



TALIBAN TAKEOVER IN AFGANISTAN AND CHALLENGES BEFORE INDIA AND INTERNATIONAL COMMUNITY

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ABSTRACT:

Since 15th August 2021, when the Taliban militia entered Kabul, all the Governments across the globe are totally occupied in the process of evacuation of their nationals. The personnel of international institutions responsible for the safety and security of the Afghan citizens probably know more about the composition and charter of the Taliban. There is no difference between the Taliban of 1996 and of today, only the situations, circumstances and parties involved have changed. Earlier they unleashed violence to take over the territories but this time the entire Afghan Government surrendered dramatically as if it was pre planned and arranged. Remembrance of mass killings and collective violence especially on women and young girls are crimes committed against humanity and by forgetting these massacres and forgiving the perpetrators will never give the guarantee that terrible events will not recur again. The Taliban's horrific take over of Afghanistan and its claim to be the new government is a threat to the civilized world including legal challenges before the international community in recognizing the Taliban. The debate assumes significance because China and Russia, two of the five permanent United Nations Security Council members have seemingly shown readiness to recognize a Taliban-led Government. By forgiving and forgetting the heinous acts of past Taliban regime could have dangerous consequences in future.. When political power is transferred through legal means the question of recognition by international community doesn't arise. However things are different when the change of Government happens through extra legal methods like ousting the sitting government using un-constitutional means. The Taliban takeover of Afghanistan squarely falls in this category. Recognition of governments under international law is vital for several reasons. It is important to know who the governing authority of the State is, who has the responsibility for effectively carrying out the domestic and international obligations ranging from pursuing diplomatic relations to the protection of Human rights and so on. All other countries must explain their approach to the new regime. It is still unclear whether this will be merely a repeat of the brutal regime seen from 1996 to 2001 or whether negotiations are under way for more inclusive coalition including several former leaders of Afghanistan, will fructify into a transitional government. A doctrine competing with the effective control theory is that of democratic legitimacy. According to this, recognition of a government also depends on whether it is legitimate representative of the people it claims to govern. So governments that capture power through non-democratic means notwithstanding their exercising de facto control over the country- should not be recognized by the states. The end of Cold war, the subsequent spread of democracy in the world, and growing demand for universal respect for human rights gave an impetus to this doctrine in last three decades. The Taliban regime, despite exercising effective control over Afghanistan lacks democratic legitimacy. Thus it would fail to be recognized as the legitimate representative of Afghanistan if the doctrine of democratic legitimacy is applied. Things would become more complicated if the Afghan President, Ashraf Ghani, who fled the country when the Taliban entered Kabul, were to announce a government in exile.

INTRODUCTION:

Very few would have been surprised if the Taliban would have unleashed violence to take over the territories in Afghanistan. What has surprised many is the pace at which the Taliban pushed their lines and replace the democratically elected Government in Afghanistan. There was absolutely no resistance from Army or government machineries, it seemed like a smooth transition. The US Army imparted training to the army of Afghanistan for twenty years, the claim by the US officials as well as the president of USA that Afghanistan has to save by itself. Then question arises where is your training and the timing of US Military's withdrawal that without any stringent conditions.

The Doha peace deal with the United States and China's foreign minister Wang Yi's warm welcome to a Talibani delegation in Tianjin in July reflect the democratic success of Taliban at the international level. All most all regional stakeholders at this point are engaging with the Taliban openly or behind the close doors. The special envoy of the State of Qatar for Counter terrorism and Mediation of Conflict Resolution, Multaq bin Majed Al Qahtani in June-2021 confirmed India's outreach to Taliban. Now that Afghan State has failed, the Taliban is the most powerful political entity.

GOVERNMENT VS STATE

A salient point to remember is that recognition of the government should not be confused with recognition of the state. Malcolm Shaw, the celebrated international lawyer writes "a change in the government, however accomplished, does not affect the identity of the state itself". Thus in the current scenario the issue is not about the recognition of Afghanistan, whose legal personality remains intact. Whether countries recognizing the Taliban regime or not will depend on their political considerations and geo-strategic interests, as evident from the Chinese and Russian sudden U turn. However, certain criteria have evolved in international law on deciding the issue of recognition of governments and these need to be prudently looked at.

ISSUE OF LEGITIMACY

Where is the good Taliban? In the past leaders and analysts have used the terms "Taliban 2.0" or the good Taliban to create an environment conducive to negotiate with them. The Taliban's unleashing of War to secure power has put an end to those arguments. The claim that Taliban shall have to secure international legitimacy is exaggerated, The conclusion of an agreement with U.S. while excluding the Afghan Government and talks with China have already accorded the required legitimacy to the Taliban at international levels. On the domestic front, if the Taliban cared for the legitimacy from Afghan people they would have contested elections instead of capturing territory by force.

LONG TERM SETTLEMENT

Several reports have emerged over last couple of months have confirmed that violence and oppression are the Taliban's modus operandi. Women as expected have suffered worst. Female students and employees have been let off. News of Taliban forcing women to marry its soldiers or else assaulting them has increased. The already dwindling Afghan Sikh Community is leaving the country. The progress made during the fragile peace in the last two decades has been un-done in a matter of weeks. As the struggle for power with and within the Taliban gains momentum, ethnic divisions will accentuate and the minorities will become more and more vulnerable.

Sadly, the Afghans who are leaving their homes today will not be returning to their homes any time soon, if at all. Historically India has been one of the preferred refuges for Afghans beyond their immediate neighborhood. First, countries must see refugees as their responsibility rather than a burden. This shall involve rapid processing of visa applications and ensuring safe routes to commute. Second, there should be an effort to develop a regional and potentially an international coalition to address the needs of Afghan refugees. An active policy to provide shelter, education, vaccination and employment opportunities instead of sending them to congested, unhygienic and ignored/unwanted refugee camps. The policy makers should look beyond immediate fix and instead move towards long term settlement strategy.

CONCLUSION :

The Government of India should explain its approach to the new regime in Afghanistan . It is still unclear whether this will be merely a repeat of the brutal regime seen from 1996 to 2001 or whether negotiations are under way for a more inclusive coalition consisting several former leaders of Afghanistan to form a widely accepted government with knowledgeable people from all spheres. The rise of Taliban power and that of the group's Pakistani backers is a particular security concern as groups such as the LeT and the JeM could use Afghanistan as a staging base for terror attacks in India. Finally the Government must explain how it will approach the Afghan people especially those whose lives could be in danger including Embassy staffs and associates, those working on Indian projects and minorities including those Islamic sects such as the Hazaras who have been targeted as well as women and young girls. India continues to stand with Afghanistan in ensuring restoration of normalcy through a legitimate democratic process that is essential for the long-term stability of Afghanistan and the region. A more open liberalized Visa policy and more swift processing of the newly launched special “ e-Emergency X-Misc” visas would re-assure both Afghans and International community that India's exit from Afghanistan is not permanent and it will retain its traditional and historic interests in the country(Afghanistan) and its people despite adverse events there.

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