

# The Legal And Human Rights Implications Of The Taliban's De Facto Authority In Afghanistan

---

TDG [thedailyguardian.com/the-legal-and-human-rights-implications-of-the-talibans-de-facto-authority-in-afghanistan](https://thedailyguardian.com/the-legal-and-human-rights-implications-of-the-talibans-de-facto-authority-in-afghanistan)

- [HOME»](#)
- [The Legal And Human Rights Implications Of The Taliban's De Facto Authority In Afghanistan](#)

**As the ICJ in its opinion on the Israel-Palestinian dispute called the occupation unlawful and human rights, ICJ, Israel-Palestine, Afghanistan, Taliban, women's rights, international law declared that building settlements in the occupied West Bank and occupied East Jerusalem was illegal and rejected any argument that Israel has sovereignty over the territories, despite its claims. Another [...]**

---



As the ICJ in its opinion on the Israel-Palestinian dispute called the occupation unlawful and human rights, ICJ, Israel-Palestine, Afghanistan, Taliban, women's rights, international law declared that building settlements in the occupied West Bank and occupied East Jerusalem was illegal and rejected any argument that Israel has sovereignty over the territories, despite its claims. Another issue that needs to be taken up seriously, is the violation of the human rights of women by the de facto authority of Afghanistan. Even though the third UN-convened meeting of Special Envoys and Special Representatives on Afghanistan took place on 30

June–1 July 2024 in Doha, Qatar to discuss the international community's approach to Afghanistan. More than one year after the first Doha meeting, there is growing concern that the international community lacks the necessary resolve to defend and advocate for the human rights of Afghan women and girls. Many Afghan women civil society have even called for a boycott of continued negotiations with the Taliban until women's rights are restored. In this context, the authors discuss the ongoing violations of human rights of women and girls and the need for fixing the responsibility of the de facto government of the Taliban .

After the US left Afghanistan, the Taliban took control of the state. They formed a de facto government which most of the states have not recognised. Thus, this government is lacking legal capacity to enter into any diplomatic relations under international law. Under International law, recognition of state and recognition of government are different. On the one hand States recognition has four criteria which are territory, population, government and capacity to enter into foreign relations. On the other hand, recognition of government is different. A state may recognize another state but at the same time does not recognise the government which is exactly the case with the de facto government of Taliban. However, when the UN body is inviting this government at UN meeting the legal question may arise, whether UN is recognizing Taliban government or not? If UN recognizes Taliban, it may be a collective recognition. But in international law recognition government doesn't happen by any dialogue. There is a process to recognition. It may be express or may be implied. Many states engage with different bodies of government even though they do not recognize the government. Non-recognition does not waive the duty of international responsibility. Therefore, if Taliban is doing wrong by women rights violation, it can be responsible in international forum without recognising the government.

Coming to the human rights situation of Afghan women, their rights and their role within society can be traced back to 1978 when a coup d'état resulted in the fall of Daud Khan's government which led to the commencement of militarisation of communist factions and mujahideen who had excluded Afghan women from the decision-making processes and access to leadership roles. Before the Soviet Invasion of 1979, there were signs of progress for women, Afghanistan has several women in the cabinet, women were going to school in cities, female presence within police force

However, the gravity of the current situation can be traced from the fact that the United Nations Human Rights Council (UNHRC) has issued a warning against systematic 'gender apartheid and gender persecution'. In a joint report last year to UNHRC, Richard Bennett, the Special Rapporteur on the situation of human rights in Afghanistan, and Dorothy Estrada-Tanck, Chair of the Working Group on discrimination against women and girls, said that the situation of women and girls in Afghanistan was among the worst in the world. In contrast, the Taliban have defended their decisions by stating that the working women in Afghanistan are violating the sharia law of their land and that their de facto government is

committed to enforcing sharia law in Afghanistan which has led to the de facto authorities dismantling the most fundamental principles of human rights, particularly for women and girls.

Going forward, the need of the hour is to establish the human rights obligations of the de facto government of the Taliban, who call themselves the Islamic Emirate of Afghanistan, and at present are exercising governmental functions and have de facto authority over the population that in essence meets the criteria of application of human rights law. It is imperative to hold the Taliban responsible under Article 10 of the Draft Articles on State Responsibility, which declares that “the conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law.



Abhinav Mehrotra &  
Bishwanath Gupta

Abhinav Mehrotra is Assistant Professor and Dr Biswanath Gupta is Associate Professor at OP Jindal Global University. Views expressed in the above piece are personal and solely those of the authors. They do not necessarily reflect Firstpost’s views.