Legal principles to reduce custodial deaths

Part of: GS-II- Governance POLICE REFORMS (PT-MAINS-PERSONALITY TEST)

Understanding the background of problem

- In wake of custodial deaths in Tamil Nadu, the debate on Roman dilemma: “Who will guard the guardians” rises again. Torture is anathema to democracy and cannot be tolerated in a civilized society.
- Answer to prevention of torture can be found in multiple sources like Royal Commissions in the UK, Law Commission report and Police Commission reports in India and also Supreme Court’s progressive case law, like Joginder Kumar (1994) and Nilabati Behera (1993).
- However, the basic loophole which exists even today is that most torture is done before the arrest is recorded by the police. Safeguards obviously kick in only after the arrest is shown. This is a perennial, insoluble dilemma and all devious police forces globally use it.

Supreme Court judgement in DK Basu case

- The DK Basu judgment since 1987 is crucial in dealing with issue of custodial deaths.
- The judgement has origin from a letter complaint in 1986, which was converted into PIL.
- 4 crucial and comprehensive judgments — in 1996, twice in 2001 and in 2015 — lay down over 20 commandments, forming the complete structure of this judgement.

Details of judgment:

First 11 commandments in 1996, focused on vital processual safeguards:

- All officials must carry name tags and full identification, arrest memo must be prepared, containing all details regarding time and place of arrest, attested by one family member or respectable member of the locality.
- The location of arrest must be intimated to one family or next friend, details notified to the nearest legal aid organisation and arrestee must be made known of DK Basu judgement.
- All such compliances must be recorded in the police register, arrestee must get periodical medical examination, inspection memo must be signed by arrestee also and all such information must be centralised in a central police control room.
- Breach to be culpable with severe departmental action and additionally contempt also, and this would all be in addition to, not substitution of, any existing remedy.
- All of the above preventive and punitive measures could go with, and were not alternatives to, full civil monetary damage claims for constitutional tort.

8 other intermediate orders till 2015 sought:

- Precise detailed compliance reports of above orders to be submitted by all states and UT and any delayed responses looked into by special sub-committees appointed by state human rights body.
- Also where no SHRC existed, the chief justice of the high courts to monitor it administratively.
- It emphasised that existing simple but potent powers for magisterial inquiries under the
CrPC were lackadaisical and must be completed in four months, unless sessions court judges recorded reasons for extension.

- It also directed SHRCs to be set up expeditiously in each part of India.

**The third and last phase of judgment ended in 2015:**

- Stern directions were given to set up SHRCs and also fill up large vacancies in existing bodies.
- The power of setting up human rights courts under Section 30 of the NHRC Act was directed to be operationalized.
- All prisons had to have CCTVs within one year.
- Non-official visitors would do surprise checks on prisons and police stations.
- Prosecutions and departmental action to be made unhesitatingly mandated.

**Where do we lack?**

- In operationalising the spirit of DK Basu judgment, in punitive measures, in last mile implementation, in breaking intra-departmental solidarity with errant policemen and in ensuring swift, efficacious departmental coercive action plus criminal prosecution.
- A 1985 Law Commission report directing enactment of section 114-B into our Evidence Act, raising a rebuttable presumption of culpability against the police if anyone in their custody dies or is found with torture, has still not become law, despite a bill introduced as late as 2017.
- We still have abysmally deplorable rates of even initiating prosecutions against accused police officers. Actual convictions are virtually non-existent.

*Consider the question “Custodial torture is an anathema to democracy. Examine the issues related to custodial torture and how is it against the basic fundamental rights? What steps should be taken to prevent such acts by the police functionaries?”*

**Conclusion**

Monitoring and implementation of DK Basu by independent and balanced civil society individuals at each level, under court supervision, is sufficient to minimise this scourge. It is high time we take actions in this direction.