

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

1. Please provide information regarding the Peoples Art and Literature Society (Makkal kalai illakkiya kazhagam).
2. Does the Society support the Communist Party of India (Marxist-Leninist)?
3. Do the police take action against persons selling Communist Party literature?
4. Do the police take action against persons selling anti-government literature?
5. Is the CPIML journal (or magazine called 'New Culture') and literature illegal, and/or anti-government?
6. Are you able to say what the 'ruling class party' is?
7. Is PALS an offshoot of the Tamil Nadu Organising Committee (TNOC)?
8. Is TNOC an offshoot of CPIML?
9. Can the police take persons into preventative detention in Chennai, e.g. when top political leaders are visiting Chennai?
10. What are the Tamil speaking states in India?
11. Are there reports of police allowing prisoners to beat other prisoners?

RESPONSE

1. Please provide information regarding the Peoples Art and Literature Society (Makkal kalai illakkiya kazhagam).
2. Does the Society support the Communist Party of India (Marxist-Leninist)?

Only limited references to Makkal Kalai Ilakkiya Kazhagam (the People's Art and Literary Association (PALA)) were located in the available sources. Several articles refer to this group in association with other left-wing organisations in particular the New Democratic Labour Front who advocate "Marxism-Leninism-Mao thought".

Other articles report on the PALA's protest activities. However, it is difficult to determine their ideology from these as they primarily focus on the group's actions rather than their politics.

In 2004 the PALA issued a joint statement with the New Democratic Labour Front, criticising the World Social Forum (WSF), an anti-globalisation forum which was to be held in Mumbai. This statement provides an indication of their political ideology:

The World Social Forum is holding its Fourth Annual Meeting at Mumbai from 16th to 21st January 2004. The CPI, CPI (M) and the NGOs are actively mobilizing for the event. With the slogan 'Another World is possible', the WSF claims to provide a forum for all the forces opposed to Globalization. Even a glance at the WSF Charter would reveal the fact that it is not a front against Imperialism, but a forum that institutionalizes the anti-imperialist forces through devious methods. By dissipating people's movements and dampening revolutionary forces, the WSF is attempting to manufacture consent for the implementation of Globalization from below...

...an alternative that does not demand the destruction of Imperialism, or stops short of overturning down the capitalist social system, betrays itself to be hollow. The cry for a solution to this crisis is destined to be a cry for Socialism and Communism.

True, the International Communist movement is splintered and weak. But this fact does not alter the truth that Socialism and dictatorship of the proletariat is the answer to Imperialist aggression and Fascism. This is no dream of a distant Utopia or empty sloganeering of an orthodox Marxist. This is an obligation imposed upon us by the most orthodox and reactionary Bourgeois of the world. All 'spaces' that hitherto existed between the Bourgeois and the Proletariat, between Imperialism and oppressed Nations are gone. All the shock absorbers are removed and Socialism is pulled into the arena to confront imperialism face to face...

The major constituents of the WSF, i.e., – the NGOs, Anarchists, Trotskyites and Post-Modernists of various hues etc., – are the strategic weapons in the armoury of Imperialism to be used against Communism. These forces are ideologically united in their crusade.

In spite of the weakness of the revolutionary movement the enemy apprehends Communism gaining influence as the alternative. Hence, the time-tested tactics of promoting social democrats, Anarchists, Trotskyites and pseudo-communists is on the play now. The vanguard role of PT in the WSF and the active role of CPI, CPI (M), CPI (M-L) (Liberation) in India are part of this conspiracy; a conspiracy to gain credibility by portraying a bourgeois formation as a red coalition. Or 'left pluralism' in the now infamous NGO-discourse...

In a world where the aggressive face of Imperialism is getting increasingly exposed, in a situation where the illusions of bourgeois democracy are shattered, in the times when the enemy scrambles over everything to find a credible political alternative, it is the duty of the Communist Revolutionaries to hold high the banner of Marxism-Leninism-Mao Tse-Tung Thought and expose the lackeys of Imperialism who pretend to be Communists and Socialists. Underplaying the ideological and political issues in order to sound 'democratic' is nothing but opportunism. We should not mince words. The proletarian movement need not factor its criticisms in order to appear polite towards bourgeois intellectuals ('Smash Imperialism' 2004, Nadir website, 17 January – http://www.nadir.org/nadir/initiativ/agp/free/wsf/mumbai2004/0117smash_imperialism.htm – Accessed 28 November 2005 – Attachment 1).

In March 2005 PALA also posted a paper on anti-globalisation on the New Democracy Information Centre – Tamilnadu website. The introduction to the website indicates that the PALA promotes "Marxism-Leninism-Mao thought":

We are communist revolutionaries from Tamilnadu, India. We support the Marxist-Leninist revolutionary mass organisations namely People's Art And Literature Association (PALA), Peasants Liberation Front (PLF), Revolutionary Students And Youth Front (RSYF), and New Democratic Labour Front (NDLF). Long live proletarian revolution! Long live Marxism-Leninism-Mao thought ('Globalisation, saffronisation and cultural oppression' 2005, New Democracy Information Centre – Tamilnadu website, 14 March – <http://ndictn.blogspot.com/> – Accessed 28 November 2005 – Attachment 2),

A number of articles detail the group's participation in various demonstrations. An article posted on India Resource Centre website, on 8 October 2005, reports on a PALA protest against a Coca-Cola bottling plant, alleging that it "will lead to the depletion and contamination of groundwater and affect agriculture in the drought-prone district". This article also describes the group as Marxist:

The agitation against the bottling unit of a multinational soft drink giant in water-starved Tirunelveli district in Tamil Nadu is fast turning into a battle against the privatisation of water resources.

Resistance to the Rs.30-crore beverage bottling plant coming up in the southern Tamil Nadu district of Tirunelveli is intensifying. The protesters allege that the unit, a water-intensive one will lead to the depletion and contamination of groundwater and affect agriculture in the drought-prone district.

The plant is being set up to manufacture branded items of the multinational soft drink giant, Coca-Cola...

In the latest of a series of protests, held on September 23, nearly 1,000 activists of the Democratic Youth Federation of India (DYFI) and the Students Federation of India (SFI) were arrested when they staged a demonstration and road roko at Duraiyur, on the Tirunelveli-Madurai National Highway, close to the SIPCOT centre. DYFI State secretary S. Kannan, cautioned that the State government's action in placing a huge quantum of water from the Thamiraparani river at the disposal of the bottling unit might mark the beginning of a major thrust in the direction of privatising drinking water resources consistent with its loyalty to World Bank-driven neoliberal policies. Kannan said the agitation would continue "until the licence to the unit is withdrawn by the government".

Ten days earlier, over 2,000 volunteers, including a substantial number of women, of the People's Art and Literary Association (PALA), the Peasants Liberation Front, the Revolutionary Students and Youth Front and the New Democratic Labour Front, all Marxist groups from different parts of the State, participated in a rally in Tirunelveli against the granting of the licence. A Bangalore-based group of 50 "revolutionary students and youth" were also among the protesters. When the agitators later marched towards the construction site to stage a demonstration, they were arrested (Viswanathan, S 2005, 'Bottling Thamiraparani', India Resource Centre website, 8 October – <http://www.indiaresource.org/news/2005/2022.html> – Accessed 28 November 2005 – Attachment 3).

An earlier article from India Reach website, on the same issue reports on the difficulties that the PALA had in obtaining an application to stage the protest against the bottling plant. The application was initially refused, but the court subsequently directed the group "submit a fresh application seeking permission". This article also refers to the PALA as being "an ultra-left outfit":

The Madurai Bench of Madras High Court has quashed the police order denying permission to an ultra-left outfit to hold street-corner protest meetings in Tirunelveli district opposing the setting up of a bottling plant by soft drink MNC Coke. Mr Justice C Nagappan quashed the order of the Dy SP, Nanguneri, denying

permission to the Makkal Kalai Ilakkiya Kazhagam (People's Art and Literary Association) to hold the protest meetings.

Passing the order on a petition from the Kazhagam, the Judge said the police could not take a decision arbitrarily without considering the views of the petitioner organisation...

Without asking for their views, the Dy SP, on August 13, denied permission, it said and contended that this was arbitrary and a violation of freedom of expression guaranteed under the Constitution.

Directing the Kazhagam to submit a fresh application seeking permission, the Court ordered the Dy SP to take a decision on that after hearing the views and by following due process of law ('Anti Coke Campaign: HC Quashes Order Denying Permission' 2005, India Reach website, 31 August –

<http://www.indiareach.org/5D0B659920DC754B32F399E27AB6BFB3> – Accessed 23 November 2005 – Attachment 4).

An article published by *The Hindu*, on 12 January 2005, reports another PALA demonstration demanding that the government adopt certain measures to assist tsunami victims:

Members of the Makkal Kalai Ilakkiya Kazhagam, including women, staged a demonstration near the Collectorate here today, urging the Government to construct proper houses for tsunami victims. They also demanded provision of fishing nets and other equipment to the fishermen affected by the tsunami free of cost, slapping a ban on the adoption of the children who have become orphans by private people, setting up of homes for orphans in all districts by the Government itself.

They urged the Government to prepare the list of the dead and the missing, based on the birth and death registration. The executive committee member of the Kazhagam, Sekar, led the agitation, when the president of the All Platform Vendors Protection Association, Sekar, and others spoke ('Around the City: Demonstration' 2005, *The Hindu*, 12 January – <http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2005011214310300.htm&date=2005/01/12/&prd=th&> – Accessed 23 November 2005 – Attachment 5).

A 2004 article published by *The Hindu*, on 20 July 2004, reports on a protest against the arrest of a local fisherman "on the 'foisted' charges of destroying prawn ponds in the village" and to demand "permanent ban on the prawn ponds, which damaged the environment":

Members of the Makkal Kalai Ilakkiya Kazhagam staged a demonstration here today to protest the arrest of the president of the Thillai Vilagam panchayat in Tiruvarur district, Yoganathan, and local fishermen on the 'foisted' charges of destroying prawn ponds in the village. They demanded the withdrawal of all cases.

Their other demands included imposing a permanent ban on the prawn ponds, which damaged the environment, and adequate compensation to the affected farmers ('Around the City: Demonstration' 2004, *The Hindu*, 20 July – <http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2004072013740300.htm&date=2004/07/20/&prd=th&> – Accessed 23 November 2005 – Attachment 6)

Several other articles from 2004 report on the PALA's (Makkal Kalai Ilakkiya Kazhagam) demonstration against a Hindu seer who was accused of the "murder of Manager of Varadaraja Swamy temple in Kancheepuram". On 13 November 2004 they protested against his bail plea.

In recent times, no other sitting in a Court Hall would have attracted as many visitors as witnessed for the hearing of the bail petition of Kanchi Mutt seer Jayendra Saraswati in the Madras High Court this morning, forcing the judge to shift the Court

Hall...

The Bail petition, moved on Friday by the advocates for Jayendra Saraswati, arrested in connection with the murder of Manager of Varadaraja Swamy temple in Kancheepuram, came up for hearing in Court Hall number 25 before Mr Justice R Balasubramanian...

Supporters of Kanchi Shankaracharya and rival groups, opposing his bail plea, virtually came to blows, sparking tension in the Madras High Court premises. Even as the hearing on the plea filed by the Shankaracharya, arrested in connection with a murder case, was adjourned to November 17, activists belonging to Makkal Kalai Ilakkiya Kazhagam, Revolutionary Students Youth Front and New Democratic Workers Front, entered the court premises, carrying placards and shouted slogans denouncing the Mutt and opposing the seer's bail plea, police sources said. Mutt supporters, mostly activists of Hindu organisations like Hindu Munnani, who had come to the court to witness the bail plea proceedings, clashed with the rival groups.

The situation turned volatile as the groups nearly came to blows, leading to tension. However, police intervention restored normalcy and brought the situation under control ('Huge Crowds Throng Court Hall' 2004, *Deccan Herald* online edition, 13 November – <http://67.18.142.206/deccanherald/nov132004/i2.asp> – Accessed 22 November 2005 – Attachment 7).

Later the group continued their protest "when they attempted to burn an effigy of the Kanchi Seer" ('Sangh Parivar organisations stage demonstration' 2004, *The Hindu* online edition, 13 November – <http://www.hindu.com/2004/11/14/stories/2004111414790300.htm> – Accessed 28 November 2005 – Attachment 8).

They also staged a demonstration "demanding withdrawal of special amenities provided to the Kanchi seer in the Vellore prison. They insisted that the Acharya should not be enlarged on bail" ('BJP Cadres Observe Fast' 2004, *The Hindu* online edition, 22 November – <http://www.hindu.com/2004/11/23/stories/2004112307330300.htm> – Accessed 28 November 2005 – Attachment 9).

In 2003 the PALA also participated in a protest against the Tamil Nadu Government's decision to impose a ban on animal sacrifices in temples:

In the land of "ahimsa", devotees and priests are up in arms as the Tamil Nadu Government has slapped a ban on animal sacrifice in temples.

Devotees and priests are agitated as Chief Minister J Jayalalitha has given "life" to the Tamil Nadu Animals and Birds Sacrifices Prohibition Act, 1950, which had remained unenforced in the state for the past 53 years.

Ignoring the ban order issued by the government last week, hundreds of devotees from various Hindu sects offered animal sacrifices to propitiate the Gods and Goddess, only to incur the wrath of the police.

Unmindful of the ban and the presence of a large posse of policemen, devotees thronged the Sudalai Andavar Temple at Sirumalanji in Tirunelveli district last week to sacrifice the goats and hens they had reared for the purpose. While a few sacrificed the animals in front of the temple and courted arrest, others preferred to do it elsewhere.

In Tiruchirapalli, members of the People's Art and Literary Association (PALA) and the Revolutionary Students' and Youth Front slaughtered a goat in front of the Sappani Swamy Temple to register their protest.

PALA members had even carried the carcass of a slaughtered goat in a procession but they were arrested by the police. A temple priest in Tirunelveli was also taken into "house arrest" on charges of abetting the devotees ('Priests, devotees protest ban on

animal sacrifice in TN' 2003, *Deccan Herald* online edition, 15 September – <http://www.deccanherald.com/deccanherald/sep15/n8.asp> – Accessed 29 November 2005 – Attachment 10).

One undated reference published by *India Today* categorises the group as “Splinter pro-LTTE organisation”. No other reference, supporting this assertion, was found in the sources consulted:

A number of splinter pro-LTTE organisations, such as Tamil Protection Federation, People’s Art and Literary Association, LTTE Friendship Association, Liberation Tigers Solidarity Organisation (pro-DK) and Tamil Youth Forum, also indulged in derogatory utterances against the Prime Minister and the Government’s Sri Lanka policy during the past few days. The Liberation Tigers Solidarity Organisation and Dravida Kazhagam, with the support of student unions of some colleges of Coimbatore, launched a signature campaign to counter the pro-IPKF campaign launched by the State Congress-I. Some wall posters issued in the name of Pulmai Pithan, a Tamil poet, reading that ‘Tamils can never become Indians and Indians can never become Tamils’ were found displayed in Chinglepet Dist. and Madras city. Tamil Mannan, President, Tamil Protection Federation, has held the Prime Minister personally responsible for the ‘rape and murder perpetrated on Tamils in Srilanka by the IPKF’ and threatened that Tamil Tigers would emerge in Tamilnadu even if they are suppressed in Jaffna. A seminar of intellectuals and pro-LTTE political leaders (75-Trichy-Nov.28) was used as a forum for highly inflammatory speeches against the Prime Minister and the Indo-Sri Lanka Accord. Though the strength of these organisation and the following of other leaders in insignificant and response to their programmes has been limited (50-250), the highly provocative and anti-Centre statements issued by them portend emergence of extremist groups in the State (‘The Jain Commission Report: Support/Attitude of Indian Political Leaders Govt. of Tamil Nadu Towards the LTTE’ (undated) *India Today* website, Vol 5, Ch 28 – <http://www.india-today.com/jain/vol5/chap28.html> – Accessed 28 November 2005 – Attachment 11).

3. Do the police take action against persons selling Communist Party literature?

This question has been addressed from the viewpoint of the Communist Party of India (Marxist-Leninist) People’s War Group (PWG) as referred to this party in the review application, and specifically the states of Andhra Pradesh and Tamil Nadu.

Background information on the Communist Party of India (Marxist-Leninist)

RRT *Research Response IND14576*, dated 4 April 2001, provides background information on the various factions of the CPI (ML) specifying the legal and illegal factions. The response notes that the more militant factions of the CPI(ML), such as the CPI(ML) Party Unity and the CPI(ML) People’s War Group (which merged together in 1998 to become CPI (ML) People’s War), have remained banned throughout India (RRT Country Research 2001, *Research Response IND14576*, 4 April – Attachment 12).

On 21 September 2004 CPI (ML) People’s War merged with the Maoist Communist Centre to become the Communist Party of India (Maoist). Earlier this year both the Andhra Pradesh and the Tamil Nadu governments, moved to ban this organisation:

- The Communist Party of India (Maoist) was founded on September 21, 2004, through the merger of the Communist Party of India (Marxist-Leninist) People’s War and the Maoist

Communist Centre. The merger was announced to the public on October 14 the same year...

On August 17, 2005, the government of Andhra Pradesh outlawed the Communist Party of India (Maoist) and various mass organizations close to it, and began to arrest suspected members and sympathizers days afterwards. The arrested included former emissaries at the peace talks of 2004 ('Communist Party of India (Maoist)' 2005, Wikipedia website – 14 November – [http://en.wikipedia.org/wiki/Communist_Party_of_India_\(Maoist\)](http://en.wikipedia.org/wiki/Communist_Party_of_India_(Maoist)) – Accessed 29 November 2005 – Attachment 13).

- The two major Naxalite Organizations, the Communist Party of India (Marxist-Leninist) - People's War, and the Maoist Communist Centre of India, have merged and formed a new unified party called Communist Party of India (Maoist), on 21st September, 2004, at an undisclosed place in the forests. The Communist Party of India (Marxist-Leninist) - Peoples's War and its front organizations were banned under the Criminal Law (Amendment) Act, 1908, by this Government. The Government of India had also banned this organization and the Maoist Communist Centre of India under the Unlawful Activities (Prevention) Amendment Act, 2004 ('CM bans CPI(Maoist) for seditious activities' 2005, *Trinity Mirror* online edition, 13 July - http://www.trinitymirroronline.com/article.asp?article_no=21005071310&gen_date=7/14/2005 - Accessed 24 November 2005 - Attachment 14)

Wikipedia also provides a brief overview of the history of the Communist Party of India (Marxist-Leninist) listing the militant and less militant groups ('Communist Party of India (Marxist-Leninist)' 2005, Wikipedia website – 15 November – [http://en.wikipedia.org/wiki/Communist_Party_of_India_\(Marxist-Leninist\)](http://en.wikipedia.org/wiki/Communist_Party_of_India_(Marxist-Leninist)) – Accessed 29 November 2005 – Attachment 15).

Communist Party Literature

It appears from the information consulted that people who distribute information from banned communist organisations would face penalties.

In announcing the ban on their ban on the Communist Party of India (Maoist), the Tamil Nadu Government stated that the organisation had been “indulging in unlawful activities, maintaining links with other banned extremist groups, circulating hand bills and pasting handwritten wall posters containing seditious slogans, calling upon the public to pursue the path of violence”:

It has been brought to the notice of this Government that the Communist Party of India (Maoist) is indulging in unlawful activities, maintaining links with other banned extremist groups, circulating hand bills and pasting handwritten wall posters containing seditious slogans, calling upon the public to pursue the path of violence and that its members have committed various acts of violence and have been involved in criminal cases, thereby causing terror in the minds of the people. This outfit is also found to be interfering with the administration of Law and in the maintenance of Law and Order, thereby constituting a danger to public peace. The Communist Party of India (Maoist) through its seditious literature wall writing, posters and pamphlets has been inciting and encouraging its members to use criminal force and violence against the Government machinery and calling upon the working class to participate in the violent struggle to establish the dictatorship of the proletariat ('CM bans CPI(Maoist) for seditious activities' 2005, *Trinity Mirror* online edition, 13 July - http://www.trinitymirroronline.com/article.asp?article_no=21005071310&gen_date=7/14/2005 - Accessed 24 November 2005 - Attachment 14)

Other reports noted actions taken against people publishing or writing literature relating to the banned Communist groups. These following reports refer to reporters and writers rather than those selling the publications:

In August this year the Andhra Pradesh government re-imposed a ban on the CPI (Maoist) along with its seven “front organisations”. An article published by *Frontline* magazine, in their 27 Aug - 9 Sep 2005 edition, notes that the Revolutionary Writer’s Association (RWA) was among the banned organisations - “this is the first time that the RWA has been banned”. The article states that “the various naxalite organisations are already banned under the Unlawful Activities (Prevention) Act of the Government of India”:

Signalling the end of the government’s liberal attitude towards the naxalites, Home Minister K. Jana Reddy announced a ban on the CPI (Maoist), the Radical Youth League, the Rythu Coolie Sangham, the Radical Student’s Union, the Singareni Karmika Samakhya, the Viplava Karmika Samakhya, the All India Revolutionary Student’s Federation and the Revolutionary Writer’s Association (RWA). This is the first time that the RWA has been banned. The various naxalite organisations are already banned under the Unlawful Activities (Prevention) Act of the Government of India.

The clampdown on Maoist sympathisers began almost immediately. Vara Vara Rao, who acted as the CPI (Maoist) emissary before the commencement of the peace talks, was arrested on August 19. A leading light of the RWA, he is the first person to be arrested under the PSA. The police had booked several cases against Vara Vara Rao, the balladeer Gaddar, and RWA president Kalyan Rao, last year when they participated in public meetings along with CPI (Maoist) State secretary Ramakrishna. (‘A violent turn’ 2005, *Frontline* online edition, Volume 22, Issue 18, 27 August-9 September – <http://www.flonnet.com/fl2218/stories/20050909002104400.htm> – Accessed 24 November 2005 – Attachment 16).

A statement issued by Reporters Without Borders (RWB) on 8 September 2005 expressed concern at the Chhattisgarh state government’s recent decision to ban all Maoist groups. RWB state that “the full list has yet been published but it could include Media”:

Reporters Without Borders voiced deep concern at the likely damage to press freedom of a ban on all Maoist groups adopted by the Chhattisgarh State government in central India under which journalists could be jailed for up to three years for covering their rebellion.

The state government adopted the special people’s security ordinance on 5 September 2005 that bans the Communist Party of India – Maoist (CPI –M), fighting a guerrilla war since 1980, and 32 other pro-Maoist groups. The full list has yet been published but it could include Media...

A joint press conference on 5 September by the home minister and the state police chief to present the new ordinance, journalists were warned by officials that they faced arrest for interviewing Maoist and that Media seen to be supporting Maoists could be shut down and their property confiscated.

“You can’t fight an armed rebellion by stopping journalists from talking about it,” said the worldwide press freedom organisation. “The Chhattisgarh government commits a serious violation of press freedom by imposing a news blackout on the Maoist movement. If the ordinance is adopted in the state it will block all independent news coverage in the regions affected by the Maoist rebellion,” it said (‘Chhattisgarh Government Adopts Law That Could Put Journalists In Prison’ 2005, Reporters Without Borders, 8 September – http://www.rsf.org/print.php3?id_article=14900 – Accessed 23 November 2005 – Attachment 17).

In June 2005 Reporters Without Borders reported on the release, on bail, of a magazine editor who had been “arrested on 30 May, along with three other members of the Revolutionary Writers Association” on a conspiracy charge:

Reporters Without Borders notes the release on bail on 16 June 2005, of N. Venugopal (photo), managing editor of the Telugu-language bi-monthly *Veekshanam*, who was arrested on 30 May, along with three other members of the Revolutionary Writers Association (Virasam), Chenchaiiah, G. Pinakapani and Ravi Kumar. Police, for a second time, opposed the bail application before the Nizamabad district court.

On the morning of 16 June, a petition, signed by more than 100 intellectuals, was handed into the Supreme Court in Andhra Pradesh State in the south-east, urging it to intervene in the case. Other documents were also handed in, including copies of official reports of previous acquittals of writers accused of “conspiracy” and copies of releases from press freedom organisations such as Reporters Without Borders. ‘N. Venugopal released on bail’ 2005, Reporters Without Borders, 20 June – http://www.rsf.org/print.php3?id_article=14046 - Accessed 23 November 2005- Attachment 18).

4. Do the police take action against persons selling anti-government literature?

No reports of police taking action against persons selling anti-government literature were located in the sources consulted. However, there was information on the general attitude of the authorities to the publication of anti-government literature, and the freedom of the press.

In their 1998 report on India, Amnesty International’s documented a case where “four human rights defenders and journalists were arrested in Assam, after speaking out against the granting of increased powers to the armed forces in Assam and against government corruption”:

In August, four human rights defenders and journalists were arrested in Assam, after speaking out against the granting of increased powers to the armed forces in Assam and against government corruption. They were repeatedly charged with having links with an armed opposition group and publishing statements issued by such groups. Three of them Ajit Kumar Bhuyan, Lachit Bordoloi and Prakash Mahanta, all members of the human rights organization Manab Adhikar Sangram Samiti (MASS) – were subsequently charged under the National Security Act, which allows for preventive detention without trial on loosely defined grounds of national security (Amnesty International Report on India 1998, Amnesty International – http://www.contactpakistan.com/kashmir/kashmir_amnesty.htm – Accessed 25 November 2005 – Attachment 19).

The US State Department’s *Reports on Human Rights Practices for 2004 – India*, states that “independent newspapers and magazines regularly published and television channels broadcast investigative reports and allegations of governments’ wrongdoing, and the press generally promoted human rights and criticized perceived government lapses”:

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice; however, there were some limitations. Under the Official Secrets Act, the Government may restrict publication of sensitive stories or suppress criticism of its policies, but no cases were reported during the year.

The Press Council is a statutory body of journalists, publishers, academics, and politicians, whose chairman is appointed by the Government. Designed to be a self-regulating mechanism for the press, it investigates complaints of irresponsible journalism and sets a code of conduct

for publishers. This code includes a commitment not to publish articles or details that might incite caste or communal violence. The Council publicly criticized newspapers or journalists it believed had broken the code of conduct, but its finding carried no legal weight.

A vigorous press reflected a wide variety of political, social, and economic beliefs. Independent newspapers and magazines regularly published and television channels broadcast investigative reports and allegations of governments wrongdoing, and the press generally promoted human rights and criticized perceived government lapses. Most print media were privately owned. In the electronic media, 80 percent of the television channels were privately owned. Government-controlled radio remained the main source of news for much of the population...

During the year, the threat of losing government revenue contributed to self-censorship by smaller media outlets that heavily relied on state government advertising.

Authorities occasionally beat, detained, and harassed journalists. In April, the Journalists Union of Assam and the Journalist Action Committee alleged that police ordered a journalist and several other people to kneel down in the road during a routine traffic stop. No action was taken against police (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – India*, Section 2a, 28 February – Attachment 20),

On the issue of freedom of the press in India, Wikipedia observes that “many laws have been used to curb the freedom of the press in India. Some of the more severe laws are the Official Secrets Act and Prevention of Terrorism Act (PoTa)”. However, Wikipedia also notes that “many of the traditional means of delivering information are being slowly superseded by the increasing pace of modern technological advance” and that this “offers significant potential advantages to journalist seeking to maintain and enhance their freedom of speech”.

In the Indian Constitution the word “press” is not mentioned. The press in India derives its freedom as an interpretation of the Article 19(1)(a) of the Constitution which states: “*All citizens have the right to freedom of speech and expression*”.

However the Article has a subclause (2) which states down restrictions under which the freedom guaranteed by Article 19(1)(a) can be revoked. Article 19(2) states that this right can be restricted only by law or by the State for reasons of: “*sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of the court defamation, or incitement to an offence*”.

Many laws have been used to curb the freedom of the press in India. Some of the more severe laws are the Official Secrets Act and Prevention of Terrorism Act (PoTa). Under PoTa any person could be arrested and put into indefinite undisclosed detention by the police or the Army, if they felt that the person had been in contact with a terrorist or terrorist group and could be a danger to the state’s security. This prevented journalists from using their full range of sources, and compelled them to use safer sources such as government officials, which reduced the efficiency of the press dramatically. PoTa has been now abolished by the recently elected United Progressive Alliance government...

Many of the traditional means of delivering information are being slowly superseded by the increasing pace of modern technological advance. Almost every conventional mode of media and information dissemination has a modern counterpart that offers significant potential advantages to journalist seeking to maintain and enhance their “freedom of speech” (‘Freedom of the Press: India’ 2005, Wikipedia website, 28 November – http://en.wikipedia.org/wiki/Freedom_of_the_press – Accessed 30 November 2005 – Attachment 21).

5. Is the CPIML journal (or magazine called ‘New Culture’) and literature illegal, and/or anti-government?

No references to a CPI(ML) magazine or journal called “New Culture” were located in the sources consulted.

6. Are you able to say what the ‘ruling class party’ is?

A definition for the term “ruling class party” was not found in the available sources. The term appears to be Communist Party rhetoric to describe any party which is in Government at a given time, and in particular those parties which do not embrace communist ideology.

Below are several examples of the phrase “ruling class party” used in context in several communist party publications. These may assist in interpreting the communist parties’ definition of this term:

A paper posted on the International Conference of Marxist-Leninist Parties and Organizations website states:

The growing economic crisis underlies the growing political instability of the ruling classes. The principal **ruling class party** for over four decades, the Congress has declined. However, there is consensus between the ruling class parties on the New Economic Policies though they try to pose as opponents of some aspects of these policies to hoodwink the people and for electoral exploitation of the people’s anger.

Four parliamentary elections held over last ten years have not given majority to any ruling class party or alliance. Minority Governments have been formed with the help of unprincipled alliances after the elections. The ruling class parties are getting increasingly isolated and the people’s resentment is rising.

Utilizing the decline of the main ruling class party, the communal party of majority Hindu community, Bhartiya Janata Party, has formed a coalition government after the last elections. This party is electoral wing of the Rashtriya Swayamsewak Sangh, an avowedly fascist outfit. Their government is trying to whip pseudonationalist and communal passions while it goes full speed to facilitate the entry of the MNCs in all sectors (‘CPI(ML) – New Democracy Country Report’ undated, International Conference of Marxist-Leninist Parties and Organizations website – <http://www.icmlpo.de/us/6con/country/indiennnd.htm> – Accessed 23 November 2005 – Attachment 22).

An article dated 2005 on the Campo Antiimperialista website states:

The state repression is being perpetrated not only on the revolutionary masses and organizations. A similar crackdown is going on against any type of democratic mass movement in all corners of the country irrespective of whichever **ruling class party** is in power. Recently there has been a crack down on even Gandhian-type movements like that of the Narmada movement by the Madhya Pradesh government. In Kashipur, in Orissa, dozens of police camps have been established in a short period in a small aluminium mining area where a number of organizations have been protesting and organizing local people against the mining. The police firing on farmers in Rajasthan is another example to show that whether it is the NDA or the UPA, Indian rulers run the same pro-imperialist government (‘Oppose and Resist UPA Government’s Repression on People’s Movement’ 2005, Campo Antiimperialista website 20 April – <http://www.antiimperialista.org/view.shtml?category=9&id=1113945202&keyword> – Accessed 23 November 2005 – Attachment 23).

The People's March website (2003) states:

Today, after the set-back in the communist movement in the Soviet Union and China, revisionism is the main danger to the International Communist Movement. In India too, revisionism comes in various forms with various labels. There are the establishment communists of the CPI and CPM, who are now part and parcel of the ruling classes of the country. In West Bengal, where the CPM rule, they have launched fascist attacks on the revolutionaries, just like any other **ruling class party**. Then there are the fake Maoists, like the *Liberation*, who seek to fool the genuine revolutionaries and take them in to the morass of revisionism. Then there are various other brands, some who are deep in the revisionist quagmire, others who are sitting on its edge, refusing to take to the path of armed struggle. Many are mere paper organizations of little significance ('Deeper into the Revisionist Garbage Can' 2003, People's March website, Vol 4, No. 4-5, April – May – <http://www.peoplesmarch.com/archives/2003/apr-may2k3/libration.htm> – Accessed 23 November 2005 – Attachment 24).

An extract from a 1996 paper on the Communist Party of India (Marxism) website also states:

But what we have to note is that the Congress Party, which ruled the country for thirty-five years, while failing to end landlordism, land concentration and growing landlessness has successfully disrupted the pre-independence peasant unity. It is true that unity centered around the rich and middle peasants, which today we are striving to build peasant unity centering around the agricultural workers and poor peasants. The **ruling class party**, whether congress or Janata, also used its control peasantry and the disruption of their unity. The two-year of the cooperatives rural banks etc., to perpetuate the division in the peasantry and the disruption of their unity. The two years of the Janata Party government showed that its policies in regard to land reforms were no different from those of the Congress. In fact, some of the Janata State Governments were proposing to reverse even the Congress legislation to favour the landlords ('Fifty Years of Organised Peasant Movement' (1996) Communist Party of India (Marxism) website, Vol 4, No. 2, April- June – http://cpim.org/marxist/198602_marxist_peasantmov_hks.htm – Accessed 23 November 2005 – Attachment 25).

7. Is PALS an offshoot of the Tamil Nadu Organising Committee (TNOC)?

8. Is TNOC an offshoot of CPIML?

Only two references to the Tamil Nadu Organising Committee (TNOC) were found in the sources consulted. Neither of these articles indicated that the TNOC had any affiliation with either the People's Art and Literary Association (PALA) or the Communist Party of India (Marxist-Leninist). These articles are provided below:

- The first article refers to the group's participation in organising "the sixth international Tamil Internet Conference and Exhibition 2003" (Announcement on Tamil Internet 2003 Conference' 2003, INFITT website, 22 June - <http://www.infitt.org/ti2003/news.php> – Accessed 23 November 2005 – Attachment 26).
- The second article, dated 2002, refers to the appointment of the Chair of TNOC as part of the preparations for the 2003 conference ('Tamil Internet 2002' 2002,

<http://www.tamilnation.org/digital/tamilnet02/> – Accessed 23 November 2005 – Attachment 27).

Information was located regarding another similarly named organisation “the Tamil Nadu State Organising Committee”. The Tamil Nadu State Organising Committee is a branch of the Socialist Unity Centre of India (SUCI) which appears to have organising committees in several states. SUCI have their own publication which is called “Proletarian Era”. One of the functions of the state organising committees appears to be arranging meetings and celebrations. Two examples of the Tamil Nadu State Organising Committee activities as discussed in “Proletarian Era” are cited below below:

- The Tamil Nadu State Organizing Committee held a public meeting “to observe the 57th Anniversary of the Party Foundation Day. The meeting was well attended with participants from different districts of the state” (‘Call of May Day’ 2005, *Proletarian Era* online edition, 1 May, Vol 38, No. 18 – <http://www.suci.in/report/pe05012005.pdf> – Accessed 28 November 2005 – Attachment 28).
- The Tamil Nadu State Organizing Committee also organised a memorial day meeting (‘How Far For Women’ 2004, *Proletarian Era* online edition, 1 September, Vol 38, No. 2 – <http://www.suci.in/report/pe09012004.pdf> – Accessed 28 November 2005 – Attachment 29).

On 16 January 2005 the Tamil Nadu State Organising Committee posted an article on Zinester Ezine Directory website detailing their efforts to provide medical relief and provisions to Tsunami victims:

The Socialist Unity Centre Of India(S.U.C.I.) Tamil Nadu State organizing Committee has opened up medical camps in Porto Nova- Paringipettai. Another camp is working in Chinnur 2km from Pudhukuppam. These two places belong to Cuddalore Similarly medical camp is working in Chinna Mudaliar Chavadi of Pondichery. In Cuddalore, side by side with the medical team, a team of volunteers are helping the villagers clear debris, help repair houses etc. Another medical camp has been set up in Karaikal, 18 km away from Nagapattinam.

Doctors and medical workers belonging to Medical Service Centre (MSC) have come from Bengal, Kerala, Chandigarh, Delhi, Karnataka are working in the medical camps round the clock. The Medical Service Centre rendered very valuable service in Orissa Super Cyclone and in the Earth Quake affected areas of Kutchh. The S.U.C.I. volunteers from all parts of the country are going to Tamil Nadu with the money and the relief materials (collected from the people) and to work as volunteers in the effected areas of Cuddalore and Nagapattanam (‘SUCI’s Medical Relief Work Tamil Nadu Tsunami’ 2005, Zinester Ezine Directory website, 16 January – <http://archives.zinester.com/76029/36933.html> – Accessed 28 November 2005 – Attachment 30).

An article posted by the Tamil Nadu State Organising Committee on INSAF website (International South Asia Forum) reports on a demonstration staged by the group against the mistreatment of women in India, particularly by authorities:

A demonstration of women was organised by AIMSS today by 11 Am near Chennai Memorial Hall, demanding that the Supreme Court reconsider its verdict regarding the arrest of women. “Do not push many as scape goats on the plea of arresting one single women”, “Do not confer unlimited powers to police” were some of the the slogans echoed by them.

Com Jeyapaul, member, Tamilnadu State Organising Committee of SUCI, in his address stated that throughout the country, from Delhi to Nagpur to Orissa to Tamilnadu, atrocities on women were on the increase. Even the police were indulging in sexual harassment, lock-up deaths were taking place. In this situation, this verdict is a painful thing. In order to stop the cultural degradation and to ensure protection to women it is highly necessary to withdraw this verdict. More over the protracted and powerful mass movements alone is the guarantee for the civil and democratic rights. AIMSS activists Panmozhi, Arul and a few more women also spoke ('MSS TN protests SC verdict- Do not push many as scapegoats on the plea of arresting one single women' 2003, INSAF website, 3 November – http://insaf.net/pipermail/insafny_insaf.net/2003-November/000628.html – Accessed 28 November 2005 – Attachment 31).

Wikipedia provides a profile of the Socialist Unity Centre of India (SUCI) and states that “SUCI stands out amongst left groups as a hardline cadre party, with Stalin as one of the principal guiding lights. SUCI members are expected to give up their material possessions and fully dedicate their life to the party”:

Socialist Unity Centre of India is an Indian communist political party. SUCI was founded by Shibdas Ghosh as a splinter-group of RSP in 1948, but the political development of the party is very different from that of RSP. SUCI stands out amongst left groups as a hardline cadre party, with Stalin as one of the principal guiding lights. SUCI members are expected to give up their material possessions and fully dedicate their life to the party. Although its a minor party, it makes itself very visible with posters and murals throughout India.

The party participated in the United Front governments in West Bengal 1967-1969 and 1969-1970 together with CPI(M) and others.

SUCI has two members of the West Bengal state assembly, both from the South 24 Paraganas district. The foremost stronghold of the party is in South 24 Paraganas, in areas such as Joynagar where the party controls municipalities, etc. The relation with CPI(M) in that area is very bad, and a series of mutual killings have taken place ('Socialist Unity Centre of India' 2005, Wikipedia website -17 November – http://en.wikipedia.org/wiki/Socialist_Unity_Centre_of_India – Accessed 28 November 2005 – Attachment 32).

9. Can the police take persons into preventative detention in Chennai, e.g. when top political leaders are visiting Chennai?

The sources consulted indicate that it is possible for police to take persons into “preventative detention” under various sections of the Code of Criminal Procedure. Extracts of the relevant Acts and Laws are provided at the end of this section.

In a paper dated 5 September 2005, Human Rights Watch Asia (HRWA) report arrests made under ss 41(a) and 151 of the Code of Criminal Procedure. HRWA remarks that the number of arrests made in India under s151 of the Act is “unusually large”:

Section 41(a) of Chapter 5 of the CrPC provides that an individual can be arrested without an order or warrant if he “has been concerned in any cognisable offence or [if] a reasonable complaint has been made [against him] or credible information has been received or a reasonable suspicion exists of his having been so concerned.” The key words in this subpart-*reasonable* and *credible*-are extremely vague and allow for unfettered discretion on the part of police officers.

As previously observed, many times arrests occur under the guise of “preventive

detention.” The U.N. Human Rights Committee in their concluding observations regarding India’s implementation of the ICCPR stated their dissatisfaction with the use of preventive detention. Section 151, the section that allows for preventive detention, is widely recognised as giving too much discretion to the police, and it allows the police to create reasons to arrest those against whom they have a personal vendetta. The number of arrests made under this section is unusually large, suggesting that police officers are doing just that. Furthermore, if an officer uses preventive detention as the grounds for arrest, the officer also does not have to comply with Article 22 of the Constitution.

In 1994, the Supreme Court stated in the case of *Joginder Kumar vs. State of Uttar Pradesh* that “no arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.” While the CrPC provides the power to arrest, many police officers do so without the justification (‘The Right to Life in India: Is It Really the Law of the Land?’ 2005, Asian Human Rights Commission – Human Rights Solidarity – 5 September - <http://www.hrsolidarity.net/mainfile.php/2005vol15no05/2446> – Accessed 25 November 2005 – Attachment 33).

Another 2005 article reports the arrest of 16 human rights campaigners under s151 of the Code of Criminal Procedure. The article claims that the arrests were motivated by animosity towards members of the human rights group:

Hong Kong: The Asian Human Rights Commission (AHRC) on 16 October called on police authorities in Tamil Nadu to apologise for unlawfully arresting a leading human rights campaigner and 15 other activists, and stop violating people’s right and freedom to assembly...

The rights campaigners arrested included Henri Tiphagne, who is the executive director of People’s Watch, a vocal group against police custodial torture.

It is widely believed that the arrests were motivated by the animosity towards Tiphagne and his organisation, which once successfully led to the conviction of Kumar, who allegedly ordered the arrests, in court for human rights violation.

“Many police officers in India are notorious for their atrocious acts, especially for victimising those who would dare to stand against them,” said Bijo Francis, a programme officer of the AHRC. “The provisions of law as evident from this particular case can often be misused for pacifying personal vengeance of police officers,” Francis said.

The 16 rights activists were arrested under section 151 of the Criminal Procedure Code for preventive detention and released later.

Francis said this was yet another exposure against the myth that India’s legislation is good enough to safeguard acts against police torture. (‘Police urged to stop abusing power’ 2004, *The Milli Gazette* online edition – 1 November –

<http://www.milligazette.com/Archives/2004/01-15Nov04-Print-Edition/011511200451.htm> – Accessed 24 November 2005 – Attachment 34).

A 2003 article published by *The Hindu* quotes a former justice of the Mumbai High Court who claims that “there are more human rights violations in Tamil Nadu, than in any other State”. He points out that “out of the over 73,000 TADA detenus across the country, only less than two per cent were convicted”:

There are more human rights violations in Tamil Nadu, than in any other State, according to Justice Suresh, former Mumbai High Court Judge. Speaking at the first State-level conference of ‘human rights defenders’ here

yesterday, Mr. Justice Suresh, however, said the voice of the people was also loud and clear in resisting the violations. Stating that mere holding of elections did not represent democracy, he said the voice of common man should be respected. The Preamble of the Constitution laid stress on liberty, equality, fraternity and social, economic and political justice.

Mr. Justice Suresh said bureaucrats and judiciary had failed to look into the human rights content in the fundamental rights. All human rights were indivisible.

Describing the Supreme Court observation that strikes were illegal as “unconstitutional”, he said it denied the people the right to dissent, guaranteed by Article 21.

Stating that the Terrorists and Disruptive (Prevention) Act and the Prevention of Terrorism Act were “unjust” laws, he pointed out that out of the over 73,000 TADA detenus across the country, only less than two per cent were convicted.

He demanded scrapping of Section 151 of the Criminal Procedure Code, which allowed the police to detain anyone without any valid reason.

Speaking on the occasion, N. Markandan, former Vice-Chancellor, Gandhigram Rural Institute, expressed concern over the misuse of police and judiciary by politicians (‘More Rights Violation in Tamil Nadu’ 2003, *The Hindu* online edition, 30 November – <http://www.hindu.com/2003/11/30/stories/2003113003210500.htm> – Accessed 24 November 2005 – Attachment 35).

A 1999 Human Rights Watch publication also reports on the arrest of social workers under ss151 and 107 and of the Code of Criminal Procedure. Section 107 “allows the police to preventively detain any person likely to commit a breach of the peace or disturb the public tranquillity”:

Shankar Pawar works among Dalits in the Andhra Pradesh-Karnataka-Maharashtra border region. In 1993 he was detained under Criminal Procedure Code Section 151 for fifteen days for organizing Dalits to demand their due share of auctioned temple lands. Under Section 151, “a police officer knowing of a design to commit any cognizable offence may arrest, without orders from the Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented.” Although sub-section (2) of Section 151 does not allow for the detention to exceed twenty-four hours, in the state of Maharashtra the section has been amended to allow for detention up to fifteen days. After his detention, Pawar was jailed for fifty-two days and concurrently tried under the National Security Act. Only after his case was pleaded before three High Court judges was he released.

Datta Khandagale is a social worker in Chorakali village, Usmanabad district, Maharashtra. He works with fifty Dalit families who are segregated from the majority caste Hindus in the village. In September 1992, Khandagale asked the police to register an Atrocities Act case against upper castes who had instituted a social boycott against Dalit villagers. The boycott was in retaliation for the Dalits’ attempt to enter a village temple for prayer. As they entered, the upper-caste villagers began to throw stones and, as a result, one woman’s head was cut open. When Khandagale approached the police with a complaint, the police responded, “You’re the one making trouble in the village, increasing tensions between communities,” and then proceeded to file a Criminal Procedure Code Section 107 case against him. Section 107 allows the police to preventively detain any person “likely to commit a breach of the peace or disturb the public tranquillity.” Nine Dalits were arrested, including Khandagale. Because they could not pay the bond, they remained in jail for five days (‘The Criminalization of Social Activism – Broken People: Caste Violence Against India’ 1999, Human Rights Watch online – <http://www.hrw.org/reports/1999/india/India994-10.htm> – Accessed 25 November 2005 – Attachment 36).

US State Department's 2004 *Country Report on Human Rights Practices for India*, also states that "the National Security Act (NSA) permits police to detain persons considered security risks anywhere in the country (except for Jammu and Kashmir), without charge or trial for as long as 1 year". It maintains that "there were credible reports that police throughout the country often did not file legally required arrest reports":

There were credible reports that police throughout the country often did not file legally required arrest reports, resulting in hundreds of unsolved disappearances in which relatives claimed that an individual was taken into police custody and never heard from again. Police usually denied these claims, countering that there were no records of arrest...

The National Security Act (NSA) permits police to detain persons considered security risks anywhere in the country (except for Jammu and Kashmir), without charge or trial for as long as 1 year on loosely defined security reasons. NSA does not define "security risk." State governments must confirm the detention order, which is reviewed by an advisory board of three High Court judges within 7 weeks of the arrest. NSA detainees are permitted visits by family members and lawyers, and detainees must be informed of the grounds for their detention within 5 days (10 to 15 days in exceptional circumstances). According to press accounts, 32 persons had been detained under the NSA during the year.

Human rights groups alleged that the NSA allowed authorities to order preventive detention at their own behest after only a cursory review by an advisory board, and that no court could overturn such a decision (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – India*, Section 2a, 28 February – Attachment 20).

Extracts from Relevant Sections of the Code of Criminal Procedure, 1973

Section 41:

When Police may arrest without warrant:

41. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

- (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
- (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or
- (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or
- (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; or
- (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

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- (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in

India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110

(‘The Code of Criminal Procedure, 1973’, Section 41 1974, *India Code Information System (INCODIS)* website, 25 January – <http://indiacode.nic.in/fullact1.asp?tfnm=197402> – Accessed 28 November 2005 – Attachment 37).

Section 107:

Security for keeping the peace in other cases:

107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, 1*[with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction

(‘The Code of Criminal Procedure, 1973’: Section 107 1974, *India Code Information System (INCODIS)* website, 25 January – <http://indiacode.nic.in/fullact1.asp?tfnm=197402> – Accessed 28 November 2005 – Attachment 38).

Section 151:

Arrest to prevent the commission of cognizable offences.

(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force.

(‘The Code of Criminal Procedure, 1973’: Section 151 1974, *India Code Information System*

(*INCODIS*) website, 25 January – <http://indiacode.nic.in/fullact1.asp?tfnm=197402> – Accessed 28 November 2005 – Attachment 39).

A copy of the National Security Act, 1980 “An Act to provide for preventive detention in certain cases and for matters connected therewith” (‘The National Security Act, 1980’, *India Code Information System (INCODIS)* website, 27 December – <http://indiacode.nic.in/fullact1.asp?tfnm=198065> – Accessed 28 November 2005 – Attachment 40).

10. What are the Tamil speaking states in India?

RRT *Research Response IND17453*, dated 23 August 2005, addressed this topic (RRT Country Research 2005, *Research Response IND17453*, 23 August – Attachment 41). The information indicates that Tamils live throughout India but particularly in southern states neighbouring Tamil Nadu such as Karnataka, Kerala, and Andhra Pradesh as well as Maharashtra:

Geographic distribution

Tamil is the first language of the majority in the southern Indian state of Tamil Nadu, and in northern and northeastern Sri Lanka. The language is also spoken in other parts of these two countries, most notably in the Indian states of Karnataka, Kerala and Maharashtra, and in Colombo and the hill country in Sri Lanka.

During the 19th and early 20th centuries, Tamil-speaking indentured servants from India and Sri Lanka were sent to many parts of the British empire where they founded Tamil-speaking communities. There are currently sizeable Tamil-speaking populations descended from them in Singapore, Malaysia, and Mauritius. Many people in South Africa, Guyana, Fiji, Suriname and Trinidad and Tobago have Tamil origins, but the language is no longer spoken in those countries.

Groups of more recent emigrants – primarily refugees from the Sri Lankan civil war, but also a few economic migrants – exist in Australia, Canada, the USA and most western European countries (‘Tamil Language’, nd, Answers.com (originally sourced from Wikipedia) – Accessed 23 August 2005 – <http://www.answers.com/topic/tamil-language> – Attachment 42).

RRT *Research Response IND23366* also provides statistical information which identifies the distribution of the Tamil population throughout India (RRT Country Research, 2004, *Research Response IND23366*, 4 June – Attachment 43).

See also *Research Response IND16494*, dated 24 February 2004, which also deals with this topic. The response notes that Tamil is one of the twenty two officially recognised languages of India. (See also RRT Country Research, 2004, *Research Response IND16494* (specifically Question 4), 24 February – Attachment 44.)

11. Are there reports of police allowing prisoners to beat other prisoners?

There were no reports referring specifically to police officers allowing prisoners to beat other prisoners. However, there were reports of conflict between prisoners, and between prisoners and police, in India.

The US Department's 2004 *Country Reports on Human Rights Practices for India* states that police were sometimes responsible for custodial deaths:

The Government generally respected the human rights of its citizens; however, numerous serious problems remained. Police and security forces were sometimes responsible for extrajudicial killings, including staged encounter killings, and custodial deaths. Government officials often used special antiterrorism legislation to justify the excessive use of force while combating active insurgencies in Jammu and Kashmir and several northeastern states. Security force officials who committed human rights abuses generally enjoyed de facto legal impunity, although there were numerous reports of investigations into individual abuse cases as well as punishment of some perpetrators. Other violations included: torture and rape by police and other government agents; poor prison conditions; lengthy pretrial detention without charge; prolonged detention while undergoing trial; occasional limits on press freedom and freedom of movement; harassment and arrest of human rights monitors; extensive societal violence and legal and societal discrimination against women... ((US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – India*, Section 2a, 28 February – Attachment 20)

There were a number of articles reporting on fights between prisoners. However, there was no indication that these were sanctioned by the police officers involved. Two articles published in 2001 report on incidents between “undertrial prisoners” as they were being transferred between facilities.

An article published by *The Tribune* in 2001 states that “two sides of the prisoners were locked into a dispute. The jail staff allegedly beat them up after segregating the two groups”:

FEROZEPORE, Jan 31 — The shifting of about 300 undertrials from Faridkot to the local Central Jail here is said to be the root cause of frequent prisoners' disputes. While 26 prisoners have suffered blunt injuries in the latest incident of jail dispute on January 29, the groupism among the jailbirds repeatedly sparked violence during November and December last.

The transfer of undertrials from outside Ferozepore district was necessitated due to repair works at the Faridkot jail. As a result of this the number of prisoners in Ferozepore has mounted to 1,100.

Even as the judicial probe into the latest incident of violence continues, the Superintendent of the Ferozepore Central Jail, Mr Bhajan Singh, attributed it to the groupism among the prisoners. Confirming blunt injuries to 26 prisoners, he told TNS that the dispute was a fallout of the fight between the local prisoners and undertrials from Faridkot.

He, however, admitted that several prisoners might have received injuries when the jail staff hit the jailbirds and segregated them to prevent major violence.

There were also reports indicating that the jail staff settled scores by beating up the prisoners who were habitual of making complaints to judicial officials about “poor” arrangements.

However, Mr Bhajan Singh denied the charge and claimed that the jail staff had only intervened to stop prisoners from injuring one another.

While the authorities did not allow journalists to meet the undertrials on one pretext or the other, enquiries from independent sources revealed that prisoners fought over the claim on a kite that found its way into the jail premises on the occasion of “Basant Panchmi” — a kite-flying festival.

Subsequently, the two sides of the prisoners were locked into a dispute. The jail staff allegedly beat them up after segregating the two groups.

Earlier, during November and December last there were reports of violence inside the jail. The Chief Judicial Magistrate from Faridkot is learnt to have recorded the

statement of the jail inmates yesterday evening
(‘Inmates’ shifting cause of jail violence’ 2001, *The Tribune* online edition – 1
February – <http://www.tribuneindia.com/2001/20010201/punjab1.htm> – Accessed 28
November 2005 – Attachment 45).

A 2001 article posted on Indiainfo website reports on a similar incident when undertrial prisoners “frustrated over the lack of amenities in the overcrowded Tihar Central Jail... went berserk and used blades and pocket scissors to attack each other”:

New Delhi: At least 13 undertrials of the Central Tihar Jail were injured on Monday as they clashed inside a prison vehicle taking them to a district court for trial.

The undertrials have been frustrated over the lack of amenities in the overcrowded Tihar Central Jail in the capital.

Tihar Jail officials said the incident took place at around 11:00 hours (IST) when the prisoners were being taken from Tihar to Tis Hazari district courts.

They said the clash was over some dispute among the prisoners. “They went berserk and used blades and pocket scissors to attack each other.”

The injured prisoners were taken to the hospital and most of them discharged after treatment. None of the undertrials, however, received any serious injuries.

Generally, tension and strife are on the rise in the Central Tihar Jail due to inmates cramped up in prison cells.

Earlier this year, an undertrial was killed and several others injured when prisoners clashed over lack of space in their cells. Such fights have regularly taken place among prisoners in the central jail to capture more and more space in the congested cells.

Attributing “tension” as the reason behind the riots in the jail, Director General (Prisons) Ajay Aggarwal maintains that riots have been taking place due to the constraint of space in the prison.

“There is a constant tussle, which at times turns violent, to grab as much space as possible,” he said.

Tihar had an in-built capacity to house 3,637 prisoners, but over a period of time the rush to the prison had been growing and at present it is three times more than its capacity

(‘Undertrials clash in prison vehicle – 19 hurt’ 2001, Indiainfo website, 26 March – <http://newsarchives.indiainfo.com/2001/03/26/26prison.html> – Accessed 28
November 2005 – Attachment 46).

An article from the *Ludhiane Tribune*, dated 31 March 2002, reported on a siege by prisoners protesting the state government’s decision to move prisoners to another jail. The siege lasted four days:

Launching a commando operation, the CRPF and Bihar Military Police today stormed the Chapra Divisional Jail here, ending its four-day-long siege by its rebellious inmates, killing at least five prisoners and injuring several others.

Nearly 15 policemen and eight inmates were injured in the two-hour operation during which prisoners clashed with the police and threw stones at them.

“We have regained full control of the jail premises forcing the inmates to surrender”, Chapra Police Superintendent Kundan Krishna said.

Assisted by the CRPF and Bihar Military Police contingents, a large posse of district police descended on the roofs of the jail barracks using the ladders of fire engines.

They climbed down and opened several rounds of fire, forcing the rebellious inmates into their wards. The commandos succeeded in opening the main gate, locked by the prisoners, enabling senior officials and jail staff to enter and take charge.

The authorities later asked the prisoners over the loudspeaker to come out of their wards and surrender for a head count, which they did, Mr Krishna said.

All injured have been admitted to jail hospital and Chapra Sadar hospital where the condition of some of them is serious.

The prisoners had taken over the jail on Wednesday forcing its officials and wardens out of the premises in protest against the state government's decision to shift five prisoners to Buxar Central Jail.

The prisoners killed in the operation have been identified as Ashok, Sanjay Rai, Sashi Bhusan and Vakil.

Fresh incident of stone-throwing took place outside the jail this morning when the relatives of the inmates on being denied to pass food items to the prisoners clashed with the police, resulting in injury to a policeman ('Commandos End Jail Seige: Five Inmates Die in Operation' 2002, *Ludhiana Tribune* online edition, 31 March - <http://www.tribuneindia.com/2002/20020331/main4.htm> - Accessed 28 November 2005 – Attachment 47).

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