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# CRITICAL ANALYSIS ON THE CASE OF KULBHUSHAN JADHAV

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## CHAPTER- I

### ABSTRACT

‘The Indian Spy Case’ is a one of the landmark verdicts given by the International Court of Justice<sup>1</sup> in which Kulbhushan Jadhav, a citizen of India had been arrested, detained and convicted to death sentence by the Pakistan Court on the allegation that he was indulged in terrorist activities and was a spy to the Indian Government. The Indian Government post the decision given by the Pakistan Court, filed a case against Pakistan in the present matter, before the ICJ.<sup>2</sup> The present matter questioned the validity and application of Article 36 of the Vienna Convention on Consular Relations (VCCR). Further, the jurisdiction of the International Court of Justice<sup>3</sup> was also challenged in the current case with India requesting before the ICJ to decide on the consular rights of India that had been violated by Pakistan in the course of this case. In the current research paper, the author aims at analysing the verdict pronounced by the ICJ in the case of Kulbhushan Jadhav by primarily focussing into the aspect of VCCR and its applicable provisions, the aspect of Bilateral Agreement on Consular Access and the registration purview of the same in relation to Article 102 of the United Nations Charter.<sup>4</sup>

**KEYWORDS:** *Bilateral Agreement, Indian Spy, International Court of Justice, Kulbhushan Jadhav, Vienna Convention on Consular Relations.*

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<sup>1</sup> Siddharth Varadarajan, *Beyond the Hurrahs, Eight Takeaways from the ICJ Ruling on Kulbhushan Jadhav*, THE WIRE, July 18, 2019. <https://thewire.in/diplomacy/eight-takeaways-from-the-icj-ruling-on-kulbhushan-jadhav>

<sup>2</sup> International Court of Justice (Here After Referred to as ICJ).

<sup>3</sup> Vienna Convention on Consular Relations (Here After to as VCCR).

<sup>4</sup> United Nations Charter, Article 102.

## **INTRODUCTION**

It is unusual for antagonistic organizations to deploy bordering territory as a launch pad for obstructive and clandestine activities. The pertinent issue is if the adjoining nation is cognizant of it. An issue on similar lines arose in the year of 2016 wherein an Indian Citizen, previously associated with the Indian Navy had been arrested, detained and convicted to death sentence by the Pakistan Court on the allegation that he was indulged in terrorist activities and was a spy to the Indian Government. Post this decision of the Pakistan Court, the country of India then requested the ICJ to intervene and provide intermediate reliefs and decide the case. It further led to the challenging of the VCCR. The Law of Consular relations includes within its purview the procedure for designating consular representations<sup>5</sup>, the obligations of the recipient nation<sup>6</sup> for the international respondents, and the rights and safeguards possessed by the international respondent, the transmitting nation, and the consular authorities. As per the International Law, the aspect of Consular Access is dealt with by the VCCR which has primarily established and given out the legal framework for consular access. Another aspect to such consular access was that of the Bilateral Agreement between the two disputing nations, India and Pakistan and whether the same binds on the nations or not considering the viewpoint of registration of such agreement under Article 102(2) of the United Nations Charter.<sup>7</sup> The Article 102<sup>8</sup> of the United Nations Charter usually administers the Bilateral Agreement however, because the same was not registered it could not be presented before the United Nations courts, leaving ICJ with the jurisdiction to try this case.

A case like that of Kulbhushan Jadhav wherein Indian citizens are detained and sentenced by the Pakistan Courts on the grounds of them being spy is not new to India. Previously as well several Indians such as that of Ravidra Kaushik who was given life imprisonment by the Supreme Court of Pakistan, the case of Mr. Inayat Masih who was also detained on similar grounds and been awarded death sentence by the Supreme Court of Pakistan are a few instances known by the public.

On 10<sup>th</sup> April, 2016 Kulbhushan Jadhav was awarded with death sentence by the Pakistan Court on the allegation that he was indulged in terrorist activities and was a spy to the Indian Government. Post this decision of the Pakistan Court, the country of India then requested the

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<sup>5</sup> Luke T. Lee J.D. & Jon Quigley, *Consular Law and Practice*, OXFORD UNIVERSITY PRESS, 3rd ed., 2008.

<sup>6</sup> *Supra* note 2

<sup>7</sup> United Nations Charter, Article 102(2).

<sup>8</sup> *Id.*

ICJ to intervene and provide intermediate reliefs and decide the case. The ICJ has a mandatory jurisdiction to resolve any conflict being presented before it by any of the nations over any and all of the issues including the ones arising between nations regarding the inference or implementation of the Convention. The ICJ as a result of such application by India put a halt on the execution of such sentence as an interim relief. The court after taking into consideration all of the essential contributories and facts of the case arrived at the conclusion that Pakistan had violated the VCCR in the course of trial of Kulbhushan Jadhav by depriving him a councillor and not intimating him about the rights, he is entitled to under Article 36<sup>9</sup>, not intimating India considering the two also had a bilateral agreement between them. Considering the above-mentioned facts, the ICJ decided that India should be given consular access. The ICJ further ruled that Kulbhushan Jadhav shall be freed from Pakistan and shall return to his home country, India safely. Whilst like every other case before any court one of parties won and the other one lost, the important point to be considered here is that irrespective of the grave tension between the two nations regarding this case, International Law prevailed and aided in maintaining peace between the nations. In the course of trial, the ICJ elucidated on the importance of consular access, 'UN Charter's norm of non-intervention in domestic affairs and fair trial in the global scenario.

### **RESEARCH OBJECTIVES**

In light of the landmark case of Kulbhushan Jadhav, the main objectives of the researcher are as follows:

1. To analyse the significance and applicability of the Bilateral Agreement on Consular Access between India and Pakistan.
2. To understand the importance of consular access in cases of disputes arising among nations.
3. To comprehend about the powers and Jurisdiction of the ICJ, in case of unregistered agreements.
4. To examine the applicability of the VCCR.

### **RESEARCH QUESTIONS**

1. What is the Bilateral Agreement on Consular Access and how is it applicable in the case of Kulbhushan Jadhav?

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<sup>9</sup> VCCR, Article 36.

2. Can the provisions of the VCCR be over powered by the provisions of any existing Bilateral Agreement or treaty among the signatory states?
3. Does the ICJ have jurisdiction to try the cases in the presence of any unregistered Bilateral Agreement or Treaty existing among any signatory nations?
4. Is there any exception to the applicability of an individual's or Nation's consular access?

### **RESEARCH METHODOLOGY**

The present research paper requires the use of a doctrinal methodology of research to facilitate a better comprehension of the topic. The doctrinal method of research is primarily concerned with legal propositions and doctrines. It encompasses the interpretation of terms as well as pointing to the precedents applicable to the present topic. In the course of making this research paper while deploying the doctrinal method the researcher has referred to secondary sources such as several research papers, articles, case comments, books, legal precedents etc so as to provide an in-depth understanding of the topic. Hence, the researcher proposes doctrinal research as it best fits the analysis of the current subject.

### **STATEMENT OF PROBLEM**

In the course of this research paper while analysing the case of Kulbhushan Jadhav, the researcher came across various problems such as that of the enforceability of the judgments given by the ICJ, the applicability of The VCCR on nations in the cases where there already exists an understanding in the form of treaties, agreements. Additionally, while the VCCR in its regulations provides for grant of consular access, it does not explicitly provide via the use of any phrase, provision or proviso clause of whether there can be an exception to the same or if it is mandatory to provide consular access. Lastly, there also exists ambiguity among the nations about the obligatory requirement of adhering to the decisions of ICJ.

### **LIMITATION OF THE STUDY**

While dwelling on the concept and applicability of consular relations, Bilateral Agreements and the VCCR the ambit of the present research paper has been limited to those aspects which are relevant and have been disputed for understanding the case of Kulbhushan Jadhav with respect to the VCCR, Bilateral Agreements existing between India and Pakistan only.

## **LITERATURE REVIEW**

In a research paper titled, '*Kulbhushan Jadhav Case: A Mystery of a Win-Win Situation for Pakistan and India*'<sup>10</sup> by Usman Hameed and Zarfishan Qaiser, the researchers highlighted on the need of robust safety protocols are essential to address the consular access safety breaches among the nations. International standards must be persuaded at the global scale to end the ongoing banter with regards to consular access.

*'The Right to Access Consular Assistance and Protection and its Relevance to the Architecture of a Safe, Orderly, and Regular Migration'*<sup>11</sup> an article penned by Rodolfo Marques discussed on the significance of consular access and human rights in the present scenario with growing competitiveness among the nations as well as considering the wide scale migrations which happen throughout the globe. It also discusses the several international treaties, agreements, documents etc and their impact as well as applicability in the global scenario.

A research paper titled, '*Deconstructing the Jurisprudence Of The International Court Of Justice In Jadhav Case (India V. Pakistan)*'<sup>12</sup> while elucidating on the case of Kulbhushan Jadhav the researcher was of the view that the ICJ has taken an ambivalent and inert stance in this case. He further elaborated on how the conduct and willingness of the nations plays a vital role for the application of consular access and that eventually even post the decision of the ICJ, one of the major determining factors in a case is the prevalent geopolitical situation among the nations.

In a book titled, '*The Law of Consular Access: A Documentary Guide*'<sup>13</sup> by William J. the author has elucidated on the expansion and advancements in the field of law in the national as well as a global scenario which has further increased the significance of International Law. The author has discussed the aspect of consular access in detail and their applicability and relation to the VCCR, Bilateral Agreements, Multilateral treaties in the light of landmark cases like that of Kulbhushan Jadhav.

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<sup>10</sup> Zarfishan Qaiser, *Kulbhushan Jadhav Case: A Mystery of a Win-Win Situation for Pakistan and India*, INTERNATIONAL JOURNAL DOCUMENTATION AND RESEARCH INSTITUTE, Vol. 8, pp 233-239, 2008.

<sup>11</sup> Roberto Ribeiro C. Marques, *The Right to Access Consular Assistance and Protection and its Relevance to the Architecture of a Safe, Orderly, and Regular Migration*, INTERNATIONAL JOURNAL OF POSTCOLONIAL STUDIES, Vol. 23, pp 410-414, December 2020.

<sup>12</sup> Atul Alexander, *Deconstructing the Jurisprudence Of The International Court Of Justice In Jadhav Case (India V. Pakistan)*, NLU LAW REVIEW, March 12, 2021.

<sup>13</sup> William J., *The Law of Consular Access: A Documentary Guide*, ROUTLEDGE RESEARCH IN INTERNATIONAL LAW, 1<sup>st</sup> ed., 2011.

A Report published on Hein Online '*The Jadhav Case*'<sup>14</sup> has highlighted on the applicability and binding nature of consular access as well as that of the decisions of the ICJ by referring to the case of Kulbhushan Jadhav along with other landmark judgments on consular access and binding nature of the decisions of the ICJ. It has expressly stated and analysed on how the judgments given by the ICJ have an obligatory application on the signatory nations even when there exist several bilateral agreements, treaties on consular access.

## **CHAPTER II**

### **ANALYSIS OF THE BILATERAL AGREEMENT ON CONSULAR ACCESS**

In the past, tension-filled relations have existed between India and Pakistan. After a short spell of consensus, India and Pakistan drafted and signed The Bilateral Agreement on Consular Access in response to worldwide strain and a yearning for peace. It is a brief document that establishes the aim and intent of the agreement, accompanied by a seven-part enumeration of the treaty's terms. The protocols of the treaty conclude it. Phrases like “agree, shall, and undertakes” appear in the document's text.<sup>15</sup> This phrasing reinforces the idea that the agreement imposes binding responsibilities on the signatories. The aim segment outlines the purpose for which the two countries arrived at the agreement and establishes the foundation for implementation of such provisions. It also establishes that the two countries are “willing of pursuing the ideal of human treatment of citizens from either nation arrested, detained, or imprisoned.”

In these seven provisions, the first and the second provision make it compulsory for India and Pakistan to maintain and exchange the records two times in a year of the detained, arrested or imprisoned citizens. Further, it also states that there exists an obligation on the part of the nation carrying out such activities to intimate the High Commission of the country to which the person subjected to such arrest, detention or imprisonment belongs to. Post such intimation, the next provision while further elaborating on the duties of the country subjecting the person to an arrest, detention or imprisonment mandates that they shall also intimate the arrested or detained or imprisoned persons country about the judgment passed for such person. The fourth provision states that consular access has to be provided in a time span of not more than three months to the country which is in a conflict. Further on, the fifth provision discusses about the release and sending back of a person post his provided detainment or arrest or imprisonment period. The

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<sup>14</sup> Ashish Shukla, *Report on Jadhav Case*, INDIAN COUNCIL OF WORLD AFFAIRS, August 27, 2019.

<sup>15</sup> Samriddhi Sharma, *Agreement on Consular Access between the Government of the Islamic Republic of Pakistan and the Government of the Republic of India*, BLOG FORUM, May 21, 2008

opposing country is also empowered under the sixth provision to review the issue in hand on its merits. Moreover, the seventh provision provides the discretionary power to the country carrying out such detention, arrest or imprisonment for releasing the person before the stipulated time of his serving of the above on the grounds of humanity and compassion.<sup>16</sup>

The ICJ faces a peculiar quandary as a result of the Bilateral Agreement on Consular Access signed and consented upon by India and Pakistan. Pursuant to the Article 102 of the Charter of the United Nations it is mandatory for treaties to be registered with the United Nations.<sup>17</sup> Article 102(2) states that the, failure to adhere with the same amounts to the prohibition of any such unregistered treaties from being presented before any organisation of the United Nations. Considering that the Bilateral Agreement between India and Pakistan was unregistered in the beginning of the proceedings, the provision of Article 102 is applicable to the case of Kulbhshan Jadhav. The United Nations has acknowledged and adjudicated concerns relating to the treaties that were not registered in the past, establishing a row of governing rulings in United Nation courts. Yet, these decisions given by the court does not resolve the circumstance posed in the case of Kulbhshan Jadhav, whereby a country directly challenges a treaty which was not registered, before the ICJ. Moreover, Pakistan's dependency in its plea to the Court on the Bilateral Agreement between the two countries was contested by India considering that the same was not registered<sup>18</sup>. In its opening argument India claimed that the bilateral agreement existing between the two disputing countries could not be enforced in the case of Kulbhushan Jadhav before the ICJ, considering that the same was not registered as provided under Article 102, at the time when the proceedings were initiated.<sup>19</sup>

In the present case, the primary provisions which have been questioned are the fourth and the sixth provision considering that Pakistan had clearly violated the two by not providing consular access to India within a time span of not more than three months and also considering that for the purpose of defending this action , it took the shelter of sixth provision which is an exception to the forth provision as it exempts the adherence to the fourth provision in the cases involving political or national security.

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<sup>16</sup> *Supra Note 16.*

<sup>17</sup> *Supra Note 8.*

<sup>18</sup> Jadhav Case, Application Instituting Proceedings filed in the Registry of the Court, May 8, 2017.

<https://www.icj-cij.org/files/case-related/168/168-20170508-APP-01-00-EN.pdf?forcedefault=true>

<sup>19</sup> *Id.*

The ICJ came to the conclusion regarding the consular access as per the Bilateral Agreement that no provision of the agreement can be held to be denying the consular access including that of the sixth provision and that such action has also led to the infringement of Article 36 of the VCCR<sup>20</sup>. The ICJ also elucidated that if any of the signatory nations had the intention to provide for an exception to any of the seven provisions, then they should have explicitly express the same. Lastly, it held that the provisions of VCCR cannot be over powered by any of the treaties, agreements etc among any of the nations and that any treaties, agreements etc being formulated shall be held to be legitimate only if they “confirm, supplement, extend or amplify” the VCCR. Hence, the ICJ ruled in the case of Kulbhushan Jadhav that Pakistan had violated India’s Right of Consular Access in the light of the Bilateral Agreement existing between the two nations keeping in mind the fourth provision of this agreement as well as the Article 36 of the VCCR.<sup>21</sup>

### **CHAPTER III**

#### **APPLICABILITY OF THE VIENNA CONVENTION ON CONSULAR RELATIONS(VCCR)**

The VCCR is a convention which addresses the aspect of consular relations among the nations relying on the Bilateral Agreements, traditions and beliefs of various nations. This convention consisting of seventy -nine articles became operational in the year of 1967 and has been endorsed by one eighty countries globally. It empowers the provisions on International Law to be applicable in situations wherein the VCCR has not provided with specific applicable provisions.

One of the most important provisions which has been dealt with in the case of Kulbhushan Jadhav is that of Article 36 and Article 73 of the VCCR<sup>22</sup> which imposes certain responsibilities on the signatory nations with regards to the consular access. It mandates on the nation subjecting an individual to arrest, detention or imprisonment to intimate such individual’s country about such arrest, detention or imprisonment and further gives him the right to his consular representatives to have the subject’s physical access and visitation, freedom of communication and consultation while he is subjected to such arrest, detention or imprisonment.

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<sup>20</sup> Supra Note 10.

<sup>21</sup> *Id.*

<sup>22</sup> VCCR, Article 73.

In the case of Kulbhushan Jadhav, the primary arguments of Pakistan in relation to Article 36 of the VCCR were with regards to its applicability in the light of the exceptions in the cases of political, national security and espionage. Further, it also contented that in the case of India and Pakistan, the Bilateral Agreement signed by the two disputing nations is the governing document and not the VCCR.

In the light of the above- mentioned contentions the ICJ gave out the ruling that Article 36 of the VCCR does not include or state within its ambit anything with regards to an exception, even in the cases of political, national security and espionage. While emphasising the significance of the convention's conceptualization, it stated that the convention's main objective is to assist to the establishment of amicable relationships between countries and to promote the practice of consular pursuits pertaining to citizens of the sending State. Hence, the ICJ reached at a consensus that the consular representatives are entitled to their consular access as provided by the provision and if the same is not followed by the sending state it is the infringement of Article 36 and the individual's right to consular access. Further, it clearly established that considering the main objective for the introduction of such convention no provision of the VCCR excludes an individual or nations right to consular access.

Additionally, with regards to Pakistan's claim that in the case of India and Pakistan, the Bilateral Agreement signed by the two disputing nations is the governing document and not the VCCR the ICJ referred to the sixth provision of the Bilateral Agreement and stated that the same cannot be regarded as an exception so as to deny an individual's right to consular access. The ICJ came to the conclusion regarding the consular access as per the Bilateral Agreement that no provision of the agreement can be held to be denying the consular access including that of the sixth provision and that such action has also led to the infringement of Article 36 of the VCCR. The ICJ also elucidated that if any of the signatory nations had the intention to provide for an exception to any of the seven provisions, then they should have explicitly expressed the same. Lastly, it held that keeping in mind the provisions of Article 73 of the VCCR, the provisions of VCCR cannot be over powered by any of the treaties, agreements etc among any of the nations and that any treaties, agreements etc being formulated shall be held to be legitimate only if they "confirm, supplement, extend or amplify" the VCCR.

In the case of Kulbhushan Jadhav, the court after taking into consideration all of the essential contributories and facts of the case arrived at the conclusion that Pakistan had violated the

VCCR in the course of trial of Kulbhushan Jadhav by depriving him a councillor and not intimating him about the rights, he is entitled to under Article 36, not intimating India considering the two also had a bilateral agreement between them. Considering the above-mentioned facts, the ICJ decided that India should be given consular access.

## **CHAPTER- IV**

### **DECONSTRUCTING THE JUDGMENT/ANALYSIS OF THE JUDGMENT IN THE CASE OF KULBHUSHAN JADHAV**

In the case of Kulbhushan Jadhav, the main stance and claim of India were for the “Suspension of the death sentence, Restitution in integrum and Release of Jadhav forthwith. After taking into consideration all the necessary facts, agreements and applicable legislations the ICJ came to the conclusion regarding the consular access as per the Bilateral Agreement that no provision of the agreement can be held to be denying the consular access including that of the sixth provision and that such action has also led to the infringement of Article 36 of the VCCR. The ICJ also elucidated that if any of the signatory nations had the intention to provide for an exception to any of the seven provisions, then they should have explicitly expressed the same. Lastly, it held that the provisions of VCCR cannot be over powered by any of the treaties, agreements etc among any of the nations and that any treaties, agreements etc being formulated shall be held to be legitimate only if they “confirm, supplement, extend or amplify” the VCCR. In *the LaGrand Case*,<sup>23</sup> the courts of United State of America had awarded death sentence to two individuals of German nationality for murder and attempt to bank robbery. The convicted individuals were not intimated about their rights of consular access as has been provided and mandated by the Article 36 of the VCCR. Post the awarding of such sentence, Germany requested and applied to the ICJ so as to put a stay on the execution proceedings, till the case was decided by the ICJ. After taking into consideration, all the necessary factors the ICJ came to the conclusion that United States of America had infringed the consular rights of the accused and that of Germany as provided by the VCCR. It further established that the scope of Article 36 of the VCCR is not restrictive in nature and extends to “creation of individual rights” on consular access “without delay” so as to safeguard the rights and freedoms of an individual as well as that of any nation.

The ICJ upheld the decision of the LaGrand Case in the *Avena Case*<sup>24</sup> wherein Mexico alleged

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<sup>23</sup> Germany v. United States of America (LaGrand), ICJ GL NO. 104 2001.

<sup>24</sup> Mexico v. United States of America, 2004 ICJ REP 12.

that United States of America had infringed the consular rights as provided under the Article 36 of the VCCR of Mexico. The ICJ again held that United States of America had infringed the consular rights of individuals. Further, it was also held that the Nation is bound to follow the decisions rendered by the ICJ and if the same had been adhered to it would amount to infringement of the Constitutional rights of the nation as well. Hence, the above- mentioned precedents establish the jurisdiction, authority and powers enjoyed by the ICJ while deciding a dispute arising amongst its signatory countries.

The ICJ ruled in the case of Kulbhusan Jadhav that Pakistan had violated India's Right of Consular Access in the light of the Bilateral Agreement existing between the two nations keeping in mind the fourth provision of this agreement as well as the Article 36 of the VCCR. It also established that Article 36 of the VCCR does not include or state within its ambit anything with regards to an exception, even in the cases of political, national security and espionage. The Court concludes that a thorough re-assessment and judicial review of Kulbhusan Jadhav's conviction and punishment is the suitable recourse in this case. To be efficacious, the overview and reassessment of Kulbhusan Jadhav's verdict shall ensure that comprehensive consideration is provided to the implication of the infringements of the protections provided for in Article 36 of the Convention and that the infringement and any potential bias induced by the infringement are closely investigated. It is further asserted that the requirement to ensure competent assessment and revision can be fulfilled in a wide range of manners. Pakistan is free to pursue its own means. But, the liberty of opting for one's own methods entails limitations. The necessity to facilitate competent assessment and consideration is an outcome requirement which needs to be met unequivocally. As a result, it held that Pakistan must adopt all necessary efforts to ensure remediating and reassessment, particularly, if required, passing suitable regulations. Lastly, the Court observes that it granted an interim order instructing Pakistan to adopt all available steps to put a halt to the execution of Kulbhusan Jadhav, until the end of the case before the ICJ. The Court believes that a prolonged execution halt is a necessary prerequisite for an appropriate assessment and deliberation of Kulbhusan Jadhav's conviction and punishment.

## **CHAPTER V**

### **CONCLUSION AND SUGGESTIONS**

The detainment and arrest of an Indian national named, Kulbhusan Jadhav by Pakistan gave rise to a series of conflicts and disagreements among the nations post the verdict of death

sentence being awarded to Kulbhushan Jadhav on the allegation that he was indulged in terrorist activities and was a spy to the Indian Government. The Indian Government as a result of such decision, requested the ICJ for intervention and fair trial. The present case, in the course of being tried at the ICJ highlighted on the significance of VCCR, the Bilateral Agreement existing between the two disputing countries as well as it also upheld the jurisdiction of the ICJ to decide any dispute arising among any two nations. It also clearly upheld the supremacy of the VCCR over any of Bilateral Agreements, treaties etc existing among the countries. With the prevailing standards emphasis on consular relations, competent implementation of consular legislation is vital. The present case establishes that the responsibilities levied by VCCR Article 36 extend invariably to all VCCR signatory countries and their citizens who encounter oneself in the region of another VCCR signatory country irrespective of the fact if they are those suspected of being indulged in terrorist activities and spying or irrespective if their citizenship is contested among the nations. The ICJ's decision requires a substantial reform in the law of consular relations. While reviewing Article 36 in the light of the case of Kulbhushan Jadhav, it is understandable that there are various challenges with its implementation in the internal judicial system of a country. In many circumstances, an injured citizen must demonstrate that the agreement is "self-executing" or is a component of the enacting country's national law before requesting such remedy under Article 36. It must convince the court that the rights given are susceptible of personal implementation and refer to the precise redress desired for eventual infringement. Such a time-consuming procedure frequently prevents the respondent from asserting its privileges under Article 36. The issue of Article 36 enforcement transcends above any country's national courts to concerns brought before the ICJ. The designation of the entitlement to consular access as a distinct privilege conferred to the foreign respondent requires the courts to exercise greater caution in implementing the enhanced conduct of foreign citizens confined under their jurisdiction. Additionally, the ambiguity still existing on the aspect of law on consular access and the VCCR was again reiterated in the case of Kulbhushan Jadhav which emphasized on the need for the amendment of the VCCR considering its pertinent brevity and inadequate spectrum of protections, as well as the dearth of a suitable implementation framework. Taking cognizance of the Preamble's phrasing and Article 36's heading, the agreement's existing terminology is debatable. If the convention is revised to expressly say that it does impart individual rights and if it expressly provides out the consequences for its violation, more efficient implementation of the convention can be achieved. This precludes the possibility of nations reaching at their own understanding of the treaty rather than embracing the ICJ's norms. It would additionally increase global and

institutional responsibility by requiring governments who refuse to grant personal recourse to be increasingly open and emphatic regarding their decision.

Hence, the judgment rendered by the ICJ has had an immense impact on the relationship among the two nations as well as on the role and powers of the ICJ, on the significance of consular access and importance of a humane treatment for all individuals irrespective of their race, caste, nationality etc.

