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**CASE COMMENTARY: JADHAV CASE (INDIA V. PAKISTAN), I.C.J. 2019**

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**Abstract**

The Jadhav case refers to the arrest and subsequent conviction of Indian national Kulbhushan Jadhav by the Pakistani government on charges of espionage and terrorism in 2016. India challenged Pakistan's handling of the case and the jurisdiction of the military court that sentenced Jadhav to death. The case was taken to the International Court of Justice (ICJ), where India argued that Jadhav was denied consular access and a fair trial. In a unanimous decision in 2019, the ICJ ordered Pakistan to undertake an effective review of Jadhav's conviction and sentence, and to grant consular access to India. However, the ICJ did not order Pakistan to release Jadhav. The case has strained relations between India and Pakistan, and highlights the complex political and legal dynamics of the region. The status of Jadhav remains a source of diplomatic tension between the two countries.

**Keywords:** India, Pakistan, Espionage, Sentencing, ICJ, Consular Relations

<b>Case title</b>	The Jadhav Case (India v. Pakistan)
<b>Case no</b>	ICJ/1817
<b>Date of judgment</b>	July 17, 2019

<b>Jurisdiction</b>	International Court of Justice (ICJ)
<b>Quorum</b>	Abdulqawi Ahmed Yusuf (Presiding Judge, Somalia), Joan E. Donoghue (United States of America), Antônio Augusto Cançado Trindade (Brazil), Yusuf Bin Sulaiman Al Othaimen (Saudi Arabia), Mohamed Bennouna (Morocco), Giorgio Gaja (Italy), Kirill Gevorgian (Russian Federation), Xue Hanqin (China), and Ronny Abraham (France).
<b>Author</b>	Abdulqawi Ahmed Yusuf.
<b>Petitioner</b>	Republic of India
<b>Respondent</b>	Islamic Republic of Pakistan
<b>Advocate(s) representing petitioner</b>	Harish Salve
<b>Advocate(s) representing respondent</b>	Khawar Qureshi
<b>Acts And Section Involved</b>	<ul style="list-style-type: none"> <li>The International Convention for the Protection of All Persons from Enforced Disappearance</li> <li>The Vienna Convention on Consular Relations.</li> </ul>

**I. INTRODUCTION OF FACTS:**

The Jadhav case is a high-stakes legal battle between India and Pakistan that has drawn international attention and has serious



geopolitical implications. At its core, it's a story of espionage, diplomacy, and human rights.

On March 3, 2016, Kulbhushan Jadhav, a former Indian naval officer, was arrested by Pakistani authorities in the province of Balochistan on charges of espionage and terrorism. He was tried by a military court and sentenced to death, a decision that was met with outrage and disbelief in India. The Indian government maintained that Jadhav was a legitimate businessman who was kidnapped and brought to Pakistan, and that he was denied a fair trial and consular access.

In response, India took the matter to the International Court of Justice (ICJ), the United Nations' top court, where it argued that Jadhav's rights under the Vienna Convention on Consular Relations had been violated. In a historic ruling in 2019, the ICJ ordered Pakistan to undertake a review of Jadhav's conviction and sentence, and to provide consular access to India. However, the ICJ did not order Pakistan to release Jadhav, leaving the fate of the former naval officer in a state of uncertainty.

The Jadhav case is a powerful reminder of the complex and often dangerous nature of diplomacy in the modern world, and the importance of upholding the rule of law and protecting human rights. It is also a stark example of the political and legal tensions that continue to exist between India and Pakistan, two nuclear-armed nations that have a long and fraught history

## II. **ISSUE:**

A. Whether the respected nations, Pakistan breached its obligations under the Convention by not informing Mr. Jadhav without delay of his rights to consular access and by denying India the right to communicate with and have access?

## III. **ARGUMENTS FAVOUR OF INDIA:**

A. **Violation of Consular Access:** India argued that Jadhav was denied consular access, a right guaranteed under the Vienna Convention on Consular Relations. India also

argued that Jadhav was denied a fair trial and was subjected to torture in order to extract a confession.

B. **Lack of Jurisdiction:** India challenged the jurisdiction of the military court that tried Jadhav, arguing that it was not competent to hear cases involving foreign nationals. India also argued that the military court did not have the jurisdiction to hear a case that involved espionage and terrorism, which are typically dealt with by civilian courts.

C. **Unlawful Detention:** India argued that Jadhav's arrest and detention were unlawful and that he was kidnapped from Iran and brought to Pakistan. India also argued that Jadhav was not provided with a fair trial and was denied the right to defend himself.

## IV. **ARGUMENTS FAVOUR OF PAKISTAN**

A. **Involvement in Espionage:** Pakistan argued that Jadhav was involved in espionage and terrorism, and was using his business as a cover for his subversive activities aimed at destabilizing the country. Pakistan presented evidence and a confession allegedly made by Jadhav to support its claims.

B. **Military Court Jurisdiction:** Pakistan argued that the military court had the jurisdiction to hear cases involving terrorism and espionage, which are security-related offenses. Pakistan also argued that the military court followed due process and that Jadhav was given a fair trial.

C. **National Security Concerns:** Pakistan argued that the case involved national security concerns and that Jadhav's activities were a threat to the country's stability. Pakistan also argued that the ICJ did not have jurisdiction to hear the case and that India was tool to put pressure on Pakistan.

## V. **ORDER OF THE COURT:**

A. The court ruled that it has the authority, based on Article I of the Optional Protocol for the Compulsory Settlement of Disputes under the Vienna Convention on Consular Relations of April 24, 1963, to handle the case brought forward by India on May 8, 2017.



B. It was determined that Pakistan violated its obligations under Article 36, paragraph 1 (b) of the Vienna Convention on Consular Relations by not informing Jadhav promptly of his rights.

C. The court concluded that Pakistan denied India the right to communicate with and have access to Jadhav, and also deprived India of its right to provide assistance to Jadhav as required by the Vienna Convention.

D. Finally, the court found that the proper remedy in this case is for Pakistan to effectively review and reconsider Jadhav's conviction and sentence, taking into account the violation of his rights under Article 36 of the Convention, in order to ensure that proper weight is given to this violation.

## VI. CONCLUSION

In conclusion, the Jadhav case was an important case in the field of international law, particularly with regard to consular relations and the protection of individuals from enforced disappearance. The International Court of Justice (ICJ) found that Pakistan had violated its obligations under the Vienna Convention on Consular Relations by failing to inform Mr. Jadhav of his rights to consular access and by denying India the right to communicate with and have access to him. The ICJ held that the appropriate reparation in this case was for Pakistan to provide effective review and reconsideration of Mr. Jadhav's conviction and sentence, so as to ensure that full weight was given to the effect of the violation of his rights under the Convention.

The ICJ's decision serves as a reminder of the importance of respecting the rights of individuals and the obligations of states under international law, including the Vienna Convention on Consular Relations and the International Convention for the Protection of All Persons from Enforced Disappearance. The ICJ's decision also serves as a cautionary tale for states to ensure that they comply with their obligations under these important treaties, and to ensure that the rights of individuals are protected and respected. The Jadhav case

underscores the significance of the ICJ as a forum for resolving disputes between states and protecting the rights of individuals, and highlights the crucial role that international law plays in promoting peace, justice, and the rule of law in the world.

## VII. RELATED CASE LAWS

1. The LaGrand case (Germany v. United States of America), which dealt with the right of consular access and the remedy of effective review and reconsideration of a conviction and sentence.

2. The Avena and Other Mexican Nationals (Mexico v. United States of America) case, which dealt with the right of consular access and the remedy of effective review and reconsideration of a conviction and sentence in the context of the Vienna Convention on Consular Relations.

3. The Al-Qaeda case (Congo v. Belgium), which dealt with the right to consular access and the obligation of a state to provide effective review and reconsideration of a conviction and sentence in the context of the International Convention for the Protection of All Persons from Enforced Disappearance.

## X. REFERENCE

1. Jadhav (Ind. v. Pak.), Judgment, July 17, 2019, I.C.J. G.L. No. 168 (International Court of Justice) ('Jadhav Judgment').
2. Arwa J. Fidahusein, VCCR Article 36 Civil Remedies and Other Solutions: A small Step for Litigants but a Giant Leap towards International Compliance, Vol.5 SETON HALL CIRCUIT REVIEW, 273 (2008).
3. LaGrand (Germ. v. U.S.), Judgment, June 27, 2001, I.C.J. Rep. 466 (International Court of Justice) ('LaGrand'); Avena and Other Mexican Nationals (Mex. v. U.S.), Judgment, March 31, 2004, I.C.J. Rep. 12 (International Court of Justice) ('Avena').
4. IVOR ROBERTS (ED.), SATOW'S DIPLOMATIC PRACTICE, 143 (7th ed., 2018)
5. United Nations. 1969. "Vienna Convention on the Law of Treaties." Treaty Series 1155 (May): 331.
6. Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 12 (Mar. 31)
7. Congo v Belgium Case' (2002) 13 European Journal of International Law 877; Marina
8. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>