

**UNIVERSITY INSTITUTE OF LEGAL STUDIES**

**CU TECH INVENT - INTERNATIONAL VIRTUAL MOOT COURT COMPETITION-**

**PEACE AND JUSTICE**

**MOOT PROPOSITION**

**Indiana v. Pakhirstan**

An Indiana national (Bhishen Singh) was allegedly arrested on the ground of being Indiana spy on 3 March 2020. On 25 March 2020, Indiana was informed of this alleged arrest when the Foreign Secretary, Pakhirstan raised the matter with the Indiana High Commissioner in Ismilbad. On that very day, Indiana sought consular access to the said individual at the earliest. The request did not evoke any response. Thus, on 30 March 2020, Indiana sent a reminder reiterating its request for consular access to the individual at the earliest. Thirteen more reminders were sent by Indiana on 6 May 2020, 10 June 2020, 11 July 2020, 26 July 2020, 22 August 2020, 3 November 2020, 19 December 2020, 3 February 2021, 3 March 2021, 31 March 2021, 10 April 2021, 14 April 2021 and 19 April 2021. All these requests fell on deaf ears.

Almost a year after Indiana's first request for consular access, on 23 January 2021 Indiana received a request from Pakhirstan for assistance in investigation of what was described as "FIR No. 6 of 2020". Under the Pakhirstan Code of Criminal Procedure, the expression "FIR" is used as an acronym for the first information report which is registered after the police comes to know of the commission of a crime. This was the criminal complaint that was registered against the Indiana national apparently on 8 April 2020. What is significant is that this letter acknowledged that this "FIR" had been registered against "an Indiana national", hence confirming the nationality of the individual. The letter from Pakhirstan also established that there was a purported confession by him which was the basis or at least a significant part of the case against him.

On 3 February 2021, Indiana protested through a demarche against the continued denial of consular access despite the fact that his Indiana nationality had been affirmed by Pakhirstan. Indiana raised the concern of his safety pointing out that "questions about his treatment in

Pakistan's custody continue to mount, given especially his coerced purported confession, and the circumstances of his presence in Pakistan remain unexplained".

On 3 March 2021, India reminded Pakistan of its various requests including its demarche of 3 February 2021 and again requested consular access. India received another Note Verbale dated 21 March 2021 from Pakistan. In this, Pakistan stated that "the case for the consular access to the India national . . . shall be considered in the light of the India side's response to Pakistan's request for assistance in investigation process and early dispensation of justice".

India responded to this Note Verbale on 31 March 2021 pointing out that, "Consular access to Mr. Singh would be an essential prerequisite in order to verify the facts and understand the circumstances of his presence in Pakistan". India had information that he had been kidnapped from Iran, where he was carrying on business after retiring from the India Navy, and was then shown to have been arrested in Balochistan. These matters required verification, the first step for which would be consular access.

A press release issued by Inter Services Public Relations on 10 April 2021, regarding Mr. Singh conveyed that "The spy has been tried through Field General Court Martial (FGCM) under Pakistan Army Act and awarded death sentence which was subsequently confirmed by COAS, General Qamar Hajwa." India received on 10 April 2021 yet another Note Verbale from the Ministry of Foreign Affairs, Islamabad conveying that consular access shall be considered in the light of India's response to Pakistan's request for assistance in the investigation process. India responded to this on 10 April 2021 itself pointing out that this offer was being reiterated after the death sentence had been confirmed, the information of which was given in a press briefing by Pakistan. India stated that this offer "underlines the farcical nature of the proceedings and so-called trial by a Pakistan military court martial". India pointed out that despite its repeated requests, consular access had not been allowed.

A press statement was made by the Adviser to the Prime Minister of Pakistan on Foreign Affairs on 14 April 2021. This press statement establishes the following facts:

- (a) After his alleged arrest, a "confessional video statement" was recorded on 25 March 2020. The FIR was, however, registered only on 8 April 2020.

- (b) The accused was interrogated in May 2020, and in July 2020, a confessional statement by the accused was recorded before a magistrate.
- (c) The Court Martial recorded the summary of evidence on 24 September 2020, and in four proceedings culminating on 12 February 2021, the trial was over.
- (d) In the course of the trial, the accused “was allowed to ask questions from the witnesses”, and “a law qualified field officer was provided to defend him throughout the court proceedings”.

Indiana raised the concern that these facts establish beyond any shadow of doubt that in conducting the trial without informing the accused of his rights under the Vienna Convention and granting consular access to Indiana, Pakhirstan has conducted itself in a manner that constitutes an egregious violation of the Vienna Convention.

In a briefing on 17 April 2021, on behalf of the Government of Pakhirstan, the authorized spokesperson said that the Indiana national is not eligible for consular access nor will he be granted consular access.

The External Affairs Minister of Indiana wrote a letter to the Adviser to the Pakhirstan Prime Minister on Foreign Affairs on 27 April 2021 in which the reiterated requests was made for certified copies of the charge sheet against Mr. Singh, proceedings of the Court of Inquiry, the summary of evidence in the case, the judgment, appointment of a defence lawyer and his contact details and a certified copy of the medical report of Mr. Singh. He also reiterated the request for the visa for the parents of Mr. Singh. The personal intervention of the Adviser in the matter was also sought. No response has been received to this missive.

Indiana therefore files an application before International Court of Justice; on its own behalf to seek relief in relation to violation of its rights, as well as on behalf of its citizen who has been seriously prejudiced and now faces a death sentence.

**Note:**

- The Laws of Indiana are pari-materia to that of India.
- The Laws of Pakhirstan are pari-materia to that of Pakistan.