Detaining Non-Citizens

Prelims - *Current events of national and international importance.*

Mains (GS-II) - *Separation of powers between various organs dispute redressal mechanisms and institutions.*

Why in news?

Recently, Assam's immigration detention policy faces criticism for detaining non-citizens indefinitely without trial or deportation prospects which raises serious concerns about violations of constitutional principles and the rule of law.

- **Detention Framework for Non-Citizens in India –** Non-citizens in India can be detained under two primary laws,
    - The National Security Act, 1980
    - The Foreigners Act, 1946
- Detained non-citizens often spend years in detention camps, facing prolonged uncertainty and harsh living conditions.
- Under Indian law, deprivation of liberty is primarily justified through,
    - Criminal conviction and sentencing
    - Detention pending trial
    - Limited preventive detention under Article 22
- **Judicial intervention** – This detention system was challenged in ***Rajubala Das v Union of India (2020).***
- The order of the Supreme Cout stated that they are detained for the purpose of being detained, ***without legitimate reason***.

- This indefinite detention without judicial oversight ***challenges Article 21*** and the constitutional principle that only courts can authorize deprivation of liberty.

  Article 21 guarantees that *"No person shall be deprived of his life or personal liberty except according to procedure established by law".*

- **Assam citizenship issue –** Approximately 19 lakh people have been stripped of citizenship through the National Register of Citizens (NRC) process in Assam.

- Many lost citizenships because *they couldn't provide documentary proof* of their family's residence in India before 1971, due to,

  - Inaccessibility of required documents.

  - Documents lost or destroyed in flood-prone Assam.

  - Rejections based on name variations and spelling discrepancies.

- Despite over 1,59,353 people being declared foreigners by Assam's Foreigners Tribunals (as of December 31, 2023), only 26 declared foreigners have been deported since 2017, with 13 Bangladeshi nationals deported recently.

- **Rule of Law concerns** – The deprivation of liberty has traditionally been recognised as a power to be exercised and controlled by the courts.

- If the executive and the legislature encroach upon the traditional role of the courts, this poses a real threat to the rule of law.

Reference

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