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Coming Home To Jail: On The Repatriation of Prisoners Act, 2003

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Today's editorial on repatriation of international criminals makes for an interesting read. The following are the most important points from this editorial.

Repatriation: The act of returning to the country of origin;

There have been multiple cases where criminals from one country have been found serving time in another. For instance, Indians serving time in countries like the UK, Pakistan or Saudi Arabia. Conversely, criminals from countries like Bangladesh, Nepal or Sri Lanka are serving their time in Indian prisons. Internationally, it is not considered 'humane' to let criminals serve time away from their country of belonging, especially when sentenced for minor crimes.

- The International Covenant on Civil and Political Rights, under Article 12(4) states the right to return to one's home country. Serving time in foreign land is perceived to be more onerous (burdensome) than serving time at home.
- The Vienna Convention on Consular Relations of 1963 provides for consular protection upon arrest, detention and trial in a foreign country.
- The UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations of the Treatment of Foreign Prisoners of 1985 emphasizes on the 'social rehabilitation of foreign prisoners through early repatriation to their home countries'.
- The legacy of transfer of sentenced prisoners lie in the 'post-war humanitarian exchange of POWs (prisoners of war)' and also in the two UN Conventions of 2004 which are against transnational organized crime and corruption.
- States are free to enter into bilateral or multilateral agreements to exchange prisoners. The principle involved here is that 'an offence committed abroad is also an offence in the home country' provided that the sentence shall not be aggravated (increased drastically) upon transfer.

Conditions in India

- Repatriation of Prisoners Act, 2003 is a two part act where the first part deals with the transfer of foreign prisoners held in Indian prisons to their countries of respective origins, while the second part deals with bringing home sentenced Indian nationals from any foreign country.
- Almost all types of prisoners are eligible for repatriation provided they fulfill these conditions:
 - they are willing to be repatriated;
 - they have no pending appeals in any court;
 - the offence do not fall under jurisdiction of military law;
 - the sentence is not a death sentence;
 - they have at least 6 months of their sentence left to serve;
 - the repatriation has the consent of both the countries involved;

Repatriation of Prisoners Act is very important for India as the following data will demonstrate:

- According to the Ministry of External Affairs, as of March 2018, there were at least 7,850 Indian nationals in prisons scattered across 78 countries.
- According to National Crime Records Bureau, in 2015, there were 6,185 foreign nationals serving time in Indian prisons; 66% of them were from Bangladesh alone.
- The following countries account for most Indians being sentenced abroad: Saudi Arabia, the UAE, Kuwait, the UK, the US, Canada, Nepal, Bhutan, Sri Lanka, Bangladesh, China, France, Germany, Indonesia, Myanmar and Thailand.

India has signed 30 bilateral agreements on repatriation and has entered into transfer agreements with the Inter-American Convention on Serving Criminal Sentences Abroad, and the Council of Europe’s Convention on the Transfer of Sentenced Persons. Taken together, the latter two bring at least another 50 countries into a co-operative legal framework with India.

Conclusion

- Despite the various efforts and agreements for repatriation the reality is not very convincing. There were only 9 foreign prisoners repatriated from India in 2015 (6 from UK, 1 each from France, Germany and the UAE); and between 2003 and March 2018, only 63 of 171 applications to transfer Indian nationals home has been honored.
- The Repatriation of Prisoners Act, is a ‘win-win situation’ for India for the following two reasons:
 - India need not spend unduly on housing foreign prisoners.
 - India can save considerably on consular services abroad by bringing back Indian prisoners home.

“Repatriation of Prisoners Act, 2003 can simultaneously satisfy the public expectation of bringing nationals home and the meeting of international humanitarian commitments.”