**Banglar Manabadhikar Suraksha Mancha (MASUM)**

**Submission to the Special Rapporteur on Torture**

At India’s Universal Periodic Review (UPR) in 2017, 34 countries recommended India to ratify the Convention Against Torture (CAT). Over the years, the UN and its Human Rights Council, Special Procedures, Indian National Human Rights Commission (NHRC) and other civil society organizations have pleaded with the government to enact a specific legislation to prevent and punish torture. The Prevention of Torture Bill 2017 has been pending with the Parliament of India since three years. In spite of this, the state has consistently failed to ratify CAT and abide by international human rights standards.

According to a survey conducted by Amnesty International in 2014 regarding attitudes towards torture, as many as **74% Indians believed that torture is sometimes necessary or acceptable to gain information that may protect the public.**[[1]](#footnote-1) This overwhelming approval cannot be seen in isolation from the laws, policies and the inaction of the Indian state regarding torture. The acceptance of torture has been engrained in the Indian mindset and can be perceived in the psychosocial behavior of the masses.

1. **Perpetual threat of Terrorism**

Shutting down any further engagement with the UN and any other mandate holders on the issue of torture in Jammu & Kashmir in 2019, the Indian government wrote:

*Terrorism is the grossest violation of human rights. The basic human right i.e. the right to life is being constantly violated by cross border terrorism in the Indian state of Jammu & Kashmir. [[2]](#footnote-2)*

Through special laws such as Armed Forces Special Powers Act (AFSPA), Public Security Acts (PSA) and Unlawful Activities Prevention Act (UAPA), the Indian state agents have committed several human rights violations in the name of preventing terrorism and maintaining peace. These laws violate the presumption of innocence on which the modern legal framework is based.

Under the rule of Bharatiya Janta Party (BJP), the UAPA has become a tool in the hands of the state to crush dissent, sabotage protest movements and attack human rights defenders by charging them under the UAPA. **People who speak against injustices committed by the state are branded as the enemies of the state and a threat to national security.** In 2018, human rights defenders such as Sudha Bharadwaj, Vernon Gonsalves and Varvara Rao were arrested and charged with the UAPA on the basis of flimsy and concocted evidence and have not received bail till date.[[3]](#footnote-3) More recently, the state has resorted to use this tactic against prominent figures of the anti-CAA (Citizenship Amendment Act) protests that had flared up in the country since December 2019.[[4]](#footnote-4)

Moreover, the **people accused under terror related charges face condemnation from the Indian masses who deem them terrorists and hence, deserving of torture and capital punishment.** While sentencing Afzal Guru, accused in the terror attack on the Parliament of India in 2001, to the death penalty the Supreme Court of India said:

The incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of the society will only be satisfied if capital punishment is awarded to the offender.[[5]](#footnote-5)

Therefore, it becomes easier for the government to use torture against people accused under UAPA with the consent of the masses in the name of maintaining peace and protecting lives.

1. **Impunity, Denial and an unreliable Criminal Justice System**

**According to answers given in the Parliament of India, there had been 1,674 custodial deaths in 2017-18.**[[6]](#footnote-6) **(Numbers reported by civil society organizations are much larger) In spite of this, India’s UPR in 2017, Attorney General Mukul Rohatgi stated:**

We believe in peace, non-violence and upholding human dignity. As such, the concept of torture is completely alien to our culture and it has no place in the governance of the nation.

**Section 197 of the Criminal Procedure Code provides immunity from prosecution to agents of the state unless sanction is provided by the government.** Therefore, police officers and armed forces are almost never held accountable for crimes such as torture and extrajudicial killings. The freedom to practice unrestrained and arbitrary violence enjoyed by the agents of the state sets a dangerous example before common citizens. It reinstates the belief that violence can go unpunished by law and normalizes the practice of torture. According to a study conducted by a civil society organization (CSO), **more than 80% police personnel in India believe that there is nothing wrong with using violence to extract confessions from criminals.**[[7]](#footnote-7)

There is an increasing lack of faith in the criminal justice system due to unnecessary delay in court proceedings, attacks on the independence of judiciary, political interference and lack of non-partisan investigations. This **motivates people to take the law in their own hands which can be seen in mob lynchings and public assault of people perceived to be criminals** such as pickpockets, cattle traders/smugglers and so on.[[8]](#footnote-8)

The lack of training given to police personnel results in limited knowledge in relation to conducting investigations and interrogating suspects and witnesses. Often **the only means that the police are aware of is the use of torture** against the accused and therefore, **torture is deemed to be the only effective tool while conducting interrogations.**

1. **Bias against specific communities**

According to a report released by National Crime Records Bureau in 2018, **Muslims, Dalits and Tribals constitute more than half of the population in Indian prisons in spite of being a numerical minority in the country.** Muslims with a total population of 14.2% make up for 19.7% of the number of prisoners; Dalits and Tribals make up for 16.6% and 8.6% of India’s population while they make up for 21.6% and 11.8% of the total number of prisoners respectively.[[9]](#footnote-9) This is not because of high delinquency rates amongst the minorities but due to their poor socio-economic status, lack of access to legal services and the prejudice of the criminal justice system against them.

**Out of 198 incidents related to torture by police and Border Security Force monitored by MASUM since 2018, 76 victims were Muslims, 20 were Dalits while 35 belonged to Other Backward Classes** (OBCs).

**Muslims are the worst affected community in counter-terrorism operations** initiated by the state. There have been outrageous reports of torture and brutality from Jammu & Kashmir, India’s only Muslim majority state.[[10]](#footnote-10) **Muslims, Dalits and Tribals often do not have the resources to bribe police officials to receive bail** in cases where they are arrested and illegally detained. They are also **extremely vulnerable to torture due to lack of adequate legal representation and political connections**.[[11]](#footnote-11)

Religious and caste discrimination in India is not merely limited to the criminal justice system. Under the rule of the BJP, hate crimes such as lynching, mob violence and physical assault against minority communities have also increased. **Right wing fringe elements have not shied away from inflicting torture as a form of punishment on minorities.** Attacks associated with cow vigilantism wherein right wing groups often affiliated with the BJP threaten, humiliate and attack those who they suspect of cow slaughter/trade (mostly Dalits and Muslims) are a pertinent example. **At least 50 people have been killed in such attacks since 2015 while 250 have been injured.[[12]](#footnote-12)**

1. **Justification of Torture in Media and Entertainment**

Representations in popular film and media in the country glorify acts of violence and torture by the police and often portray torture as the only means to break hardened criminals. Torture is also portrayed as the punishment that criminals rightly deserve and is often displayed as justice. **Given the popularity of cinema in India and the massive influence it has on the masses, it can be safe to assume that this propagates the belief that torture is necessary, justified and effective.[[13]](#footnote-13)**

**Television news channels also participate in promoting a culture of torture and violence** by advocating harsh punishments for people accused under terror-related charges. For instance, a popular television channel accused activist Sudha Bharadwaj of being a “maoist” and participating in activities inciting violence against the state and thus, deserving of being detained under the UAPA.[[14]](#footnote-14)

1. **System justification and Glorification of the Armed Forces**

According to a study conducted by a CSO, **54% Indian respondents have a lot of trust in the Indian army which is significantly higher than the trust Indians place with the police (23%) and even the judiciary (31%) and government officers (18%).**[[15]](#footnote-15) It is important to understand that the army symbolizes the pinnacle of patriotism—the act of sacrificing one’s life for the security of the nation state. The overwhelming faith that Indians place in the army is the result of this patriotism; since the armed forces have the best interests of the nation at heart, they can commit no injustice. Taking this a step further is the argument that any injustice that the armed forces commit can be overlooked because they act only in the interest of the nation.

State security is placed at a higher pedestal than protecting the human rights of civilians in conflict zones. This is why the Indian army has been given exorbitant powers in the form of AFSPA in areas such as Kashmir and the Northeast. **In a conversation with MASUM, a senior officer from the Border Security Force referred to the death and torture of civilians while ensuring national security as “collateral damage”.** The National Human Rights Commission (NHRC) which was established primarily to monitor and investigate incidents of torture, has not been provided the authority to investigate cases involving armed forces. Moreover, **in most of the complaints of torture that MASUM has submitted to the NHRC, the Commission has chosen to believe the narrative of the perpetrators of torture rather than the undeniable evidence of torture or the testimony of victims.**

The Indian army is an embodiment of national security, territorial sovereignty and nationalist sentiments—elements that the common citizens of India value over all else. Therefore, excesses such as torture committed by the army are often ignored or worse, are justified by the masses.

**Normative, Institutional and Policy measures for Prevention of Torture**

**Normative Measures**

1. Introducing the concept of torture and importance of human rights in **educational curriculums.**
2. **Disseminating information regarding torture,** police brutality and excesses committed by the army to a wider audience through mediums of art, film, music, news, reports and social media
3. Advising **viewer discretion for films** that propagate positive attitudes towards torture and further prejudices against specific communities.
4. **Initiating dialogue about torture** and incidents of state oppression (especially in conflict zones) through organizing events, panel discussions, street theatre and community participation.

**Institutional Measures**

1. **Police Reform**: The Police in India remains a colonial institution whose chief responsibilities are to maintain order and ensure state security rather than to uphold civil liberties and stop criminal activities. There is an urgent need for an overhaul of the policing system.
2. **Routine visits to prisons** by independent members of civil society.
3. **Providing the National Human Rights Commission (NHRC) with the powers to order prosecution of perpetrators of torture and probe cases involving armed forces.** Ensuring that the Commission follows the Paris Principles of 1991 and is granted resources to employ independent investigators for cases of torture. Members of civil society should also be employed as senior officers of the NHRC
4. **Training medical practitioners** to be sympathetic towards torture victims and follow international guidelines such as the Tokyo Declaration of WMA, Istanbul Protocol and Minnesota Protocol while dealing with incidents of torture.

**Policy measures**

1. Ratifying the Convention Against Torture
2. **Ensuring accountability**: Section 197 of the Criminal Procedure Code provides immunity from prosecution to agents of the state unless sanction is provided by the government. This provision must be repealed to effectively challenge torture and ensure accountability
3. **Repeal Special laws and Preventive detention laws** such as AFSPA, PSA and UAPA.
4. **Providing Witness Protection** in all investigations related to torture.
5. Passing the Indian Evidence (Amendment) Bill 2016[[16]](#footnote-16)
6. Providing **adequate compensation** for victims of torture
7. Introducing **state sponsored counseling and physical therapy** for victims of torture by experts
8. **Interacting with CSOs, activists and lawyers** who have worked with victims of torture to implement adequate policy measures to prevent and mitigate torture.

*Banglar Manabadhikar Suraksha Mancha (MASUM) is a human rights organization based in West Bengal and is committed to the strengthening of the state and judicial mechanisms for the benefit of citizens, especially the marginalized and vulnerable sections of society. Since our inception in 1997, our primary work revolves around the atrocities committed by the State, including torture, extrajudicial executions, failure of the criminal justice system, impunity, custodial deaths, illegal arrests and detention.*

[*www.masum.org.in*](http://www.masum.org.in)

1. <https://www.amnestyusa.org/pdfs/GlobalSurveyAttitudesToTorture2014.pdf> [↑](#footnote-ref-1)
2. <https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=34631> [↑](#footnote-ref-2)
3. <https://www.frontlinedefenders.org/sites/default/files/urgent_appeal_india_-_five_human_rights_defenders_arrested_and_charged_in_coordinated_raids_across_india.pdf> [↑](#footnote-ref-3)
4. <https://thewire.in/rights/anti-caa-protesters-uapa-caa> [↑](#footnote-ref-4)
5. <https://scroll.in/article/804613/was-afzal-guru-a-martyr-or-a-militant-jnu-students-were-debating-a-question-that-law-cant> [↑](#footnote-ref-5)
6. <https://www.epw.in/engage/article/indias-silent-acceptance-torture-has> [↑](#footnote-ref-6)
7. <https://scroll.in/article/936162/in-charts-high-approval-for-police-violence-in-india-80-among-police-50-among-citizens> [↑](#footnote-ref-7)
8. <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities> [↑](#footnote-ref-8)
9. <https://ncrb.gov.in/sites/default/files/PSI-2018.pdf> [↑](#footnote-ref-9)
10. <https://www.telegraph.co.uk/news/2019/09/25/young-boys-tortured-kashmir-clampdown-new-figures-show-13000/> [↑](#footnote-ref-10)
11. <https://www.hrw.org/sites/default/files/reports/india0809web.pdf> [↑](#footnote-ref-11)
12. <https://www.hrw.org/world-report/2020/country-chapters/india> [↑](#footnote-ref-12)
13. <https://thewire.in/film/vigilantism-mob-justice-bollywood-movies> [↑](#footnote-ref-13)
14. <https://www.frontlinedefenders.org/en/case/media-attack-against-sudha-bhardwaj> [↑](#footnote-ref-14)
15. <https://www.commoncause.in/pdf/SPIR2018.pdf> [↑](#footnote-ref-15)
16. <http://164.100.47.4/billstexts/rsbilltexts/AsIntroduced/ind%20evid%2010317-E.pdf> [↑](#footnote-ref-16)