

HUMAN RIGHTS IN INDIA

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STATEMENT OF CLAUDE-ANDRÉ SHEPPARD, ATTORNEY, OBSERVER OF THE TRIAL OF P.R. SARKAR, LEADER OF THE AHANDA MARGA RELIGIOUS SOCIETY IN PATNA, INDIA.

MR SHEPPARD: Mr Chairman, on advice I received, I prepared an opening statement. It is too long and too bulky to be read, so I am filing it and I am going to refer to parts of it and stress what seems to me most significant in my experiences there.

MR FRASER: We will put the entire statement in the record, and then you can proceed as you like.

MR SHEPPARD: I appreciate that.

On some points which were not of direct concern to me because I had a very special mandate, I thought it would be more appropriate if someone more knowledgeable of these areas brought his assistance to the subcommittee. And on my right we have Mr Craig Runde who has interested himself in two particular problems. One is the health of Mr Sarkar who has been on a three year hunger strike and it has affected the trial, and another one is the attitude of the Indian authorities toward the problem. It ties in beautifully and in a rather unexpected manner with the testimony of the previous witnesses from the American Government whom I was privileged to hear and does not, from what I know, conform entirely to what you heard earlier this afternoon.

As you know, I was sent to India on the recommendation of organisations which knew of my own background. I was commissioned by the International Commission of Jurists in Geneva and the International Human Rights Committee in New York. I was an observer. I am not connected with the Ahanda Marga or supporter or a mirer or in any way involved with them. My own background, as you may know, is that I am partner in a Montreal law firm. I have pleaded, as a practising lawyer, certain number of cases with political overtones. I am generally very much involved in civil rights and political liberties issues not as a partisan of any particular group or segment, but because, I think, like all of us, I have a commitment to try to maintain political freedom in the world. The details of my curriculum you will find in an annex to my statement. And when I went to India, I knew very little about the Sarkar trial, although I documented myself to the maximum extent possible, and I went with an absolutely open mind trying to look at it strictly from the point of view of the conduct of the trial in the light of the <sup>in</sup> rules of fairness.

I was not interested or was not commissioned to look into Indian policies and Indian democracy, but merely to see whether there was enough respect for the minimum rules of fairness in that trial, and I also deliberately did not want to get involved in the issue of guilt or innocence. In other words, I was not sitting as a preventive court of appeal trying to determine on my own whether the prosecution and the defense were right.

After I had gone there, I filed a report, which <sup>is</sup> an annex to my opening statement, in which I reported on my conclusions. Although I may seem to pat myself on the back in saying so, all I will say is my report concluded that not everything was black and not everything was white. There was a lot to be criticised and some things which were feared turned out not to be as they appeared. But my report, frankly, because it was done under the auspices of international organisations and absolutely neutral was a lot milder and a lot more tolerant than what I actually did observe or could suspect. I just did not want to go beyond my limited mandate.

One thing I can tell you because I am reminded of a remark of a previous witness I heard this afternoon, that he did not meet one single Indian who criticised the emergency. I would say I did not meet a single Indian who after a while did not deplore the emergency. Although there seems to be consensus, even among the most violent critics of the Indian Government that India had had some problems and that there was a difficult social situation and that some energetic action was necessary, but I for one fail to see why such violent methods had to be used and such extraordinary means had to be used to cope with basically social problems. For instance, I do not see how slapping thirty parliamentarians in jail is going to help reduce India's population problem. I cannot see, for instance, how intimidating judges and

potential witnesses and lawyers as I was able to observe, and as happened to myself, is going to help solve India's problems.

Now as for the trial itself, basically Mr Sarkar and four fellow monks have been charged on the basis of the evidence given by a man who used to be in the movement, who has acknowledged committing, himself, about 50 murders and who only told the police about his crimes after several months had passed and after he had been detained for a protracted period of time. And as a lawyer, for instance, I was surprised to observe that many prosecution witnesses were either tainted or, to say the least, subject to suspicion. I will give you an example that surprised me. When I was there, they brought in a service station attendant to prove that he had provided a certain jeep that might have been used in transporting the future victims with 3½ gallons of gasoline, if I remember it correctly.

Well, that man was able to tell the court that 7½ years earlier on a given afternoon, a given day, he provided a given jeep driven by a man he was able to identify, with 3½ gallons of gasoline. I doubt very much that any of us who only buy gas once a week would remember the looks of the man who gave us gas last week, never mind 7½ years ago.

I also noticed that apart from this particular individual who really is a highly unsavory witness, to say the least, there was not one single witness who implicated the accused except by hearsay, which we could not accept. And two of the most incriminating witnesses conveniently implicated the accused on the basis of what they had been told by someone who conveniently has absconded and could not be reached and could not be brought to testify, so that the nature of the evidence made me suspicious.

I cannot say that the accused are innocent, and I cannot say they are guilty. But I saw the extraordinary length to which the prosecution went to build up its evidence by irrelevant witness following irrelevant witness and that the substance, real serious evidence, was really only that of one particular man who may or may not be telling the truth. In other words, I do not trust him, but as I have said in my report, it is not normally a sterling character who participates in plots to murder others. It might be interesting to note that one of the witnesses against Mr Sarkar was his own wife who had set up a rival movement and who also happens to live with one of the main prosecution witnesses, and did so before he was arrested. It gives you an idea of the strange atmosphere of this prosecution.

But the first thing that struck me and that has become evident, even more apparent, since that time, from the reports I have received is that far more than trying to decide or rather to obtain the conviction of five individuals on the grounds they may have perpetrated a murder, participated in a murder, the prosecution and the Government are obviously intent on using the judicial process for purely political motives of discrediting and destroying Ananda Marga.

For instance, you will have a witness in a murder trial concerned with whether so and so killed so and so in 1969 or 1970 testifying that a given individual who was an adherent of Ananda Marga ran unsuccessfully for Parliament in 1964. Since he was an adherent of Ananda Marga that should prove that Ananda Marga was a political movement. What on earth does that have to do with whether or not at a given time an order was given to kill a given individual?

A lot of evidence, most of it presented by police officers, was made to suggest that Ananda Marga was a movement which would try and overthrow the Government, which would try and use violence, which was antidemocratic and so on. But there is not one iota of concrete evidence and we are dealing here with a movement which had more than 2 million adherents, I gather, including many Government officials. One of the reasons given, for instance, for the turncoat witness who implicated Mr Sarkar for not telling the police earlier after being detained for many months what crimes he had committed, was that he did not trust the police because many of them were members of Ananda Marga. It illustrates two things.

It took the police a lot of work before he confessed. I am not saying he was tortured. He was detained for a long time before he confessed. There was no evidence at all, to my mind, that we are dealing with a movement which is subversive, which wants to use violence or that anyone organised or in a

formal capacity wanted to use violence to overthrow the Government or advocated it. I am not saying there may not have been some hotheads somewhere as we have seen in all political parties who advocated the use of wrong methods. The fact Mr Sarkar criticises the system, that he says Indian Government officials are immoral, all of that does not bear the slightest relevance to whether or not he is guilty of a criminal charge. Furthermore the very Government that prosecuted this man, publishes just before the trial begins what I would call a vile pamphlet while the case is before the court to describe Mr Sarkar and movement in terms which would land any American or Canadian newsman or pamphleteer writing the same thing in jail for contempt.

So the political overtones and the political use of the trial I find extremely disturbing.

There was criticism of the length of the proceedings, that it took a very large number of proceedings and years before the accused came to trial. Frankly, I must say after having studied the record I cannot blame the Indian authorities for that. Their courts are not as efficient as ours. The system is different. Many of the delays were due to circumstances. Some of them were requested by the defense. Although it would be deplorable that somebody would be in jail for so long.

I also found that the fear that defense counsel had no access to their clients was not justified. The client-solicitor, the client-lawyer relationship and its secrecy seems to be respected, within limits, but I have seen worse in Canada at times of stress than I saw in India. While I do not say Canada provides a good standard in this domain, I can't throw a stone when I live in a glass house.

There are two things that I found that are really unacceptable and that convince me that the accused are not going to get a fair trial, even though the judge is doing his best. I will say publicly that Judge Singh who sits on the case does his best under the circumstances.

The two things that I found very significant are the following. One is the monetary situation, which is rather incredible. All the assets of Ananda Marga have been seized, and defense counsel, who are two of the most influential barristers of the Indian bar, have been defending the accused for a number of months now without getting paid. The supporters of Ananda Marga the Ananda Marga adherents around the world have tried to supply the defense lawyers with funds from foreign sources. And they have not tried to do it in a secretive manner, but by going straight to the authorities and saying the accused have not the means to defend themselves. In fact, the lawyers told me, they do not even have enough money to buy the transcripts of the evidence they need in a case where the trial lasts one year. The Indian Government refused.

Various personalities across the world, including the former Prime Minister of England, for instance, Sir Harold Wilson, wrote to Mrs Gandhi to say at least permit the funding of the defense and if you have it put in a trust fund, control it, and pay it directly to the lawyers, both of whom are older and respectable men. I think none of them have any brief for Ananda Marga.

Well, the Indian Government procrastinated. Eventually the answer came down. They passed a law forbidding the provision of foreign subsidies or foreign funds to any Indian national, among others, for the defense. And as a result of my own report, the International Commission of Jurists itself wrote to the Indian authorities, again asking that legitimate funds from legitimate sources be permitted to enter India for the sole purpose of funding the defense. The answer has not yet been received, but I was told yesterday by Mr Wells, who is a London barrister and who helped the defense team in India and just came back to London, that he was told by Sir Harold Wilson that he had just received a letter from Mrs Gandhi in which she said that if the accused are so poor, there is legal aid in India and the Indian Government will only be too happy to hire lawyers for them and pay them.

Now, I do not have to stress that if there is one case where you do not want Government lawyers, it is this one. And I will leave you to draw the conclusions that you have to.

The other point, which I think is also very significant, is that the defense is unable, and has been unable and will be unable to produce one single witness for the defense. For the simple reason, and on that there is no contradiction from anybody I met in India, for the simple reason that anybody acknowledging being remotely connected with Ananda Marga immediately takes the road to prison. Who possibly can testify on behalf of Ananda Marga and what happened in the Indian Ananda Marga organization except people who were members of Ananda Marga? Unless you are a suicidal type, you are not likely to come forward and testify, even if you manage to reach a defense counsel before the police arrest you.

So I say in my report, while the formalities of justice are observed, while the judge is very courteous and does his best, while lawyers are permitted to cross-examine at length, because of the absolutely antidemocratic conditions in India today, the defense is unable to call a single witness, except the accused who have all testified, I must say and denied in a rather more vigorous manner than I thought they would dare, every allegation of the prosecution. But what, if I can conclude my remarks, I found really bothersome in view of my background as a lawyer trained in the same tradition all of us are trained in North America, is that the trial is not trial of the accused. It is the demolition of Ananda Marga.

(Mr Sheppard's prepared statement follows:)

I arrived in court there with written credentials, a fellow member of a bar of a fellow commonwealth country. I am introduced to the prosecution first. I have no brief for either side. Two days later as I walked out of court, and in the court I would say of 20 persons present, 18 must be police officers, they literally arrested me, a man who had been sent down from New Delhi for the special purpose of watching me, which I found very flattering and would not let me go until I told him what I thought about the trial. I did not tell him, I must say.

The conclusion was ironic: I was told the next day the colleagues of this rather incompetent security man gave him hell for being so obvious. But my presence in India was punctuated by a lot of police attention.

MR FRASER: Did you get into the question of why there was a confession allegedly?

MR SHEPPARD: A confession by this prosecution witness: because the accused, none of them confessed. They violently denied any participation.

First of all I had no access to this gentleman because, whenever he showed up in court, he was surrounded by, I would say, an armada of 40 armed soldiers. Second, with my experience, I really do not have to be told why a man who is in police custody for 6 months confesses, especially when I also know that as a condition of his testimony he was pardoned for his crime. In other words, he cannot be charged with the six murders he confessed to, but the forty four remaining murders have not been pardoned. So if the result of the trial is not what the prosecution wants, this gentleman might find himself -- as he admitted in court -- hanging from a scaffold.

I do not know why he confessed or was such a willing prosecution witness, but I have some theories.

MR FRASER: Where does the matter stand now?

MR SHEPPARD: I have a fresh report on that as of yesterday. The prosecution has finished its arguments. The defense has begun its argument. I understand that arguments ought to finish in November. The trial started last December, and the trial judge will render his judgement in the following months. There are no jury trials in India, as you may know.

MR FRASER: I did not know. Is that now or always?

MR SHEPPARD: No, that preceded the emergency.

What I would call the persecution of Ananda Marga, it started several years ago. I did not conduct a profound study of why the Indian Government does not like Ananda Marga. Frankly, if I were in the Government and I had

a religious movement going around calling me immoral and what-have-you, I would not like it. But I would not put everybody in jail for that.

One thought that comes to mind talking about the emergency, as you know in Canada, we had an emergency in 1970 at which time a terrorist movement, which seemed to be much larger than it turned out to be, kidnapped and murdered a cabinet minister, and kidnapped and held for a long time a British diplomat. In a country where there had never been terrorism and which is known for a fairly stable regime, it came as a thunderclap, and we passed our own emergency regulations. We did not see it necessary to curb the judiciary. We did not see it necessary to curb the press. And we did not see it as being necessary to maintain the political emergency or judicial emergency for more than a few weeks.

You have to distinguish between economic and social problems on the one hand - which are long-range and which may justify energetic measures; and the obstruction of political freedoms on the other hand, which really from what I saw, were not justified in India.

Remember, it happened a few weeks after Mr Gandhi was found guilty of corrupt political practices.

MR FRASER: Mr Smeeton.

MR SMEETON: Thankyou, Mr Chairman.

We have heard from several sources that appear to be quite knowledgeable about Indian affairs that the Government plans on making this a showcase trial with the bottom line being the execution of Mr Sarkar.

Do you feel there is any chance that he will be executed?

MR SHEPPARD: First, he has to be found guilty. And I am not sure from what I hear that Mr Singh's conscience will permit him to convict the accused. And I do not know whether in India there have been many executions. It is not part of the Indian tradition.

But I am afraid that it is a real possibility. And first of all, personally I would not like to see anybody executed for any crime, but certainly not on the flimsy evidence that has been used in this case.

When you say it is a showcase trial, one thing that illustrates it, you know that there is a special Indian regulation which I quote in my report applying special censorship to the Sarkar trial. The reporters are not even allowed to report what happens in court without going through the censor, which indicates the importance, the political importance, attached to what the Indians on the one hand say is a purely criminal case. If it is purely a criminal case, what harm is there in reporting it when every day in India people hear about people being beheaded by murderers, rapes and lots of other gory details.

There is a regulation, I quote chapter and verse, it is a confidential, secret regulation.

MR SMEETON: Did not one of the departments of Government publish, I think about a year ago, an anti-Ananda Marga propaganda?

MR SHEPPARD: That is the document I alluded to. A man who was an unsuccessful parliament candidate - I have it here, in fact - an unsuccessful candidate, I would say an equally unsuccessful journalist afterwards, was hired by the Indian Government to write a pamphlet, Ananda Marga - The Truth, published by the Indian Government. The objective of the pamphlet is indicated by the cover, which is a skull with barbed wire in front of it. I was present when this man testified as an expert of Ananda Marga, and he was confronted with the fact that in this report he refers to Mr Sarkar as a perverted megalomaniac and then in cross examination denied that he had any bias against Mr Sarkar.

MR SMEETON: I think you mentioned somewhere in the body of your report that Mr Sarkar has been fasting for better than 3½ years. Why is he fasting and what will it take to persuade him to break his fast?

MR SHEPPARD: Mr Sarkar went on a fast, I understand, more than three years ago after a purported attempt to poison him in prison. I say "purported" - I do not know whether it is true or whether he is right or wrong. He has gone on some sort of liquid diet and Mr Runde knows a lot more about this situation than I do, because since it was a self-imposed fast, and I was representing two legal organisations only interested in the fairness of the trial, I did not want to get into the issues which are important, but on which I really have little expertise.

What I do know about his condition is that he is too sick to be in court; that he had to be brought on a stretcher to testify on his own behalf -

MR SHEETON: Excuse me. Did you ever see him at all when you were there?

MR SHEPPARD: No, that happened after. But I spoke to defense attorneys. In fact, he is so weak he cannot speak and he communicates with his lawyers - and I understand that is how he testified a few weeks ago - by using an alphabet chart on which he spells out the words in reply to the questions put to him. Now what would persuade him to terminate his fast, I do not know. I think Mr Runde might be able to answer that, but it is an extraordinary situation. I also gather that the Indian authorities are not making particular energetic efforts to have him terminate his fast.

STATEMENT OF CRAIG RUNDE, FORMER DIRECTOR OF P.R. SARKAR INTERNATIONAL DEFENSE COMMITTEE

MR RUNDE: I went to India in 1974 with Mr Wells who was mentioned before. Mr Wells' journey was specifically oriented around the question of this fast in finding out ways that it might be possible to have it ended. It seems as if there were conditions under which Mr Sarkar began his fast. Several dealt with providing proper food, visitation rights and the ending of illegal imprisonment of some of his followers.

The fourth point which is probably the most important and most significant is the question of the poisoning incident, which is said to have happened in early 1973 after Mr Sarkar had asked court protection from this very sort of thing and had not received it.

After this incident of April 1, 1973, he began his fast which is now in his 1,272 day. With regard to poisoning, he asked there be judicial enquiry into it so he might make known officially his thoughts on it, who he thought was involved, et cetera. The Indian Government refused to acknowledge this request, refused to acknowledge Mr Wells suggestion that this would be a very important humanitarian move to take. In late 1974, there was a commission report. It was a non-official commission made up of certain members of the Calcutta bar, who found, in fact, Mr Sarkar was poisoning himself by an overdose of barbiturates administered by the jail doctor.

Still the Government has failed to acknowledge that report and eventually it is continuing to say, there is nothing wrong, Mr Sarkar's health is quite satisfactory in certain letters to Members of Congress. The Indian Ambassador to the United States has suggested that his health is fine. His treatment is fine, and we need not be concerned. Of course, we feel very differently about that.

MR SHEETON: Are there any other trials currently pending that involve members of Ananda Marga?

MR SHEPPARD: I understand there are one or two other trials. The accused in this particular case have future trials pending against them. They will need many acquittals if they would ever like to see the light of freedom again.

MR RUNDE: Could I add another rather sensationalised issue? One trial now pending in New Delhi with regard to an alleged assassination attempt upon the Chief Justice of India in early 1975 and also yet to come in Patna again will be a trial against the several members of Ananda Marga

with regard to the assassination of the railway minister in early 1975. In both of these cases, there is a tremendous parallel as to how the case would evolve against CBI and the central Government police being involved around the prosecution of each. The only main witness again being a former member who is held in custody for some time, confesses, implicates other people and then is granted a pardon.

In some sense this is as much a human rights issue as Mr Sarkar's trial because these gentlemen face death sentences as well.

In rather an interesting note, Mrs Gandhi, in a letter to a Swedish enquirer, and this was slightly after the emergency but before any of these trials ever began, said the following. I will read it.

"Mr Sarkar is on trial for murders and other crimes. Some months ago his organisation assassinated our railway minister and more recently his organisation made an attempt on the life of our Chief Justice. They had drawn a list of other intended victims, people prominent in public life including myself.

The Prime Minister already has the outcome sealed. It is hard to say whether a lower court judge is going to be able to stand up against that kind of potential intimidation.

MR SHEETON: You mentioned you were there for about a month, the month of June.

MR SHEPPARD: No; I attended nine days of hearings.

MR SHEETON: You actually observed nine days of hearings?

MR SHEPPARD: Yes.

MR SHEETON: Did you have any way of determining whether what you saw then was typical of the trial as a whole?

MR SHEPPARD: That was a big issue before I went, and it is not the first trial that I have observed. I have always felt, perhaps wrongly that a trained, practising lawyer who is concerned with the form and methods of a trial can come to conclusions very rapidly. I did a lot of research. I met a lot of people before. I even went on my way to India to meet Mr Nolls who is a British barrister involved in the defense. I spoke at length with both prosecution and defense lawyers - who were very much afraid to meet with me, I might add, to give you an indication of the climate there. For instance, they would not even talk to me until I had been introduced to them by the prosecuting attorney. And I was assured, and I am convinced, that what I observed was extremely typical and characteristic.

MR SHEETON: Extremely typical?

MR SHEPPARD: And characteristic of the rest of the trial, no doubt in my mind.

MR SHEETON: I was reading the other day in the New York Times an article on India by William Borders in which he was talking about the legal system becoming politicised and that this was causing a growing concern amongst significant portions of the legal profession. Did you get an opportunity while you were there to talk to members of the Indian bar? Was any of this concern manifested or expressed to you?

MR SHEPPARD: I read the article that you referred to and I do not want to publicly breach the confidence of people I met and obviously since I was followed everywhere, I am sure even the inefficient CBI knows who I met.

If I can generalise, there has been concern that Mr Prasad and Mr Bannerjee, the two leading defense counsel, might be jailed after the trial. I asked them about it, and both of them, first of all, said that they were not afraid. They were very senior members of the bar. They did not anticipate that they might be imprisoned. And their conduct in court, I must say, was very much fearless and energetic despite the sort of slow

pace of the cross-examination. It was not the cross-examination, of men who are afraid. I must say publicly that I very much admired their courage under the circumstances.

But I also spoke to other lawyers who are less eminent and who are, let us say, less protected by their background and their wealth. And they are all convinced sooner or later they are going to make an unexpected visit to prison. I do not know whether their fears are justified, but the very fact practising lawyers have to be afraid that that possibility exists is significant. Another fear I have heard about but which I cannot verify, is that one of the reasons that the issue of defense funds is so important is that in the present atmosphere, if a lawyer defends somebody from a banned movement without being paid, he might be suspected of doing it because he believes in the movement, of being guilty of association, and that is enough to jail him.

It has not happened, but you live in a system in which serious men and women of the bar are afraid of that type of thing. I saw no evidence of it, but having seen evidence of just what was happening to me, and I knew I was hopefully getting out of the country in a few days, and being told that lawyers are followed and, in fact, one young lawyer told me she had been warned by a friendly member of the CBI that really they know what company she was keeping and she better change her ways, gives you an idea. And that article, which the New York Times published, I think is a mild indication of what is going on because it only refers to large cities, but small cities like Patna, it is much worse.

MR. SHEETON: Thankyou Mr Chairman. Thankyou Mr Sheppard.

MR. FRASER: Mr Sheppard, you have given us a graphic picture. How soon will the verdict come out?

MR. SHEPPARD: I am told November is the end of the proceedings and there are a lot of legal issues involved also that it may take a few months before Justice Singh can grant his judgement. Things move very slowly.

MR. FRASER: Does he have to be in jail during this time?

MR. SHEPPARD: First of all, there are a lot of people in jail in India who are not even charged.

MR. FRASER: I know.

MR. SHEPPARD: Mr Sarkar and the others are charged with extremely grave murder, if the accusation is true. I touched on this matter in my report. I pointed out that very few countries, including Canada allow bail in serious murder cases. American rules of bail are a lot more liberal than in many countries, and I am not prepared to criticise the Indian authorities only because the accused have not had bail, although it is deplorable that anybody should be in jail for years while presumed to be innocent and not have a chance to be free. It is irreparable damage if they are acquitted.

But factually they can be acquitted five times in a row, they will still be in jail because they are keeping so many charges pending on the heads of the accused.

MR. FRASER: I want to express my appreciation to you, not only for your report today but for your service in undertaking the mission to India. I see by your background that your interest in the subject has been very deep indeed. We very much appreciate your willingness to come and share your observations with us. If you should come across additional information as the trial comes to conclusion that you can share with us, we would appreciate it very much.

MR. SHEPPARD: I follow it as regularly as I can through various contacts.

MR. FRASER: With that we will adjourn this hearing. Thankyou very much.

(Thereupon, at 4.00 pm., the hearing was adjourned, subject to call of the Chair)