



Jadhav (India v. Pakistan) 2017

ICJ - Anushka Seth



Forum: International Court of Justice (ICJ)

Issue: Jadhav (India v. Pakistan) 2017

Names: Anushka Seth

Position: President of ICJ

Introduction:

Kulbhushan Sundhir Jadhav, an Indian national, was the defendant in question following his arrest in Pakistan. The way his case was dealt with, initiated the conflict between India and Pakistan. The litigation at the ICJ is regarding consular access, representation and security.

Trial is not ruling Jadhav's innocence but whether or not Pakistan violated international law within the case until jurisdiction of Jadhav.

Definition of Key Terms:

Death sentence

Order of court for the guilty to be punished for their crime with death.

Consular Access

For a restrained national to be entitled to communication with their government officer concerning welfare, regal representation and consular assistance. Mentioned in Article 36 of the Vienna Convention of Consular Relations.

“In light of”

India's 13 requests had either been rejected or came with an 'in light of' response. This meant considering or taking into account certain circumstances or factors that have been presented or are relevant to the situation. This indicates that the request is being considered in light of new information or events. In this case 'in light of' regards to India's response to Pakistan's request for assistance on the investigation.

Note Verbale

Mode of communication between the Minister of External/Foreign Affairs. Here brief messages are said less formally than the register of legal documents. In this case it was used to request assistance on investigation, for reminders for requests of consular access, and respective replies, among other messages.

Research and Analysis Wing (RAW)

The Indian foreign intelligence agency that deals with foreign affairs namely counter-terrorism, counter-proliferation, policy making, advising and strategic planning of international affairs.

Background:

Jadhav was arrested on the 3rd of March 2016. According to India, Jadhav was crossing the country, coming from Iran. Pakistan carried out the case at the Field General Court Martial with the basis that Jadhav was present during a security raid and was arrested for espionage as an RAW agent, passing information undercover against Pakistan.

India was informed of this alleged arrest when the Foreign Secretary of Pakistan raised the matter with the Indian High Commissioner in Islamabad. On the same day India filed for its first request for consular access.

Almost a year after the first request, Pakistan requested for assistance and investigation from India came as a FIR registered against an Indian national.

India again, brought up that consular access is primarily essential to take Jadhav's account however the response came that this would be in light of India's co-operation and assistance with the trial and investigation.

Before granting consular access, the announcement of Jadhav's death sentence was made. India responded that consular access after this could not be utilized for the necessary purpose.

Current Situation:

India has made a case to the International Court of Justice against Pakistan for violation of the Vienna Convention of Consular Relations (see Article 36). India makes the case about their restriction of involvement in Jadhav's case in Pakistan.

By the Agreement on consular access between the Government of the Islamic Republic of Pakistan and the Government of the Republic of India of 2008, this was permitted. The agreement permits governments to deny consular access in the case of national security being at risk, which in this case would favor Pakistan. The said agreement is not officially registered in the UN making it an invalid reference unless it is granted admissible by the Court as the VCCR allows mutual extensions on the already mentioned.

The defendants must get the ICJ to admit and consider the 2008 agreement followed by making claims on the question of national security risk associated with the Jadhav case making it valid to deny consular access.

Timeline of events:

24 April 1963

Vienna Convention on Consular relations was written.

23 May 1969

The Vienna Convention on the Law of Treaties was written which is essentially what states the boundaries within which the applications of treaties is defined elaborating on the way it will be functioning.

21 May 2008

Agreement on Consular access between the Government of the Islamic Republic of Pakistan and the Republic of India.

3 March 2016

Pakistan claims, Jadhav had been arrested in Baluchistan during a security raid. India denies and claims that Jadhav had been abducted from Iran and brought to Pakistan.

25th March 2016

India was formally made aware of the Arrest of their national, Mr. Jadhav. As per international allegations procedural defense, India filed the first of the 13 requests for consular access. This was denied with claims that it would not be possible because it was a case of espionage and security.

23rd January 2017

India receives via note verbale that Pakistan requires assistance from India to investigate Jadhav's case.

February 3rd, 2017

India replies elaborating all the reason that consular access must primarily be granted for Jadhav's representation, safety, and explanation of his presence in Pakistan.

Note verbales back and forth while case proceeds at Field General Court.

April 10th, 2017

Jadhav is given the death sentence.

May 8th, 2017

India approaches the International Court of Justice against Pakistan for violating the Vienna Convention of Consular Relations in Jadhav's case.

Further Reading:

[The Vienna Convention of Consular Relations 1963](#)

[Beneficial Questions and Answers for basis](#)

[Agreement on consular access between the Government of the Islamic Republic of Pakistan and the Government of the Republic of India. Islamabad, 21 May 2008](#)

[Provisional Measures and the Jadhav Case](#)

[Case Concerning the Vienna Convention on Consular Relations \(India vs. Pakistan\)](#)

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