

THE INVISIBLE CRIME: A COMPARATIVE ANALYSIS OF ENFORCED DISAPPEARANCE, HUMAN RIGHTS, AND CRIMINAL JUSTICE SYSTEMS IN BANGLADESH, INDIA, AND AUSTRALIA

O CRIME INVISÍVEL:

*UMA ANÁLISE COMPARATIVA DO DESAPARECIMENTO
FORÇADO, DOS DIREITOS HUMANOS E DOS SISTEMAS DE
JUSTIÇA CRIMINAL EM BANGLADESH, ÍNDIA E AUSTRÁLIA*

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Abstract

Enforced disappearance is studied as a state-perpetrated crime and serious violation of human rights in the legal systems of Bangladesh, India, and Australia. The research applied a conceptual, comparative, and doctrinal approach to assess the criminal justice treatment of enforced disappearance in these jurisdictions. Despite the fact that the three jurisdictions have different legal systems, none of them formally acknowledge or make enforced disappearance a crime under their own domestic criminal laws. Enforced disappearance is characterized by its inconspicuousness and related impunity and

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hinders the investigation of legal accountability. The research found significant deficiencies in the place where the domestic legislative framework is unable to align with international human rights standards like the International Convention for the Protection of All Persons from Enforced Disappearance. The inherent normative failure in the domestic legal systems of each state is highlighted and harmonized legal reform recommendations sought to align domestic legal systems with international legal obligation. The comparative legal analysis identified ongoing state authority assertion and rule of law obligation tensions. The findings highlight the challenges in strengthening accountability measures and strengthening protections for enforced disappearance victims. The conclusions have important theoretical and practical implications for the improvement of criminal justice systems both interna-

tionally and domestically and thus contribute to the global initiative to eradicate enforced disappearance and uphold human rights.

Keywords: Bangladesh, Comparative Analysis, Criminal Justice Systems, Enforced Disappearance, Human Rights, South Asia and Australia.

Resumo

O desaparecimento forçado é analisado como um crime perpetrado pelo Estado e uma grave violação dos direitos humanos nos sistemas jurídicos de Bangladesh, Índia e Austrália. A pesquisa adotou uma abordagem conceitual, comparativa e doutrinária para avaliar o tratamento do desaparecimento forçado no âmbito da justiça criminal nessas jurisdições. Apesar de os três países possuírem sistemas jurídicos distintos, nenhum deles reconhece formalmente nem tipifica o desaparecimento forçado como crime em sua legislação penal interna. Esse fenômeno é caracterizado por sua invisibilidade e pela impunidade associada, o que dificulta a apuração de responsabilidade jurídica. O estudo identificou deficiências significativas na medida em que os marcos legislativos domésticos não se alinham a padrões internacionais de direitos humanos, como a Convenção Internacional para a Proteção de Todas as Pessoas contra o Desaparecimento Forçado. Evidencia-se uma falha normativa estrutural nos sistemas jurídicos internos de cada Estado, sendo propostas recomendações de reforma legal harmonizada para adequar o direito doméstico às obrigações jurídicas internacionais. A análise comparativa também identificou tensões persistentes entre a afirmação da autoridade estatal e os deveres do Estado de Direito. Os achados destacam desafios para o fortalecimento de mecanismos de responsabilização e para o aumento da proteção às vítimas de desaparecimento forçado. As conclusões possuem implicações teóricas e práticas relevantes para o aprimoramento dos sistemas de justiça criminal, tanto no plano internacional quanto no doméstico, contribuindo para a iniciativa global de erradicar o desaparecimento forçado e assegurar os direitos humanos.

Palavras-chave: Bangladesh. Análise comparativa. Sistemas de justiça criminal. Desaparecimento forçado. Direitos humanos. Sul da Ásia e Austrália.

1. Introduction

Enforced disappearance, commonly referred to as an 'invisible crime,' is based on anonymity and governmental apparatuses' systematic silence (Ibrahim, 2021). This practice is defined as the clandestine abduction or detention of a person by state officials or those acting with state authorization, followed by a calculated refusal to acknowledge the deprivation of liberty or disclose the individual's fate, effectively removing them from the protection of the law. It not only deprives victims of their basic rights of liberty, security, and the right to life but also violates the rights of family members seeking truth and justice. The practice also creates a persistent environment of fear and collective social trauma, eroding the rule of law and undermining democratic government (Committee on Enforced Disappearances, 2026). Although enforced disappearance is widely condemned worldwide and the existence of there are normative legal instruments, enforced disappearance remains one of the serious issues in many jurisdictions, often protected by the veil of impunity and institutional denial.

The analysis of the problem of enforced disappearance in Bangladesh, India, and Australia is justified because they have different yet interrelated socio-political and legal contexts. Bangladesh and India are neighbouring South Asian democracies with common histories of regional conflict and political turmoil, which have repeatedly resulted in charges of state-sanctioned killings and enforced disappearances. These practices are notably concentrated in geopolitically sensitive zones, including the Chittagong Hill Tracts in Bangladesh, the regions of Jammu and Kashmir, and Northeastern India, where security frameworks frequently bypass standard judicial oversight (Amnesty International, 2025; Human Rights Watch, 2026). The legal framework of both these countries was criticised for being ineffectual in dealing with enforced disappearances, which was exacerbated by the implementation of special security legislation and restricted judicial scrutiny. In Australia, the system is subject to criticism about the danger of enforced disappearances, owing to a patchwork human rights framework and clandestine detention practices involving asylum seekers and First Nations peoples. International observers have identified a lack of legislative accountability and the use of offshore 'processing' as significant barriers to judicial oversight, raising concerns about potential violations of the right to be free from arbitrary or incommunicado detention (Human Rights Watch, 2025; UN Working Group on Arbitrary Detention, 2025). This research seeks to highlight existing parallels and contrasts between the two systems. The practice of enforced disappearance, the legal prohibitions that accompany it, and its administration

within the criminal procedural law system.

This primary objective of this research is to present a thorough comparative analysis of enforced disappearances that have occurred in Bangladesh, India, and Australia. It also pays particular attention to the ways in which human rights standards and the actions taken in accordance with criminal procedure acts interact.

The research is guided by the following research questions: How do domestic legal instruments define and sanction forced disappearances? What are the obstacles and weaknesses in the efforts to ensure accountability and judicial process for victims? What is the extent to which national security issues are intertwined with human rights obligations in each country? To encourage legal change and strengthen measures against forced disappearances in different democratic settings, it is essential to address these.

The current research adopts a conceptual, comparative, and doctrinal approach. It analyses the definition and characteristics of enforced disappearance as defined in the international law on human rights, with particular reference to its classification as a state crime and a non-derogable rights-violation. The comparative element involves extensive research into the existing legal frameworks, court decisions and enforcement mechanisms currently in force in the context of Bangladesh, India and Australia, to establish trends in compliance or deviations from agreed standards at international level. Doctrinally, this research carefully assesses relevant legislation, judicial decisions, and international conventions signed by the countries to delineate the extent to which enforced disappearance is criminalized and prosecuted. This three-pronged methodology enables an exhaustive examination of the legal aspects as well as the practical implications attached to this oft-forgotten crime.

The article is organized in three parts. It first defines the conceptual and legal frameworks of enforced disappearance, mindful of its position in international law and how it affects domestic criminal procedure mechanisms. It then discusses in-depth case studies of Bangladesh, India, and Australia, discussing the socio-political context, legal frameworks, administrative practices, and specific challenges of enforced disappearance in these countries. The article provides a comparative analysis that draws on characteristics such as impunity and legal invisibility, politically will and legal culture-driven country-specific characteristics. Second, it provides normative recommendations for harmonisation of domestic law with international standards accountability. accountability of institutions. Lastly, the article concludes by arguing that an end to enforced disappearances is a sine qua non for the achievement of justice and the advancement of social democracy.

This study provides significant cognitive contributions on both theoretical and practical grounds. It is theoretically more comprehensive than other criminological studies because it documents the mechanisms through which states abuse legal and institutional mechanisms to hide crimes committed by the state and thereby challenge mainstream narratives about democracy and the rule of law. The findings are also relevant to policymakers, human rights experts and legal reformers who are working to close legislative loopholes, strengthen judicial control and create victim-driven justice system. By framing the problem of enforced disappearance in relative terms across developing and developed democracies, the paper greatly enriches the global debate on state crimes and human rights, providing rights enforcement, and provides a nuanced understanding that goes beyond the hegemonic binary of developed versus developing countries.

2. Conceptual and Legal Framework

Enforced disappearance is a complex legal and social problem that is unanimously condemned as a serious violation of international human rights and humanitarian law. According to the International Convention for the Protection of All Persons from Enforced Disappearance (UN General Assembly, 2007), this crime occurs when individuals are arrested, detained, abducted, or otherwise deprived of their liberty by State agents or persons acting with the State's authorization, support, or acquiescence and then refuse to acknowledge the deprivation of liberty or conceal the fate or whereabouts of the disappeared person. Such systemic secrecy deprives the victim of legal protection and effectively results in a 'second disappearance,' since the state's failure to acknowledge their status effectively extinguishes their legal and physical existence (Committee on Enforced Disappearances, 2026).

The Convention (ICPPED, 2006) lists some of the basic elements of the offence: (a) deprivation of liberty, (b) the involvement or complicity of state agents or their acquiescence, and (c) refusal to disclose the deprivation or concealment of fate or whereabouts, causing prolonged public officials, which causes long-term suffering to the victims and their relatives. families. Unlike a simple abduction or kidnapping, enforced disappearance is a continuous offence, since the violation continues as long as the fate of the victim is unknown and the state refuses to take responsibility (Chowdhury, 2018). This dual nature - first the deprivation of liberty and then the concealment of information - distinguishes enforced disappearance from other violations of human rights.

3. Forced Disappearance: A Criminal Offence and Human Rights Violation Backed by the State

Forced disappearance is widely recognised as a state crime and a serious violation of human rights due to its institutional nature. State agents' involvement is frequently a planned control technique intended at silencing opposition, punishing whole communities, and instilling terror in the democratic fabric (UN Working Group on Enforced or Involuntary Disappearances, 2024). Furthermore, when these actions occur as part of a widespread or systematic practice against a civilian population, they are explicitly classed as crimes against humanity (Committee on Enforced Disappearances, 2025). Classification of this act as a state crime further suggests violation of non-derogable rights, those rights which cannot be suspended at all situations of exigency or war.

These rights, comprising the right to life, protection from torture, and recognition as a legal person, are classified as non-derogable. The secrecy surrounding enforced disappearances undermines the effectiveness of the rule of law, instilling distrust in government institutions. Furthermore, the pursuit of restitution and justice has been significantly impeded. Essentially, enforced disappearance is a systemic tool of state repression that undermines the rule of law and erodes the fundamental ideals of democratic governance and social justice (Commission of Inquiry on Enforced Disappearances, 2026).

4. Key Human Rights Principles

The crime of enforced disappearance has its roots in violations of fundamental human rights. The right to life is infringed since many people who are secretly arrested are subjected to torture, inhumane treatment, or extrajudicial killings (Fahim, 2025). The right to arbitrary loss of liberty, which lacks constitutional protection and due process safeguards, severely limits people's freedom and security.

Furthermore, enforced disappearance breaches victims' rights to due process and fair trial by preventing them from accessing judicial remedies and legal processes, as well as denying relatives the ability to seek justice (Amnesty International, 2025). The right to truth has also been recognized as an autonomous human right in the context of enforced disappearance, requiring authorities to conduct investigations and reveal information regarding the fate and whereabouts of missing people (Breen-Smyth, 2024). It relates to the continued pain of families and is essential for carrying

out effective reparations and reconciliation methods.

Physical and psychological abuse in circumstances of forced disappearances violates other fundamental rights, including the right to be free from torture and other forms of cruel, inhumane, or humiliating treatment (Smith & Smith, 2022). Furthermore, the state's failure to acknowledge both the reality and location of those who have disappeared translates to a rejection of legal status and the enjoyment of the right to legal status as described in Article 6 of the Universal Declaration of Human Rights.

5. Relevant International Legal Instruments and Their Status in Bangladesh, India, and Australia

The enforcement of disappearances is governed by a rigorous normative framework that has evolved over time through international law. The ICPPED, adopted by the UN General Assembly in 2006 and implemented in 2010, commits to criminalising enforced disappearances, putting prevention measures in place, protecting victims, and providing reparations. The Committee on Enforced Disappearances (CED) is the Convention's supervisory body in charge of ensuring state compliance and investigating suspected breaches. Bangladesh has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) for many years, reflecting some states' reluctance to accept the Convention's obligations despite its growing normative importance (Amnesty International, 2023).

Bangladesh has formally recognized other human rights agreements, such as the International Covenant on Civil and Political Rights (ICCPR); yet, there are no provisions in its national legislation that expressly criminalize enforced disappearance, which limits accountability. The lack of a specific legal framework endangers victims and allows for impunity (Fahim, 2025).

India signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in 2007 but has failed to ratify it, indicating that some nations are still unwilling to fulfil their full duties under international human rights law (Kamble, 2025). Domestic legislation addressing coerced disappearances remains fragmented and weak. The Indian Penal Code punishes illegal imprisonment and abduction, but it does not define or criminalise enforced disappearance in conformity with international norms. Critics argue that special laws in conflict-affected zones, such as the Armed Forces Special Powers Act (AFSPA),

promote impunity and shield state officials from accountability (Dilbung, 2025).

Although Australia is not a state party to the ICPPED and has ratified other relevant treaties such as the ICCPR and the CAT, it is nevertheless subject to customary international law standards that prohibit enforced disappearance (Baranowska, 2025). Concerns regarding adequate safeguarding against enforced disappearance, however, have been raised by the processing of Indigenous Australians and asylum seekers, where detention remains secretive and there is a lack of transparency (Vogl & Methven, 2020). Domestically, enforced disappearance is not illegal in Australia, and policy discussions about how to strike a balance between human rights commitments and national security interests are still ongoing.

The ICPPED serves as a specialized framework that works with other international legal instruments. If an enforced disappearance occurs as part of a widespread or systematic attack on a civilian population, it is considered a crime against humanity under Article 7(1)(i) of the International Criminal Court's Rome Statute (ICC, 2024). While regional organizations like the Australian Human Rights Commission (2025) provide localized monitoring, global enforcement of these protections remains inconsistent, with the UN Working Group on Enforced or Involuntary Disappearances (2025) documenting thousands of outstanding cases that highlight a persistent regional gap in South Asia (WGEID, 2025).

6. Enforced disappearance in Bangladesh

6.1. The Domestic Legal System and Institutional Reactions

There are no explicit legislation pertaining to enforced disappearances in internal legal system of Bangladesh, which is important given the State's international commitments under human rights law. Bangladesh has ratified the International Covenant on Civil and Political Rights (ICCPR) and other foundational treaties, but it has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), making it one of the exceptions in South Asia (UN Treaty Collection, 2023). Therefore, it is more difficult to investigate and prosecute enforced disappearances because they are not considered a standalone offence under Bangladeshi law.

In Bangladesh, judicial actions involving enforced disappearances are still limited by the historical framework of the Penal Code 1860 and the Code of Criminal Procedure 1898. While these statutes criminalize kidnapping, wrongful confinement,

and homicide, they fundamentally fail to address the unique 'composite' nature of enforced disappearance; most notably the state's denial of liberty and the victim's subsequent removal from legal protection (OHCHR, 2025). This legislative void continued until August 2024, when the government ratified the ICPED and established a formal Commission of Inquiry to probe covert detention facilities (Amnesty International, 2025). Critics argue that the Special Powers Act of 1974 has been exploited to enable arbitrary imprisonment without trial and erode due process safeguards in Bangladesh's criminal justice system (Fahim, 2026).

The Rapid Action Battalion (RAB), the police, the security forces, and intelligence agencies are all institutionally important to law enforcement; however, Bangladesh's law enforcement agencies have been linked to serious human rights violations, including enforced disappearances, amid a pervasive culture of impunity and weak accountability mechanisms (Uddin, 2024). The National Human Rights Commission of Bangladesh, which was founded in 2009 to look into human rights abuses, has had ongoing institutional constraints that have made it difficult for it to deal with situations like enforced disappearances. These constraints include weak enforcement powers, reliance on government compliance, and limited jurisdiction over law enforcement (Strengthening the National Human Rights Commission of Bangladesh, 2025).

6.2. Role of Law Enforcement and State Agencies

In the context of extensive security procedures and terrorist activities, police units, particularly the Rapid Action Battalion (RAB), and intelligence officers have been assigned to perform actions known as enforced disappearances. Additionally, extrajudicial executions carried out under the pretexts of law enforcement operations and the illegal arrest of opposition leaders and political activists have been linked to the Rapid Action Battalion (RAB) and other security personnel (Amnesty International, 2023). Due to frequent restrictions on family members and solicitors' access to those in custody, these abuses frequently go unreported, making it difficult to identify victims and impeding the ability of offenders to be punished. Recent scholarly research indicates that the Bangladeshi government has consistently rejected international scrutiny and undermined accountability for human rights breaches by dismissing claims of enforced disappearances as politically motivated or mislabelled (Fahim, 2025).

6.3. Judicial and Human Rights Advocacy Responses

Even in Bangladesh, legal remedy for victims of enforced disappearances has been inconsistent, impeded by procedural and systemic flaws. The judiciary has interfered at times, granting constitutional habeas corpus writs or directing investigations based on appeals from relatives of the vanished. The judiciary's capacity to effectively engage in human rights and accountability matters in Bangladesh has frequently been hampered by political meddling, a lack of reliable evidence, and the unwillingness of authorities to assist (Uddin, 2024). The judiciary's ability to offer an ultimate check on abuse of executive authority remains restricted, reflecting wider problems about the rule of law.

Human rights organisations have constantly tracked incidents, raised awareness, and advocated for legal reforms at both the national and international levels. Organisations like as 'Odhikar' and "Ain o Salish Kendra (ASK)" frequently produce papers shining light on the nature and quantity of enforced disappearances in an effort to persuade the Ministry of Home Affairs to ratify the ICPPED and strengthen protection measures. Human Rights Watch and Amnesty International are among the international human rights advocacy organizations that have called on Bangladeshi authorities to look into and prosecute those who are involved for enforced disappearances (Human Rights Watch, 2021; Amnesty International, 2023). NGOs' legitimacy and efficacy in addressing human rights crimes like enforced disappearances have been undermined in Bangladesh due to tight laws, official intervention, and political intimidation, notwithstanding formal legal safeguards (Uddin, 2023).

6.4. Challenges: Impunity, Legal Gaps, and Issues of Enforcement

One of the biggest obstacles to putting a stop to enforced disappearances in Bangladesh is impunity. This is because there is no particular criminal offense for enforced disappearances under domestic law, which leaves a legal gap that makes accountability and prosecution more difficult (Fahim, 2025). Due to immunity, perpetrators who are usually associates of state agencies are not subject to independent enquiries. The denial culture of State officials' makes victims even more invisible and prolongs their families' agony.

The autonomy and lack of accountability enjoyed by the police and security forces contribute to widespread impunity and human rights violations like enforced disappearances; institutional corruption, political meddling, and weak institutional

competence within Bangladesh's law enforcement agencies exacerbate enforcement challenges (Uddin, 2024). In addition to being delayed, judicial interventions face challenges including witness intimidation and limited access to evidence. Moreover, the legal framework's reliance on vague and expansive regulations, such as the Special Powers Act, which provide security personnel disproportionate discretionary authority to detain and eliminate people arbitrarily in the name of national security, is another issue. Families are also denied access to truth, restitution, and assurances of non-repetition since the legal system is victimless.

7. Enforced Disappearance in India

7.1. Regional Conflict Contexts: Kashmir and Northeast India

Enforced disappearances and extrajudicial killings by state security forces are among the major human rights violations that have been linked to decades of insurgency, militarization, and counter-insurgency operations in conflict-ridden areas of India, such as Jammu and Kashmir and parts of the Northeast (Peerzada, 2022). The Kashmir area has been plagued by violent, militarized conflict since the late 1980s, which has led to several disappearances and forced many affected families to actively look for information about their missing loved ones (Human Rights Watch, 2019).

Northeast India, or Assam, Manipur, and Nagaland, has an ethnic conflict and insurgency-prone geography, with both state security forces and insurgent organisations constantly involved as a result of recurring conflicts. Systematic counter-insurgency operations and state-sponsored repression have been linked to forced disappearances in the Kashmir war; victims are frequently subjected to extrajudicial executions, torture, and incarceration without due process as part of a larger pattern of human rights violations (Haq, 2021). The cycle of disappearances fosters an environment of fear, undermining public faith in governmental authority and making peacebuilding efforts exceedingly difficult.

7.2. National Legislation, Special Legislation, and Institutional Structures

The Indian laws dealing with enforced disappearance include a complex combination of specific legislation, criminal common law norms, and different institutional processes. India has mostly signed the International Convention for the Protection of All Persons from Enforced Disappearance, ICPPED (UN Treaty Collection, 2023), however it has yet to sign the treaty and has previously declined to assume binding international obligations in this regard.

The lack of a specialised national legal code that includes enforced disappearance as an offence is a significant omission. The Indian Penal Code lists abduction, wrongful confinement, and homicide as crimes; however, these provisions do not cover the unique characteristics of enforced disappearance, especially the state's denial or concealment of the victim's fate or whereabouts. As a result, scholars have identified a substantial legal gap in India's domestic law (Gupta, 2025). The doctrine of sovereign immunity and special legal protections of the security forces also hinder prosecution.

One such landmark law dealing with enforced disappearance is the Armed Forces (Special Powers) Act (AFSPA), passed first in 1958 to give wide-ranging powers to the armed forces in "disturbed areas." The Armed personnel (Special Powers) Act gives security personnel the power to make warrantless arrests based on reasonable suspicion, carry out warrantless searches, and use force, including fatal force in "disturbed areas," sometimes with lax accountability procedures (Patir, 2021). Widespread criticism has been levelled against the extensive immunities granted by legislation like India's Armed personnel (Special Powers) Act for encouraging impunity and permitting grave violations of human rights by security personnel in areas afflicted by war, such as Jammu & Kashmir and the Northeastern states (Das, 2025). Attempts at repealing or amending AFSPA have been strongly resisted by security agencies as well as political parties, indicating the contentious nature of legal reforms.

In India, State Human Rights Commissions and the National Human Rights Commission are quasi-judicial bodies that can hear grievances but issue advisory, non-binding recommendations. However, enforcement of these recommendations is uneven and largely dependent on political will (Kaundal & Shanthakumar, 2023). The police and paramilitary forces remain overarching in law and order, with minimal external accountability or monitoring mechanisms.

7.3. Judicial Pronouncements and Human Rights Reports

The Indian court system has played an essential, albeit uneven, role in preventing the commission of enforced disappearances. The Supreme Court's landmark rulings have upheld victims' constitutional rights while emphasising the state's obligation to investigate and deliver remedies. In *People's Union for Civil Liberties v. Union of India* (1997), the Supreme Court recognized the gravity of alleged extrajudicial killings, mandating a judicial inquiry and compensation for victims' families, and establishing that enforced disappearances and "fake encounters" constitute serious violations of fundamental rights. Human rights organisations have extensively recorded examples of enforced disappearances in India, demonstrating governmental collaboration and immunity. Amnesty International, Human Rights Watch, and the Asian Legal Resource Centre conducted investigations that revealed patterns of abuse and advocated for the repeal of the Armed Forces (Special Powers) Act (AFSPA) and increased legal protection. The papers emphasise the need of victim-centered solutions, such as truth-telling, restitution, and prevention against future abuse.

7.4. Difficulties Linked to Accountability and Impunity

Taking accountability for enforced disappearances in India presents various legal, institutional, and political obstacles. The immunity provisions incorporated into the Armed Forces (Special Powers) Act (AFSPA) effectively shield security forces from prosecution and foster a climate of impunity. Bureaucratic delays, non-cooperation, and intimidation of witnesses and complainants can greatly hamper investigations and judicial processes in cases of disappearances.

The lack of specific domestic law against forcible disappearances limits legal remedies. While the courts have recourse to general human rights principles, the absence of statutory offense and definitions complicates prosecution and remediation. Furthermore, political motives based on national security override human rights concerns, constraining reform efforts. These difficulties are exacerbated by institutional flaws. The NHRC and SHRCs lack the authority and resources necessary to conduct investigations or implement recommendations. The objectivity of police investigations into disappearance cases is undermined since they are typically carried out by the same authorities that are accused of abuses.

Political will to act upon enforced disappearance remains unclear. Political will generally yields to security and counterterror over human rights, and disap-

pearances are viewed as collateral or inevitable in conflict areas. This environment impedes openness and suppresses justice for the victims. However, civil society pressure for legal reform and accountability is on the rise, as when urging India to ratify the ICPPED and repeal or amend AFSPA. Broadening international focus and judicial activism provide grounds for cautious hope for piecemeal reform, though a great deal has to be overcome.

8. Enforced Disappearance in Australia

8.1. Structure Regulating Refugees, Autochthonous Populations, and Counterterrorism Measures

Australia's strict immigration detention policies, which include mandatory and indefinite detention of asylum seekers and offshore processing of unauthorised arrivals, have received widespread human rights criticism for effectively detaining people without meaningful legal protection, resulting in prolonged deprivation of liberty and systemic rights violations for vulnerable populations (Donnelly, 2024). The fact that there are records to suggest that asylum seekers can be subjected to long periods of detention or are moved between facilities without supervision is a serious indicator of violation of basic human rights, such as individual liberty and prevention of arbitrary detention. Moreover, the long-standing and historically ingrained exclusion of Aboriginal and Torres Strait Islander people is an example of structural invisibility in the form of enforced absence. Due to systemic neglect, racialized policing, and structural marginalization within Australian society, Aboriginal and Torres Strait Islander Australians are disproportionately overrepresented in the criminal justice system, experiencing hyper-incarceration and related human rights violations, such as increased rates of arrest, imprisonment, and exposure to custodial risk (Boffa, 2025). In that sense, these conditions do not exactly meet international legal definition of enforced disappearance, but very closely resemble a lack of visibility and responsibility typical of state conduct seen elsewhere.

Australian post-9/11 counterterrorism responses have seen enhanced surveillance and detention powers extend beyond entrenched limits at times and potentially at odds with the aim to protect human rights. The laws to be repealed, such as the Australian Security Intelligence Organisation Act (1979) and other security Acts that are relevant, grant broad powers of secret detention of persons and activities associated with espionage. While there have been no reported incidents of state-

authorised enforced disappearances to date, a phenomenon common to war-affected states, there are fears of potential uses that might be obscured behind national security measures.

8.2. Domestic Legal Provisions and Criminal Justice Responses

Australia has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), despite being a robust adherent to most other international human rights treaties (United Nations Treaty Collection, 2023). The local legal code does not define a specific crime of enforced disappearance. Instead, protections for being kept under arbitrary detention and enforced disappearance are incorporated into various sections of the Australian Constitution, Criminal Code Act 1995, and case law based on common law.

There are gaps in the criminalization of disappearance-type behaviour, particularly in situations involving dubious detention and state responsibility, because the Criminal Code Act and other Australian statutes criminalize abduction, kidnapping, and unlawful deprivation of liberty but do not specifically address the elements of enforced disappearance involving state action, denial of detention, or concealment of fate (Australian Human Rights Law Centre, 2025). Where procedural fairness and habeas corpus protections are important features of Australian law, along with judicial supervision intended to protect from arbitrary confinement, serious weaknesses continue to exist with regards to implementation, particularly regarding immigration confinement.

Australian immigration detention arrangements, particularly those of its offshore sites at Manus Island and Nauru, have been strongly criticized for being opaque, keeping persons without trial for long, and not providing proper legal representation. They tend to create a situation of invisibility and enhanced susceptibility to violation of the rights of detainees. Such practices do not count as enforced disappearances by international law but feature elements of hidden detention and denials by authorities.

8.3. Function of Mechanisms of Supervision and Legal Analysis

Australia employs a range of multifaceted strategies to prevent violations of human rights. The Australian Human Rights Commission, the nation's human rights institution, is required by the Australian Human Rights Commission Act 1986 to investigate and resolve complaints of violations of human rights, including those involving deprivation of liberty, as well as to monitor and report on national human

rights compliance (Australian Human Rights Commission, 2022–2023). The Office of Commonwealth Ombudsman also scrutinizes complaints regarding institutions and agencies that are responsible for carrying out law enforcement functions.

Judicial oversight has been central to moderating the dangers posed by abuses of power. The Australian judicial organs have been careful to protect detainees' rights, thus upholding the value of habeas corpus and procedural fairness. In the contentious ruling in *Al-Kateb v. Godwin* (2004), the High Court maintained the validity of indefinite immigration detention under the Migration Act 1958 (Cth) even in cases where removal was not reasonably practicable. This decision was criticized for giving the executive branch excessive deference in matters of detention and national security.

8.4. Assessments Made by International Human Rights Groups

The treatment of immigrants, detainees, and Aboriginal Australians has been widely criticised by UN human rights procedures and non-governmental organisations (NGOs). The UN Committee Against Torture (UNCAT) and the Human Rights Committee chastised Australia for its long-standing policy of indefinitely holding asylum seekers with no procedural protection and no effective remedy procedures. Furthermore, the United Nations Human Rights Council's Universal Periodic Review raised concerns about Australia's detention and enforced disappearances standards. Criticism from agencies such as the United Nations Permanent Forum on Indigenous Issues, which advocates for the preservation of indigenous rights, has highlighted Australia's failure to address the core causes of high rates of imprisonment and mortality among severely afflicted communities.

Furthermore, NGOs such as Human Rights Watch and Amnesty International criticised the Australian government for being secretive, limiting detainees' access to the judiciary, and the need for immigration detention law reforms to prevent severe human rights violations, such as enforced disappearance.

9. Appraisal Evaluation and Analysis

9.1. Comparative Analysis of the Three Jurisdictions: Differences and Similarities

A comparative examination of enforced disappearance techniques used in Bangladesh, India, and Australia indicates both parallels and variances, which stem from disparities in political, legal, and socio-cultural contexts. The three legal sys-

tems share a conflict between state authority and security. States use various tactics for enforced disappearance, such as clandestine arrests, hiding the fate of individuals, and intentionally excluding them from official records. The activities are described using varied terminology and cause varying degrees of anguish.

Given their histories of significant political upheavals, revolutions, and ethnic wars, India and Bangladesh examine how enforced disappearances are commonly employed as instruments of political repression and the silencing of dissident voices. Australia, in contrast, has comparatively fewer incidents specifically classified as enforced disappearances, which are widespread in South Asia due to internal disputes, even considering issues surrounding the imprisonment of immigrants and the marginalisation of Indigenous Australian communities. The secrecy surrounding the incarcerated individuals and the ambiguity and lack of accountability surrounding those detained under Australia's offshore detention policy provide parallels to the enforced disappearances that take place in many different locations.

Further differences might be seen in legal and institutional measures. Bangladesh and India both have laws that gives security forces broad powers, fostering a culture of impunity. Meanwhile, Australia places a larger focus on judicial review and national human rights protection, although these concerns are incompatible with immigration policy and national security measures. The absence of non-legislative acknowledgement of enforced disappearances in Australia is attributable to deep-seated legal flaws in detention practices and marginalized communities, rather than places of conflict.

9.2. Illegal Immunity and Invisibility in Democratic Democracies

Despite their democratic legitimacy, all three nations demonstrate "legal invisibility" in connection to enforced disappearances, which is defined by the lack of a country-specific statute criminalising the crime and entrenched impunity. The legal invisibility is odd given that democratic institutions largely adhere to the rule of law and human rights protections.

The Indian Armed Forces Special Powers Act and the Bangladesh Special Powers Act are two examples of laws that demonstrate how state security and political goals may trump the judicial system in both countries. Despite the fact that remedies are legally accessible before the courts, executive hesitancy, a lack of proof, or intricate procedural barriers effectively nullify them. The numerous flaws allow for enforced disappearances without substantial legal redress, maintaining systema-

tic impunity.

The absence of specific legislation to combat enforced disappearances and the lack of transparency surrounding immigration detention create a type of legal ambiguity that is harmful to victims seeking justice, despite Australia's numerous stringent legal systems and judicial reviews. Impunity results from both the overt rejection of state accountability and the structural invisibility that comes with national security-related administrative procedures and discretionary powers.

9.3. The Tension between National Security Considerations and Human Rights Obligations

One prominent source of tension evident within all three states relates to the tension between responsibility tied to national security and that linked to human rights. Bangladesh and India justify aggressive security policies and clandestine detention practices as being critical counter-terrorism responses to forestall terrorism, insurgent war, and political instability. Human rights norms breaches and justification of enforced disappearances within counter-terrorism policy all tend to illustrate securitization as a process.

Australia faces serious challenges with regards to processing asylum seekers and dealing with counterterrorism initiatives, which could lead to a focus within security issues that inhibits openness and fair process. The focus that is made to prioritize national security can hamper independent oversight and delay justice for victims, thus endangering compliance with international human rights obligations. This statement captures a broader international concern with states using security discourse to implement policies that have stigmatizing implications, frequently contravening international legal instruments designed to safeguard individuals from illegal liberty deprivation and enforced disappearance.

9.4. Function of Global Law and Compliance by States

International law, through the ICPPED, categorically prohibits enforced disappearance and delineates state obligations in prevention, investigation, and remedy (UN Human Rights Office, 2016). The three jurisdictions' compliance with international standards pertaining to enforced disappearances varies. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) has been signed by both Bangladesh and India, but neither country has formally ratified it. This shows a reluctance to commit to legally binding agree-

ments that are thought to restrict national sovereignty (United Nations Treaty Collection, 2023). In addition to impeding approval, this reluctance which is affected by both internal opposition and the current political climate slows down legislation change pertaining to disappearances. Similarly, although typically upholding strong commitments under international human rights law, Australia has not ratified the ICPPED (United Nations Treaty Collection, 2023). The lack of ratification indicates a selective approach to international obligations on human rights and a political unwillingness to let international scrutiny over matters like security and migration policy.

However, global human rights instruments and non-governmental organizations are important sources of encouragement for governmental response. Such actors shed light upon the phenomenon of enforced disappearances and foster increased responsibility by establishing reporting mechanisms, making recommendations, and conducting advocacy work. Although such global attention produces normative pressures, real-world effect depends essentially upon political will and legislative change at the state level.

10. Policy and Legislative Reform Recommendations

10.1. Harmonization of National Legislation with International Norms

Harmonizing national laws with international norms, especially those of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), is one of the significant actions that Bangladesh, India, and Australia have taken to stop enforced disappearances. Despite having nominally acceded to the Convention, none of the three governments have ratified it or implemented enough elements to guarantee effective legal protection (United Nations Treaty Collection, 2023).

India and Bangladesh ought to make ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) a priority and adopt inclusive legislation that clearly criminalizes enforced disappearance. Such legislation will specify the crime along lines with those of the Convention, such as the act of state agents, and impose specific punishments. The adoption of international definition will fill lacunae present within extant legal systems due

to blanket security legislation, such as Bangladesh's Special Powers Act and India's Armed Forces Special Powers Act (AFSPA), that presently are being used to perpetuate immunity.

Australia, despite having advanced legal arrangements, must introduce a clearly specified offence of enforced disappearance as per the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), where all forms of secret detention and denials by the government are illegal. Introduction of such legislation would make prosecution easier and reflect the political will required to end legal invisibility that is entrenched within its migration and security policy. Widescale adoption of such practices within all three jurisdictions would strengthen accountability and provide a clearer model for seeking redress.

10.2. Enhanced Organizational Reaction and Victim Assistance

Establishing independent commissions with prosecution authority and victim assistance initiatives is essential for Bangladesh and India to eradicate long-standing political meddling and impunity. Such organizations ought to function openly, free from interference from the government, and endowed with the authority to provide victims' families with justice.

The Commonwealth Ombudsman and the Australian Human Rights Commission, and Australia's current monitoring bodies, require more authority and funding to deal with the enforced disappearances of Aboriginal and Torres Strait Islander people as well as immigration prisoners. Improved inmate access to attorneys, independent oversight, and prompt investigations will increase accountability and transparency.

Remedial actions taken for victims should include activities that go beyond just criminal proceedings, such as reparations, reparation, and protection from re-occurrence. The creation of victim-friendly systems, where families are involved in truth-telling programs and judicial proceedings, will aid healing and promote confidence within society regarding legal agencies.

10.3. Enhancing Global Cooperation and Oversight

Enforced disappearances constitute a major breach of international legal instruments, particularly in the context of cross-border insurgencies and migration, necessitating international collaboration. Bangladesh, India, and Australia must

use United Nations human rights institutions like the Committee on Enforced Disappearances and the Universal Periodic Review process to receive international scrutiny and technical support.

In order to promote exchange of information, joint investigations, as well as coordination between legal systems regarding cases of disappearances, there is a need to build or strengthen regional and bilateral mechanisms for cooperation. Regional forums that address South Asia can foster exchange of information aimed at harmonizing legal practices and utilizing best practices, while multilateral international forums membership by Australia can strengthen common responsibility for managing migration.

Enabling and empowering global non-governmental organizations and civil society networks is important for improving the efficiency of activities within different states, thus creating room for accountability and advocacy for victims' rights. In addition, funding entities that partner with international agencies can avail resources designed to strengthen capacities of internal actors, with specific concern to improve monitoring and reporting mechanisms.

10.4. Suggested Changes to the Criminal Justice Process

Reforms to the criminal justice system are required to address the underlying causes of enforced disappearances. Security services and police officers must get extensive human rights training, with a special emphasis on non-derogable principles including the prohibition on enforced disappearances. Institutional changes must end the culture of impunity, establish stringent procedures of responsibility for infractions, and ensure that security activities are subject to external civilian monitoring.

Judges' expertise must be improved. To achieve appropriate justice administration, courts must get specific competence in enforced disappearances and international human rights legislation. To prevent against arbitrary interference with liberty, independent judicial review of detention is required, particularly in counterterrorism and migration circumstances.

Enhancing access to justice requires providing legal services and relief to victims of crime, particularly to underprivileged groups who are more likely to go missing, such as Native Americans, ethnic minorities, and asylum seekers. Expanding civic involvement can improve collaborative efforts to prevent disappearance crimes and raise understanding of rights and reporting procedures. These include disclosing the locations of detention centres and counterterrorism activities, with

the goal of fostering public confidence and promoting accountability. Using technology to follow criminals and compile case histories may yield accurate information, prevent disappearances and speed up the investigative process.

11. Conclusion

Enforced disappearances are being studied as an "invisible crime" from the perspectives of Bangladesh, India, and Australia. The research looks at the relationships between criminal justice systems and human rights organisations, as well as how these interactions play out in different political and social settings. The main findings are reported as follows: Enforced disappearance has been described as a protracted and systematic display of violence that is inherent in the state security system and political machinery of numerous democratic regimes, albeit in different ways. In India and Bangladesh, enforced disappearances are regarded as directly tied to internal conflicts, both historically and in current times, where legislative responses and exercise of authority generate a climate of impunity.

State authorities also have concurrent authority as stated by security laws. In light of constitutional protection, the crime of enforced disappearance is rendered invalid due to ambiguous domestic legislation; this situation, along with an ineffective institutional framework, evades accountability and fosters a climate of legal ambiguity. This issue has a significant impact on immigration detention and treatment of Aboriginal Australians because ambiguous definitions of abuse under law, as well as national security concerns, obscure incidents of abuse and impede avenues of remedy. The comparative approach used reveals not only common difficulties, such as the tension between national security and essential rights, the consequences of treaties after ratification, and the dimension of institutional immunity, but also specific governmental responses conditioned by political cultures, legal systems, and institutional abilities.

The article contributes to the current scholarly discussion by emphasising the complexities of enforced disappearance as an unusual state crime perpetrated during times of peace, as well as the need for state responses tailored to the specific elements impinging on democratic institutions. The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) has been mentioned to emphasise the importance of local legislation that are consistent with global human rights norms. Preventing enforced disappearances necessitates institutional responsibility and the development of appropriate regulations. To effect major change, victim-centred remedies and more international collaboration are required.

Strengthening the judiciary's capacity, as well as increasing civil society engagement, promotes the rule of law and addresses the root causes of enforced disappearances. The preservation of the rule of law and the safeguarding of human rights in such situations need an overarching political intervention that transcends party lines and requires the participation of all civic sectors. The continuous use of enforced disappearances violates democratic ideals and undermines public faith in official institutions. As a result, there is an urgent need for an all-inclusive legal system founded on principles such as openness, broad-based inclusion, and respect for human dignity.

The current research aims to get a better understanding of enforced disappearances by going beyond standard historiography and arguing for multifaceted legal and policy remedies, all with the goal of making this surreptitious crime public, recognisable, and avoidable across the world.

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