



India should fulfill its due international obligations to ensure the rights to all individuals

Serious failures and inadequacies to comply with statutory or regulatory obligations on the part of the Ministry of External Affairs (MEA) have been involved in a series of incidents in the recent years.

Latest in the series is a diplomatic rift between the United States and India over the treatment meted out to Indian diplomat Devyani Khobragade, an accused in New York on multiple crimes. The whole country is now escalating into a major diplomatic furor to save Ms. Khobragade. Such a spear-headed attack has never been made in the past by India to save its citizens who were in much troubled situation in foreign countries.

Before the issue being resolved, Ms. Khobragade has hurriedly been shifted to the Permanent Mission of India (PMI) in New York by the MEA, Government of India. If approved, it would supplement her immunity from other charges going forward. However, the U.S. State Department has the authority to turn down such assignments on national security grounds.

Devyani Khobragade, India's deputy consul general in New York is accused of submitting false documents to obtain a work visa for her Manhattan housekeeper. On December 12, she was arrested and handcuffed as she was dropping her daughter to school before being released on a USD 250,000 bond after giving up her passport and pleading not guilty to the charges.

In a strong reaction of the arrest, the Indian leaders irrespective of their party politics voiced against the U.S. for their action. The government of India decided to take strong steps to restore the 'dignity' of the diplomat, the U.S. to apologize and drop all criminal charges against Ms Khobragade. Speaking in the Rajya Sabha, External Affairs Minister Salman Khurshid said, "We will bring back the diplomat and restore her dignity. If I fail to do it, I will not return to this House." The media has quoted.

In its fury of retaliating to the issue in haste, security barricades that were meant to protect the American Embassy have been removed. Many have cancelled their meetings with a visiting U.S. delegation. The privileges given to the U.S consular officials in India and their families have been withdrawn. The Government of India has also stopped all import clearances including for liquor for the US embassy. Taken aback by India's retaliation, "the US has told India that in no circumstance it can violate the safety of US diplomats with respect to the Vienna Convention" India Times has quoted.

According to the U.S. authorities, the charges stem from a promise Ms. Khobragade made to American authorities that she would pay her housekeeper \$4,500 a month. The prosecutors said she actually paid the housekeeper just \$573 a month and made her work far more than 40 hours a week. The charges against Ms. Khobragade carry maximum sentences of 15 years in jail if convicted on both counts, ten years for visa fraud and five years for making a false declaration.

Amid controversy generated by the case of junior diplomat Ms Khobragade, U.S. Prosecutor Preet Bharara has released a statement. The statement defending the arrest, and that Ms Khobragade was



not handcuffed when she was arrested. As also has been reported, legal process was started in India against the victim, attempting to silence her. The statement of federal prosecutor concludes that "this Office and the Justice Department are compelled to make sure that victims, witnesses and their families are safe and secure while cases are pending". Finally, this Office's sole motivation in this case, as in all cases, is to uphold the rule of law, protect victims, and hold accountable anyone who breaks the law - no matter what their societal status and no matter how powerful, rich or connected they are.

The prolonged struggle of Overseas Indians in the Gulf Countries

One wonders why the Government of India is not moving even a finger, to safeguard and uphold the dignity of millions of Overseas Indians (Especially in the Gulf Cooperation Council countries) working abroad. It's a 'National Shame' that, even the basic tenets of law that was not considered for the safety and security of its citizens abroad.

For almost all other countries, the 'Vienna Convention on Diplomatic Relations of 1961' is the base for such activities and the Convention has established itself as a cornerstone of modern international relations. It may be noted that under Article 3, the functions of a Diplomatic Mission includes "Protecting in the receiving State, the interests of the sending State and of its nationals, within the limits permitted by International Law"; and negotiating with the Government of the receiving State".

Unfortunately, it's a fact that the Ministry of External Affairs (MEA), Government of India lacks its due international responsibilities and obligations as above mentioned, in our global practices.

The case of a 'Judgment Creditor', who has been waiting for justice over 17 years

Here is a serious case of an Indian national, who was kept waiting for justice over 17 years now by the betrayal of the External Affairs Ministry, Government of India. No one in the External Affairs Ministry, the political front or the media, who has opened almost a 'war-front' against the US to save Ms Khobragade ever thought it their duty to help an "innocent victim" to get him the 'justice due to him'. He too was a dignified Indian citizen.

The petitioner was a businessman and investor in Abu Dhabi and most importantly a THREE times of 'Judgment Creditor' (Winner) from the Legal Courts of Abu Dhabi, United Arab Emirates (UAE). The value of the petitioner's business establishments in Abu Dhabi stood worth 100 Million Dollars in 1975. He was trapped in a fabricated police case in Abu Dhabi, UAE to force him to withdraw a lawsuit against a local landlord. He had to undergo extremes of cruelties and humiliation from Abu Dhabi Police which no human being can withstand.

The Judges of both the Trial Court and the Appellate Court of Abu Dhabi found that the petitioner innocent; rather 'a martyr'. The Apex Court, comprising the three-judge panel declared that the case was wholly false, baseless and that it was fabricated by the police for personal gain. The Court, while pronouncing a landmark judgment, ordered the restoration of victim's dignity and respect, and to compensate him for all his losses. Any civilized Government, more so a member of United Nations should have hastened to implement the orders of higher judiciary. Sad to state, the offending state,



UAE, ignored the judicial verdict and deported the petitioner to India as if he was punished for a crime.

It is, doubtless, there was an act of bad faith on the part of the foreign state, Abu Dhabi, United Arab Emirates. The legal position in such a situation is stated as: “A State which acts towards foreign nationals in bad faith - violates the minimum standards of international law and acts contrary to the principles of law recognized by civilized nations”. [Observations in 1952 Current Legal Problems, P.314]

After reaching India, the petitioner has made every effort to uphold his dignity and his rights. He has made representations to the Union Government of India asking them to grant him leave to institute legal proceedings against the state of UAE. In October 1996 a writ petition was filed by petitioner before the Hon'ble Supreme Court of India. The facts enumerated therein would clearly establish the callous attitude of the authorities in UAE.

The Hon'ble Supreme Court of India took cognizance of the case and suggested the Delhi High Court deal with it. The petitioner has thereafter moved the Delhi High Court. The High Court of Delhi, was pleased to issue a mandamus to the Government, the Ministry of External Affairs (MEA) to settle the matters within two months. The directives of the Hon'ble High Court of New Delhi have literally been kicked out by the Indian Ministry of External Affairs.

The anguish resultant from the deprivation of his dignity and huge wealth in business earned exclusively through the untiring personal efforts causes extreme mental depression which will virtually reduce the life of the petitioner to a mere vegetable existence. In a recent letter to the Ministry of External Affairs enquiring the status of the case under the Right to Information Act, the MEA has sent an evasive reply that they do not have any records of the case with them.

The doctrine of ‘international responsibility’ is applicable to any subject bearing legal personality in international law. As explained by Professor van Bowen: “The subject who has suffered the injury is not the individual person, or for that matter, a group of persons, but the State of which the person or the group of persons is or are national(s). It is in this perspective that States may claim reparation from the offending State but the victims themselves have no standing to bring international claims.” The ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’ (Adopted by General Assembly resolution 40/34 of 29 November 1985)

Representation on ‘Indo-Gulf Reparation Mechanisms’

In January 30, 2013 a representation was submitted to the Ministry of External Affairs, Government of India by this petitioner towards a strategy formulation and implementation of ‘Mutual Human Rights Law and Reparation Mechanisms’ between the Government of India and the GCC (Gulf Cooperation Council) countries, mandating our elected representatives and officials to eliminate discrimination and imbalances of (25 million) Overseas Indians working in different countries, in the Gulf Countries in particular. This also involves the recognition and protection of the dignity and respect of individuals. The Ministry of External Affairs, New Delhi has written to the petitioner that



whatever the arrangements for the welfare of Indian community and assistance to the distressed Indians abroad are only their 'VISION' and nothing else.

Support Us

A perusal of the background information on the goals and objectives of your organization has given confidence and hope to this petitioner.

“The execution of Judgments of the UAE Court is a part of ‘Indo-Gulf Reparation’ Movement”. Millions of Overseas Indians will be the beneficiaries of a 'Mutual Reparation Mechanism', if put into practical effect.

“Give a hand to the petitioner to enforce the UAE Judgments and thereby strengthening the Integrity of the Judiciary and people's confidence in our Judicial Systems”.

Kindest Regards,

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Supporting Documents:

'Indo-Gulf Reparation Mechanisms' Updates

http://www.reparationlaw.com/statepractices/reparation_mechanisms_india_gulf.php

India-US row over arrest of diplomat Devyani Khobragade escalates

<http://reparationlaw.com/caselaw/india-us-row-over-arrest-of-diplomat-devyani-khobragade-escalates/>

Archives & Document Exhibits

http://lawyersindia.com/outsourcing/exhibits_main_2557_case_uae.html

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