



## Legal Capacities to Protect Human Rights in Afghanistan

Abdul Hameed Arefi

Faculty Member of the Law Faculty of Gawharshad University, Kabul, Afghanistan

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### **Abstract**

Protecting human rights is one of the most important obligations and responsibilities of political systems in human societies. Individuals' enjoyment of human rights and public freedoms has been considered the most important responsibility and one of the most fundamental obligations of rulers and administrators towards citizens. This issue has been considered throughout history as the fundamental, legal, and legal axis of individuals and legislation has been made based on it. The fundamental rights of citizens have been defined and specified in this type of law. In the history of Afghanistan, despite all the problems, developments, and crises of political, intellectual, social, cultural, and the like; the issue of human rights and general freedoms of individuals has been considered and reflected in the past laws of this country. Legal and legal support mechanisms have also been foreseen to protect these rights and freedoms. However, in the field of implementation and enforcement of legislative documents in force in the country, unfortunately, there have been problems and not much has been set as a benchmark for action. In this short article, the existing capacities and capacities in legislative documents and legal support mechanisms in line with human rights values in this country have been briefly examined. Due to research limitations, it is not possible to address all legislative documents related to this issue, so some of these important legislative documents have been mentioned.

**Keywords:** *Human Rights Values; Public Freedoms; Capacities and Legislative Documents of Afghanistan*

### **Introduction**

Attention and belief in human rights values are important and constitute one of the most important parts of the fundamental rights of the country. For this reason, this important issue is also mentioned in the Afghan constitution and is reflected in many laws. In particular, the Constitution of 2003 very clearly emphasizes human rights and general freedoms of individuals in society, and this law reflects respect for human rights and a society free from oppression, tyranny, the rejection of discrimination and violence, the rule of law, social justice, and the preservation of human dignity for all residents of this land. In the previous constitutions, the above-mentioned issues were also mentioned, and in particular, any kind of discrimination and unfair privilege between Afghan citizens was prohibited, and Afghan citizens, both men, and women, were considered to have equal rights and duties before the law, and the government was obliged to ensure the rights and freedoms of all citizens. The right of all ethnic

groups to enjoy political, cultural, and economic rights and the like was emphasized. However, there has always been a problem in implementation and execution. Adherence to legal and regulatory requirements in Afghanistan has been a dream for the citizens of this country, but unfortunately, in no historical period has this important and long-standing wish of the people of this country been fully fulfilled and realized, and this issue remains an unattainable desire for the citizens.

### **The Importance of Human Rights**

Undoubtedly, human and humanitarian rights for all human beings in all human societies must be recognized protected, and respected by governments and societies in all eras. Respecting and honoring these types of rights will lead to the growth of human personality and the flourishing of their talents. The reflection of these values in the laws in force in the country, especially in the constitution, and the effective support from political powers and the credibility of governments guarantee these values and are considered a guarantee of their implementation. Respecting the human rights of individuals in society will provide individuals with abilities by which each individual can choose and exercise their own actions and behavior in social life, and these abilities must necessarily have strong support and be organized through established rights. (Khosravi 2013: 178, 181) On the other hand, social life requires accepting inevitabilities and observing a series of necessary and essential obligations that must be observed by individuals and given serious attention. This means that individuals cannot perform their desired behaviors and actions always and everywhere. Therefore, just as the explanation of these values in basic laws is important, their limitations must also be reflected in laws and stated explicitly. These restrictions must be arranged and regulated according to legal frameworks and standards, and all individuals are free to conduct their behavior within the framework of the law so as not to harm the rights and values of others. Individuals are immune from government aggression according to legal standards and provisions. And the scope of government authority and sovereignty over individual behavior is also determined and limited by laws. Governments are obligated to provide the legal basis for everyone to enjoy this right. No one can deprive others of their human rights and values under the pretext of having this right. The principle of respect for human dignity and respect for human beings is the criterion and standard for the use of these rights and values. (Danesh 1975: 535) No one is allowed to arbitrarily reveal the secrets of the private lives of others, insult and humiliate people, deny anyone, falsely accuse people, and reveal the telephone conversations of individuals under the pretext of freedom of expression. All of these types of actions and behaviors are considered contrary to the values of human rights of individuals and are prohibited.

### **Legal Capacities and Human Rights Values in Afghan Legislative Documents**

The people of Afghanistan have always faced many problems and difficulties in relation to their human rights and humanitarian values. In addition to the problems and crises, instability, conflicts, and devastating and destructive wars; they have been constantly deprived of their human rights and human dignity. In different periods, efforts have been made to promote the human rights values of the people and citizens of this country, but they have not been very fruitful. However, the mere reflection of these values in the country's important legislative documents is important and noteworthy. In this regard, the following legislative documents can be considered among the most important guarantees and capacities for protecting human rights values in Afghanistan:

#### **1. Constitution of 2003**

The most important step in explaining and securing human rights values has been the formulation and ratification of this constitution. From a legal perspective, the constitution, as an important national document and guarantee, secures human rights values in society. The constitution creates order in society in all different social spheres and creates a connection and balance between the political system and individual freedoms. According to many writers and researchers, the drafting of the Constitution is considered one of the important achievements in protecting and safeguarding the values of human rights

of individuals and guaranteeing their implementation. Accordingly, the second chapter of this law is dedicated to the values of human rights and general freedoms of individuals in society, emphasizing that no one should be deprived of these rights without legal authorization.

Due to the importance of the issue, it is necessary to briefly mention its cases:

The right to life; is the first and most important human right of individuals in society and has been recognized and protected in terms of religious teachings and in the Constitution. In law, this right is also recognized as a divine gift, and its protection is emphasized.

The right to personal security: This right is also recognized in this law and its protection is emphasized. Based on it, no one, including the government, has the right to arbitrarily attack the life, property, honor, and reputation of individuals.

The right to travel and choose one's place of residence; Travel and choose one's place of residence are fundamental human rights of individuals, and they can benefit from this right both inside and outside the country to meet their job, business, education, medical, and other needs. (Shariat Panahi 2008: 147) Therefore, every person should be able to use the roads freely, equally, and free of charge at any time and in complete safety, and to reside in the place of their choice. No one has the right to deprive anyone of this right.

Freedom of thought and belief is one of the most important manifestations of human freedoms, which is reflected in this law, and based on it, individuals have the right to have any thoughts, ideas, beliefs, and convictions regarding religion, morality, sect, politics and the like, and to be able to think and reflect freely and of their own free will and choose their own beliefs, and there should be no imposition in accepting it, nor should there be any compulsion to confess it. (Rahimi Nejad 2008: 119, 121) Therefore, individuals can have any thoughts and beliefs, and no one can prosecute or persecute someone simply for having a particular thought or belief. It is clear that enjoying this kind of freedom will lead to creativity, innovation, and the flourishing of human talents, and limiting it will lead to the destruction of human talents and, as a result, the backwardness of society. Therefore, the basis for the enjoyment of it by the members of society must be provided. (Shariat Panahi 2008: 147, 148) According to the emphasis of the Constitution, freedom is a natural human right. This right has no limits except the freedom of others and the public interest, which is regulated by law.

Freedom of expression: Freedom of expression means that individuals are free to express their views, thoughts, beliefs, opinions, and information, and can convey and express their views to others through speech, books, works of art, conferences, the press, and the like. Freedom of expression is a human right that must be guaranteed in society in the field of expressing thoughts, beliefs, and ideas without fear of prosecution, punishment, and detention unless it violates human values and the rights of others. Of course, this type of freedom is not intended to be absolute but rather has limitations that are important from a religious and legal perspective, and much emphasis has been placed on them. Freedom of expression should not undermine religion or insult sacred things, nor should it be contrary to human dignity, nor should it harm the honor, reputation, and status of individuals in society.

Freedom of religion: Every individual has the right to have a particular belief in religious matters, to be free to perform their religious ceremonies, and to publicly teach their religious teachings (Rahiminejad 2008: 120). Therefore, performing religious ceremonies, teaching, educating, and practicing religious and religious rules in society are considered essential to freedom of religion. However, it is worth noting that individuals in society cannot ignore the limits and balances of laws and the maintenance of public order under the pretext of enjoying this principle. Therefore, the performance of religious ceremonies should not cause harm to followers of other religions and sects. Followers of religions in Afghanistan are free to perform religious ceremonies according to their own jurisprudence, as well as to

religious education and upbringing and personal matters such as marriage, divorce, inheritance, and wills and related lawsuits.

Freedom of assembly, processions, and gatherings; according to which individuals had the right, in accordance with the laws in force in the country, to gather in a designated place and exchange views on political, social, and other issues. Formation of assemblies and processions without weapons, provided that they did not violate Islamic principles and values, beliefs, or insult religious sanctities. Citizens may assemble and demonstrate for lawful and peaceful purposes, without carrying weapons.

Freedom and the right to have a suitable job; based on this, everyone is free and has the right to choose any type of job they wish to do, of course within the framework of the law and provided that it does not contradict government laws, contradict Sharia, public order, good morals, or conflict with the rights of others.

The right to choose housing; Given the importance of housing for individuals in society, the home or any place where individuals reside must be protected from attack, and no one, including government officials, has the right to enter or inspect a person's housing without the owner's permission. If necessary, they are required to obtain permission for inspection and inspection from the competent judicial authorities and courts.

Freedom in education; having access to education is the right of all people. The state is obliged to provide free education. (Judge Shariat Panahi 1387: 149, 150) Education is the right of all Afghan citizens and the state is obliged to regulate all educational programs and take appropriate measures.

Freedom in elections: Since elections are considered a method of selecting and determining representatives and include all different stages such as registration, voting, and announcement of results, it requires that in the process of holding elections, citizens can freely and without discrimination exercise this legal right and vote for the person they want without fear and that the people's votes determine the outcome of the elections. (Khosravi 2013: 196, 197) According to humanities scholars, elections provide legitimacy to the government and further strengthen the relationship between the people and the government. Elections have become a common and global culture as a peaceful and non-violent means of establishing institutions of power, and in many countries, political leaders try to gain power by winning the votes of the people.

The right to own legitimate business and property; The economic and legal system of Islam has recognized and supported the private property of individuals, in such a way that the rights of both the individual and society are ensured. (Amid Zanjani 1373: 535, 537) The property of individuals is protected from infringement. No person shall be prohibited from acquiring or possessing property except within the limits of the provisions of law. No person's property shall be confiscated without the order of law and the decision of a competent court. The appropriation of a person's property shall be permitted by law only to secure the public interest, in exchange for prior and fair compensation. The search and declaration of a person's property shall be carried out only by the provisions of law. The ways of acquiring property are limited according to legal and religious criteria and permissions, based on which the acquisition of illegitimate and unlimited wealth will be curbed.

Freedom and judicial security of citizens; Individuals should enjoy this type of freedom and should feel that they are not pursued and prosecuted without reason, that they are not arbitrarily summoned, and that individuals are not considered criminals unless there is legal evidence and reasons for their guilt. (Danesh 2015: 720) Therefore, the acquittal of individuals is the main condition. The accused is presumed innocent until proven guilty by a final judgment of a court of competent jurisdiction. Crime is a personal act and does not spread to another person. Therefore, the government is obliged to provide citizens with the opportunity to enjoy judicial freedoms and prevent violations of these freedoms. No one can be arrested without legal grounds. In the event of arrest, the subject of the charge must be

immediately communicated and explained in writing to the accused, stating the reasons. Therefore, every individual has the right to appeal to competent courts and have easy access to justice in order to defend their rights.

All of the above are important aspects of human rights and public freedoms of individuals in society, and each of them plays a fundamental role in the lives of individuals and is decisive, so it is reflected in this constitution.

## **2. The 1964 Constitution**

According to this newly enacted and formalized constitution, all Afghans are considered equal before the law without discrimination or privilege and enjoy equal rights and duties.

Public freedoms in this law are considered essential and natural rights of humans. These types of rights have no limits except the freedom of others and the public interest regulated by law. This constitution emphasizes that the freedom and dignity of humans are inviolable and indivisible from individuals and groups. The state is obligated to respect and protect the general freedoms of individuals and the inherent dignity of humans.

According to this law, no act shall be considered a crime except by a law that was in force before its commission. No one may be punished except by a judgment of a competent court issued after a public and present trial. No one may be punished except by the provisions of the law that were in force before the commission of the act charged. No one can be prosecuted or arrested except by the provisions of the law. No one can be detained except by the order of a competent court and by the provisions of the law.

According to this law, important legal principles such as the principle of innocence of individuals and individuals have been taken into account and considered as the main condition. Therefore, the accused is considered innocent until he is convicted by a final court verdict.

In this legislative document, crime is considered a personal matter. For this reason, the prosecution, arrest, or detention of the accused and the application of punishment to him do not extend to another person, and it has been emphasized that torture of human beings is not permissible. For this reason, it has been very clearly stated that no one can be tortured or ordered to torture another person, even to discover the truth from him, even if that person is being prosecuted, arrested, detained, or sentenced to punishment.

Also, in this Constitution, it is not permissible to determine a penalty that is contrary to human dignity. A statement obtained from the accused or another person through coercion is not valid. A confession to a crime is a confession that the accused makes with full consent, in a state of sound mind, to the commission of a crime that is legally attributed to him in the presence of a competent court. This law clearly states that every person has the right to appoint a defense attorney to defend him against any charge brought against him by law.

This law emphasizes that the indebtedness of a person to another person cannot deprive or restrict the freedom of the debtor. The manner and means of collecting debt are regulated by law.

Freedom of travel and the right to choose one's place of residence for citizens of the country are recognized and emphasized in this law, stating that every Afghan has the right to travel and choose a place of residence anywhere in the territory of his government, except in areas prohibited by law. Also, every Afghan has the right to travel outside Afghanistan and return to it by the provisions of the law.

The right to personal security is specified in this law and this fundamental right is emphasized in such a way that no Afghan will be sentenced to exile inside or outside Afghanistan. No Afghan will be handed over to a foreign government due to accusations of a crime.

The right to security of one's home is also respected and emphasized in this law, stating that a person's home is immune from invasion. No one, including the government, may enter or search a person's home without the permission of the resident or a court order with jurisdiction, except in the circumstances and manner specified in the law. In cases of an obvious crime, the responsible officer may enter or search the residence of the person under his/her responsibility without his/her permission or the prior permission of the court. The said officer is obliged to obtain the court's decision after entering or conducting the search within the period determined by law.

This law clearly states that the property of individuals and individuals in society is respected and protected from infringement. No person's property shall be confiscated without the order of the law and the decision of a competent court. The acquisition of a person's property is permitted only to secure public interests, in exchange for prior and fair exchange by the law. No one shall be prohibited from acquiring and disposing of property except within the limits of the law. The method of acquiring property shall be regulated by law to secure public interests. The inspection and declaration of a person's assets shall be carried out only by the law. Foreign states and nationals shall not have the right to own real estate in Afghanistan. The sale of real estate to political missions of foreign states based on reciprocal procedures and to international organizations of which the Afghan government is a member is permitted after the consent of the government.

The freedom and privacy of communications between individuals and groups is also addressed in this law, and it is emphasized that letters, telephones, telegraphs, or any other means of communication are immune from attack. The government does not have the right to inspect individuals' communications except by decision of a competent court and by the provisions of the law. In urgent cases as defined by law, the responsible officer may conduct a telecommunications inspection on his responsibility without prior permission from the court. The said officer is obliged to obtain a court decision after inspecting within the period specified by law.

Freedom of thought, opinion, and expression are recognized for individuals in this society and are protected from infringement under this Constitution. Every Afghan has the right to express his or her thoughts by speech, writing, image, or the like by the provisions of the law. Every Afghan has the right to print and publish materials by the provisions of the law without prior submission to government authorities. Permission and privileges to establish public printing presses and publish the press shall be granted only to citizens of the Afghan government in accordance with the provisions of the law. The establishment and operation of public radio and television broadcasting facilities shall be reserved for the government.

The right to freedom of assembly and demonstration to raise legitimate demands is respected by individuals and citizens of the country and is permitted for nationals. Citizens of Afghanistan have the right to assemble for lawful and peaceful purposes without carrying weapons by the provisions of the law without prior permission from the government.

The right to establish associations and form parties by citizens of this country is also recognized, and based on this constitution, citizens of Afghanistan have the right to establish associations to achieve material or spiritual goals by the provisions of the law. Citizens of Afghanistan have the right to form political parties by the provisions of the law, provided that the party's goals and activities and the ideas on which the party's organization is based do not contradict the values enshrined in this Constitution. The organization and financial resources of the party are public. A party formed by the provisions of the law may not be dissolved without legal grounds and a ruling by the Supreme Court.

Compensation for individuals and persons is also emphasized in this law, stating that any person who suffers damage from the administration without cause is entitled to compensation and can file a lawsuit in court to obtain it. The government cannot take action to obtain its rights without a court order, except in cases specified by law.

The right to education and training for all citizens of the country is generally considered in this constitution, in that education is the right of all Afghans and is provided free of charge by the government and citizens of Afghanistan. The government's goal in this area is to reach a stage where appropriate educational facilities are provided to all Afghans by the provisions of the law. The government is obliged to formulate and implement an effective program for the balanced dissemination of education throughout Afghanistan. The government is responsible for guiding and supervising education. Primary education is mandatory for all children in places where the government has provided the means. The establishment and management of higher and general educational institutions is the sole right and duty of the state. Outside this area, Afghan citizens have the right to establish private and literacy schools. The conditions for establishment, curriculum, and conditions of study in such schools shall be regulated by law. The government may, by the provisions of the law, permit the establishment of private schools by foreign persons. Only foreigners can use these schools. The government is obliged to formulate and implement an effective program for the development and strengthening of the national Pashto language.

The right of individuals to access health and sanitation services is also emphasized in this law, stating that the government is obliged to provide, within its capabilities, means of preventing and treating diseases in a balanced manner for all Afghans. The government's goal in this area is to reach a stage where adequate health facilities are provided to all Afghans.

The right to employment is also recognized for all individuals in this constitution, and it is clearly stated that work is the right and duty of every Afghan who has the power to exercise it. The main goal of laws enacted to regulate labor is to reach a stage where the rights and interests of workers' guilds are protected, favorable working conditions are provided, and relations between workers and employers are regulated fairly and progressively.

Regarding the right to employment in government jobs; this law states that Afghan citizens are accepted into government service based on their qualifications and by the provisions of the law. The choice of job and profession is free within the conditions determined by the law. Imposing forced labor is not permissible, even if it is for the government. The prohibition of forced labor does not prevent the implementation of laws that are enacted to regulate collective activities to ensure public interests.

Also, according to this constitution, every Afghan is obliged to pay taxes and duties to the government. No type of tax or duty shall be imposed without the provision of law. The amount of tax and duty and the method of payment shall be determined by law with due regard for social justice. This provision shall also apply to foreign persons. Defending the homeland is the sacred duty of all Afghan citizens. Afghan citizens are obliged to perform military service by the provisions of the law. Following the provisions of the Constitution, obeying the laws, observing public order and security, protecting the interests of the homeland, and participating in national life are the duties of all Afghan people.

The above-mentioned matters in this constitution are considered to be among the most important examples of human rights and public freedoms of individuals and are reflected in this legislative document. Respecting and protecting the public and human rights and freedoms of individuals in society is considered to be one of the important duties of the government.

### **3. Public Media Protection Law**

According to many experts and writers, the media plays a significant and fundamental role in promoting and upholding human rights values and public freedoms in society and is considered a sign of respect for the right to freedom of expression. In all societies, the media is regarded as a fundamental

pillar and a vital element of a civilized community. This is because access to information enables citizens to oversee and monitor the processes and mechanisms of governance, as well as the activities of the government. Citizens can observe how the government and its institutions fulfill their responsibilities and duties.

Citizens have the right to be fully informed about government documents and performance reports related to public services. Ensuring the right of access to information for individuals fosters transparency in society and leads to the accountability of government institutions. Consequently, it serves as a logical mechanism to combat and eliminate corruption. For this reason, no authority can justify placing people in an information vacuum under the pretext of public interest, maintaining order, or ensuring security, nor can they distort social truths and realities in a misleading manner.

The realization and guarantee of this right for citizens depend on the safety and protection of journalists. If the media and journalists do not feel secure, they naturally cannot provide accurate and timely information, perform their duties with peace of mind, or boldly expose economic crimes, administrative corruption, and violations without fear. Information dissemination and access to information are impossible without ensuring the safety and protection of journalists.

However, reporting should not involve spreading false information or causing public disorder and psychological distress in society. Legal restrictions must be strictly observed. The right to access information, like any other right, is not absolute and has its limitations that must be considered. These include safeguarding national stability and security, protecting personal rights and individual privacy, and avoiding the incitement of ethnic, linguistic, or religious hatred, as well as refraining from promoting violence. Failure to adhere to these limits will disrupt public order.

Therefore, the crucial mission of the media is to inform and enlighten public opinion while raising the level of public awareness. The media must play a beneficial and effective role in ensuring transparency, monitoring government institutions, combating administrative corruption, strengthening national unity, and fostering solidarity in society. They should also strive to promote and advocate for human rights values and the principles of human dignity.

#### **4. Legislative Documents on Women's Protection**

The development of legislative documents to safeguard the rights of women and children in Afghanistan has been a serious priority. Numerous laws and regulations have been enacted and enforced to enhance their protections. However, significant concerns remain regarding the dire situation of women, which continues to be a major challenge.

International institutions have repeatedly emphasized that the condition of women in Afghanistan is far from satisfactory, with severe shortcomings in legal rights, employment opportunities, and personal and social life. In the sphere of social activities, women have had minimal participation and lack job security. A large number of women have faced various forms of violence and discrimination.

Many scholars argue that women constitute half of society and play a crucial and decisive role. Depriving them of educational opportunities diminishes their potential contributions and stifles their talents. It is essential to provide them with proper educational opportunities so they can acquire the necessary skills and effectively fulfill their familial, educational, managerial, and social responsibilities.

Ensuring equal opportunities for women is vital for the country's development and prosperity. Their exclusion results in a loss of valuable capabilities for society. For this reason, international human rights instruments obligate member states to eliminate all forms of discrimination against women and recommend that all countries promptly and effectively implement policies to end such discrimination.



Undoubtedly, these measures will transform women into active and prominent forces in the social and administrative spheres of the country.

### **5. Human Rights Protection Directive for Government Offices**

The Human Rights Protection Regulation for Government Institutions was developed and approved to better uphold human rights values within state agencies. This regulation was significant both from a religious perspective, emphasizing the preservation of human dignity, and in terms of existing national legislation as well as international instruments that the Afghan government had adopted and committed to uphold.

The formulation of this regulation was particularly important as its implementation would ensure the protection of both employees and clients' rights within government offices. Proper enforcement would have established monitoring mechanisms in state institutions through legislative documents.

Key objectives included creating greater harmony between laws, regulations, policies, strategies, and government programs with human rights standards, as well as raising awareness about human rights among ministry staff and government employees. Unfortunately, in practice, the regulation was never properly implemented.

### **Conclusion**

The reflection of human rights values and public freedoms in legislative documents is crucial and can serve as an important mechanism for ensuring these rights and freedoms. On the other hand, the commitment and adherence of political systems and powers to these legislative documents can guarantee these values. Therefore, it is essential that governing systems in every country consider human rights values and public freedoms in both the "formulation of legislative documents and their implementation." Neglecting these rights in society will have irreversible negative consequences.

In Afghanistan, attention to and utilization of these existing legal frameworks and capacities can help protect and uphold human rights values in society. Undoubtedly, taking practical and effective steps within the existing legal framework in Afghanistan will establish the rule of law, ensure justice, and create lasting stability and order in society, while also safeguarding the inherent human rights values of individuals. The existence of appropriate legislative documents and a commitment to their implementation and enforcement will ensure the preservation of these fundamental rights and inherent human values.

In other words, the most important guarantee for protecting public rights and freedoms in all societies, especially in Afghanistan, lies in these very legislative documents. It is hoped that this critical issue receives the attention it deserves.

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