Kulbhushan Jadhav Case – Part II

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Why in news?

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After a break of close to 18 years, India-Pakistan again found themselves in the International Court of Justice at The Hague.

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What is the issue?

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- India claimed that Pakistan had breached its international law obligations by **refusing consular access to Kulbhushan Jadhav,** who has been sentenced to death on charges of espionage and terrorism.
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- Jadhav, an Indian national, was arrested by Pakistani officials in 2016.
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- India claims that Jadhav is a former naval officer, who was running a business in Iran from where he was kidnapped and shown to have been arrested in Baluchistan.
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- Pakistan alleges that Jadhav is a serving naval officer, who was tasked by the Indian intelligence agencies to destabilise Pakistan and was arrested in Baluchistan.
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What is status of the case?

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- India’s applied in International Court of Justice, to prevent Pakistan from escalating the dispute by executing Jadhav.

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- Pakistan has (and will continue to) strongly contested the jurisdiction of the Court to decide this case.
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- In 2008, the two nations entered into a bilateral agreement on consular access, which modifies their obligations under the **Vienna Convention.**
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- Unlike the Vienna Convention, this bilateral agreement does not provide for the submission of disputes to the International Court.
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- The International Court need only be satisfied that it has a prima facie basis for jurisdiction to direct Pakistan not to execute Jadhav for the duration of the proceeding.
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What are the arguments of the nations?

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- India could argue this provision of the bilateral agreement should be read narrowly.
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- Even if the bilateral agreement allows countries to deny consular access in cases involving security, it surely cannot have been the intention that **they could simply label any case with the Spying and deny all consular access.**
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- There are also indications that Pakistan will argue that its denial of consular access is linked with India’s refusal to co-operate in the investigation.
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- The foreign affairs minister of Pakistan claimed that India has similarly denied consular access to many Pakistani nationals over the years.
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- If the Court accepts the argument, then it is left with little choice but to hold that a clause that permits a state to withhold consular access entirely would naturally also permit it to withhold such access conditionally.
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- If the Court decides that the provisions of the Vienna Convention apply, then these arguments collapse spectacularly.
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Source: The Indian Express

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