



January 30, 2013

Panikkaveetil K. Jabir
5th Floor, Metro Plaza Building
Market Road, Kochi, Kerala – 682 014.

To

Shri Salman Khurshid,
Hon'ble Minister for External Affairs,
Ministry of External Affairs,
Government of India,
South Block,
NEW DELHI.

Sub: Representation for 'Indo-Gulf Reparation Mechanisms' – [Strategy Formulation and Implementation of a 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 Non-resident Indians (NRIs) working in different countries. This also involves the recognition and protection of the dignity and respect of individuals].

Dear Sir,

The petitioner is a citizen of India, and now resident in the State of Kerala.

As one connected with General Contracting & Refrigeration Engineering, he had good connection with the developments in Abu Dhabi, UAE. A substantial fortune was built up by the hard and dedicated work in that country.

The petitioner was subjected to a most inhuman treatment by the authorities of U.A.E. They are detailed separately. Though as a disciplined citizen he attempted to pursue legal remedies for the redress of his grievances and the restoration of his assets, they turned out to be futile exercises.

There have been momentous developments in relation to relations between people working in areas outside their own motherland. These include important international developments like UN General Assembly Resolution. The petitioner was hoping that the Government of India would be taking effective and meaningful steps in the wake of such international developments. Sad to say, no meaningful action has been taken by the Government in that regard so far.



This has resulted in great resentment among the Overseas Indians and their family members remaining in India, suffering many deprivations of the advantages of a cultured life.

The petitioner was hoping that some meaningful and specific decisions will be taken to implement the mandates of the UN Resolutions and their requirements over the overseas population. Here again, there had been dismal failure of the Government machinery to rise to the expectations of the toiling masses outside India. In particular, the experiences of those who work in the Gulf countries have been extremely agonizing.

There had been severe criticism about the conduct of the 11th Pravasi Bhartiya Divas held between 7 and 9 January, 2013 at Kochi. A vehement criticism appeared in one of India's most prominent newspapers, The Times of India. The report of 8th January 2013 reflected the cynicism and disappointment of the people.

The caption was: "And again, same old promises". The following is a passage which should engage the serious attention of the Government of India:

"There were large protests from sections Gulf migrants. They said the conference had been discussing almost the same issues for the eleven years and delegates have been listening to the same old promises".

A forceful assertion was made by the newspaper:

"Unless the Governments at the Center and the State are able to execute these promises, there is no point in continuing with this event".

The situation cannot be allowed to pass unnoticed by a responsible and civilized Government.

The Government of India also has been emphasizing the need to punctiliously conform to the expectations of Human Rights. The petitioner is advised and it is submitted that the Supreme Court of India has illumined many of the murky areas of the working of Human Rights. Many of the member states work in collaboration with the UN Human Rights Mechanisms and treaties detailed by the United Nations. A brief resume of such measures adopted in different countries are contained in Annexure 1.



Reparation Mechanisms

Reparation Mechanisms Between India and Gulf Countries



The Charter of the Organization of American State signed in 1948, the Charter of Council of Europe adopted in 1950, and the similar Charter in Africa adopted in 1987, are prominent illustrations of the expanding vistas of Human Rights.

It would have been in the fitness of things that India had evolved a systematic formulation of protection of Human Rights of those working outside India.

This is a pressing and prominent necessity considering the fact that about 25 million Indians work as Overseas Indians. The segment of working population in the Gulf countries (Above 5.5 million Indian workers, among in the GCC countries), with lesser emoluments and more difficult working condition merit special and separate treatment, with a more compassionate approach to their working conditions and the difficulties experienced by the members of their families. They cannot be compared with other fortunate Overseas Indians who work in other areas of the world.

In this background, a clear-cut inter-Governmental working arrangement was an absolute necessity between India and the Gulf Cooperation Council (GCC) countries.

It is sad but true that such an arrangement is not even conceived of even at this late hour. Consequently, no regional inter-Governmental Human Rights Mechanisms or any procedure incorporating those precious liberties of citizens had been framed.

It has to be remembered in this connection that the remittances of these poorer sections buildup \$70 billion (World Bank, the top recipient of officially recorded remittances for 2012 is India) of US Dollars of the precious foreign exchange to India.

These wage earners, and hardworking citizens of India, should be insulated against any violations of Human Rights. The absence of an effective Reparation Mechanism assumes greatest importance in that background.

It has to be remembered that stories of torture and deprivation continue to flow steadily in the working conditions of the Gulf migrants. A most naked and cruel violation of Human Rights (torture included) is illustrated with reference to the personal experiences of the petitioner.

It is inconceivable that when anti-social elements hatch a conspiracy and attempt virtual destruction of a continued life, the violators of law are protected by the state.



When the facts and files establish such wanton violations of Human Rights, a clear duty is implied on the part of the country wherein the Indian citizens had worked and added to the assets of that country, to give him effective reparation.

The following is the tragic story of the petitioner:

The petitioner was a businessman and investor engaged in the business of 'Trading and General Contracting' in Abu Dhabi, UAE for over 18 years. He was attacked by a posse of policemen at his office; robbed of cash and valuables to force him to withdraw a lawsuit against a property owner. He sought intervention from the police. The police did come, but instead of helping him, he was shackled and literally dragged out of the office and on through the street in the presence of known friends and other members of the community. He was confined to a detention center and brutally tortured and later taken to central prison. It took six months thereafter, for the petitioner to have his first appearance in Court

He was implicated in a false case by the Police. The charge was about "Using force against Government employee and assault".

The Judges of both the Trial Court and the final Appellate Court of Abu Dhabi found that the petitioner innocent; 'a martyr'.

The Hon'ble Judges instructed the authorities to release the victim immediately.

The Judges declared that the case was wholly false, baseless and that it was fabricated by the police for personal gain.

The Court, therefore, while pronouncing its judgment ordered to restoration of the victim's dignity, and to compensate him for all his losses.

Any civilized Government, more so a Member of United Nations, should have hastened to implement the judicial directive.

Sad to state, the offending officials of the state ignored the judicial verdict and deported the victim, totally deprived of all his assets, papers and records.

This superstition of a judicial decision by executive fiat is rank subversion of the rule of law.



Attempt to obtain judicial remedies in the Indian Court turned out to be futile on the technical pleas of the cause of action not arising in India, and the purported justification was that violations of law took place outside Indian territory.

It is in this context that the convention becomes absolutely relevant.

The Government should not delay any longer the follow up steps to ensure that the Indian citizens justice long overdue. (Annexure 2)

When in so many other countries the Charters have been established in pursuance to Articles 55 and 56 of the UN Charter, India SHOULD NOT HAVE lagged behind.

When this grievance was placed before Justice V.R. Krishna Iyer, he was, despite his many critical disabilities, generous enough to give useful directions. This representation is prepared in the light of the guidelines suggested by him.

The grievances of the petitioner are intimately known to K. Sukumaran, Senior Advocate of the Supreme Court of India, who pleaded for the petitioner in the Hon'ble Supreme Court and in the High Court of Delhi. He was a former Judge, High Court of Kerala and Bombay. Additionally, he was the Chairman of a Commission appointed by the Government of Kerala to suggest to the Government, the desirable amendments to the Emigration Act which could be placed before the Government of India. The report had been subject matter of discussion of the Pravasi Seminar in Bombay.

The petitioner earnestly appeals to the Government of India to evolve an Indo-Gulf Reparation Mechanism, to wipe off the tears from the eyes of many thousand overseas Indians toiling in the desert land, and their family members.

The subject was mentioned to the Hon'ble Minister of State for External Affairs Smt. Preneet Kaur and Hon'ble Minister for Social Welfare, Mr. Muneer, during the Pravasi Bharat Divas of 2013.

It is highly appropriate in this connection to refer to the latest development on the theme – the second national report of the U.A.E for Universal Periodic Review (UPR) to the U.N. Human Rights Council. Government on promoting and protecting Human Rights, at the United Nations in Geneva, as published in Gulf News, January 29, 2013.



In the formal presentation, Dr. Anwar Gargash, Minister of State for Foreign Affairs, United Arab Emirates, informed the Human Rights Council about the steps taken, which comprise two aspects:

- 1) Level of protection of Human Rights as claimed to have been already achieved.
- 2) Proposed legislation guaranteeing the protection to domestic workers against mistreatment or abuse.
- 3) The Government determination “to bolster law enforcement agencies to tackle the crime at various levels”.

The Minister’s speech brings out two important aspects:

- a) A frank admission about large areas of omissions in relation to observance of Human Rights.
- b) The anxiety expressed by the 90 UN Member Nations during the interactive session, to know more about the protection of Human Rights and a “series of recommendations on possible further action” to enhance Human Rights Protection.

This is the second such review to the U.N. Human Rights Council for the UAE since the process known as the Universal Periodic Review (UPR) was instituted in 2006. UAE Government will be helpful to the Government of India to concentrate on the core issues.

The great Republic of India has a solemn and onerous responsibility to focus its attention on the deficiencies pointed out and the challenges posed to the actual implementation of reparation mechanisms, and a clear pronouncement on the further steps to be undertaken expeditiously and implemented as a time-bound programme.

It is for consideration by the Government of India whether a competent official with deep involvement and considerable compassion to the migrant cause should not be associated with the further investigation on deficiencies noticed and remedial measures required.



The petitioner submits hereunder the major recommendations that could be considered by the Government expeditiously and meaningfully:

- a) Establishment of an 'Indian Migrant Cell'. It should have the required high status and power. Technical experts and involvement of a UN Special Rapporteur on Human Rights of Migrants, the UNHCR, the International Labour Organization (ILO) and the International Organization for Migration (IOM) included.
- b) Establishment of the MOA (Memorandum of Agreement) and MOU (Memorandum of Understanding) with regards to the Strategy Formulation and Implementation of a Mutual Reparation Mechanism Between India and the GCC countries for safeguarding the rights and dignity of NRIs and ensuring quick relief to the suffering migrants, as regards working condition, assurance for continued contacts with family and safe return to the home, without any tension, suspense or torment.
- c) Ensuring periodic visits by representatives of the Indian Government and of the Kerala and other State Governments about the living conditions of persons confined to prisons. That too is an incident of Human Right.
- d) Educational arrangements to inform officials and non-officials concerned of the rights and interests of the migrants including the scope of UN Human Rights Special Procedures Mechanisms.
- e) To ensure effective and meaningful participation of the representatives of the Government of India in the meetings of Inter-American Charter Session, European Union Charter Session and the African Union Charter Session.
- f) Creation of a Reparation Fund on lines similar to the UN Trust Fund for Victims, for affording quickest relief as regards reparation to the victims of Human Rights Violation.

The petitioner prays that he may be afforded the facility to call on the Secretary and the Hon'ble Minister to explain the various aspects of the sufferings of the Indian migrants,



Reparation Mechanisms

Reparation Mechanisms Between India and Gulf Countries



with a view to make available to them the full protection of Human Rights in letter and spirit.

(Panikkaveetil K. Jabir)

Petitioner.