

Detention, rules and laws in it

January 2, 2020

Source: *The Hindu*

Manifest pedagogy: The idea of detention has been a lot in news recently with the revokal of Article 370 and also issue of illegal migrants and citizenship. This issue is covered under various articles of manifest 11 . It is advisable that the students read them all by linking on with the other so that they are in a position to answer any question related to the topic

In news: There have been several instances of police clashing with and detaining protesters during protests against Citizenship (Amendment) Act, 2019.

Placing it in syllabus: Polity- Fundamental Rights

Dimensions: Detention centers and rules & Detention of minors

Content: After the Citizenship (Amendment) Act, 2019 was passed on December 11, 2019 there are fears that those excluded from National Population register (NPR) – National Register of Citizens (NRC) will be sent to detention centres. However, the government has denied that the NPR and the NRC are linked.

Detention centres and rules pertaining to them:

- Detention centres are set up to **house illegal immigrants or foreigners** who have completed their jail sentence but their deportation process to the country concerned has not been initiated or completed.
- It is also set up to **accommodate foreign convicts in criminal cases who have completed their jail terms and await deportation.**

- Under **Section 3(2)(c) of The Foreigners Act, 1946**, the Central Government has the powers to deport foreign nationals staying illegally in the country.
- These powers have also been entrusted to **State governments under Article 258(1)** of the Constitution and under **Article 239(1) for administrators of UTs**.
- In 1998, the Ministry of Home Affairs (MHA) asked all the states and UTs to restrict the movement of convicted foreign nationals who had completed their jail sentence.
- States were asked by the **MHA in 2009 to set up sufficient number of detention centres where the “suspected illegal immigrants from Bangladesh would be detained pending their deportation”**.
- On January 9, 2019, a detailed **manual on “model detention centres”** was circulated to make a distinction between “jails and detention centres”.

Rules in manual:

- **States require “no specific approval” from the Home Ministry** to set up “detention centres /holding centres/ camps”.
- Centres should be **set up outside the jail premises and their numbers and size should be decided by the States**.
- On completion of the sentence of the foreigner, the jail authorities concerned may hand over the foreign national to the authority in charge of the detention centre.
- There should also be a provision to **facilitate the stay of such foreigners in “metro” cities during the waiting period** between their interview with the embassy concerned and issuance of travel documents.
- The detention centres should be designed for inmates to maintain standards of living in **consonance with “human dignity”**.
- Well-lit, airy rooms adhering to **basic hygiene standards** and equipped with electricity, water and communication facilities are to be provided at the centre.

- Detention centres should also have **open spaces for detainees to move around** and segregated accommodation for men and women.
- It should be ensured that **members of the same family are not separated** and all family members are housed in the same detention centre.”
- It also asks States to pay **special attention to the needs of women, nursing mothers, transgenders** and open a crèche in the camp.
- **Children lodged in detention centre may be provided educational facilities** by admitting them in local schools.

Note: Assam has six detention centres, the highest among the States. Nearly 41 lakh people were excluded from the final draft of NRC in Assam. Of these, 36 lakh have filed claims against the exclusion.

Since 1985, when **Foreigners Tribunals (FTs)** were first set up in Assam, till February, 2019, as many as 63,959 persons were declared foreigners through ex-parte proceedings. In 2016 and 2017, 39 Bangladeshi nationals were deported from detention camps in Assam, according to the MHA report, 2018.

Detention of minors:

- During protests against the Citizenship (Amendment) Act, 2019 there were instances of police detaining minors under 18 years.
- In **Uttar Pradesh police had detained at least five minors**, between the ages of 13 and 17, at the Bijnor Police Cantonment and allegedly tortured them over a period of 48 hours before releasing them.
- **Eight minors were detained** after violence broke out **near Delhi gate** in Daryaganj.
- According to **The Juvenile Justice (Care and Protection of Children) Act, 2015 (Section 10)**, as soon as a child alleged to be in conflict with law is apprehended by the

police, the child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer.

- Then the child should be produced before the **Juvenile Justice Board** within a period of 24 hours.
- The **child** alleged to be in conflict with the law **shall not be placed in a police lock-up or lodged in a jail.**

National Commission for the Protection of Child Rights (NCPCR) examines and reviews the safeguards provided under any law for the protection of child rights and recommend measures to the government. The commission can also inquire into violation of child rights and recommend initiation of proceedings in such cases.