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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He

participated in several workshops on research methodology and teaching and learning.

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Crimes Against Humanity: Rampant Human Rights

Violations In Afghanistan Under The Reign Of

Taliban

Authored By- Jass Kaur Bindra

Introduction-

“We will not enjoy security without development, we will not enjoy development without security, and **We will not enjoy either without respect for human rights.**”

—UN Secretary-General Kofi Annan¹

Humanity won't survive for long without Human Rights but '**Crimes against Humanity**' has abased the life, liberty, equality, privacy, advancement and growth of society and has pushed numerous nation states on path of torture, slavery, murder, deportation, prostitution etc.

In the current scenario a drastic upsurge of crimes against humanity can be seen in the nation state of Afghanistan which has fallen under the clutches of Taliban. Taliban the militant organization is endlessly committing ceaseless attacks directed against its civilian population, with knowledge of the attack. Since seizing control of the city on August 12, 2021, the Taliban have terrorized females by trawling for high-profile women, refusing to acknowledge women free movement beyond their dwellings, imposing mandatory dress codes, severely restricting educational and economic opportunities, and curbing the right to peaceful assembly.

The Taliban perpetrate war crimes against civilians by assassinating teachers, kidnapping humanitarian workers, and torching schools. Taliban troops were responsible for the deaths of 699 people in the first half of 2021².

¹UNFPA, 'Quotes on Human Rights' (United Nations Population Fund, 1 June 2004) <<https://www.unfpa.org/resources/quotes-human-rights>> accessed 8 January, 2022.

² Aditya Gowdara Shivamurthy, 'The Taliban stalemate in 2021: International recognition and internal cohesion' (Observer Research Foundation, 27 July, 2021) <<https://www.orfonline.org/expert-speak/the-taliban-stalemate-in-2021/>> accessed 9 January, 2022.

During the months of June and July, the Taliban were responsible for "*the great bulk*" of the demolition and plundering of private residences and civilian infrastructure. Extrajudicial murders are being carried out by the Taliban, and food supplies have been seized. Rape have been committed by Taliban soldiers, including gang rapes. As retaliation for providing reproductive health treatments to women, the Taliban gang-raped and killed a young girl.

The blatant shameless acts of severe human rights defiance have terrorized the humanity not merely in the nation state of Afghanistan but the intercontinental network. The horrendous situation of Afghanistan puts forward several questions- What is Taliban and How it came into force? What is the rationale behind the appalling crimes being committed by the Taliban? What was the Status Quo before August 2021? Which International Statute covers the humanitarian crisis of Afghanistan? What measures and steps can be taken at International Level to mitigate the hideous human rights violation in Afghanistan?

Hence, we will start scrutinizing the aforesaid questions by firstly looking into the background of Taliban and the status quo of the nation state of Afghanistan.

Background

It is a well-known fact that in order to have a prudent vision for the future, one is required to comprehend the subtleties and nuances of past events as the understanding of the latter usually proves to be helpful in the pursuit of the former. Due to this, a look back at the troubled past of Afghanistan under Taliban and the scenario post that rule, until their recent takeover becomes imperative. Here's a succinct description of the aforementioned periods:

The First Reign Of Taliban : Orthodox And Destructive

Taliban came into being as a militant group post the Soviet-Afghan War, which brought an end to the reign of the communist government led by PDPA (People's Democratic Party of Afghanistan). Taliban garnered public support in the name of giving security to people and upholding Islamic idea of State and gradually took control of around two-third of the total Afghan landmass by late 1996.³

³ Robert D Crews, *The Taliban and the Crisis of Afghanistan*, (first published in 2009, Harvard University Press, 2009).

The Taliban regime subscribed to an orthodox and strict Islamic ideology which is often referred to as “a mixture of Deobandi traditionalism and Wahhābī puritanism—with a conservative Pashtun social code (Pashtunwali)”.

The notorious regime treated women like second class citizens and stripped them of their rights related to education and employment. The girls were not allowed to receive education in schools and in the same way, they were not allowed to pursue the career of their choice and were forced to live a life full of restrictions. The steep decline in the social status of women in the Afghan nation-state was one of the shadiest realities of this regime. Apart from that, the mass destruction of non-Islamic monumental structures like the Buddha of Bamiyan and the usage of harsh punitive measures as a part of the criminal justice system can be mentioned as the unscrupulous actions for which the regime has been heavily criticized time and again.

End Of First Reign Of Taliban: The Period Of Mere Existence

Post the 9/11 terrorist attacks, the U.S. government demanded the extradition of Osama bin-Laden but the Taliban’s refusal to give Laden was met by a strong reply in the form of attacks by forces led by United States and NATO on the Taliban which drove them out of power but these attacks which continued till 2021, did not result in the complete obliteration of Taliban, and its leaders continued to exist.

The Beginning Of The Second Reign Of Taliban

The number of troops in Afghanistan surged significantly during the tenure of President Obama but after the talks between Taliban and the representatives of U.S in 2020⁴, the latter agreed to withdraw the forces from Afghanistan. The withdrawal of U.S. was subject to the condition that Taliban will function as per law and order but Taliban broke the truce and took over the nation state of Afghanistan for a second time.

⁴ Aditya Gowdara Shivamurthy, ‘The Taliban stalemate in 2021: International recognition and internal cohesion’ (Observer Research Foundation, 27 July, 2021) <<https://www.orfonline.org/expert-speak/the-taliban-stalemate-in-2021/>> accessed 9 January, 2022.

Instances Of Gross Violation Of International Law

1. Blatant Infringement of Human Rights by commission of crimes as per 'Draft Articles adopted by International Law Commission'

-There has been an errant infringement of *Article 1 r.w. Article 2⁵ of Prevention and Punishment of Crimes Against Humanity 2019 by International Law Commission* in the Nation state of Afghanistan. *Article 1 r.w. Article 2⁶* targets at preventing and punishing all the crimes which endanger the humanity inclusive of-

- Murder- Despite peace attempts, Taliban insurgents ruthlessly murdered about 6,000 Afghan people in 2021. According to the UN's statistical research, horrific killings occurred under the Taliban regime after the overtake, leading to abominable human right violation.
- Extermination- The Taliban threatens LGBT⁷ Afghans with 'extermination.' For homosexuality, there are only two punishments: stoning or being forced to remain behind a wall that collapses on him.
- Torture- Children as young as 14 years old were among those detained and tortured. Suspending prisoners by their wrists, inflicting beatings to the soles of their feet, electric shocks, twisting detainees' genitals, cutting toe nails, and placing people in stressful postures were all techniques utilised by civilians.
- Deprivation of physical liberty - Sheer deprivation of personal liberty and excessive torture has been witnessed in months of November 2021 as women and girls are being forcibly married and being deported to Waziristan in Pakistan.
- Deportation - 9,00,000 individuals have been uprooted in the last 3 months' period.
- Rape, Sexual Slavery, Enforced Prostitution, Sexual Violence – Thousands of women have been forced into sexual slavery by the Taliban. As part of a ploy to entice fighters to join the Taliban, the Taliban is giving “women.⁸” Sexual enslavement, not

⁵ Prevention and Punishment of Crimes Against Humanity 2019 International Law Commission Art 1 r.w. 2.

⁶ ibid.

⁷ Louise Nordstrom, 'The Taliban has a hit list for the Afghan LGBT community', (france24, 2 November, 2021) <<https://www.france24.com/en/asia-pacific/20211102-the-taliban-has-a-kill-list-for-the-afghan-lgbt-community-ngo-says>> accessed 13 January, 2022.

⁸ Aisha Ahmad, 'Afghan Women: The State of Legal Rights and Security', [2006] Vol. 3, No. 1 (January - June 2006), pp. 25-41.

marriage, is a war crime and a crime against humanity, and forcing women into sexual slavery under the pretext of marriage is a hostile act and a crime against humanity.

2. **Failure to abide by the general obligation by nation state of Afghanistan-The International Law Commission under its Draft Article** has imposed *General Obligations* under *Article 3 r.w. Article 4⁹*. Egregious transgression of general obligation under the reign of Taliban in the Nation state of Afghanistan can be seen as-

- 1st Obligation- ***“Each State has the obligation not to engage in acts that constitute crimes against humanity”¹⁰***. But a horrendous violation of 1st obligation is visible in this case as abominable crimes against humanity inclusive of sexual slavery, forced prostitution, forced pregnancy, forced sterilization that violate the basic rules of international law, persecution of identifiable groups has taken place in Afghanistan. Sexual assault must not be tolerated as part of a comprehensive strategy for achieving long-term peace, justice, and national reconciliation in Afghanistan.
- 2nd Obligation – ***“No exceptional circumstances whatsoever, such as armed conflict, internal political instability or other public emergency, may be invoked as a justification of crimes against humanity.”¹¹*** International Law under the ILC draft has strongly upheld that political instability inclusive of insurgency created by Taliban cannot justify crime against humanity but despite that no measures and efforts can be seen which curbs gross defiance of Human Rights. Entire 2021 passed but the condition in the Nation state of Afghanistan specifically in western city of Herat is as grave as it was. Civilians' rights were curtailed by the Taliban, including the ability to live without fear of retaliation against themselves and their families, the ability to continue working without the need for a mahram (male family member as a chaperone), and the right for girls in grades six and up to return to school.

⁹ Prevention and Punishment of Crimes Against Humanity 2019 International Law Commission Art 3 r.w. 4.

¹⁰ *ibid.*

¹¹ *ibid.*

- LGBT¹² Afghans are being threatened with extermination by the Taliban. It is cruel and unproductive to detain and torture minors who have previously been victims of armed insurgency organization.

3. **Non-adherence to the Principle of Non-Refoulement** -The principle of non-refoulement is a rudimentary tenet of International Law and due to this reason, all the nations across the globe are supposed not to opt for forced deportation of refugees to a country in which they may be subjected to persecution but the people who fled to other countries during the Afghanistan crisis of 2021 in search of a persecution-free life were not treated in accordance with this tenet and the refugees witnessed the rampant non-adherence to non-refoulement in different countries which further aggravated their agony.

- *Article 5¹³* of the “*Draft Articles on Prevention and Punishment of Crimes Against Humanity*” adopted by International Law Commission requires the nations to strictly adhere to non-refoulement while taking into consideration the human rights violations, but different countries forcefully deported the Afghan refugees, thereby not complying with this article.
- For instance, Pakistan alone deported around 200 refugees who had fled Afghanistan amid the aforementioned crisis. In the same way, the United Kingdom refused to grant asylum to 32,000 Afghan nationals who are very likely to get deported soon and the scenario has not been any different for the refugees who sought asylum in Iran as they also ended up getting deported.

The utter disregard for this fundamental principle by the member nations has endangered the future of the refugees, who fled their own country in search of a better future for their family. The International community has failed to address this issue in a vociferous manner and that is another reason why the innocent refugees are bearing the brunt of the imprudent actions of a few countries.

4. **Blatant infraction of ‘UN Declaration on the Elimination of Violence Against Women, 1993’ by Taliban** - Since the Taliban took control of Afghanistan in 2021, much akin to the previous Talibani regime, numerous restrictions were imposed on women including

¹² Louise Nordstrom, ‘The Taliban has a hit list for the Afghan LGBT community’, (france24, 2 November, 2021) <<https://www.france24.com/en/asia-pacific/20211102-the-taliban-has-a-kill-list-for-the-afghan-lgbt-community-ngo-says>> accessed 13 January, 2022.

¹³ Prevention and Punishment of Crimes Against Humanity 2019 International Law Commission Art 5.

the restrictions on their free movement, education and employment. Apart from that, the notorious previous regime of Taliban had also perpetrated sexual offences¹⁴ against women and coerced young girls into marrying the Talibani assassins and unfortunately, the same has become one of the harsh realities under the current regime and different news reports act as testaments for this fact. The onus lies on the international community to deal with this issue with the utmost alacrity as the failure to act in a decisive manner would only worsen the situation, as the state sponsored offenses against women have yet again become a regular affair under the current Taliban regime. This issue was recently raised by the UN itself and thus, it demands quick action.

The *UN Declaration on the Elimination of Violence Against Women* which was adopted by the United Nations General Assembly in 1993, specifies and categorises the offences against women and defines violence against women in an elaborate manner. The definition provided by the aforementioned declaration is as follows: “*Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*”¹⁵

The offences against women perpetrated by the Taliban quite conspicuously fall within the ambit of the above stated definition because the offences being committed against the women ensue physical, sexual as well as psychological harm to the individuals and since it is a definition recognized by the United Nations, the actions to curb the commission of these offences become imperative.

Potential Measures To Mitigate Crimes Against Humanity

In Afghanistan

1. **International Community shall insist on the adherence to application of Article 6(5) and Article 8¹⁶ of ‘Draft Articles adopted by International Law Commission’**- It is high time that the United Nations Organization steps up and communicates the requirement of adherence to International Laws to the leaders of the Taliban government in Afghanistan

¹⁴ Aisha Ahmad, ‘Afghan Women: The State of Legal Rights and Security’, [2006] Vol. 3, No. 1 (January - June 2006), pp. 25-41.

¹⁵ Ibid [6].

¹⁶ Prevention and Punishment of Crimes Against Humanity 2019 International Law Commission Art 6(5), Art 8.

and one of the prominent legal documents in this regard is ***“Draft Articles Prevention and Punishment of Crimes Against Humanity”***, which is a document adopted by ***International Law Commission***. There is a very high probability that this initiative of the UN would gain support from a considerable number of peace loving countries across the globe and this collective insistence may yield positive results for the war stricken nation. The concrete reason behind the same is the presence of ***Articles 6(5) and 8¹⁷***, which require the member states to not provide any impunity under their criminal law to the persons who hold any official position and to conduct an immediate and unbiased probe against the persons who seem to have been involved in crimes against humanity.

The verbatim contents of the two articles are as follows:

- **Article 6(5):** *“Each State shall take the necessary measures to ensure that, under its criminal law, the fact that an offence referred to in this draft article was committed by a person holding an official position is not a ground for excluding criminal responsibility.”¹⁸*
- **Article 8:** *“Each State shall ensure that its competent authorities proceed to a prompt, thorough and impartial investigation whenever there is reasonable ground to believe that acts constituting crimes against humanity have been or are being committed in any territory under its jurisdiction.”¹⁹*

In this way, if the aforementioned articles became effective in Afghanistan, then that would certainly be the first step towards peace.

2. Encouraging Taliban to revere the Declaration on the Elimination of Violence Against Women and act accordingly

- The rampant violence against women has become a harsh reality under the Talibani regime and a critical step for the purpose of alleviation of the agony of Afghan women from the International community would be the encouragement by the latter to the current Taliban regime to show utmost reverence towards the ***UN Declaration on the Elimination of Violence Against Women²⁰*** and to act in accordance with it. The

¹⁷ ibid.

¹⁸ ibid [7].

¹⁹ ibid.

²⁰ Aisha Ahmad, ‘Afghan Women: The State of Legal Rights and Security’, [2006] Vol. 3, No. 1 (January - Page | 12

declaration not only provides a broad and wholesome definition (Article 1) of the term “violence against women” but also requires the member states to take decisive actions in order to curb the instances of such violence irrespective of any custom, tradition or religious consideration which prevents them from taking such actions (Article 4).

- This declaration comprises six articles which are aimed at eliminating the violence against women worldwide and one of the major highlights of this declaration is the fact that it lists 8 rudimentary rights of women under Article 3 and if the Taliban embraces this declaration, then that would most certainly change the lives of the women in Afghanistan as the moment they are granted these rights, their lives would become free from restrictions.
- There already exists a law in Afghanistan for elimination of violence against women which had come into being in 2009 as a result of series of protests led by women’s rights activists for over two decades. The declaration coupled with this law would surely safeguard the rights of women and offer protection²¹ to them, if implemented by the Taliban.

3. Exhorting Taliban to abide by “Convention on the Rights of the Child, 1989” to which Afghanistan is a signatory since 1994 - As per Article 6²² of CRC, “States Parties recognize that every child has the inherent right to life and it shall ensure to the maximum extent possible the survival and development of the child.” Afghanistan is the signatory of Convention on the Rights of the Child, 1989” since 1994, which means that from the past 27 years Afghanistan has been a part of this convention and it must abide and adhere to all the provisions which have been mentioned in the convention. But the true reality is that the nation state of Afghanistan under the reign of Taliban is not abiding by the conventions.

June 2006), pp. 25-41.

²¹ Louise Nordstrom, ‘The Taliban has a hit list for the Afghan LGBT community’, (france24, 2 November, 2021) <<https://www.france24.com/en/asia-pacific/20211102-the-taliban-has-a-kill-list-for-the-afghan-lgbt-community-ngo-says>> accessed 13 January, 2022.

²² Convention on the Rights of the Child, 1989 Art 6.

All the nation states who are a signatory to this convention must exhort Taliban to abide by this convention and to specifically enforce Article 6 so as to improve the condition of children who are being treated as mortals by Taliban. In Afghanistan's Andarab valley, the Taliban has terrorized and killed young children. The militants have been searching people's houses without reason or justification and kidnapping innocent people. People chose to rise up against the crimes in order to safeguard their lives, honor, and property.

4. **Safeguarding the existence of LGBTQIA+ under reign of Taliban by adherence to Article 9, 26 of “International Covenant on Civil and Political Rights (ICCPR)”**

- *Article 9* of the ICCPR mentions that- “The right to liberty is available to “everyone” which includes all persons of LGBTQ identity.”²³
- *Article 26* of the ICCPR, “Prohibits discrimination and gives equal protection to all persons before the law has been interpreted to include transgender persons under the category of sex.”²⁴

As a measure to safeguard the critical condition and survival of members of transgender community (who are being brutally killed for the reason that they are one amongst LGBTQIA+) in the nation state of Afghanistan under the horrendous reign of Taliban, it is of utmost importance that Taliban abides by International Law mentioned under *Article 9, 26 of International Covenant on Civil and Political Rights (ICCPR)*²⁵. The majority of these rulings were given in reaction to petitions filed under the individual human rights treaties' (voluntary) Individual Complaint Mechanism or a voluntary reference to trans problems. Transgender rights have been mentioned by the ICESCR Committee, however they have continuously cited a lack of thorough studies and facts to make any decisive suggestions.

²³ International Covenant on Civil and Political Rights (ICCPR), 1977 Art 9.

²⁴ International Covenant on Civil and Political Rights (ICCPR), 1977 Art 26.

²⁵ *ibid.*

If the ICCPR is not enforced, then the status quo will continue which is appalling. LGBTQ persons are afraid of being killed by the Taliban. There are only two conceivable punishments for a guy who has intercourse with another man, and both are lethal: *“Either stoning or he has to be behind a wall that collapses on him.”*²⁶ The height of the wall should be between 2 1/2 and 3 meters.

Conclusion

The terror-stricken nation of Afghanistan has had a troubled past and the memories of the first reign of Taliban which lasted for almost half a decade, are still fresh in the minds of the people who witnessed it. While taking over the country this time, they made every possible attempt to show the world that there is a compassionate side to this militant organization which is notorious for its misogynistic and destructive tendencies. They told the whole world through their press conference that they will grant all sorts of freedoms to women including the freedom to study and work, and tried to paint a rosy picture of Afghanistan under Taliban by holding a series of press conferences but the truth saw the light of day very soon and the ground reality came in front of everyone through a number of media reports which provided facts about the rampant human rights violations²⁷ being committed by Taliban which proved that the claims made in those press conferences about a new Taliban were merely a bunch of lies. The media reports clearly show that the Taliban regime poses an immense threat to the vulnerable individuals i.e. women, children and persons belonging to LGBTQIA+ community. The whole country is in grave danger as the ones who are supposed to be the protectors are the ones who are the perpetrators.

The onus lies on the International community to make an intervention and put to use every possible measure in order to protect the vulnerable individuals residing within the territory of the Afghan nation-state. The potential measures as provided in the previous heading would be best suited to deal with this issue and the Taliban may be either incentivized or pressurized for the grassroots-level implementation of these measures as per the requirement.

²⁶ Robert D Crews, *The Taliban and the Crisis of Afghanistan*, (first published in 2009, Harvard University Press, 2009).

²⁷ Aditya Gowdara Shivamurthy, ‘The Taliban stalemate in 2021: International recognition and internal cohesion’ (Observer Research Foundation, 27 July, 2021) <<https://www.orfonline.org/expert-speak/the-taliban-stalemate-in-2021/>> accessed 9 January, 2022.

In this way, the most plausible conclusion would be that considering the graveness of the threat posed by Taliban, the intervention by the International community has become imperative and such intervention, if made in order to make Taliban revere the relevant provisions of International law, would be the sole step having the potential to alleviate the agony of the vulnerable individuals.

