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Case Comment: Unveiling the Justice Veil: How D.K. Basu v State of West Bengal exposed Police Brutality in Custody and Ensured Fundamental Rights?

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INTRODUCTION

The legal justice system's top need that, when a criminal is apprehended is that he or she should be kept in police custody until a trial can be held for them. This is how criminals are frequently addressed throughout the world, yet it is important to remember that they are still humans. A person who commits an offence does lose some of their rights, but even then, the Indian Constitution forbids reducing a person to a lesser being. As a result, one of the most significant rights guaranteed by our Constitution, the Right to Life and Liberty, which is contained in Article 2¹, cannot be violated, even without the person's consent.

Though the behavior of committing atrocities on detunes by the police authorities is fundamentally unethical still administration is clearly failing in its job to take strict actions against the issue. Nonetheless, it raises serious questions if a person is killed as a result of such

¹ *D K Basu v State of West Bengal* (1997) 1 SCC 416

actions. Police should not torture a criminal because of the crime he committed; instead, they should work to stop the offender from committing any further crimes. The justice system breaks down when the police assume the job of the legal system, especially when they do so without authority. Custodial violence, torture, and deaths in India have been a persistent problem for several decades. These incidents occur in police custody, prisons, and other detention facilities, and often involve the abuse of power by law enforcement officials. The history of custodial violence in India dates back to the colonial era when the British authorities used torture and violence to suppress dissent and maintain their control over the country. During the post-independence period, custodial violence continued to be a prevalent issue, with several incidents of torture and extrajudicial killings being reported. However, it was not until the 1970s and 1980s that custodial violence began to receive significant public attention. This was due in part to the efforts of human rights activists and civil society organizations, who began to document and report incidents of torture and deaths in custody.

One of the most infamous incidents of custodial violence during this period was the custodial death of Adivasi farmer Laxman Naik in Andhra Pradesh in 1987. Naik was arrested on suspicion of theft and taken into police custody, where he was brutally tortured for several days before being killed. The incident sparked widespread outrage and led to calls for greater accountability for law enforcement officials. The 1990s saw a significant increase in custodial violence and torture, with several high-profile cases being reported. In 1996, the custodial death of human rights activist and journalist Jyoti Basu in police custody in West Bengal sparked protests and demands for justice. Similarly, the custodial death of 22-year-old MBA student Rajan Pillai in 1995 led to calls for police reforms and greater accountability for law enforcement officials. In response to the increasing incidents of custodial violence and torture, the Indian government passed the Prevention of Torture Bill in 2010, which aimed to provide legal protection to individuals who have been subjected to torture or ill-treatment by law enforcement officials. However, the bill was never passed into law due to opposition from various political parties and civil society organizations.

The case of *D.K. Basu v Union of India*², which was heard by the Supreme Court in 1996, is a significant landmark in the fight against custodial violence and torture in India. The judgment laid down important guidelines to prevent custodial violence and torture, including the requirement for police officials to follow certain procedures when making arrests and detaining individuals. The case also highlighted the need for greater accountability and transparency in the actions of law enforcement officials. Despite these efforts, custodial violence and torture continue to be prevalent issues in India. According to a report by the National Campaign against Torture, there were 1731 custodial deaths in India between 2010 and 2015³. The report also highlighted the lack of accountability and redress for victims of custodial violence and torture and called for greater reforms in the criminal justice system to address this issue.

HISTORICAL BACKGROUND OF THE CASE

Mr. Dilip Kumar Basu, the executive chairman of a non-political organization called Legal Aid Services in West Bengal, delivered a letter to the then Chief Justice of India while keeping in mind the startling increase in deaths while in the custody of Police in the country. The letter, dated August 26th 1986, made reference to some items on custodial deaths in a newspaper, specifically the Telegraph Newspaper. In the letter, Mr. Basu asked that it is to be treated as a writ petition under the Public Interest Litigation Act. While the letter was being examined, Mr. Ashok Kumar Johri entered the picture with a letter in which he reiterated the issue and claimed that Mahesh Bihari, of Pilkhana, Aligarh, Uttar Pradesh, died in custody. The Supreme Court of India treated this letter along with the letter from Mr. Basu as a writ petition. The Law Commission of India received notices from the Court asking for the creation of adequate measures to resolve the situation within two months. The Court also sent notices to the state governments over the same⁴.

² *Ibid*

³ 'Custodial Violence in India with Reference to the Prevention of Torture Bill and International Legal Framework' (2022) 8(1) IJLS

⁴ *D K Basu v State of West Bengal* (1997) 1 SCC 416

ANALYSIS

The concerns stated in the writ case were centered on the issue of custodial deaths in India and their rising frequency, while also highlighting the requirement for precise rules to control police arrests and prevent arbitrariness on the part of the police. The petitioner's arguments claimed that the mental suffering and torment that an arrested person goes through in police custody is unbearable and that, it should be prevented at any cost. On the other hand, the respondent had argued before the Hon'ble bench that the circumstance was "OK" according to the respective states. Custodial fatalities were not, however, subject to any regulations at that time. The Hon'ble Supreme Court cited the Judgment given under *Neelabati Behra v State of Orissa*⁵, which determined that torture in any form and cruel or inhumane treatment of people who have been arrested have violated their constitutional rights, particularly Article 21⁶. Only in line with the terms of the law could citizens have their fundamental rights restricted. The Hon'ble Supreme Court had also brought up the case of *Joginder Kumar v State of Uttar Pradesh*⁷, in which it was determined that police personnel were making arrests without warrants despite the fact that procedural guidelines for criminal arrests had already been established. Arrests shouldn't be made frequently; just because a police officer is legally permitted to do so doesn't give him the right to do so arbitrarily.

In its ruling, the Hon'ble Supreme Court established the following set of rules for police to adhere to while making arrests and keeping Persons in custody:

1. Any information by the police personnel involved in an arrest must be precise and unambiguous. Their name tags must be read correctly, and a register should contain a record of their personal information.
2. A memo detailing the arrest must be immediately written by the arresting police officer and seen by at least one person. These witnesses may be a member of the arrested person's family or a prominent citizen from the neighborhood where they belong from.

⁵ *Nilabati Behera v State of Orissa* (1993) 2 SCC 746

⁶ *Ibid*

⁷ *Joginder Kumar v State of UP* (1994) 4 SCC 260

The arrested person's signature on the note will also include the date and time of the arrest.

3. When detained by the police, a person has the right to notify a family member, friend, or another person he knows about his detention and the place where he is being held.
4. As soon as the detained individual is arrested, he must be informed of the aforementioned right.
5. The time, date, and place of the arrested person's imprisonment must be made known to that person through the district's legal aid agency if a family member, friend, or another person of the arrested knows lives outside the district or town. Within 8 to 12 hours following the arrest, the appropriate police station should carry out the aforementioned procedure.
6. A diary must be kept at the scene of the arrest with information about the arrest and the person who was taken into custody. The entry must also include information about the police officer who has custody of the person who has been detained.
7. The arrested person has a right to have a medical examination from a licensed medical officer every 48 hours of arrest. The arrested person and the police officer in charge of the arrest must both sign this examination, known as the "Inspection Note," and a copy must be sent to the detained person.
8. A trained physician selected from a panel of physicians authorized by the Director of Health Services of the relevant state shall conduct a medical examination of the detainee every 48 hours while they are in custody. The Director must put together a list of licensed physicians for the tehsils and districts
9. Copies of every document should be provided to the local magistrate for his files.
10. The arrested person is permitted to speak with his or her solicitor while being questioned, as long as the conversation does not last the entire time.
11. There must be a police control room in every district and state police headquarters, and the police officer in charge of the arrest is required to give the details of the person within 12 hours of the arrest. The aforementioned information has to be posted on a board in the control room.

BIRDS EYE VIEW & CRITIQUES OF THE CASE

In the discussion on this particular case, we appreciate the arguments presented by the Petitioner, it is because the arguments presented by the plaintiff describe the need for guidelines and highlights the issue which is of utmost importance. The Judgement given by the Hon'ble Supreme Court of India in the D.K. Basu case was a landmark Judgement for the issue of violation of Fundamental rights and human rights in custody in India, but also there are several critiques and limitations in the approach of the Hon'ble Court. In this Particular Case, the Hon'ble Supreme Court had only provided important guidelines and procedures to safeguard the persons who got detained by the police, but the judgment didn't address the root causes of custodial Violence and the lack of accountability for police officers who engage in such abuses. The Court had provided the guidelines to deal with custodial violence but it is not wholly followed by the police officers and the police are still found to be indulging in the practice of custodial violence.

The guidelines do not go far enough in preventing custodial violence and they are not always followed in practice and another limitation of the Judgement given by the Hon'ble Supreme Court of India in the case of D.K. Basu is that it did not adequately address the role of the judiciary in preventing and remedying custodial violence and torture. The court's decision focused primarily on the duties and responsibilities of the police and did not adequately address the role of the judiciary in enforcing constitutional rights and holding police officers accountable for violations. And also, the Judgement didn't provide remedies for victims of custodial violence and torture. While the court had recognized that victims of such abuses in the Custody by the police officers were entitled to compensation and redress also it didn't mention any mechanisms for enforcing these remedies or for ensuring that police officers who engage in such abuses are held accountable.

POSSIBLE SOLUTIONS TO ADDRESS THE CRITIQUES OF THE CASE

Make the Guidelines Legally Binding: One possible solution is to make the guidelines laid down by the Supreme Court legally binding. This would require legislative action to give the

guidelines legal force and make law enforcement officials accountable for any violations. Making the guidelines legally binding would ensure that law enforcement officials are held accountable for their actions and provide a stronger deterrent against custodial violence and torture.

Expand the Scope of The Guidelines: Another solution is to expand the scope of the guidelines to cover individuals who have been detained or arrested under other laws. This would provide protection for a wider range of individuals who may be vulnerable to custodial violence and torture. Additionally, the guidelines could be expanded to address issues such as solitary confinement, which is a common practice in Indian prisons.

Focus on Police Reforms: To address the systemic issues that lead to custodial violence and torture, there is a need for comprehensive police reforms. This could include measures such as improving police training, increasing accountability for police officers, and reducing the use of torture as an interrogation tactic. Additionally, there could be a greater emphasis on community policing and engagement to build trust between law enforcement officials and the communities they serve.

Increase Public Awareness and Education: Increasing public awareness about the guidelines laid down by the Supreme Court and educating law enforcement officials about their responsibilities could also help to address the critiques of the case. This could include conducting training programs for law enforcement officials and outreach campaigns to inform the public about their rights and how to report any violations.

CONCLUSION

The case of D.K. Basu v State of West Bengal is a significant landmark in India's legal history, highlighting the issue of custodial violence and torture. The judgment delivered by the Supreme Court, in this case, laid down crucial guidelines to prevent such violations and safeguard the fundamental rights of individuals in custody. The guidelines laid down by the Supreme Court in the D.K. Basu case have been widely recognized as a crucial step towards ensuring that the

basic rights of citizens are protected. They have helped to prevent custodial violence and torture and establish a fair and just criminal justice system in India.

The judgment has also played a significant role in creating awareness about the issue of custodial violence and torture and encouraging judicial activism. It has led to an increased number of cases being filed to protect the rights of individuals and promote accountability for law enforcement agencies. Despite the guidelines laid down by the Supreme Court, custodial violence and torture continue to be a problem in India. There is a need for effective implementation of these guidelines to ensure that the fundamental rights of individuals are protected. It is essential to build public awareness about the guidelines and educate law enforcement officials about their responsibilities. The D.K. Basu case serves as a reminder of the need to protect the fundamental rights of individuals, even when they are in custody. The judgment has contributed significantly to human rights protection in India and has helped to create a fair and just criminal justice system. The implementation of the guidelines laid down, in this case, is crucial to prevent custodial violence and torture and promote accountability for law enforcement agencies.