

IN CUSTODY LAW, IMPUNITY AND PRISONER ABUSE IN SOUTH ASIA.  
By Nitya Ramakrishnan. Sage Publications India Private Limited. New Delhi. Pp  
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International law allows no justification for the use of torture, on grounds of emergency or otherwise. The most specific and significant international law document on torture is found in CAT (Convention against Torture) 1985.<sup>1</sup> It defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...by or at the instigation of or with the consent or acquiescence of state actors as part of interrogation, punishment, intimidation, or discrimination.

An eminent scholar on law and society, Professor Upendra Baxi argues that torture is, in fact, institutionalized. As he puts it, “custodial violence or torture is an integral part of police operations in India”.<sup>2</sup> In the book under review<sup>3</sup> the author described the state of affairs of custodial treatments in India, Pakistan, Bangladesh, Sri Lanka, Nepal and Afghanistan.

The author focused on various facets of torture in India in section 1. The author attempted in the introductory chapter torture in public sphere. While citing the statistical realities from the National Human Rights Commission the author shows the extent of custodial torture in Indian jails and police custody. The aim of this study is not to recount incidents or record the number of custodial parlances through lenses. It is to throw rope and expose the hegemony of the impunity which operates through semantic condemnation and systemic tolerance. To discuss the situation of in custody in India the author discussed people’s right to disclose, the Constitution and custodial rights, the penal code and the law of evidence, due process under CrPC, police acts and prison manuals, state of custodial justice, judicial trends, perspectives on torture and also discussed 6 case studies.

Various cases analyzed by the author and observed that despite the explicit recognition in the *D.K.Basu*<sup>4</sup> case, the state’s obligation to investigate and prosecute, instances of illegal detention and custodial violence are questionable. The disturbing fact that emerges from the cases analyzed is that action claims for compensation, petitions for habeas corpus or seeking directions for an investigation – is invariably brought to the higher judiciary either by the big team or the victim’s family, or by the civil society organization.

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1 Adopted and opened for signature, ratification and accession by UN General Assembly resolution 39/46 of 10 Dec. 1984 entry into force June 26, 1987, in accordance with art. 27(1).

2 Upendra Baxi, *The Crisis of the Indian Legal System* 123 (Vikas Publishing House, New Delhi 1981).

3 Nitya Ramakrishnan, *In Custody: Law, Impunity and Prisoner Abuse in South Asia* (Sage Publications India, 2013).

4 (1997) 1 SCC 416.

Torture remains an openly rooting part of police work. Emergency and security laws are not the only ones that encourage impunity but normal laws to make it hard to bring Indian state actors to justice. Through various cases it is also revealed that conditions in jails continue to be abysmal. The author brought to light the inhumane practice of torture on convicted criminals or undertrials in the jail which even resulted the death of the prisoners.

The author initiated the discussion on Pakistan's regime in section 2 focusing on custody law impunity and prisoner abuse by referring the constitutional provisions at various periods. The author analyzed Pakistan's legal regime, due process, the judiciary, international and statutory commitments, correcting the custodians. In discussing some parting sharp focuses on due process, the author observed that human rights abuse and torture are also rampant under the hard laws. In many cases, women alleging rape had been arrested and convicted of punishments of stoning and weeping women through the impossible and unequal rules of evidence. Despite a constitutional prohibition regarding torture, the Pakistan Army was running several detention and torture cells in almost every city. However, author also noted that in a country that has seen the destruction of its democratic institutions almost since its inception, there are individuals and institutions of indomitable courage while keeping alive the pilot for human rights.

In section 3 on Bangladesh the author started the discussion on the situation after independence of Bangladesh. The author discussed also martial law and other agents during 1971, international commitments of domestic legal framework, court directives and recommendation of judicial commissions, and also describes some case studies.

After independence in Bangladesh martial law regime and state emergency have been regular occurrences. The martial law has been declared unconstitutional in principle by the Supreme Court in two judgements delivered in 2010. The Division of the Supreme Court confirmed the ruling of its high court division that proclamation of martial law would violate the basic structure of the Constitution. The author deals with Bangladesh's commitments under international law on human rights instruments, its constitutional and statutory provisions affecting custodial justice and related court rulings. He has also referred important court decisions and recommendations of national commissions and international committees on custodial justice. The author concluded this section with case studies of custodial abuse in the context of special security laws.

Section 4 of the book deals with history and politics of Sri Lanka. Discussing about state of affairs in Sri Lanka the author discussed AIDS history and politics, the Constitution and emergency legislation, criminal law and custodial justice, international law: obligations and compliance. In 1978 the Jayawardene government brought into force a new Constitution, which renamed Sri Lanka the Democratic Socialist Republic

of Sri Lanka and established a Presidential form of government. The Sri Lankan Parliament passed Prevention of Terrorism Act in 1979 and made into a permanent law in 1980. In some cases, the Supreme Court of Sri Lanka has directed administrative action and even prosecution of those responsible for torture. The response of the administration was not always satisfactory. The court has commented that there was a need for the inspector general of police to take action to prevent infringements of fundamental rights by police officers. Sweeping powers of arrest and detention, use of confessions recorded by the police, waiver of proof relating to recovery of offensive material from a suspect and immunity to the security forces or the sum and substance of the terror law and emergency provisions in Sri Lanka. There can be no protection from torture in the face of such statutory impunity. The Human Rights Commission of Sri Lanka is empowered to enquire the complaints and ensure the protection of fundamental rights of Sri Lankan citizens.

In section 5 the author deals with human rights conditions in Nepal. The author discussed the 1990 Constitution, accountability, the interim Constitution, the Army, Nepal's legal framework, Torture Compensation Act, 1996, the courts and custodial justice and also added some case studies. Nepal has acceded to following international conventions: Geneva Conventions 1949; Convention on the Prevention and Punishment of the Crime of Genocide 1948; Convention on the Elimination of all forms of Discrimination against Women 1979; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1975.

In this section the author reviews the 1990 Constitution promulgated by King Birendra under popular pressure and also analyzed the new interim constitution of Republican Nepal, directed by people's representative after the democratic movement overthrew the monarchy. He also mentioned the military movement which has become the single most powerful factor in Nepal politics today and also reviews the statutory regime of Nepal. The author also looked into the working of the Torture Compensation Act and reviews institutional response to the menace of custodial torture and also conducted interviews with government officials in implementing international commitments against custodial torture. There are five case studies at the end of the chapter.

In section 6 the author focused on Afghanistan. During the 19<sup>th</sup> Century the Afghan leadership had got into the habit of alternating between Russian and British help. The influence of the two European powers continued till beginning of the 20<sup>th</sup> century. At the turn of the 20<sup>th</sup> Century, liberal and democratic ideologies came into Afghanistan. The new 1964 Constitution was undoubtedly a major conceptual breakthrough. But the problem of an untrained judiciary remained and laws that primarily affected life and liberty, such as criminal law, were on still based on the Sharia and prescribed corporeal mutilation. The period from 1965 to 1973 was the most productive in

terms of codification and centralization in the legal history of Afghanistan. The author reported from Amrit Singh of American Civil Liberties Union which says: 'these documents make it clear that the military was using unlawful interrogation techniques in Afghanistan' Rather than putting a stop to this systemic abuses, senior officials appear to have turned a blind eye to them. The author pointed out that although the constitution of Afghanistan guarantees fundamental human rights, it does not adequately provide for their protection. The Supreme Court has no independent power and has no independent power to review legislation. It also lacks in independent power over the executive. Article 58 of the Constitution provides for an independent human rights commission. It is recommendatory and referral body. To give an account of custody in respect of Afghanistan the author discussed land and the people, the challenges of constitutionalism, human rights. The author also focused on the Soviet occupation, counter terror, Afghanistan's human rights norms and the criminal justice administration.

In the epilogue the author observed that formal condemnation of custodial torture is necessary but barely sufficient for containing the widespread practice. Effective deterrence can be ensured as a self-executing system of reparation. Reparation includes immediate and adequate compensation to the victims, action against those actually responsible and administrative steps or non-repetition. The burden of justice must be borne by the system and not by the victims. The system is prone to impunity, and to counter which, measures are needed at several levels and in several spheres, normative as well as operational. The author suggested following measures that may be included in the agenda for an advocacy campaign for human rights abuse in custody: ratification of international conventions and the regular reporting to UN monitoring mechanisms; legislative measures particularly penal provisions that criminalize custodial torture or enforced disappearances and administrative liability; monetary compensation for custodial torture and enforced disappearances; medical examinations of persons in custody; and review mechanism.

The treatment of every chapter is very much exhaustive and comprehensive with illustrative blow up. The organization of the book has been properly presented, coherently linked with the theme. The book under review is an effort to deliberate and debate upon some of seminal questions concerning the human rights of the accused and their struggle towards the protection and preservation of those rights. However, the author has only provided constitutional laws on custody and custodial torture. It would have been better if the author had clearly laid down the basic domestic legislations and how the judiciary is treating the cases differently. The author could also have done a comparative study with various 'rule of law' abiding nations.

Overall, the book is useful to the entire academic community, particularly teachers, researchers and students who are studying 'Human Rights', an important area of

legal study. With its comprehensive coverage, it provides a ready reference on the subject in South East Asian region.

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