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## **I. INTRODUCTION:**

A country having Islam as its official and prominent religion currently, has been claimed and ruled by many empires and countries from time to time. Kabul is the largest city of this state and also the capital at the same time. There are two major languages which are spoken in the nation which are recognised as Pashto and Dari Persian<sup>1</sup>. The country is a landlocked country with no access to the sea. Pakistan, China, Iran, Uzbekistan, Turkmenistan and Tajikistan are the surrounding countries. *With a Population of 32,890,171*<sup>2</sup>, the country is mainly mountainous and some plains. The nation is now officially called as *‘Islamic Emirate of Afghanistan’*<sup>3</sup>.

Afghanistan had been a place of habitation for many people since the prehistoric era. The land has been captured by many since the beginning, Indians, Arab Muslims, Soviets, Britishers, Americans, Mongols etc and the land has a nickname called *“graveyard of empires”*<sup>4</sup>. Many empires have risen to power and at the same time many have lost their dominance and control over the state among which there were *Kushans, Ghorids, Mughals, Hindu Shahis, Khaljis, Ghaznavids, Hotak and Durrani* etc. In the late 19th Century, the State was tried to be captured by two major groups of Russians and Britishers of India<sup>5</sup>.

Finally, after the Third Anglo-Afghan war in 1919 the state of Afghanistan got independence on 19 August and became a free state<sup>6</sup>. It became the kingdom of Afghanistan under King Amanullah and it continued to be a kingdom for almost around fifty years and then it became a republic. By the year of 1996 most of Afghanistan was captured by the Islamic revivalist

<sup>1</sup> Wikipedia, *Afghanistan*, WIKIPEDIA THE FREE ENCYCLOPEDIA (Nov. 01, 2021, 07:04 p.m.), <https://en.wikipedia.org/wiki/Afghanistan>.

<sup>2</sup> *Ibid.*

<sup>3</sup> Tiffany Wertheimer, *Taliban increasingly violent against protesters – UN*, BBC NEWS (Aug. 24, 2021), <https://www.bbc.com/news/live/world-58279900>.

<sup>4</sup> Wikipedia, *History of Afghanistan*, WIKIPEDIA THE FREE ENCYCLOPEDIA (Oct. 30, 2021, 09:59 p.m.), [https://en.wikipedia.org/wiki/History\\_of\\_Afghanistan](https://en.wikipedia.org/wiki/History_of_Afghanistan).

<sup>5</sup> *Ibid.*

<sup>6</sup> Wikipedia, *Afghan Independence Day*, WIKIPEDIA THE FREE ENCYCLOPEDIA (Oct. 30, 2021, 07:37 p.m.), [https://en.wikipedia.org/wiki/Afghan\\_Independence\\_Day](https://en.wikipedia.org/wiki/Afghan_Independence_Day).

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group known as Taliban for five years but their power was seized by the US in 2001. Currently in 2021, Taliban has retired to power and the Afghanistan government has been removed which resulted in the fall of Kabul. The current condition of the state is very critical, there is high level of terrorism, poverty with a very less GDP. Even the condition of children and women are very critical in the nation.

## **II. AFGHANISTAN GOVERNANCE CRISIS:**

Islamic republic of Afghanistan was removed by the Taliban in 2021 again and the country has been called as an Islamic Emirate. After the Taliban group captured the nation in August, the security and military forces of Afghanistan have surrendered and President Ashraf Ghani has fled the country overnight to prevent the attacks and killing of the citizens which would have happened if the military or government had retaliated. Taliban have even captured the cities and Parliament and they are stationed in the capital of Kabul<sup>7</sup>. The tables have turned now, the US government which was helping Afghanistan since 2001 to maintain the republican government there is now trying to evacuate themselves from the nation safely. After the end of the 20 years' war between the US and Taliban, US embassies were forced to flee and it was done by a deadly airlift evacuation which ended the involvement of US in the war officially<sup>8</sup>.

Hibatullah Akhundzada is announced as the super leader of the group and they also stated that they are trying to form their own government which will work in the footsteps of Iranian leadership. It is assumed that after taking complete control over the nation the group will move to capture other countries hence Pakistan has already closed the border and prohibited the travel to Afghanistan as many of the Afghan citizens are trying to flee the country and take refuge in Pakistan which has already declared that there is no space for more refugees. According to

<sup>7</sup> Scott R. Anderson, *History and the Recognition of the Taliban*, LAWFARE ( Aug. 26, 2021, 12:55 p.m.), <https://www.lawfareblog.com/history-and-recognition-taliban>.

<sup>8</sup> Express Web Desk, *Afghanistan crisis Highlights: Taliban capture key cities, Ghani says will not allow imposed war*, THE INDIAN EXPRESS (Aug. 15, 2021), <https://indianexpress.com/article/world/afghanistan-crisis-live-updates-taliban-kandahar-kabul-us-troops-7451404/>.

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statistics, about three million Afghans have been living in Pakistan as refugees since 1979<sup>9</sup>. After capturing the nations, the Taliban are assuring that they are working on establishing a proper government that will represent the citizens of Afghanistan and they will live peacefully. They also declared that they don't want any enemies around them. After the crisis the women of the nations are again demanding for their rights, jobs and representation in the country. This time the Taliban group is more focused on meeting, discussions and negotiations than violence. On 2nd September the Taliban were preparing to unveil their governance plans. It is also reported that Qatar is working with the Taliban to reopen the airport for the commercial flights which will declare the right of free movement to the people of Afghanistan<sup>10</sup>.

### **III. SUPREME LEADER, CABINET AND RAHBARI SHURA:**

Hibatullah Akhundzada is declared as the head who will have all the authority on the decisions pertaining to religion, military, governmental and politics. Everyone is bound to agree to his announcement. The Taliban group respects him very much due to his knowledge of Fiqh and his title Malawi which means a qualified scholar of Islam<sup>11</sup>. Rahbari shura is a Leadership council set for providing assistance to the supreme. Composition of the council should have 26 members. The duty of the council is to assist in governmental order and looking for the cabinet of Afghanistan. The members of the council are selected by the supreme leader and the members are responsible to elect another supreme leader after the demise of the current one<sup>12</sup>.

Excluding Akhundzada, Md. Hassan Akhund is selected as the Prime Minister and there are two deputy P.Ms whose names are Abdul Ghani Baradar and Abdul Salam Hanafi. Apart from the supreme the cabinet consisted of 33 members in total applied for different tasks. Taliban also declared that currently some members are still left to be appointed in the cabinet and they

<sup>9</sup> The Hindu Need Desk, *Afghanistan crisis updates*, THE HINDU (Sep. 02, 2021, 11:04 p.m.), <https://www.thehindu.com/news/international/september-2-afghanistan-crisis-live-updates/article36241128.ece>.

<sup>10</sup> *Ibid*.

<sup>11</sup> Reuters, *Taliban's reclusive supreme leader appears, belying rumours of his death*, REUTERS ( Oct. 31, 2021, 01:06 p.m.), <https://www.reuters.com/world/asia-pacific/talibans-reclusive-supreme-leader-appears-belying-rumours-his-death-2021-10-31/>.

<sup>12</sup> Wikipedia, *Politics of Afghanistan*, WIKIPEDIA THE FREE ENCYCLOPEDIA (Oct. 25, 2021, 11:08 p.m.), [https://en.wikipedia.org/wiki/Politics\\_of\\_Afghanistan](https://en.wikipedia.org/wiki/Politics_of_Afghanistan).

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claimed that they have appointed Hazaras (*the minority group residing in Hazarajat region who speak Persian and Hazaragi*) and women will be appointed later criticizing the comment of appointment of all men members in the cabinet during the Taliban rule<sup>13</sup>.

#### **IV. POLICIES AND EDUCATION UNDER TALIBAN RULE:**

The Taliban wanted to enact Sharia Law in the nation. They also banned protest which are not approved and they had put a ban on women indulging in any kind of sports specially in the sport activities in which there is any kind of body show off which is not allowed in Islam<sup>14</sup>. Taliban have planned to reopen high schools for males but they have not commented on anything about educating females. The primary schools are already open<sup>15</sup>. For the study in universities, they have established that females will only be allowed to join when they will be separated from male students and professors<sup>16</sup>. Female students are informed to wear hijab but they have been told that secondary education for girls will be continued as early as possible<sup>17</sup>.

#### **V. ACCEPTANCE OF TALIBAN: CAN IT BE RECOGNIZED AS A GOVERNMENT OR IS IT STILL A TERRORIST GROUP?**

After the incident of Afghanistan, the first question which occurs is, Whether the Taliban can be accepted as changed ? Or will the other nations and the UN ever recognise it as a government? Answering this question is still very uncertain and unpredictable. History of the Taliban is very woeful as we very well know that previously they have abused the rights of humans along with killing, execution and other gruesome acts to all. They have even disturbed and abused the military of the republican government of Afghanistan and the US military who

<sup>13</sup> *Ibid.*

<sup>14</sup> Report: Taliban has banned women's sports in Afghanistan, AP NEWS (Sep. 09, 2021), <https://apnews.com/article/sports-afghanistan-australia-coronavirus-pandemic-health-14ab5ebd11bec3a5d2f3eda2a8b3a706>.

<sup>15</sup> Emma Graham-Harrison, *Taliban ban girls from secondary education in Afghanistan*, THE GUARDIAN (Sep. 17, 2021, 11:39 p.m.), <https://www.theguardian.com/world/2021/sep/17/taliban-ban-girls-from-secondary-education-in-afghanistan>.

<sup>16</sup> Reuters, *Taliban say women can study at university but classes must be segregated*, REUTERS (Sep. 13, 2021, 03:10 p.m.), <https://www.reuters.com/world/middle-east/taliban-say-woman-can-study-university-classes-must-be-segregated-2021-09-12/>.

<sup>17</sup> Emma Graham-Harrison, *supra* note 13.

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supports them. The new group of Talibans who have captured in 2021 has claimed that they will live peacefully but not the world has to watch that whether they are really changed or they are still the same who supports terrorism activities just in the name of gods falsely.

Will they support education and protection for females or will they protect the human rights and freedom of every individual, the world must wait and see. They clearly don't have any money to run or initiate any kind of government and no country is ready to help them in doing so. Hence there is a chance that they will use their earlier methods to fulfill the demands to form the government. Either there is a very low chance that they are changed and they will negotiate for financial help in exchange for the establishment of a free country and fair government.

## **VI. DE FACTO RECOGNITION OF TALIBAN:**

As it can be clearly observed that the recognition of the Taliban group creates accountability. For managing the conduct of nations with one another, recognition of government, its enrollment and dissolving needs to be in accordance with International Law. If the Taliban will be recognised as the government of Afghanistan then it will enable other nations to have diplomatic relations with the former country. The Taliban recognised as a government will have to make anti-terrorist commitments as well as they will have to sign treaties and accords related to world peace and protection of human rights. If they will be recognised then they will have to be ready to be held liable whenever there is any breach of human rights and they can be brought to justice if the international humanitarian law will be hindered in any possible manner. After being recognised they must stop sponsoring terrorism if they are involved in any of them<sup>18</sup>.

According to the Article 10(1) of Responsibility of States for Internationally Wrongful Acts, 2001, it is clearly stated that any revolt against an authority or government of other nation by

<sup>18</sup> Vanshaj Jain, *To recognise Taliban or not? This question shows poor understanding of international law*, THE PRINT (Sep. 15, 2021, 10:39 a.m.), [https://theprint.in/opinion/to-recognise-taliban-or-not-this-question-shows-poor-understanding-of-international-law/733495/#google\\_vignette](https://theprint.in/opinion/to-recognise-taliban-or-not-this-question-shows-poor-understanding-of-international-law/733495/#google_vignette).



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the newly formed Government of any state shall be called as an act of that state itself under the international law<sup>19</sup>. Hence any such act of rebellion by the Taliban will make the state of Afghanistan liable for the same. So, it can be seen that by recognising the Taliban as the new government of Afghanistan they can be held liable for various things which they are free to do now. The UN and the world community has a chance to make them bear the international legal responsibilities and it may stop their gruesome actions.

In August, 2021 the Taliban regained their control over the state of Afghanistan by seizing the headquarters and throwing off the original government. This automatically makes the government under Taliban existing but yet they are not recognised by law. Many interviews have shown that the government there is struggling to survive due to the cut off of global help and trade. The rate of poverty and child mortality is increasing day by day. People are trying to flee the borders of the state so that they can survive with the minimum at least. Women are still discriminated against in terms of education and job opportunities like the last time, so it can clearly be observed that they are unable to fulfill their promise of development and better rights to the women. Domestic violence against is at its peak again and the outside world can recognise it clearly hence it's been more than a year of control but the other countries are still hesitant to recognise their government. So, their recognition as a government is still de facto.

## **VII. DE JURE RECOGNITION OF TALIBAN:**

One more question which arises amidst the Afghanistan crisis is that, whether Afghanistan after being captured by Taliban can be recognised as a State or not? And How will the Taliban get de jure recognition as a government? To answer the first question we have to see the criteria of the international law for the recognition of a newly formed state. The state to be recognised must pass the 1933 Montevideo Convention test which demands that the state must have *a) permanent population, b) government, c) a territory, d) must engage in diplomatic relations*<sup>20</sup>. According to this test the State of Afghanistan clearly passed the first two points

<sup>19</sup> Responsibility of States for Internationally Wrongful Acts, 2001, art. 10(1).

<sup>20</sup> Montevideo Convention on the Rights and Duties of States, 1933, art. 1.

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and for the third point the Talibans have already formed a new government in the state. And for the fourth point it can be seen that the Talibans are not capable of engaging in relations with foreign countries as the countries are denying to accept that.

There have been some agreements but they are not for trade relations but rather for stopping it. According to an agreement between the Taliban and Trump government in 2020 which has specified a road map for the exit of the US military from Afghanistan. It simply signifies that it has capacity to negotiate and enter into foreign relations but countries are not ready to do the same because of their conservative ideology<sup>21</sup>. So, if the State of Afghanistan will pass these tests then it will be recognised as a state under international law.

Some other instances which should be taken into account for recognition of the state is that the State must be permanent and it must willingly follow the provisions of international law. The state of Afghanistan has been independent and permanent since 1919 and the point of following the provisions of international law will be a point to be observed after seeing the history of the Talibans<sup>22</sup>. According to the Article 51 Of United Nation Charter, any nation has the right to act in self defence against any other state if they commit any violence towards the former nation<sup>23</sup>. But there is no such right present for taking armed action in self defence against the act of violence done by any non-state groups and actors. Currently the group of Talibans are clearly not recognised as a government and hence they are a non-state actor so whenever they commit violence against any nation then they do not have any direct right to act in self defence equally. But once the Talibans will be recognised as the new government of the nation and if they continue to attack another nation then the nation has the direct right to retaliate in self defence against Afghanistan. One last factor to get de jure recognition is whether other states which are members of the international community of the UN grants recognition to the Talibans

<sup>21</sup> Donald R Rothwell, *What's in a name? The Taliban and recognition under international law*, THE INTERPRETER (Aug. 26, 2021), <https://www.lowyinstitute.org/the-interpreter/what-s-name-taliban-and-recognition-under-international-law>.

<sup>22</sup> *Id.*

<sup>23</sup> United Nations Charter, 1945, art. 51.

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or not<sup>24</sup>. It will be a point to see which states are fine with the decision of giving a chance to Talibans and which are not and hence it will decide the future of Talibans to get a de jure recognition. Till now no country is ready to do it. Currently the al-Qaeda leader, Ayman al-Zawahiri was found in Kabul the capital of Afghanistan and killed by the CIA there, has grabbed the attention of the whole world. Though the Taliban are claiming that they were unaware of him, countries are not gonna believe this statement so easily. Since the link of one prominent terrorist organisation has been found with the state as they may be hiding its leader within the boundaries of Afghanistan, hence recognition of its government by UN and foreign nation is again far away.

Reasons like poverty, violence and malnutrition among the newborn are increasing rapidly. This humanitarian crisis is spiking and the International Rescue Committee has concluded that this crisis could kill many more people in comparison to the numbers killed during the twenty years of war. This crisis could only be ended by the foreign help and nothing else hence sooner or later de jure recognition of state is necessary and without it there is no survival of the state for long. Foreign trade, central bank, food supplies and many other helps is much required. It is again happening that in the war of control and imposition the general people are losing their lives everyday which clearly don't have any fault and at the end humanity is struggling to survive.

### **VIII. CONCLUSION:**

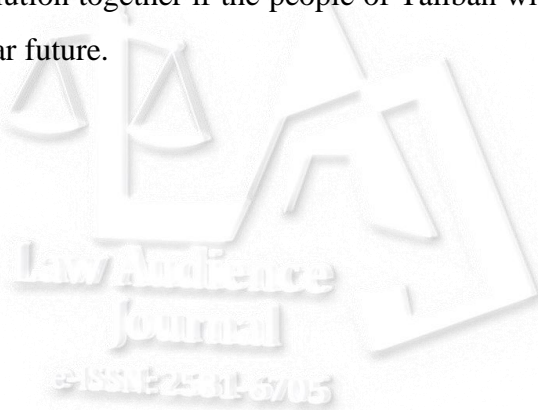
People of Afghanistan are going through a tough period after a continuous battle of 20 years and support, the government has still lost the war which is very sad and it must be so bad for the citizens of the country. They will have to fight for their rights and family. Women will have to fight for equality and job opportunities and I don't even want to talk about the minorities. The history of the Talibans is not at all acceptable in any manner. There is a clear crisis of governance as no state wants to help them or recognise them as a government. No one wants to maintain diplomatic relations with them. Deputy Special Representative and Humanitarian

<sup>24</sup> Donald R Rothwell, *supra* note 20.

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Coordinator inside Afghanistan named as Ramiz Alakbarov stated that the state will be out of stock of food which are offered by the World Food Programme along with the United Nations’ food stock<sup>25</sup>. So, it can clearly be observed that to remain alive and running their government must get a de jure recognition by the UN and other states which will only happen when they will obey the provisions and regulations of international law.

Otherwise, they will be a threat to the world hence they must be exiled from the help and support of the world but along with them the innocent citizens will suffer which is not at all justifiable at the same time. This problem has become so paradoxical and the world must have come up with some solution together if the people of Taliban will not bring a change in their way of operating in near future.



<sup>25</sup> Express Web Desk, *supra* note 8.