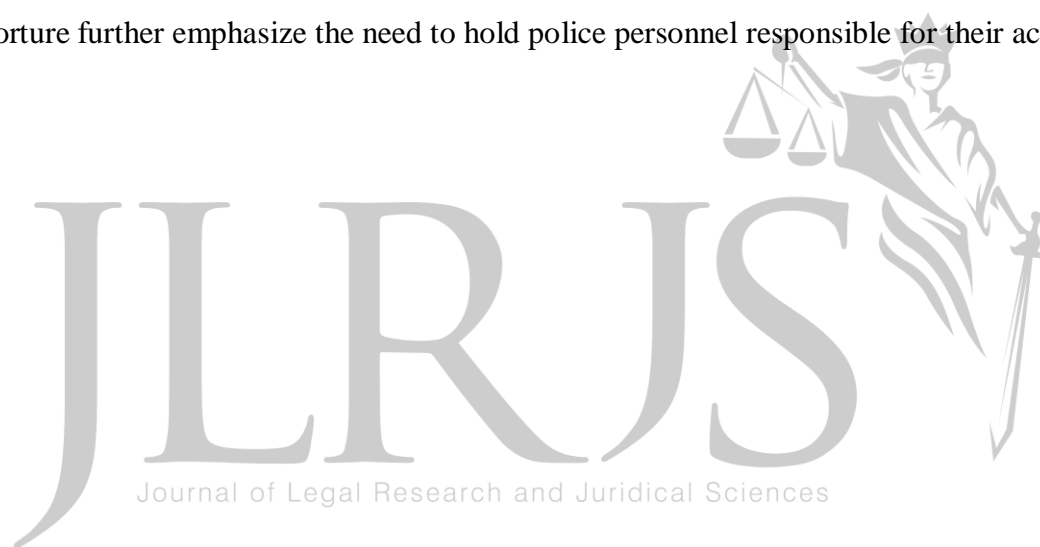
ACCOUNTABILITY OF POLICE OFFICERS

The 13th law commission study recommended shifting the burden of evidence to the prosecution when it comes to questions of whether or not an arrested individual suffered physical harm while in police custody. There was also a proposal to add section 114B to the Indian Evidence Act of 1984, which would serve as a defense shield by creating a presumption that the victim's injuries occurred while in police custody if such evidence were ever discovered. In addition, the magistrate must take into account the accused's medical history, the length of time he spent in police custody, and any other evidence that supports the

prosecution's case before making a ruling on the issue of presumption for the aforementioned proposition.⁷

CONCLUSION

A civil case for damages is a lengthy and complicated legal procedure, and criminal punishment alone will not provide any satisfaction to the victim's family. Consequently, when a citizen's inalienable right to life has been violated, it is essential to provide monetary compensation to the victim's family, especially if the deceased was the primary earner. Vicarious responsibility refers to the situation in which the state is held liable for the rights violations committed by its agents. Each instance is unique, and as a result, there is no universal formula that can be used to determine an appropriate amount of compensation. The rising instances of custodial assault and torture further emphasize the need to hold police personnel responsible for their acts.



⁷ Pracheen Raj, CUSTODIAL DEATH CRITICAL ANALYSIS ILKOGRETIM ONLINE (2021), <https://www.ilkogretim-online.org/fulltext/218-1617349689.pdf> (last visited June 3, 2023).