



NATIONAL CAMPAIGN AGAINST TORTURE

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India's False Promises To Ratify UNCAT

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1. Executive summary and recommendation to ratify the UNCAT

India's track record in the past three cycles of the Universal Periodic Review since 2008 has been a case of making false promises to ratify the UN Convention against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) but not taking any measure to ratify the same in the last 14 years. The Law Commission of India on the request of the Government of India on the ratification of the UNCAT had submitted the draft Prevention of Torture Bill, 2017 for enactment by the parliament in October 2017.¹ No measure has been taken as on date to enact a national law against torture. The refusal of the Supreme Court in its judgment on 5th September 2019 to issue directions to the Government of India to enact a national anti-torture law and ratify the UNCAT had further emboldened the government of India not to ratify the UNCAT.²

Torture continues unabated. India recorded custodial deaths of 11,419 persons including death of 794 persons in police custody and 10,625 persons in judicial custody from 2016-17 to 2021-22 i.e. over five persons per day.³ The reported cases of about 518 deaths in police encounters during 2016-17 to 2018-19⁴ are just tip of the iceberg.

India continues to deport mainly Rohingya refugees in violation of the Article 3 of the UNCAT. In 2021, India had over 400,000 refugees. In 2021, at least 414 refugees mainly from Myanmar i.e. about 354 Rohingyas and 60 Chins and other ethnic Myanmarese nationals were arrested by police in various States of India.⁵

The Sessions Courts in India awarded death sentence to 522 persons during 2017-2020 including to 121 persons during 2017⁶; 186 persons during 2018⁷; 121 persons during 2019⁸ and 94 persons during 2020.⁹ As of 20 February 2022, there were 526 death row prisoners in India¹⁰ living in torturous conditions. Further India continues to increase death penalty for more offences.

The National Campaign Against Torture request to make the following recommendations to India:

- Ratify the UNCAT by 2022;
- Enact a national anti-torture law; and
- Enact a national law on refugees.

2. Torture and custodial deaths

During the past three cycles of the Universal Periodic Review since 2010, a large number of member nations have consistently recommended to India to ratify the UN Convention against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). However, India failed to enact a domestic law relating to prevention and punishment of torture, the necessary step towards ratification of the UNCAT to date despite the Law Commission of India submitting the draft Prevention of Torture Bill, 2017 for enactment by the parliament in October 2017.¹¹ The refusal of the Supreme Court in its judgment on 5th September 2019 to issue directions to the Government of India to enact a national anti-torture law further emboldened the government of India not to ratify the UNCAT.¹²

India recorded custodial deaths of 11,419 persons including death of 794 persons in police custody and 10,625 persons in judicial custody from 2016-17 to 2021-22 i.e. about five persons per day. The National Human Rights Commission (NHRC) recorded the death of 794 persons in police custody including the death of 145 persons during 2016-17; 146 persons during 2017-18; 136 persons during 2018-19; 112 persons during 2019-20; 100 persons during 2020-21¹³; and 155 persons during 2021-22 (upto February 2022).¹⁴ The NHRC also recorded the death of 10,625 persons in judicial custody including 1,616 persons during 2016-17; 1,636 persons 2017-18; 1,797 persons during 2018-19; 1,584 persons during 2019-20; 1,840 persons during 2020-21¹⁵; and 2152 during 2021-22 (upto February 2022).¹⁶

One of the emblematic cases had been torture to death of P Jeyaraj and his son, J Benniks in the custody of Sathankulam police station in Thoothukudi district, Tamil Nadu during the intervening night of 22 and 23 June 2020. The father-son duo was arrested in the evening of 19 June and was subjected to third degree torture and subjected to third degree custodial torture. Following a nationwide outrage, the case was handed over to the Central Bureau of Investigation which registered two cases related to the custodial deaths and filed charge sheet against nine police officials including an inspector/Station House Officer (SHO), two Sub-Inspectors (SIs), two head constables and four constables who were posted at the police station where the alleged torture took place. In August 2020, the CBI had told the Madras High Court that the father-son duo died after suffering multiple injuries due to torture in police custody.¹⁷ The trial in the case began on 18 February 2021 at a district court of

Madurai.¹⁸ In September 2021, the Supreme Court refused to allow bail to two accused police officials - P Raghu Ganesh and S Sridhar - involved in the case.¹⁹

3. Torture and extrajudicial executions

The victims of torture are also often subjected to extrajudicial executions.

The National Human Rights Commission received intimations from police about 518 deaths in police encounters during 2016-17 to 2018-19. These included 169 deaths during 2016-17; 155 deaths during 2017-18 and 133 deaths during 2018-2019 (20.01.2019) from across India.²⁰ These are just tip of the iceberg.

On 4 - 5 December 2021, as many as 14 civilians were shot dead by the security forces while one security forces personnel was killed in Mon district of Nagaland. The deceased included six miners killed in an ambush by Indian Army's 21st Para Special Forces²¹, seven other civilians shot dead by the security forces and a soldier on the evening of 4 December 2021²² and another civilian was shot dead by the Assam Rifles at Mon town on 5 December 2021.²³

In July 2020, three migrant workers identified as Imtiyaz Ahmad (20 years), Ibrer Ahmad (16 years) and Mohammed Ibrar (25 years) from Kotranka tehsil in Jammu district were killed in a fake encounter by the Indian Army in Jammu & Kashmir's Shopian district.²⁴ A charge sheet filed by the Jammu & Kashmir Police on 25 December 2020 in the court of principal district and sessions judge, Shopian indicted Captain Bhoopendra Singh alias Major Basheer Khan of Indian Army's Rashtriya Rifles and his two civilian accomplices. As per investigation by the Special Investigation Team of the police, the victims were allegedly first abducted and taken in a vehicle to the place of occurrence and murdered in cold blood and illegally acquired weapons and materials were planted on their bodies.²⁵ The three innocent labourers were murdered by Captain Singh to pass off the staged encounter as a genuine encounter and win Rs.20,00,00 prize money given for killings of terrorist.²⁶

4. Refoulement of refugees

Article 3 of the UNCAT prohibits refoulement where there are substantial grounds for believing that s/he would be in danger of being subjected to torture.

In 2021, India had over 400,000 refugees including (i) 20,000 refugees from Myanmar,²⁷ (ii) about 4,557 Afghan refugees who were on Long Term Visa (LTV) as on December 2021;²⁸ (iii) about 95,829 Sri Lankan refugees;²⁹ (iv) about 73,404 Tibetan refugees;³⁰ (v) about 41,315 refugees recognised by the United

Nations High Commissioner for Refugees (UNHCR)³¹; (vi) about 31,313 refugees belonging to minority communities from neighbouring countries who have been given LTV on the basis of their claims of religious persecution and want Indian citizenship,³² (vii) about 123,000 unregistered refugees i.e. about 100,000 Chin refugees from Myanmar residing in Mizoram since 1990s³³ and about 23,000 Rohingya refugees not registered with UNHCR.³⁴

The Government of India assists only the Tibetan refugees³⁵ and the Sri Lankan Tamil refugees who arrived after July 1983.³⁶

Other refugees face the wrath of the law as illegal immigrants.

In 2021, at least 414 refugees mainly from Myanmar i.e. about 354 Rohingyas and 60 Chins and other ethnic Myanmarese nationals were arrested by police in various States of India. The highest number of arrest was reported from Jammu and Kashmir with 174, followed by Delhi (95), Assam (55), Manipur (30), Uttar Pradesh and Haryana (19 each), West Bengal (13), Telangana (6) and Tripura (3).³⁷ On 8 April 2021 the Supreme Court in a departure declined to issue direction to the Union of India and Jammu & Kashmir (J&K) administration to release the 168 Rohingya refugees detained at sub-jail in Jammu. It merely directed not to deport any of them to Myanmar without the procedure prescribed for such deportation despite facing imminent danger of being persecuted on return.³⁸ However, the Manipur High Court in its order and judgment dated 3 May 2021 in *Nandita Haksar Vs. State of Manipur & Others*³⁹ allowed seven Myanmar nationals of non Rohingya origin to seek asylum in India.

India regularly repatriates Rohingya refugees to Myanmar. An emblematic case of botched up refoulement is given below:

14-year-old Rohingya girl rejected by Myanmar and India

On 1 April 2021, Myanmar refused to accept a 14-year-old Rohingya girl when she was taken to the international check-gate at Moreh in Manipur by a team of the Assam Police for deportation after clearance from the Government of India. However, immigration officials of Myanmar refused to accept her stating that the check-gate has been shut for the last one year due to the COVID-19 pandemic. Further, the Myanmar officials told the Indian authorities that the situation in their country is also not appropriate for any kind of deportation. Failed at the deportation bid, the police team returned to Silchar with the girl, and handed her back to the shelter home where she has been living. She was found at a house in the Rongpur area of Silchar in Assam's Cachar district two years

back in an unconscious state under mysterious circumstances. It was later found that her parents were in a refugee camp at Cox Bazar in Bangladesh.⁴⁰ The Indian authorities went ahead with the foiled deportation of the 14-year-old Rohingya girl to Myanmar despite her request that she be sent to Cox's Bazar in Bangladesh, where her parents are reportedly living in a refugee camp.⁴¹

5. Torture and death penalty

According to the National Crime Records Bureau, 522 persons were awarded death penalty in India during 2017-2020 by the Sessions Courts which are required to be confirmed by the High Courts. These included death sentences on 121 persons during 2017⁴²; 186 persons during 2018⁴³; 121 persons during 2019⁴⁴ and 94 persons during 2020.⁴⁵

As of 20 February 2022, there were 526 death row prisoners in India. These included 488 death row prisoners as of 31 January 2021⁴⁶ while 38 persons were sentenced to death by a special court on 18 February 2022 for the serial bomb blasts in Gujarat in 2008.⁴⁷

India continues to impose death sentences for more offences. Death penalty was prescribed as a punishment under the Bihar Prohibition and Excise Act of 2016. Punjab also introduced the capital punishment respectively in March 2021 for the offence of causing deaths by the sale or manufacture of spurious liquor. In August 2021, Madhya Pradesh and Maharashtra's state legislature unanimously approved bills introducing the death penalty for 'heinous' offences of rape and gangrape. The Ministry of Women & Child Development, Government of India, also introduced a bill that imposes capital punishment for repeat aggravated trafficking crimes involving children and women.⁴⁸

¹. LAW COMMISSION OF INDIA Report No.273, "Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation", October 2017 available at <http://lawcommissionofindia.nic.in/reports/Report273.pdf>

². The judgment of the Supreme Court in *Dr Ashwini Kumar vs Union of India* dated 5 September 2019 is available at <https://indiankanoon.org/doc/19090773/>

³. Written Reply given by Minister of State for Home Affairs, Nityananda Rai on 22 March 2022 in the Lok Sabha in response to Unstarred Question No.3019, available at <http://164.100.24.220/loksabhaquestions/annex/178/AU3019.pdf> & Written Reply given by Minister of State for Home Affairs, Nityananda Rai, on 1 December 2021 in the Rajya Sabha in response to Unstarred Question No. 364; available at: <https://pqars.nic.in/annex/255/AU364.pdf>

⁴. Written reply given 6 February 2019 in the Rajya Sabha by Minister of State for Hansraj Gangaram Ahir, available at: <https://pqars.nic.in/annex/248/Au370.pdf>

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5. INDIA:THE STATUS OF REFUGEES – 2021 , Rights and Risks Analysis Group, New Delhi, January 2022
 6. Prison Statistics India 2017 published by the National Crimes Record Bureau under the Ministry of Home Affairs; <https://ncrb.gov.in/sites/default/files/PSI-2017.pdf>
 7. Prison Statistics India 2018 published by the National Crimes Record Bureau under the Ministry of Home Affairs; <https://ncrb.gov.in/sites/default/files/PSI-2018.pdf>
 8. Prison Statistics India 2019 published by the National Crimes Record Bureau under the Ministry of Home Affairs; <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>
 9. Prison Statistics India 2020 published by the National Crimes Record Bureau under the Ministry of Home Affairs; https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf
 10. Project 39A, “Death Penalty in India: Annual Statistics Report 2021”, National Law University, Delhi, 2022; available at: <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/61f6d7e8f0e77848cc843477/1643567095391/Annual+Statistics+Report+2021+%281%29.pdf>
 11. LAW COMMISSION OF INDIA Report No.273, "Implementation of ‘United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation”, October 2017 available at <http://lawcommissionofindia.nic.in/reports/Report273.pdf>
 12. The judgment of the Supreme Court in *Dr Ashwini Kumar vs Union of India* dated 5 September 2019 is available at <https://indiankanoon.org/doc/19090773/>
 13. Written Reply given by Minister of State for Home Affairs, Nityananda Rai, on 1 December 2021 in the Rajya Sabha in response to Unstarred Question No. 364; available at: <https://pqars.nic.in/annex/255/AU364.pdf>
 14. Written Reply given by Minister of State for Home Affairs, Nityananda Rai on 22 March 2022 in the Lok Sabha in response to Unstarred Question No.3019, available at <http://164.100.24.220/loksabhaquestions/annex/178/AU3019.pdf>
 15. Written Reply given by Minister of State for Home Affairs, Nityananda Rai, on 1 December 2021 in the Rajya Sabha in response to Unstarred Question No. 364; available at: <https://pqars.nic.in/annex/255/AU364.pdf>
 16. Written Reply given by Minister of State for Home Affairs, Nityananda Rai on 22 March 2022 in the Lok Sabha in response to Unstarred Question No.3019, available at <http://164.100.24.220/loksabhaquestions/annex/178/AU3019.pdf>
 17. CBI files chargesheet against 9 cops in Tamil Nadu custodial torture and death case, India Today, 26 September 2020, <https://www.indiatoday.in/india/story/cbi-files-chargesheet-against-9-cops-in-tamil-nadu-custodial-torture-and-death-case-1725717-2020-09-26>
 18. Tamil Nadu custodial death case: Trial begins after eight months, Hindustantimes, 18 February 2021; <https://www.hindustantimes.com/india-news/tamil-nadu-custodial-death-case-trial-begins-after-eight-months-101613647994039.html>
 19. No Bail For Cops Accused In Tamil Nadu Custodial Deaths: Supreme Court, NDTV, 7 September 2021; <https://www.ndtv.com/india-news/no-bail-for-cops-accused-in-tamil-nadu-custodial-deaths-case-says-supreme-court-2532994>
 20. Written reply given 6 February 2019 in the Rajya Sabha by Minister of State for Hansraj Gangaram Ahir, available at: <https://pqars.nic.in/annex/248/Au370.pdf>
 21. Nagaland district tense after civilian killings: How the events unfolded in Mon, Hindustan Times, 6 December 2021; <https://www.hindustantimes.com/india-news/nagaland-district-tense-after-civilian-killings-how-the-events-unfolded-in-mon-101638760134016.html>
 22. Army operation in Nagaland goes awry, 15 civilians dead, Hindu, 5 December 2021; <https://www.thehindu.com/news/national/other-states/16-dead-after-armys-nagaland-ambush/article37849057.ece>
 23. Nagaland: Locals vandalise Assam Rifles camp to protest killing of 13 civilians, one more dead, Indian Express, 6 December 2021; <https://indianexpress.com/article/north-east->

india/nagaland/nagaland-civilian-deaths-cm-neiphiu-rio-7656875/

²⁴. Army to probe encounter of 3 'militants' after families say they were labourers, Indian Express, 11 August 2020; available at: <https://indianexpress.com/article/india/jk-army-to-probe-as-rajouri-families-say-encounter-killed-3-labourers-6549503/>

²⁵. How Army captain abducted 3 labourers, shot them in cold blood: Chilling details of Shopian fake encounter, Indiatoday, 29 December 2020; available at: <https://www.indiatoday.in/india/story/chilling-details-of-shopian-fake-encounter-1754214-2020-12-29>

²⁶. Army Captain led Shopian operation with 'eye on ₹20 lakh prize money', Hindu, 10 January 2021; available at: <https://www.thehindu.com/news/national/army-captain-staged-amshipura-encounter-for-20-lakh-reward-chargesheet/article33544279.ece>

²⁷. Around 15,500 Myanmar refugees deepen Covid distress in Mizoram, Assam Tribune, 20 May 2021, available at: <https://assamtribune.com/international/around-15500-myanmar-refugees-deepen-covid-distress-in-mizoram-1093022?infiniteScroll=1>

²⁸. Rajya Sabha Unstarred Question No.380 answered on 1 December 2021, <https://pqars.nic.in/annex/255/Au380.pdf>

²⁹. UNHCR INDIA FACT SHEET, 31 MARCH 2021, available at: <https://reporting.unhcr.org/sites/default/files/India%20fact%20sheet%20April%202021.pdf>

³⁰. UNHCR INDIA FACT SHEET, 31 MARCH 2021, available at: <https://reporting.unhcr.org/sites/default/files/India%20fact%20sheet%20April%202021.pdf>

³¹. UNHCR INDIA FACT SHEET, 31 MARCH 2021, available at: <https://reporting.unhcr.org/sites/default/files/India%20fact%20sheet%20April%202021.pdf>

³². Lok Sabha, Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016 (Sixteenth Lok Sabha)

³³. Press Release: CAA Impact – About 6,00,000 Refugees Made Forever Stateless, India Urged To Using Stop Refugees As Pawns As Stated In The Counter-Affidavit To The Supreme Court, 18 March 2020, available at: <http://www.uncat.org/press-release/press-release-cao-impact-about-600000-refugees-made-forever-stateless-india-urged-to-using-stop-refugees-as-pawns-as-stated-in-the-counter-affidavit-to-the-supreme-court/>

³⁴. Minister of State in the Ministry of Home Affairs (Shri Kiren Rijiju) in his reply to the parliament stated that more than 40,000 illegal Rohingya immigrants were staying in India. As UNHCR registered about 23,000 Rohingya refugees, it implies that about 23,000 refugees remained unregistered. The written reply to Unstarred Question No.534 on 20.12.2017 in the Rajya Sabha by Rijiju is available at: <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2017-pdfs/rs-20122017/534.pdf>

³⁵. Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf

³⁶. Ministry of Home Affairs, Government of India Annual Report 2019-20, available at: https://www.mha.gov.in/sites/default/files/AnnualReport_19_20.pdf

³⁷. INDIA:THE STATUS OF REFUGEES – 2021, Rights and Risks Analysis Group, New Delhi, January 2022

³⁸. The order passed by a Supreme Court bench headed by Chief Justice S.A. Bobde on 8 April 2021 in Mohammad Salimullah and Another vs. Union of India and Others [Writ Petition (C) No. 793 of 2017], available at: https://main.sci.gov.in/supremecourt/2017/27338/27338_2017_31_1502_27493_Judgement_08-Apr-2021.pdf

³⁹. Judgment and order passed by the Manipur High Court on 3 May 2021 in Writ Petition (Cr.) No.6 of 2021 (Nandita Haksar Vs. State of Manipur & Others), available at: [https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3glx%2B5SFrUiAoD82TehNu0u2FGizID7PUnFDZGOT0peVr%2FEc1eGvdRA5&caseno=W.P.\(Cr.\)/6/2021&cCode=1&appFlag](https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=QnBUxJ6a3glx%2B5SFrUiAoD82TehNu0u2FGizID7PUnFDZGOT0peVr%2FEc1eGvdRA5&caseno=W.P.(Cr.)/6/2021&cCode=1&appFlag)

⁴⁰. Assam tries to deport 14-year-old Rohingya girl, Myanmar refuses to accept, Indian Express, 2 April 2021, available at: <https://www.newindianexpress.com/nation/2021/apr/02/assam->

tries-to-deport-14-year-old-rohingya-girl-myanmar-refuses-to-accept-2284937.html#:~:text=SILCHAR%3A%20Myanmar%20refused%20to%20accept,deportation%2C%20officials%20said%20on%20Friday.&text=The%20girl%20stayed%20there%20for,a%20local%20language%2C%20she%20said

⁴¹. India moves to deport 14-year-old Rohingya girl but Myanmar refuses, Scroll, 2 April 2021, available at: <https://scroll.in/latest/991196/myanmar-refuses-to-take-back-14-year-old-rohingya-girl-who-faces-deportation-in-india-reports>

⁴². Prison Statistics India 2017 published by the National Crimes Record Bureau under the Ministry of Home Affairs; <https://ncrb.gov.in/sites/default/files/PSI-2017.pdf>

⁴³. Prison Statistics India 2018 published by the National Crimes Record Bureau under the Ministry of Home Affairs; <https://ncrb.gov.in/sites/default/files/PSI-2018.pdf>

⁴⁴. Prison Statistics India 2019 published by the National Crimes Record Bureau under the Ministry of Home Affairs; <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>

⁴⁵. Prison Statistics India 2020 published by the National Crimes Record Bureau under the Ministry of Home Affairs; https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf

⁴⁶. Project 39A, "Death Penalty in India: Annual Statistics Report 2021", National Law University, Delhi, 2022; available at: <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/61f6d7e8f0e77848cc843477/1643567095391/Annual+Statistics+Report+2021+%281%29.pdf>

⁴⁷. Court sentences 38 to death for 2008 Gujarat bombings, Hindustan Times, 19 February 2022; available at: <https://www.hindustantimes.com/india-news/court-sentences-38-to-death-for-2008-gujarat-bombings-101645215533825.html#:~:text=A%20special%20court%20in%20Gujarat,in%20Ahmedabad%2014%20years%20ago.&text=The%20court%20imposed%20a%20fine,2.88%20lakh%20on%20another%20one.>

⁴⁸. Project 39A, "Death Penalty in India: Annual Statistics Report 2021", National Law University, Delhi, 2022; available at: <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/61f6d7e8f0e77848cc843477/1643567095391/Annual+Statistics+Report+2021+%281%29.pdf>