



“Khobragade scandal sheds new light on India’s rotten diplomacy”

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Obama has described that the relationship between India and United States would be one of the “defining partnerships” of the 21st century while visiting the country in 2010, praising its tradition of tolerance and its free market economy. The latest diplomatic rift between India and the U.S. shows all its ‘diplomatic triumphs’ turned upside down in a chaotic manner, exposing India's deliberate failure to adhere to the statutory duties and state responsibilities under international law.

The gruesome experiences of the writer of the last 18 years in dealing with the Ministry of External Affairs have been briefed separately. They reveal the cruelties of Abu Dhabi authorities and the inaction of the MEA, the Government of India in spite of the order of the Delhi High Court.

Unfortunately, India’s concept of “diplomacy” is often misconstrued and put to maximum abuse by their officials. Some privileged elites in the MEA, New Delhi, irrespective of their caliber, seniority and eligibility, manage to get themselves inducted into diplomatic missions with ulterior motives. Such people lack the experience of professional diplomacy; bring ill-fame to the nation when they attempt to make undue financial gains through indecent means.

The officials of MEA, Government of India approached over the Devyani Khobragade issue, without properly conceiving the fathoms of International treaty laws, the Vienna Convention on Diplomatic Relations (VCDR) of 1961 and the Vienna Convention on Consular Relations (VCCR) of 1963. They lacked deep knowledge of the rules governing the Consular Functions including the various categories of Diplomatic Immunity of the members of a diplomatic mission. [Article 5 & 36 of the VCCR specify consular officials’ duties when citizens of their country face difficulties in a foreign State⁽³⁾].

Criminal elements are also flourishing in India under the guise of 'diplomatic immunities and reciprocal privileges or treatments'. The case of a senior UAE diplomat who smuggled about 37 kg of gold worth at least US\$2 million (Rs.11 crore), last year, into New Delhi International Airport is just an example. The Directorate General of Revenue Intelligence (DRI) has taken up the matter with the Ministry for action against the diplomat who is still at large. The MEA responded that the UAE diplomat enjoys immunity under international law, from criminal, civil and administrative jurisdictions of the receiving State.

Khobragade's arrest on December 12, 2013 and subsequent strip-search sparked outrage in India and prompted a range of retaliatory measures in Delhi against U.S. diplomats. The very concept of the solemn document, the Vienna Convention on Diplomatic Relations of 1961 has been misinterpreted in India in this case, as it has been grossly misinterpreted in the case of Italian Ambassador to India in 2013.



The United States anti-trafficking strategy set forth in December 23, 2008; the President Bush signed into law a bill that enhances measures to combat human trafficking. 'The Trafficking Victims Protection Reauthorization Act of 2008' was named after English abolitionist William Wilberforce, who led the Parliamentary movement against the British slave trade in the early 19th century.

The U.S. has also agreed to UN Protocol against trafficking in persons who provides a working definition of human trafficking and a common basis for criminalizing the trafficking of persons, especially women and children. Devyani Khobragade, 39, India's deputy consul general in New York is the third Indian diplomat to be accused of cheating the U.S. authority from trust to trafficking.

On January 08, 2014 Khobragade was granted G1 visa with full diplomatic immunity by the State Department, which then asked India to waive the immunity so that she could face the charges. That request was refused and the State Department then requested her immediate departure. The next day she left New York for India. The same day, Khobragade was indicted by a federal grand jury in Manhattan. The indictment said Khobragade had made multiple false representations to U.S. authorities. The indictment accuses her and others of trying to "silence and intimidate the victim and her family and lie to Indian authorities and courts."

The description about 'a series of efforts to intimidate the victim, Sangeeta Richard and her family in India' reveals the ill-equipped and possibly abusive actions of the Indian authorities over the Khobragade affair. In a letter to the judge, U.S. prosecutors said "we will alert the court promptly if we learn that the defendant returns to the United States in a non-immune capacity, at which time the government will proceed to prosecute this case and prove the charges in the indictment.

We should applaud Preet Bharara, the United States Attorney for the southern district of New York, for taking a victim-centered approach in this case. The U.S. authority and attorney Dana Sussman of Safe Horizon representing Ms Richard, who has taken every step under law to protect the victim and her family; they were flown to a safety zone, safe in every respect, until completion of the legal proceedings in the case.

There's a very important message from the great city of United States, New York, that 'all the progressive and democratic governments must adopt a 'victim-centered approach' in their criminal justice process and thereby modernizing and strengthening the Integrity of the Judiciary and people's confidence in their justice systems'.

The External Affairs Ministry of India has already done great damage to the Nation's image by its wrong presumptions and hasty actions in dealing with the situation. Sincere efforts are to be made at appropriate levels to regain its glory.

A victim of repeated betrayal and deception by the MEA, New Delhi:

[The case of a "Judgment Creditor", the writer, who has been kept waiting for the past 18 years for justice]



The writer is a torture survivor of inside the regime's brutal prison in Abu Dhabi, United Arab Emirates and most importantly a THREE times of Judgment Creditor (winner) from the Legal Courts of Abu Dhabi, United Arab Emirates. Government of India has never risen to the occasion against the brutality and humiliation inflicted upon an Indian citizen in UAE despite multiple judgments from that country in his favour.

A 'serial entrepreneur' in Abu Dhabi, UAE, engaged in the business of 'Trading, General Contracting etc.', he had a dispute arose with a local landlord. He instituted a civil suit in Abu Dhabi Court for settling the issue. An interim order was granted by Abu Dhabi Court of Justice in his favour.

The landlord, in collusion with local police, turned against the writer (the petitioner) and took recourse to all illegal means to withdraw the 'Civil Suit'. On October 26, 1995, the petitioner was brutally tortured and literally dragged out of his office along the street in the presence of known friends and bystanders. He was confined to a detention center where he had to undergo extremes of cruelties and humiliation from Abu Dhabi Police which no human being can withstand. After four months of his illegal detention, a false case was registered against the petitioner, alleging "Using force against Government employee and assault". It took six months thereafter, for the petitioner to have his first appearance in Court.

The innocence of the petitioner had been ultimately upheld by the Hon'ble Judge of Abu Dhabi Legal Court of First Instance. The Court found that, the Prosecutor was guilty of proceeding against the petitioner. The Court acquitted the petitioner of all the charges leveled against him and directed the authorities to prosecute the policeman involved and also the landlord - for being guilty of deception.

The office of the public prosecutor, Abu Dhabi filed an appeal against the decree of the legal court of the first instance. The case finally came up before the Apex Court, comprising the three-judge panel. The petitioner was granted bail on the filing of the appeal. However, despite the bail and sureties he was not released from the prison. During the hearing, the police officer dropped his claim from his complaint with a declaration attested by the Notary Public. Finally, the landlord and the prosecutor followed suit and told that they have absolutely no case against the accused.

The eminent Jurists Panel of Apex Court found that the accused was innocent; rather 'a martyr'. The appellate review highlighted the culpability of the policeman and emphasized the notoriety of his actions. "It further reiterated the condemnation of prosecutor". The Court, therefore, ordered restoration of victim's dignity and respect and to compensate for all his losses while pronouncing a 'Landmark Judgment'.

In the wake of the concurrent judicial findings of the Court, he should have been restored to his former status and position and adequately compensated for his mental agony and sufferings. Unfortunately, the UAE authority acted in total defiance of the findings and sentiments expressed by the judicial establishments of that



country and on September 28, 1996 the petitioner was deported to India as if he was punished for a crime.

After reaching India, the petitioner has made every effort to uphold his dignity and his rights. In October 1996, a writ petition was filed before the Hon'ble Supreme Court of India. The Supreme Court directed Delhi High Court deal with it. The High Court of Delhi directed the Government to settle the matters within two months. On January 28, 2004 the High Court of Delhi observed in its order that the Government should inform the Court of the steps taken to protect the rights of the petitioner.

The judgment dated 19-9-2007 of the Delhi High Court had extracted a previous letter of the Government reading: "Shri. Jabir should pursue his legal action already done by him through the UAE Courts. Although under Section 86 cannot be granted for suing the UAE Government, we are taking up the matter with our Embassy in Abu Dhabi once again, requesting them to pursue this case at appropriate level".

The petitioner's letter to the MEA on July 04, 2012 enquiring the status of the case under the Right to Information Act was answered by an evasive reply that they do not have any records of the case with them. The anguish of the citizen can be imagined.

Under international law, the state is responsible for all actions or omissions of its officials and organs. This is the function of the basic rules of international law concerning the responsibility of States for their internationally wrongful acts and the legal consequences which flow therefrom. The 'successor governments' also remain bound by the acts incurred by the 'predecessor governments'.

In January 30, 2013 endeavours were made by the 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 millions of overseas Indians working in different countries. This also involves the recognition and protection of the dignity and respect of individuals.

In response, the MEA, New Delhi, explained that the government of India has established various arrangements for the welfare of Indian community and assistance to the distressed Indians abroad. Later, the same ministry has written that whatever the arrangements it made for the welfare of Indian community and assistance to the distressed Indians abroad are only their 'VISION' and nothing else!

The officials of the Ministry of External Affairs should feel themselves guilty of their inaction in protecting the innocent Indians trapped in false cases in the UAE and other Gulf (GCC) countries.

The tragedy of this generation is that the "victims" are always neglected. Their agonies, losses and sufferings are never resolved. As long as the tears of the



victims are not wiped, all the progressions we have made hitherto are only 'teasing illusions and promises of unreality'.

[The petitioner's case had been espoused by a great jurist and Judge of the Supreme Court of India – Justice V.R. Krishna Iyer. Senior Advocate K. Sukumaran, a former Judge of the High Courts of Kerala and Bombay appeared in the matter before the Supreme Court and the High Court of Delhi]

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Legal Instruments & Reference Links:

1) Vienna Convention on Consular Relations (VCCR) 1963

<http://reparationlaw.com/caselaw/vienna-convention-on-consular-relations-1963-done-at-vienna-austria-on-24-april-1963>

2) Vienna Convention on Diplomatic Relations (VCDR) 1961

<http://www.reparationlaw.com/resources/vienna-convention-on-diplomatic-relations-united-nations-treaty-series/>

3) The US State Department's handbook on Diplomatic Immunity

<http://reparationlaw.com/caselaw/diplomatic-and-consular-immunity-guidance-for-law-enforcement-and-judicial-authorities-united-states-department-of-state-bureau-of-diplomatic-security/>

4) William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

<http://www.justice.gov/olp/pdf/wilberforce-act.pdf>

5) Truth and Justice are being nakedly sacrificed for UAE's Reputation!

<http://ireport.cnn.com/docs/DOC-1074332>

6) Indo-Gulf Reparation Mechanisms - Representations to Government of India

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

7) The Sale Prospects of UAE Judgments

http://www.judgmentforsale.com/sales_prospects.html

8) Justice V R Krishna Iyer, former Judge of the Supreme Court of India

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

9) Senior Advocate K. Sukumaran, former Judge of High Courts of Kerala & Bombay

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

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