

IN THE MATTER OF:

Persecution of Adi Shaivite Minority

Report by Geoffrey Robertson AO QC

1. I am asked to report on whether the treatment of followers of the Adi Shaivite Minority Tradition and their spiritual leader His Divine Holiness Sri Nithyananda Swami (HDH) respects their right to religious freedom guaranteed by Article 18 of the International Covenant on Civil and Political Rights, or whether on the contrary it amounts to persecution on the grounds of their religious beliefs. They are followers of a spiritual leader, Sri Nithyananda Swami (referred to as HDH) who has founded monasteries (Aadheenans) in the southern part of India where he is said to have millions of devotees, with followers who are spread around the world. In India, they claim to have been subjected to violence from agents of the state, notably the police, both federal and local, such as to raise fears about the safety of HDH and to compel him for his own safety to leave the country for an undisclosed destination where he has now obtained asylum. It is further alleged that attacks on him and his followers have been committed by mobs spurred on by political parties and adverse media articles and television broadcasts, and that state law enforcement agencies have failed to protect them. I have been provided with a good deal of evidence, both documentary and photographic, of various attacks on monks and monasteries and devotees over the past decade, and asked to consider whether they have been subjected to persecution for holding a minority religious belief.
2. In normal circumstances, before forming any conclusion, I would wish to conduct an inspection of the sites of the alleged attacks and interview both the alleged victims and the law enforcement authorities who are said to have taken no action, as well as prosecution officials who are alleged to have brought trumped-up cases against HDH. However, the pandemic has precluded any visit to India. I have, however, been provided with all court records and prosecution papers in respect of the two cases involving HDH, and have been able to rely on the reports by my research assistant Erin Leach, who before coronavirus struck was able to spend five days in Karnataka, where much of the violence has been alleged to have taken place, interviewing 27 members of the ASMT

community. Ms Leach has a Master's degree from the University of Edinburgh and has worked as a researcher for the Queensland Anti-Discrimination Commission, and her conclusions, to which I refer below, I consider reliable. In addition, I have had the advantage of detailed discussions with lawyers who are acting, or have acted, for HDH in India and the United States.

3. I have also been supplied with a number of quite extensive publications which document evidence from the press and other third party sources, giving graphic accounts of attacks on ASMT members since 2010. These include:
 - I. *Special Report to the UN – Persecution of ASMT in India* which summarises incidents which tend to show persecution of the group, and identifies the factions involved in the religious hatred that has produced attacks on their temples, beating of the monks, and false claims against their leader;
 - II. *Hindu Holocaust: The Untold Story*: This is a book of several hundred pages which sets out evidence that extremist Hindu and political groups have orchestrated the attacks on the spiritual leader and his followers, using torture, illegal detention, media defamation and mob violence. The photographs are telling, and apparently genuine;
 - III. *Nation Profile Kailassa* which explains where ASMT is placed in Hindu ideology and culture and how they have been persecuted in particular because their beliefs about gender equality, gender identity and LGBTQ rights conflicts with the beliefs of conservative Hindu groups;
 - IV. *Attacks on Women and Children* – this publication documents cases of violence against the ASMT religious community by extremist Hindus, alleging complicity from state police and failure of police to investigate or prosecute;
 - V. *Attempts on the Life of HDH* – alleges three attempted assassination by extremists because of his support for gender equality, freedom of gender identity and other causes antipathetic to reactionary Hindu traditions.
4. These publications, and others, credibly show a pattern of hostility to HDH and his followers from extreme Hindu nationalist organisations and state agencies, and that law enforcement agencies have turned a blind eye when this hostility is manifested by physical attacks and by criminal damage of temples. The

attacks are seen to be encouraged by local media, which distorts and sensationalises ASMT practices and the sex allegations against their leader.

5. However much the above-mentioned publications present a credible picture of persecution, it must be recognised that all of them have been produced by ASMT itself. For that reason, I asked Ms Leach to re-interview some of those who had provided first-person accounts, and have relied for this report only on photographs and media news stories (many hostile to HDH) and not on any editorial text or description in these publications which cannot be corroborated. Ms Leach carefully considered complaints about discrimination on grounds of religion, including physical assaults, deprivation of liberty, and criminal violence, which it was alleged local police had not taken seriously. She concluded that ASMT followers lived in fear for their security and for the life of their leader, which had adversely impacted upon their Article 18 right to practice their religion. Ms Leach subsequently received one allegation from an ex-ASMT member who alleged that the interviewees may have been "coached" to exaggerate some accounts of sexual assaults Ms. Leach, however, is a canny human rights researcher, and she stands by her conclusion in respect to the persecution and interference with the community's right to worship as it chooses.
6. Most Hindus belong to sects of Hinduism which are smaller subsets of the larger tradition. Hinduism comprises a broad set of overlying principles and many indigenous spiritual traditions coexist peacefully. There is no one concept of the divine, no unique sacred text and no single guru. In the south of India, *Aadheenams* are the governing bodies, owning monasteries, temples and land. The Adi Shaivite community belongs to thirteen of these *Aadheenams*, and reveres Paramashiva – source of the science of yoga and of enlightenment – as their founder.

Is the Adi Shaivite Minority Tradition a Religion?

7. ASMT is centred in Tamil Nadu and is a temple-based culture, taking its leadership from the Avatar (HDH) who was recognised at a young age and brought up by monks in preparation for his coronation which took place in 2004. He is the 293rd successor of the founder and succeeded as ruler of twelve *Aadheenams and the Surangi Kingdom* and has founded his own. He directs long-established vedic traditions and rituals, in the quest by his followers for spiritual enlightenment. As Avatar, he acts as guru or teacher, expatiating on and applying the sect's core principles based on the ancient Hindu texts of the

Vedas and the Agamas – nonviolence, vegetarianism, worship of nature and living beings, organic lifestyle, temple-based living, yoga and yogic sciences. To this extent, ASMT is little different to other branches of the Hindu religion, although it attracts anger and even hatred for its “progressive” views on gender and sexuality. It freely ordains women into every level of its monastic order (*sanyaas*) and recognises no less than eleven genders, and ordains temple rituals in celebration of freedom of gender identity and gay marriage. Their spiritual leader HDH himself claims that he is of non-binary gender, and does not identify with either male or female genders. Some attacks on devotees, and police inaction over these attacks, have been attributed to anger about these beliefs among more Conservative Hindu and evangelical Christian groups as well as militant atheist organisations.

8. There can be no doubt that the ASMT is a religion, deserving of protection under international human rights treaties that India has endorsed, which guarantee that **“everyone has the right to freedom of thought, conscience and religion (and) to manifest his religion or belief in teaching, practice, worship and observance...”** (Article 18). Religion has been defined as “first, belief in a supernatural being, thing or principle, and second, the acceptance of canons of conduct in order to give effect to that belief”.¹ Freedom of thought, conscience and religion are of course fundamental to all human rights conventions and declarations. Freedom of worship is considered as one of the foundations of democratic society and an important factor in forming the identity of individual believers. It includes the right of parents to ensure that their children are educated in conformity with their religious convictions and that believers in a particular religion should not on that score suffer discrimination or persecution. The right is subject, of course, to limitations imposed for reasons of public safety, public order, health or morals or in order to protect the rights of others.

9. The European Court of Human Rights (ECtHR) has provided the leading jurisprudence on religious freedom. It requires that any religion, for its adherents to be protected, should obtain “a certain level of cogency, seriousness, cohesion and importance,” but that the state has no power to take exception to the legitimacy of particular beliefs or the way in which they are expressed.² It is notable, for the purposes of this case, that the ECtHR has acknowledged that the safeguards of its religious freedom guarantee apply to

¹ High Court of Australia, *Church of New Faith v Commissioner of Payroll Tax* (1983) 57 ALJR 785

² *Eweida v UK*, No 48420/10, ECtHR 2013

the various forms of Hinduism, including the *Hare Krishna* movement,³ and the more recent *Bhagwan Shree Rajneesh* movement.⁴ Vegetarianism, which is one tenet of ASMT, has been accorded protection under the Convention.

10. Interferences with religious freedom have been held to include police attacks on believers or their meetings, oppressive prosecutions, political attacks and the like, and even psychological pressure on vulnerable persons by state agencies to encourage them to abandon their beliefs. The state has positive obligations to protect believers if they are attacked by non-state parties, such protection usually taking the form of its police arresting and prosecuting the attackers. If the state takes legal action against a leader or adherent, it must of course guarantee a fair trial and respect freedom of expression and privacy rights. It is well established that the guarantee protects the right to maintain temples and other places of worship, and it follows that the state and its agents have an obligation to protect them from attacks or desecration, and to ensure that their normal functions and rituals are not impeded. It also has a duty to avoid the use of derogatory terms in official documents, in reference to religious organisations.
11. In particular relevance to ASMT, the state has a positive duty under Article 18 to protect religious adherents from physical, verbal or symbolic attacks. Although they have no right to be shielded from criticism, the state must intervene if third parties attempt by violence or by improper pressure to change their beliefs or to demonise them. An individual has a right not to be disturbed in his or her worship by the activities of others. Police are state agents for this purpose, and they violate the right to religion if they turn a blind eye to attacks against adherents or do not prosecute those attackers, whether from indifference or hostility.⁵

Persecution

12. Persecution of adherents or leaders of a religion is obviously contrary to Article 18. The concept is most commonly explored in asylum cases, where refugees are entitled to that status under the 1951 Refugee Convention if they have a **“well-founded fear of being persecuted for reasons of race, religion, ... membership of a particular social group ...”** Under international law, persecution can amount to a crime against humanity if levelled **“against any**

³ See *Kovajkovs v Latvia*, No 35021, 31 January 2012; *Genov v Bulgaria*, No 40524/08, 23 March 2017.

⁴ *Mockute v Lithuania*, No 66490/27, February 2018.

⁵ *Global congregation of Jehovah's Witnesses v Georgia* (ECtHR, No 71156/01, 3 May 2007)

identifiable group of collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds", see article 7(1)(h) of the International Criminal Court statute. That statute (article 7(2)(g)) defines "persecution" as **"the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."** This is the stringent test for a criminal offence, although refugee cases show that fear of persecution may be "well-founded" if, for example, attacks on the persecuted group are sporadic or involve discrimination in access to fundamental rights – e.g. to education or medical treatment. The question I have to consider is whether the ASMT community can be said to have been subjected to persecution, in this broader "refugee" sense, by the state of Karnataka and Government of India, on account of their religion. This requires consideration of their treatment over a number of years and the questions over the unfairness of the trial of their leader.

13. For the purposes of the Refugee Convention, there is no generally accepted definition of persecution. Courts often begin with dictionary definitions of the word, i.e.: "to hunt, pursue, drive" and "to pursue with malignancy or injurious action, especially to oppress for holding a heretical opinion or belief,"⁶ and apply (or disapply) these general words to the facts proved in the individual case. They would apply to attacks on ASMT devotees because, for example, of the movement's support for women's rights in religion, and freedom of gender identity.
14. Lord Hoffman has defined "persecution" in the over-simple formula "persecution = serious harm + the failure of state protection"⁷ which does at least draw attention to the importance of law-enforcement – as the UNHCR Handbook says, "denial of protection may confirm or strengthen the applicant's fear of persecution and may indeed be an element of persecution."⁸ It was certainly a factor in the fear that devotees expressed to Ms Leach, both for themselves and for their leader, whom they believed would not be protected by police from attacks by extremists.
15. Further elucidation is offered by the European Union in its qualification for refugee claims, which states that persecution may be constituted by:

- a) Acts of physical or mental violence, including acts of sexual violence;

⁶ R v Immigration Tribunal, ex parte Jonah (1985) Imm AR 7 per Nolan J

⁷ Islam Shah

⁸ Para 98

- b) Legal, administrative, police and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- c) Prosecution or punishment which is disproportionate or discriminatory;
- d) Denial of judicial redress...⁹

It stresses that violations must be serious, but this may be drawn from an accumulation of incidents. ASMT can complain under these headings, in respect both to the treatment of HDH and to accumulated victimisation of individual members.

16. It is often said (and sometimes disputed) that the Convention requires a two-fold determination – first, whether the applicant for refugee status has a state of mind amounting to a genuine fear of being persecuted, second, whether there is a rational basis, factually well-founded, for that fear.¹⁰ ASMT members interviewed by Ms Leach are reported by her to hold the subjective fear of persecution. The factual foundation for the fear requires an objective test – there must be a “real chance” that the applicant will be persecuted, rather than speculation, although the odds may be much less than 50%.¹¹ Were an ASMT member to apply for asylum in, say, the UK or Australia, the decision would depend on the evidence, and the facts set out in this opinion would support the claim. Most attacks were some years ago, but the community says at no time did it receive adequate police protection. It alleged that the main attack on the ashrams started in 2010 in Karnataka and Tamil Nadu and subsequent attacks against both the community as well as HDH came regularly thereafter: e.g. in 2012 (Bidadi, Karnataka), 2013 (death threat on TV), 2014 (attack on HDH and on Bidadi ashram, Karnataka), 2015 (four monasteries in Tamil Nadu in Tiruvarur, Vedaranyam, and Panchanathikulam), 2017 (at Trishulam, Tamil Nadu), 2017 & 2018 (Tiruvannamalai, Tamil Nadu), 2019 (Gujarat), 2020 (Varanasi, Uttar Pradesh). The ASMT community and HDH allege they face constant threats of persecution.

17. Although some cases stress that human rights violations must be severe, that element of severity may be provided by repetition or by particular cultural shock, as is the case in many communities of sexual assault. “Cumulative denial of human dignity” says Baroness Hale, “is capable of amounting to persecution.”¹² Australian decisions recognise as persecutory the cumulative

⁹ Directive 2011/95/EU

¹⁰ *Chan v MIEA* (1989) HCA 62 at para 16

¹¹ *Ibid* para 12

¹² *R (Hoxha) v Special Adjudicator* (2005) 1 WLR 1063 at para 36

experiences of persistent indignities, suffered by small religious sects.¹³ And US courts accept that a “facially legitimate” prosecution may in fact amount to persecution if really undertaken to punish a leader of a political or religious minority.¹⁴ Canadian courts have confirmed that destroying or damaging churches infringes the rights of adherents of that church.¹⁵ The right to practice religion is, of course, subject under Article 18 to limits “**necessary to protect public safety, order, health or morals or the fundamental freedom of others**” but the Human Rights Committee has made clear that societal bias and prejudice against a minority religion cannot constitute a legitimate reason to limit manifestation of the disfavoured religion or belief.¹⁶

Relevance of “cult” allegations

18. The reason for the actions against ASMT are threefold: 1) hostility to their liberal views on gender equality in religion and freedom of gender identity, 2) anger about the sex abuse allegations against their leader and 3) repeated media and official statements that they are a “cult”. Their acceptance of gender differences is legitimate and cannot be any justification or excuse for attack, and as I shall explain, the allegations against HDH are meretricious and baseless. The group does have some features associated with “cults”. There can be no doubt that the ASMT worships HDH as their guru and spiritual guide. They are, quite literally, devotees who in some cases leave homes and jobs and families and even children to dedicate themselves to their religion and to its leader. Ms Leach was told that ASMT did not require its members to give up their life savings, although many are tasked with fundraising. In such respects, however, ASMT does not differ from other alleged religious “cults” given court-approved protection: *Hare Krishna*, scientology, Exclusive Brethren, Jehovah’s Witnesses and so on. The concept of a Avtar or a guru, an Incarnation who guides people is very much a core part of Hindu culture, and can be seen in many other religions. In any event, I do not think it is useful to suggest that religious groups which might be described as “cults” should have any reduced Article 8 protection for that reason. Individuals have a right to submit themselves voluntarily to religious discipline so long as it does not breach the law, and any evidence of exploitation or coercion or unlawful activity as a result of “brainwashing” should be made the subject of legal proceedings that conform to “fair trial” requirements.

¹³ SCAT v Minister (2003) 76 ALD 625 at para 21

¹⁴ Chanco v Immigration Service (1996) 82 F.3d 298 at 302

¹⁵ Liang v Canada (2011) FC 65 at para 17

¹⁶ HRC General Comment No 22

Evidence of persecution

19. I have been shown evidence – photographs and news reports – of attacks on ASMT monks and devotees from 2010 onwards. Until then, HDH was, while maintaining contact with his community in Tamil Nadu, based for some years in the United States, where his “Life Bliss Foundation” and other enterprises were based. The problems for ASMT began in 2010 when Sun TV – a popular television channel in India owned by the ruling political party in Tamil Nadu, Dravida Munnetra Kazhagam (DMK) and with an open anti-religious anti-Hindu platform – broadcast a video purporting to show HDH in sexual congress with a female devotee named Ranjitha. This was a fake (see paras 22-4 below) and had been made, so the American court proceedings show, as part of an extortion plot, but it gave rise to sexual abuse allegations against HDH by one of the plotters, one Aarthi Rao (see paras 23-5 below), which produced a criminal investigation by police in Karnataka. These events were given massive and prejudicial coverage in the local media, and stirred up extremist Hindu groups associated with the Bharatiya Party (BJP) and the local political party Dravida Munnetra Kazhagam. The first attacks came shortly after the transmission of the fake video, as a mob descended on the Aadheenan at Tiruvannamalai and demanded the surrender of HDH, who they said they proposed to kill. Furious at not finding him, they trashed the monastery and beat several monks. The following day, as photographs show, a mob attacked a monastery in the town of Salem, burning effigies of HDH and then cars belonging to his supporters, and then setting alight the living quarters of the monks, including the hut where HDH was residing in the town of Bidadi in the state of Karnataka.
20. The following month, a police investigation began and the police arrested HDH in North India. He was denied bail, and taken to the airport to be flown to Bengaluru. At both airports, he was confronted by angry mobs, which were allowed by his police escorts to throw acid, eggs and shoes at him. He was kept in solitary confinement for 53 days. The press openly ridiculed HDH for his claim of non-binary gender identity. On 12 June, the High Court ordered his release, and the judge asked the police, according to press reports, “under the guise of suspicion, how long can you torture a person mentally?” The memo submitted by the prosecution said that 48 witnesses were examined but there was no evidence found of any crime by HDH.

21. Thereafter, state police frequently raided the Aadhenam at Bengaluru and were alleged to have sexually abused female monks, who brought cases against them in Bangalore courts which have yet to be tried, so many years later. The Temple suffered attacks from Hindu extremists which caused considerable damage. These attacks were encouraged by sensationalist media programmes, and in April 2012, an injunction was imposed on a number of television stations to stop them referring to HDH in a false or derogatory manner. Nonetheless the attacks continued, together with police raids on monasteries. The chief Minister described HDH as “an enemy of the State” and ordered his arrest. There are photographs which show further attacks on monasteries, with television cameramen encouraging the attackers and pictures of, and medical reports on, injured monks after these incidents. Police took no action, other than to arrest several of the victims. I have inspected photographic evidence showing mob attacks on monks on occasions in 2015 and 2016, and on 5 February 2017, 25 April 2017, 5 May, 16 June 2017, 18 June, 8 February 2018, 18 May 2018. Some of this evidence was published in 2018 by ASMT in its report to the UN’s High Commissioner of Human Rights, “Persecution of Adi Shaivite Minority Tradition in India.”¹⁷
22. ASMT has also published a report “Attacks on Women and Children – Violence Against Women” which details many examples of gender violence, mainly by Hindu extremists but also by state police, over the years 2010–18, together with police refusals to act on complaints. It is supported by an annexure with a number of victim/witness statements, together with photographs, medical reports and court documents, which credibly demonstrate a protracted harassment to which female adherents and their children have been subjected. In order to corroborate their claims, I requested Erin Leach to conduct further interviews. Those led to her conclusion that “members of ASMT have been and are being subject to discrimination, physical and sexual abuse, arbitrary arrest and detention and ill-treatment at the hands of state police officers and immigration officers, largely incited by leading political parties who control the state media.”
23. As a result of intervening 27 adherents, Ms Leach concluded that they had been subjected to persecution, albeit not at the level of gravity required by Article 7 of the ICC statute for a “crime against humanity”. Nonetheless, it generates an atmosphere in which they live in constant fear for themselves and for their leader, and this has a profound and debilitating impact on their ability to enjoy

¹⁷ September 18, 2018, see page 15–19; 22–25; 27; 35–38.

their Article 18 right to freedom of religion and to manifest that in practice and observance. A monk from Montréal, Canada explained to her:

“the moment you go outside... I never thought that wearing this (the religious dress of ASMT) constantly, there is so much, like I mention, this constant anxiety and apprehension to engage with anybody, which, which is very much opposite to the very purpose of the lifestyle [of a monk]... the purpose of the lifestyle is to help people and to give them guidance and healing and various things that that we learn and that we live. And then after that, when going towards people, this is what you experience. So, there's, there's a very intense conflict... There's no valid reason why I would have to go through this... the intention, and what we live for is very life positive... there's no reason why I would have to carry this... this anxiety or apprehension whenever I go to public in India.”.

24. The religious dress of the community is highly distinctive – members wear a *mala* with a picture of HDH, so they are readily identified as targets for harassment and verbal abuse. At immigration, many foreign monks reported that they were subject to intrusive questioning – and sometimes even refusal to enter, when they specified that they were bound for the Bengaluru Aadheenam. Of course, the state cannot be held responsible for hostile acts by citizens outside the monastery, and can point to the fact that ASMT members have access to lawyers who can bring actions for defamation and assault – which they do, although these suffer from the general malaise and delays in the justice system in India. Much of the demonisation of HDH has been initiated by Sun TV in Tamil Nadu, a broadcaster controlled by the ruling political party. It was once required by the court to broadcast an apology, but together with other tabloid television stations it continues its campaign of denigration. One ASMT complaint that the state of Karnataka should do something about – although it does not apply only to this religion – is that the official language for all administrative matters, including police complaints, is Kannada – there is no provision for Tamil, the language which most devotees speak. This is an example of discrimination against an indigenous community, and does not count as discrimination on the grounds of religion.
25. Nonetheless, reviewing photographic and documentary evidence and court records provided by ASMT, it is clear that devotees of this minority religion have suffered from physical violence and destruction of temple property and that the state has not fulfilled its duty to keep them free from the fear which

prevents them from enjoying their chosen religion. Much of the hostility and prejudice they have encountered over the past decade is because of the prosecution of HDH and the sensationalising of news about him, and hence it is important to analyse his case in some detail: persecution on grounds of religion can include persecution of a religious leader, if his prosecution is unjustified or an abuse of process.

Prosecution of HDH

26. There is no doubt that HDH has been subjected to media demonisation in India, beginning with the demonstrably falsified morphed video created by Aarthi S Rao, a teacher at HDH's Life Bliss Foundation in the US, together with Vinay Baradwaj, also a former volunteer, for the purposes of a conspiracy to extort money from him and his foundation in 2009. It emerged on Sun TV in India in 2010, purporting to show him in sexual congress with a Bollywood actress named Ranjitha. Forensic examination showed it to be unreal - "a composite layering which includes scenes that were recorded at different times and blended together to appear to be real".¹⁸ She also made allegations that HDH had sexually abused her. HDH sued her for defamation over her allegations in the courts of Ohio, when on 12/08/2014 she was ordered to pay \$463,211.25 in damages plus legal fees. Rao, a U.S. citizen and resident of Michigan, was subsequently prosecuted in Michigan for contempt of court, but failed to appear and two arrest warrants were issued against her. The Ohio organization of the ASMT filed a suit in India to execute the orders of the Ohio Court to pay the \$463,211.25 in damages plus legal fees, but Rao did not make any appearance to answer.
27. Given Rao's numerous appearances (and non-appearances) in actions in the US courts, I have consulted with Jeffrey Willis, the attorney who appeared for HDH in those cases. He has sent me a lengthy summation of these cases which I append (Annexure 2). I have checked the case references provided in it: they show Rao to be an untrustworthy person whose allegations against HDH would not be credited by any reasonable investigator or court without some corroboration. As Ms Rao is the main witness in the ongoing criminal case in India against HDH, which has the same allegations, her record in America, which has been brought to the attention of the Indian courts, raises a serious question over whether it is right that these proceedings should continue. It will be noted that her original claim of rape made to police in Bangalore in August 2010 was not corroborated by her medical examination, that his medical

¹⁸ Edward J Primeau, Video Expert, Report p2, 10/01/2012

examination showed HDH was physically incapable of acting as she alleged, and that on 15th February 2014 she changed her story in testimony to an Indian court, claiming that she did consent to his advances but that intercourse was procured by undue influence. In my opinion little weight can now be placed on her evidence, and if she does turn up to give it in the Indian case that is continuing against HDH, there would need to be other evidence to confirm it.

28. The man named Vinay Bharadwaj, a meditation teacher at an ASMT temple in Seattle, USA, allegedly conspired with Rao to extort money from HDH in respect of the morphed video. He was, however, himself prosecuted and convicted in 2012 on a number of counts of child molestation and sentenced to 57 months' imprisonment, and was deported from the US in 2015. Before his arrest, he had tried to bring a civil action against HDH, but this was struck out: the court found that "his asserted causes of action are without merits". He was ordered to pay HDH's legal costs, in amounts of \$390,491 and \$32,500, but has yet to pay a cent. Astonishingly, this criminal is now to be relied on as a witness in the ongoing trial of HDH. Not only is he a convicted child molester, but the US cases show him as an extortionist who has disobeyed court orders to pay the legal costs of HDH expended to disprove his defamatory allegations. I find it extraordinary that any prosecutor could put him forward as a witness of truth. This is not to say that a criminal guilty of paedophile offences cannot be believed when he claims himself to be a victim of sexual assault, but such allegations would require intense scrutiny.
29. The history of the main proceedings against HDH demonstrates the deplorable state of criminal justice in India and has undertones of a persecution. To cut an overlong story short, a complaint was made against him by a man named Lenin, his former driver, in March 2010, in relation to the morphed video with the actress. HDH was interrogated, filmed, and the film shown on national television. Lenin and Ms Rao were prosecuted for extortion (a case not dismissed until 2021). The police investigator could not find any evidence against HDH so he announced in the media that he wanted witnesses to come forward for this purpose. Ms Rao, now living back in India, did so, notwithstanding the history of the US proceedings, and so did Bharadwaj, also back in India, notwithstanding his prison sentence in the US. Rao claimed she had been subject to acts of several assaults between 2005 and 2009, and Bharadwaj claimed that he had been subject to "unnatural sex" (which should no longer be a crime after the Indian Supreme Court judgement in 2019, unless there is proof of assault).

30. It took the police investigator 4 years to complete his report. In 2014 HDH was ordered to undergo a humiliating potency test, details of which were passed to the media. The test results, which were scrutinized by independent doctors from the US and Canada, concluded that HDH was incapable of the crimes he has been accused of (see medical evidence and doctor reports). The trial court delayed for two years and then in 2016 refused to release the statements the investigator had taken in the course of the investigation and there had to be an appeal to the High Court to obtain them. The prosecution then appealed to the Supreme Court – another delay – which ruled in December 2017 that certain documents of “sterling quality” should be considered by the prosecution. The trial court did not manage to frame the charges until 5 June 2018--more than eight years after the filing of the First Information Report in March 2010.
31. I have read the 7 charges. Six are based on evidence from Rao, that she had what she claims to have been consensual sex over five years but with consent induced by claims by HDH that she would thereby obtain enlightenment. He is charged that “you made her believe that you are the master and guru and subjected her to spiritual hypnotism, invading her mind and thoughts”. Furthermore, “you made her believe you are the incarnation of God and asked her to dedicate her to you... You made her believe that she is having quality of devotee to gain spiritual enlightenment”. I do not consider that these confused allegations amount to rape: if Ms Rao was willing to believe that HDH was a God and happy to obtain “enlightenment” through giving him oral sex – which seems to be the charge – then she nonetheless consented. That also seems to be the allegation in respect of “unnatural sex acts” with Bharadwaj although the charge sheet is not clear in this respect.
32. Apart from the few weeks in 2010, HDH had not been in prison and was not required to attend court – under s205 of the Criminal Procedure Code his personal attendance may be dispensed with while he is represented by a lawyer. But after the charges were framed, in mid-2018, the trial was delayed by the Special Public Prosecutor who withdrew without explanation in March 2019, and then further delayed by the failure of Witness No 1 – Lenin – to attend court for his examination on four hearing dates, October-December 2019. The court issued a non-bailable warrant for Lenin’s arrest, which he appealed to the High Court and there (and this is quite extraordinary, in my experience) asked for HDH’s bail to be cancelled. I cannot see any basis on which he was entitled to do this, but nonetheless on 5 February the High Court cancelled HDH’s bail and the trial court on 19 February issued a non-bailable warrant. He was out of the country at the time, so has not broken his bail. He has not returned to India,

where media vilification had intensified following his complaint to a UN rapporteur (see below) and where his trial has been indefinitely postponed because of the pandemic. HDH's passport was cancelled suddenly in 2018 by the government even though he had regularly been traveling abroad for his Spiritual work and returning to India to appear for all court hearings.

33. The delay since 2010 in bringing the case to trial is unconscionable. It is apparently the fault of the investigators, the prosecutor and the courts – i.e. of the government and its agents. Even if Rao's statement were to be taken at face value the charges do not appear to be cognizable as rape or assault because Rao consented with the desire to obtain "enlightenment", and homosexuality is no longer punishable as "unnatural" in India, unless force is involved. The trial court – namely a local magistrate – seems to have had the case in front of him for eleven years but to have taken no grip of it, and of course (like all trials in India) it has now been postponed indefinitely because of the pandemic. It could go on for several more years and there must be a reasonable likelihood that HDH will be acquitted, at least on the evidence I have seen thus far. In the UK, in my opinion, this case would be struck out as an abuse of process, although this remedy is not available in India.
34. There has been renewed media hostility towards HDH in the last year, with defamation of him as a "traitor against India" for lodging a complaint with a UN Rapporteur and publishing the above mentioned "Special Report to the UN" on the persecution of ASMT members. I have viewed some extracts from television news attacks on him and they border on the hysterical, condemning him for daring to ask for UN protection of his rights. There has also been direct pressure from the central government (the Home Ministry) to state governments suggesting that their police investigate possible charges. It was against this background that in November 2019 the police in Gujarat raided the All Women's University run by the local ASMT Community and brought a case against HDH for "kidnapping" two of the students. In fact, they appear to be safe and well and in other countries: each has gone to the Indian Embassy and made affidavits in which they swear that they left of their own free will and that HDH had nothing to do with their decision – which is likely to be true as he had left India before they did. The police raid has itself been the subject of litigation, as angry parents are suing officers for the indignities to which their children were subjected as police encouraged them to make allegations against HDH. I have been in communication with his lawyer, Mr Piyush Lakhani, who says that the case is an example of anti-Hindu persecution in the state. I have no reason to believe that the affidavits of the two former students are not

genuine, and would expect HDH to be exonerated if the case is dealt with fairly. It has now been indefinitely delayed because of the pandemic.

35. I append the letter (Appendix 3) that seems to have been written in December 2019 by the federal Ministry of Home Affairs to the Karnataka state authorities, after representations by Ms Rao, indicating that they should arrange for a non-bailable arrest warrant in respect of HDH followed by preparation for an extradition request or else a request for an Interpol Red Notice. The letter also suggests that a main reason the Government wants to proceed against HDH is that he was in communication with foreign Governments - which is not a crime. The level of involvement of the Federal Government shows that the cases against HDH are not ordinary state crime but have a political background. Of course, the non-bailable warrant was applied for by Ms Rao's associate, Lenin, and was granted by the High Court. Ms Rao obviously bears a grudge against HDH (see the US cases above). It is odd that the Indian government should appear to be giving this advice, based on her representations, to the state authorities. This is another reason why Interpol should question any application by India for a Red Notice, especially if (as his lawyers advise) there is to be an appeal against the High Court decision. Ms Rao also has not appeared in the Indian Courts in the execution suit filed by the Ohio organization of the ASMT.

Conclusions

36. I consider that HDH is the leader of a genuine religious group, whose adherents – some outside India, in the US and elsewhere – gain spiritual satisfaction from the Vedic beliefs and traditions that he preaches and, by example, practices. These beliefs are not acceptable to more Conservative Hindus or to secular political groupings, and like any spiritual leader he is prey to fake or exaggerated allegations by disgruntled members of the sect, which are taken up by the media, especially when they relate to sexual behaviour of the kind frequently alleged. and which have sometimes been proved against other religious leaders in the country. HDH and his followers have been subjected to persecution as a result of the failure of police and enforcement authorities in India to take action against the Hindu extremists, egged on by sensationalist media, to commit various forms of physical assault and criminal damage of ASMT temples. Another aspect of that persecution is the continuance of rape allegations first made in 2010 by Aarthi S Rao, a manifestly unreliable witness: this case should have been dismissed years ago, and has now been indefinitely postponed because of the pandemic. I am informed by his lawyers that it is

doubtful whether Rao or Baradwaj will appear to give evidence, in which event the case will probably be dismissed, but given the state of criminal legal proceedings in India it could continue for several more years during which HDH should continue to be presumed innocent – especially since his two accusers have been found guilty in proceedings in the US related to false claims about him for purposes of extortion.

37. Although the charges themselves are serious, the state of the prosecution evidence in both cases is weak and it is reasonably likely that he will eventually be acquitted. It is particularly concerning that the central government is urging states to encourage police action against him, which smacks of persecution and reprisal for his complaints to the UN. He did not “jump bail” but was on bail when he left India as he was entitled to do, and has remained abroad in order to seek asylum because he claims a well-founded fear of persecution. His lawyers maintain that the withdrawal of his bail was unlawful and are planning an appeal. In all these circumstances, I do not consider that Interpol would be justified in issuing a “Red Notice” for his arrest at this stage, when the trials are ongoing, his defence has not been heard, and his presumption of innocence must be respected especially in circumstances where there is reason to doubt the genuineness of key prosecution evidence.
38. For the reasons explained above, I consider that the leader of the ASMT and his followers have suffered and most likely are still suffering, persecution on the grounds of religious belief, contrary to Article 18 of the ICCPR. That persecution has not been so severe as to amount to an international crime, but it has prevented them from enjoying their right to religious belief, worship and practice without fear of assault and fear of maltreatment of their leader. The animosity towards ASMT in the state of Karnataka is due in part to cultural factors, notably hostility from extremist orthodox Hindus towards their legitimate support for freedom of gender identity and for gender diversity. It arises more generally from the demonisation of their leader and guru by the media and state government officials as a result of false sexual abuse charges first levelled against him in 2010 and pursued in a manner that amounts to an abuse of process. The state itself is responsible for these unfair proceedings, which should be brought to an end, and for the conduct of its police force in failing to protect ASMT devotees and their temples from physical attack.

10 August 2021,

A handwritten signature in black ink, appearing to read 'G. Robertson', with a large, stylized loop at the end.

Geoffrey Robertson AO QC
Doughty Street Chambers