

ICJ defers ruling in Kulbhushan Jadhav case after hearing arguments from India, Pakistan

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New Delhi: The International Court of Justice (ICJ) on Monday deferred its ruling on India's petition against the death sentence awarded to Kulbhushan Jadhav, a former Indian Naval officer, by a Pakistani military court.

Kulbhushan Jadhav

After hearing arguments from lawyers of India and Pakistan, ICJ President Ronny Abraham said the 12-judge tribunal would deliver its order in a public setting on a date that would be communicated to the two parties.

The ICJ President added that the tribunal would publicly deliver its decision on whether to grant an emergency stay of execution as soon as possible.

Presenting its case in the ICJ, New Delhi demanded the immediate suspension of the death sentence to Kulbhushan Jadhav while Islamabad accused it of using the world body as a stage for "political theatre" through a "misconceived" plea.

The two neighbours "who last faced off at the ICJ 18 years ago when Islamabad sought its intervention over the shooting down of its naval aircraft" India took the Jadhav case to the world court, accusing Pakistan of violating the Vienna Convention and conducting a "farfarcical trial" for convicting Jadhav without a "shred of evidence".

India demanded the immediate suspension of Jadhav's death sentence, expressing fears that Pakistan could execute him even before the hearing at the ICJ was over.

However, Pakistan asserted that Jadhav's execution was not imminent, saying that a time frame of 150 days is provided for seeking clemency and in Jadhav's case even if it started on April 10, 2017, the date of his conviction, the period could extend to well beyond August, 2017.

India made a forceful submission as the ICJ began hearing the case of the 46-year-old former Navy officer who was arrested on March 3 last year and sentenced to death by a Pakistani military court on charges of espionage and subversive activities.

"Jadhav has not got the right to get proper legal assistance and the right to consular access. There is an immediate threat to him to be executed even before a decision is passed," joint secretary in the Ministry of External Affairs Deepak Mittal told the court in his opening remarks.

Representing India, lead attorney Harish Salve said, "The execution of the death sentence cannot be done while this court is hearing the appeal. Else, it will be a violation of the Vienna Convention."

Following India's arguments, Pakistan, in its submission before the UN's highest judicial body, said India's application on Jadhav, who was sentenced to death by a Pakistani military court on charges of espionage and subversive activities last month, was "unnecessary and misconceived" and must be dismissed.

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India has seen it fit to use the International Court of Justice as a stage for "political theatre" but "we will not respond in kind", Mohammad Faisal of the Pakistan Foreign Office said in his opening remarks in response to

India's submissions earlier in the day.

Vienna Convention provisions on consular access were not intended for a spy involved in terror activities, Pakistan asserted.

The ICJ also denied permission to Pakistan to play a purported confession video of Jadhav at the public hearing here.

Later, after the hearings, Salve told a TV channel that the ICJ denying permission to Pakistan to play the confession video was a setback to it. Representing Pakistan, lawyer Khawar Qureshi said India has sought to persuade this court that Pakistan intends to execute Jadhav within days.

Simply by referring to the clemency process available as a right to commander Jadhav. A period of 150 days is provided for in this regard which even if (it) started on April 10, 2017, which is the date of conviction at first instance, could extend to well beyond August 2017.

There is also of course the potential for the writ petition of the High Court to be invoked as we believe India must be well aware, he said.

Earlier, Salve said Pakistan had denied India its 16 requests for consular access.

The graver the charges, the greater the need for continued adherence of the Vienna Convention. Jadhav has been in judicial custody without any communication with his family, he said.

The rights of Article 36 of the Vienna Convention on Consular Relations are sacrosanct, Salve said, citing the International Covenant on Civil and Political Rights (ICCPR) that recognises that no one can be arbitrarily be deprived of their lives.

India had not been given the copy of the charges filed against Jadhav, Salve said.

The need for a wholesome compliance is greater when charges are serious. We want appropriate legal representation for Kulbhushan Jadhav, he said.

Not just had all requests for consular access fallen on deaf ears, the trial was conducted without providing Jadhav his rights. Pakistan did not even respond to Jadhav's mother's pleas to see her son, India told the court. Human rights treated as basics all over had been thrown to the wind by Pakistan and the trial had been vitiated, India argued.

Though Pakistan says Jadhav has the right to appeal, two-star generals will hear his mercy plea, Salve stressed, questioning the impartiality of the process. India asserted that it wants the ICJ to annul Jadhav's death sentence and for Pakistan to ensure that no action is taken that may prejudice the rights of India or of Jadhav.

On India invoking the Vienna Convention, Qureshi said, The Vienna convention article 36 which adopted to set up standards of conduct particularly concerning communications and contact with nationals of the sending state which would contribute to the development of the friendly relations among nations...the observation we made immediately is this is unlikely to apply in the context of a spy, terrorist send by a state to engage in acts of terror.

Faisal, in his submission before the court, claimed that India had been unable or perhaps more accurately unwilling to provide an explanation for Jadhav's passport which has a Muslim name on it.

“We submit that India’s silence is telling. Indeed, India could and should have responded to a letter of request dated January 23, 2017, seeking India’s assistance to investigate the criminal activity and links with people of India which commander Jadhav has revealed,” he said.

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Instead, India appears to have been in hyperdrive mode to brief its press that Jadhav took early retirement and was kidnapped in Iran from where he was brought to Pakistan to give a false confession presumably, Faisal alleged.”

Jadhav, the latest flash point in the tensions between Pakistan and India, was sentenced last month. On May 8, India moved the ICJ against the death penalty, alleging violation of the Vienna Convention on Consular Relations. On May 9, the highest court in the UN gave Jadhav a lease of life.

India, in its appeal to the ICJ, had asserted that Jadhav was kidnapped from Iran where he was involved in business activities after retiring from the Indian Navy. India denies that he has any connection with the government. Pakistan claims to have arrested Jadhav from its restive Balochistan province.

- (With agency inputs)