



The Necessity of Guaranteeing Public Rights and Freedoms in Afghanistan

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Abstract

The guarantee of public rights and freedoms for individuals has been a significant issue in all political systems and is considered one of the primary duties and obligations of governments. Respecting these rights and liberties is regarded as essential in every society, and legislation is formulated accordingly. In Afghanistan, attention to this crucial matter is also necessary, and it is imperative to develop and enact legislative documents to ensure the protection of individuals' rights and freedoms in society. Additionally, there is a need for legal and judicial mechanisms as enforcement tools for implementing related documents. By doing so, all members of society will undoubtedly benefit from these rights and freedoms without infringing upon the liberties of others. This article aims to explore the various dimensions of this important issue, considering the necessity of relevant legislative documents and existing implementation mechanisms in the country, and to provide recommendations in this regard. It is hoped that the points raised in this discussion will be taken into consideration by the country's governing legal system.

Keywords: *General Rights and Freedoms of Individuals, Guarantees, Practical Mechanisms, Legislative Documents and The Legal System of Afghanistan*

Introduction

In every country, legal systems play a distinguished and prominent role in governance, carrying significant authority and responsibilities. The attention given to the rights and freedoms of the people and citizens by lawmakers and the legal system is a defining feature of any society. Respecting human rights and the civic dignity of individuals is considered a fundamental pillar of good governance in any system.

Undoubtedly, recognizing and upholding the public rights and freedoms of individuals in society is regarded as the most foundational and essential principle. On the other hand, protecting any form of rights without the formulation and enactment of legislative instruments in a country would be impossible. In other words, just as regulating the relationships between citizens cannot be achieved without legal frameworks, the protection of individual rights cannot be ensured without such documents. Therefore, it can be confidently asserted that safeguarding the fundamental rights of citizens and ensuring their safety is only possible by enshrining them within the binding legal framework of the country's enforceable laws.

These laws must be based on the inherent dignity of human beings, rejecting and prohibiting all forms of injustice, discrimination, intellectual and social oppression, and monopolization in various spheres of society.

Consequently, Afghanistan's legal system—which is derived from *fiqh* (Islamic jurisprudence) and Sharia, and is rooted in Islamic legal tradition—also bears the responsibility to uphold these values. In other words, it must recognize human rights principles, as well as the individual and social freedoms of citizens, and guarantee the protection of these rights by incorporating them into national legislation.

Under Islamic law, all individuals possess equal rights and duties, and no citizen should hold superiority over another. All people, regardless of gender, must benefit equally from these rights and values. Men and women alike have equal rights and obligations before the law.

Government Responsibility for Public Rights and Freedoms

First: Internally

In all systems, people and citizens expect government authorities to take positive and serious steps to defend their rights and freedoms and to take appropriate measures to fulfill government duties to preserve those values. Therefore, considering the expectations and expectations of citizens, ensuring their rights and freedoms is at the top of all their responsibilities. For this reason, the people of Afghanistan believe that the government and political system in this country have a national duty and obligation to defend against the violation of these types of rights in the following areas.

1. In Legislation

Law constitutes the primary instrument for maintaining public order and security. Governments endeavor to regulate the conduct of individuals and groups by establishing general rules and enforcing them, formulating laws and regulations based on economic, political, social, and cultural needs within the framework of societal values and beliefs, thereby ensuring order and security in society.

Governments bear the duty and responsibility in this process to respect the public rights and freedoms of citizens and refrain from violating their rights. Scholars maintain that no government has the right to impose restrictions on the legitimate freedoms of individuals, and the legislative process must always take into account the rights of the people.

2. In the Field of Law Enforcement

The most vital instrument of the state lies in its administrative organizations and institutions. The duty and responsibility of these entities is to implement government laws across various social spheres. These organizations maintain direct contact with the people and society at large, enforcing the government's sovereignty and authority over the community while exercising power over individuals.

These institutions play a significant role in safeguarding human rights. The tools for legal compliance - including civil servants' adherence to regulations, respectful treatment of citizens in government offices, and professional diligence - serve to elevate human rights values within society. However, when government employees fail to respect the rights and freedoms of the people, this leads to restrictions on individual liberties and violations of their rights.

3. In the Cultural and Educational Fields

Propaganda and influencing public opinion play a fundamental role in the exercise of governmental authority and control. States extensively employ powerful tools such as schools,

universities, press, and media to consolidate state power and maintain order and security. These instruments also serve a crucial function in promoting human rights values.

Governments bear the responsibility of safeguarding the security, rights, and individual freedoms of their citizens. The role of states in protecting human rights is of vital importance, and it is evident that they are obligated to defend both individual and collective rights and freedoms.

Second: Internationally

In today's world, numerous international human rights instruments exist that governments are obligated to observe. These documents hold such significant standing that violations tarnish a state's international credibility and reputation. International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights are among the binding international instruments adopted by the United Nations. Many countries, including Afghanistan, have acceded to and ratified these covenants.

While the Universal Declaration of Human Rights is not legally binding, non-compliance with its provisions nevertheless damages a government's international standing.

The Concept and Limitations of Human Rights

Human beings possess human rights by virtue of their humanity. These rights are inalienable and inseparable from human persons under any circumstances. Both international instruments and domestic legislation recognize and protect these rights for all, requiring respect from political systems and society at large. Respecting these rights fosters human personality development and enables the flourishing of individual potential.

The incorporation of these values into national legislation - particularly in constitutions - coupled with effective political protection, is essential to guarantee and enforce these rights. In other words, safeguarding human rights empowers individuals in society, enabling personal choice in social conduct while ensuring robust legal protection through established laws (Khosravi, 2013: 178, 181).

However, social life necessarily entails accepting limitations, and inevitabilities, and observing certain obligations. Individuals cannot always act entirely as they wish. While articulating these values in legislation is crucial, their limitations must also be clearly defined and legally framed. All persons may act freely within legal boundaries, provided they do not infringe upon others' rights and values. Individuals enjoy legal protection against government overreach, while political systems' authority over individual conduct is likewise legally circumscribed.

No individual may invoke these rights to deprive others of their human rights and dignity. Respect for human dignity serves as the fundamental criterion for exercising these rights (Danesh, 1975: 535). For instance, none may: disclose private matters under the guise of free expression, insult or humiliate others, make false accusations, or reveal private communications. All such acts violate human rights values and are prohibited (Ibid: 542-543), except where expressly permitted by law.

The legislation defines both public rights/freedoms and their limitations, recognizing their necessity for human development (Danesh, 2015: 523, 526). Freedoms of thought, belief, expression, assembly, movement, etc. empower individuals to choose their social conduct, with positive law providing recognized protection (Khosravi, 2013: 178, 181).

Therefore, delineating the scope of human rights and public freedoms while establishing necessary societal limitations constitutes a vital and unavoidable task. Individuals remain free to act within legal frameworks, as emphasized in international human rights instruments like the Universal Declaration of Human Rights, which specifies that freedom exercise must not harm others.

The Need for Legal Guarantees in Afghanistan

Under Afghanistan's legal framework, the critical task and obligation of legislation within binding legal norms rests with lawmakers. The imperative to safeguard human rights principles and civil liberties of citizens, while ensuring their guarantee and clear articulation in legislative instruments for enhanced protection, demands that this vital matter be treated as a top priority and accorded serious attention.

In this legal order, all citizens inherently possess fundamental human and civil rights. Consequently, it is proposed that the various categories of human rights, individual and collective freedoms along with their necessary limitations be explicitly defined in statutory provisions, receive robust protection from the governing system, and that corresponding implementation and enforcement mechanisms be subsequently incorporated into ordinary legislative enactments with due consideration.

First: Reflecting and Incorporating Examples of Public Rights and Freedoms into Laws

The values of human rights and public freedoms of individuals and citizens in society need to be clearly stated in a valid legal document as follows:

1. The Right to Life: The right to life is the most fundamental human right, upon which the enjoyment of all other human rights depends. As the primary human right, all citizens expect society and the state to respect and protect this right. It is the most important duty of any political system and society to honor and defend this right for all.

This right holds significant religious importance as well. As God states in the Holy Quran: "Whoever kills a soul unless for a soul or corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely." (Surah Al-Ma'idah: 32).

The Universal Declaration of Human Rights emphasizes that "everyone has the right to life...", while the International Covenant on Civil and Political Rights states that "the right to life is an inherent human right; this right shall be protected by law; no one shall be arbitrarily deprived of his life."

The Cairo Declaration on Human Rights in Islam similarly affirms that "life is a God-given gift and a right guaranteed to every human being. It is the duty of individuals, societies, and states to protect this right from any violation and to defend it against all threats."

2. The Right to Personal Security: Security in personal life fosters trust within society and encourages individuals to engage in greater activity and effort with enhanced optimism. Conversely, feelings of insecurity deprive individuals of motivation, leading to despair and hopelessness.

Personal security constitutes the assurance and confidence that individuals in a society may possess regarding the protection of their lives, dignity, and material/spiritual rights - free from fear or apprehension. It entails immunity against arbitrary detention, imprisonment, or other capricious measures by the state or society, as well as protection from all forms of aggression including murder, injury, confinement, exile, torture, and acts violating human dignity.

The presence of security and absence of security threats in society ensures the guarantee of citizens' material and spiritual freedoms, enabling them to benefit from public liberties.

3. The Right to Freedom of Movement, Choice of Residence and Security of Residence: The freedom to travel and choose one's place of residence are fundamental human rights that enable individuals to meet their professional, commercial, educational, medical, and other needs both within and outside their country (Shari'at Panahi, 2008: 147). Therefore, every individual should be able to freely, equally, and without restriction use roads and reside in their desired location at any time they wish, with complete security. No one has the right to deprive anyone of this right (Danesh, 1975: 541).

In today's world, no individual can meet all their needs alone without traveling. The development of human life and its diverse requirements necessitate that people travel to other places or reside in their desired cities to meet these needs. Therefore, travel and change of residence are means to fulfill life's necessities and tools for developing human talents and creativity.

Freedom of movement and choice of residence are considered among individual freedoms, so that people can move freely and have the right to choose regarding residence, leaving their dwelling, acquiring citizenship of their own or another country, and selecting their place of residence without any coercion or compulsion. A person's dwelling, whether a house or any place they reside, must be inviolable, and without the owner's permission, no one - including government officials - has the right to enter or search people's homes. However, when necessary, they are required to obtain inspection and search permits from competent judicial authorities and courts. This is because the home is a means for human tranquility and personality development, and mental and psychological comfort depends on the inviolability and security of the residence. The home is part of an individual's private sphere, and no one has the right to interfere in this aspect of people's lives (Danesh, 2015: 542).

4. The Right to Freedom of Thought and Belief: Freedom of thought and belief means that individuals in society should be able to think and choose their beliefs according to their own will. In other words, there should be no coercion in accepting a belief, nor any obligation to declare it (Rahiminejad, 2008: 119, 121). Individuals are free to hold any thought or belief, and no one, including the government, may persecute a person solely for holding a particular thought or belief.

Freedom in thought and reflection fosters creativity, innovation, and the flourishing of human potential. Restricting it leads to the suppression of human talents and, consequently, the backwardness of society. Therefore, it is extremely important, necessary, and essential to create the conditions for individuals in society to enjoy this right and for society to benefit from its positive and significant effects (Shari'at Panahi, 2008: 147, 148).

Freedom of thought and belief is considered one of the most important manifestations of individual freedoms in society. Accordingly, individuals have the right to hold any thoughts, beliefs, or convictions regarding religion, ethics, politics, and similar matters. Thoughts and beliefs reside within the inner self of human beings, and their nature cannot be discerned unless individuals themselves express them. Thus, holding a particular belief is different from expressing or declaring it. The existence of these beliefs in the minds and inner conscience of individuals has no practical impact on social life. However, if the expression of beliefs conflicts with public order, public interest, or the sentiments of nations, it may face legal restrictions imposed by legislators.

5. The Right to Freedom of Expression: Freedom of expression refers to the articulation of viewpoints, thoughts, beliefs, ideas, and the transmission of information to others. This right is recognized and respected both religiously and within legal systems worldwide, enabling individuals to convey their perspectives through speech, written works, artistic creations, conferences, media, and similar means (Ibid: 149).

As a fundamental human right, freedom of expression guarantees individuals the ability to manifest their thoughts, opinions, and beliefs without fear of prosecution, punishment, or detention, with this principle reflected in the enforceable laws of nations. However, such freedom must not undermine religious values, insult sacred principles, contradict human dignity, or harm the honor, reputation, and social standing of individuals within society (Danesh, 2015: 546, 547).

6. The Right to Freedom of Religion: Every person has the right to have a specific belief in religious matters, to be free to perform their religious ceremonies, and to publicly teach their religious teachings (Rahiminejad 2008: 120). Belief in religion is based on reasoning and thought, and acceptance of religion without knowledge and awareness, and solely based on imitation and prejudice, has no importance or

validity. Performing religious ceremonies, teaching, upbringing, and practicing religious and sectarian rules in society are essential for religious and sectarian freedom. Because individuals in society cannot ignore the limits and balances of laws and the maintenance of public order under the pretext of enjoying this principle, the performance of religious and sectarian ceremonies should not cause harm to followers of other religions and sects.

7. The Right to Freedom of the Press: Citizens have the right to access domestic and foreign news and information, and restricting this right means depriving citizens of information and news. Freedom of the press means being aware of the various dimensions of political, social, economic and similar issues. Freedom of the press and enjoying this right is important in today's society and is considered a necessary and essential issue for the people of society. (Shariat Panahi 2008: 150)

8. The Right to Freedom of Assembly, Processions, and Gatherings: Another fundamental freedom of the people is the freedom to form assemblies and marches. The freedom of assemblies, like other freedoms, is currently accepted in various countries, so that individuals can, with permission, gather in a certain place to exchange views on political, social, and other issues. (Ibid.: 152) It is free to hold gatherings and marches without weapons, provided that they do not violate Islamic values and beliefs or insult religious sanctities. Of course, the above concepts must be clearly and precisely explained by the legislator.

9. Citizens' Right to Judicial Security: In every society, individuals must benefit from these fundamental freedoms and should not feel subject to unwarranted prosecution or arbitrary summons. No one may be considered guilty unless there exists legal evidence establishing their criminal liability (Danesh, 2015: 720).

The presumption of innocence is the fundamental principle, and criminal responsibility is strictly personal, and not transferable to others. The determination of an act as criminal and the imposition of penalties must be based on legal criteria and adjudicated by a competent court.

The government is obligated to ensure citizens' access to judicial freedoms and prevent violations of these rights. No individual may be arrested without legal cause, and in the event of detention, the charges, along with supporting evidence, must be promptly communicated to the accused in writing.

10. The Right to a Decent Job: Everyone is free to choose any type of job they wish, provided it is within the framework of the law and does not violate government laws, contradict Sharia, disrupt public order, violate good morals, or infringe upon the rights of others. (Danesh 2015: 557) Accordingly, the government is also obliged to provide suitable employment opportunities, taking into account the needs and capabilities of individuals in society.

11. The Right to Education: Access to education is a fundamental right for all citizens. The government is obligated to provide free educational opportunities (Qazi Shari'at Panahi, 2008: 149, 150). According to Afghan law, education is guaranteed as a right for all Afghan nationals, with the government providing free education up to the bachelor's degree level at state institutions.

The government must implement effective programs to ensure the balanced development of education throughout Afghanistan, provide compulsory secondary education, and facilitate instruction in native languages in regions where they are spoken. The national curriculum shall be developed based on the principles of the holy religion of Islam, national culture, and in accordance with scientific foundations. The religious curriculum for schools shall be designed according to the Islamic denominations present in Afghanistan.

12. The Right to Enjoy Legitimate Business and Property: Private property rights must be recognized and rigorously protected in a manner that safeguards both individual and societal interests. This means that private ownership shall be respected and any violation prohibited. Specifically:

An individual's property shall be inviolable. No person may be prevented from acquiring or disposing of property, except within legal limits. No one's property may be confiscated without due legal process and a ruling by a competent court. The expropriation of private property shall only be permitted for public benefit purposes, subject to prior and fair compensation as prescribed by law. The inspection or disclosure of personal assets may only occur pursuant to legal order.

However, the means of acquiring property shall be limited to lawful and Sharia-compliant standards, thereby controlling illicit and excessive wealth accumulation. Consequently, every individual rightfully owns what they obtain through legitimate means, while unlawful acquisition - including through usury, seizure, bribery, embezzlement, theft, gambling, misuse of endowments (waqf), fraudulent government contracts, sale of unused lands for immoral establishments, or similar means - is prohibited.

Second: The Necessity of Formulating and Amending Ordinary Legislative Documents

In the section on drafting and amending legislative documents, it is generally emphasized that these amendments should be based on the criteria of human rights values and the inherent dignity of human beings, meaning that all legislative documents should be amended and drafted with respect to human rights values, a few of which are briefly mentioned as examples.

Third: The Need to Formulate a Law on Access to Information and Support for Public Media

represents a crucial step by the government in promoting and safeguarding human rights values in the country. Media is considered a fundamental pillar and vital element in all societies because access to information enables citizens to oversee legal and governmental processes, allowing them to monitor how the government and its institutions fulfill their responsibilities.

Every Afghan citizen has the right to be fully informed about government documents and performance reports related to public services. Ensuring the right to access information fosters transparency in society and enhances government accountability, thereby serving as an effective mechanism to combat and eliminate corruption. Consequently, no entity, including the government, may justify withholding information from the public under the pretext of public interest, maintaining order, or ensuring security, nor may they distort social realities or present misleading narratives.

Security institutions must ensure the safety and protection of journalists, as this is among their most critical duties. The ability to inform and guarantee this right for citizens depends on the security and protection of journalists. If media professionals and journalists do not feel secure, they cannot perform their duties effectively, report accurately and promptly, or courageously expose economic crimes, administrative corruption, and violations without fear.

However, media outlets must not misuse these protections. Under the guise of reporting, they should not disseminate false information that disrupts public order or causes social unrest, and they must strictly adhere to legal limitations. The right to access information, like all rights, is not absolute and carries certain restrictions that must be observed. These include safeguarding national stability and security, respecting personal rights and privacy, avoiding ethnic, linguistic, or religious hate speech, and refraining from promoting violence. Violating these principles undermines public order.

Thus, the core mission of public media is to inform, enlighten public opinion, and raise societal awareness. Media must play a constructive role in ensuring transparency, monitoring government

performance, combating corruption, strengthening national unity, and fostering social harmony. They should actively promote human rights values and uphold the principles of human dignity.

Fourth: The Need to Develop Legislative Documents to Support Women and Children

Their positive and decisive role cannot be denied in any way. Therefore, depriving them of opportunities will result in the loss of the useful and effective abilities of this large group and their human talents will not flourish. Therefore, proper educational opportunities must be provided for them so that they can acquire the necessary abilities and fulfill their educational, managerial, social and political responsibilities properly. Therefore, women's equal opportunities play a major role in the development and prosperity of the country, and their deprivation will deprive society of their empowerment.

Fifth: The Need to Formulate Regulations to Protect Human Rights in Government Departments

In order to provide the basis for the implementation of human rights monitoring mechanisms in government departments by the applicable legislative documents, the existence of such a regulation seems necessary. Establishing coordination between laws, regulations, policies, strategies, and programs of government departments with human rights standards and raising the level of awareness of employees of ministries and government departments in the field of human rights should have been one of the important goals of this regulation.

Sixth: The Need to Draft a Legislative Document Regarding the Prohibition of Torture

Respect and preserve human dignity and ensure the rights of suspects, accused, and convicted persons during the stages of legal prosecution. Prevent torture of suspects, accused, convicted persons, and other persons during the stages of crime detection, investigation, trial, and enforcement of punishment. Support victims of torture and witnesses to its commission. Prosecute perpetrators of the crime of torture. Providing compensation for victims of torture should be one of the important goals of this document, and based on that, it should make the interactions, behaviors, and reactions with the aforementioned individuals lawful and humane, and strictly prohibit the punishment of people.

Seventh: The Necessity of Drafting and Amending Criminal Laws

Criminal laws encompass all crimes and penalties, therefore, fair trial standards, humanitarian law rules, and the values of human rights of individuals require that this area be considered a serious concern and concern of legislators, that they pay attention to it, and that they continuously conduct the necessary reviews and make appropriate reforms if necessary. The objectives of the punishments and their effectiveness and instructiveness should be carefully considered, and the preventive aspect of punishments should also be included in these laws. It is expected that by implementing these types of laws, justice will be provided in the best possible way and violations of the human rights values of individuals in society will be prevented.

Conclusion

As in all legal systems, the preservation of human rights values has been accorded special attention and holds particular importance. It is essential that Afghanistan's legal system consistently strives to realize respect for and protection of human rights values and public freedoms within the framework of legislative documents and their practical implementation mechanisms, taking effective steps in this direction.

The rule of law and the administration of justice in society must be treated as crucial matters. The formulation and enactment of legislative documents and systematic strategies to guarantee and safeguard human rights values should be among their top priorities. The legislative documents in force and existing

in the country, as the most important documents in expressing the rights and public freedoms of individuals and determining the boundaries of individual freedoms regarding the performance of power, and on the other hand, clarify and determine the limits of the exercise of public powers in dealing with the values of human rights and public freedoms of individuals.

Therefore, given the existence of human rights guarantees in domestic legislation and international human rights instruments, the political system is also obligated to fulfill its protective and defensive responsibilities regarding human rights values, and can in no way disregard or ignore these guarantees.

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