Role of Technology in reduction of Custodial Deaths

What is the issue?

The recent spate of custodial deaths in Tamil Nadu has yet again highlighted the methods used by the police during interrogation.

What are Custodial Deaths?

- Custodial Death is widely referred to as death that happens to a person who is under trial or has already been convicted of a crime.
- It can be due to natural causes like illness or may also happen due to suicide, infighting among prisoners or police brutality and torture.
- **Police custody**- The police have the physical custody of the suspect and have to produce the suspect before a judge within 24 hours of the arrest.
- **Judicial custody**- This is when an accused is in the custody of a Magistrate.
- In police custody, the accused is lodged in a police station, whereas in judicial custody, he is lodged in prison.
- Police custody may extend only up to 15 days but judicial custody may extend up to 90 days.

According to the India Annual Report on Torture 2019, there were a total of 1,731 custodial deaths in India.

What are the reasons for rise in custodial death?

- **Lack of proper healthcare**- The incompetence of the state and judicial facilities to provide proper healthcare to prisoners is a major problem.
- **Lack of security**- A lot of attacks happen inside the prison between inmates which often prove to be fatal.
- **Lack of psychiatric help** - There are no adequate provisions for inmates and under-trials seeking psychiatric help and this affects their mental health greatly.
- **Suicides-** It is a matter of debate how many of these are actual suicides and in how many cases, the victims were forced to commit suicide due avoid further torture and violence.
- **No rights-** A person under custody loses most of his rights including the right of free movement and the right to choose their preferred medical care.
- **Police brutality**- Torturing an accused or a detainee is the most important reason for the increase in numbers.

What is the law around custodial deaths?

- **IPC Section 330**- If any public servant causes injury to any person to extort confession he will be liable for punishment with imprisonment upto 7 years.
- **Right not to be a witness against himself**- Article 20(3) of the Constitution provides that no

accused person will be compelled to be a witness against himself.
- **Code of Criminal Procedure**- Section 163 of the CrPC prohibits the investigating officers from forcing any person to make any statement which he would like to make on his free will.
- **Indian Evidence Act, 1872**- Section 25 states that no confession made to a police officer can be used to prove any offence against him.
- Section 26 makes all confessions made during custody inadmissible unless made in the immediate presence of a Magistrate.
- **Supreme Court judgements-** The SC has mandated that all police stations and investigation agencies must install CCTV cameras.
- In *Joginder Kumar v. State Of U.P and Others 1994*, the SC held that the police officer shall inform the arrested person when he is brought to the police station of this right.
- In *D.K. Basu Vs State of West Bengal (1997)*, the Supreme Court issued a list of 11 guidelines.
    - Details of all personnel handling the interrogations of the arrested person must be recorded in a register.
    - A memorandum of arrest at the time of the arrest should be prepared.
    - Police must notify a detainee's time, place of detention, and place of custody.

What must be done if a convict dies in the custody?

- **Legal mandate**- A First Information Report has to be registered if someone dies in police custody.
- As per Section 176 of the CrPC, in addition to the police conducting an inquiry for a custodial death, the judicial magistrate or the metropolitan magistrate has to mandatorily conduct an inquiry.
- Within 24 hours of the death, the magistrate conducting the investigation has to send the body to the nearest civil surgeon to be examined.
- **National Human Rights Commission Guidelines**- All such deaths have to be reported to the National Human Rights Commission within 24 hours.
- All reports including post-mortem, videograph and magisterial inquiry report must be sent within two months of the incident.
- **Compensation**- Courts have granted compensation to the next of kin of the deceased based on the fact that the right to life of the deceased has also been violated by unnatural death in custody.
- Various state governments have framed their own compensation schemes.

How technology can prevent custodial deaths?

- **Technological solutions**- Use of body cameras and automated external defibrillators can help avert police custodial deaths.
- **Deception detection tests-** DDTs which deploy technologies such as polygraph, narco-analysis and brain mapping, could be used to learn information that is known only to a criminal regarding a crime.
- **Brain Fingerprinting System**- The Brain Fingerprinting System (BFS) is an innovative technology that has proved helpful for solving crimes, identifying perpetrators, and exonerating innocent suspects.
- **Use of robots**- Police departments are increasingly using robots for surveillance and bomb detection.
- Robots equipped with AI and sensor technology can build a rapport with the suspects, utilise persuasive techniques like flattery, shame and coercion, and strategically use body language.
    - An automated interrogation technology called the Automated Virtual Agent for Truth

Assessments in Real-Time (AVATAR) which was tested last year has given accurate information and analysis.

- **Artificial Intelligence (AI)** - AI can detect human emotions and predict behaviour.
- **Machine Learning (ML)** - ML can in real-time alert superiors when police are meting out inhumane treatment to suspects.

What are the concerns with the use of technology?

- The risk of bias
- The peril of automated interrogation tactics
- The threat of ML algorithms targeting individuals and communities
- The hazard of its misuse for surveillance
- Cannot address the underlying issues that lead to custodial deaths

In Selvi v. State of Karnataka, the court observed that the state could not perform narco analysis, polygraph, and brain-mapping tests on any individual ***without their consent****.*

What is the need of the hour?

- There is a need for a formulation of a multi-pronged strategy by the decision-makers encompassing legal enactments, technology, accountability, training and community relations.
- The Law Commission of India's proposition in 2003 to change the Evidence Act to place the onus of proof on the police for not having tortured suspects is important in this regard.
- Stringent action must be taken against personnel who breach the commandments issued by the apex court in *D.K. Basu v. State of West Bengal* (1997).
- The draft bill on the Prevention of Torture, 2017, which has not seen the day, needs to be revived.

References

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