Recognising a Government and a State – Taliban Regime

What is the issue?

With the Taliban's takeover of Afghanistan, it is imperative to look into the issue of recognising an entity that claims to be the new government of a State.

Is State and Government the same?

> The **state** is a political and geopolitical entity.
>
> The **nation** is a cultural or ethnic entity.
>
> **Government** is the means through which the State power is employed.

- In other words, State is an organized political community acting under a government (particular group of people that controls the state apparatus).
- Clearly, recognition of a 'Government' is different from recognition of a 'State' under international law.
- In the current case, the issue is about the recognition of not Afghanistan (the State) but the present Taliban regime (the government).

> Malcolm Shaw - A change in government, however accomplished, does not affect the identity of the State itself.

Why is recognition essential?

- Recognition of a government is vital in international law **to know who the governing authority of the State is.**
- Because, it is the governing authority that carries out domestic and international legal obligations relating to diplomatic relations, rights protection, etc.

What is the complexity in Afghanistan?

- State and government generally work in tandem.
- The recognition is easier if the change of government within a state occurs with political transfer of power through legal means.
- But the Taliban have ousted the sitting government using unconstitutional means / extra-legal methods.
- So, the recognition will now depend on the countries' political considerations and geo-strategic interests.

What are the different principles of recognition?

Test of 'effectiveness'

- To recognise a government means to determine **whether it effectively controls the state it claims to govern.**

    i. Control over the territory (or a part of it), national institutions, the banking and monetary system, etc.
    ii. Control over a majority of the population
    iii. A reasonable possibility of permanence

- It is immaterial how the new government occupied office (whether through civil war, revolution, or a military coup).
- As per this, Taliban would be recognised as the government as it effectively controls Afghanistan.

Democratic legitimacy

- Recognition of a government depends on whether it is the **legitimate representative of the people it claims to govern**.
- So, governments that capture power through non-democratic means should not be recognised by states.
- The Taliban regime, despite exercising effective control over Afghanistan, lacks democratic legitimacy and thus would fail to be recognised as the legitimate representative of Afghanistan.

What is the international law on this?

- Under international law, there are two modes of State recognition that confer legitimacy upon the said State.

    De jure government - The legal, legitimate government of a state and is so recognized by other states.

    De facto government – That which is in actual possession of authority and control of the state.

- De Facto recognition may be based on the effective control theory alone but it can be revoked at any time.
- But de jure recognition is non-conditional, final and irrevocable and a State will have absolute rights and obligations against other states.
- De jure recognition is largely based on the democratic legitimacy doctrine and on compliance with Article 1 of the Montevideo Convention.

    Under ***Article 1 of the Montevideo Convention on the Rights and Duties of States***, in order to acquire recognition, a state must have i) a permanent population, ii) a defined territory under its control, which is governed by a particular government, iii) the capacity to enter into relations with other states.

What are the options before the countries?

- The doctrine of democratic legitimacy is widely employed by countries who would refuse de jure recognition of the Taliban.
- Also, if the Afghan President, Ashraf Ghani, who fled the country when the Taliban entered Kabul, were to announce a government in exile, it could be recognised as the de jure government.

    1. E.g., Many countries recognised Yemen's Abdrabbuh Mansur Hadi government in exile since 2015 (de jure, not de facto) as rebellious separatists acquired power in Yemen through illegal means.
    2. Nicolás Maduro government in Venezuela is not recognised by several countries due to the alleged lack of democratic legitimacy.

- But it would still be consistent with international law if Russia and China formally recognise the Taliban regime due to its effective control of Afghanistan.
- Because there is no binding legal obligation on countries to recognise regimes based on democratic legitimacy.

What about India's decision?

- Given the Taliban's brutal past, its extremist ideology, and absence of democratic legitimacy, India may refuse legal recognition.
- However, India will still have to find a way to engage with the de facto Taliban government given India's huge investments in Afghanistan, and for multilateral dealings such as the SAARC.

Source: The Hindu, The Leaflet

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