

# Kulbhushan Jadhav case and ICJ verdict

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## **Manifest pedagogy:**

Kulbhushan Jadhav case has been a highly sensationalized one. But UPSC aspirants need to be clinical in their approach and do topics surrounding them rather than focusing on the story. Following are the topics

1. Consular relations and the Vienna Declaration on it
2. ICJ its powers and functions

Vienna Declaration shall be covered in a separate article

**In news:** ICJ has given its judgement on Kulbhushan Jadhav case.

## **Placing it in syllabus:**

- International institutions and their mandate
- India and neighborhood relations

## **Static dimensions:**

- Vienna Convention on diplomatic relations
- International Court of Justice (ICJ)

## **Current dimensions:**

- Issue is all about
- ICJ judgement on the case
- Implication of judgement on India- Pak relations

**Content:** In a major diplomatic and legal victory for India in the Kulbhushan Jadhav case, the International Court of Justice (ICJ) has directed Pakistan to review his conviction and,

until then, put his death sentence on hold. The court also asked Islamabad to allow New Delhi consular access at the earliest.

## **ICJ:**

- It is the principal judicial organ of the United Nations (UN).
- The ICJ's primary functions are to settle international legal disputes submitted by states (contentious cases) and give advisory opinions on legal issues referred to it by the UN (advisory proceedings).
- Through its opinions and rulings, it serves as a source of international law.
- The ICJ is the successor of the Permanent Court of International Justice (PCIJ), which was established by the League of Nations in 1920 and began its first session in 1922.
- After the Second World War, both the League and the PCIJ were succeeded by the United Nations and ICJ, respectively.
- All members of the UN are party to the ICJ Statute.
- The ICJ comprises a panel of 15 judges elected by the General Assembly and Security Council for nine-year terms.
- The court is seated in the Peace Palace in The Hague, Netherlands, making it the only principal U.N. organ not located in New York City.
- Non-UN members may also become parties to the court's statute. Once a state is a party to the court's statute, it is entitled to participate in cases before the court.
- However, being a party to the statute does not automatically give the court jurisdiction over disputes involving those parties.
- The issue of jurisdiction is considered in the three types of ICJ cases: **contentious issues, incidental**

## **jurisdiction, and advisory opinions.**

### **Vienna Convention on Diplomatic Relations of 1961:**

- It is an international treaty that defines a framework for diplomatic relations between independent countries.
- It specifies the privileges of a diplomatic mission that enable diplomats to perform their function without fear of coercion or harassment by the host country.

### **Some of it's key provisions are:**

Article 9: The host nation at any time and for any reason can declare a particular member of the diplomatic staff to be persona non grata. The sending state must recall this person within a reasonable period of time, or otherwise this person may lose their diplomatic immunity.

Article 27: The host country must permit and protect free communication between the diplomats of the mission and their home country.

Article 29: Diplomats must not be liable to any form of arrest or detention. They are immune from civil or criminal prosecution, though the sending country may waive this right under Article 32.

Article 31.1c: Actions not covered by diplomatic immunity: professional activity outside diplomat's official functions.

There are 192 state parties to the convention including all UN member states except Palau, the Solomon Islands, and South Sudan.

### **Timeline of Kulbhushan Jadav case:**

- 3 March 2016: Kulbhushan Jadhav, retired navy officer accused to be an Indian Intelligence agency RAW's operative arrested near Chaman, Balochistan.
- 25 March 2016: Indian authorities are notified about

Jadhav's arrest in a press release. India argued that Pakistan abducted Jadhav from Iran.

- 7 December 2016: Pakistan Foreign Minister Sartaj Aziz confirmed that conclusive evidence against Kulbhushan has not been found. Pakistan Foreign Ministry released a statement the same day stating that the statement attributed to the Adviser is incorrect.
- 6 January 2017: Pakistan announced that it has submitted a dossier to the new United Nations' Secretary General Antonio Guterres over Indian interference in Islamabad, which was aimed at "destabilising" the nation.
- 10 April 2017: Pakistan Army's Inter-Services Public Relations (ISPR) in a press release informed that Jadhav had been awarded the death sentence by a military court in Pakistan.
- 26 April 2017: Pakistan denied India's 16th request for consular access to Jadhav.
- 8 May 2017: India moved a petition in the UN seeking justice for Jadhav after being denied 16 consular accesses, alleging violation of the Vienna Convention on Consular Relations by Pakistan.
- 9 May 2017: The ICJ puts a stay on the death sentence given by Pakistan to Kulbhushan Jadhav after an appeal from India, which accused Pakistan of violations of the Vienna Convention.
- 17 April 2018: India filed its second round of pleadings to the ICJ at The Hague.
- 17 July 2018: Pakistan submitted its second counter-memorial in the ICJ on the conviction of Kulbhushan Jadhav.
- 20 November 2018: Former external affairs minister Sushma Swaraj sought diplomatic access to Kulbhushan Jadhav.
- 19 February 2019: The ICJ began its four-day public hearing where India asked UN top court to annul Jadhav's conviction.
- July 4, 2019: The ICJ announced that it will deliver its

final judgment on July 17.

### **ICJ judgement on the case:**

Recently ICJ held that Jadhav's execution will remain on hold until Islamabad "effectively reviews and reconsiders" his conviction. This means the death sentence awarded to Jadhav by a military court in Pakistan is stayed until probably a civil court, where the accused will have better representation, hears the case afresh.

The court ruled decisively in favour of India's plea to allow it full consular access to Jadhav, which has so far been denied. Judge Gilani from Pakistan was the only one to go against the majority judgement. The judge from China, also voted in favour of the judgement. The court, however, rejected India's plea for annulment of Jadhav's conviction by the military court in Pakistan and his immediate release.

The ICJ concluded that Islamabad had violated Article 36 of the Vienna Convention of Consular Relations, 1963, (**Article 36: Foreign nationals who are arrested or detained be given notice without delay of their right to have their embassy or consulate notified of that arrest**) by not informing New Delhi about Jadhav's arrest immediately after Pakistan Army had taken him into custody. It found that Pakistan had deprived India of the right to communicate with and have access to Jadhav, to visit him in detention and to arrange for his legal representation.

Pakistan has challenged New Delhi's entire stance at ICJ with main argument that Jadhav is an Indian spy who illegally entered Pakistan to sabotage the country's interests and therefore he was not permitted consular access.

Judgments delivered by the Court in disputes between States are binding upon the parties concerned. Article 94 of the United Nations Charter provides that " each Member of the United Nations undertakes to comply with the decision of [the

Court] in any case to which it is a party". Judgments are final and without appeal.

However in the past the court's verdicts have not always been approved by the member states. In that context, regardless of what the court decides, the fate of Jadhav depends on the nature of India and Pakistan's bilateral relationship.

### **Implications of the judgement on India – Pakistan relations:**

The ICJ verdict on Kulbhushan Jadhav case is indeed a triumph for India. However, the dispute between India-Pakistan over Kulbhushan Jadhav will not end with this verdict. Rather, the verdict has the potential to intensify the tension between the two South Asian powers.

India has pointed out that he was denied the right to be defended by a legal counsel of his choice. His conviction and death sentence is based on "confessions" taken in captivity.

With Jadhav's arrest, Pakistan has sought to project it as proof of India's alleged hand in support for the Baloch insurgency.

There are only two possible future scenarios for this case. First, Pakistan reviews Jadhav case in a civil court. Second, Pakistan dishonours the ICJ verdict.

-> The Court has said that Pakistan has the right to choose the means of effective reviewing of the case. It increases the possibility of Jadhav gets a fair trial in a Pakistani civil court. If this happens, the impending proceedings in a Pakistani High Court will consider the merit of the case given serious allegations made by Pakistan against Jadhav such as his involvement in sabotage and spying activities in Balochistan.

India will get a chance to defend, presents arguments and evidence of these allegations. Providing evidence regarding

the retirement of Jadhav from Indian Navy and his whereabouts, and business in Iran would be helpful to counter Pakistan's claims in the court. Another significant challenge before India would be defending on Jadhav's passport, which has a different name on it, as Pakistan claimed.

-> Considering the fact that Pakistan is already under pressure from the international community on its support to terror groups, the country disobeying the ICJ verdict is unlikely. However, since the ICJ does not have enforcement power and judgment of Court in contentious cases are final, and no reverting is permitted, in situations of non-compliance of the verdict, the only option available to state is to approach the UN Security Council as per Article 94 of the UN Charter.

The article states that "if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

In the Security Council, permanent members can veto the resolution as the ICJ verdict was nearly unanimous, adopted fourteen to one, and four permanent members were in favour of it.

Jadhav Case will be a pioneering initiative in India's future pursuit of multilateral forums to achieve its national interests. Departing from its earlier position that there can be no third party involvement in the India-Pakistan conflict, India in an unprecedented move approached the ICJ to prevent the execution of its national sentenced to death by a Pakistan military court. Whether it is bilateral or multilateral, India's primary concern should be national interest and ensure the life of Indian citizens.