



## Examining the Rights of Foreign Tourists in the Law of Afghanistan

Sayed Hassan Anwari<sup>1</sup>; Nematullah Nabavi<sup>2</sup>

<sup>1</sup> Researcher, Lecturer of Rabia Balkhi University, Afghanistan, Kabul, Afghanistan

<sup>2</sup> Graduated in Criminal Law and Criminology, Al-Mustafa International University, Qom, Iran

E-Mail: [anwary1373@gmail.com](mailto:anwary1373@gmail.com); [Nematnabavi14@gmail.com](mailto:Nematnabavi14@gmail.com)

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### **Abstract**

Today, travel and tourism are urgent needs of the world's modern culture that all people try to have fun and travel domestically or internationally, which is very important for countries in terms of business and economy. They always try to develop the tourist industry. To attract many tourists to the country, to improve the level of the country's economy, in addition to the development of economic infrastructure, and political and security stability, it is necessary to recognize the rights of tourists in domestic laws. Therefore, in this article, the right to tourism and the general rights of tourists in the legal system of Afghanistan are examined. So, the Afghan legislator recognized the right to tourism, freedom, and general human rights for individuals in the constitution, and according to Article 7 of this law, all the freedoms and general rights that are included in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights or the treaties that the Afghan government It is a member of foreign citizens, which includes the right to security (life and financial), the right to human dignity, the right to travel and choose residence, the right to privacy, the right to access the consulate, the right to go to court, and the right to access information. It recognizes the necessity and is obliged to observe it in the sovereignty of the government territory, and on the other hand, foreign tourists who come to Afghanistan must observe the norms, culture, and internal laws so as not to be against public opinion and conscience.

**Keywords:** *Tourists; Right; Freedom; Country; Foreigner; Law; International*

### **1. Introduction**

Undoubtedly, since the beginning of his life, man has always sought to experience mental and physical happiness and his material and spiritual progress. Therefore, to acquire it during one's life, one should do different activities, including traveling to historical, artistic, literary, and symbolic places and interesting and spectacular natures that exist in other cities and countries for fun, research, getting to know new cultures, and even development. They like to do business. According to the principle of freedom and the principle of freedom of movement, a person has the right to travel wherever he wants. But this trip, when it is to the second country, definitely has limitations. In this sense, according to Article

"24" of the Universal Declaration of Human Rights, and according to Article (12) of the International Covenant on Civil and Political Rights, the United Nations recognizes tourism and tourists as a fundamental right without discrimination based on race, gender, language, position, religion, recognized politically and... so that citizens can travel to the third country more easily and travel easily, which is clearly stated in paragraph (2) of the same article, everyone can freely leave their own country or another country and travel to the target country. Based on this, the member states of the United Nations have gradually provided support for international tourists in their domestic laws. Therefore, in this research, library research was conducted regarding the rights of foreign tourists in domestic laws, which until now no article or research has been done or at least not available to us, so that the rights of tourists in the legal system of our country are determined and attract tourists and encourage them. And more income can be earned in this way.

Therefore, Afghan legislators, in addition to accepting the fundamental rights of the people under their rule, explicitly oblige the Afghan government in Article (7) of the Constitution to implement the United Nations Charter, the Universal Declaration of Human Rights, and the international covenants of which it is a member. comply Therefore, in this article, it is tried that according to the acceptance of the rights of tourists in the international laws, what rights the legislator has accepted for the tourists in the domestic laws are discussed and expressed clearly and clearly by using the provisions of the law.

## **2. The Concept of Tourism Right**

Tourism is a part of contemporary culture. (Lanquar, 1381, 10) for which many definitions have been stated. Dehkhoda's dictionary has defined it as traveler and tourist. It means traveling and leaving a permanent place temporarily to enjoy and live somewhere else. In other words, tourist means tourism (Qaemi, 1399: 157), whose equivalent word in English is tourism, which means traveling to enjoy or earn money. However, the International Tourism Organization has so far provided several definitions of tourism, according to the latest definition of this organization, "tourism or tourist is a set of actions that a person or group does in a place other than their usual environment and this trip lasts more than a year. It does not kill, and its purpose is entertainment, recreation, rest, sports, and such activities" (Visi, Mehmandoost, 1394: 140). Today, with the globalization of tourism the provision of favorable conditions for tourism in different countries, and the creation of the International Tourism Organization, the meaning and concept of tourism have changed and tourists have been given new rights and special privileges in addition to their natural rights. Therefore, countries that are members of the United Nations and the International Tourism Organization have tried to recognize the rights of international tourists and provide facilities and facilities to attract them to the country. so that in this way he can meet the economic goals of his country and establish the role and greatness of the nation in the international arena. According to Article (7) of the Constitution approved in 1382, the government is obligated to implement the United Nations Charter, the Universal Declaration of Human Rights, and the international treaties and covenants of which the Afghan government is a member. By implementing and complying with this article, the rights of foreign tourism in Afghanistan will be considered optimally. On the other hand, paragraph (1) of article (2) of the Tourism Law, which is still valid and in effect, and approved by the Revolutionary Council of the Democratic Republic of Afghanistan in 1357, has defined tourist or tourism. "Tourist: A person who visits a country other than the one he lives in, provided that he does not engage in a duty for which specific payment is made there. This visit is intended for recreation, rest, vacation, treatment, research, tracking, sports, business, and visiting relatives, it also includes delegations and meetings, and it includes at least (24) hours of stay, which refers to tourists and tourism. The foreigner is not aware of the situation of the domestic tourists from city to city in the country of tourism. Therefore, people who have traveled from their country individually or in a group for recreation, rest, treatment, research, business, sports, and meeting their relatives and friends to a third country officially for more than (24) hours and less than one year. It is called tourist or foreign tourism.

### **3. Basics of the Right to Tourism**

Humans naturally have the right to be tourists, because of its inherent nature, this right is recognized as essential for humans and cannot be reserved for specific people in a specific land. It means that all human beings are equal in creation and branching from the same source, and factors such as language, race, religion, gender, and nationality only differentiate them, not deprive them of their rights and discriminate. (Ahmadi, Jafari, Hosseini Sadrabadi, 2019: 567). The inherent right of tourists and the principle of freedom of movement is one of the most important human rights and public freedoms, based on this principle, everyone has the right to freely travel within their country and even leave that country or return to it, so no country can close its borders to its citizens so that people cannot leave the country or another country cannot prevent the entry of a foreign citizen without reason and deprive him of this right. (Maqami and Droodgar, 2016: 161) Of course, these rights and freedoms had grown only based on religious beliefs until the 18th century, but after the American Independence Revolution and the French Revolution in 1789, it expanded until today with the support of the United Nations. The countries of the world have recognized these rights and freedoms in the constitution with varying degrees, and the global public opinion is getting ready to accept such rights and freedoms day by day. (Ahmadi, Jafari, Hosseini Sadrabadi, 2019: 568) Therefore, it is necessary to discuss these rights and freedoms in international documents and domestic laws separately to clarify the audience.

#### **3.1. The Right to Tourism in International Documents**

By recognizing the inherent dignity and dignity of human beings, all human beings have equal rights and freedoms, the non-deprivation of which is the foundation of justice and peace in the world; Therefore, the United Nations declares the Universal Declaration of Human Rights as a common goal of all peoples and nations so that all individuals and institutions of society should always keep this declaration in mind and develop the respect for these rights and freedoms with the cooperation of education and with increasing measures. national and international, to ensure their global and effective recognition and implementation both among the people of the member countries and among the people of the lands that are in their territory (Ahmad, Jaafari, Sadrabadi, 2019 :577-581). Therefore, in Article "24" of the Universal Declaration of Human Rights, and Article (12) of the International Covenant on Civil and Political Rights, recreation and tourism are recognized as a fundamental right without racial, gender, linguistic, ethnic, religious, and political discrimination so that people can Travel to the second country comfortably and without worries.

But what justifies the basis of the right to travel is the right to freedom of passage, which is undeniable, people have freedom in passing from one place to another within the country or outside the country, unless restrictions are imposed according to the law. So individuals leave their country individually or in a group and go to another country under the title of tourists, these countries cannot prevent their movement unless it harms the security and general order of the society (Khodabakhsh, Tajrishi, 2014: 3). In paragraph 1 and 2 of Article 13 of the Declaration of Human Rights, it is stated that "everyone has the right to freely travel and choose his place of residence within any country. Everyone has the right to leave any country, including his own country, or to return to his own country," which is confirmed by Article 13, Paragraph 1 and 2 of the Declaration of Human Rights, and Article 20, Paragraph A of the Islamic Declaration of Human Rights states: "Every human being has the right to freely He should move from one place to another and choose his place of residence in Islamic cities and countries or outside them when necessary. In this case, the right of all people to freely travel between different countries is guaranteed, and one of the advantages of tourists is that tourists enjoy their trip and their personal, financial, and privacy security is ensured.

### 3.2. The Right to Tourism in Domestic Laws

Afghanistan was accepted as a member of the United Nations on November 19, 1946. Since then, it has gone through political ups and downs, and in some of these periods; The international laws that Afghanistan has accepted have not been properly and accurately implemented. However, with the establishment of the Islamic Republic of Afghanistan and the approval of the Constitution in 2002, the legislator recognized the right to travel and tourism for its citizens inside and outside the country based on Article 39 of this law: "Every Afghan has the right to travel to any part of the country and choose housing, except in the areas that are prohibited by law. Every Afghan has the right to travel abroad and return to Afghanistan according to the law". This means that all citizens have the right to travel anywhere in the country or abroad and return to their place of residence. However, the rights of foreign tourists cannot be deduced from this article. However, according to Article (7) of the Constitution of Afghanistan, the government of Afghanistan is obliged to implement and observe the United Nations Charter, the Universal Declaration of Human Rights, and the international covenants of which it is a member.

Therefore, according to Article 7 of the Constitution of Afghanistan, the government of Afghanistan is obliged to comply with the Declaration of Human Rights and international covenants and has accepted all the fundamental rights of foreign tourists in its territory, because the fundamental rights of foreign tourists are included in the Universal Declaration of Human Rights and the Covenant. The above-discussed international civil and political rights are recognized without racial gender, linguistic, religious, and political discrimination. Afghanistan accepts this declaration and covenant and is obliged to comply with it. Therefore, this country cannot run away from the responsibility of ensuring the safety of life and property of foreign tourists based on the principle of territorial sovereignty and does not respect these rights. On the other hand, Article 57 of the Constitution states, "The government guarantees the rights and freedoms of foreign nationals in Afghanistan, according to the law." These persons are obliged to comply with the laws of the Afghan government within the limits of international law. Therefore, based on Article 57 of the Constitution according to Article 58 of this law, "the government establishes the Independent Human Rights Commission of Afghanistan to monitor the observance of human rights in Afghanistan and to improve and protect it. Any person can complain to this commission in case of violation of his human rights. The Independent Human Rights Commission of Afghanistan was established, to be able to respect and implement the human rights of all people properly, both domestic and foreign, which confirms this article in Article 21, Clause 20 of the Constitution, the duties and competencies of the Independent Human Rights Commission of Afghanistan. The Independent Human Rights Commission is obliged to cooperate with the United Nations and other regional and international institutions within its jurisdiction to fulfill and respect human rights.

### 4. Ensuring the Rights of Tourists in the Host Country

Tourism is one of the natural and fundamental rights of every human being, and after accepting this right, countries cannot refuse to accept other rights and freedoms following it. When a person has permission to travel and the second country accepts him as a tourist, the host country is obliged to accept the public rights and freedoms that are associated with human nature and that humanity enjoys because of being human for this reason, there is no difference between a citizen and a foreigner, and one of the most important characteristics of such rights and freedoms is that they are non-transferable, including all human beings, and cannot be changed (Gharibah, 2010, 192). Although these rights and freedoms were limited to religious beliefs until the 18th century, and since then, especially after the American Revolution and the French Revolution of 1789, they have expanded and gradually included the basic and normal laws of countries. 11).

Today, one of the important factors in the realization of tourist rights is the legal regulations of the countries, which play an essential role in the development of the tourism industry (Farhoudi and Shurcheh, 2013, 23). It is necessary to formulate laws and regulations to protect tourists and create

security for them because the entry of foreign tourists to any country and the prosperity of foreign tourism are largely related to the laws and regulations that protect their rights. The main necessity of planning such an issue is the urgent need to revive tourism, not only for economic purposes but also to restore the greatness of the nation in the international arena. Now, with a little reflection on this ground, we can see that the entry of tourists to any country, along with having tourist attractions (natural and artificial), requires preconditions, one of the most important of which is the provision of the rights and freedoms of tourists: security and freedom; some principles play the main role in this field along with the attractive conditions of the countries. Therefore, in this section, the writer tries to state and clarify the basic rights and freedoms of foreign tourists that must be observed in the laws of Afghanistan, so that tourists know that their rights and freedoms are protected and secured after entering Afghanistan.

#### **4.1. The Right to Human Dignity**

Today, the most important legal issue is the general rights of human beings, which are based on the most fundamental human rights, the natural dignity and dignity of human beings (Mehrpour, 2014, 360). Allah Almighty says in the Holy Qur'an, verse 70 of Surah Al-Israa: "And We greatly honored the children of Adam, and we took them on the sea and the sea and provided them with every delicious and pure food, and we gave them superiority over many of our creatures and We gave great virtue." From this verse, it is clear that God has given the human species superiority over other creatures in the world, and on this basis, all human beings must recognize dignity and respect for each other as a right and see themselves as obligated to that right. (Gharbiyeh, 2013, 203) means that human dignity is inherent, which is caused by the presence of God's spirit in human beings. All legal and moral systems have recognized the inherent dignity of all human beings and consider it necessary to respect this right. It is believed that when a person does not take it away from himself by his own free will by committing a crime, he has this honorable quality. (Compiler, 1380, 196)

Basically, following the Holy Qur'an, the United Nations stated in the introduction of the Declaration of Human Rights: "Since the recognition of the inherent dignity of all members of the human family and their equal and inalienable rights forms the basis of freedom, justice and peace in the world..." In this sense, the United Nations in many covenants, especially in Article (10), "All persons deprived of their freedom must be treated with humanity and respect, which is the inherent truth of the human person." In Article (17) "No one should be subjected to arbitrary or illegal interference in their private, family, home or correspondence life. Also, his honor and dignity should not be subjected to unlawful attack" The International Covenant on Civil and Political Rights explicitly emphasizes the inherent dignity and dignity of human beings. Fundamentally, "human freedom and dignity are immune from aggression." The government is obliged to respect and support human freedom and dignity. It has recognized human dignity explicitly and implicitly in articles (23, 34, 37, 38, etc.). Therefore, according to the above content, countries and nations are obliged to preserve the inherent dignity and dignity of tourists in their territories and respect the dignity and honor of tourists, and may the government and the Muslim nation of Afghanistan grant this right to all foreigners.

#### **4.2. The Right to Security**

The right to security is one of the most basic fundamental rights of tourists, which is at the top of the legal documents of countries and international documents. Because this right causes other rights of individuals to be asserted (Alizadeh, Kaviani, 2013, 258), because in the absence of security, no person can benefit from his other rights, and security is the basis of inviting tourists to the country. It means that tourists travel when they feel their personal, financial, and health security in the country in question and the host country has implemented and announced this right for tourists from a legal and practical point of view.

According to the constitution of Afghanistan, the lawmaker has considered the right to security, which includes life and financial security, as one of the main and basic duties of the government, and has

made the government obligated to provide security for all people. Because in Article (23) of this law, it is stated that "life is a gift from God and a natural right of the man." No person is deprived of this right without legal permission." In this article, the legislator means the right to human life, which no one can take away without a warrant, and it is also stated in Article (40) of the Constitution that "property is immune from encroachment." No person is prohibited from acquiring property and occupying it, except within the limits of the law. No person's property can be confiscated without a law and a competent court decision. Therefore, according to the provisions of this article, people's property is safe from assault and no one can seize and confiscate someone's property without the law and the court's decision. Therefore, in addition to ensuring the security of life and property, the government is obligated.

Therefore, by examining the articles of the constitution, it became clear that the government is obliged to ensure the life and financial security of citizens according to the above articles of the constitution, which are not explicitly stated about foreign nationals. However, in Article 3 of the Universal Declaration of Human Rights, "everyone has the right to life, liberty and personal security" and in Article 17 of this declaration, "every person, individually or collectively, has the property right. No one can be arbitrarily deprived of the property right. In addition, Article (9) of the International Covenant on Civil and Political Rights states that "everyone has the right to freedom and personal security.

No one can be arbitrarily arrested, detained, and imprisoned. No one can be deprived of freedom except according to the law" about the right to security. But it can be deduced from Article 7 of the Constitution that the government is obliged to comply with the declaration of human rights and international covenants of which Afghanistan is a member and to ensure the life and financial security of foreign nationals, especially tourists.

### **4.3. The Right to Freedom of Movement**

The right to freedom of movement is the basis of the right to travel, which is considered one of the most important rights and freedoms of individuals. According to this right, all people can travel anywhere in the country and abroad, and the principle is that no country can close its borders to foreigners without reason; so that foreigners cannot enter the country. But there is no consensus in accepting the principle of free borders for foreigners because the opponents of this principle believe that based on the interests and security of the country, countries have the right to close their borders to foreigners and not allow them to enter, but the moderates They believe that countries should allow foreign nationals who want to travel in the country for tourism or otherwise if there is no problem in the interests and public security. (Gharbiyah, 1390, 199)

As stated in Article (13) of the Declaration of Human Rights, "Everyone has the right to move freely within any country and choose their place of residence." "Everyone has the right to leave any country, including his own country, or to return to his country." Therefore, this principle of freedom of passage and choice of residence was accepted by the United Nations and member states and is obliged to implement it, unless it deprives foreign nationals of this right and does not allow them to enter. Therefore, Afghanistan, which is a member of the United Nations and accepts this declaration, the gate of this country's borders is open to all foreign nationals who want to travel here for tourism, and from the economic and cultural point of view, the government and the nation will welcome them.

### **4.4. The Right to Residence and Privacy of Individuals**

One of the urgent and important needs of people is residence, that is, having a house and shelter is considered one of the basic rights that humans have been looking for in various situations and are always trying to get. Today, the countries of the world have granted this right of residence to all citizens, but what is worth pondering is whether foreigners have the right to reside in a host country or not. The answer is definitely yes. Because God says in the Holy Qur'an: "We tamed the earth for you humans so that you can use its gifts to grow and continue your life", this verse refers to having the right to reside. On the

other hand, when countries officially allow foreign nationals to enter, it means that they are permitted to stay if they do not allow residence inside the country, it means that they are not allowed to enter inside the border. But what is debatable is that the tourists who come inside the country should have immunity in their residence and the government should ensure its security, which is stated in verses 27 and 28 of Surah Noor: "O people of faith, never enter any house except your own, unless it is owned by its owner. If you don't have a friend, don't enter, and when you get permission, go inside, greet the people of that house first, you should be careful and if you don't find someone's house, don't enter again until permission is given, then enter and when you go to his house You came to the door and they said go back, go back because it is better for you and God knows everything you do" (Gharbiyeh, 2020, 2010) Therefore, the lawmaker of Afghanistan stated in Article (38): "A person's home is immune from attack." No person, including the government, can enter or search a person's residence without the resident's permission or the order of a competent court, except in the circumstances and manners specified in the law. This article is recognized.

According to Articles 13 and 12 of the Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights, Afghanistan is a member. It has recognized the right to residence and the right to privacy. It means that foreigners and tourists can choose their place of residence and no one can be forced to live in a certain place. On the other hand, a person's home is protected from assault, which means that no one has the right to enter it without the owner's permission, and only government officials have the right to enter the home and search it, provided that they have the necessary permission from the judicial authority. Therefore, according to Article 7 of the Constitution, the government is obliged to observe and implement it.

#### **4.5. Right to Trial and Freedom of Defense**

The right to trial and freedom of defense is one of the main human rights, which today is accepted as an international practice by all countries that even if a person is a foreigner, he can appear before the court of the host country without any discrimination and freely and free of charge. defend his rights (Gharbiyeh, 2013, 2020) because, on the one hand, the sovereignty of governments requires the recognition of such rights. The result of not recognizing this right is promoting revenge and personal trial in society and disrupting the order of society, which contradicts the sovereign duty of governments. and so on, which is the duty of the governments to ensure order is one of rights (Safa'i, 1402, 174-175), so today judicial security is considered a part of national security and forms the foundation of human civilization and is one of the main characteristics of societies. It is considered advanced.

To secure and respect the right to trial and freedom of defense, principles, and rules must be observed, including the principle of acquittal, the public nature of the proceedings, the reasoning and justification of the court verdict, the right to have a lawyer in lawsuits, the principle of legality of crime and punishment. Prohibition of torture, non-humiliation, respect of the arrested person, and compensation for the loss caused by the fault and mistake of the judge (Tabatabai Motmani, 1382, 73), which Afghanistan, in addition to accepting these rights in the declaration of human rights and international covenants, is well established in the constitution and ordinary laws. is also accepted.

#### **4.6. The Right to Access Consular Services**

To protect their nationals in other countries, governments establish and establish a legal office called the consular institution, which carries out the task of promoting the administrative affairs of nationals in the territory of another country by international regulations and respecting the laws and culture of the country of service. In other words, governments establish consular relations with each other for two reasons: First, governments support their nationals in the international arena and try to protect their interests in foreign countries; Secondly, governments need to be informed about the economic and even political events of other countries to fix their own economic and political situation. Therefore, the travel and tourism of the citizens to the second country also causes legal and administrative issues that the

government is obliged to support and the host government must provide these facilities and facilities to the consulate of the nationals and not create obstacles.

#### **4.7. Right to Access Information**

Apart from the general rights and freedoms, tourists have the right to access information related to tourism and tourists, and the host country must provide information about historical and cultural places or transit routes for travelers, because tourists, due to their lack of knowledge about the culture, know Lack of language and safe routes, lack of knowledge of health or administrative centers, and lack of security contact numbers will lead to problems. Therefore, the host government should provide necessary information and facilities to tourists so that they can make the most of their recreation and tourism and attract more tourists, according to Afghanistan's ruling No. (2645) dated 9/30 2019/2019 President has established the company under the name (Afghan Tour) that the main task of this government company is to provide facilities and services for foreign tourists.

#### **4.8. The Right to Transfer Goods and Currency**

The right to transfer goods and currency is one of the implied rights, the right to travel, which is known to foreign tourists. Because every government issues the right to cross its border to a person, in addition to this right, it issues permission to transfer goods and currency inside the country to tourists and tourists, because no tourist and tourist can continue traveling without goods and currency. achieve its goal, but this transfer of goods and currency is different and subject to change according to the customs laws according to the economic and political situation of each country. Therefore, according to the legal and transportation restrictions, the tourist can carry what he needs with him, and no country can prevent it unless the goods in question are against the law.

#### ***Duties and Obligations of Tourists***

As discussed in the previous discussions, the host country, based on international documents or domestic laws, is obliged to accept some of the fundamental rights of foreigners or tourists, which it has accepted, but on the other hand, as soon as foreigners and tourists enter the border of the destination country, they are allowed to do so naturally. He is subject to the internal laws of that country, but his rights and status are subject to the laws of his country, and the host country has no right to interfere in the affairs of his status according to international laws. However, in the field of public law under the jurisdiction of the territory of that country, the regulations of the place of residence must be observed, and even tourists who carry out commercial activities or earn income that is subject to internal taxes are obliged to pay taxes unless they are tax exempt according to the law. (Qassimi Shub, 1384, 102) On the other hand, foreign tourists who come to the country for tourism should not act contrary to public order or general culture and norms, which may lead to arrest.

#### ***Conclusion***

The right to travel is one of the basic and natural rights of human beings, which is inseparable from his essence, and it is emphasized in the Holy Qur'an for the enjoyment of human beings, therefore, the United Nations in the Declaration of Human Rights and the International Covenant on Civil and Political Rights consider this right as a They have recognized the basic right for humans, and the member states of the United Nations have recognized it in their domestic laws and have widened the scope for the implementation of that right by developing regulations. If the Afghan legislator, in addition to recognizing the right to travel and other fundamental rights of people recognized in the constitution. According to Article 7 of this law, the rights and freedoms stated in the Declaration of Human Rights and the



International Covenant on Civil and Political Rights of the United Nations, of which Afghanistan is a member, the government is obliged to implement and comply with it.

Therefore, in the domestic laws of Afghanistan, the tourism right has solid theoretical and legal foundations, and there is no doubt in recognizing this right for tourists and implementing this right, basic rights and freedoms, including the right to life, the right to freedom, and the right to security, the right to freedom of movement, the right to residence and privacy, the right to trial and freedom of defense, and the right to human dignity have been recognized for tourists.

These rights are the minimum rights that a human being, including tourists, should have, but does know the minimum rights for tourists encourage tourists and tourists in Afghanistan? It should be said that attracting tourists and developing tourism as an industry cannot be realized by recognizing minimum rights for foreign tourists, and the development of such an industry requires establishing special laws and regulations to protect tourists recognizing special rights for tourists, and even granting them privileges.

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