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ENFORCED DISAPPEARANCES AND INTERNATIONAL LAW: INDIA'S RELUCTANCE TO RATIFY THE ICPPED AND ITS DOMESTIC IMPLICATIONS

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Abstract:

The issue of *enforced disappearances* is not a new phenomenon; it has existed for decades and continues even today. In many parts of India, people face this grave violation of human rights. Enforced disappearances are linked with several forms of abuse and denial of justice, making it one of the most inhumane crimes. At the global level, international law has recognized the seriousness of this problem and has taken steps to prevent and address it²⁷⁶. The **International Convention for the Protection of All Persons from Enforced Disappearances**, adopted by the United Nations, was created with the aim of eliminating this crime. The first express recognition of enforced disappearance as a crime was included in *Article 7(i) of the Rome Statute of the International Criminal Court* (adopted in 1998, enforced in 2002). Despite the fact that this crime has deeply affected communities in regions like Jammu & Kashmir, India has still not ratified the Convention. The impact of enforced disappearances is not limited to the direct victims but also inflicts severe emotional and psychological suffering on their families.²⁷⁷

Keywords: enforced disappearances, victim, torture, extrajudicial killings, ICCP

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²⁷⁶ *Enforced Disappearances and International Law: India's Reluctance to Ratify the ICPPED and its Domestic Implications* 1 (2025).

²⁷⁷ Rome Statute of the International Criminal Court art. 7(1)(i), July 17, 1998, 2187 U.N.T.S. 90

Introduction

Human rights are inherent to every individual, regardless of caste, creed, race, gender, nationality, or any other status, and must be protected under all circumstances. *Enforced disappearance* is a grave and unpredictable crime that not only violates but also simultaneously breaches several fundamental human rights. To safeguard these rights at the international level, the United Nations has established numerous conventions, while domestic legislatures across states have also framed legal measures to ensure their protection.²⁷⁸

One of the most significant milestones in this effort was the adoption of the **Universal Declaration of Human Rights (UDHR)** by the United Nations, which laid down a universal framework for the protection of human rights. In the specific context of enforced disappearances, the **International Convention for the Protection of All Persons from Enforced Disappearance** serves as the principal instrument. This crime, often referred to as *forced or involuntary disappearance*, has long been recognized as a serious human rights violation.

The practice of enforced disappearance is not a recent phenomenon. It has been observed in various parts of the world, with countries such as Sri Lanka, Chile, and India particularly affected. Historically, the origins of this crime can be traced back to the regime of Adolf Hitler, who, through the *Nacht und Nebel Decree* of December 7, 1941, authorized the secret abduction of individuals, leaving families without any information about their fate or whereabouts. In later years, the practice resurfaced in Latin American states such as Brazil, Chile, and Guatemala during periods of military dictatorship. Subsequently, large-scale

instances were reported in Sri Lanka, Iraq, and the former Yugoslavia, where enforced disappearance became a widespread tool of repression.²⁷⁹

Definition of Enforced Disappearance

During the drafting of the Convention, there was broad agreement among delegations on the essential elements that should constitute the definition of enforced disappearance. These included: (i) deprivation of liberty in any form, (ii) refusal to acknowledge such deprivation or concealment of the victim's fate or whereabouts, and (iii) placing the individual outside the protection of the law. Detailed debates eventually led to the adoption of the definition now contained in Article 2 of the Convention.

Some delegations argued that the definition should mirror that found in the Rome Statute of the International Criminal Court (ICC). However, others stressed that the Rome Statute only applies to enforced disappearances when committed as crimes against humanity, whereas the new convention was intended to cover all instances of the offence, even when not amounting to crimes against humanity. A proposal to limit the definition to disappearances involving removal "for a prolonged period of time" was rejected. Opponents emphasized that the crime could be established immediately upon arrest, where there is a refusal to acknowledge detention, and that both national and international bodies should be able to intervene from the outset without waiting for a specific time frame to pass.

Another discussion centered on whether "placing a person outside the protection of the law" should be treated as an element of the crime or as a consequence of it. The drafters ultimately agreed that it should be understood as a consequence. Similarly, the draft phrase "deprivation of liberty in whatever form" was

²⁷⁸ International Convention for the Protection of All Persons from Enforced Disappearance, art 2, adopted 20 December 2006, entered into force 23 December 2010.
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

²⁷⁹ Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948).
<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

refined to the clearer wording: “arrest, detention, abduction, or any other form of deprivation of liberty.” As for perpetrators, the definition was restricted to acts committed by state agents, and the proposal to extend it to non-state actors was rejected.²⁸⁰

Based on this definition, the Committee on Enforced Disappearances has repeatedly recommended that States Parties amend, review, or expedite reforms to their criminal codes to ensure that their national legal frameworks fully reflect the standard set out in Article 1 of the Convention

ICPPED refers to the International Convention for the Protection of All Persons from Enforced Disappearance, a United Nations treaty adopted in 2006 that aims to prevent enforced disappearance, a serious human rights violation where a person is taken into custody but the state refuses to acknowledge their detention. The convention requires States Parties to criminalize enforced disappearance, search for disappeared persons, and investigate such acts to bring those responsible to justice.²⁸¹

Key Aspects of the ICPPED

Definition:

Enforced disappearance is defined as the deprivation of liberty by state agents (or those with state authorization) followed by a refusal to acknowledge the deprivation of liberty or concealment of the person’s fate or whereabouts.

Prohibition:

The convention prohibits enforced disappearance under any circumstances, including states of war or public emergency.

Purpose:

²⁸⁰ Declaration on the Protection of All Persons from Enforced Disappearance, GA Res 47/133, UN Doc A/RES/47/133 (1992). <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-enforced-disappearance>

²⁸¹ Human Rights Committee, *Katwal v Nepal*, Communication No. 2004/2010, UN Doc CCPR/C/119/D/2004/2010 (2017). <https://juris.ohchr.org/search/details/2546>

The ICPPED is the first universally legally binding human rights instrument specifically focused on enforced disappearance, building on a 1992 Declaration on the same topic.

Committee on Enforced Disappearances (CED):

The treaty established the CED, a UN treaty body that monitors the implementation of the convention by States Parties.

Katwal v. Nepal for India

The decision in *Katwal v. Nepal** highlights the broader accountability framework that exists even when a State has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Since Nepal was not a party to the ICPPED, the complaint was examined under the ICCPR to which Nepal is bound. The Human Rights Committee clarified that enforced disappearance, although not expressly mentioned in the ICCPR, constitutes a continuing violation of several Covenant rights, including the right to life, freedom from torture, safeguards against arbitrary detention, and recognition before the law.²⁸²

This reasoning is especially significant for India, which has ratified the ICCPR but has not ratified the ICPPED. By virtue of its ICCPR obligations, India is still legally bound to prevent, investigate, and remedy enforced disappearances occurring within its territory. The case demonstrates that India cannot avoid accountability merely because it has not acceded to the ICPPED; enforced disappearances in regions such as Jammu & Kashmir or the North-East can still be challenged under the ICCPR framework before the Human Rights Committee. Thus, **Katwal v. Nepal** underscores that international human rights law closes the gap between treaty ratification and state responsibility, ensuring that fundamental protections cannot be bypassed.

²⁸² International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force 23 March 1976. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Declaration on the Protection of All Persons from Enforced Disappearances

After adopting earlier resolutions, the United Nations advanced its commitment to human rights protection by drafting a specific declaration to safeguard individuals against enforced disappearances. This instrument, the **Declaration on the Protection of All Persons from Enforced Disappearance**, was adopted by the UN General Assembly through **Resolution 47/133 on 18 December 1992** (OHCHR, 1992). Unlike broader human rights instruments, this declaration is exclusively dedicated to the offence of enforced disappearance, thereby providing clear, focused, and comprehensive standards.²⁸³

The declaration recognizes enforced disappearance as a grave crime that violates a wide range of rights enshrined in international human rights treaties and contradicts the principles and objectives of the United Nations. It places a total prohibition on the practice and calls upon states not only to prevent and punish enforced disappearances under their domestic criminal laws but also to cooperate with each other and with international institutions to eliminate the practice globally.

One of its most significant contributions is the emphasis on victims' and families' rights. It requires states to disclose the whereabouts of disappeared persons and affirms the right of families to receive information about the condition and health of their loved ones. It also obligates governments to establish effective domestic mechanisms to regulate detention in line with international minimum standards and to create **independent and resourceful institutions** capable of handling complaints related to enforced disappearances. Furthermore, the declaration condemns the use of special military courts for trying state officials accused of such crimes, insisting on impartial judicial procedures.

Another landmark provision is the recognition of the **right to redress and compensation** for victims and their families. This guarantee is particularly vital since, in many cases, the disappeared individual is the primary breadwinner, and their absence leaves dependents in severe financial and psychological distress.²⁸⁴

While the 1992 Declaration was non-binding, it played a pivotal role in shaping binding international law. Its principles directly influenced the drafting of the **International Convention for the Protection of All Persons from Enforced Disappearance (2006)**, which gave legal force to many of the declaration's provisions. The Convention expanded on the declaration by not only prohibiting enforced disappearance but also recognizing it as a *crime against humanity* when practiced systematically. Unlike the declaration, the Convention obligates states to criminalize enforced disappearance in domestic law, establish jurisdiction, and cooperate in extradition and prosecution. Thus, the 1992 Declaration served as the foundation, while the 2006 Convention transformed those standards into binding obligations under international law.²⁸⁵

Enforced Disappearances as a Crime Against Humanity

Enforced disappearance is among the most serious violations of human dignity, infringing on multiple fundamental human rights at once. It constitutes an arbitrary deprivation of liberty and places the victim at constant risk of harm to personal integrity, security, and even life. The practice denies individuals their basic rights, including the right to liberty, the right to life (in many cases), freedom from torture or inhuman treatment, the right to family association, the right to a fair trial, and protection against arbitrary arrest or detention.

²⁸³ Armed Forces (Special Powers) Act 1958 (India). <https://legislative.gov.in/sites/default/files/A1958-28.pdf> Constitution of India, art 21.

²⁸⁴ Constitution of India, art 21. <https://legislative.gov.in/constitution-of-india>

²⁸⁵ Code of Criminal Procedure 1973 (India), ss 41–60. <https://www.indiacode.nic.in/handle/123456789/15256>

The wide range of rights violated by enforced disappearance includes:

- * The right to recognition as a person before the law;
- * The right to liberty and security;
- * Freedom from torture and cruel, inhuman, or degrading treatment;
- * The right to life, when disappearance results in death;
- * The right to identity;
- * The right to a fair trial and judicial guarantees;

Importantly, enforced disappearance creates two categories of victims the direct victim the person who has been disappeared and the indirect victims the family members. The very purpose of this crime is to place the disappeared person “outside the law” by denying communication and refusing to acknowledge their fate. International human rights bodies have observed that such incommunicado detention inflicts severe psychological distress and fear, amounting to inhuman and degrading treatment.²⁸⁶

The recognition of enforced disappearance as an international crime can be traced back to the Nuremberg Trials Hitler’s Field Marshal Wilhelm Keitel was convicted for ordering disappearances under the Night and Fog Decree. Although the International Military Tribunal did not specifically classify enforced disappearance as either a war crime or a crime against humanity, later prosecutions of officials involved in drafting and implementing the decree confirmed that such acts could amount to both. This laid the groundwork for the modern legal understanding of enforced disappearance as a crime against humanity

This recognition was further solidified in the Rome Statute of the International Criminal Court (1998), which expressly included enforced

disappearance within the list of crimes against humanity. Article 7(1)(i) defines enforced disappearance as the arrest, detention, or abduction of persons by a state or political organization, followed by a refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of the persons concerned, with the intention of removing them from the protection of the law for a prolonged period of time. The inclusion of enforced disappearance in the Rome Statute marked a turning point, as it formally codified the offence under international criminal law, ensuring that those responsible could be held individually accountable before the International Criminal Court.²⁸⁷

Research Problem

The central research problem lies in India’s continued reluctance to ratify the ICPPED and to criminalise enforced disappearance as a distinct offence within its domestic legal framework. While India’s Constitution guarantees the right to life and liberty under Article 21, and the Code of Criminal Procedure (CrPC) provides safeguards against arbitrary arrest and detention, there remains no explicit statutory recognition of enforced disappearance as a crime. Victims’ families, often referred to as “half-widows” in Kashmir, face systemic barriers to justice, including denial of information, intimidation, and the absence of dedicated mechanisms for truth and reparation.²⁸⁸

Thus, the core problem may be framed as follows: *India’s non-ratification of the ICPPED and lack of domestic legislation on enforced disappearance perpetuate impunity, weaken victims’ access to justice, and undermine the state’s compliance with evolving international human rights norms.*

²⁸⁶ Committee on Enforced Disappearances, *General Comment on Article 2*, UN Doc CED/C/GC/2 (2020).
<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-2020-article-2-international>

²⁸⁷ OHCHR, *Fact Sheet No. 6: Enforced or Involuntary Disappearances* (United Nations, 2009).
<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet6Rev.1en.pdf>

²⁸⁸ International Criminal Court, *Elements of Crimes* (ICC Publication, 2011) 5.
<https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf>

Challenges

Several structural, political, and methodological challenges complicate research and reform in this area:²⁸⁹

1. **Data Scarcity and Reliability:** State reluctance to publish official records, combined with contested figures from civil society, makes it difficult to establish the true scale of disappearances.
2. **National Security Framework:** Disappearances often occur in contexts governed by special security laws such as the Armed Forces (Special Powers) Act (AFSPA). The state frames these as legitimate counterinsurgency measures, which creates political resistance to reform and ratification of international treaties.
3. **Legal Fragmentation:** India's federal structure complicates uniform criminal law reform. Policing is a state subject, yet international treaty compliance is a Union responsibility, creating jurisdictional overlap.
4. **Judicial Ambivalence:** While the Supreme Court has recognised the right to life and has occasionally ordered compensation in disappearance cases, it has avoided mandating systemic reforms or striking down security legislation. Judicial precedent therefore sends mixed signals.
5. **Societal and Victim-Level Barriers:** Victims' families often face intimidation, stigma, and procedural hurdles in approaching courts. Fear of reprisal and lack of access to resources prevent them from seeking remedies effectively.
6. **Political Sensitivity of Ratification:** Ratifying PPED could expose India to international scrutiny, including the

competence of the Committee on Enforced Disappearances. Policymakers fear this could internationalise domestic conflicts, especially Kashmir.

Suggestions and Recommendations

1. **Ratification of the ICPPED:** India should move from signature to ratification, ideally with narrowly tailored interpretative declarations (rather than sweeping reservations) to reconcile the treaty with its security framework. This would demonstrate international commitment and strengthen domestic legitimacy.
2. **Standalone Legislation:** Enforced disappearance should be codified as a distinct offence under the Indian Penal Code. A model provision should capture the elements of the crime: deprivation of liberty, involvement of state agents, concealment of fate, and placing the victim outside the protection of the law.
3. **Independent Complaints and Investigation Mechanism:** Establish a specialised national body with statutory powers to investigate disappearance complaints, with regional offices and guaranteed autonomy. Such a mechanism should have subpoena power, access to detention facilities, and authority to order immediate production of detainees.
4. **Safeguards in Detention:** Introduce mandatory arrest registers, electronic custody tracking, CCTV in interrogation facilities, and time-bound judicial production rules. These measures would close loopholes that enable disappearance.
5. **Reparation and Rehabilitation Framework:** Create a statutory scheme that provides victims' families with compensation, healthcare, education, and legal aid. Psychosocial rehabilitation, memorialisation projects,

²⁸⁹ UN Working Group on Enforced or Involuntary Disappearances, *Annual Report 2022*, UN Doc A/HRC/51/31. <https://www.ohchr.org/en/documents/thematic-reports/ahrc5131-annual-report-working-group-enforced-or-involuntary>

and truth-telling initiatives should be institutionalised.

- 6. Integration with Existing Institutions:** Strengthen the NHRC or create a parallel independent office dedicated solely to enforced disappearances. Synergy between national bodies and international monitoring mechanisms should be institutionalised.

Research and Academic Suggestions

- 1. Mixed-Methods Research:** Combine doctrinal analysis of law with empirical fieldwork, including interviews with victims, human rights defenders, and state officials. This would bridge theory with lived experience.
- 2. Comparative Studies:** Conduct structured comparisons with Nepal, Sri Lanka, and other regions where disappearance-related reforms have been attempted. This would reveal practical pathways and pitfalls for India.
- 3. Victim-Centred Approaches:** Research should prioritise survivors' needs and voices, documenting how they perceive justice and reparation. Feminist and ethnographic methodologies could enrich legal studies.
- 4. Institutional Feasibility Analysis:** Propose concrete models for institutional reform and test them against India's federal, bureaucratic, and political realities.
- 5. Archival and Data-Building Work:** Scholars can collaborate with NGOs and legal aid organisations to build comprehensive datasets of disappearance cases, thereby strengthening evidence-based advocacy.

Conclusion -

Enforced disappearance is among the gravest violations of international human rights law, cutting across multiple legal protections such

as the right to life, liberty, recognition before the law, and freedom from torture. International instruments—including the ICCPR, the 1992 UN Declaration, the Rome Statute, and most importantly the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)—establish a comprehensive normative framework against this crime. Yet, India has hesitated to ratify the ICPPED or criminalise enforced disappearance as a standalone offence within its domestic legal system.

This gap between India's constitutional guarantees under Article 21 and its international obligations creates a troubling pattern of impunity, particularly visible in conflict-prone regions like Jammu & Kashmir. Families of the disappeared—often termed “half-widows”—continue to face systemic barriers to truth, justice, and reparation. The reluctance to act is shaped by national security narratives, political sensitivities, and judicial ambivalence, but these cannot override the non-derogable nature of rights protected under international law.

To reconcile domestic realities with international commitments, India must move towards ratification of the ICPPED, enact tailored legislation, and establish an independent investigative and monitoring mechanism. Incorporating victim-centred remedies, including reparation, rehabilitation, and truth-telling, would ensure that justice is not only legal but also restorative. Upholding these obligations is not merely a question of compliance with international law, but an ethical and constitutional responsibility to protect human dignity.