**CASE ANALYSIS DK BASU VS. STATE OF WEST BENGAL**

ABSTRACT

Dk Basu Vs State Of West Bengal (1997 (2) Scc 416), The Court Laid Down Certain Basic Requirements To Be Followed In All Cases Of Arrest Or Detention To Prevent Custodial Violence And Protect Human Rights. The Guidelines For Detainees Were Issued And Also The Provision Of Compensation For The Aggrieved Family Were Was Being Made.

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Case Profile

Case Name

DK Basu v. State of West Bengal along with Ashok K. Johri v. State of UP.

Court

Before the Supreme Court of India

Decided on

18.12.1996

Bench

Kuldip Singh, A.S.Anand, JJ.

**Facts:-**

The Case was Filed by DK Basu, The Executive Chairman, Legal Aid Services, West Bengal, a non- Political organization. He wrote a letter to CHIEF JUSTICE OF INDIA, regarding certain news items published in the Telegraph Newspaper dated 20, 21 and 22 of July, 1986 and in the Statesman and India express dated 17th August, 1986 for deaths in police lock up and custody. He requested that the letter be treated as a Writ Petition within the “Public Interest Litigation” Category. How police becomes over powering and the crime go unpunished, so in the lieu family members must also be given compensation for such injury caused to them and rights of the individuals must be protected. Considering the importance of the issues raised in the letter, it was treated as a Writ Petition and notice was served to the Respondents. While the Writ Petition was under consideration Mr. Ashok Kumar Johri, wrote a letter to the Chief Justice drawing his attention again towards a custodial death case of one Mahesh Bihari of Pilkhana, Aligarh in Police Custody. The same letter was also treated as a Writ Petition and was tagged along with the Writ Petition filed by Mr. D.K.Basu. Dr. A.M.Singhvi, Senior Advocate was appointed as Amicus Curiae to assist the Court for this matter. In addition to this, On 14.08.1987, the Court made the Order issuing notices to all the State Governments and notice was also issued to the Law Commission of India requesting suitable suggestions within a period of two months. In response to the notice, affidavits were filed by several states including West Bengal, Orissa, Assam, Himachal Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra and Manipur.[[1]](#footnote-1)

**Issue:**

The Issue in the Present Case pertained to Custodial Torture and Deaths by the Police, also is the violation of Fundamental Rights guaranteed by the Constitution of India of the individuals in respect of the prisoners were taken into consideration.

**Arguments By Petitioner: -**

* Petitioner emphasizes on formulate modalities for awarding compensation to the victim and/or family members of the victim for attrocities and death caused in police custody and to provide for accountability of the efforts are often made to hush up the matter of lock-up deaths and thus the crime goes unpunished and "flourishes".
* It was requested that the letter along with the new items be treated as a writ petition under "public interest litigation" category**.**

**Arguments By Respondents: -**

The Respondents in response to the notice issues filed a counter petition for which,

* It was maintained that the police was no hushing up any matter of lock-up death and that where ever police personnel were found to be responsible for such death, action was being initiated against them.
* The respondents characterized the writ petition as misconceived, misleading and untenable in law and that "everything was well" within their respective States.

 **About the Prisoners Rights And Custodial Violence – A remarkable part of The Judgement given by Justice AS Anand : -**

*Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."*

*-Adriana P. Bartow*

The Torture Although has not been defined in Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous wit the darker side of human civilisation[[2]](#footnote-2)

The Law Commission of India in response to the notice issued by this Court forwarded a copy of the 113th Report regarding "injuries in police custody and suggested incorporation of Section 114-B in the India Evidence Act." (Section 114-B in the India Evidence Act: - an accomplice is unworthy of credit unless he is corroborated in material particular.)

Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. **Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless.** These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by **Articles 21 and 22** of the Constitution of India. The issues are fundamental.[[3]](#footnote-3)

In all custodial crimes that is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law.[[4]](#footnote-4)

"Custodial violence" and abuse of police power is not only peculiar to this country, but it is widespread. The Universal Declaration of Human Rights in 1984, which market the emergency of worldwide trend of protection and guarantee of certain basic human rights, states in Article 5 that "No one shall be subjected to torture or to curel, inhuman or degrading treatment or punishment." Despite the pious declaration, the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication. In England, torture was once regarded as a normal practice to ger information regarding the crime, the accomplices and the case property or to extract confessions, but with the development of common law and more radical ideas imbibing human though and approach, such inhuman practices were initially discouraged and eventually almost done away with.[[5]](#footnote-5)

A **Glance Through The Judgment:-**

**(Provisions Highlighted, Cases Remarked , Judgement and The Guidelines Issued)**

The Torture to the Prisoners , restraining their movements, 3rd degree torturing moves is a clear infringement to their fundamental as well as basic human rights.

**Constitutional Provisions and Laws Relating to the detention and rights of Prisoners highlighted in the Judgement: -**

**Article 21- Safeguard to Life: -**

Article 21 is guaranteed to the citizens as well as the non citizens of India, valuing their basic rights and necessities, granting them their, **“ Right To Life”.** For which it provides, **"no person shall be deprived of his life or personal liberty expect according to procedure established by law".** Personal liberty, thus, is a sacred and cherished right under the Constitution. **The expression "life of personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.** Any form of torture of cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. The precious right guaranteed by Article 21 of the constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, expect according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.

Justice AS Anand while writing the judgement in addition to Article 21 highlighted various other provisions of law which safeguards the rights of individual and prevents over powering rule of the Police, also which is of a great importance in understanding the Rights of the Prisoners.

* **Article 22** guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and the shall not be denied the right to consult and defend himself by a legal practitioner of his choice.
* **Clause (2) of Article 22** directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.
* **Article 20(3)** of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. These are some of the constitutional safeguard provided to a person with a view to protect his personal liberty against and unjustified assault by the State, In tune with the constitutional guarantee a number statutory provisions also seek to project personal liberty, dignity and basic human rights of the citizens.
* **Chapter V. of Criminal Procedure Code, 1973** deals with the powers of arrest of a person and the safeguard which are required to be followed by the police to protect the interest of the arrested person.
* **Section 41, Cr. P.C.** confers powers on any police officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate.
* **Section 46** provides the method and manner of arrest. Under this Section no formality is necessary while arresting a person.
* **Under Section 49**, the police is not permitted to use more restraint than is necessary to permitted to use more restraint than is necessary to prevent the escape of the person.
* **Section 50** enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence.
* **Section 56** contains a mandatory provision requiring the police officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and
* **Section 57** **echoes Clause (2) of Article 22** of the Constituion of India. There are some other provisions also like **Section 53, 54 and 167** which are aimed at affording procedural safeguards to a person arrested by the police. Whenever a person dies in custody of the police, **Section 176** requires the Magistrate to hold and enquiry into the cause of death.[[6]](#footnote-6)

Despite such laws in existence the crime in prisons wouldn’t stop. And referring and quoting the above in judgment Justice A. S. Anand Further states, that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture.[[7]](#footnote-7)

Justice Anand takes the refer. of the case **Joginder Kumar Vs. State**[[8]](#footnote-8) considered the dynamics of misuse of police power of arrest and 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. ...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 person his liberty is a serious matter."

This case involved a lawyer who was been kept under police custody for a week, and his family members were not been informed for that cause. The reason which police gave was that, that the lawyer was not in detention at all but was only assisting the police to detect some cases. The court didn’t got satisfied by the statement and the order was against the administration. Also In **Neelabati Bahera Vs. State of Orissa**[[9]](#footnote-9), (to which Anand, J. was a party) Court pointed out that prisoners and detenues are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenues.

Taking in consideration all the provisions of law, the rights of an individual and to protect the people from atrocities of the authority and safeguard their interest, the bench came up with 11 guidelines to be followed before any detention: -

“We therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name togs 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 of the arrestee shall prepare a memo of arrest at the time of arrest a 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 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 he next friend of the person who has been informed of the arrest an 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 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 Stare 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 illaga 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 his liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.[[10]](#footnote-10)

 Through this, The Bench issuing the guidelines also included in the judgment the Compensation for the family of the victim to whom such grievance is caused and holds that the State will be vicariously liable for the acts of the Public Servants. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element.

**Rights of Prisoners- An International Perspective: -**

**International Human Rights Laws: -**

International human rights laws protect people from racial discrimination, from torture and from enforced disappearances. They also recognise the rights of specific groups of people, including women, children, and people with disability, indigenous peoples and migrant workers. Some of these treaties are complemented by optional protocols that deal with specific issues or allow people to make complaints**.[[11]](#footnote-11)**

 **UN Charter: -**

The charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations conference on international organization, and came into force on October 24 1945.

Basic Principles For The Treatment of Prisoners was adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990. The principles are as follows:

* Prisoners shall be treated with inherent dignity and valued as human beings.
* No discrimination on the grounds of race ,sex, colour, language, religion, political, national, social origin, property, birth, or other status.
* Respect the religious beliefs and cultural precepts of the group to which the prisoners belong.
* The responsibility of the prisons for the custody of the prisoners and for the protection of the society against crime and its fundamental responsibilities for promoting the well-being and development of all members of the society.
* All prisoners shall retain the human rights and fundamental freedoms set out in UDHR, ICESCR, ICCPR and the optional protocol as well as such other rights as are set out in other United Nations covenants.
* Right of the prisoners to take part in cultural activities and education aimed at the full development of the human personality.
* Abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken or encouraged.
* Prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country#s labour market and permit them to contribute to their own financial support and to that of their families.
* Access to health services without discrimination on the grounds of their legal situation.
* With the participation and help of the community and social institutions and with regard to the interest of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society.
* The above principles shall be applied impartially[[12]](#footnote-12)

 **International Bill of Rights:**

 **Universal Declaration of Human Rights:**

In 1948 a movement was started in the United Nations in the form of Universal Declaration of Human Rights which was adopted in the General Assembly of the United Nations. This organic document is also called as Human Rights Declaration. This important document provides some basic principles of administration of justice. Among the provisions in the document are follows:

* No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment[[13]](#footnote-13).
* Everyone has the right to life, liberty and security of person.
* No one shall be subjected to arbitrary arrest, detention or exile.
* Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
* Everyone has the right to life, liberty and security of person.
* No one shall be subjected to arbitrary arrest, detention or exile.
* Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.[[14]](#footnote-14)
* Article 3 of the UDHR states that everyone has the right to life, liberty and security of the person. Right to life is one of the basic human rights and is available to both prisoners and freemen.

**The International Covenants On Civil And Political Rights, 1966:**

* No one shall be subjected to cruel, inhuman or degrading treatment or punishments.
* Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention.
* All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person[[15]](#footnote-15).
* No one shall be imprisoned merely on a ground of inability to fulfil a contractual obligation.
* Article 7 of ICCPR allows no limitations of rights against cruel inhuman treatment and no justification even during public emergencies may warrant such rights.

 **UN Core Conventions And Specific Instruments:[[16]](#footnote-16)**

Standard Minimum Rules For The Treatment of Prisoners:

Amnesty International in 1955 formulated certain standard rules for the treatment of prisoners. Some important relevant rules are as follow:

* Principle of equality should prevail; there shall be no discrimination on grounds of race, sex, colour, religion. Political or other opinion, national or social origin, property, birth or other status among prisoners[5].
* Men and women shall so far as possible be detained in separate institution;
* Complete separation between civil prisoners and persons imprisoned by reason of criminal offence; young prisoners should be kept separate from the adult prisoners.
* All sorts of cruel inhuman degrading punishments shall be completely prohibited.
* Availability of at least one qualified Medical officer with the knowledge of psychiatry.
* Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment:
* State party has to take effective legislative, judicial and other measures to prevent acts of torture.
* No state party shall expel, return or extradite a person who is in danger of being subjected to torture.
* State party should ensure that all acts of torture are offences under its criminal law.

**Conclusion: -**

AS stated right in Bhagwad Geeta, “Hate the crime not the criminals”. The case DK Basu VS State of West Bengal goes by the principle and teaches the true meaning of humanity. Our constitution provides for equality to all the citizens and Prisoners are also covered under it. They also have all the rights which a free man has under some restrictions. Just being in prison doesn’t deprive them from their fundamental rights. Each clause of Art. 20 is designed to protect the people against the excess of the legislature, the judiciary and the executive respectively. Also article 21, provides them for their right to life, and avails them of the freedom to lead it with dignity. These protections are available to both citizens and foreigners. The guidelines issued were with the intention of protecting rights of the individual and the nation as a whole. Now the procedure has been established by law and who does contempt of court is liable to be punished. No one shall be subjected to injustice, that’s what our constitution provides for. For every International Charter we see “No one shall be subjected to cruel, inhuman or degrading treatment or punishments” has been the base to form every human right. Right to life is a Universal remedy and base to every human right. So much privilege is being attached to the post for which thousands of people aspire for, the dignity of the post should be maintained and some limitations to the powers must be adhered to. The following suggestions provides for the same which must be taken into consideration by the judiciary.

**Suggestions:**

* Section 41 (1)(4) CRPC arrestation power is with the police and none concerned is informed before doing it, the arrestation must be made only after informing and taking permission of the magistrate
* The period of informing magistrate must be reduced from 24 to 2-3 hours at max which will reduce the misuse of powers by the personnel.
* Section 151 CRPC which gives power to the police to make arrest must be demolished.

**REFERENCES: -**

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3. Joginder Kumar Vs. State [1994 (4) SCC, 260]
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5. Jayaram Swathy, Rights of Prisoners, Legal Service India, www.legalserviceindia.com
6. https://www.un.org
7. UDHR, 1948, Article.1
8. ICCPR, 1966, Article.10

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1. Darshan Patankar, ‘Dk basu vs State of WB’,( Law Briefs 18 May 2017), <www.lawbriefs.in>, accessed on 25th April 2020 [↑](#footnote-ref-1)
2. Dk Basu Vs State Of West Bengal (1997 (1) Scc 416) [↑](#footnote-ref-2)
3. ibid [↑](#footnote-ref-3)
4. Supra note 2 [↑](#footnote-ref-4)
5. ibid [↑](#footnote-ref-5)
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12. UDHR, 1948, Article 1 [↑](#footnote-ref-12)
13. ibid [↑](#footnote-ref-13)
14. Supra note 12 [↑](#footnote-ref-14)
15. ICCPR, 1966, Article 10 [↑](#footnote-ref-15)
16. Supra note 13 [↑](#footnote-ref-16)