

IN THE MATTER OF:

PARAMAHAMSA NITHYANANDA

OPINION

GEOFFREY ROBERTSON QC

1. I am asked to advise the Adi Shaivite Minority Tradition (ASMT) about the potential refugee status of their leader, Paramahansa Nithyananda (PN) (known as his Divine Holiness Sri Nithyananda Swami) who is currently staying for security reasons in a third country but who wishes to apply for refugee status elsewhere. I have communicated with him by email and have spoken to his lawyers, both internal and external, and have viewed extensive documentation about his case together with photographs, witness statements and other documents concerning attacks on him and on his followers and their places of worship.
2. ASMT satisfies the legal definition of a religion (see *Church of the New Faith v Commissioner of Pay-Roll Tax*, 1983 57 ALTR 785): it has an estimated 20 million adherents who believe in PN as a supernatural being and accept canons of conduct in order to give effect to that Vedic belief. It is not a 'cult' but a genuine branch of Hinduism going back many centuries and worshipped mainly by ethnic Tamils in the Southern Indian states of Tamil Nadu and Karnataka and in the Tamil diaspora, where its ashrams and Temples abound. PN is the 293rd 'Divine Holiness,' recognised according to ASMT traditions as the Avatar. As a small boy he was taught his responsibilities by spiritual leaders of the ASMT. He was crowned by his predecessor at a ritual coronation in 2004. Since then he has provided spiritual leadership to his people, founded many temples, schools and monasteries, and travelled the world to inspire adherents and meet local dignitaries, many of them in the US but also in Canada, Malaysia, Australia, Sri Lanka, the UAE and Europe. In 2007 he founded Nithyananda University in Los Angeles, and meditation academies in Toronto and Paris.
3. The ASMT tradition emphasises nonviolence and requires vegetarianism and yoga and temple-based devotion. What sets it apart from other forms of Hinduism is its support for women's rights and particularly for the rights of members of the LGBTQ and transgender communities, including for gay marriage. This has attracted ideological hostility from other more conservative Hindu groups, in addition to racial prejudice against Tamils, especially Tamil immigrants in the state of Karnataka, and this provides an animus which, when fanned by political and media incitement, results in violent attacks on the community and its spiritual

leader, often carried out by extremist members of the governing Bharatiya Janata Party (BJP). Marxist and Communist parties in the area are hostile to indigenous spiritual traditions and for that reason publicly condemn the spiritual leader, whilst evangelical Christian groups active in Southern India can add to hate speech directed against ASMT. These prejudices are reflected in the bigotry shown by state politicians and police, and in the media, notably in the “tabloid television” operations of the Sun media network, controlled by the DMK, a nationalist political party which controls or influences most of the media in Tamil Nadu.

4. The persecution of which ASMT complains, and which NP fears, began in 2010 with the sensational and repeated screening by the Sun TV network of a fabricated video purporting to show NP having sex with a well-known Indian film actress. The video was later proved to be false: A Judge ordered the television station to run an apology for it every two hours for 7 days, and one person involved confessed and was jailed for extortion. This did not remedy the damage: the allegation was incendiary and incited mob attacks on ASMT followers and Temples throughout the states of Tamil Nadu and Karnataka, and a number of attempts to beat up, if not kill, PN. There is no doubt these attacks occurred: they are evidenced by photographs, news videos, media reports and victim’s statements. There is a video of PN being chased by a mob, shouting “kill him”, and then setting his residence on fire. The police have done nothing to stop mob violence against PN and his followers - according to some witnesses, police have actually participated in it. Despite the proven manipulation of the Sun TV video, the animosity and outrage it caused has continued to the present day. Much of the material may be downloaded as a video entitled “Hindu Holocaust.”
5. I have viewed evidence of attacks and [burnings of Temples and homes associated with PN at various times](#) (please see the directory “3 key evidences” under the provided link) until 2018, a year in which a number of assassination attempts are said to have been made on him. On one occasion his food was poisoned; on another his car was ambushed and stormed by a mob whipped up by nationalist political leaders; and then machete-wielding intruders broke into his Ashram and he had to be protected by his followers. In each case complaints were made to the local police, who took no action. It was after this, in fear he says for his life, and for the lives of his followers, he fled abroad, and was admitted (I am told as a provisional refugee) to a third country.
6. Although in hiding, he is still pursued by his tabloid tormentors: he tells me (via email) that he has been frightened by the fact that his security staff have seen drones hovering over his residence and suspicious figures observing his home. This is supported by the fact that [one antagonistic television station last week announced that its “hunt” for PN would take it to Ecuador and revealed other details of his hitherto secret travel](#) (please see the directory “3 key evidences” under the provided link). This convinces him that the factions which are determined to demonize him are on his trail and that were he to return to India his life would be in imminent

danger. There is no doubt in my mind that the television programme, which called upon its audience to help locate him, was stirring up the pre-existing hostility.

7. PN insists that he fled from India for fear of his physical safety, and not from fear of legal proceedings. The High Court confirmed, on 10th September 2018, that his bail continued, and so he was free to leave the country despite the continuation of proceedings which began as long ago as 2010 and which the state prosecution has allowed to drag on for 9 years, with no date yet for trial. It began in March 2010 at the time of the consternation caused by publication of the false video, as a complaint made by a discontented intern but with no victim alleged. After an investigation, the investigator reported that he could find no evidence, whereupon the Head of the CID, quite outrageously, called publicly for victims to come forward and make statements against PN, and offered a reward if they did so.
8. There were two persons, allegedly involved in making the false video, who complained - a woman (A) and a man (B) who both claimed to have had oral sex with PN in previous years, (B's statement alleged "unnatural," i.e. homosexual, contacts). Although A's statement was the only basis for the rape charge, it did not allege rape, only consensual activities which she entered into in search of "enlightenment." Rape is defined – in Irish, Indian and English law – as sexual intercourse to which the victim does not consent, and it is therefore difficult to understand why this charge was not dismissed at the outset. B was later sentenced to prison in the United States for having sex with children. Both A and B's claims against PN were dismissed in US cases, with costs and, in A's case, with damages. Further evidence emerged in the US proceedings to show that the allegations were false.
9. Nonetheless, the case against PN was allowed to stay on the record in a court in Tamil Nadu and was subsequently transferred to Karnataka. In 2012 its courts ordered him to be subject to an inhumane and painful "potency test" to determine whether he could perform a sexual act (the result, on one interpretation, indicated that he could not) but otherwise the prosecution did little or nothing to advance the case, and did not even frame the charges until June 2018. Having read the voluminous documents in the case, I think it likely that the indictment, if brought in the UK or Ireland, would be dismissed as an "abuse of process" for intolerable prosecution delay. PN believes that his prosecution has turned into a persecution, and the only reason the charges have not been withdrawn or otherwise disposed of after 9 years is to keep alive the false allegations dating back to 2010, as an aspect of his ongoing denigration. I cannot comment on this, other than to say that an inspection of the record shows inexplicable and inordinate delay. The continuance of the case is all the more bizarre because the two complainants have spent some years in the US and been involved in legal actions there with PN or ASMT entities relating to their allegations all of which they have lost with cost orders (which I have viewed) [made against them by US courts](#) (please see the directory "3 key evidences" under the provided link). It is difficult to understand how either A or B could be viewed as credible witnesses. In

these circumstances, continuation of the prosecution for 9 years without bringing it to trial does smack of persecution rather than prosecution.

10. Under the 1951 *Geneva Convention Relating to the Status of Refugees*, an asylum seeker must show that he has a “*well-founded fear of persecution*” due to his race, religion, nationality, political opinion or membership of a particular social group, and that his state of mind, engendered by this fear, is sufficient to discourage him from returning to his home or native land. The question of whether he fears persecution is of course subjective – the refugee must show that his anxieties are genuine. I have been unable to visit or speak to PN, who is in a secure place in the third country, but have corresponded by email in which he says he fears for his life if he returns to India and fears further assassination attempts (he lists several made in 2018) and attacks on him and his followers. He additionally fears persecution for his religious beliefs. I have no doubt that these fears are genuine – they are additionally evidenced in publications by ASMT, which has produced a number of booklets detailing (with photographs) the mob attacks on his followers and his properties and detailing attacks on his person as recently as June 2018. So, I consider that he sincerely believes that if he returns to India his life will be in danger and his freedom of speech in addressing his followers will be curtailed. His motive for fleeing India appears to be a genuine fear of persecution, and not, for example, any attempt to avoid justice.
11. The fear must be “well-founded.” There can be no doubt – from news reports, photographs and video footage – that PN and his followers have been subjected to mob attacks from 2010 onwards. In 2018 complaints were made to police about what were feared to be assassination attempts, but no action was taken. Demonization from tabloid television in Tamil Nadu continues – as recently as January 2019 his whereabouts were publicised, and the public stirred against him. The objective condition for refugee status is in my view fulfilled.
12. However, “persecution” is usually carried out by or on behalf of governments, by their police and intelligence agents. In this case, most of the mob violence has been whipped up by tabloid television, extremist religious groups and individual politicians. It can, however, be shown that numerous complaints have been made to police on behalf of PN and his followers, but they have taken no action to investigate and have turned a blind eye to threats to his physical safety. He sensibly fears that they will not offer effective protection, and he regards his treatment at the time of the rape allegation as part of a political persecution, together with prejudicial statements made by BJP and DMR officials. His position is similar to that described in paragraph 65 of the UNHCR Handbook and Guidance on criteria for determining refugee status:

“Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the

country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizeable fractions of the population do not respect the religious beliefs of their neighbours. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.”

It follows that PN has a well-founded fear that he will not be effectively protected by the state were he to return to India.

13. My opinion is that Paramahansa Nithyananda genuinely fears persecution should he return to India and that his fear, from such evidence as I have been able to examine, is well founded. I should be happy to elaborate if required.

Geoffrey Robertson QC

A handwritten signature in dark ink, appearing to read 'G. Robertson', with a stylized, looping flourish at the end.

20th February 2019

Mr. Geoffrey Robertson QC
Distinguished Jurist on the United Nations Justice Council (2008-12)

Appointments:

- United Nations Internal Justice Council (2008 – 2012)
- Appeal Judge, UN Special Court for Sierra Leone (2002-2007)



Practice:

- Led human rights missions for Amnesty International to South Africa (1983, 1986), 1988), Vietnam (1989) and for Jan Hus Foundation to Czechoslovakia (1984, 1987).
- Appearance as leading counsel in over 200 reported cases, many in the European Court of Human Rights, the House of Lords, the Court of Appeal, the High Court and the Privy Council, with appearances in the Courts of Appeal of Singapore, Trinidad, the Eastern Caribbean, Malawi, Florida and appearances in various courts in Australia, New Zealand, Fiji, Mauritius and Malaysia Anguilla, Antigua and in the Revolutionary Military Tribunal of Mozambique. *These cases have usually involved human rights and relate to international, constitutional and media law.*

Author

- Crimes Against Humanity – The Struggle for Global Justice (Alan Lane, 1999; revised 2000 (Penguin paperback); US edition published by the New Press, 2000; Indonesian edition, 2001; 3rd edition, 2006 (Penguin and New Press))
- The Inconvenient Genocide: Who Now Remembers the Armenians? (Random House, 2014)
- Mullahs Without Mercy: Human Rights and Nuclear Weapons (Random House, 2012)
- Obscenity (Weidenfeld and Nicolson, 1979)

Prestigious Appointments

- Consultant to Australian Government on defamation law reform (1984)
- Led British Bar and Law Society mission to Malawi (1990)
- Appointed by President of Antigua as Counsel assisting Royal Commission into gun-running to Medellin Drugs Cartel (1990); in consequence called to assist the U.S. Senate enquiry into illegal traffic in conventional weapons (1991)
- Retained by Government of Malawi to advise on prosecution of Hastings Banda and others, and to lead for Crown in Malawi Court of Appeal (1996-7)
- Appointed by Government of Trinidad to draft green paper on Reform of Media Law (1998)
- Appointed by Government of Mauritius to draft new media laws (1999)

- Appointed as counsel to Lord Mackay of Clashfern, Inquiry into the Commission into the Administration of Justice, Trinidad and Tobago (2000)
- Trustee, School of Oriental and African Studies (2016 – present)
- Trustee, Bureau of Investigative Journalism (2015 – present)

Education:

- Sydney University BA, LLB (Hons);
- Honorary Doctor of Laws Oxford University BCL (Rhodes Scholar, 1970)

Professional:

- Admitted as a barrister, Middle Temple, 1973
- Queen's Counsel, 1988
- Founder and Head, Doughty Street Chambers, 1990 – present
- Assistant Recorder, 1993; Recorder, 1999
- Master, Middle Temple, 1998
- Appeal Judge, UN Special Court for Sierra Leone, 2002-2007
- President of Court, December, 2002 – March, 2004
- Distinguished Jurist Member, United Nations Internal Justice Council, 2008-2012

Academic

- Visiting professorships in the past at Universities of Warwick, New South Wales, Queen Mary College, University of London. Currently visiting professor at New College of the Humanities.
- Most recent keynote lecture was on the political appointments and judicial independence at IBA Annual Conference, Rule of Law section (Sydney, October 2017)
- Media law lectures include Bernard Simons Lecture (1997), Kapila Lecture (1997), Goodman Lecture (1999), World Bank Lecture on media and judiciary (Washington, 2000), Commonwealth Legal Conference (1999, 2003 and 2005), September 11 memorial symposium, University of Connecticut (2004); International Judicial Colloquy, Stanford University (2005), Keynote address at Cornell Law School symposium, "Milosevic and Saddam on Trial" (February, 2005) published in Cornell Law Journal (Issue 3, Volume 5), "Nuremberg : The legend and the legacy", Jackson Centre / Fredonia University, New York.