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The Big Picture - Kulbhushan Jadhav: Justice Served

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A day after the **International Court of Justice (ICJ)** ordered Pakistan to review the death penalty to **Kulbhushan Jadhav**, India asked Pakistan to release the former Navy officer forthwith and vowed to vigorously continue efforts to bring him back.

49-year-old Kulbhushan Jadhav, was arrested by Pakistan in March 2016 and accused of espionage, a charge India has rubbished. A year later, he was sentenced to death by a Pakistani military court.

The International Court of Justice has ruled that Pakistan must review the death sentence of the retired navy officer. The world court also directed Pakistan to allow the Indian citizen **consular access**.

India's case at ICJ

India had made **two prayers in its petition** before the ICJ:

- One, suspend the death sentence by way of immediate relief as Pakistan had violated provisions of the Vienna convention.
- Second, declare the sentence of the military court as null and void as such courts are not recognised as legal entities as per international laws of jurisprudence.

ICJ's Ruling and implications

- The Court has observed that there has to be an **effective review of Jadhav's sentence**.
 - **Effective review and reconsideration** is a phrase which is different from 'review' as one understands in a domestic course.
 - An effective review and reconsideration 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.
 - The 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 defence whichever forum or court hears his case.
- The International Court of Justice also said that **Pakistan must take all measures which are necessary including legislative measures to facilitate the process of effective review**.
 - In general, military courts cannot try civilians. The constitutional amendment which created military courts for trying civilians has lapsed in Pakistan and it has not been able to re-enact the same.
 - Whether Jadhav's case would go back to the old military court is something which is not clear. If it goes back to the military court then it may not amount to be an effective review and reconsideration because the military court rules do not support the kind of procedure by which outsiders are allowed to come in and assist in defending as the consular access would mean.

What the order means for India?

India got the satisfaction on the following major aspects:

- The **execution has been stayed** and cannot be carried out until the full case has been heard all over again.
- Effective Review and Reconsideration of the conviction and the sentence.
- A sort of assurance that in the next trial, Jadhav would have full access to legal representation of his choice and also the fact that **Jadhav's defence would be**

assisted by India's consulate.

Challenges for India

- ICJ's verdicts are binding but there is **no enforcing agency** to ensure the implementation.
- India has **not often got a satisfaction** whenever it has gone to the international bodies.
- There is a fear that the way **China has opposed the verdict by the Permanent Court of Arbitration**, Pakistan can also disobey the decision by the ICJ.
- Pakistan has called the verdict as a major defeat for India and a major victory for itself. These type of views may result into a long battle with Pakistan on the case.

Points in favour of India

- **Pakistan being a party to the UN charter** is bound to obey the decision made by the UN body.
- International community has its own way of dealing with the states that disobey the UN Charter.
- India has continued to maintain a sustained pressure on Pakistan from all fronts: economic, political, diplomatic and military.
- Because of the sustained diplomatic campaign by India, Pakistan has got isolated. Now **Pakistan wants to normalize its status in the international order.**
- Pakistan is not in a position to disobey the order of ICJ considering especially because of its economic situation.

Pakistan needs to be moderate in its opposition and criticism of this decision. It has a way out i.e. it can say to its citizens that it is facing tremendous international pressure. This is a great opportunity that has been presented to Pakistan to mend its ways and to sort of reach out for diplomatic settlement or diplomatic talks with India.

- Some of the messages that Pakistan has been sending over the last few years have been positive. **Opening of airspace to India, acceding to most of the demands of Indian on Kartarpur Sahib corridor, taking an action on Hafiz Saeed** are some examples.

What if Pakistan doesn't implement the order?

- India is watchful and if at some point of time, it feels that something is being done to evade the order, it has an option to go back to the court for further directions and clarifications.
- The International Court of Justice is one of the bodies of the UN . If Pakistan brazenly denies the order, then there are some procedures under the UN charter which India

can go forward with.

Way Forward

- India needs to vigorously pursue this case to get satisfaction on full annulment of the decision against Jadhav and his safe and speedy return to India.
- If Pakistan doesn't mend its ways, India needs to be prepared to further isolate Pakistan particularly on the issue of terrorism.
- **The regional security environment is becoming complex day by day. India needs to find a solution to tackle the same.**