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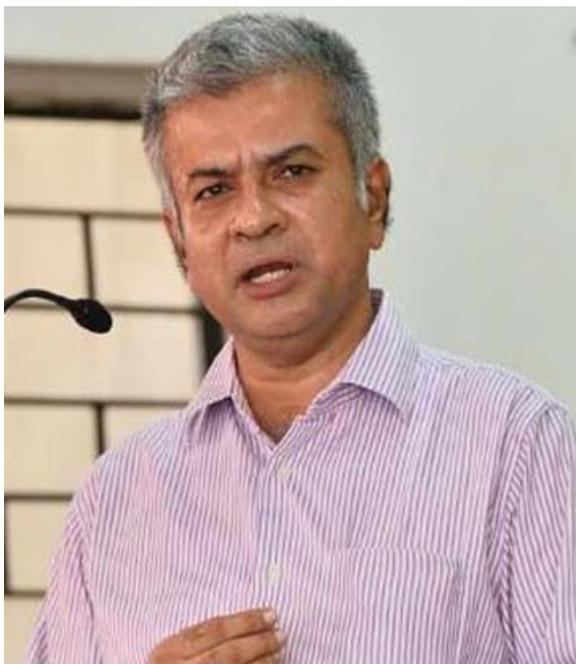
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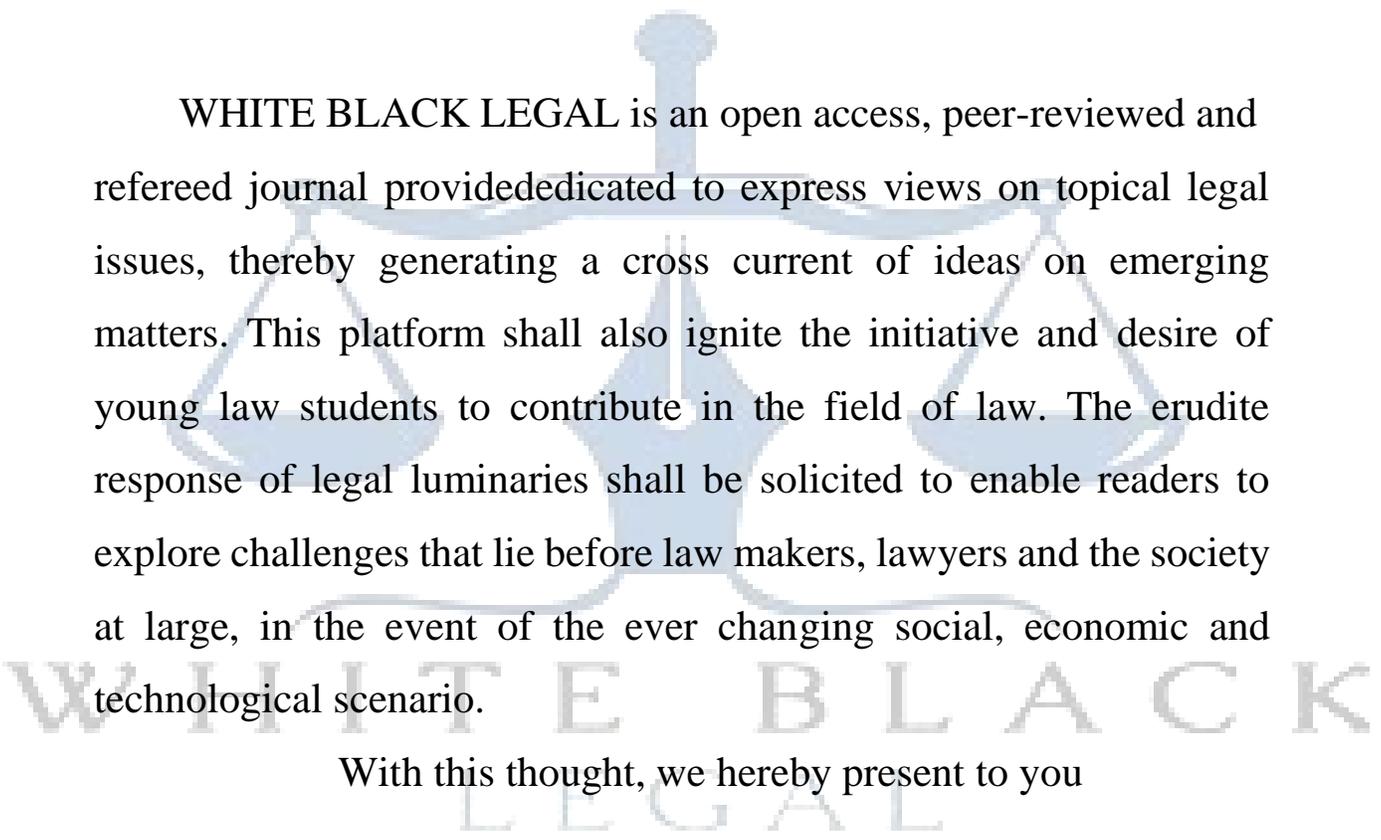
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With this thought, we hereby present to you

CUSTODIAL VIOLENCE IN INDIA AND SOUTH ASIAN COUNTRIES - SPECIAL REFERENCE TO INTERNATIONAL PERSPECTIVE OF HUMAN RIGHTS

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Abstract

Custodial violence remains one of the gravest human rights violations perpetrated by state authorities across democratic and authoritarian systems alike. Despite constitutional guarantees, statutory safeguards, and international human rights obligations, acts of torture, ill-treatment, and deaths in custody continue to plague law enforcement institutions. This article undertakes a comprehensive comparative study of custodial violence in India and selected South Asian countries—namely Bangladesh, Pakistan, Sri Lanka, Nepal, and Myanmar—against the backdrop of international human rights norms and jurisprudence. It evaluates the convergence and divergence in legal frameworks, enforcement mechanisms, and judicial responses across these jurisdictions. Using doctrinal and analytical methodology, the paper integrates major case laws, statutory developments, and United Nations conventions such as the Convention Against Torture (CAT),¹ to assess the region's compliance with global human rights standards. The article concludes that while India and other South Asian states have made formal commitments to human rights, the absence of effective accountability mechanisms and entrenched police impunity perpetuate custodial violence. It advocates for stronger ratification of international conventions, independent oversight mechanisms, and harmonised regional cooperation for the eradication of custodial torture in South Asia.

Keywords: Custodial Violence, Human Rights, Torture, South Asia, India, Police Brutality, International Law, Convention Against Torture, Comparative Law, Judicial Accountability.

¹ United Nations General Assembly Resolution 39/46, adopted on 10 December 1984.

1. Introduction

Custodial violence, in its multifaceted manifestations—whether physical, psychological, or sexual—constitutes one of the most severe affronts to the principles of constitutionalism and human dignity. When a state official inflicts harm upon a person deprived of liberty, it is not merely an act of individual misconduct but a systemic violation of the social contract between the State and its citizens. Such violence, particularly within police stations, prisons, and interrogation centres, undermines the very notion of justice and due process enshrined in democratic constitutions. The practice, often normalised within institutional culture, transforms law enforcement into an instrument of fear rather than protection, thereby eroding public trust in the criminal justice system.

Within the South Asian context, custodial violence assumes a particularly acute dimension due to the historical legacy of colonial policing structures. The police institutions established under British rule were designed primarily for coercive control rather than public service. Post-independence governments in India, Pakistan, Bangladesh, and Sri Lanka largely retained these authoritarian frameworks, perpetuating methods of interrogation rooted in intimidation, physical coercion, and extrajudicial punishment. Consequently, the persistence of custodial brutality in these nations is not a sporadic aberration but a deeply entrenched institutional practice that continues to defy modern legal and ethical standards.

According to the *Asian Centre for Human Rights* (2023), India alone records an average of more than 165 custodial deaths annually, a figure that likely underrepresents the true magnitude of abuse due to widespread underreporting and administrative concealment. Comparative statistics from neighbouring South Asian countries reveal similar patterns of impunity, where deaths in police and judicial custody are frequently attributed to “natural causes” or “suicide” without independent forensic examination. Such manipulations reflect not only institutional complicity but also a profound disregard for the international obligation to ensure transparent and impartial

investigations into all custodial deaths, as mandated under Article 12² of the *UN Convention Against Torture (CAT)*.

Despite the existence of constitutional protections and statutory safeguards, systemic impunity continues to thrive. Article 21³ of the Indian Constitution guarantees the right to life and personal liberty, which the Supreme Court has expansively interpreted to include freedom from torture and inhuman treatment. Similarly, Pakistan's Constitution under Article 14⁴ and Sri Lanka's under Article 11⁵ recognise human dignity and protection against torture as fundamental rights. Yet, these guarantees are often rendered ineffective by institutional reluctance to prosecute police personnel, bureaucratic inertia, and political interference. The principle of equality before law—enshrined in Article 14 of the Indian Constitution and its equivalents elsewhere—thus remains an unfulfilled promise for those who perish in custody.

The persistence of custodial violence in South Asia signals a deeper institutional malaise. It is not merely the product of individual cruelty but the outcome of a structural imbalance in power between the State and its citizens. Weak prosecutorial accountability allows law enforcement agencies to operate with impunity, often shielded by political patronage. The lack of independent oversight mechanisms—such as autonomous police complaints authorities or effective human rights commissions—further exacerbates the crisis. This institutional inertia perpetuates a cycle of violence where each act of torture reinforces the culture of silence within the criminal justice system.

Another critical dimension is the politicisation of law enforcement. Police and security forces in many South Asian states are frequently deployed as instruments of political control, suppressing dissent and targeting vulnerable or marginalised groups. The misuse of preventive detention laws and the excessive use of custodial interrogation in politically sensitive cases demonstrate how state power can be weaponised against fundamental freedoms. This nexus between political authority

² United Nations. (1984). *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 12. United Nations Treaty Series, 1465, 85

³ "No person shall be deprived of his life or personal liberty except according to procedure established by law."

⁴ "The dignity of man and, subject to law, the privacy of home, shall be inviolable. No person shall be subjected to torture for the purpose of extracting evidence."

⁵ "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

and law enforcement not only corrodes public confidence in the impartiality of the criminal justice system but also contradicts the international law principle of non-derogability⁶ of the prohibition against torture, even in circumstances of emergency or national security.

The present study, therefore, situates custodial violence within a broader framework of comparative jurisprudence. It seeks to analyse the statutory regimes, judicial interpretations, and international obligations that collectively define state responsibility in India and other South Asian countries. By integrating case law analysis with international human rights standards, this research attempts to uncover the systemic deficiencies that allow such violations to persist despite formal legal safeguards. Ultimately, it contends that custodial violence in South Asia is not simply a violation of domestic law but a grave breach of international human rights commitments, demanding a coordinated regional and global response to restore accountability, transparency, and justice within custodial institutions.

2. Concept and Nature of Custodial Violence

Custodial violence represents one of the most egregious manifestations of state power exercised beyond the bounds of legality and morality. It encompasses every form of physical, psychological, and sexual abuse inflicted upon individuals who are under detention or otherwise deprived of liberty by public officials. Such acts are not limited to overt physical assault but also include prolonged detention without trial, humiliation, solitary confinement, and the denial of medical assistance. The gravity of custodial violence lies in the fact that it is committed by those entrusted to uphold the law, thereby transforming institutions of justice into instruments of oppression. In its essence, custodial violence is an affront to the dignity of the human person, violating the fundamental right to life and liberty guaranteed under constitutional and international law alike.

The **United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)** serves as the cornerstone of the international legal framework against custodial brutality. Article 1⁷ of the Convention defines torture as any act through which

⁶ the absolute nature of certain human rights that **cannot be suspended, restricted, or violated under any circumstances**

⁷ "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a

severe physical or mental pain is intentionally inflicted by or at the instigation of a public official for purposes of coercion, punishment, or intimidation. Importantly, the Convention recognises torture as a *jus cogens*⁸ norm—one from which no derogation is permissible under any circumstance, including war, emergency, or internal instability. This absolute prohibition underscores that custodial violence cannot be justified under the pretext of national security or public order. It obliges state parties not only to refrain from torture but also to prevent, investigate, and prosecute any such act committed within their jurisdiction.

Within India, custodial violence manifests in multifaceted and often insidious forms. Beyond the notorious “third-degree” interrogation methods that involve physical coercion, there exist more subtle violations such as prolonged detention without legal representation, intimidation of family members, and psychological manipulation to extract confessions. Reports by the **National Human Rights Commission (NHRC)**⁹ and the **Asian Centre for Human Rights (ACHR)**¹⁰ consistently reveal recurring patterns of torture and custodial deaths in police stations and prisons. Despite a robust constitutional framework—particularly Article 20(3)¹¹, Article 21, and Article 22¹² of the Indian Constitution—implementation remains profoundly inconsistent. The disparity between judicial pronouncements and ground realities demonstrates a disjunction between normative legality and functional justice.

Judicial interventions have sought to curb these violations through progressive jurisprudence. In *D.K. Basu v. State of West Bengal* (1997),¹³ the Supreme Court of India issued an authoritative set of procedural safeguards governing arrest and detention, mandating, inter alia, the maintenance of arrest memos, medical examinations, and the right to inform relatives. Similarly, in *Joginder*

third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity.”

⁸ United Nations. (1969). *Vienna Convention on the Law of Treaties*, Article 53. United Nations Treaty Series, 1155, 331.

⁹ Government of India. (1993). *The Protection of Human Rights Act, 1993*. New Delhi: Ministry of Law and Justice.

¹⁰ Asian Centre for Human Rights. (2023). *Annual Human Rights Report 2023*. New Delhi: Asian Centre for Human Rights.

¹¹ “No person accused of any offence shall be compelled to be a witness against himself.”

¹² provides protection to individuals in matters of arrest and detention, guaranteeing rights such as being informed of the reasons for arrest, the right to consult a legal practitioner, and safeguards against preventive detention beyond prescribed limits.

¹³ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 (India).

Kumar v. State of Uttar Pradesh (1994),¹⁴ the Court emphasised that no arrest should be made without reasonable justification and accountability. However, despite these landmark rulings, custodial violence persists largely because of weak enforcement mechanisms, political interference, and institutional solidarity among law enforcement officers. The judiciary's moral guidance, though laudable, is often undermined by systemic inertia within investigative and prosecutorial agencies.

The situation in Pakistan mirrors this pattern of entrenched custodial abuse. Despite constitutional protections under Article 14(2)¹⁵ of the **Constitution of the Islamic Republic of Pakistan**, which explicitly prohibits torture for extracting evidence, reports from the **Human Rights Commission of Pakistan (HRCP)**¹⁶ reveal widespread violations across police and military detention centres. The phenomenon of “fake encounters,” where individuals are killed in staged armed clashes, continues to serve as a euphemism for extrajudicial executions. The *2022 Torture and Custodial Death (Prevention and Punishment) Act*¹⁷ marked an important legislative milestone, introducing criminal penalties for acts of torture by public officials. Yet, the persistence of unreported or uninvestigated custodial deaths demonstrates that legislative enactment alone cannot dismantle the entrenched culture of impunity within law enforcement.

Bangladesh presents a similar paradox. Although it enacted the *Torture and Custodial Death (Prevention) Act, 2013*¹⁸, which is considered one of the most progressive anti-torture statutes in South Asia, implementation has been almost negligible. The **Ain o Salish Kendra (ASK)**¹⁹ and other rights organisations have documented numerous cases of torture under the **Rapid Action Battalion (RAB)**, often involving deaths in custody justified as “crossfire incidents.” The continued use of draconian laws such as the *Digital Security Act* has further exacerbated custodial

¹⁴ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260 (India).

¹⁵ “No person shall be subjected to torture for the purpose of extracting evidence,”

¹⁶ **independent, non-governmental organisation** established in 1987 to monitor, document, and advocate for the protection and promotion of human rights across Pakistan

¹⁷ of Pakistan criminalises torture, custodial deaths, and custodial rape by public officials, aligning domestic law with the UN Convention Against Torture (CAT) and ensuring penalties, investigations, and victim redress mechanisms.

¹⁸ of Bangladesh is a landmark law enacted to prohibit and punish acts of torture, inhuman treatment, and custodial deaths by law enforcement or public officials, in compliance with the UN Convention Against Torture (CAT).

¹⁹ **Bangladesh-based human rights and legal aid organisation** founded in 1986, dedicated to promoting access to justice, preventing custodial torture, and protecting civil and political rights through advocacy, research, and legal support.

abuses against journalists and activists. This pattern illustrates that legislative frameworks, without corresponding institutional reform and judicial independence, are insufficient to curb state-sponsored violence.

The denial of medical care to detainees—a lesser discussed yet pervasive form of custodial violence—deserves particular attention. Failure to provide timely medical assistance or to document injuries constitutes both a violation of the *right to health* and an attempt to suppress evidence of torture. In several documented instances in India and Sri Lanka, detainees have succumbed to injuries sustained during interrogation, while post-mortem reports are manipulated to conceal the cause of death. The United Nations' *Istanbul Protocol* (2004)²⁰ prescribes specific standards for documenting torture and investigating custodial deaths, yet few South Asian nations have adopted these guidelines effectively.

Hence, the nature of custodial violence across South Asia is systemic rather than incidental. It thrives in environments where accountability mechanisms are weak, where investigative agencies protect their own, and where the political will to enforce human rights remains tepid. The comparative analysis between India, Pakistan, and Bangladesh reveals a troubling uniformity: a pattern of institutional silence, bureaucratic delay, and judicial hesitation that collectively perpetuate the cycle of torture. Addressing custodial violence, therefore, requires not only legal reform but also a moral reorientation of state institutions towards genuine respect for the dignity and autonomy of every human being under their custody.

A critical aspect of custodial violence is the duality of its justification: while states often defend coercive measures as necessary for national security or efficient law enforcement, such justifications collapse before international human rights law, which recognises torture as an absolute prohibition under *jus cogens*²¹ norms. The perpetuation of such violence reflects a culture of administrative indifference and the absence of independent oversight mechanisms.

²⁰ (Professional Training Series No. 8/Rev. 1). United Nations.

²¹ United Nations. (1969). *Vienna Convention on the Law of Treaties*, Article 53. United Nations Treaty Series, 1155, 331.

3. Legal Framework in India

India's legal regime offers extensive constitutional and statutory safeguards against custodial violence. Article 20(3) protects individuals from self-incrimination; Article 21 guarantees the right to life and personal liberty; and Article 22(1) ensures procedural fairness upon arrest. The *Code of Criminal Procedure, 1973* (CrPC) mandates that any person arrested be produced before a magistrate within 24 hours (Section 57), while the *Indian Evidence Act, 1872* renders confessions under coercion inadmissible (Section 24).

The judiciary has consistently expanded the ambit of these protections. In *Joginder Kumar v. State of U.P.* (1994)²², the Supreme Court emphasised that arrest should not be routine and must serve a lawful purpose. Further, in *D.K. Basu*, the Court enumerated specific directives including mandatory arrest memos, medical examinations, and access to lawyers for detainees. However, despite such jurisprudential progress, the National Human Rights Commission (NHRC) continues to document thousands of custodial deaths annually, reflecting a stark implementation gap.

India has yet to ratify the United Nations Convention Against Torture (CAT), though it signed the treaty in 1997. The *Prevention of Torture Bill, 2010* lapsed without enactment, and subsequent efforts have stagnated amid bureaucratic reluctance and political inertia. This gap weakens India's compliance with international human rights commitments and limits victims' access to redress mechanisms.

4. Comparative Study: South Asian Countries

South Asia's experience with custodial violence reveals a shared colonial inheritance of coercive policing, compounded by weak judicial independence and underdeveloped human rights enforcement.

In **Bangladesh**, the enactment of the *Torture and Custodial Death (Prevention) Act, 2013* marked a historic milestone in South Asian human rights jurisprudence, as it was among the first domestic statutes in the region to explicitly criminalise custodial torture. The Act defines torture broadly,

²² *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260 (India).

encompassing physical and psychological harm inflicted by public officials during arrest, detention, or interrogation. It also prescribes imprisonment of up to life for custodial deaths and mandates compensation for victims. Nevertheless, the effectiveness of this law has been undermined by systemic weaknesses in law enforcement and the judiciary. Investigations are often delayed or manipulated, and prosecutors are reluctant to pursue cases against police officials. According to reports by **Ain o Salish Kendra (ASK)** and **Amnesty International**,²³ not a single conviction was secured in the first six years after the Act's passage, underscoring a glaring enforcement deficit.

The **2019 custodial death of writer Mushtaq Ahmed** serves as a tragic illustration of this failure. Detained under the *Digital Security Act, 2018* for allegedly “spreading anti-state propaganda,” Ahmed died in custody following repeated allegations of torture and denial of medical care. His death provoked national and international outrage, exposing the contradictions between Bangladesh's statutory framework and its actual human rights practices. Despite constitutional guarantees under Article 35(5)²⁴ of the **Bangladesh Constitution**, which prohibits torture, the increasing misuse of digital surveillance laws to suppress dissent has led to a resurgence of state-inflicted custodial abuses. The lack of judicial independence, coupled with a politicised bureaucracy, continues to shield perpetrators from accountability.

In **Pakistan**, the passage of the *Torture and Custodial Death (Prevention and Punishment) Act, 2022* represented a significant step toward fulfilling the country's obligations under the *UN Convention Against Torture (CAT)*, which Pakistan ratified in 2010. The Act criminalises all forms of torture by public officials and establishes penalties ranging from three to ten years' imprisonment. It also provides for the establishment of an independent oversight mechanism within the Federal Ombudsman's Office to investigate complaints. However, reports from the **Human Rights Commission of Pakistan (HRCP)** and the **International Commission of Jurists**

²³ a **global non-governmental organisation** founded in 1961, dedicated to promoting and protecting human rights worldwide through research, advocacy, and campaigning against abuses such as torture, arbitrary detention, and the death penalty.

²⁴ explicitly prohibits torture, stating that “No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”

(ICJ)²⁵ in 2023 indicate that torture remains widespread, particularly within counter-terrorism and intelligence operations. Practices such as enforced disappearances, incommunicado detention, and extrajudicial killings persist with impunity, especially in provinces like Balochistan and Sindh, revealing a continuing gap between formal legal reform and institutional conduct.

Sri Lanka's experience further exemplifies the limitations of legislative compliance without effective enforcement. The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, 1994* domesticated the provisions of the CAT into national law, theoretically allowing prosecution of state officials for torture. Yet, post-war militarisation following the end of the Sri Lankan Civil War in 2009 entrenched a culture of impunity within security institutions. The **UN Committee Against Torture**, in its periodic reviews, has repeatedly condemned Sri Lanka for failing to prosecute perpetrators despite credible evidence. Cases such as the **Trincomalee Five (2006)**²⁶ and the **Mirusuvil Massacre (2000)**²⁷ demonstrate how protracted delays, intimidation of witnesses, and weak prosecutorial independence undermine accountability. Although the **Human Rights Commission of Sri Lanka** has played a mediating role, its lack of binding powers has rendered its interventions largely symbolic.

In **Nepal**, the criminalisation of torture under the *Criminal Code, 2017* represented an attempt to bridge the gap between constitutional guarantees and international commitments under the *CAT* and the *International Covenant on Civil and Political Rights (ICCPR)*.²⁸ The Code defines torture broadly and provides for imprisonment and compensation; however, implementation has been inconsistent.

The country's transitional justice process, initiated after the 2006 Comprehensive Peace Agreement, remains paralysed. Institutions such as the **Truth and Reconciliation Commission**

²⁵ is a **non-governmental organisation composed of judges and lawyers**, established in 1952 to promote the rule of law, human rights, and judicial independence globally through legal analysis, advocacy, and litigation support.

²⁶ refers to the extrajudicial killing of five Tamil students by Sri Lankan security forces in Trincomalee

²⁷ the killing of eight Tamil civilians, including four children, by Sri Lankan Army personnel in the Jaffna District village of Mirusuvil during the civil war

²⁸ United Nations. (1966). *International Covenant on Civil and Political Rights (ICCPR)*. United Nations Treaty Series, 999,

(TRC²⁹) and the **Commission of Investigation on Enforced Disappeared Persons (CIEDP³⁰)** have been criticised for their ineffectiveness and political manipulation. Victims of wartime torture and enforced disappearance continue to face barriers to justice, as state officials and security personnel enjoy de facto immunity. Consequently, Nepal’s commitments under international law have been reduced to symbolic compliance rather than substantive protection.

Myanmar, under continued military rule, represents the most acute crisis in custodial violence within South Asia. The **Office of the United Nations High Commissioner for Human Rights (OHCHR³¹)** and the **Independent Investigative Mechanism for Myanmar (IIMM³²)** have documented extensive and systematic abuses since the February 2021 military coup, including arbitrary arrests, custodial killings, and sexual torture of detainees.

The military junta’s security forces routinely detain political opponents, journalists, and ethnic minorities under draconian laws such as the *Unlawful Associations Act* and *Counter-Terrorism Law³³*. Torture is employed as a tool of political repression, with detainees subjected to electric shocks, beatings, and deprivation of medical treatment. These acts constitute grave breaches of international humanitarian law and crimes against humanity under the *Rome Statute of the International Criminal Court³⁴*, even though Myanmar has not ratified the statute. Across these jurisdictions, a common pattern emerges: **legislative progress without operational transformation**. South Asian states have, to varying degrees, enacted anti-torture laws in compliance with international norms. Yet, their enforcement remains impeded by structural deficiencies, including weak judicial independence, lack of witness protection, and politicisation

²⁹ a **restorative justice body** established in various post-conflict nations—most notably in **South Africa (1995)**—to investigate human rights violations, promote accountability, and foster national healing through truth-telling and reconciliation processes.

³⁰ investigate cases of enforced disappearances during the armed conflict (1996–2006), ensure truth-seeking, and recommend reparations for victims and accountability measures for perpetrators.

³¹ responsible for promoting and protecting human rights globally, monitoring violations, providing technical assistance, and supporting international human rights mechanisms such as treaty bodies and special rapporteurs

³² to collect, consolidate, preserve, and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, in order to facilitate future prosecutions

³³ Government of Myanmar. (2014). *Counter-Terrorism Law, 2014*, and *Unlawful Associations Act, 1908 (as amended)*. Naypyidaw: Government of the Republic of the Union of Myanmar.

³⁴ adopted in 1998 and effective from 1 July 2002, established the ICC as a **permanent international tribunal** to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression, reinforcing accountability under international criminal law.

of law enforcement agencies. The persistence of custodial violence reveals that the mere existence of legal prohibitions does not suffice unless accompanied by genuine political will, institutional reform, and cultural change within security establishments. The comparative experience of Bangladesh, Pakistan, Sri Lanka, Nepal, and Myanmar thus illustrates the paradox of formal compliance and practical defiance. These nations publicly commit to human rights norms, participate in UN mechanisms, and report periodic progress, yet continue to condone custodial violence through silence, delay, and denial. This paradox underscores the urgent need for **regional cooperation under the aegis of SAARC³⁵** or a dedicated **South Asian Human Rights Mechanism**,³⁶ capable of ensuring transnational accountability and harmonisation of standards. Until such institutional frameworks evolve, the promise of the *Convention Against Torture* will remain aspirational within South Asia’s legal landscape.

Table 1: Comparative Legal Framework in South Asia

Country	Specific Anti-Torture Law	Ratified CAT	Enforcement Mechanism	Status of Accountability
India	No (Bill pending)	Signed (1997)	NHRC, Judiciary	Weak enforcement
Bangladesh	Torture & Custodial Death Act, 2013	No	Judiciary	Minimal convictions
Pakistan	Torture Act, 2022	Yes	Federal Ombudsman	Limited accountability
Sri Lanka	CAT Act, 1994	Yes	Human Rights Commission	Persistent impunity
Nepal	Criminal Code, 2017	Yes	National Human Rights Commission	Slow implementation

³⁵ established in 1985 to promote economic growth, social progress, and cultural development among its eight member states—Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka—through cooperation and mutual assistance.

³⁶ is a **proposed regional framework** aimed at promoting and protecting human rights within the SAARC member states by establishing cooperative institutions for monitoring, advocacy, and redress, modelled on mechanisms like the ASEAN Intergovernmental Commission on Human Rights (AICHR).

Country	Specific Anti-Torture Law	Ratified CAT	Enforcement Mechanism	Status of Accountability
Myanmar	None (military rule)	No	None	Severe violations

Source: Compiled from NHRC, HRCP, UNCAT Reports (2023).

5. International Human Rights Perspective

The absolute prohibition of torture under international law is well established through the *Universal Declaration of Human Rights (1948)* (Article 5),³⁷ the *International Covenant on Civil and Political Rights (ICCPR)* (Article 7³⁸), and the *Convention Against Torture (1984)*³⁹. The jurisprudence of international bodies such as the *UN Human Rights Committee* and the *Inter-American Court of Human Rights* has reinforced state obligations to investigate and punish custodial violence.

In *Velásquez Rodríguez v. Honduras* (1988),⁴⁰ the Inter-American Court held that the state bears responsibility for disappearances and custodial killings, establishing the principle of due diligence. Similarly, the *European Court of Human Rights* in *Selmouni v. France* (1999⁴¹) articulated that torture's definition evolves with human dignity's progressive standards.

South Asian states, as signatories to the ICCPR, are bound to uphold these standards. However, regional compliance remains fragmented due to domestic political resistance and inadequate institutional frameworks. The *Asian Human Rights Commission* and *South Asian Association for Regional Cooperation (SAARC)* have yet to develop robust mechanisms akin to the European or Inter-American systems, leaving victims reliant on national courts and limited NGO interventions.

³⁷ United Nations. (1948). *Universal Declaration of Human Rights*, Article 5. Paris: United Nations General Assembly.

³⁸ United Nations. (1966). *International Covenant on Civil and Political Rights (ICCPR)*, Article 7. United Nations Treaty Series, 999, 171.

³⁹ United Nations. (1984). *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*. United Nations Treaty Series, 1465, 85.

⁴⁰ *Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Inter-American Court of Human Rights, Series C No. 4

⁴¹ *Selmouni v. France*, Application No. 25803/94, Judgment of 28 July 1999, European Court of Human Rights

6. Judicial Responses and Landmark Cases

Judicial activism has served as a vital bulwark against custodial excesses. The Indian judiciary's interventions in *Sunil Batra v. Delhi Administration* (1978)⁴², *Nilabati Behera v. State of Orissa* (1993)⁴³, and *D.K. Basu* have expanded the right to compensation and accountability for custodial deaths. The Court in *Nilabati Behera* recognised state liability for custodial deaths under Article 21, marking a pivotal step in public law compensation.

In Bangladesh, courts in *State v. Md. Delwar Hossain* (2015⁴⁴) invoked the 2013 Torture Act to impose rare custodial torture convictions. In contrast, Sri Lanka's *Basnayake v. State* ⁴⁵cases demonstrate judicial reluctance to challenge security establishment impunity. Nepal's Supreme Court, in *Rajendra Dhakal v. Government of Nepal* (2007⁴⁶), mandated criminal investigations into disappearances, underscoring the judiciary's potential as a human rights guardian.

However, judicial efficacy depends on enforcement mechanisms, and many judgments remain unimplemented. The absence of independent investigative bodies to pursue police officers undermines these rulings' deterrent value.

7. Challenges and Policy Implications

The persistence of custodial violence in South Asia arises from structural deficiencies: politicised police forces, lack of forensic transparency, poor training in human rights, and reluctance to prosecute officers. Socioeconomic inequalities further exacerbate vulnerability, as marginalised groups disproportionately suffer from custodial abuse.

Another obstacle is legislative inertia. India's failure to enact anti-torture legislation reflects the political sensitivity surrounding security agencies. Moreover, human rights commissions often lack enforcement powers, functioning as recommendatory bodies. Regional cooperation through

⁴² *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494 (India).

⁴³ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 (India).

⁴⁴ *State v. Md. Delwar Hossain*, (2015) ICT-BD Case No. 01 OF 2011

⁴⁵ *Basnayake v. State*, (Sri Lanka Supreme Court, Fundamental Rights Application No. 51/2005).

⁴⁶ *Rajendra Dhakal v. Government of Nepal*, Writ No. 3575 of 1999, Supreme Court of Nepal (Decision of June 1, 2007)

SAARC remains underutilised, with no binding human rights charter comparable to the African or European systems.

8. Suggestions and Reforms

To align domestic frameworks with international norms, the following reforms are imperative:

- 1. Ratification of CAT and Enactment of National Legislation:** India must ratify the Convention Against Torture and enact a comprehensive statute defining and penalising torture.
- 2. Independent Investigative Bodies:** Establish specialised custodial violence investigation units independent of police hierarchies.
- 3. Judicial Oversight and Victim Compensation:** Expand public law remedies through fast-track human rights courts.
- 4. Regional Cooperation:** Encourage SAARC nations to adopt a *South Asian Charter on Human Rights Enforcement*.
- 5. Training and Sensitisation:** Mandatory human rights modules in police academies to curb systemic brutality.

9. Conclusion

Custodial violence represents the most egregious manifestation of state oppression, eroding constitutional morality and international human rights commitments. South Asia's shared postcolonial experiences demonstrate that legislative reforms alone are insufficient without institutional accountability. The comparative analysis reveals that while states have moved towards formal compliance with international obligations, entrenched impunity and weak political will hinder meaningful progress. A holistic approach—combining legislative, judicial, and regional mechanisms—is indispensable to safeguard the inherent dignity of individuals in state custody. The eradication of custodial violence is not merely a legal necessity but a moral imperative central to the idea of justice in democratic societies.

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