Custodial Torture - Existing Provisions

What is the issue?

- The 'Custodial death' of a father and son in Sathankulam town in Tamil Nadu's Thoothukudi district gave way to demands for separate law against torture.
- In this context, it is essential to look into how implementing the existing laws and recommendations of various commissions would help.

What are the provisions in place?

- **IPC** - Torture is not defined in the Indian Penal Code.
- However, the definitions of 'hurt' and 'grievous hurt' are clearly laid down.
- The definition of 'hurt' does not include mental torture.
- But, Indian courts have included among others, in the ambit of torture -
    i. psychic torture
    ii. environmental coercion
    iii. tiring interrogative prolixity (excessive wordiness)
    iv. overbearing and intimidatory methods
- Voluntarily causing hurt and grievous hurt to extort confession are also provided in the Code with enhanced punishment.
- **CrPC** - Under the Code of Criminal Procedure, a judicial magistrate inquires into every custodial death.
- **NHRC** - The National Human Rights Commission has laid down specific guidelines for conducting autopsy under the eyes of the camera.
- **SC Judgements** - The Supreme Court judgment in DK Basu v. State of West Bengal was a turning point in matters of custodial torture.
- The Court's decision in Nilabati Behera v. State of Orissa is also notable.
- It ensured that the state could no longer escape liability in public law and had to be compelled to pay compensation.
- Therefore, there is neither a dearth of precedents nor any deficiency in the existing law.
- It is not the law per se but the improper implementation that fails to deter incidents of custodial torture.

What are the drawbacks in the Prevention of Torture Bill?

- A fresh draft of the Prevention of Torture Bill was released in 2017 for

seeking suggestions from various stakeholders.

- The Bill was vague as well as very harsh for the police to discharge its responsibilities without fear of prosecution and persecution.
- It was inconsistent with the existing provisions of law.
- It included 'severe or prolonged pain or suffering' as a form of torture but that was left undefined.
- The proposed quantum of punishment was too harsh.
- The 262nd Law Commission Report recommended that the death penalty be abolished except in cases of 'terrorism-related offences.'
- Despite this, the Bill provided for the death penalty for custodial deaths.
- Most countries have deleted or are deleting the death penalty from their statute books.
- But India is on path to enact fresh legislation with death penalty as the ultimate form of punishment.
- The Bill also makes the registration of every complaint of torture as an FIR.
- There is a blanket denial of anticipatory bail to an accused public servant.
- This seems less reasonable.
- The bail can be refused in appropriate cases.
- But, excluding an investigating officer from availing such an opportunity shall amount to putting him/her on the highest pedestal of mistrust.
- Overall, the proposed Bill was less reformative and more vague, harsh and retributive in nature.

What about the UN CAT?

- In 2017, the Central government admitted in the Supreme Court that it was seriously considering the 273rd Report of the Law Commission (LC).
- The LC recommended ratification of the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment (CAT).
- CAT was signed by India, but is yet to be ratified.
- However, except for minor discrepancies, the prevalent law in India is adequate and well in tune with the provisions of CAT.

What is to be done?

- There is first the need to implement the existing laws and provision in its true spirit.
- The investigations and the prosecutions are not fair; these must be rectified first.
- There is also the need to make better the police training.
- The temptation to use third-degree methods must be replaced with scientific skills.
- Thus, the need of the hour is to strike at the root cause of the problem and

implement recommendations of various commissions to bring in necessary reforms.

Source: The Hindu

