DK Basu Judgments - Custodial Deaths

What is the issue?

- 'Custodial death' of a father and son in Sathankulam town in Tamil Nadu's Thoothukudi district has brought the question of police brutality to the fore.
- In this context, the DK Basu judgments since 1987 gain significance and needs a revisit.

What are the judgements about?

- A letter was received in 1986 from an organization regarding the matter of lock up deaths in the state of West Bengal.
- This letter was treated as a writ petition and taken as a PIL.
- It spawned four crucial and comprehensive judgments - in 1996, twice in 2001 and in 2015 - laying down over 20 commandments.
- Additionally, it led to at least 5 other procedural, monitoring and coordinating judicial orders.
- These have created a valuable and seamless web of legal principles and techniques.
- All of them are aimed at reducing custodial death and torture and to have control on police and a set of guidelines for arresting a person.

What was the impact?

- Relatively little highhandedness occurred after formal arrest, but most torture was done before the arrest was recorded.
- Safeguards obviously kick in only after the arrest is shown.
- This is a perennial, insoluble dilemma and all devious police forces globally use it.

What were the subsequent developments?

- In light of the above, the first 11 commandments in 1996, therefore, focused on vital processual safeguards -
    i. all officials must carry name tags and full identification
    ii. arrest memo must be prepared, attested by one family member or respectable member of the locality
    iii. memo must contain all details regarding time and place of arrest
    iv. the location of arrest must be intimated to one's family or next friend

v. details must be notified to the nearest legal aid organisation
vi. arrestee must be made known of each DK Basu right
vii. all such compliances must be recorded in the police register
viii. the arrestee must get periodical medical examination
ix. inspection memo must be signed by arrestee also and all such information must be centralised in a central police control room

- Significantly, breach of this was to have severe departmental action and additionally contempt also.
- This would all be in addition to, and not substitution of, any existing remedy.
- This first judgement went further, applying the principle that rights without remedies are illusory and futile.
- Hence, all of the above preventive and punitive measures could go along with, and were not alternatives to, full civil monetary damage claims for constitutional tort (a wrongful act or infringement of a right).
- Later, after considering detailed reports, general and state-specific directions were formulated.

- The last phase of the judgements ended in 2015.
- It had stern directions to set up SHRCs (State Human Rights Commissions.
- But, more importantly, it ordered filling up large vacancies in existing bodies.
- The as yet unused power of setting up human rights courts under Section 30 of the NHRC Act was directed to be operationalised.
- All prisons had to have CCTVs within one year.
- It was directed that non-official visitors would do surprise checks on prisons and police stations.

- Prosecutions and departmental action were unhesitatingly mandated.

What is the concern though?

- Little more by way of theoretical structure is required if DK Basu's comprehensive coverage is genuinely implemented.
- But the real problem is in operationalising the spirit of DK Basu.
- This encompasses -
  i. punitive measures
  ii. last mile implementation
  iii. breaking intra-departmental solidarity with errant policemen
  iv. ensuring swift, efficacious departmental coercive action plus criminal prosecution
- India still has abysmal rates of even initiating prosecutions against accused police officers.
- Actual convictions are virtually non-existent.

- Figures for initiating departmental action are better.
- But they are woefully low, and hardly ever taken to successful dismissal.

How does it make sense in the Sathankulam case?

- The Tamil Nadu police and their political masters have suggested that DK Basu judgements apply only in police and not in judicial custody.
- This only shows their ignorance of the procedures, and a distortion of the case.
- DK Basu is all-encompassing, loophole covering and makes absolutely no such distinction amidst categories of custody.

What is the way forward?

- A 1985 Law Commission report directed enactment of section 114-B into the Evidence Act.
- This gave way for raising a rebuttable presumption of culpability (guilty) against the police if anyone in their custody dies or is found with torture.
- This has still not become law, despite a bill introduced as late as 2017. This should be processed soon.
- More importantly, monitoring and implementation of DK Basu judgements is the need of the hour.
- This should be taken up by independent and balanced civil society individuals at each level, under court supervision.

Source: Indian Express

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