

# **Custodial Violence And International Human Rights Obligations: A Comparative Study Of India And South Asian Countries**

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**Abstract:** Custodial violence represents one of the gravest violations of human rights, striking at the core of human dignity, personal liberty, and the rule of law. Despite the existence of comprehensive international human rights standards prohibiting torture and cruel, inhuman, or degrading treatment, custodial abuse continues to persist across South Asian jurisdictions. This article undertakes a comparative study of custodial violence in India and selects South Asian countries, namely Pakistan, Bangladesh, Nepal, and Sri Lanka, through the lens of international human rights obligations. It examines the extent to which global norms enshrined in instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture, and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) have been incorporated into domestic legal frameworks and institutional practices.

The study critically analyses constitutional safeguards, statutory provisions, judicial interventions, and accountability mechanisms governing custodial conduct in these jurisdictions. It highlights significant gaps between normative commitments and practical enforcement, underscoring challenges such as weak institutional oversight, political interference, limited access to justice, and entrenched cultures of impunity within law enforcement agencies. By adopting a comparative and human-rights-based approach, the article identifies best practices and structural deficiencies in the region's response to custodial violence. The study concludes that effective prevention of custodial abuse requires not only legal reform but also sustained institutional accountability, independent monitoring, and adherence to international human rights standards to ensure meaningful protection of detainees' rights in South Asia.

**Keywords:** Custodial Violence, Human Rights Obligations, Torture and Ill-Treatment, International Human Rights Law, South Asia, Police Accountability, Detention and Due Process, ICCPR, UNCAT, Judicial Oversight, Rule of Law

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## **INTRODUCTION**

Custodial violence refers to physical, psychological, or sexual abuse inflicted on a person while in the custody of law enforcement authorities or during detention. Such violence encompasses torture, beatings, degrading treatment, and other forms of coercion that violate human dignity. International human rights law unequivocally prohibits torture and ill-treatment and mandates state responsibility for prevention, investigation, and redress. Despite robust legal standards, custodial violence persists worldwide, particularly in regions facing weak rule of law, institutional inertia, and political instability (United Nations, 1948; International Committee of the Red Cross [ICRC], 2010).

South Asia is home to diverse legal traditions but faces common challenges relating to custodial violence. India's constitutional protections, judicial oversight mechanisms, and landmark court decisions underscore an evolving legal framework aimed at curbing custodial abuse. However, enforcement gaps and persistent reports of custodial deaths and torture point to a troubling disparity between legal norms and practice. Comparatively, neighbouring countries within South Asia—Pakistan, Bangladesh, Nepal, and Sri Lanka also confront similar patterns of custodial abuse, albeit with distinct political contexts and institutional responses.

This paper offers a comparative analysis of custodial violence in South Asia, emphasising international human rights obligations and states' compliance. By examining legal frameworks, institutional practices, civil society engagement, and judicial interventions, the study seeks to identify patterns of compliance or deviation from international norms, including the prohibition against torture (ICCPR, 1966), the Convention Against Torture (UNCAT, 1984), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015). The article underscores the imperative for strengthening accountability mechanisms and offers recommendations for more effective enforcement of rights in custodial environments.

## **HISTORICAL BACKGROUND**

### **Origins Of International Human Rights Norms On Custodial Treatment**

The global human rights movement gained momentum after World War II, driven by the horrors of genocide, forced labour, and systematic torture in conflict and authoritarian regimes. The adoption of the **Universal Declaration of Human Rights (UDHR)** in 1948 marked a foundational commitment to human dignity, establishing the right to freedom from torture and cruel, inhuman, or degrading treatment (Articles 5 and 10). The UDHR's influence extended into binding treaties such as the **International Covenant on Civil and Political Rights (ICCPR, 1966)** and the **Convention Against Torture (UNCAT, 1984)**, which explicitly codified obligations to prevent custodial abuse, ensure fair treatment of detainees, and provide redress.

Under UNCAT, states are obligated to criminalise torture, undertake regular training of law enforcement personnel, and establish independent monitoring mechanisms. The **Nelson Mandela Rules (2015)** further articulate minimum standards for the humane treatment of

detainees, with emphasis on medical examinations, prohibition of corporal punishment, and safeguarding detainees' legal rights. Together, these instruments constitute the international human rights framework that guides state conduct and judicial interpretation.

### **Custodial Abuse In Post-Colonial South Asia**

Following decolonisation, South Asian countries inherited legal systems rooted in British penal codes, which included provisions for arrest, detention, and police powers. The colonial legacy of punitive enforcement, often characterised by authoritarian policing and limited accountability, laid fertile ground for custodial abuse. Since independence, India and its neighbours have attempted legal reform to align with democratic principles, yet custodial violence remains widespread.

In India, custodial torture emerged as a socio-political concern in the post-Emergency era (1975–1977), when state abuse of power became a defining political memory. Civil liberties organisations began documenting widespread torture, prompting the Supreme Court of India to confront the issue proactively. Similarly, Bangladesh and Pakistan's experiences of military rule and political instability have compounded issues of impunity and systemic custodial violence. Nepal's lengthy armed conflict (1996–2006) further intensified concerns over arbitrary detention and abuse, while Sri Lanka's civil war (1983–2009) witnessed grave violations under the cover of counter-insurgency operations.

## **INTERNATIONAL PERSPECTIVES ON CUSTODIAL VIOLENCE AND HUMAN RIGHTS OBLIGATIONS**

### **The International Covenant on Civil and Political Rights (ICCPR)**

The ICCPR (1966), to which India, Pakistan, Bangladesh, Nepal, and Sri Lanka are parties, obliges states to protect the inherent dignity of detainees and prohibits torture and cruel, inhuman, or degrading treatment (Article 7). The Human Rights Committee, tasked with monitoring ICCPR compliance, has emphasised states' obligations to implement effective safeguards, including access to legal counsel, judicial review of detention, and independent investigations into allegations of abuse (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2014).

## **Convention Against Torture (UNCAT)**

UNCAT's entry into force in 1987 created a binding legal regime imposing explicit duties on state parties to criminalise torture, provide remedies, and ensure non-refoulement. South Asian states exhibit varying degrees of commitment to UNCAT: Bangladesh acceded in 1998, Nepal in 1991, and Sri Lanka in 1994. India and Pakistan have not ratified UNCAT, raising critical debates around domestic legal reform and international accountability. UNCAT's Committee Against Torture periodically reviews state reports, issuing concluding observations that often highlight deficiencies in implementing anti-torture safeguards and investigating custodial deaths.

## **Nelson Mandela Rules**

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015) reinforce humane treatment standards, emphasising the dignity, health, and privacy of detainees. While not a treaty, the Mandela Rules encapsulate global norms widely adopted by UN member states. The Rules stress medical examinations upon arrest, prohibition of prolonged solitary confinement, and training for custodial staff.

## **CUSTODIAL VIOLENCE IN INDIA: LEGAL FRAMEWORK AND ENFORCEMENT**

### **Constitutional and Statutory Safeguards**

India's Constitution (1950) enshrines fundamental rights relevant to custodial protection—Articles 14 (equality before the law), 21 (right to life and personal liberty), and 22 (protection against arbitrary arrest and detention). Article 21 in particular has been interpreted expansively to encompass human dignity and freedom from torture or degrading treatment.

Statutory provisions, such as Sections 41–60 of the **Code of Criminal Procedure, 1973 (CrPC)**, regulate arrest and detention procedures. The **Indian Penal Code (IPC)** criminalises causing hurt (Sections 319–323), grievous hurt (Sections 320–325), and wrongful confinement (Sections 341–342). However, custodial torture is not explicitly defined as a separate offence, creating challenges in enforcement.

## **Judicial Interventions**

The Indian judiciary has played a transformative role in addressing custodial violence. In **D.K. Basu v. State of West Bengal (1997)**, the Supreme Court laid down comprehensive guidelines for arrest and detention, including mandatory identification of arresting officers, right to inform a relative, and access to medical examination. These guidelines aimed to create procedural safeguards against custodial abuse.

Subsequently, the Supreme Court recognised custodial violence as a human rights violation requiring accountability. In **People's Union for Civil Liberties (PUCL) v. Union of India (1997)**, the Court directed compensation for victims of custodial deaths and emphasised the state's duty to investigate. Nonetheless, compliance with these directives has been inconsistent, with recurring reports of custodial deaths and torture highlighting enforcement gaps.

## **Institutional Challenges**

Law enforcement reform remains a contentious political issue in India. Structural factors such as inadequate training, lack of independent oversight, political interference, and cultural acceptance of coercive policing contribute to persistent custodial abuse. National human rights mechanisms, including the **National Human Rights Commission (NHRC)**, have authority to investigate custodial violations, yet their recommendations are often non-binding.

## **SOUTH ASIAN COMPARATIVE ANALYSIS**

### **Pakistan**

Pakistan's legal framework provides protections against torture under its Constitution (Article 14) and criminal law, yet enforcement is weak. Custodial deaths and torture remain widespread, particularly in politically charged contexts such as counter-terrorism operations. Although Pakistan is a party to the ICCPR, its failure to accede to UNCAT underscores gaps in legislative commitment to anti-torture norms. Judicial activism has sporadically addressed custodial abuse, but systemic challenges persist due to weak oversight mechanisms and military influence over policing in certain areas.

## **Bangladesh**

Bangladesh ratified UNCAT in 1998 and incorporated torture-related offences through the **Bangladesh Torture and Custodial Death (Prevention) Act, 2013**, which criminalises torture and mandates compensation. Despite these legal provisions, custodial violence remains a pressing human rights concern, with civil society documentation indicating frequent use of torture to extract confessions or intimidate political opponents. Implementation of the 2013 Act and judicial oversight mechanisms has been uneven, raising questions about effective enforcement.

## **Nepal**

Post-conflict Nepal has undertaken substantial legal reforms to align with international norms. Nepal ratified UNCAT in 1991 and the ICCPR in 1991, and the **Interim Constitution of Nepal (2007)** and **Constitution of Nepal (2015)** explicitly guarantee freedom from torture. The transitional justice framework, including the Commission of Inquiry on Enforced Disappearances, reflects efforts to address past custodial abuses. However, accountability gaps persist due to political compromise in transitional justice processes and limited capacity of investigative institutions.

## **Sri Lanka**

Sri Lanka's experience with custodial violence is inextricably linked to its civil war (1983–2009). Allegations of torture, enforced disappearances, and extrajudicial killings drew international scrutiny, particularly from UN special rapporteurs and treaty bodies. Sri Lanka is party to ICCPR and UNCAT, yet domestic implementation has been weak. Post-war accountability mechanisms, including domestic committees and truth commissions, have faced criticism from human rights organisations for lacking independence and judicial powers.

## **CHALLENGES IN ENFORCEMENT AND ACCOUNTABILITY**

### **Lack of Independent Oversight**

A common thread across South Asia is the absence of robust, independent oversight bodies with enforcement powers. Police accountability mechanisms are often internal to law enforcement, undermining impartial investigations.

### **Cultural and Institutional Barriers**

Custodial violence is frequently rationalised as a policing necessity for rapid information gathering, particularly in terrorism or security cases. This cultural acceptance within law enforcement impedes reform.

### **Judicial Access and Legal Aid Deficits**

Vulnerable detainees often lack access to legal representation at early stages of detention, exacerbating risks of abuse. Effective implementation of rights to counsel and prompt judicial review remains uneven.

### **Political Interference**

Political influence over law enforcement and prosecutorial decisions weakens the independence of investigations into custodial abuse, particularly where state actors are implicated.

## **COMPARATIVE INSIGHTS AND BEST PRACTICES**

While India's judicial directives (e.g. D.K. Basu guidelines) represent a significant jurisprudential contribution, similar legal innovations appear in Bangladesh's Torture Prevention Act and Nepal's constitutional guarantees. Variations in commitment to international instruments (e.g. accession to UNCAT) further distinguish how South Asian states integrate human rights obligations domestically.

Best practices emerging from comparative analysis include:

- **Legislative clarity and prohibition of torture** (Bangladesh, Nepal)
- **Judicial supervision of custodial procedures** (India)
- **Dedicated compensation frameworks for victims** (Bangladesh)
- **Transitional justice mechanisms post-conflict** (Nepal, Sri Lanka)

However, the translation of legal norms into practice hinges on political will, institutional capacity, and civic vigilance.

## CONCLUSION

Custodial violence in South Asia underscores the enduring gap between international human rights norms and domestic implementation. While legal frameworks increasingly reflect international obligations, enforcement remains inconsistent. India's constitutional protections and judicial activism offer a strong normative basis, yet systemic barriers persist. Pakistan's limited adherence to anti-torture treaties, Bangladesh's recent legislative reforms, Nepal's transitional justice efforts, and Sri Lanka's post-conflict accountability challenges illustrate the regional diversity of responses to custodial abuse. Effective prevention of custodial violence requires independent oversight, political commitment to human rights, access to justice for detainees, and sustained civil society engagement. Strengthening these elements can bridge the gap between legal commitment and lived reality, advancing human dignity within custodial settings.

## FUTURE SCOPE

Future research and policy work should explore:

1. **Empirical studies on implementation gaps** in custodial rights enforcement across South Asian police and prison systems.
2. **Impact assessments of judicial directives** (e.g. India's Basu guidelines) on reducing custodial abuse.
3. **Comparative evaluations of accountability institutions**, including police ombudsman models.
4. **Role of technology and independent monitoring tools** (e.g. body cameras, detention tracking systems) in preventing abuse.
5. **Victim-centred approaches** to rehabilitation and redress, including psychological support frameworks.
6. **Education and training reforms** for law enforcement emphasising human rights and international norms.

A multidimensional approach that combines legal reform, institutional strengthening, and cultural change offers the best prospect for eradicating custodial violence in the region.



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