

SRMUN-ATLANTA

INTERNATIONAL COURT OF JUSTICE

Memorial

INSTITUTING PROCEEDINGS

filed in the Registry of the Court on 8 May 2017

JADHAV

(INDIA v PAKISTAN)

I. APPLICATION INSTITUTING PROCEEDINGS 8 May 2017.

To the Registrar, International Court of Justice.

I, the undersigned, duly authorized by the Government of India, of which I am the Agent, have the honor to submit to the International Court of Justice, in accordance with Article 40 (1) of its Statute, Article 38 of its Rules and Article 1 of the Optional Protocol concerning the Compulsory Settlement of Disputes, an application instituting proceedings brought by the Republic of India against the Islamic Republic of Pakistan in the following case.

I. Subject of the Dispute

1. The dispute between India and Pakistan concerns that of an Indian National, Mr. Kulbhushan Sudhir Jadhav, who was sentenced to death in a Pakistan military court in April of 2017. India and Pakistan have been two states that have had a growing strenuous relationship since both nations declared their independence from Great Britain in 1946. There has been a total of three wars between the two nations which have all been fought over the Kashmir region and they are both now nuclear powers which has heightened the tensions between the two nations. Pakistan claims that they detained Mr. Jadhav due to the fact that he was performing espionage after entering Pakistan under a Muslim alias. India however contends that Mr. Jadhav was not in Pakistan at the time of his capture and was retired from the military and therefore would have been arrested as an Indian national not someone apart of the Indian military. India also claims that they were not notified quickly of the arrest of Mr. Jadhav or allowed to have consular access which would be a violation of the Vienna Convention on Consular Relations.

II. The Facts

1. Mr. Kulbhushan Sudhir Jadhav was captured on March 3rd, 2016 by Pakistan for espionage in Iran but India was not informed of the arrest until March 25th, 2016. Immediately India requested

consular access to Mr. Jadhav which is a right explicitly cited in Article 36 of the Vienna Convention on Consular Rights.

2. According to Article 36, Pakistan should have granted consular access to Mr. Jadhav “without delay” however there are a total of thirteen reminders sent by India to Pakistan asking for this right. India has also sent a *demarche* against the repeated denial of consular access to Mr. Jadhav.
3. On March 21st, 2017 there was a response from Pakistan stating that “the case for consular access to the Indian national...shall be considered...”. Once again violating Article 36 as Mr. Jadhav had been in custody for over a year without consular access.
4. Pakistan released a statement through InterService Public Relations announcing that Mr. Jadhav had been awarded the death sentence on April 10th, 2017. India received a *note verbale* the same day from Pakistan stating once again that consular access would be considered to help with the investigation into Mr. Jadhav. However, Mr. Jadhav had already been sentenced to death by the military court so no further investigation would be needed. If consular access had been granted like it was supposed to be the case would have had a different outcome.
5. Mr. Jadhav’s mother filed an appeal where once again India requested consular access to help with the appeals process in Pakistan. No response was ever received from Pakistan.

III. The Jurisdiction of the Court

1. The court has jurisdiction over “all matters that are specially provided for... in Treaties and Conventions in force” according to Article 40 section 1 of the Statute of the Court. The Republic of India and Islamic Republic of Pakistan are both members of the United Nations and are therefore subject to the two documents in question, the Vienna Convention on Consular Relations (1963) and the Optional Protocol concerning the Compulsory Settlement of Disputes (1963), Both nations have signed and ratified these two treaties.
2. The jurisdiction for this case also falls under Article 36 paragraph 1 of the Statute of the Court on the Basis of a Treaty. Article 36 paragraph 1 states that the jurisdiction of the court comprises all cases for which the parties refer to it and all matters specifically provided in the charter or in treaties. Since the Vienna Convention is the treaty which Pakistan violated this case falls under the jurisdiction of this court.
3. In the *Le Grand* case (Germany v United States of America), the International Court of Justice accepted the application of the Republic of Germany for the violation of the Vienna Convention with the jurisdiction resting on Article 40 section 1 of the Statute of the Court and on Article 1 of Optional Protocol.
4. In the *Avena* case (Mexico v United States of America), the court was allowed jurisdiction based on Article 40 section 1 of the Statute of the Court and on Article 1 of Optional Protocol concerning compulsory settlement of disputes.
 - a. In paragraph 34 of the judgement in the *Avena* case, this court ruled that the International Court of Justice has the jurisdiction to grant appropriate restitution.

IV. The Legal Grounds upon Which India’s Claims Are Based

1. Due process is the international minimum standard as stated in the International Covenant on Civil and Political Rights or the ICCPR which has been signed and ratified by both Pakistan and India.
 - a. An individual, such as Mr. Jadhav, who is being prosecuted in a foreign state cannot adequately defend himself in a court of law which is why consular officers are vital to the process of international law. This is why the violations by Pakistan in ignoring Article 36 are against Mr. Jadhav’s fundamental human rights that this court has worked to protect.
2. Article 36 of the Vienna Convention on Consular Relations states
 - a. “consular officers shall be free to communicate with nationals of the sending State and to have access to them” and that “the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district,

a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner”.

- b. Article 36 of the Vienna Convention gives states the right to act through their consular officers to visit its national in prison, custody or detention in order to arrange legal representation and to communicate with him which India was not given the right to do because of the repeated denial of consular accesses by Pakistan
3. Pakistan was sent a total of 13 reminders to allow consular access to Mr. Jadhav which were all ignored by Pakistan. According to Article 36 of the Vienna Convention, India should not have to send reminders and should instead be given immediate access to the national in question. In the *note verbale* that was sent to India by the government of Pakistan they stated that the request for consular access would be considered which shows that Pakistan knew of the right to consular access as stated in the Vienna Convention but chose to ignore the request and therefore ignore the Vienna Convention itself.
4. In the *Le Grand* case (Germany v United States of America) this court stated that Article 36 paragraph 1 creates individual rights which may be invoked in this court by the national State of the detained person. The court also stated that Article 36 lays out the obligations that the receiving state has toward the detained person and the sending state. Again, Pakistan ignored the obligations laid out in Article 36 not only to the Republic of India but also to Mr. Jadhav himself.
5. Similarly in the *Avena* case (Mexico v United States of America), paragraph 40 of the judgement made by this court held that the “violations of the rights of the individual under Article 36 may entail a violation of the rights of the sending State, and that violations of the rights of the latter may entail a violation of the rights of the individual”. Mr. Jadhav’s rights were clearly violated in this case by Pakistan not allowing him to have the right to consular access which would have helped him in this case. By India not having the right to send consular officers to help with Mr. Jadhav’s case the rights of India were also violated in relation to the Vienna Convention.
6. A spokesperson for the Pakistan government held a press conference on April 20th, 2017. In this press conference a question was asked about the request for consular access to Mr. Jadhav as requested by India. The spokesperson stated that India and Pakistan have a bilateral agreement on consular access and that according to the 2008 Bilateral Agreement on Consular Access the request for consular access is made off of merit.
 - a. However, Article 36 of the Vienna Convention is a provision of a multilateral treaty which according to Article 73 can be expanded upon but not overruled. Treaties such as the bilateral treaty can be made with the subject of consular access but they must expand the provisions in some way and not hinder Article 36 in any way.
 - b. The 2008 Bilateral Agreement on Consular Access does not contain language that would suggest that diminish Article 36. In any case the Vienna Convention is a multilateral treaty which means that in cases such as this the Vienna Convention should be the treaty that is being referred to.
 - i. If we did take the bilateral agreement into account under the agreement Pakistan should have notified India immediately of any arrest or detention but India was not notified for over 20 days which would be against the agreement itself. The agreement also states that consular access should be provided within three months of the arrest which again did not happen. Pakistan never gave consular access even after being repeatedly reminded that they had an obligation to allow for consular access.
 - ii. Point iv in the bilateral agreement which was referred to in the press conference by Pakistan should not be taken out of context. Point iv states that in the case of arrest that is made on political grounds each side has the right to examine the case based on their own merits. This point does not deny the right to consular access as the point of the bilateral agreement is to further the rights of the

individual and to take away the right to consular access would be counterintuitive to that purpose.

7. The Declaration on The Human Rights of Individuals Who Are Not Nationals of The Country in Which They Live (1985) also recognizes in Article 10 that any alien in a foreign country has the right to communicate with a consular officer of which they are a national. Pakistan once again did not allow Mr. Jadhav to communicate with any consular officer and it is not known if Mr. Jadhav even knew of this right.

V. Decision Requested

1. The Republic of India would like for this court to consider the standards of human rights that the international community holds in order to have a remedy which is appropriate for the situation.
2. The Republic of India is requesting that the court will declare that Pakistan violated Mr. Jadhav's basic rights.
3. This court should take into the account the treatment of Mr. Jadhav and the violations that Islamic Republic of Pakistan has taken in violation of Article 36 of of the Vienna Convention on Consular Relations
4. The Republic of India requests that Mr. Jadhav be released due to the violations of the Islamic Republic of Pakistan which is appropriate resolution for the treatment of Mr. Jadhav.

Respectfully submitted,

X 

Allie Rupp,
Agent of the Government of India