Syllabus subtopic: Important International institutions, agencies and fora, their structure, mandate.

News: Pakistan violated its obligations under the Vienna Convention in the arrest and detention of Indian national Kulbhushan Jadhav, Justice Abduylqawi Jadhav, International Court of Justice (ICJ) President told the United Nations General Assembly.

Prelims focus: All about ICJ, its structure and mandate, Vienna Convention

Mains focus: Jadhav’s case and what India can now do in this case.

Kulbhushan Jadhav Case

• Kulbhushan Jadhav was arrested in March 2016 by Pakistani security forces in Balochistan province after he reportedly entered from Iran.

• He was sentenced to death by a Pakistani military court on the charges of espionage and terrorism in April 2017.

• India has always maintained that Kulbhushan Jadhav is not a spy, and that Pakistan should provide counsellor access to him as his case pertains to abduction from the Iranian territory.

• In May 9, 2018, ICJ has stayed his death sentence after India had moved a petition before the UN body to seek justice for him, alleging violation of the Vienna Convention on Consular Relations by Pakistan.

• During the hearing in the case on February, 2019, India said Pakistan's continued custody of Indian national Kulbhushan Jadhav without any consular access should be declared "unlawful" as it was an egregious violation of the Vienna Convention.

• Harish Salve, who is representing India and Kulbhushan Jadhav in the ICJ, said Pakistan was using the issue of Kulbhushan Jadhav as a "propaganda tool" without even following the due proper procedure.
About ICJ:

- The International Court of Justice (ICJ) is the principal *judicial body of the UN*.

- **Established in 1946 to replace the Permanent Court of International Justice**, the ICJ mainly operates under the statute of its predecessor, which is included in the UN Charter.

- **It has two primary functions:** to settle legal disputes submitted by States in accordance with established international laws, and to act as an advisory board on issues submitted to it by authorized international organizations.

- The court is seated in the Peace Palace in The Hague, Netherlands, making it the *only* principal *U.N. organ not located in New York City*.

**Election of the judges:**

- The International Court of Justice is *composed of 15 judges* elected to *nine-year terms of office* by the *United Nations General Assembly and the Security Council*.

- In order to be elected, a *candidate must receive an absolute majority of the votes in both bodies*.

- In order to ensure a measure of continuity, *one third of the Court is elected every three years. Judges are eligible for re-election*.

**Who nominates the candidates?**

- Every state government, party to the Charter, designates a group who propose candidates for the office of ICJ judges. This group includes *four members/jurists of the Permanent Court of Arbitration* (machinery which enables arbitral tribunals to be set up as desired and facilitates their work) also picked by the State. Countries not part of the statute follow the same procedure where a group nominates the candidates.

- Each *group is limited to nominate four candidates*, two of whom could be of their nationality. Within a fixed duration set by the Secretary-General, the names of the candidates have to be sent to him/her.

**Qualifications of ICJ judges**
A judge should have a high moral character.
A judge should fit to the qualifications of appointment of highest judicial officers as prescribed by their respective states or.
A judge should be a juriconsult of recognized competence in international law.

The 15 judges of the Court are distributed as per the regions:

- Three from Africa.
- Two from Latin America and Caribbean.
- Three from Asia.
- Five from Western Europe and other states.
- Two from Eastern Europe.

Vienna Convention on Consular Relations of 1963

The court observed that

- Islamabad has violated Article 36 of Vienna Convention of Consular Relations, 1963, by not informing India about Jadhav’s arrest immediately after Pakistan Army had taken him into custody.
- India had been deprived of ‘right to communicate with and have access to Jadhav, to visit him in detention and to arrange for his legal representation’.

1. The Vienna Convention on Consular Relations is an international treaty that defines consular relations between independent states.
2. A consul, (who is not a diplomat) is a representative of a foreign state in a host country, who works for the interests of his countrymen.
3. Article 36 of the Vienna Convention states that foreign nationals who are arrested or detained in the host country must be given notice without delay of their right to have their embassy or consulate notified of that arrest.
4. If the detained foreign national so requests, the police must fax that notice to the embassy or consulate, which can then verify the person.
5. The notice to the consulate can be as simple as a fax, giving the person's name, the place of arrest, and, if possible, something about the reason for the arrest or detention.