

TAKEAWAYS FROM THE KULBHUSHAN JADHAV CASE RULING

Relevant for: International Relations | Topic: India - Pakistan

Kulbhushan Jadhav, the former Indian Navy officer, who was allegedly abducted by Pakistani intelligence from Iran and sentenced to death on charges of espionage and terrorism by a farcical military court in Pakistan, [has been given a glimmer of hope by the ruling of the International Court of Justice \(ICJ\)](#). Responding to a petition by India that sought an annulment of his death sentence because Pakistan had violated numerous international treaties and extracted irregular confessions under coercion, the ICJ, on July 17, 2019, ruled with a decisive vote (15-1) that Mr. Jadhav cannot be executed by Pakistan, and that he must be given adequate consular access and a fair trial. The ruling also urged Pakistan to review his conviction. This constitutes a major diplomatic and legal victory for India, with Pakistan accusing India of 'ambushing' it at The Hague.

Given its rather lukewarm record in the past of securing the release of Indian detainees in Pakistan through bilateral negotiations, India's strategy in this case has been to exploit increasing international acceptance that Pakistan was an emerging 'rogue' state. Laying stress on Pakistan's scant regard for Article 36 of the Vienna Convention on Consular Relations — it deals with the arrest, detention and trial of a foreign citizen — India's counsel, Harish Salve, highlighted two compelling arguments. First was the arrest process, which was not accompanied by an immediate notification to Indian consular officials in Islamabad. There was a delay of over three weeks before India was informed, and it was during this period, according to reliable sources from within Pakistan, that Mr. Jadhav was subjected to all means of coercion and forced to sign a 'confession taken under custody' without adequate legal representation. Second was the two-way denial of access and communication by any means between Mr. Jadhav and consular officials and a failure to inform him of the rights he enjoyed under the convention.

Kulbhushan Jadhav: the story so far

The legitimacy of military courts has always been controversial within the international legal system that emerged in the post-World War II era as a fast-track system of delivering skewed justice by authoritarian regimes and military dictatorships. Purportedly set up in Pakistan in 2015 as a counter-terrorist and anti-corruption initiative, Mr. Jadhav's sentencing in April 2017 was based on confessions taken in captivity and is part of several arbitrary sentencings by Pakistan's Military Court.

The International Covenant on Civil and Political Rights (ICCPR) recognises the right to an effective defence against criminal charges, and to a fair and impartial trial, in which the accused is represented by a lawyer of his choice. By denying consular access, Pakistan has stood in gross violation of both the Vienna Convention and the ICCPR. Had due process been followed, and then had Mr. Jadhav been charged with espionage, India may not have had the necessary room to take the matter to the ICJ.

Kulbhushan Jadhav case: A timeline

By attempting to circumvent the 'due diligence' process, Pakistan has exposed serious chinks in its legal environment and jeopardised its standing in the comity of nations. The Jadhav case has also revealed Pakistan's desperation in its search for 'proxies' as drivers of the internal unrest in Balochistan. Reliable sources within India's intelligence agencies hint at the possibility of Mr.

Jadhav having been abducted by armed groups operating on the border between Iran and Balochistan. Pakistan is known to have used proxy Sunni groups such as the Jaish al-Adl against Iran, and Iranian officials have often spoken to their Indian counterparts about Pakistan's sponsorship of terrorist activities along the Iran-Pakistan border. A testimony to the growing menace of this group is its recent designation as a front of Jundullah — which is a 'Specially Designated Global Terrorist'.

India has shown both intent and resilience in attempting to secure the release of Mr. Jadhav despite the many hiccups along the way. Following a synergised approach steered by the National Security Adviser and the External Affairs Minister, India fought the kidnapping of Mr. Jadhav, an Indian national who was legitimately residing in Iran after retirement from the Indian Navy. Realising, in 2017, following his death sentence that the overall deteriorating relations between India and Pakistan had closed the door on any bilateral way of securing his release, India rightly chose to go the 'international way' by fielding a formidable legal team led by the jurist, Harish Salve. Sparing no efforts on the human aspects of the case too, India managed to get Mr. Jadhav to meet his mother and wife after the death sentence was pronounced. The first success achieved by the Indian legal team was on May 9, 2017 when the ICJ sent an urgent message to the Prime Minister of Pakistan, urging him to stay the execution till India's case was heard fully and the ICJ arrived at a verdict. Moving slowly but surely through the legal battle for over two years, India, has been demonstrating significant synergy between various stakeholders in the case.

The final verdict will, hopefully, galvanise the Indian establishment to step on the pedal and exert pressure on Pakistan to rescind the death sentence and allow Mr. Jadhav consular access and legitimate legal platform to mount his defence. While it would be wishful thinking to assume that Mr. Jadhav would return to India soon, there is a glimmer of hope on the horizon that the Indian strategic establishment would do well to exploit. Having deftly navigated the legal and diplomatic channels and restrained the Pakistan military by securing manoeuvring space following the ICJ verdict, a leading power such as India must demonstrate its intent and capacity to extract desirable outcomes out of potentially difficult, or seemingly impossible situations. Kulbhushan Jadhav's case is one such challenge.

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