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From

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To

Shri. S. Sarkar,
Section Officer, Gulf Division,
M/S. Ministry of External Affairs,
Government of India, NEW DELHI.

Ref. Your Letter No.G/3139/2013/MEA (Gulf Division) dated 10th October, 2013

Sub. Representation to the Ministry of External Affairs, Delhi, 2013

Respected Sir,

In response to your above letter, a self-contained explanatory representation is submitted herein below. I have covered almost all the salient aspects of my case in order to give you a quick appraisal. (I, Panikkaveettil K. Jabir, hereinafter referred as 'the petitioner')

The petitioner was a businessman and investor engaged in the business of 'Trading and General Contracting' in Abu Dhabi, UAE and had a unique opportunity of observing the country for over 18 years. He had been an active participant in the developmental activities of that country.

The petitioner is basically a qualified Mechanical Engineer, obtained his higher Diploma in Electro-Mechanical Engineering (M.E), from Victoria College of Engineering, Bombay. He had valuable experience in the said field by working in projects of International Repute like Voltas and Lufthansa in Mumbai, India.



The petitioner on 01.06.1979 proceeded to UAE for starting business there with his expertise in the above said filed. Due to his dedication and hard work, he could establish a prosperous engineering firm “Ramla Electro-Mechanical Engineering Est” in Abu Dhabi, U.A.E., in 1982.

Later, in 1987 a trading firm under the license of "Summer Pool Building Material Trading Est" was started. He entered in general contracting business, as his 3rd concern, “Premier General Contracting & Maintenance Est” was started in 1990. A brief resume edifying his professional activities is given separately with accompanying trade license copies marked for the convenience of reference as **‘Exhibit Series No.1’**

On 26th October 1995, a great calamity befell the petitioner. There was a business contract signed with an Emirati, ‘Mr Hassan Saeed’, covering a Nine Storied Building proposed to be leased out for a sum of 10,80,000.00 UAE Dirhams (AED 1.08million) Per Annum, with condition to renew semi-annually.

The ill-intention of the local was that, he wanted to cancel the lease deed of his building, when the restoration of entire building was over. An amount worth hundreds of thousands of UAE Dirhams had been spent by the petitioner on behalf of his principal company, the ‘Premier General Contracting Est’., for all renovation works that includes the cost of material and manpower.

When a dispute arose with Mr Hassan Saeed, the petitioner, on the basis of legal advice, instituted a Civil Suit in Abu Dhabi Court for settling the issue. The conspiracy on the part of Mr. Hassan Saeed, to avoid paying debts was one of the important and thrusting points in the civil suit. The Honorable judge of the civil court took a decision in favour of the petitioner, and consented the related payment to the court's treasury.

Though the petitioner had acted only as a law abiding citizen, and in accordance with legal advice secured in that behalf, and had only sought relief from a court of justice, the landlord took it as a personal affront and planned and executed violent and



reckless revenge against the petitioner defying all legal provisions and principles of fair-play. There was a gross violation of Human Rights.

Hassan Saeed was claiming to be a close associate of the 'Crown Prince' of Abu Dhabi. He abused the acquaintance and intimacy with the office of 'Crown Prince' for making wrongful gain at the expense of the petitioner. Certain corrupt police officials colluded with him. Making a forcible entry into the petitioner's place, the petitioner was threatened to withdraw the Civil Suit. The petitioner could not yield to such illegal and unjust demands and therefore refused to accede.

Taking advantage of the situation prevailing in that country, and securing the help of police even by resorting to all unfair means, Hassan Saeed and his men in police ransacked the entire office of the petitioner and robbed him of all cash and valuables. The petitioner sought intervention from the police. The police did come, but instead of helping the petitioner, they started abusing him, beating and kicking, in a horrifyingly violent manner, using with hands, fists, legs and hands with metal shackles.

The petitioner was shackled 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 was again brutally tortured. There was a policeman who shouted "We know how to teach Indians" and asked petitioner to sign some documents. When the petitioner refused, they forced him to lay down on the floor, took out their Arabic turban and rolled it on petitioner's entire head and started hitting and kicking on the head with their legs. Another in uniform pulled out his fingernail with a cutter.

Due to the heinous forms of torture, the petitioner's finger nail was entirely torn apart. As a result, the petitioner became unconscious and soon thereafter he was taken to hospital-emergency, Abu Dhabi. Treatment was made without removing the shackles, hands cuffed behind the back. Over a dozen of X-rays were taken at the hospital of the different parts of his body. (X-rays & Report of the medical examiner has been secured and is available for inspection).



When those atrocities were being committed in the station, the petitioner's sponsor, Mr. Easa Ahmed, a person belonging to Abu Dhabi met the duty officer of 'Asma Police Station', who is of Captain's rank. He was then told a concocted story. That the accused (the petitioner) had hit three of his police staff and an Emirati, and that one police official and the Emirati, the local man was in a serious condition and admitted in the hospital and that, they were not permitted to allow him to see the accused (the petitioner).

After hearing such a story from a highly placed official the sponsor did not pursue the matter in view of the authoritarian methods prevalent in that country. Such (fake) stories have been repeated many times to others who approached to help petitioner. (A similar medical report submitted by them before the Criminal Court was proved-false and subsequently rejected the Abu Dhabi Court of Justice).

The petitioner was subjected to the greatest ordeals by being taken from hospital to the underground lock-up and illegally kept incommunicado in solitary confinement. He was confined to secret detention centers in different days with all sorts of malpractices resulting in injury, bodily damage and injury to his reputation. The petitioner was warned about the consequences if not withdraw the civil suit which was filed against the landlord. The dreadful agony and blackmailing was continued therein for 21 days and later the victim was taken to central prison at Al Wathba, Abu Dhabi.

The petitioner had to undergo extremes of cruel torture and humiliation from Abu Dhabi Police which no human being can withstand. However, he was spared from death.

Al Wathba Central Prison, Abu Dhabi

The Al Wathba Central Prison in Abu Dhabi was overcrowded with over three thousand prisoners – three or four times of its actual holding capacity. In scorching heat of the desert, within concrete cages, prisoners were made to live in inhuman conditions without the basic necessities of life. Not even a fan provided in those



concrete cages. Many prisoners were dumped in the corridors and pinning for a little cool breeze. Even a breath of fresh air was a precious boon!

The food was most unpalatable and unhygienic. Prisoners sustain their life with fermented camel meat and wormy food-grains and clamoured there for a glass of cold water in the hot summer days. The heartening fact is that many innocents are made to languish here under the banner of criminals which cast a stigma on them for life. A true copy of 'My Prison-life' is produced as '**Exhibit No.2**'

Torture and other cruel, inhuman treatment continued unabated at Al Wathba prison, Abu Dhabi. The petitioner was not allowed to communicate with anyone. The petitioner's contracting and trading activities get stammered, causing heavy loss. Untold sufferings were also inflicted on the petitioner as an under-trial prisoner.

The public prosecution demonstrated extraordinary misconduct in its investigation. The victim was brought to the court on 27 occasions, dragged with shackles, manacled and cuffed on both hands and legs. Such inhuman treatment was inflicted even on women contrary to all injunctions of Islamic faith.

The trip was 120 km in an armoured truck to the court and the return there from through desert in harsh weather. Even when its capacity was 15 persons, about 50 persons were packed like salted fish making each one gasp for breath during the journey.

On 11/02/1996, after four months of arrest, a false case was registered against the petitioner under the case No. 152/1996 offenses, alleging "Using force against Government employee and assault".

The petitioner was kept waiting all these days in a small and narrow room along with other prisoners without any ventilation or so, but not called up for hearing. The witnesses of the petitioner and his counsels were present, but their depositions were also not recorded.



This blocking of access to a Court of Justice also constitutes violation of Human Rights by the State itself. All these constitute the grossest and wanton violation of Human Rights. The State, Abu Dhabi, UAE, is answerable vicariously and otherwise for all such violations of law.

It took six months thereafter, for the petitioner to have his first appearance in Court. The witnesses did not care the threat of State police and Public prosecution, and they dared to explain the facts. The Court listened to the evidences of eye-witnesses from different nationalities. Mr. Saleem Raza, a Pakistani who said a policeman was holding an iron bar of one meter length in his hand, threatening anyone who came near the office premises of the accused and was shouting "Indian, Pakistani and Bengalis all are thieves and procurers".

Mr. Zulfiqar Ali who gave similar statement, moreover he added-that the appellee have neither resisted the police nor they have beaten anyone from the patrolling squad and that the appellee are of good nature "I am a Pakistani and they are Indian, no relations are between us, and my testimony is based on truth only. Further the Court listened to the statement of the 3rd witness Mr. Shirban Kalobar from Iran, whose testimony came similar to the declaration of the first two witnesses.

The innocence of the petitioner had been ultimately upheld by the Judges of both the Trial Court and the Apex Court of Abu Dhabi. On 10/4/1996 the Hon'ble Judge Mohammed Abdul Raheem Al Khoori, Judge of Abu Dhabi Legal Court of first instance, acquitted the petitioner of all the charges leveled against him in the presence of Mr. Mohammed Obaid Al Kabi, the Prosecuting attorney, and Mr. Abdul Fattah Sayed Ahmed, the secretary, under the case No. 152/1996, and directed the authorities to prosecute the policeman involved and also the plaintiff – for being guilty of deception.

The atrocities committed did not come to an end and the office of the Public Prosecutor, Abu Dhabi filed an appeal against the decree of the legal court of the first instance. On 18/04/1996 the appeal was set for hearing. 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 next hearing, the police officer, Mr. Ahmed Abdulla Abdul Khadir, dropped his claim from his complaint in the Apex Court, with a declaration attested by the Notary Public Abu Dhabi, under number 2314/96 dated 17/3/1996. The landlord too was declared that he had no case against the victim and accepted his attempt to create false evidence against the victim. The other two policemen involved in the case, who in fact, became the instrument of horrific torture designed to extort money, declared that they were misguided by the police officer.

On 19/5/1996 the Appellate Court of Abu Dhabi, under presidency of the Judge: Hon'ble Abdul Baqi Abdul Hakam, and the membership of the two other judges (1) Hon'ble Hasan Shareef Al Jafri (2) Hon'ble Mohammad Al Aboodi, upheld the finding of the Trial Court and commented adversely and strongly against the illegal and high-handed acts of the officials.

The Apex Court found that the person was innocent; 'a martyr'. The case was wholly false, baseless and that it was fabricated by the police for personal gain. "The Court observed that all the pieces of evidence indicated the properness of the behavior of the victim, the accused. Some of these findings of fact are proof of violation of Human Rights and International Conventions".

"It further reiterated the condemnation of prosecutor". The appellate review highlighted the culpability of the policeman and emphasized the notoriety of his actions and violations of Human Rights.

The Court, therefore, ordered restoration of the victim's dignity, and compensate him for all his losses while pronouncing a 'Landmark Judgment'.

An excerpt from the appellate judgment is as follows:-

"Verily the Islamic law and the entire positive laws have honoured man and protected his freedom, his honour, his property and his soul. Hence, if man was killed while



protecting these, he is considered to be a martyr. And limitation of his freedom without any right is an unforgiving crime and the same is mentioned in the provisions of article 2 and 3 of the penal procedure code. And it is proved in this case that the policemen along with the local went to arrest the accused, without any right and curtailed his freedom".

The Court having been convinced about the innocence of the petitioner quoted the Islamic Law that should be practiced by everyone following the Islam Religion. The Apex Court illustrated the petitioner as a 'martyr' in the Judgment and highlighted the intense miseries he went through. A true copy of 'the Final Judgment' is produced as **'Exhibit No.3'**

Deportation Order

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 the mental agony and suffering and pecuniary losses suffered by him. Unfortunately, the Abu Dhabi officials acted in total defiance of the findings and sentiments expressed by the judicial establishments of the country.

The petitioner was detained at further extent without the due respect of the law of the land. On 28-9-1996 by virtue of the administrative decision number 227/1996, it was decided to deport the petitioner from the UAE. The petitioner had a valid visa of a 'sole investor' and had his 'own business' establishments in the UAE. The petitioner was re-victimized in a manner that was extremely 'libelous' - by 'false statement of facts as if he was punished for a crime'. The deportation order was signed by one Captain Hamad Ahmed, then head of security affairs department, general directorate police of Abu Dhabi, UAE.

The petitioner was deported back to India in total negation of the law virtually denying all the constitutional rights of that country. The constitution and union laws of the UAE were blatantly violated abridged as enshrined including the well-established principles of international laws and the Covenants (Ref).



The deportation order it reads “Under the charge of applying force against a government employee” which could instill fear and suspicion in the general public, associating or dealing with the petitioner. It caused a situation of re-victimization associated with great pain, loss of dignity, including his inability to recapture the past glory, which the victim could have achieved had the judgment of the Legal Courts of Abu Dhabi had been implemented in time, which strengthens this case further.

The Apex Court had already found the claim against victim was fabricated. An excerpt of Judgment reads "All the evidence indicates to the appropriateness of his behavior". “The court was ruled that, there is not a shred of evidence which can prove the accusation. On the contrary there was ample evidence that it was the policeman who assaulted the victim”.

It is respectfully submitted that flouting the orders of a judicial body is totally destructive of the Rules of Law and norms internationally upheld for safeguarding Human Rights. The very concept of having an independent judiciary to protect the citizen from Executive excesses crumbles down by such an action on the part of Government officials.

The domestic law permits recovery for reputational harm and economic losses flowing from the falsity of a defamatory statement. A true copy of ‘the Deportation Order, by ‘Captain Hamad Ahmed is produced as ‘**Exhibit No.4**’

‘No Entry Stamp & Cancellation of Residence Visa’

The petitioner's visa has been cancelled and has made an endorsement of ‘No Entry’ in his passport. There was no legality to cancel a valid residence permit of a rightful investor. The petitioner was not involved in any crime or any consequences that may ultimately remove him from the UAE. The victim was a ‘judgment creditor’ and he was living in the UAE over the last 18 years and was a sole investor of a group of business establishments.



Endorsing 'No Entry' on a passport would make the bearer ineligible, resulting a greater adverse impact on his dignity. The Immigration of Abu Dhabi, UAE has no authority to affix a "No Entry" stamp in a valid Indian passport without any valid reason. A passport or travel document Under Clause No.17 of the Indian Passport Act, 1967 is a property of the Central Government.

The Orders of the Hon'ble 'Supreme Court of India & High Court of Delhi'

After reaching India, the petitioner has made numerous representations to the Union Government of India asking them to grant him leave to institute legal proceedings against the state of UAE. These included several representations made in person to the various Ministers who were administering the External Affairs Ministry.

In October 1996 a writ petition was filed by the petitioner before the Hon'ble Supreme Court of India. The Supreme Court of India took cognizance of the case and suggested the Delhi High Court deal with it. The petitioner has thereafter moved the Hon'ble High Court of New Delhi under Article 226 of the Constitution.

The Hon'ble High Court of Delhi, was pleased to issue a mandamus, vide judgment dated 20-11-1997 to the Government, the Ministry of External Affairs (MEA) to settle the matters within two months of the date of the Judgment. A true copy of 'the High Court Judgment' is produced as **'Exhibit No.5'**

In total negation of such a specific order of the Delhi High Court, the External Affairs Ministry of India, despite the lapse of many years of date of the judgment, demonstrated a blatant disrespect to the law of the country. A true copy of 'Letter dated January 29, 1998 from Shri. N.U. Avirachan, Under Secretary, Ministry of External Affairs, Government of India, addressed to Shri. Bala Subramanian, Second Sec India (Cons), Embassy of Abu Dhabi, is produced as **'Exhibit No.6'**

In January 28, 2004 the High Court of Delhi observed in its order [WP(C) NO.6149/1998] that the Government should inform the Court of the steps taken to protect the rights of the petitioner.



In 19/09/2007, the judgment of the Delhi High Court which had extracted the letter of the MEA dated 29/07/1998 reading: “Shri. Jabir should pursue his legal action has 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”. (A copy of that judgment was already submitted in the first reminder letter to the MEA)

The stand taken by the Ministry of External Affairs in the case that “the petitioner is free to take his case further with the Abu Dhabi Court for execution of his impending judgments”, was only an attempt to get rid of its responsibility of supporting the petitioner for proper legal remedies.

The very essence of the ‘Vienna Convention 1961’ was not given due weight. Instead, the victim was advised to fight his case on his own at Abu Dhabi. (The Vienna Convention on Diplomatic Relations is fundamental to the conduct of foreign relations and ensures that diplomats can conduct their duties without threat of influence by the host government)

On the other hand, one feels it a contradiction that, fighting against many unfavourable situations prevalent in Abu Dhabi, UAE, the petitioner could get three consecutive judgment orders in his favour from the Criminal Courts of Abu Dhabi, namely the Court of First Instance, the Bail Order of the Apex Court and the Final Judgment of the Apex Court. None of them was executed. And most importantly, earlier there was a ‘Civil Court Order of Abu Dhabi’ in favour of the petitioner, and as a result of this order, the petitioner had to undergo excruciating agony, the most uncivilized method of torture, and finally indulged in illegal confinement that lasted for over a year. The duty and responsibility of the authority to protect the petitioner against the threats of violence was left unattended and therefore, the Apex Court of Abu Dhabi illustrated that the petitioner is a living ‘martyr’ in its final judgment.

According to the ‘Federal Law No (35) of 1992’, concerning the criminal procedural law in the UAE, the public prosecution is in-charge of enforcing Judgments in all criminal cases brought before the court – Article (272).



Instead of doing this honest duty, entrusted with the public prosecution by the law of the land, the petitioner was illegally deported to India, with the ulterior motive of avoiding reparations as ordered by the Courts of Abu Dhabi, UAE.

Attribution of Conduct to the State

The responsibility of States for acts of its organs is well accepted under international law. The 'successor governments' also remain bound by the acts incurred by the 'predecessor governments'.

“The responsibility of a State is involved in its territory for acts of its organs against the persons of foreigners if the State has neglected to take all reasonable measures for the prevention of the crime and the pursuit, arrest and bringing to justice of the criminal”.

The fundamental reason behind this rule is to prevent States from escaping international responsibility. In fact, the whole body of international law on State responsibility is based on a realistic concept of accountability, which disregards legal formalities and aims at ensuring that States entrusting some functions to individuals or groups of individuals must answer for their actions, even when they act contrary to their directives.

The doctrine of 'international responsibility' is applicable to any subject bearing legal personality in international law. As explained by Professor van Boven: **"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) is attached as **'Exhibit No.7'**.

As such, it is not at all feasible for the petitioner to reopen the long pending issue of “non-execution of the judgments now lying dormant in the Emirate of Abu Dhabi, on an individual basis. It is for the Government of India that has to take up this



frightening, and blatant violation of the law and the constitutional rights of UAE, on diplomatic level, that too without loss of further time. The petitioner sincerely aspires for appropriate protective measures from the Government of India so that none of the migrant Indian will have to face, in future, the inhuman and deadly tortures to which the petitioner was exposed to.

In view of the background information furnished as above, the petitioner is hopeful that the Hon'ble External Affairs Ministry could now have an updated picture, prima facie borne out by the records of the case, (and) the unhelpful attitude of the officials in India as well as abroad in abating his agonies.

The petitioner's case had been espoused by a great jurists and judge of the Supreme Court of India – Justice V.R. Krishna Iyer. Justice K. Sukumaran, a Judge of the High Courts of Kerala and Bombay took up the matter with Mr. Salman Khurshid, who took a just and humane view of the matter. (A copy of his article 'Human Rights - Expanding horizons' published on November 25, 1998 is attached as '**Exhibit No.8**').

Yours truly

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References

- 1.The Constitution and Union laws of United Arab Emirates (UAE)
2. Criminal Case Procedures – United Arab Emirates (UAE)
3. International Covenant on Civil and Political Rights-1966;
4. International Covenant on Economic, Social and Cultural Rights-1966
5. Universal Declaration of Human Rights, a Magna Carta for all humanity-1948.
6. The Basic Principles of Justice for Victims of Crime and Abuse of Power -1985
7. Vienna Convention on Diplomatic Relations – Done at Vienna on 18 April 1961

NOTE: Further details of the case and the documents other than what is listed above are available at: <http://www.lawyersindia.com/outsourcing/>
