



JADHAV CASE (INDIA V. PAKISTAN)

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Introduction

Vienna convention on Consular Relations of 1963 is an international treaty ratified by almost 180 countries for providing consular actions between independent states. A consul normally operates out of an embassy in another country. He is mostly entrusted with two functions: firstly, protecting in the host country the interests of their countrymen, and secondly, furthering the commercial and economic relations between the two states.

This case of India versus Pakistan (Jadhav) will truly be a landmark for other similar cases where consular access was denied and there was contravention of Vienna convention on Consular Relations.

Facts of the case

Since 3 March 2016, an individual named Kulbhushan Sudhir Jadhav has been in the custody of Pakistani authorities. He is a retired officer of Indian Navy. There was dispute about the circumstances and facts about his arrest between India and Pakistan. According to India, Mr. Jadhav was kidnapped from Iran and later was transferred to Pakistan and detained for interrogation. Whereas, Pakistan contended that Mr. Jadhav, whom it accuses of performing acts of espionage and terrorism on behalf of India, was arrested in Balochistan near the border with Iran after illegally entering Pakistani territory.

On 25 March 2016, Pakistan raised this issue with the High Commissioner of India in Islamabad and released a suspicious video in

which Mr. Jadhav appears to confess to his involvement in acts of espionage and terrorism in Pakistan on the orders of India's foreign intelligence agency "Research and Analysis Wing" (also referred to by its acronym "RAW"). The circumstances under which the video was recorded were unknown to the Court.

On the same day, by means of a Note Verbale from the High Commission of India in Islamabad to the Ministry of Foreign Affairs of Pakistan, India noted the "purported arrest of an Indian" and requested consular access to Mr Jadhav. Until 9 October 2017, India sent more than ten Notes Verbales in which it identified Mr. Jadhav as its national and sought consular access to him and Pakistan paid no heed to the request of providing consular access.

The trial of Mr. Jadhav was initiated on 21 September 2016 and was conducted before a Field General Court Martial. On the basis of this information (from the only source made available to the Court), it appears that Mr. Jadhav was tried under Section 59 of the Pakistan Army Act of 1952 and Section 3 of the Official Secrets Act of 1923. According to Pakistan, after the trial had begun, he was given an additional period of three weeks in order to facilitate the preparation of his defence, for which "a law qualified field officer" was specifically appointed.

On 23 January 2017, the Ministry of Foreign Affairs of Pakistan sent a "Letter of Assistance for Criminal Investigation against Mr Jadhav to the High Commission of India in Islamabad, seeking support in "obtaining evidence, material and record for the criminal investigation" of Mr. Jadhav's activities. On 21 March, 2017 Pakistan sent a note verbale that India's request of consular access will



only be given if India assists Pakistan for assistance in Investigation process.

On 10 April 2017, Pakistan announced that Jadhav had been sentenced to death.

Issues raised

- 1) Pakistan breached the Vienna Convention as it repeatedly denied consular access to Kulbhushan Jadhav
- (2) the process of resolution of this case.

Judgment

India seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute and on Article I of the Optional Protocol. The Court found that it has jurisdiction under Article I of the Optional Protocol to entertain India's claims based on alleged violations of the Vienna Convention.

The International Court of Justice has by an overwhelming majority of 15-1 ruled that Pakistan do an **“effective review and reconsideration of conviction and sentence”** of Jadhav, that it grants Indian official consular access to him and directed. “Pakistan to take all measures at its disposal to ensure that Mr. Jadhav is not executed pending the final decision in the present proceedings. The Court considers that a continued stay of execution constitutes an indispensable condition for the effective review and reconsideration of the conviction and sentence of Mr. Jadhav”.

Clearly the judgment is in India's favour though Pakistanis are claiming it's their victory because ICJ has not accepted the extreme remedies which India had sought for. India however have added that if the remedies India was demanding are not available, then the Court should ensure a retrial with full consular access to Jadhav

and India be given the right to arrange for his legal representation. These were granted in the judgment handed down on July 17, 2019.

To what extent the Judgment was in India's favour?

First, the ICJ suspended the death penalty awarded to Jadhav by the Pakistani military court. Secondly, the ICJ ruled that Pakistan will have to review the entire process of trial and conviction of Kulbhushan Jadhav. And Thirdly, ICJ noted that Pakistan breached the obligation incumbent upon it under Article 36 of the Vienna Convention on consular relations. This means that Pakistan has now to provide India consular access to Kulbhushan Jadhav.

Conclusion

The ICJ should have laid down some detailed guidelines for how the trial has to be carried out because Pakistanis are already crowing on the fact that ICJ have ruled they can reconsider and review by “means of its own choosing”. As we are very well aware of the fact that “fair trails are oxymoron in Pakistan still Pakistan can not afford to follow the judgment pronounced by the ICJ. What can be concluded from the judgment is that ICJ delivered ‘justice’ in the true sense of that word, upholding human rights, due procedure and the rule of law.
