

# Rejuvenated Ascendency of Taliban in Afghanistan Examined through International Legal Lenses

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## ABSTRACT

The ultraconservative Islamic group Taliban has once again secured the land of the Islamic Republic of Afghanistan, renaming the country as the “Islamic Emirate of Afghanistan.” Power change in national territories becomes an international issue when the authority in power challenges international legal standards during the modification and teases the responsibility and obligations of the international community. This paper is penned to find out the legality of the process of the Taliban’s acquirement of domination upon Afghanistan, the appropriacy of Shariah principles used in different aspects of conduct in Afghanistan, the reasons behind the lack of support by the international community while discussing these issues from a legal viewpoint. There are several allegations in the media against the Taliban rulers for drastically violating International Humanitarian and Human Rights laws. Moreover, some speculations are incentivized by Islamophobia and news of terribly dropped life standards in Afghanistan. Though the United Nations (hereinafter, mentioned as UN) is continuing with remarkable humanitarian support in that terrain, the state responsibility regarding the disastrous conditions of the Afghans, is not a matter to be waived off. National statutes, Shariah law principles, international instruments, newspaper and non-academic articles, journal articles, official reports by international organizations, reports of meetings of experts, and Afghan Human Rights Organization, and news media, websites, and books are the sources used to aggregate qualitative data for the discussion. The findings will highlight and clarify the reasons behind the little to no support for the Taliban, exhibited by the international community.

**Keywords:** humanitarian law, human rights law, Shariah law, international community, speculation, legal viewpoint.

## INTRODUCTION

The idea of human rights is inextricably linked to the democratization of society in modern times. Certain international legal principles are safe to be obliged because disobedience can cultivate conditions conducive to political and social discontent, sowing the seeds of bloodshed and crisis.<sup>[1]</sup> Protecting human rights and preserving peace are two of the main focuses of the international community for this reason.

Afghanistan is a signatory party to several international human rights treaties therefore, is required to abide by the provisions. Yet, national and international media frequently report on Afghanistan’s violation of these treaties. In situations of conflict, it’s normal to have supporters and opposes of certain events. Moreover, in this era, technology has made it easier to express, control, and spread different opinions. The focus of this paper is to avoid any kind of bias and capture the legal side of the event of the ascendency of the Taliban in Afghanistan. A series of sections to decipher and discuss this multilayer issue is prepared below, which includes, presenting the practical and legal aspects of international human rights violations, assessing relevant domestic and international legislation, and discussing ways to cope with the problems.

The shifting political history of Afghanistan is a sign of shifting leadership and foreign state meddling with its political system. The most recent political transition was secured by an agreement with the United States rather than through a war, invasion, or occupation. According to a statistic used below, the Afghans were skeptical of the Taliban's rule. Meaning, the acceptance of the Taliban on a national and international level was in doubt even before the recent seizure of control of governing power. The Taliban abrogated the Afghan Constitution of 2004 and enforced Shariah law.

However, neither the Muslim countries nor the other states are supporting the current Afghan Government. Policies made by the Taliban are under the guise of Shariah law. The facts this paper addresses are the clarity regarding Islamophobia in describing the issues, human rights violations in Afghanistan, the actuality of international Humanitarian law violations in Afghanistan, speculations regarding questions of recognition by the international community of the Taliban government based on assessment of accessible data, the scope of using Shariah law and the complexity regarding the same. The facts this paper does not address are the deep and continuous political issues in the Afghanistan territory, the discussion, and opinion of the international community as a whole regarding the controversies of Taliban ruling and reasons behind the same, mechanisms to address the contradictory standing of the recognition by the international community and United Nations with severe attention. One of the objectives of this paper is to determine whether the Taliban are appropriately implementing Shariah law. Analysis of the various claims made by the Taliban in the news media and the news regarding grave violations of international human rights legislations will be in contrast with the examination of proper implementation of Shariah Law and help discover the reason behind the dissatisfaction of the international community as a whole. This paper is an analytical discussion from the perspective of *International Humanitarian Law, Human Rights Law, Shariah Law, and Domestic Constitutional Law*, with a few suggestions for eradicating some of the problems.

## **BRIEF INTRODUCTION TO AFGHANISTAN'S POLITICAL SHIFTING AND GOVERNMENT SYSTEM: PRE- TALIBAN RULING**

Afghanistan got its first constitution in 1923 during the rule of King Ahmadullah, but it was disposed in 1929 by Tajik rebels.[\[2\]](#) 2<sup>nd</sup> constitution of Afghanistan was passed in 1931 and Monarchy was the system of the Afghan Government for a long time based on these constitutions but in the Constitution of 1964, constitutional monarchy was addressed which increased the scope of democracy but the king was beyond the electoral limitations because of the rule of inheritance.[\[3\]](#)

The Afghans have suffered at the hands of Afghan leaders several times. Afghanistan was not exempted from global economic and political changes that followed World War II.[\[4\]](#) At that time, the Afghan economy crumbled and Millions of Afghans perished during that period as a result of an unjust political system, resulting in the removal of the king's cousin Mohammad Daoud. To strengthen their positions of power, the Soviet Union and the US attempted to rule Afghanistan.[\[5\]](#)

The Afghans have suffered at the hands of Afghan leaders several times. The Soviet invasion of Afghanistan began in 1979 with the arrival of Soviet forces.[\[6\]](#) Later, the Soviet Union intended to seize control of Afghanistan's ruling regime, and the Afghan government supported this plan.[\[7\]](#) In contradiction, Mujahidin, or Islamic militants close to Kabul (a region of Afghanistan), adopted a different stance, which ultimately resulted in a cold war. The Mujahidin engaged in guerrilla warfare, and the Soviet Union systematically violated humanitarian norms by utilizing its air force and military. After extensive discussions, the Soviet Union withdrew its soldiers in 1989.[\[8\]](#) The communist regime in Afghanistan maintained control in 1992 and this war resulted death of around 15,000 Soviet troops and 50,000 Afghan civilians.[\[9\]](#) Beginning in 1994, the Taliban formed a movement by taking advantage of Afghanistan's impoverished political situation with Pakistan's support this trend also spread to other regions of the nation.[\[10\]](#)

In 2001, when the Taliban's Arab Islamist supporters, Al-Qaeda, based in Afghanistan and directed by Osama bin Laden, organized terrorist strikes in New York and Washington, the international community paid attention to Afghanistan as well.[\[11\]](#) To prevent the Taliban from seizing control of the country, the United States and its allies began bombing Afghanistan and provided support to the Northern Alliance, a coalition of Afghan anti-Taliban factions.[\[12\]](#) Despite losing control and growing disorganized, the Taliban persisted, and many of its important figures escaped capture throughout the Afghanistan war.[\[13\]](#) Early in December (2001-14), the Northern Alliance successfully ousted the Taliban's government.[\[14\]](#)

After the Taliban's control ended in 2001, Afghanistan's political history underwent a new chapter.[\[15\]](#) Afghanistan enacted a new constitution in 2004 that included the addition of parliament, first-ever elections, and elections that took place in the same year.[\[16\]](#) That election was won by Hamid Karzai with American assistance and this way had been the chosen one for the Afghans for the past decade until 2021 when the Taliban regained Afghanistan's territorial control after the death of a US military member and the withdrawal of US military forces.[\[17\]](#)

The U.S. has the legal right to wage war as a result of the 9/11 tragedy, which is why it intervened in Afghanistan. However, the United States referred to its meddling in Afghan politics as a war against terror,[\[18\]](#) though both U.S. and Taliban have violated international human rights and humanitarian law during the time of conflict.[\[19\]](#) Two events are exemplified below to corroborate the previous statement.

#### **Event 1:**

Afghan National Army (hereinafter mentioned as ANA) was attacked with a suicide vehicle-borne improvised explosive device in Laghman province on 1<sup>st</sup> April 2007 which killed civilians, including 5 children and at last 13 civilians as well as 5 ANA more solid were seriously injured.[\[20\]](#) On that day by sending an e-mail to AIP Jalalabad, the Taliban claimed Laghman's suicide attack responsibility. [\[21\]](#)

#### **Event 2:**

On 4<sup>th</sup> March 2007 an aerial bombardment was held in Kapisa province which was directed against one local man suspected of Taliban links. 9 civilians, including 2 pregnant women, 4 children, and 2 aged people were killed by this attack. U.S. military claimed responsibility for this attack. [\[22\]](#)

Afghanistan's continuously deteriorating economic and social development is also sown by its uncertain political landscape. Trade and global relations did not progress, and the unstable nature remains.

## **RECOGNITION AND LEGALITY OF THE CURRENT TALIBAN RULE UNDER NATIONAL AND INTERNATIONAL LAWS:**

Though Pakistan, Saudi Arabia, and the United Arab Emirates recognized the Taliban government in their initial ruling period (1996-2001)[\[23\]](#), this time no country has recognized the Taliban Government.[\[24\]](#) Moreover, the Taliban's national likability cannot be guaranteed, according to the statistics mentioned hereinafter. The legality and reliability of the Taliban government are analyzed below by differentiating the ruling process into two segments; the international chapter and the national chapter.

### **International chapter: Recognition and Acceptance**

To recapitulate this whole incident from the perspective of International Humanitarian Law (hereinafter mentioned as IHL), it should be ensured that this particular matter falls under the arena of IHL. Therefore, to be measured under the threshold of the IHL provisions, the definite nature of this event must be examined initially. To determine that, the focal point of this part should be the question as to whether this incident

falls under the legal definition of WAR, INVASION, or OCCUPATION or not.

Many international news mediums have mentioned this instance as “The Fall of Kabul[25]/ The Fall of Afghanistan[26].” The meaning these terminologies indicate should be deciphered. Henceforth, to discuss the legality of Taliban rule in Afghanistan, dissecting the power-gaining process of the Taliban is significant.

### **War:**

War is generally understood as armed conflict between two or more states or regions of a state that affects the nations as a whole or partially. The purpose of the enactment of the Charter of the UN was to repair the world from the destructive effects of WWII and to prevent further likely events. However, the charter doesn't define the concept of war though it acknowledges the after-effect of war. As the purpose of the Charter of UN, it is stated that-

*“To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind....”*

Despite the vagueness, the importance of peace and security, the right to self-determination of people, and the principle of equality and respect towards human rights was recognized by Art. 2 of the UN Charter. The states refrain from using threats or use of force against the territorial integrity and political independence of any other state under the same provision because it contradicts the purpose of the charter. Thus, the acts against which omission is required under the Charter of the UN, can be defined as acts of war.

Taliban rule in Afghanistan restarted in 2021. At that time, many of the civilians fled the country. The simultaneous events were titled as “Taliban's return to power,” “Seizure of cities,” “Fall of Afghanistan” “Failure of American foreign policy and intelligence,” etc.[27] The question is whether all the rigidity upon the Taliban lies because they are an Islamic Fundamentalist group related to Al-Qaeda or not.

The Taliban and U.S. were party to several negotiations before the former took Afghanistan under control. Referring to the Falkland Island War (1982) [Argentina vs. United Kingdom] shows a different perspective from the war as the political powers were shifting in the island as indeterminably as Afghanistan.[28] The populace largely supported the invasion of Argentina in Plaza De Mayo. Most of the Latin American countries supported them over Britain. Still, there were casualties and human rights infringement. The parties to the conflict were taken under the protection of 1949's Geneva Convention for that reason. Even with the Civilians' support, Argentina was unable to avoid liability, and their invasion of the island was ruled as a “Breach of Peace” by Resolution 502 of the United Nations Security Council.[29] No armed conflict, and no declared war, the negotiations indicate that there was no war relative to the Taliban regime in Afghanistan (2021).

### **Invasion:**

In the case of Afghanistan, the civilians were the victims of the unstable political condition of their homeland, and they tried to escape it. The question arises as to the reason for their fear and reason behind fleeing. The Use of Force and the invasion of Afghanistan by the Taliban were the points of skepticism.

According to Art. 2(4) of the Charter of the UN, affecting territorial integrity or political independence by threat or use of force is inconsistent with the charter. This statement gives indications of the required omissions. The Rome Statute of the International Criminal Court further supports the same ideology, and in Art. 8, the statute categorizes the use of force for invasion as an act of aggression regardless of a declaration of war. UN General Assembly Resolution 3314 (XXIX) supports the same rule.

The definition of invasion under International Humanitarian Law is vague. The basic elements of invasion

are-

- Military combatants
- Use of Force
- Taking control of another territory[30]

After the evacuation of U.S. troops leaving their Afghan counterparts at the base camp, Taliban forces took control and expressed their intention to follow the process of peaceful transfer of power.[31] The event took place based on negotiations between the two concerned forces and a presidential order signed by Donald Trump.[32] Thus, the regime wasn't restarted by the invasion by the Taliban.

### **Occupation:**

Further explanation is relevant to the concept of occupation. Though it seems similar, invasion and occupation are different concepts. According to art. 42 of the Hague Convention IV, a territory is considered occupied when it is placed under the authority of the hostile army. Placing authority requires some range of stability in the invaded terrain.[33]

The foreseeable dilemma here is whether the Taliban can be considered a hostile army or not. Hostile force means any person or group violating the law and opposing military forces by interrupting their missions by their conduct.[34] U.S. troops abandoned the base as per negotiations, and the Taliban was at the other end of the contract according to the Peace Agreement[35] of 2020.[36] The remaining Afghan troops didn't put up much of a fight. Therefore, presuming any hostility is unreasonable.

The final remarks on this regard would be, there was the existence of no such event which can be defined as war, occupation, and invasion regarding the Taliban control in the Islamic Republic of Afghanistan. The concerns regarding Islamophobia in addressing the matter and whether it is intentional or mere use of journalistic language or lack of knowledge of international humanitarian law is a question of fact and may vary from case to case. However, the legal analysis doesn't give any such indication.

Before the Taliban rule, it was the responsibility of both U.S. and Afghan soldiers authorized for the protection of the territory and the authority that prevailed at that time to notify the citizens and declare the change of power. The U.S. military presence was an invasion but the Taliban's recent ruling is based on a contract with the invaders.[37] Taliban was also not the representative of Afghanistan at that time and it was negotiated without the consent of the Afghan government. Thus, constituting a possible intervention in Afghanistan's internal affairs, the agreement is not a treaty under international law.[38] Nonetheless, similar to many other peace agreements with non-state armed groups, it was intended to be binding and was accepted by the Security Council by enacting Resolution 2513 (2020)[39], contributing to its legalization. Neither party has since sought to rescind the agreement and it is still in continuation.[40]

### **National Chapter: Comparison to Political and Democratic Standards Based on The Legal Changes.**

From a monograph called "*The Fallacy of Peace Process in Afghanistan: The People's Perspective (2018)*" by the Afghan Institute of Strategic Studies (AISS), it is clear that only 10% of the citizens of the entire population sympathized with the Taliban because this group used propaganda to divide the rural and urban regions by claiming that the dissenters who call for modernization are based solely in cities and don't represent Afghanistan's rural majorities, to exploit the division to realize their personalized agenda.[41] For a clear understanding, mentioning some of the specific data collection from this particular study is necessary [42]

Figures 4, 5, 6, and 8[43] shows that the understanding of the peace process would intensify if the literacy



level is abundant with the people with the bachelor range of academics or above. In contradiction, the Taliban's education ban, vandalizing educational institutions, decreasing schools and universities, and limiting the study fields[44] show that the recent autocratic government of the Taliban is walking reversely. The majority of the people think that the Taliban are dissatisfied brothers, political opponents, and enemies of Afghanistan while their behaviour shows that they are mostly considered enemies of Afghanistan from that perspective. The harsh truth is, even some citizens think that the Taliban is a terrorist group. The reason for this adverse attitude received from their people based on the Taliban's rules of conduct, the majority of the Afghans feel that the peace process has failed in Afghanistan. This is not only a statistic showing failure but also a display of dissatisfaction. The unsporting attitude are carried out till now. The following issues are encapsulated to highlight the reasons for hostility towards Taliban ruling by citizens.

### **Constitutional and Governmental Debate:**

Question as to whether or not the governing law would be upheld in Afghanistan when the Taliban took power, the Senior Commander of the group Waheedullah Hashimi stated-

*“There will be no democratic system at all because it does not have any basis in our country. We will not discuss what type of political system should apply in Afghanistan because it is clear. It is Shariah Law and that is it.”*[45]

After that the Taliban dissolved the constitution of Afghanistan. Taliban's acting minister of justice later to its entry into Afghanistan, stated to the Chinese ambassador that they were going to temporarily enact articles from Afghanistan's 1964 Constitution that are not contradictory to Shariah law while presenting the Taliban as the new government.[46] He assured that international laws and instruments are to be followed, maintaining the same reservation. While he did not discuss all the provisions, it was a positive step as the 1964 constitution enabled Afghanistan to enjoy a decade of parliamentary democracy without any external help.[47]

While the Taliban promised a more tolerant and progressive approach than their rule in Kabul from 1996 to 2001, the real scenario is different. The male-only caretaker government is solid proof of this fact. After the Taliban took over Afghanistan, they appointed Mohammad Hasan Akhund as the head of Afghanistan's new caretaker government and was addressed in the list of United Nations.[48] The list of cabinet members remains heavily influenced by the position of the group's old guard with no women included. The government was titled by the Taliban as “the new Islamist government” and the group announced that the Islamic Emirate decided to appoint a caretaker cabinet to carry out all the necessary government works. It was titled as an “acting government” at that time, and further inclusion of members was divulged to be made with proper deliberation. The status of the appointed members showed ignorance towards the women and the wide ethnic diversity of the country.[49]

Though the U.S. showed concern about the newly appointed members of the government, the Taliban assured that no country would be threatened, and humanitarian aid and access would be available in favor of Afghans.[50] However, the appointment of Sirajuddin Haqqani as the minister of interior affairs, who is also the current leader of the designated terrorist organization “Haqqani Network” and has an entry listed as one of the FBI's most wanted men, practicalized the international agitation.[51] On May 17, 2023, Taliban rulers appointed Maulvi Abdul Kabir Afghanistan's new caretaker Prime Minister.[52] United Nations Security Council first listed Maulvi Abdul Kabir in 2001 for his concurrent roles in the first Taliban regime and he was among the group of Taliban leaders who were arrested by Pakistani Intelligence agents in 2005 during raids in northwest Pakistan.[53] Political risk adviser Arif Rafiq opined that Abdul Kabir's closeness to Pakistan and his contribution to Doha talks makes his appointment appear as the Taliban's effort to smoothen relations with foreign countries but the main concern is how this appointment will be able to

manage making the groundbreaking in the domestic and foreign policy. According to Kabul University Lecturer Faiz Zaland, Kabir’s appointment will not bring any substantial change to the group’s future foreign policy.[54]

Said Azam, a Canada-based politician analyst, and former Afghan government official opined the idea of adopting provisions of 1964’s Constitution as a pragmatic approach that will help Taliban gain international acceptance. No country has recognized the Taliban rule, only Turkey has preached in favor of recognizing the Taliban’s Islamic Emirate.[55] If the 1964 and 2004 constitutions are compared then the comparison between the determined route, and the forsaken route can be unequivocally shown to realize the left-out democratic, political, and human rights aspects.

| Constitution of 1964                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Constitution of 2004                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b><u>The Preamble:</u></b></p> <p>The preamble of 1964’s constitution recognized secularistic views and acknowledged religious diversities by starting with “<i>In the name of God, the Almighty and the Just.</i>” It is rooted in justice, equality, and political, economic, and social democracy along with personal liberty, welfare, and human dignity.</p>                                                                                                                                                                                 | <p><b><u>The Preamble:</u></b></p> <p>It became a strictly Islamic constitution in 2004 when it started with the name and praise of Allah and half of the first part was dedicated solely to concepts like Islam, Allah, Prophet Mohammad (PBUH), and Islamic rules. However, it upholds the rights of all the citizens of Afghanistan over an indivisible Afghanistan and acknowledges the United Nations Charter and Universal Declaration of Human Rights (UDHR). Moreover, the constitution of 2004 advocated for free will and democracy and determined the country’s standing against discrimination and violence based on the rule of law, social justice, human rights, etc. The aspiration to be a part of the international community is also expressed in this constitution.</p> |
| <p><b><u>Government and Religion</u></b></p> <p>In 1964’s constitution, the type of government system envisioned in Art. 1 included constitutional monarchy and unitary state system the sovereignty of which belongs to the nation, Afghanistan. Islam was considered the sacred religion and Hanafi doctrine, which is the most flexible of all 4 Islamic schools, was prioritized over the other 3 in the 2nd Article. Non-Muslim citizens were allowed to perform their rituals within limits determined by laws of public decency and peace.</p> | <p><b><u>Government and Religion</u></b></p> <p>In Art. 1 of 2004’s Constitution, Afghanistan was first mentioned as an “Islamic Republic” removing the term “Constitutional monarchy”, though Art 2 was conforming to Art. 2 of the 1964 constitution. The “non-Muslim” term was removed, and Islamic laws over the religious rights of people of other faiths prevailed regarding religious rituals. The term “Hanafi” was removed from Art. 2 and was added to art. 130 by limiting its use in uncodified and inexistent court proceedings to attain justice.</p>                                                                                                                                                                                                                        |

**Democracy, Human Rights and Human Dignity**

Though the preamble of ‘64’s constitution preaches democracy, there was no actual express provision in the constitution on democratic rules. Instead, it stands by monarchy while keeping democracy on a backward footing. According to art. 7 & 8, the king is the center of all powers and the head of the state. To select the king, the rule of inheritance and bloodline is followed as it is stated by articles 16, 18, and 19. Provisions regarding election commence after that in case of 2 legislative chambers stated in art. 42; 1) Wolesi Jirgah (House of the People), 2) Mehshrano Jirgah (House of the Elders). According to art. 43, members of the House of the People shall be elected by the people of Afghanistan in a free, universal, secret, and direct election by the provisions of law. Art. 45 states that each provincial council shall one of its members to the House of the Elders for a period of 3 years and the residents of each province shall elect one person for 4 years by a free, universal, secret, and direct election. Art. 49 provides that elections shall be governed by electoral law subject to the provision of the constitution.

**Democracy, Human Rights and Human Dignity**

Art. 6 of the 2004 Constitution obligates the state to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity, and equality between all people. Art. 5 addresses state responsibility and states that implementing provisions of the constitution and the other laws is one of the responsibilities Afghanistan as a state shall have. The equation regarding the head of the state changed in 2004 when by constitutional art. 60 President was declared the head of the state and empowered to execute his authority over executive, legislative, and judiciary. Art. 61 provides that the head of the state shall be elected by the Afghans by receiving a more than 50% vote in a multi-layered process where votes are taken in two terms to select a candidate as president and the “more than 50%” rule is mandatory for each time. Along with this extra cautious regulation, if one of the presidential candidates dies before proclaiming the result of either term, re-election is the following rule. Art. 83 and 84 take a more equitable approach than the previous constitution by reserving seats for women candidates. Art. 83 upholds the ‘64 constitution’s spirit of electing the members of the House of People democratically along with reserving seats for at least 2 female representatives from each province. Art. 84 includes the progressive rule of electing 50% female members by president among 1/3 of the members of the House of Elders that the President is empowered to appoint. This particular group of members shall also contain 2 impaired and handicapped persons and 2 nomads. Art. 86 and 156 are the provisions regarding the Independent Election Commission which will oversee and review the credentials of members of the National Assembly election. Art. 138, 140, and 141 mention that members of the provincial council and municipal council, respectively, shall be elected by votes of residents of each province through a free, universal, secret, and direct election.

According to the Global Gender Gap Index, 2023[56], Afghanistan graces the bottom of the list. Similar result can be found in the Global Peace Index, 2023.[57]Here, the evident problems with the appropriacy of the Taliban government system are-

1. According to articles 5, 61, 67, 83, 84, and 147 of the 2004 Constitution there was no election two months after the emergency, no elected president, no women assembly members, and no representation for the ethnic groups of Afghanistan. Art. 22 of the Afghan Constitution 2004 states that, any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, men and women, have equal rights and duties before the law. This is the familiar system to the Afghans and a familiar picture of Afghanistan to the rest of the globe. The Taliban have not released a draft constitution yet[58] despite promising so in the international media. Ergo, the system they are following now is haphazard. With more promises and fewer



implementations, the current legal obligations within the Taliban government are unclear and appear arbitrary.

2. Even before the Taliban’s rule in Afghanistan, people were concerned about the Taliban being a terrorist organization.[\[59\]](#) Appointing a minister with the above-mentioned status only helped close the gap between speculation and reality because it violated the conditions of the Joint Declaration between the Islamic Republic of Afghanistan and The United States of America for bringing Peace to Afghanistan[\[60\]](#) and the Doha Agreement, 2020.

In conclusion, the Taliban is *the de facto* representative of Afghanistan and the legality of their regime is a gray area. Moreover, Taliban’s current code of conduct is unlikely to help advancing their position.

## DEPICTING HUMAN RIGHTS AND HUMANITARIAN ISSUES IN AFGHANISTAN AND IDENTIFYING REASONS OF GLOBAL NON-RECOGNITION:

Focusing on another research objective as to why there is no recognition from the international community of the Taliban government, their self-contradictory standing can be an indicating reason. The previously-mentioned statements regarding Shariah law, constitution, and human rights are yet to be proved meaningful and prolific because of the internal condition of Afghanistan and the lack of implementation and effort from the state. The overview of 2021 to the current condition of Afghanistan is provided below which may collaterally give insight into the mentioned and further contradictions on behalf of the Taliban.

### Violating International Law and Standards:

Global recognition of the Taliban government matters because the consequence of the non-recognition is apparent as the U.S. and the other world powers have quickly put Afghanistan under sanction. The U.S. and Britain have refused to relinquish over \$9 billion in assets belonging to the Central Bank, and the international community has cut back aid on the grounds of human rights abuses, retaliatory killings, and curbs on freedom of expression in Afghanistan.[\[61\]](#) This unique application of *erga omnes*[\[62\]](#) has put the civilian population in danger. A summarized picture is shown above of what problems the Taliban are causing in their territory. What international laws make them wrongful is the immediate question to answer and for that purpose, the following chart is provided.

| International Law Instruments                                                                     | Articles                                            | Violated Standards                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Geneva Convention Relative to the Protection of Civilian Persons in the Time of War, 1949.</b> | Art. 3,14, 18, 20, 27, 39, 40, 49, 51, 56, 64, 147. | Prohibition of violence to life and person, cruel treatment and torture, outrage upon personal dignity, passing sentences, and carrying out executions without previous judgment pronounced by a regularly constituted court, willful killing, torture, or inhuman treatment, willfully causing great suffering, unlawful deportation, along with the direction of establishing hospitals and safety zones free and far from the effects of war to treat anyone, respecting and aiding hospital officials without any discrimination, ensuring right to work for protected persons to secure their basic needs, uninterrupted working environment; further direction of continuing penal laws and tribunals to ensure the administration of justice |

|                                                                                                                                                                                                                                                                                    |                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949</b></p> <p><b>2. Geneva Convention for the Amelioration of the Condition of Wounded, sick and Shipwrecked Members of Armed Forces at Sea, 1949</b></p> | <p>Art. 12 (4),</p>                      | <p>Women must be treated with all consideration due to their sex.</p>                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>Additional Protocol to the Geneva Conventions I, 1977</b></p>                                                                                                                                                                                                                | <p>Art. 51, 75, 85</p>                   | <p>Prohibition of acts and threats of violence whose primary purpose is to spread terror among the civilian population, Violence to the life, health, physical or mental well-being of persons, torture of all kinds, murder, corporal punishment, mutilation, outrages upon personal dignity, making the civilian population or individual civilians the objects of attack.</p>                                                                                |
| <p><b>Geneva Conventions, 1949</b></p>                                                                                                                                                                                                                                             | <p>Common art. 3</p>                     | <p>Persons not taking part in hostilities must, in all circumstances, be treated humanely without any adverse distinction founded on race, color, religion faith, sex, birth, wealth, or similar criteria.</p>                                                                                                                                                                                                                                                  |
| <p><b>Additional Protocol to the Geneva Conventions II, 1977</b></p>                                                                                                                                                                                                               | <p>Art. 4, 17</p>                        | <p>Entitlement of respect and honor of persons in non-international armed conflicts and Prohibition on forced displacement.</p>                                                                                                                                                                                                                                                                                                                                 |
| <p><b>Declaration on the Protection of Women and Children in Emergency and Armed Conflict by General Assembly Resolution 3318, 1974</b></p>                                                                                                                                        | <p>Art. 1, 3, 4, 5, 6</p>                | <p>Prohibition of attacks, persecution, torture, punitive measures, degrading treatment, violence and inflicting incalculable suffering on women and children, State responsibility to comply with obligations provided in the Geneva Protocol, 1925, Geneva Convention, 1949, and the other instruments of international law relative to Human Rights and important guarantees for the protection of Women and Children.</p>                                   |
| <p><b>International Covenant on Civil and Political Rights (ICCPR), 1966.</b></p>                                                                                                                                                                                                  | <p>Art. 5, 6, 12, 14, 17, 20, 22, 25</p> | <p>Prohibition of any activity to destroy the rights and freedoms of any person, arbitrary deprivation of any life, unlawful interference with privacy, advocacy of national, racial, or religious hatred, and ensuring Right to life, liberty, movement, be presumed innocent and facilities to prepare for defense, take part in public affairs, equality in accessing public service, along with freedom of choosing residence, associating with others.</p> |
| <p><b>International Covenant of Economic, Social and Cultural Rights (ICESCR), 1966.</b></p>                                                                                                                                                                                       | <p>Art. 1, 3, 6,7, 11, 12, 13, 15</p>    | <p>Right to self-determination, freely determining political status, and freely pursuing economic, social, and cultural development, equality in enjoying rights, work, adequate standard of basic necessities, gain a living, highest attainable standard of physical and mental health, education to develop personality, human dignity, knowledge, take part in cultural life and receive the benefit of scientific progress.</p>                            |

|                                                                                                                    |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Universal Declaration of Human Rights (UDHR), 1948</b></p>                                                   | <p>Art. 1, 2, 3, 5, 6, 9, 10, 12, 13, 23, 25, 26, 27</p> | <p>Right to freedom, equality, life, liberty, security, recognition, fair and public hearing, work, free choice of employment, protection against unemployment and equal pay, a standard of living adequate for the health, education, freely participate in the cultural life of the community, and prohibition of torture, cruel, inhuman, or degrading treatment, arbitrary arrest, detention, exile, arbitrary interference with privacy, family, home, along with freedom of movement.</p>                                         |
| <p><b>Rome Statute, 1998</b></p>                                                                                   | <p>Art. 7, 8, 33</p>                                     | <p><b>Illegal acts of crime against humanity, and prohibition of willfully depriving a protected person of the right to regular trial, unlawful confinement, passing of sentence, and carrying out the execution without previous judgment pronounced by a regularly constituted court.</b></p>                                                                                                                                                                                                                                         |
| <p><b>Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984</b></p> | <p>Art. 1, 2, 4, 10, 12, 13</p>                          | <p>Illegal acts of torture and directions of effective legislative, administrative, judicial, or other measures to prevent acts of torture by state parties, even in situations of war, internal political instability, or any other public emergency, Mandatory assurance of all acts of torture being under their criminal law, education and information regarding the prohibition against torture, prompt and impartial investigation against torture, and right to access to court of individuals against torturous treatment.</p> |
| <p><b>Doha Agreement, 2020</b></p>                                                                                 | <p>Art. 1, 2</p>                                         | <p>Prohibition of using and sheltering any group like Al Qaida to threaten the security of the USA, and direction of sending a clear message is that any group or its allies posing a threat against the USA have no place in Afghanistan and the Taliban will refrain from recruiting, training, and hosting them, for the purpose of preventing any such group.</p>                                                                                                                                                                   |
| <p><b>Convention on Protection of Human Rights and Fundamental Freedoms, 1950</b></p>                              | <p>Art. 2, 3, 5, 6, 8, 10, 11, 14,</p>                   | <p>Right to life, protection of the law, protection against arbitrary execution and unlawful violence, liberty and security, public hearing, freedom of peaceful assembly, association, union for the protection of interests, freedom of expression, opinion, receive information and ideas, respect for private and family life, home, enjoyment of rights and freedoms without discrimination, and prohibition of cruel, inhuman, or degrading treatment or punishment.</p>                                                          |

Violating international law means a breach of international obligations by a state, that it was bound to fulfil by international law. The fundamental principle of customary international law shows that if a state violates international law, it is responsible for immediately cease the unlawful conduct by providing appropriate guarantees of no repeating illegal actions.<sup>[63]</sup> Afghanistan ratified the Geneva Conventions in 1956,<sup>[64]</sup> ICCPR AND ICESCR in 1983, CAT in 1987, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 2003<sup>[65]</sup>, and is a signatory party to the UDHR<sup>[66]</sup>, and has deposited an instrument of accession to the Rome Statute in 2003.<sup>[67]</sup> Hence, by legal force provisions of these instruments apply to Afghanistan in cases of Human Rights and women’s rights violations, war crimes, crimes against humanity, etc. The instruments Afghanistan has not ratified and is not a signatory party to are important from the perspective of Afghanistan’s necessity regarding acceptance and support of the international community. All the international instruments set some sort of international standards that are expected to be followed by the signatory parties. The minority supporters of the other way have a

probability of being excluded from that aspect.

### **The Taliban's role in exodus and contribution to refugee issues:**

The first ruling period of the Taliban was 1996-2001 and at the end of 2001, approximately 3.6 million Afghans were living as refugees in other countries according to the reports of the United Nations High Commissioner for Refugees (UNHCR).[\[68\]](#) The reasons combined with many more, are violent treatment, exclusion of women from opportunity, social life, and health care, unreasonable use of national funds in warfare, drug trafficking, internal conflicts, and natural calamities.[\[69\]](#)

In 2021, the Taliban came to power once again and more than 1.6 million Afghans have fled the country since 2021. In the year of power change, a C-17 military cargo plane took flight from Kabul airport and two men were video-recorded falling from that plane to their death. They were trying to flee Afghanistan's hidden undercarriage.[\[70\]](#) The reasons behind such desperation were detected later gradually as internal conflict, natural disaster, chronic poverty[\[71\]](#), change in government authorities, instability and violence in Afghanistan because of change in power, well-founded fear of persecution,[\[72\]](#) etc. Currently, there are 8.2 million Afghan refugees in 103 countries of the world, making Afghan refugees the 3rd largest displaced population in the world.[\[73\]](#)

### **Internally displaced persons and lack of efforts of Taliban for the betterment of situation:**

In the initial period of Taliban rule from 1996 to 2001, According to the U.S. Committee for Refugees (USCR), about 375,000 people were internally displaced.[\[74\]](#) Currently, there are 3.2 million internally displaced Afghans in their own country.[\[75\]](#) The most significant challenges for internally displaced Afghans are Humanitarian assistance (24.4 million in need), acute hunger (20 million have faced), natural disasters like famine, poverty, and decreasing income (80% of households are suffering).[\[76\]](#) The Norwegian Refugee Council reported that the Taliban forcibly evicted the internally displaced people from cities to rural areas or villages of origin, where they experienced extreme poverty, limited human rights access, and an inability to sustain them.[\[77\]](#)

### **Infringement of Human Rights and Dignity:**

There has always been high resistance from the citizens against Taliban rule whether they are by the journalists, judges, teachers, civil servants, human rights activists, or men and women of any other background.[\[78\]](#) The reason behind the joint protests is to protect and nurture the fundamental freedoms and democratic aspirations the Afghans that they have lived with for the past 20 years. Despite being the *de facto* representative of Afghanistan[\[79\]](#), the violent assumption of power by the Taliban has created a hostile environment for women, girls, and all the other categories of protestors. According to the interview of a female protestor, she is skeptical about the intention of the Taliban and believes like the other protestors that this particular Islamist group (Taliban) is a foreign proxy.[\[80\]](#)

In terms of Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), 1966, the right to freedom of expression contained in Article 19(2) may be subject to certain restrictions. According to this Art.'s definition of freedom of expression, media freedom, and access to information contribute to the larger goal of human empowerment.[\[81\]](#) Unfortunately, in Afghanistan, freedom of media is a questionable issue right now because Taliban rulers banned several national and international news media in Afghanistan.[\[82\]](#) In 2021, the Taliban shut down hundreds of media stations and fired 80% of female journalists from their jobs.[\[83\]](#) As a result, reporting on genuine news and encounters with the Afghan people are limited and frequently seems to be anecdotal.[\[84\]](#) Several international media revoked their correspondents in the last weeks of August 2021.[\[85\]](#) The International Federation of Journalists (IFJ) listed 153 ceased media organizations.[\[86\]](#) The authenticity of national media reports are also dubious, because Taliban set 11

guidelines for journalist, which refers issue against a topic in conflict with Shariah law or “insulting national personality”.[\[87\]](#) Simultaneously, instruction to produce reports in coordination with the interim government’s media office was also given to journalists.[\[88\]](#)

After the Taliban’s entry on 1st May 2021, 35 media organizations closed their doors.[\[89\]](#) On 3rd May 2021, six other private media outlets were seized according to Afghanistan’s Ministry of Information and Culture.[\[90\]](#) In 2022, women’s rights, freedom of media, and expression were put under more incentive restrictions as almost all institutions established to address gender-based and minority-based violence were shut down by the Taliban.[\[91\]](#) To suppress civil society and dissent among the population, the Taliban brought upon repeated human-rights abuses e.g., arbitrary arrest, torture, eliminating political opponents, public execution, savage beating[\[92\]](#), education ban along with vandalizing educational institutions,[\[93\]](#), etc.

The economic situation of Afghanistan appeared catastrophic because, according to the UN Office for the Coordination of Humanitarian Affairs, from 2020 till present, a whopping 50% increase in poverty level is recorded among the Afghans.[\[94\]](#) The isolation from the international community further hampered the economy of Afghanistan because of the freezing of the Afghan foreign reserves and the cutting of foreign assistance.

The UN Assistance Mission in Afghanistan (hereinafter mentioned as UNAMA) recorded at least 237 extrajudicial executions between 15 August 2021 and 15 June 2022. In December, the UN reported another 69 extrajudicial killings primarily of National Resistance Front (hereinafter mentioned as NRF) members. In Ghor province, on 26 June, the Taliban killed 4 men, 1 woman, and a girl; members of Shia Hazaras for that household’s association with the former government.[\[95\]](#) In September, videos and pictures of extrajudicial killings by Taliban of NRF associates in Panjshir province appeared on social media. Though the Ministry of Defense announced an investigation, no progress was made public.[\[96\]](#) Media reports consisted of news of eviction, torture, and public execution of civilian population and fighters. Taliban denied responsibility and alleged that the reports of NGOs and Amnesty International were falsified.[\[97\]](#) Between 18 November and 16 December, more than 100 people were publicly flogged in stadiums and the Taliban executed the first person in Farah province in December. Between August 2021 and June 2022, UNAMA recorded 2106 civilian casualties and targeted attacks on minority ethnic and religious groups, religious and education centers, public transportation, etc. In the 30 September bombing in Hazara neighborhood, 52 teenagers died. Unfortunately, Taliban authorities failed to investigate any of the incidents.[\[98\]](#)

There was a provision in the last enacted constitution in Afghanistan for protecting the Human Rights of the Afghan people. Art. 58 of the Afghan Constitution (2004) stated that –

*“The state shall establish the Independent Human Rights Commission of Afghanistan to protect Human Rights”.*

In case of a violation of Human Rights, every Afghan citizen was entitled to complain to this commission. This commission reported human rights breaches to legal authorities and aid individuals in defending their rights. The commission’s organization and operations were governed by legislation. In this regard, in 2001, the Afghan Independent Human Rights Commission (hereinafter mentioned as AIHRC) was endorsed to regulate this commission and for regulating this commission a statute was enacted as well namely, Laws on the Structure, Duties, and Mandate of the AIHRC.

Articles 4 and 21 of this law defined Human Rights as fundamental rights and mentioned that this commission will provide advice to the National Assembly/Parliament to legislate, adopt, amend laws in support of human rights promotion and protection, and abolish laws that are not in compliance with international human rights standards along with advising to sign appropriate international human rights conventions and treaties.[\[99\]](#) Though this commission had no right to sue, it was allowed to investigate



violations of human rights, monitor the social impact of violations, publish reports regarding violations of human rights, and provide guidance and advice to the President on how to address human rights violations and abuses. AIHRC published 11 annual reports, 1 legal report, 9 thematic reports, 6 research background and discussion papers, and arranged 1 conference. [100] In 2018, this commission published 2 annual reports which were about violence against women and a survey of harassment of women and children in Afghanistan [101] On 17th May 2022 Taliban authority dissolved this commission and considered the commission unnecessary in their financial crunch. [102] In this regard Innamullah Samangani, the Taliban government's deputy spokesman, told Reuters, "Because these departments are not deemed necessary and were not included in budget, they have been dissolved". [103] Mohammad Naim Nazari, former deputy head of the AIHRC criticized this decision [104] and expressed his concerns to Voice of America's Pashto Service about the rights of Afghan women. [105]

The Taliban does not recognize the rights of minorities. [106] This decision of the Afghan ruler also made the International Human Rights Organization and UN Human Rights Commission condemn Taliban Government. On 28 February 2022 Michelle Bachelet, U.N High Commissioner for Human Rights criticized this decision of the Taliban in dismay. [107] Practically, dissolving the only commission that could inform the president regarding the violation of human rights in Afghanistan and was allowed to published a report about human rights violation indicates the ignorance of the Afghan government regarding the human rights issues.

### **Challenges regarding Education, Political Involvement, Work, Opportunity, and Personal Liberty of Women:**

The political conversations between Taliban and Western diplomats regarding women- rights, banning women's education, and freedom to work have borne little results. Secondary girl's schools were supposed to reopen in March 2023, but the Taliban rescinded the directive and also barred women from seeking higher education and working with international NGOs. Taliban's argument is that they are following the Islamic principles however; it is the only Muslim country prohibiting education for girls. [108] According to the Afghan Education Ministry's 2020-2021 annual report, there were 18,765 public and private schools with 80554 female teachers. Over 100,000 Afghan women were enrolled in universities along with 2,439 female lecturers. Before the Taliban took over, 63 women were in the Afghan Parliament, and 9 of them held minister and deputy minister-level positions. 280 women were complying with their roles as judges along with 500 female prosecutors. Over 2,000 women owned their own business. Taliban Shut down the Ministry of Women's Affairs (MoWA) and replaced it with the Ministry of Virtue and Prevention of Vice which issued abusive decrees against women, protests against which earned the female protestors unlawful detention and violence. [109] The restrictions included wearing head-to-toe covering accessing public spaces, denied entrance in university buildings, inaccessibility to higher education [110], academic years limited to primary school along with the bar of studying certain subjects [111], prohibition in leaving the country except for with *mahram* or chaperone, implementation of rules forbidding women from filing domestic violence cases which is punishable on the ground of moral corruption on the part of women, etc. [112] Taliban defended their decision by stating that it's for the National Interest and Women's Honor and assured that such a ban is temporary till they manage adequate funds and remodel the syllabus consistent with Islamic rules. [113]

However, the talk of honor was trampled over by the very group just a few days before their 1st anniversary as Taliban fighters beat and fired on the female protestors of a 40-person group who marched on the education ministry in Kabul. Their slogan was "bread, work, and freedom." [114] Before the Taliban ruling, in the statistics of 2018 prepared by the Afghan Institute of Strategic Studies (AISS), it is evident that women do not prefer the Taliban regime. [115]

After the violent event took place, female protestors carried a banner that had "August 15 is a black day"

written over it because they were fed up with having no political and social life.[116] On November 10, 2022, the ban on women using parks and gyms was made enforceable. In response, Taliban's spokesman Mohammed Akef Mohajer confirmed that they tried their best not to enclose parks for certain people by ordering separate days for male and female access. The orders regarding gender segregation were not followed, and both male and female individuals were observed in a park together which ultimately led to this decision.[117]

Human Rights Watch and San Jose State University's interview with 10 women in Ghazni Province shows how much of a threat the Taliban ruling is for women and ethnic minorities.[118] Women complained that they didn't have food, but they were not allowed to work. Taliban rulers crushed their dreams of higher education. The Taliban sees women who work in foreign organizations as enemies and extorts food from communities. The interviewee was suffering from fear, anxiety, hopelessness, insomnia, a deep sense of loss, and helplessness because they were always being observed for engaging in behavior Taliban finds unacceptable. A woman previously worked in a nongovernmental agency had to move and hide frequently because her category is alleged to work for foreigners by the Taliban and are reported to them. Women who worked for the army and police were the targets along with the women right's activists. They stopped working in fear for their lives as two female police officers were already killed in Ghazni. The Taliban government directed International NGOs still functioning to stop working on human rights, women's rights, and other issues while permitting them to work singularly in the health sector. Nonetheless, health care is not fully accessible for women as one interviewee stated that she took her pregnant sister-in-law to the doctor but the Taliban didn't let them enter because they didn't have a *mahram* with them. Several interviewees expressed their concerns about the armed control of the Taliban over hospitals, healthcare employees, and a limited number of female doctors. One government worker said *"It is a form of violence when they don't let women work. It is violent when they don't let young people get an education. They have taken every hope from people- that is violence... They rule by fear. It's painful to watch the society living in fear."*[119]

Though the women are not allowed to work, the displaced persons in need of humanitarian aid, 70% of them are women and children. Currently, 840,000 women in Afghanistan are suffering from moderate acute malnutrition but they can take no measures to help themselves as their right to work is restricted.[120] From 2021 to 2023, more than 47 restrictions were decreed on women by the Taliban government including prohibition on right to education, access justice, divorce, personal freedom, work, recreation, sports etc.[121]

### **Pulverization of Rule of Law and Access to Justice Principles:**

Rule of law is a popular term used worldwide for indicating justice. The World Justice Project (WJP) defines the rule of law as a durable system of laws, institutions, norms, and community commitment that delivers four universal principles-

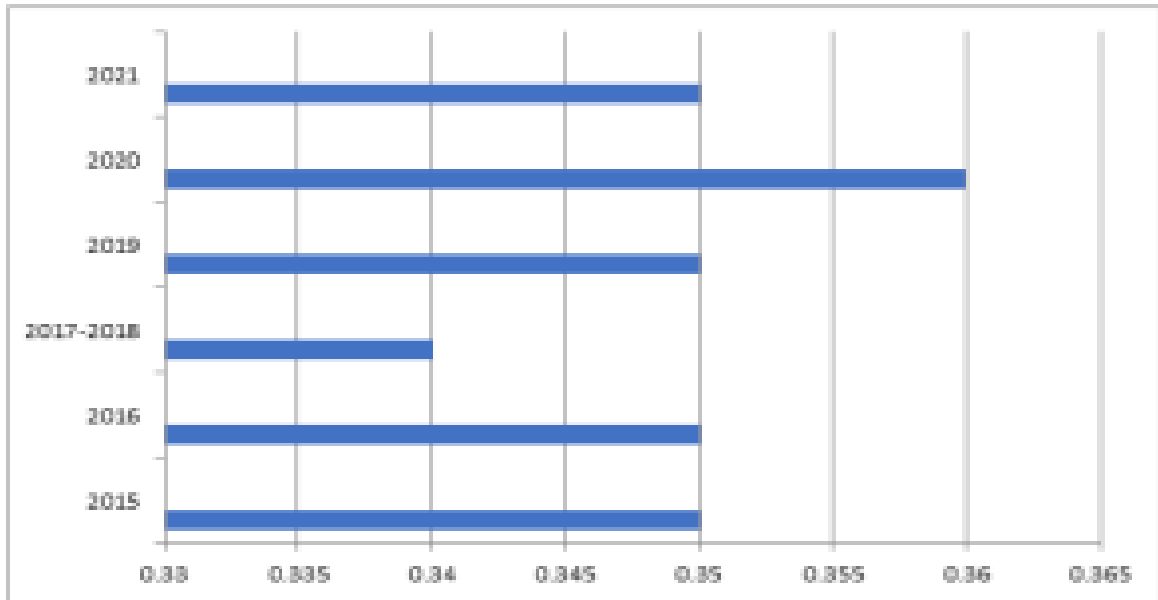
1. Accountability; the government, as well as private sectors, are accountable under the law
2. Just law; the law is clear, publicized and stable and is applied evenly. It ensures human rights as well as property, contract, and procedural right
3. Open government; the process by which the law is adopted, administered, and enforced are accessible, fair and efficiently
4. Accessible, and impartial justice[122]

Moreover, the extension concept of the rule of law also includes,

- No approval of discriminatory laws
- Legislates laws with terms providing special treatment for special people
- Not legislate laws that deprive people of their rights of religion, language, etc.

- No force against people
- Ensure general people’s participation in the process of government. [\[123\]](#)

The establishment of the rule of law is essential for ensuring basic human right for civilians. Afghanistan scores for the overall rule of law from 2015 to 2022 made by the World Justice Project (WJP) Rule of Law Index 2022 have been given below:



[\[124\]](#)

Furthermore, according to the WJP Rule of Law Index 2022 Afghanistan score Global Rank 136/140; Regional Rank of 6/6; Income Rank of 17/17, and in the civil justice system and the criminal justice system it scores Global Rank 132/140; Regional Rank 6/6; Income Rank 17/17.[\[125\]](#)This score shows the actual situation regarding the rule of law in Afghanistan. Access to justice must be established in order to maintain the rule of law. Access to justice means people will be able to understand the exercise their rights in accordance with the fair rule of law and enforcement the decision when they run into legal issue in their daily lives.[\[126\]](#)Access to justice is one of the fundamental humans right. Article 8 of the Universal Declaration of Human Rights (hereinafter mentioned as UDHR), 1948 states-

*“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.*

Art. 10 of this Declaration, and art. 2 of the ICCPR supports art. 8 of UDHR. These articles, every person is entitled to get equal opportunity fair trial, public hearing, and remedy and anything contrary to these is a violation of human rights. In Afghanistan not everyone can easily access to court system; in particular, Afghan women have a hard time doing so. Despite having the same rights and legal protection as men under Shariah law, women in Afghanistan are stripped off those rights.

### Implementation of Shariah Law: Rules v. Reality

Sliding out from the international legal and political side, the proper implementation of Shariah law is another important side that needs attention. From day one, the Taliban rulers committed to safeguarding women’s rights per Shariah law. Later, they outlawed women from working for non-governmental organizations (NGOs) in the majority of industries, and at the beginning of April 2023, they proclaimed that Afghan women would not be permitted to work for the UN mission there.[\[127\]](#)Additionally, they discriminated against women; forbade them from entering many public spaces, and limited their work to primary education and health care.[\[128\]](#)Although the Taliban legitimized their actions under the guise of Shariah law in this matter, Shariah regulations are not very onerous.

## **Equality before Law, right to work, and Movement:**

In Islam, men and women shall receive the same treatment for moral behaviour and punishment for misdeeds.[\[129\]](#)

According to Shariah law, women may work. In Qur'an, Surah 28 (Al-Qasas), Verse 23, a fact was described where daughters of Prophet Shuaib (A.S) and Moses who were both prophets of Allah were watering their animal out of their home; this fact indicates that women are permitted to do jobs outside the home and Shariah law did not forbade them to do so.[\[130\]](#)

In addition, the Taliban dictator altered Afghan politics and the legal system.[\[131\]](#) They barred women from holding judiciary positions or taking other types of employment[\[132\]](#), but Shariah law did not forbid women from sitting as judges or taking part in legal procedures. The "one man and two women" rule has been addressed in several verses of the Qur'an that deal with testimony. The Qur'an in Surah 2 (Al Baqarah, verse, 282) also explains the rationale behind this ratio as, if one woman forgets other women can remind her.[\[133\]](#)

Additionally, if a Muslim husband accuses his wife of infidelity, he must have witnesses to back up his claim. In this regard, in Qur'an, Surah 2 (An-Nur), Verse 6-8 mentioned that, in case of any allegation against spouse, they have to bear witnesses and in here number and gender of witnesses has not been mentioned.[\[134\]](#)

These references indicate the approval of women in legal proceedings. No Shariah law prohibits the evaluation of women. Especially because Saudi Arabia, the most conservative Islamic nation, now also appoints female judges. In 2018, members Faysal al-Fadhel, Lateefa al-Shaalan, and Aatt al-Subaiti proposed a female member who served on the Council's Islamic Affairs and Judicial Committee in Saudi Arabia, recommended to be appointed to the Shura Council in the judiciary.[\[135\]](#)

## **Education:**

Shariah law does not deny education to girls. According to Shariah law, Muslim women recognized the divine mandate to learn, starting with prophetic statements thousands of years ago and continuing through centuries of tradition and the quest for knowledge to 21st-century intuitions.[\[136\]](#) Moreover, Shariah law makes education compulsory to Muslim male and female.[\[137\]](#)

Shariah law regarding education did not indicate any particular sex. So, according to this verse, learning is obligatory for all human beings. Furthermore, through God Almighty and the holly Prophet (PBUH) use the masculine form to describe most of the commandments, women also are bound to act and follow those rules and regulations.[\[138\]](#) Every human being is endowed with reason, has the potential to be good, and decides to work for the formation of harmony, and the Qur'an recognizes reason as the process through which moral judgments of right and wrong are produced.[\[139\]](#) In Shariah law, education is rights of women which will increase their intellect, develop their critical thinking and helps them to be good Muslim by knowing Qur'an and Hadith.

Ummahatul Momeneen [the wives of the Prophet Mohammad (Phub)] and other female followers of the Prophet played a great and remarkable role during the time of the Prophet (Phub) in spreading the teaching of the Holy Qur'an and the Sunnah of the Prophet. Hazrat Aisha (R.A), the favorite wife of the Prophet and the daughter of the first caliph, Hazrat Abu Bakar Siddique (R.A), would be a notable example regarding spreading the Prophet's (PBUH) teaching.[\[140\]](#) She narrated 2210 Hadith and authoritative Hadith collection, such as Sahih Bukhari, could not have been completed without the effort and contribution of this

women.[\[141\]](#) In his book *Al-Muhaddithat: The Women Experts in Islam*, Mohammed Akram Nadwi Lists more than 8000 female hadith experts who lived throughout Islamic History and in all areas of religious knowledge, these women academics frequently acquired great rank and taught both men and women.[\[142\]](#) A large number of Muslim women took part in the establishment of educational institutions. Fatima-al-Fihir, who founded the University of Al-Karaouine in 859 CE, is the most prominent of these and this University is the oldest continuing university according to UNESCO. [\[143\]](#)

As in every society almost half of the population is women, so for the development of society education for this half of the population (women) is necessary. Simultaneously, women's education is needed for being better mothers, workers, and citizens and for raising their voices against exploitation and violence. All of this information enlightens the acceptance and importance of female education in Shariah law.

### **Marriage:**

In Imam Bukhari, it is specified in many chapters. So, a chapter is named "*Force Marriage is not Permissible*", another is titled "*Father, etc. cannot force to his daughter (virgin or not) to do marriage except with her consent*" and another is named "*When a daughter is married without her consent than her marriage is null and Void.*"[\[144\]](#) Shariah Law recognizes marriage with the consent of a guardian when any party of marriage is minor. But if the parties are adults and the father asks about his or her consent regarding marriage and the adult girl cries or laughs in an insulting manner or remains silent but her face reddens due to rag and unpleasantness, then it would be equal to refusal.[\[145\]](#) Against forced marriage another reference can be found during the time of the Prophet (SAW) when a virgin girl informed the Prophet (SAW) that her father forced her to do marriage and that girl was permitted by the Prophet (SAW) to continue or end her marriage."[\[146\]](#)

These facts recognize the importance of the party's consent in case of a valid marriage. Free consent regarding marriage is also recognized in IHRL. According to Art. 16 of the International Bill of Human Rights, marriage shall be entered into only with the free and full consent of the intending spouses. Taliban Government considered this point of Sharia law and issued a decree barring forced marriage in Afghanistan, saying women should not be considered "property" and must consent to marriage.[\[147\]](#) Furthermore, Taliban leadership created a wide rule regarding the marriage of widows against the longstanding tribal traditions that have held it customary for a widow to marry one of her husband's brothers or relatives in the event of his death mentioning that, it has ordered Afghan court to treat women fairly, especially widows seeking inheritance as next to kin.[\[148\]](#)

### **Other Civil and Political Rights:**

Though Shariah law does not state the establishment of a separate authority for the implementation of human rights, several rights like the right to life, right to access justice, right to a basic standard of life, right to personal freedom, right to security of privacy and property, freedom of conscience, protection of religious sentiments, protection from arbitrary imprisonment, right to participate in affairs of state[\[149\]](#), etc.

Every Muslim administrator has to acknowledge a person's right to access justice and the right to be heard because these rights are guaranteed by Allah. Whoever denies the rights or violates them are acknowledged by the Qur'an as disbelievers, wrongdoers, and evil-livers. That means there is no option for the authorities to prefer their own words and decisions better than the rights given by Allah. From the perspective of personal hatred, no one can deprive any individual and resort to aggression, no matter their religious belief, sex, race relation, or status of enmity, of justice because Quranic verses are universal and ubiquitous rules that applies to all. According to Islam, equality is a birthright that no person shall be denied. The Taliban rulers have yet to appoint any person with ethnic diversity and different political opinions to a government official position. Islamic rules against racial, tribal, and ethnic clashes and related to equality reflect quality



standards against this gesture. The right to life is upheld by Islamic principles which do not support arbitrary killings and executions.[\[150\]](#)

The supplementary rights to the right to life are the right to a basic standard of life, personal freedom, and protection of property and privacy according to the Qur'an. The Prophet Muhammad (PBUH) said about the non-Muslim citizens of the Muslim State (Dhimmi) that one who kills a man under covenant (i.e., a dhimmi) will not even smell the fragrance of paradise.[\[151\]](#) As Islamic rules are much older than the provisions regarding human rights, they don't need to be contradictory rather, these different sets of rules can be complementary. No matter how a Muslim ruler deviates himself from this divine statute, the statute itself does not change. So, for the Afghans or for anyone who stands responsible for wrongdoings based on international obligation, Shariah law allows protest against those wrongdoings conforming to the hadith of Sahih Muslim as it is allowed to stop evil with his hand (using force), by means of his tongue (he should speak against it) or, condemn the same in his heart. The last is considered the weakest degree of faith.[\[152\]](#)

The above analysis states the development of Sharia Law and the default of implementation of Sharia Law in Afghanistan. Though in the point of marriage Taliban follow the rule of Sharia law but in the point of women's right to education and work they are still silent where Sharia Law allowed these rights of women.

Taliban mention Sharia Law as their ruling law which is not similar to Islamic law. Islamic law is based on the interpretation of sharia which requires deep knowledge of the Quran and Sunna.[\[153\]](#) Interpretation of sharia is recognized as Ijma in Islamic law, which means the consensus of scholars signifies the importance of delegated legislation of the Muslim community.[\[154\]](#) Another scope of interpretation of Islamic Law is Qiyas which is resorted to in respect of problems about which there is no specific provision in the Quran or Sunnah.[\[155\]](#) These two scope of interpreting Islamic Law helps to develop modern governing rules focusing on new issues and also helps to develop human rights law for the country that follow Islamic law. Moreover, Islamic law may vary from country to country is influenced by local customs and evolves but Sharia Law derives from the Quran and Hadith and the scope of interpretation is not wide here.[\[156\]](#) As Sharia Law doesn't provide enough scope for interpretation, disobedience or creating rules under this law will create misinterpretation of Sharia Law and Islamophobia. So, this law shall be followed strictly as it is.

The Afghan Constitution of 2004 established Afghanistan as an Islamic Republic, and most of its provisions were enacted under Shariah Law. Orders of the Taliban to Afghan courts for complete implementation of "their" interpretation of Shariah law, including the prospect of public executions, amputations, and flogging, has raised concern among experts that this may worsen the situation regarding human rights in the impoverished country.[\[157\]](#) In actuality, Shariah law has not been followed properly. The dissolved 2004 constitution provides an option for developing International Human Rights Law (hereinafter, mentioned as IHRL) in Afghanistan. After dissolving the Constitution, Taliban rulers tried to legalize their actions of human rights violations by saying, they are maintaining Islamic rule. However, the Taliban, is not entirely following Shariah rules either, which is demotivating most of the Muslim countries to support them.

The closure from the practical, legal, and procedural arena is that Afghanistan's newly formed Taliban government has not only failed to meet the international standards but also exhausted the expectations and aspirations of its own people by non-compliance with the constitution of the Islamic Republic of Afghanistan.

The closure from the practical, legal, and procedural discussion mentioned above are-

- Afghanistan's newly formed Taliban government has failed to meet international standards, and, is jeopardizing the living standards of the citizens.
- The govt. has exhausted the expectations and aspirations of its own people by non-compliance with their promises.

- The current supreme law, the Shariah law, is not followed by the rulers of Afghanistan appropriately.
- Discrimination based on sex, poverty, internal displacement, and refugee matters are the current thriving factors in Afghanistan, not the development strategies or coping mechanisms.

The image of the current Afghanistan government is contrary to the stable and positive standards of international law that are inevitable to sustain peace around the globe. The spirit of international peace, security, and sustainability of the same continues to inspire passionate arrangements among the states, scholars, politicians, and organizations. Afghanistan on the other hand, is walking in reverse. Afghanistan government's vague development strategy and contrariety in between promises and conduct are barring its amicability with the international community.

## WAYS TO DEVELOP A PEOPLE FRIENDLY SYSTEM: ROAD TO RECOGNITION

Regarding all the concerns for the recognition part, the UN is neither a state nor a government so, the UN's authority to recognize a government is questionable. As an organization of independent states, the UN may admit the credentials of the representatives of a new government.[\[158\]](#) Though this acceptance is a reasonable ground for the international community to invite Afghanistan and its new Taliban government to be a part of it, it is probable that because of the gross human rights violations and gender apartheid[\[159\]](#), the global recognition of the Taliban as the new ruler of Afghanistan is a far cry. Though vast insider information is not available because of Afghanistan's ongoing dismantling of media freedom, from a documentary released by Al Jazeera[\[160\]](#), it is clear that the news of violations are not rumours. Economic issues like sudden tax increases, food, healthcare, mental health degradation, and women's rights are acknowledged problems by the Taliban authorities but the deteriorated living standards of women come last on the priority list of the leaders as quoted by the spokesperson –

“It takes time to provide a safe way for women to go to work or study. There is no hostility towards women” [translated]

According to the news report of DW News[\[161\]](#), while approximately half of the citizens were celebrating the Taliban's 2 years in power, the other half of the population was still struggling with their questions and confusion. A woman interviewee stated that she is not happy about the Independence Day, and she doesn't understand why the Taliban leaders are so negative about women. [Translated] Though many women hold an unyielding spirit, their situation is still not improving. The Afghan Education Minister confirmed that hundreds of Jihadi Madrassas are established in each province to enroll thousands of Taliban. However, sadly, none of them are girls. Against the atrocities against the Shia Hazara, a Shia leader requested to the Taliban spokesperson that –

“Widen your vision of what defines your religion.” [Translation]

Moreover, there have been separate bombing and suicide attacks taken place by the supporters of other visions as a protest against Taliban rule.[\[162\]](#) According to the expert group meeting report by UN Women, not enough legal tools exist to tackle the violations ongoing in Afghanistan.[\[163\]](#) According to Afghanistan's women rights activist Mahbouba Seraj what the Taliban is doing is a crime to humanity to curtail the basic rights of half of the population of a country, and it is not like every girl in Afghanistan is a prostitute and the Taliban is there to keep them all in line. From her and spokesperson's conversations, it is clear that the Taliban intellectuals and the rest of the Afghan scholars couldn't come together till now because of their diversity in opinion therefore, new tools to prevent human rights violations in Afghanistan stands as a tough task. Rawadari, an Afghan Human Rights organization, has captured comprehensive data

on the changes in the judicial and legal framework in Afghanistan from August 15, 2021, to June 2023 and also, conducted 141 interviews of defense lawyers, current and former employees of legal and judicial institutions, human rights defenders, survivors, reporters, and journalists across 26 provinces of Afghanistan. [164] It was found that the majority of judges in Taliban courts are either students or graduates of religious madrassas and have limited familiarity with modern legal knowledge, especially, principles of a fair trial. [165] 1,016 professional and administrative employees from various departments of the Attorney general office and 2000 judges nationwide have been dismissed along with hundreds of administrative and legal staff, leaving only the support staff *i.e.*, driver, gardener, etc. [166] Afghan penal code which aligned with Afghanistan's human rights commitments has been annulled. [167] The formal investigation process has been eliminated, which is a crucial step in a criminal trial and the requirement to be a defense lawyer is madrasa education, and they can play the role of judges as well. [168] According to the report, a minimum of 109 individuals were subjected to trials and punishments without undergoing a thorough investigation or receiving due process. [169] So, in the Afghan territory, most of the violations are unlikely to be dealt with a proper cure. This statement is an after-effect of factual assessment, not Islamophobia. After observing Afghanistan's hazardous internal condition one thing is clear. The country is in immediate need of quality and sufficient international aid and support. For this purpose, as the current representative of Afghanistan, the Taliban government may take the following measures-

### **Removing the Governmental Skepticism and Ensuring Lucidity of Law:**

The Taliban government is not an elected government so it can be called the representatives of the Afghans and the questionable leadership roles are in non-compliance with the international provisions and the treaty that initiated the Taliban's representation in Afghanistan. So, from the Taliban's part, this party is neglecting some compulsory rules. A new start for the Taliban government is a must, from both the national and international favourability criteria. The government just suggested that they follow Shariah law to govern Afghanistan but they did not use Shariah law completely, rather in the name of Shariah law they imposed inhuman laws upon civilians, especially against women. So, lucidity of governing law is essential for accountability of the government in case of legislation. Besides that, in Afghanistan, there are several existing laws under which people are not allowed to claim their right. Enforcement of law is not available in Afghanistan; even constitutional enforcement is also not available there. For developing this issue, specific enforceable law is essential for ensuring justice; proper enforcement of the law through an organized authority has to be ascertained for ensuring justice.

### **Complying with The Rules of Good Governance and Human Rights:**

Governance has no singular universally accepted connotation. Nevertheless, the vast idea of governance is the use of political authority and exercise of control in the society about the management of its resources for social and economic development by encompassing the role of public authorities in establishing an environment in which economic operators' function and in determining the distribution of benefits as well as the nature of the relationship between the ruler and the ruled. Governance comprises the institutions, processes, and conventions in society that determine how power is exercised, how important decisions affecting society are made, and how various interests are accorded a place in such decisions. [170] Governance involves interaction between formal institutions and civil society. The idea that the above-mentioned definition gives is Taliban government and their ruling have a close connection with the social development, public life, and economic development of the people and the state. [171] To ensure all of that, the role of democracy and public opinion is significant which is one of the main shortcomings to the Taliban government. As governance is a process of making decisions and implementing such decisions, some of the conditions must be fulfilled for the system to be called good governance. *Openness, Participation, Legitimacy, Transparency, Effectiveness and efficiency, Accountability and availability, Predictability, Coherence are the main criteria to be fulfilled to build public trust and confidence,* [172] to involve citizens

in the development process,[\[173\]](#) to ensure political acceptability and appear fair,[\[174\]](#) to ensure availability of information to the general public and maintain clarity about the government's rules, regulations, and decisions,[\[175\]](#) to create a more development-based approach to transform Afghanistan's public resources into services efficiently and to build up a strong international support system,[\[176\]](#) to clarify the executive and legislative bodies for ascertaining accountability,[\[177\]](#) to implement laws that define the rights of the citizens and appropriate government policies,[\[178\]](#) and to make policies and actions must be coherent and easily understandable to maintain balance of power and ensure development.[\[179\]](#)

United Nations Development Program's view on good governance is making governance systems accountable, effective, and agile so that they can better cope with the complex challenges of the 21st century. With Afghanistan's high-agility growth of problems, following the principles of good governance would be the right thing to do.

### **Establishing a Separate Human Rights Commission and ensuring freedom of media:**

As Afghanistan dissolved its independent human rights commission which created an annual report regarding violations of human rights. So, at present officially there is no statistic of information regarding human rights violations. Moreover, as the last human rights commission was unable to file litigation for violation of human rights, they were unable to contribute properly to ensure human rights in Afghanistan. So, to ensure human rights, they need to make a uniform commission that will exercise all the power that was exercised by AIHRC and also add the power to bring cases due to violation of human rights. Moreover, the Taliban considers going beyond the guidelines and proceeding with media reports distrustful.[\[180\]](#) The journalists should care about nothing but the truth. To earn the trust of the international community and show the world that although riddled with difficulties, the Taliban government is actually trying to improve the situation.

### **Refraining from Creating Phenomenon which Obligates the International Community under Erga Omnes:**

It is Afghanistan's strict necessity to bring international values at home. In international law, the form of government is irrelevant yet the obligations matter. [\[181\]](#) According to the traditional positivist notion of international law[\[182\]](#), jurisdiction over internal human rights situations belongs to the state and its governmental authority.[\[183\]](#) However, the international law doctrine of *erga omnes* provides a distinctive perspective. According to this principle, there are some matters of great importance the obligation regarding which stretches not only to the victimized-oppressor states but also to the international community as a whole; i.e., internationally wrongful acts.[\[184\]](#) The authority of the United Nations to intervene in cases of internal human rights violations cannot be waived. According to the Charter of the United Nations articles 1, 14, 99, Chapter VI, VII it is one of the main objectives of the UN is to maintain international peace and security along with encouraging respect for human rights and fundamental freedoms and the UN is competent to take action in case of any violation. On 20 December 1961 upon the request of an advisory opinion relative to the United Nations operations in Congo and UN Emergency Force in the Middle East it was held by the International Court of Justice (hereinafter mentioned as ICJ) in the *Certain Expenses of the UN* case that these operations constituted "expenses of the organization" and the court also pointed out that the "expenses of the organization" are amounts paid out to defray the costs of carrying out the purposes of the organization.[\[185\]](#) In the *Namibia v. South Africa* case advisory opinion (1971) the ICJ pointed out several important rules regarding this issue.[\[186\]](#)

- When the matter of human rights and humanitarian law violations are concerned, even non-member states can appear before the court to assist the case of the parties.[\[187\]](#)
- Though not in the case of day-to-day administrations of the territories, proper authority can intervene in case of a fundamental breach of obligations by the mandatory power[\[188\]](#).[\[189\]](#)



- The responsibility of the mandatory is not a matter of mere concern of conscience and morality. It amounts to judicial obligation as well to prevent the state part from having power it is not entitled to. If any state party tries to overleap the responsibilities, it will make them accountable and subject to international supervision.[190] This advisory opinion mainly emphasizes the relationship between conditions of human rights within a territory and the quality of national, international, and regional public order because the former can have destabilizing impacts on the latter.[191] In the Nicaragua v. U.S. case (1986) ICJ opined that humanitarian assistance to the victims of human rights violations constitutes no wrong in international law. The court stated-

*“There can be no doubt the provision of strictly humanitarian aid to persons or forces in another country, whatever their policy objectives, cannot be regarded as unlawful intervention, or as in the way contrary to international law.”*[192]

So, the satisfactory answer is other states and the UN can lawfully intervene in Afghanistan if the pulverization of human rights continues. To maintain an ethical appearance and integrity of the national border, the Taliban government should initiate a different approach and start upholding international humanitarian and human rights norms in their internal terrain. Otherwise, as it was stated in the *Gambia v. Myanmar* case[193], any state even without any regular or special interest can plausibly take judicial action against or initiate humanitarian assistance in Afghanistan. Conclusively, rather than having what Afghanistan needs immediately, outside support, the country will be further faced with judicial accountability and stand against the international community.

## CONCLUSION

The rejuvenated Ascendency of the Taliban in Afghanistan is a significantly impactful phenomenon in that territory. The Afghans are facing human rights abuses like never before, especially, women and children. The psychological footprint, the violent events, and the teachings are likely to leave a long-term devastating effect on the Afghan youth and future generations. The Taliban government’s focus should be pinned on their hunger, poverty, and refugee issues that are deteriorating the basic standard of life along with causing human rights violations. Shockingly, the government seems to be more focused on suppressing women and imposing restrictions on those with distinctive beliefs in the name of applying Shariah law. However, the *de facto* government failed to apply and respect both Islamic rules and international standards. The UN is treating the matters of Afghanistan with an emergency impression and rushing into the terrain with all the help the organization can manage. However, it is the state’s responsibility of Afghanistan to handle those matters with a balanced and sustainable approach. If the Taliban’s current code remains unchanged, it will help no further to attain international recognition. In addition, the current attitude can make room for others to intervene in Afghanistan’s internal affairs which may even affect the integrity and sovereignty of the Islamic Emirate. So, it would be a sensible call from the Taliban government to change their approach regarding human rights and humanitarian issues.

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