

**Report on the trial of Ananda Marga Leader
Prabhat Ranjan Sarkar (Baba)
in Patna, India.**

prepared for

THE INTERNATIONAL COMMISSION OF JURISTS

Geneva

and

THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN

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800 Place Victoria,
Suite 612

Montreal Quebec
H4Z 1H6

by

Me. C. Sheppard

OF THE CANADIAN BAR

Cable : NOSNIBOR

Telex : 05-27343

Telephone : 514-878-631

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I - INTRODUCTION AND DESCRIPTION OF MANDATE

The undersigned was commissioned by the International Commission of Jurists, Geneva, and by the International League for Human Rights New York, to attend, and report on, the trial in Patna, capital of the Indian Province of Bihar, of Mr. Prabhat Ranjan Sarkar. Copies of the relevant Ordres de Mission are annexed hereto as Appendixes "A" and "B". Mr. Sarkar, also known as Shrii Shrii Anandamurti, is the founder and leader of the Ananda Marga movement.

He and four others were charged at the end of 1971 with offences relating to the alleged murder in the summer of 1970 of a number of Ananda Marga defectors. After protracted preliminary hearings, the trial opened on December 22nd, 1975. At the time of writing, it has not yet been completed.

It would appear that from the very beginning this case aroused widespread concern, not only among Ananda Marga followers in India and abroad, but also among many individuals and organizations throughout the world concerned with the protection of civil liberties. Eventually, even, various international defence committees were created for Mr. P.R. Sarkar and are still active.

Alarm was expressed over what appeared to be excessive delays in the court proceedings; over the obstacles the accused were encountering in securing funds to pay for their legal defence; over alleged interference with their right to counsel; and over the practical difficulties in India's present political climate of presenting a full defence to charges which were said to be based on questionable or trumped up evidence. There were also fears about the general fairness of the trial.

Whether these apprehensions were well-founded or not, they were reinforced by the avowed hostility of the Indian authorities to Ananda Marga and by the clearly political overtones of the prosecution. The proceedings, if not actually designed to stamp out the movement, seem to have been manipulated by some so as to destroy the credibility of Ananda Marga and disillusion its followers.

Finally, considerable concern has been shown continuously, especially among Margis, over the state of health of Mr. Sarkar. Indeed, after a supposed attempt on his life, on February 12th, 1973, he decided to begin a hunger strike and to take in only liquids. This voluntary fast still continues to this day, more than three years later, and renders it physically and mentally impossible for Mr. Sarkar to attend the proceedings. He remains in Patna's Bankipore jail while the trial goes on in his absence.

These were the misgivings that induced both the International Commission of Jurists and the International League for Human Rights to become involved and to despatch an observer to the trial.

The present report is based not only on the undersigned's personal observations made in the course of a relatively brief attendance at the trial in the Patna District Court from June 11th to 18th, 1976, but on many meetings with defence and prosecution counsel, with various other observers, and the examination of hundreds of pages of documents, briefs and transcripts. The fact that the proceedings are almost entirely conducted in English greatly simplified the task. Some practical problems encountered in carrying out the mandate will be described in Appendix "C".

Finally, it should be noted that this report is prepared in the light of contemporary notions of fair and objective justice. The criteria used are the generally accepted basic rules of natural justice. The

undersigned is in no way attempting to assess the merits of any political, ideological, social or spiritual point of view. Nor does he wish to take sides in the controversies between the Indian authorities and Ananda Marga or pass judgment on the policies of the government of India.

The sole question this report tries to answer, on the strength of the principles outlined hereinabove, is the following: is the trial of Prabhat Ranjan Sarkar fair? In other words, is he enabled to make a full and complete defence before an impartial tribunal?

Simple as the question may appear, answering it has proved far from easy.

II - HISTORY OF ANANDA MARGA AND ITS RELATIONSHIP
WITH THE INDIAN AUTHORITIES

A proper understanding of the issues involved in the Sarkar trial required a minimum of familiarity with the history of the Ananda Marga movement itself and of the increasing hostility towards it of the Indian authorities.

The movement was founded in Bihar in 1955 by Mr. Prabhat Ranjan Sarkar, who was then employed as a railway accountant. It describes itself as "an organization to propagate Ananda Marga (the Path of Bliss), a synthesis of traditional Tantric and yogic practices with a carefully planned program of service and social reform". Mr. William T. Wells, Q.C., the British barrister who visited India in the spring of 1974 at the behest of the International Committee to Obtain Justice for Shrii Shrii Anandamurti, in his report spoke of its "twin objectives of individual regeneration through spiritual practices and of liberating and purifying the society, and ultimately of creating a world government by substituting rule by moralists for the corrupt rule, as he saw it, of the governments around him".

The religious and social tenets of Ananda Marga were evidently quite appealing to many people and the movement spread to various parts of India where it eventually attracted more than two million adherents, including apparently many government and police officials. Abroad it is represented in dozens of countries on various continents, including Europe, Asia and North America.

Ananda Marga was critical of the existing social order and it was rapidly suspected of political ambitions. It soon incurred the anger of the Indian administration. Its widening appeal to many government officials obviously also disturbed the authorities. Hence, in 1969, the authorities,

on the ground that Ananda Marga was a political party or organization, unsuccessfully attempted to prohibit civil servants from membership in the movement. In fact, not only the government, but various other elements in India opposed Ananda Marga. It even occasionally encountered mob violence. Ananda Marga made no secret of its formidable array of enemies and in one pamphlet even boasted:

"Conservative Hindus reacted against Anandamurti's program to abolish the caste system; prosperous businessmen and landowners felt threatened by his socialistic ideals; and most importantly, communists found his organization eroding their base among the poor and among disaffected intellectuals. The Communist Party of India (CPI, the pro-Soviet bloc) was an important factor in Mrs. Gandhi's rising power, and it was not averse to contributing its power to the effort to suppress Ananda Marga. Anandamurti has accused the Soviet KGB of organizing much of the anti-Ananda Marga activity; recently, the Soviet press carried articles denouncing Ananda Marga and calling for its abolition not only in India, but throughout the world."

One objection to Ananda Marga which has surfaced time and again is its insistence on a society led by moralists or "sadvipras". According to Ananda Marga, only the "morally strong and selfless individuals" are entitled to govern society. This has led its critics to assert that the movement is basically anti-democratic and seeks to establish a fascist-tinged dictatorship.

The Indian government eventually came to the conclusion that Ananda Marga wanted to capture political power by violence and armed revolution and that its so-called Voluntary Social Service or V.S.S. was really a para-military organization set up for the purpose of overthrowing the government.

This increasingly strident campaign was substantially bolstered

by the discovery in the fall of 1971 of an alleged plot of the Ananda Marga leadership to assassinate some defecting adherents.

Indeed, in the course of a police raid in June 1971 on the former Ananda Marga headquarters at Ranchi, in Bihar, the police arrested an Ananda Marga monk or avadhuta called Gour Mazumdar, but better known as Madhavananda, who had been general secretary of the V.S.S. and close to Mr. Sarkar. Four months later he was turned over to India's Central Bureau of Intelligence (C.B.I.), at the latter's request. After being detained and questioned by the C.B.I. for seven days he apparently confessed to them the murder of several disaffected Ananda Marga followers and implicated Mr. Sarkar and others in these killings as well as in plots to assassinate at least another fifty defectors. On October 31st, 1971, the police took him to court where, after pleading innocent to a charge relating to explosives supposedly found during the Ranchi raid, Madhavananda was asked by the magistrate if he had anything to add. According to the official story, he then spontaneously provided the magistrate with an extensive account of a number of murders of Ananda Marga defectors in which he claimed to have participated. He eventually admitted committing, or participating in, eighteen murders and agreeing to commit another fifty.

When asked later why he had waited in custody four and a half months before finally confessing, he explained that he had not told the Bihar police about these crimes because he did not trust them: many of them were members of Ananda Marga; he only felt confident enough to implicate himself and Mr. Sarkar when in the hands of the C.B.I.

At the end of December 1971, Mr. Sarkar and others were arrested and charged with complicity in, and/or perpetration of, the murders. In the meantime, Madhavananda had been pardoned for his participation in these same crimes. Under Indian law, the testimony of an accomplice such as Madhavananda apparently can only be received if he has first been

pardoned and no longer faces prosecution for his crime.

It was not until the 5th of May 1972 that Mr. Sarkar and his four co-accused were formally charged. As we shall see in the next chapter, it took almost two and a half years for all the preliminary and committal hearings to terminate and for the actual trial to begin. In the meantime, the official campaign against Ananda Marga seemed to increase in ferocity. Eventually, when the State of Emergency was proclaimed by Prime Minister Indira Gandhi on June 26th, 1975, and all civil liberties were suspended, many Margis were placed in preventive detention and Ananda Marga was among the twenty-six Indian organizations banned. All Ananda Marga activities were prohibited and all the funds and property of the movement confiscated. No accurate estimate exists of the number of Margis arrested or still detained.

At the present time, Ananda Marga is still forbidden in India. It is ironic that the only country where it is prohibited is that where the movement was created.

III - HISTORY OF THE SARKAR PROSECUTION AND TRIAL

(a) Arrest and committal hearings.

This historical and political background is essential to appreciate fully the context of the judicial proceedings against Prabhat Ranjan Sarkar and the basis for the uneasiness described in Chapter I.

Mr Sarkar's arrest on charges relating to the murder of defecting avadhutas took place in Patna on December 29th, 1971. Specifically, he was accused of conspiracy and abettment to the murder in 1970 of six former members of Ananda Marga.

Four other persons were arrested simultaneously: Sarveshvarananda, an avadhuta Sarkar's general secretary; Satyananda, another avadhuta; and two Ananda Marga workers: Barun Kumar Mukherjee and Pavitra Kumar Roy. Sarveshvarananda and Satyananda face the same charges as Mr. Sarkar while the remaining two are accused of the actual murders. Two other Margis allegedly involved absconded and have not been found.

It took almost five months after their arrests -- until May 5th, 1972 -- for formal charges to be laid against the five accused.

The pre-trial or preliminary hearings lasted from June 22 to November 22, 1972. Madhavananda gave evidence for seven days on behalf of the prosecution and was subjected to nine days of cross-examination. All accused, including Mr. Sarkar, testified and denied the charges. The presiding magistrate, even though noting that there were "several probabilities in this case including the probability of the correctness of the defence version" and despite the "in-consistencies, probabilities, contradictions, omissions, interestedness, etc." of the prosecution, stated that the law did not require at this stage the prosecution to prove

its case beyond shadow of doubt. He ruled that a sufficient prima facie case had been made out to justify committal to trial.

The defence attacked this committal order. Nine months later on August 22nd, 1973 it was quashed by the Patna High Court because Madhavananda's pardon -- as we have seen, the legal prerequisite to the validity of the testimony of an accomplice -- was improperly granted. However, the accused were kept in jail and this technical defect was cured by the granting of a new and valid pardon in February 1974. New committal hearings began in June 1975 and continued until December of that year. The accused were then committed to trial once more.

(b) The trial itself.

As was pointed out hereinabove, the trial is still in progress and has been going on in somewhat desultory fashion for almost eight months. It began on December 22nd 1975, before Patna District Court Judge Radha Ballabh Singh. In India there are no juries in criminal cases.

Before reviewing the course of this trial, it is important to bear in mind that all the accused, including Mr. Sarkar, in the course of the preliminary hearing, had denied the charges, and sworn to their innocence.

It should also be noted that the accused stand trial only in relation to six murders: those of Tapesvarananda, Sudhananda, Sushmita Mritunjayananda, Japeshananda and Amulya Kumar. Charges in relation to the other alleged killings are either pending or have not yet been laid confronting the accused with the inevitable but ominous prospect of facing a further series of trials whether or not they are acquitted in this case.

The prosecution began its evidence with its star witness, Madhavananda, who repeated his story, and again claimed to have acted

under the orders of Mr. Sarkar. He again admitted participating in eighteen actual murders between July 1970 and March 1971 and added that he had intended, or planned, to commit another fifty.

In cross-examination, Madhavananda acknowledged that he had been pardoned only for the six murders mentioned in the current prosecution and that he was awaiting trial on the others. He admitted knowing that he might be hanged for these other murders and said: "I am prepared to be hanged if the law desires." Despite a very lengthy cross-examination, he steadfastly denied concocting his testimony or tendering fabricated proof.

In the midst of his evidence, on January 19th, 1976, at the request of the defence and over the prosecution's objections, the trial was adjourned to February 2nd, in order to allow the defence to obtain government permission to receive money from abroad for fees and disbursements. Indeed, it would appear that one of the major difficulties facing the accused is a complete lack of funds to finance their defence. All the Ananda Marga assets have been seized and contributions from abroad are not permitted by the Indian authorities.

On February 24th, over the prosecution's renewed objection, the case was adjourned again for one month, to March 24th, in response to the accused's renewed petition praying for time to raise money for legal fees. Judge Singh added that it would be the last adjournment and that if necessary he would name court-appointed lawyers to represent the accused.

We will return to this subject in the next Chapter.

The trial resumed on March 24th, 1976 and on the 31st another key prosecution witness, Sarkar's private secretary, Vishokananda, was quoted as testifying that Mr. Sarkar had expressed the desire to establish

"through militant revolution and violent methods" a moral state ruled by moralists. Vishokananda added that to Prabhat Ranjan Sarkar moralists meant "those who blindly followed his principles and were ready for sacrifice". He also stated as some other witnesses had said, that Mr. Sarkar claimed to be a divine incarnation of Lord Shiva and of Lord Buddha. He asserted that one Sambodhananda had told him in August 1970 that the killings had taken place under Mr. Sarkar's orders. This piece of hearsay evidence is characteristic of much of the prosecution's evidence.

On April 20th, the case was adjourned to May 3rd due to the illness of Judge Singh. On May 19th, another avadhuta Tadgatananda, was reported as testifying for the prosecution that Mr. Sarkar had aimed at capturing political power through armed revolution to be achieved through the V.S.S. whose sole function, according to him, was collecting arms and ammunition and protecting Ananda Marga activities. He further accused the V.S.S. of operating para-military training camps.

Another witness for the prosecution, former avadhuta Prafulla Dev Nath, alias Krishnananda, testified on May 30th that Mr. Sarkar had told him that the killing of the defecting avadhutas was justified as they were police agents, members of the Communist Party - Marxist working against Ananda Marga and leaking out organizational secrets on the outside.

Further examples of this type of questionable hearsay evidence can be found in the testimony of Mr. Sarkar's wife, Uma, alias Marga Mata, and of the former Ananda Marga worker, Anil Kumar Sarkar, alias Amarendra Kumar. Mrs. Sarkar, who surprisingly was called to testify against her husband, reportedly told the court that she "was convinced" on the strength of what had been told to her by Vishokananda - mere speculation wrapped in double hearsay! -- that her husband had ordered the killing of the

defecting avadhutas. However, she admitted that when she asked her husband about the murders, he denied any involvement. As for Amarendra Kumar, he is said to have testified on July 3rd, that he had been told by Tapas Kumar Banerjee, one of the two absconding accused, that Mr. Sarkar had ordered the abduction and the killing of defectors.

One of the more surprising witnesses was a former Margi, unsuccessful politician, and current journalist, called Nawal Kishore Sahay. This witness is the author of several virulent anti-Ananda Marga pamphlets, two of which were published in October and December 1975 by the Ministry of Information and Broadcasting of the Government of India. While denying any special animosity towards Ananda Marga, he described its leader as a "perverted meglomaniac". He stated that Ananda Marga had taken a political turn and had participated in the 1967 general election (in which he himself was a defeated candidate) and in the 1969 Mid-term elections. He described the Proutist Block of India (P.B.I.), set up in 1969, as the organization created to run the political activities of Ananda Marga. According to the witness, P.B.I. got its money from the Ananda Marga relief funds. It was controlled by Sarkar.

It is this type of evidence, not even remotely relevant to charges of murder and conspiracy to murder, which open the proceedings to the general suspicion of their being used for political purposes and to discredit the movement. The intrinsic spiritual merits, or demerits, or the political virginity of Ananda Marga, have little bearing on whether the accused in fact conspired to commit certain murders or did perpetrate these killings. It is also somewhat difficult to understand the relevance in this type of criminal case of testimony to the effect that a particular religious or spiritual movement had -- or appeared to have -- electoral proclivities. Certainly the legal issue in the case is whether Ananda-murti conspired to kill dissenters and not whether he had political ambitions or fancied himself to be a divine reincarnation!

Many more witnesses for the prosecution were called to present various types of proof: technical evidence, scientific evidence, identification of the victims or of the accused, and corroboration of various peripheral points. But it cannot be stressed enough that the only substantial testimony appearing to implicate the accused directly is that of Madhavananda.

At this stage, it is impossible to predict which witnesses, if any, the accused will call, and what will be the outcome of this very long trial. In fact, we will see in the next Chapter that it would be very difficult for the defence to find any witnesses at all.

Anyhow, both the specific restrictions of the undersigned's mandate, and the limitations of the material available to him, would preclude a plausible assessment of the substantive merits of either prosecution or defence cases. But when such extraordinary accusations are levelled at a previously respected spiritual leader of apparently unblemished record, it is well to remember the grave dangers (although not the impossibility) of convicting basically on the sole direct evidence of so questionable a witness as Madhavananda. It is difficult for the undersigned not to echo the warning given by Mr. William T. Wells, Q.C. in a letter dated February 24th, 1976, against relying on the testimony of Madhavananda who not only is a self-confessed mass murderer, but implicated the accused only after being in custody for several months and being turned over to the dreaded C.B.I. Mr. Wells also recalled the reasoned judgment of the first committing magistrate who drew attention to the many inconsistencies in Madhavananda's evidence. Finally, it must also be borne in mind that Madhavananda expects to be hanged for the other murders unless the authorities decide to pardon him for these crimes as well. It is easy to imagine what the price for these additional pardons might be!

The credibility of Madhavananda is not high. On the other hand,

if a conspiracy took place, it is unlikely that its participants would be found to be of sterling character. As is to be expected, prosecution witnesses in murder conspiracies are not normally pristine individuals.

IV - FINDINGS

The object of the undersigned's mandate was to determine whether the Sarkar trial is being conducted according to the generally accepted rules of a fair and impartial system of justice.

More particularly, the undersigned was concerned with finding the answers to the following particular questions:

- (a) Were there excessive delays in bringing the accused to trial?
- (b) Is the accused's right to instruct freely counsel of his choice restricted by lack of funds, by the risk of arrest for the counsel, or by lack of free and confidential communications between lawyer and client?
- (c) Is the trial being conducted according to acceptable and reasonable rules of justice?
- (d) Is it possible, in the present political context of India, for the accused to have a fair trial?

These questions will be dealt with one by one in this Chapter

- (a) Delays in bringing the accused to trial.

There is no doubt that the protracted proceedings in the present case create a very onerous burden on the accused and on defence counsel. It is also quite probable that in other countries, whether they have the same British-based system of criminal justice or not, the same proceedings could have been concluded more rapidly. But both from an examination of

the records and from personal observation, it would be difficult to argue that, given all the circumstances (and in particular the hunger strike of Mr. Sarkar, the slower processes of justice in India, and the very considerable latitude allowed by the trial judge in their examination to both prosecution and defence counsel) the delays were deliberate, or designed to damage the defence, or such as to cause an injustice.

Admittedly, the prolonged detention of the accused without bail constitutes a heavy hardship for them but it is not unusual in equivalent or even more progressive systems of justice for criminal trials to take several years and for the accused to remain in custody when capital charges are involved. This is a highly deplorable -- and perhaps incurable -- state of affairs but that should be no reason to single out the Sarkar trial for particular criticism.

It might also be noted that the lawyer leading for the prosecution, Mr. Prem Shankar Gupta, expressed forcefully to the undersigned the view that the trial would have long since been finished had it not been for what he considered to be the dilatory tactics of the defence. While not necessarily agreeing with his description of the defence strategy, there is no evidence of unusual delays (except perhaps during the period between the original arrest in December 1971 and the formal charges in May 1972) which are imputable to the prosecution. If anything, the prosecution seems most anxious to terminate the case. However, with hearings which sometimes last less than one hour a day and with numerous prolonged (and perhaps inevitable) adjournments, it would be rash to expect a speedy conclusion of the case.

(b) Right to instruct counsel freely.

One fear which was expressed in the West in connection with the

defence was that there was undue interference with the confidential communications between defence counsel and their clients. Both from personal observation and from conversations with the two senior defence attorneys, Nageshwar Prasad and B.K. Banerjee, the undersigned has concluded that the accused have reasonably free and confidential access to their lawyers, both in prison and in court. In prison, the lawyers can meet the accused privately although under visual surveillance. This is not unusual. As for the courtroom, the accused are not shackled and seem to be able to roam freely from the box to the defence table to speak to counsel, exchange documents, and discuss the evidence.

The issue of defence funds is more serious however. The accused are apparently destitute and all the funds and assets of Ananda Marga have been confiscated or frozen by the authorities. There are no funds available to pay for the expenses (i.e. indispensable copies of transcripts and documents) and fees of defence counsel. In such prolonged proceedings and of which the end is not even in sight this is particularly grave. As we saw, the trial was interrupted twice to permit the defence to try and raise funds. Formal and informal attempts to persuade the Indian authorities to allow foreign sympathizers of Ananda Marga to contribute funds to the defence have met with complete official inaction.

This places an intolerable burden on the defence bench, and particularly on the two very senior counsel representing the accused. The alternative -- court-appointed defence lawyers -- for obvious reasons is totally unacceptable in this type of case. If the Indian government wants to avoid the accusation of trying to stifle the defence by starvation, it should either release solely for defence purposes sufficient quantities of the confiscated Ananda Marga assets, or permit under similar control the payment of lawyers from sources abroad. There is really no justification for the present situation which smacks of bad faith.

On the other hand, the undersigned has been assured by defence counsel themselves that there was no real ground for the fear expressed in some circles that if they continued to represent the accused without fee they might face arrest as Ananda Marga sympathizers. Although under the present Emergency Rules in India, it is difficult to predict who might be detained as allegedly endangering the security of the state, most defence lawyers seem to feel that as long as they confine their role to the purely professional function of providing the accused with the best defence admissible under the law, they do not face personal risks. Judging from their energetic conduct in court and their biting cross-examinations, they do not appear personally intimidated.

But this equanimity may result more from their own moral strength than from the absence of real danger.

On the other hand, there is little doubt that Ananda Marga's defence counsel are watched and followed. Some observers in India say they owe their apparent immunity to the eminence of Messrs. Prasad and Barnejee who are among the country's senior practitioners. But the uncertainty adds to the pressure on the defence.

(c) Rules of evidence and conduct of the trial.

The trial appears to be conducted generally in accordance with British rules of evidence. Witnesses are called by the prosecution and are then subject to thorough defence cross-examination. Presumably the same principle applies to witnesses called by the defence. Judge Singh seems fairly liberal and objective in his handling of objections. The defence appears to enjoy the fullest latitude in cross-examination of prosecution witnesses. The relationship between prosecution and defence counsel is courteous and in fact they sit together on the same bench facing the judge. If senior defence counsel has to be absent,

there is a gentlemen's agreement with the prosecution that no important witnesses will be called.

When the undersigned's presence was noted by the court and it was ascertained that he was a practising barrister, he was invited by Judge Singh to sit at counsel's bench between the defence and the prosecution and he continued to do so during the rest of his attendance in court.

It would also appear that Mr. William T. Wells, Q.C., of the British Bar, has been allowed to assist the defence and will participate in the final argument.

Nothing deserving of criticism could thus be observed in the actual conduct of the proceedings by Judge Singh.

(d) Defence difficulties due to the political climate in India.

The political connotations of this trial are inescapable. They are apparent in the testimony of some witnesses whose evidence appears to be designed more to discredit Ananda Marga than to implicate the accused in the commission of a criminal offence. They are also evident in the manner in which the Indian authorities make use of the trial to attack at every opportunity the motivations and conduct of Ananda Marga and of P.R. Sarkar.

Reading the Indian press and official comments about Ananda Marga, as well as listening to some of the witnesses called by the prosecution, one cannot avoid the conclusion that a governmental witchhunt has been instituted against anyone associated with Ananda Marga. Nothing favourable to Ananda Marga seems to be permitted to appear in the press.

In this connection, it is highly significant that on January 2 1976 the State Censor issued a confidential Order No. BC/2/76-PAT addressed to all accredited correspondents representing Indian news organizations and foreign agencies, newspapers, television and radio, ordering that "all news, comments (including editorial comments), rumour or other reports relating to the Court proceedings against Sri P.R. Sarkar alias Anandamurtiji and all other Anandamargies ... shall be submitted for scrutiny and shall not be published without permission in writing."

The trial is thus taking place in a judicial vacuum, its fairness threatened by government denunciations of Ananda Marga, by the exercise of untrammelled arbitrary powers under the Emergency Rules, and by the enforced silence of the press and of public opinion.

Although inside the courtroom the somewhat stilted rites of justice continue to be performed in the finest British tradition, on the outside -- in Kafkaesque contrast -- the police state extends its wide-ranging tentacles. Fear is rampant, and justifiedly so. And it is this fear which presents the single biggest obstacle to a fair trial for Mr. Sarkar and his co-accused.

For in the authoritarian climate of India today it is virtually impossible to find witnesses willing to brave the authorities by testifying on behalf of the accused. Indeed, many Margis are either in detention, or in hiding. Even if they could be found, such witnesses are said to be utterly afraid to come forward. Their testimony would expose them almost certainly to arrest. In other words, the accused not only have arrayed against them the entire power of the Indian police establishment, but even if they had all the funds necessary to prepare an adequate defence, it is highly unlikely that they could find, or if they found them, could produce, witnesses willing to testify on their behalf. Fair trials in a dictatorial framework are difficult to conceive and probably impossible to achieve.

What use is judicial fairness if the defence is unable to secure the information on which to found effective cross-examination or is incapable of finding the witnesses necessary to refute the charges? This is the real dilemma of the Sarkar trial. For false or questionable witnesses will be found in every political system, but only in a free society does the accused have any hope of presenting his defence with any chance of success.

The formalities of justice in Patna may not be gainsaid, but the substance of justice may leave a lot to be desired.

The undersigned's most fervent wish is that the ultimate outcome of the Sarkar case will disprove these fears.

Montreal

Monday August 9th, 1976

Claude - Armand Shepard.



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109, ROUTE DE CHÊNE, 1224 CHÊNE-BOUGERIES/GENEVA, SWITZERLAND
 TEL. 35.19.73
 CABLE ADDRESS: INTERJURISTS, GENEVA

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TO WHOM IT MAY CONCERN

The International Commission of Jurists hereby appoints

Mr. Claude Armand SHEPPARD
 Member of the Canadian Bar

to attend the trial in Patna of Prabhat Ranjan Sarkar as an Observer on behalf of the Commission and to report to the Commission on the trial and surrounding circumstances.

The International Commission of Jurists would be grateful to the Government and authorities of India for all facilities and the usual courtesies which may be extended to Mr. Sheppard for the accomplishment of his mission.

The Commission would also appreciate any assistance which the Members of the Bar and Judiciary could give to him.

This Ordre de Mission has been delivered on behalf of the International Commission of Jurists to Mr. Sheppard.

Niall MacDermot
 Secretary-General

Geneva, 21 November 1975

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(FORMERLY S. AFRICA)

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APPENDIX B
The International League for the Rights of Man

777 United Nations Plaza, Suite 6F
 New York, N.Y. 10017
 Tel. (212) 972-9554
 Cable Rightsman, N.Y.

Executive Director
 Roberta Cohen

June 3, 1976

TO WHOM IT MAY CONCERN:

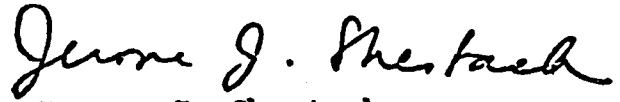
The International League for Human Rights hereby appoints

Mr. Claude Armand SHEPPARD
 Member of the Canadian Bar

to attend the trial in Patna of Prabhat Ranjan Sarkar as an Observer on behalf of the League and to report to the League on the trial and surrounding circumstances.

The International League for Human Rights would be grateful to the Government and authorities of India for all facilities and the usual courtesies which may be extended to Mr. Sheppard for the accomplishment of his mission.

The League would also appreciate any assistance which the Members of the Bar and Judiciary could give to him.


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 THE INTERNATIONAL LEAGUE FOR THE RIGHTS OF MAN, THROUGH ITS NATIONAL AFFILIATES, IS AN ORGANIZATION OF EUROPEAN

APPENDIX "C"

SOME PRACTICAL PROBLEMS ENCOUNTERED IN CARRYING OUT THE MANDATE
TO OBSERVE THE TRIAL OF MR.
P.R. SARKAR IN PATNA, INDIA

The carrying out of the mandate to observe the trial of Mr. P.R. Sarkar in Patna presented some problems which must be underlined.

The first, and most obvious problem, resulted from the unusual length of the proceedings. Ideally, the observer should attend most of the hearings. But for such a protracted case in such a distant country this was not practical. The alternative is to select at random a period of attendance, arrive unannounced and well-prepared and to trust that the proceedings actually observed will be typical of the trial as a whole. Normally, a seasoned practitioner will be able to arrive at an accurate assessment without too much difficulty. In the present case, however, the observer's task was rendered more delicate by the paucity of objective background material, by the unreliability of the censored press reports, and by the general climate of fear which made most persons extremely reluctant to meet or speak with the observer.

While the undersigned had no difficulty in gaining access to the courtroom and attending the proceedings, he was subjected throughout his stay in Patna to not too subtle police surveillance which could -- but hopefully did not -- have an intimidating effect. As one Indian acquaintance put it: "While you are observing, they are observing you." There was no actual interference with the undersigned except for some police inquiries on the first day as to the reasons for the undersigned's sudden and unheralded presence and save for a most disagreeable incident a few days later.

Indeed, at the end of the hearing on the 15th of June, 1976 as the undersigned was leaving the courtroom, he was approached in the corridor by a civilian who identified himself as belonging to "Security" and who seemed to be accompanied by one or two armed and uniformed guards. Even though both the police and the prosecution were already fully aware of the reasons for the undersigned's presence and were in possession of copies of the Ordres de Mission, this officer insisted on questioning the undersigned as to his identity, his background, the purpose of his visit, the duration of his stay, and his opinion of the case. It is with only the greatest difficulty that the undersigned succeeded in terminating the interview without providing the information requested.

Such interference is absolutely unwarranted and should be protested.

It might be added, as an ironic footnote, that the police officer in question, who had apparently been sent down from New Delhi specially to watch the undersigned, was reprimanded by his Patna colleagues for the ineptness of his 'investigative' technique!



109, ROUTE DE CHÊNE, 1224 CHÊNE-BOUGERIES/GENEVA, SWITZERLAND
 CABLE ADDRESS: INTERJURISTS, GENEVA

TEL. 35.19.73

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COMMENTS

by the Secretary-General of the International Commission of Jurists
on Maître Sheppard's Report

I have read with interest the report by Maître Claude-Armand Sheppard of the Canadian Bar on his Observer mission to the trial in Patna, India, of the Ananda Marga leader, Mr. Prabhat Ranjan Sarkar.

The International Commission of Jurists is grateful to the court and to the Indian authorities for the courteous facilities granted to Mr. Sheppard to enable him to carry out his mission.

Mr. Sheppard's report is of necessity an interim one, as the case is not yet concluded. The report appears to me to be manifestly fair and balanced. Mr. Sheppard has been able to allay some fears and anxieties which had been held as to the delays in bringing the case to trial, as to the conduct of the trial, and as to the freedom of choice of counsel and of confidential communications between the defendants and their counsel.

These findings make all the more cogent the findings made by Mr. Sheppard as to the difficulties confronting the defence. The political overtones to the trial and its handling in the press appear regrettable, to say the least. The difficulties put in the way of releasing Ananda Marga funds, or allowing the transfer of funds from abroad, to pay for the legal costs of the defence seem indefensible. It is to be hoped that this bureaucratic obstruction, which is what it is assumed to be, will be removed without delay.

Niall MacDermot
 Secretary-General

Geneva, 27 August 1976