A prisoner's tragedy, a nation's shame - Perarivalan Case

Why in news?

- Tamil Nadu Governor Banwarilal Purohit has declined to take a call on a plea for the early release of Rajiv Gandhi assassination case convict A.G. Perarivalan.
- The Governor said the President of India was the "appropriate competent authority" to deal with Perarivalan's request for freedom.

What is the case on?

- Perarivalan is one of the 7 life convicts in the former Prime Minister Rajiv Gandhi assassination case.
- He has been in prison for almost 30 years for his role in the assassination of Rajiv Gandhi during the 1991 election campaign.
- He was taken away for 'minor interrogation' in the assassination case.
- It is 20 years since he was sentenced to death for procuring two nine-volt batteries that was used in the assassination, the purpose of which he was unaware of.

How has the case progressed?

- The CBI has charged Perarivalan for terrorist offences under the Terrorist and Disruptive Activities (Prevention) Act, or TADA.
- The CBI charges against him were upheld by the trial court along with the conspiracy to commit murder under the Indian Penal Code (IPC).
- Over the course of many rounds of litigation, his conviction only for the conspiracy to commit murder under the IPC has been sustained.
    - The TADA charges against him were dropped.
- He has served 30 years as part of his life imprisonment sentence (his death sentence was commuted in February 2014).
- **Confession** - At the core of his conviction is his confession to a police officer, a legacy of the TADA that was carried forward under the Prevention of Terrorism Act (POTA).
- Confessions to a police officer are inadmissible as evidence under the Indian Evidence Act (to protect people from coerced police confessions).
- However, terrorism legislations such as TADA and POTA made confessions to the police admissible.

    - This is as long as it was made to an officer not lower than the rank of Superintendent of Police.

What is the concern with this confession?

- The CBI's main weapon against Perarivalan was his confession to V. Thiagarajan (SP, CBI).
- In the confession, he allegedly confessed to his role in procuring a car battery for the main conspirator and purchasing two 9-volt batteries that were used in making the bomb.
- Mr. Thiagarajan came out in November 2013 and made a startling revelation that he had not recorded Perarivalan's 'confession' accurately.
    - In an affidavit before the Supreme Court in 2017, he stated that he had omitted to record Perarivalan's statement that he did not know the purpose for which the battery was procured.
- It was a glaring omission that completely changed the nature of Perarivalan's involvement.
- In effect, Perarivalan was convicted based on a manipulated confession to a police officer.

What are the legal shortcomings?

- The Supreme Court has dropped the TADA charges against Perarivalan.
- Despite this, his confession which was admissible only due to provisions of the TADA was then used to convict him for IPC offences.
- Beyond the untenable legal basis of his conviction, details of the broader investigation into Rajiv Gandhi's assassination only exacerbates the injustice.
- Justice M.C. Jain's Report (Jain Commission Inquiry) to Parliament in March 1998 identified massive gaps in the CBI's investigation.
- This includes lack of clarity on the source and the making of the bomb.
- To address these concerns, the CBI constituted the Multi-Disciplinary Monitoring Agency (MDMA) in December 1998.
    - It was tasked to conduct further investigations into the larger conspiracy and the origins of the human belt bomb used in the assassination.
- Over two decades, the MDMA has been submitting reports in sealed covers to the TADA Court.
    - Perarivalan has been denied access to these.
- However, the MDMA has repeatedly stated that Perarivalan and the other accused are not part of these ongoing investigations.

How has Perarivalan's legal fight progressed?

- Having served 30 years of life imprisonment for the conspiracy to murder, his effort to get a remission under the Code Of Criminal Procedure was rejected by the Central Government in April 2018.
- However, Perarivalan continued to be entitled to have his pardon considered by the Governor of Tamil Nadu under Article 161 of the Constitution.
- His application for a pardon had been pending with the Governor since December 2015.
- Under the Constitution, the Governor is bound by the aid and advice of the State government in the exercise of pardon powers.
- Meanwhile, the central government employed obfuscation as a strategy to prolong Perarivalan's incarceration.
    - It had initially maintained that the issue of pardon was solely between the Governor and Perarivalan.
    - However, the Centre took a constitutionally untenable argument before the Supreme Court in December 2020.
    - It said that it was the President of India who had the power to consider Perarivalan's pardon.
    - Then on January 21, 2021, the Centre submitted to the Supreme Court that the Governor would take a decision on Perarivalan's pardon within a matter of days.

What is the recent development?

- On February 4, 2021, the Centre informed the Court that the Governor had finally considered Perarivalan's pardon.
    - The Governor had decided that the President alone had the power to consider such an application.
- It is clearly an abdication of a constitutional duty and is unconstitutional to ignore the advice of the State government, which the Governor is constitutionally bound to follow.

What is worrying in this case?

- Perarivalan was 19 years old when he was imprisoned and 30 years later, he is still fighting for his freedom.
- Perarivalan and his mother, Arputham, have been on a tireless crusade to end his incarceration.
- In essence, there is an acknowledgment at the highest levels that the origins and the making of the bomb remain unknown.
- Yet Perarivalan continues to be in prison for purchasing batteries whose use remains a mystery.
- At the heart of the injustice is the fact that government agencies have continued to insist on his incarceration despite being unsure of his role.

    - It is a classic case of state agencies being unable to identify and arrest those at the heart of the conspiracy.
    - But it sacrifices the lives of those who might have had a peripheral role at worst.
- It is possibly a fear that releasing Perarivalan would be a collective admission of the country's failure to successfully investigate the assassination of a former Prime Minister.
- Said that, it is cruel to ask Perarivalan to pay for the country's failures with his own life.

Source: The Hindu

