



THE ICJ VERDICT ON JADHAV AND WHAT IT MEANS FOR PAKISTAN

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



The International Court of Justice (ICJ) announced its verdict regarding Kulbhushan Jadhav on July 19, 2019, rejecting India's appeal for Jadhav's release and also directed Pakistan to review the death sentence and allow Consular access, which was effectively provided by Pakistan on September 2, 2019.

The ICJ has ordered cancellation of the death sentence until a review is carried out by the Pakistani courts. The case at the ICJ largely vindicates the Pakistani position and does not have any reservations on the procedures of courts in Pakistan which gave the verdict. Pakistan had arrested Indian spy Kulbhushan Jadhav on spy charges in March 2016 while crossing Pakistan's border with Iran. Jadhav admitted to providing funds and carrying out subversive activities in Pakistan. At the time of his arrest, Jadhav possessed a valid Indian passport with a fake identity and during his interrogation, he confessed to having been sent by Indian intelligence agency RAW, and, that he was an in-service officer of the Indian Navy. Among others, he confessed to having carried out subversive activities in Karachi, and in Baluchistan. After his arrest and confession, he was tried by a military court where he had legal assistance and after the validation of charges, he was awarded death sentence by the military court in April 2017. On humanitarian grounds, Jadhav was allowed to meet his wife and mother at the Ministry of Foreign Affairs on December 25, 2017. It may be noted that India had claimed that it had a right to Consular access under Vienna Convention, but Pakistan denied access, saying it was not applicable to spies.

However, in May 2017, the Indian government approached the International Court of Justice (ICJ) saying that Pakistani authorities were denying India its right of Consular access to Jadhav in breach

of the Vienna Convention on Consular Relations 1963. India also pleaded the Court to repeal the sentence by Pakistan military court, ensure Jadhav's release, and repatriation to India. The ICJ proceedings began in The Hague on May 15, 2017 to review the case. India and Pakistan both sent their legal teams to argue their case. On May 18, 2017, the ICJ stayed the hanging of Jadhav. The concluding hearing of the case took place in February 2019.

Regarding the submissions to the ICJ, both countries stipulated their respective positions. While India argued that the death sentence awarded to Jadhav should be annulled, Pakistan asserted that there have been precedents of death sentences awarded by the United States in similar cases. It was stated by the ICJ that it is not a court of criminal appeal; instead it has recommended that the domestic courts decide on a review. India's allegation that Jadhav was denied Consular access was rebutted by Pakistan as not being obligatory, as both the countries had agreed on an Agreement on Consular Access dated May 21, 2008, which underscored that each state was to consider a request for Consular access based on merit and circumstances.¹

India's primary plea has been Pakistan's violation of Article 36 of the Vienna Convention on Consular Relations 1963. But it may be noted that the ICJ has stated that the conviction of spy Jadhav is not to be regarded as violation of Article 36 relating to *Communication and contact with nationals of the sending state*. Pakistan has asserted that a review and reconsideration of the death sentence would be carried out. Furthermore, Pakistani Judge, Justice Tassaduq Hussain Jilani's dissenting note dated July 17, 2019, on the matter throws considerable light on several issues. According to Justice Jilani, Pakistan had withheld Consular access lawfully and did not breach any law in that matter, as mentioned above, and was in accordance with the 2008 agreement between the two countries.² He also stated that, "The Court's judgment appears to set a dangerous precedent at the times when states are increasingly confronted with transnational terrorist activities and impending threats to national security."³

For all practical purposes, the ICJ has not refuted Pakistan's claim that Jadhav is a spy who was caught while carrying out seditious activities in Pakistan. However, it may be noted that the ICJ has allowed Consular access to India in its verdict. The court maintains that the sentence and conviction of Jadhav do not violate the Vienna Convention on Consular Relations. It can be said that the ICJ verdict may not be a complete win for Pakistan, but despite staying of the death sentence, it still upholds and vindicates Islamabad's position on the matter, which is that Jadhav is a spy who has

¹ Malik Muhammad Ashraf, *The ICJ Verdict*, *The News*, July 22, 2019.

² Dissenting Opinion of Judge Ad HOC Jilani, <https://www.icj-cij.org/files/case-related/168/168-20190717-JUD-01-05-EN.pdf>

³ India's conduct amounted to rights abuse: Justice Jilani, *Dawn Newspaper*, July 18, 2019.

been held for subversion inside Pakistan. The only gain for India is the review of the death sentence and also the allowance of Consular access to Jadhav. The ICJ verdict weighs heavily in Pakistan's favor despite the staying of the death sentence. Although, it can be said that the verdict given by the ICJ has not accepted Pakistan's view on consular access, instead upholding the posture on the conviction and corrective action. The decision by ICJ is a win-win for both as it maintains a balance in favor of both Pakistan and India. While Pakistan has been asked to provide Consular access, the final fate of the spy, however, rests with Pakistan.