



Kulbhushan Jadhav Case

Why in News

Recently, **Pakistan's Parliament has enacted a law to give Indian death-row prisoner [Kulbhushan Jadhav](#) the right to file a review appeal** against his conviction by a military court.

- The bill was enacted to implement an order of the [International Court of Justice \(ICJ\)](#).
- However, India points out that the law has several “**shortcomings**”, and that steps are needed to implement the ICJ's order “in letter and spirit”.

Key Points

▪ Kulbhushan Jadhav Case:

- **Arrest:** A 51-year-old **retired Indian Navy officer**, Jadhav was **sentenced to death** by a Pakistani military court on **charges of espionage and terrorism** in April 2017.
 - In December 2017, Jadhav's wife and mother were allowed to meet him across a glass partition, with India contesting Pakistan's claim that this was consular access at ICJ.
- **Denial of Consular Access:** India approached the ICJ against Pakistan for **denial of consular access ([Vienna Convention](#))** to Jadhav and challenging the death sentence.
- **ICJ Ruling:** In 2019, the ICJ ruled that Pakistan was obliged under international laws to provide by means of its own choosing “**effective review and reconsideration**” of Jadhav's conviction.
- **Pakistan's Response:** In the wake of the ICJ order, the Pakistan government had promulgated a special ordinance to allow Jadhav to file a review.
 - Pakistan's Parliament has passed the **International Court of Justice (Review and Reconsideration) Bill, 2021** aimed to fulfill the obligation under the verdict of the ICJ.

▪ Shortcomings in the Law:

- **No Clear Road Map:** India believes the Bill reiterates a 2019 ordinance passed by Pakistan, without creating a machinery to facilitate an effective review and reconsideration in Kulbhushan Jadhav's case.
- **Extraordinary Power to Municipal Court:** It invites municipal courts in Pakistan to decide whether or not any prejudice has been caused to Jadhav on account of the failure to provide consular access.
 - This is clearly a breach of the basic tenet, that municipal courts cannot be the arbiter of whether a State has fulfilled its obligations under international law.
 - It further invites a municipal court to sit in appeal.

▪ Implications of 'Effective Review and Reconsideration' for India:

- Effective review and reconsideration is a phrase which is different from 'review' as one understands in a domestic course.

- It **includes giving consular access** and helping Jadhav in preparing his defence.
- It means that **Pakistan has to disclose the charges and also the evidence** which it has been absolutely opaque about uptill now.
- Pakistan would also **have to disclose the circumstances in which Jadhav's confession** was extracted by the military.
- It implies that **Jadhav will have a right to defend** whichever forum or court hears his case.

International Court of Justice

- ICJ is a **principal judicial organization** of the United Nations (UN).
- It was established in 1945 by a **UN Charter** and began working in 1946 as the successor to the **Permanent Court of International Justice**.
- It settles legal disputes between member countries and gives advisory opinions to authorized UN Organs and Specialized Agencies.
- It is seated in the **Peace Palace of Hague, Netherlands**.

Vienna Convention

- The **Vienna Convention on Consular Relations** is an international treaty that defines consular relations between independent states.
 - A consul (who is not a diplomat), is a representative of a foreign state in a host country, who works for the interests of his countrymen.
- **Article 36 of the Vienna Convention** states that foreign nationals who are arrested or detained in the host country must be given notice without delay of their right to have their embassy or consulate notified of that arrest.

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