

CUSTODIAL VIOLENCE

Recently, the Chief Justice of India (CJI) noted that police stations pose the highest threat to human rights and dignity as custodial torture\violence and police atrocities still prevail despite constitutional guarantees.

- He was speaking at the launch of a legal service mobile application and the vision and mission statement of National Legal Services Authority's (NALSA) legal services.
 - It was constituted under the Legal Services Authorities Act, 1987 which came into force in November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society.
 - CJI is the Patron-in-Chief and the second senior most Judge of the Supreme Court of India is the Executive Chairman of the Authority.
 - Article 39 A of the Constitution provides for free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity.
 - Article 14 and Article 22 (1), obligates the State to ensure equality before law.
 - It can be noted that the role played by NALSA and its networks is very much relevant to achieving the Sustainable Development Goal-16, which seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Key Points

- Vision & Mission Statement:
 - It encapsulates the vision of NALSA to promote an inclusive legal system and to ensure fair and meaningful justice to the marginalized and disadvantaged sector.
 - It further promotes the mission of NALSA to legally empower the marginalized and excluded groups of the society by providing effective legal representation, legal literacy & awareness to bridge the gap between the legally available benefits and the entitled beneficiaries.
- Legal Services Mobile Application:
 - It incorporates features including seeking legal assistance, legal advice, and other grievances.
 - Application tracking facilities, and seeking clarifications are some additional features available to both Legal Aid beneficiaries and Legal Services Authorities.
 - Beneficiaries can also apply for pre-institution mediation through the app. Victims can also file an application for Victim Compensation with the App.

Custodial Violence

- Related Data:

- According to National Crime Records Bureau (NCRB) data, between 2001 and 2018, only 26 policemen were convicted of custodial violence despite 1,727 such deaths being recorded in India.
 - Only 4.3% of the 70 deaths in 2018 were attributed to injuries during custody due to physical assault by police.
- Except in Uttar Pradesh, Madhya Pradesh, Chhattisgarh and Odisha, no policeman was convicted for such deaths across the country.
- Apart from custodial deaths, more than 2,000 human rights violation cases were also recorded against the police between 2000 and 2018. And only 344 policemen were convicted in those cases.

- Major Reasons:

- Lack of Legal Representation:
 - Lack of effective legal representation at police stations is a huge detriment to arrested or detained persons. The first hours of arrest or detention often decide the fate of the case for the accused.
- Lengthy Judicial Processes:
 - Lengthy, expensive formal processes followed by courts dissuade the poor and the vulnerable.
- Absence of Strong Legislation:
 - India does not have an anti-torture legislation and is yet to criminalise custodial violence, while action against culpable officials remains illusory.
- Institutional Challenges:
 - The entire prison system is inherently opaque giving less room to transparency.
 - India also fails in bringing the much desired Prison Reforms and prisons continue to be affected by poor conditions, overcrowding, acute manpower shortages and minimal safety against harm in prisons.
- Excessive Force:
 - The use of excessive force including torture to target marginalised communities and control people participating in movements or propagating ideologies which the state perceives as opposed to its stature.

- Not Adhering to International Standard:
 - Although India has signed the United Nations Convention against Torture in 1997 its ratification still remains.
 - While Signing only indicates the country's intention to meet the obligations set out in the treaty, Ratification, on the other hand, entails bringing in laws and mechanisms to fulfil the commitments.
- Constitutional and Legal Provisions:
 - Protection from torture is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution.
 - The right to counsel is also a fundamental right under Article 22(1) of the India constitution.
 - Section 41 of Criminal Procedure Code (CrPC) was amended in 2009 to include safeguards under 41A, 41B, 41C and 41D, so that arrests and detentions for interrogation have reasonable grounds and documented procedures, arrests are made transparent to family, friends and public, and there is protection through legal representation.

Way Forward

- To keep police excesses in check, dissemination of information about the constitutional right to legal aid and availability of free legal aid services is necessary.
 - The installation of display boards and outdoor hoardings in every police station/prison is a step in this direction.
- If India wants to remain as a society governed by the rule of law, it is imperative for the judiciary to bridge the gap of accessibility to justice between the highly privileged and the most vulnerable.
- Accessing justice in India is not merely an aspirational goal. Judiciary needs to work hand in hand with various wings of the government to make it a practical reality.