Kulbhushan Jadhav – ICJ Verdict

Why in news?

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- India won the plea against Pakistan to grant counsellor access to Indian national Kulbhushan Jadhav.
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- Preliminary order from the International Court of Justice that **prevents Pakistan from carrying out the execution** of Indian national Kulbhushan Jadhav.
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What is the International Court of Justice?

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- It is the primary judicial branch of the United Nations (UN), seated in the Peace Palace in The Hague, Netherlands.
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- The court settles legal disputes submitted to it by states and provides advisory opinions on legal questions submitted to it by duly authorized international branches, agencies, and the UN General Assembly.
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- The ICJ is composed of **fifteen judges elected to nine-year terms** by the UN General Assembly and the UN Security Council from a list of people nominated by the national groups in the Permanent Court of Arbitration.
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- **Five judges elected every three years** to ensure continuity within the court.
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- **No two judges may be nationals of the same country.**
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- The p5 members of the UNSC (France, Russia, China, the United Kingdom, and the United States) always have a judge on the Court.
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- The exception was China, which did not have a judge on the Court from 1967

to 1985 because it did not put forward a candidate.
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- Judges may deliver joint judgments or give their own separate opinions.
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- Decisions and Advisory Opinions are **by majority,** and, in the event of an equal division, the President's vote becomes decisive.
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What are the drawbacks of the court?

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- **Absence of binding,** which means that the 193 member states of the ICJ do not necessarily have to accept the jurisdiction, since it raises the question of sovereignty of the countries.
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- Organizations, private enterprises, and individuals cannot have their cases taken to the International Court of appeal a national supreme court's ruling.
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- Other existing international thematic courts, such as the ICC, are not under the umbrella of the International Court.
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- Such dualistic structure between various international courts sometimes makes it hard for the courts to engage in effective and collective jurisdiction.
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- The International Court **does not enjoy a full separation of powers,** with permanent members of the Security Council being able to veto enforcement of cases, even those to which they consented to be bound.
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What are the highlights of the Judgement?

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- Pakistan should now inform the court about the steps it takes to implement the order.
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- The ICJ judges are clear that these provisional measures are binding and create international legal obligations for the country to which they are addressed.
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- The ICJ has rejected Pakistan’s objections regarding the urgency of the

matter.
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- It rejected Pakistan’s own jurisdiction to take up the case and its claim that a 2008 bilateral agreement between the two countries precluded the matter from being raised before the ICJ.
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- It noted that irreparable partiality would be caused if the court did not indicate provisional measures, especially in the absence of any assurance from Pakistan that he would not be executed before the final decision.
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- This case is about politics, not law; **the judgment simply puts the execution on hold until the dispute is resolved.**
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What is the way forward?

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- It may appear to be a complete victory for India on the questions of jurisdiction, urgency and the core charge that Pakistan violated the Vienna Convention.
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- However, this is a preliminary ruling and all issues are open for adjudication at the final stage.
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- It is theoretically possible for Pakistan to ignore the ICJ’s order and go ahead with its internal processes for the disposal of appeals and clemency petitions; it is unlikely to do so. Such a course of action would undermine its international credibility.
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- India will have to **leverage the moral and diplomatic advantage** it has obtained through this ruling to help Mr. Jadhav prove his innocence before a civilian court and win his freedom.
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- Pakistan must act responsibly and abide by the fundamental norms of international law.
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Source: The Hindu & The Indian Express.

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