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The Rights of Minorities from the perspective of the Constitution of Afghanistan

Abstract

In every country, there are real minority groups that have existed for centuries. Afghanistan is also one of the countries that has religious, ethnic, linguistic and religious minorities, but the discussion of the rights of minorities is not much advanced and the minority is one of the citizens of Afghanistan to enjoy all the rights of a citizen after "Bonn" session and the approval of the 2002 Constitution came into existence. In this research on the rights of minorities in Afghanistan law from the perspective of non-discrimination and legal actions, security of freedoms in security, religion, language, education and freedom in judgment.

Keywords: Rights, Minority, Security, Education, Religion, Language

Afganistan Anayasası Perspektifinden Azınlıkların Hakları

Öz

Her ülkede yüzyıllardır var olan gerçek azınlık grupları vardır. Afganistan da dini, etnik, dilsel ve dinsel azınlıklara sahip ülkelerden biridir, ancak azınlıkların hakları tartışması çok ileri düzeyde değildir ve azınlık, "Bonn" oturumu ve 2002 Anayasasının onaylanmasından sonra bir vatandaşın tüm haklarından yararlanmak için Afganistan vatandaşlarından biridir. Bu araştırmada, Afganistan hukukunda azınlıkların hakları, ayrımcılık yapmama ve yasal işlemler, güvenlik, din, dil, eğitim ve yargılama özgürlüğünde özgürlüklerin güvence altına alınması perspektifinden incelenmiştir.

Anahtar kelimeler: Haklar, Azınlık, Güvenlik, Eğitim, Din, Dil



Introduction

The issue of minority rights is not related to one country or several countries, but many countries in the world are facing this phenomenon and this issue has become one of the global challenges. Therefore, it is necessary to recognize the special rights of ethnic minorities, and ethnic minorities should enjoy special rights in addition to citizenship and general human rights, because there should be no doubt that formal interpretation The rule of prohibition of discrimination and observance of equality can only play a partial role in ensuring the positive rights of minorities, and even in cases of applying this type of interpretation, not only by ethnic minority groups. It will not be welcomed, but an action in the direction of erasing the special identity of the minority will also be rejected, even though in the formal interpretation of this rule, the government is on it to enjoy the rights and regulations of the citizens. Domestically and internationally, the special characteristics of individuals including race, color, language and religion should not be taken into consideration and these factors should not have an impact on their rights.

It is obvious that if this rule is used for the benefit of minority groups from the general rights of citizens, it will be useful, but if the application of this principle means that, for example, in the general education of all citizens of a If the country does not speak the mother tongue, and if they do not have freedom to hold religious ceremonies, economic security, and other racial and linguistic characteristics, the principle of equality has not been respected (Dashti & Batani, 2010). Because the principle of equality between citizens, that religious, linguistic and racial minority groups have the right to preserve their differences and special characteristics, which in fact constitute the identity of these groups. Based on this, in the form of the principle of equality in the society where there are religious, religious, racial, linguistic and ethnic minorities, it is observed that the minorities enjoy all the rights and benefits. One of the countries where there are many minorities is the country of Afghanistan, so in this research, the rights of minorities are examined from the point of view of the laws of Afghanistan. The history of Afghanistan has always been faced with discrimination and inequality and the people of this land have endured a lot of suffering due to the lack of justice and equality, but after the defeat of the Taliban in Afghanistan and the coming of the government New with the slogan of democracy and freedom and the approval of the new constitution by the representatives of different nations of the country, have the rights of minorities been respected or not

1. Minority Security from the Perspective of the Constitution of Afghanistan

The enjoyment of security can be considered as the most natural and basic human right, which is the basis for the enjoyment of other basic human rights and freedoms. Security is a mental assurance based on which people in the society they live in do not have any fear of saving their lives, dignity and material and spiritual rights. Security has categories and components such as life, dignity, property, occupation, housing, residence, and solitude, and it has important effects on human life. The right to life is one of the most important, basic and fundamental human rights, thanks to which human beings can enjoy their other basic rights and freedoms. In their various personal, social, private and general relationships, people may be partially or totally exposed to danger in terms of material and spiritual life. It is in such a situation that the existence of security as a legal, moral and social institution will be unavoidable for everyone.

2. Life safety

The most obvious and natural right of every human being is to live. Life is a divine gift that the Almighty God has given to all creatures. Therefore, no one has the right to take away this right from people, because the right to life is one of the natural, individual and natural rights of human beings and the basis of all human rights. Therefore, the security of life is the basis of all social and citizenship rights of the people of the society. If the people of the society do not have the security of their lives, they will not enjoy the rest of the social rights, such as human dignity, financial and economic security, the enjoyment of the country's welfare resources, justice in the courts and the participation in the affairs of the country, after all, security in social life is one of the ancient aspirations of mankind. The nightmare and fear of aggression, oppression and threats have always been a factor of bitterness and despair in the collective life of the minorities in the society, because the minorities are always because of the insecurity and aggression of the ruling majority They have been oppressed and violated. In any society that is not safe, there are more minorities that are subjected to aggression and oppression. The history of the crusades and racial wars in Europe, as well as the racial and ethnic wars in the countries Asian countries such as Turkey, Iraq, Afghanistan, Yemen and Syria show that in most of these wars, minorities have been oppressed and oppressed. In some of the historical regions of Afghanistan, due to insecurity, half of the racial minorities were destroyed or sold into slavery in the world, therefore, considering the importance of the safety of the lives of all citizens and Regarding the minorities in the preamble of the constitution, the lawmaker makes the following decision considering the dark and insecure history of Afghanistan: We have approved this law with the understanding of past injustices and numerous troubles that have come to our country.

These words in the preamble of the constitution well express the miserable situation of the country of Afghanistan. For all the people of Afghanistan, especially the ethnic and religious minorities who lived as second and third class citizens in the past and were deprived of welfare and educational opportunities, freedom from this nightmare and the feeling of immunity is on the horizon Factors that threaten the peace of life and the rights of minorities. He decided that he was loved and enjoyed more than life itself. In the preamble of the Constitution of Afghanistan, it is stated: "In order to create a civil society free from oppression, tyranny, discrimination and violence and based on legality, social justice, preserving dignity and human rights and ensuring freedoms." The basic rights of the people are one of the rights of individuals in society. It is an exercise of the right to security that the government must provide security to all individuals. Based on this, security in a country like Afghanistan, which has political turmoil and crisis, poverty and a sick economy, cultural invasion that has attacked the country from all sides, cultural instability and the emergence of social anomalies such as the breaking of ties, the loss of trust between the government and The government and also in terms of political interventions, especially the occupation of the country by America and internal armed rebellions, such as the rebellions of local commanders, and the daily taking of power by the Taliban group and the defeat of the group Ash from Iraq and Syria, suicide attacks in military barracks and educational institutions, suicide by means Public transportation and security of mosques, academic and university campuses, security is one of the most important components in the country of Afghanistan. It is clear that if there is no security, there is no economy, there is no culture, and there is no vitality in the society, so in the basic law that was approved in 2003, it is stated that there should be nothing Without judgment Legally punished and threatened his safety. In Article 23, it states as follows:

Life is God's gift and human's natural right. No person will be deprived of this right without legal permission (Constitution of Afghanistan, 2003) . Therefore, it can be concluded that human life is of utmost importance in the constitution of Afghanistan and all human beings of every race, ethnicity, religion, and language are equal in having this right Its security is one of the basic duties of governments and its effects It is important and fundamental in the survival of human life.

Although the constitution has emphasized the security of all the residents of Afghanistan, considering that 99% of Afghanistan's society is made up of Muslims, religious minorities such as Sikhs or Hindus are still completely safe in the society (Constitution of Afghanistan ,2003) Sometimes they are harassed because they are Sikhs. Utar Sangh Khalsa, the head of the Sikh

temple, which is located on the map of Kabul, says: Several decades of war, instability and insecurity have caused mass migrations of Sikhs, and only 372 Sikh families are left in Afghanistan. Out of the eight temples that were once active in Afghanistan, this is the only temple left. During the civil wars in the middle of 1990, the temples were a suitable place for the warlords to stay and open fire on each other due to their high fortification, which resulted in eight temples and one school that It is said that one day, a thousand Sikhs were busy studying there, and they were destroyed. During the time of the Taliban government, Sikhs had to wear yellow clothes and raise yellow flags over their houses and shops, which is a reminder of their deprivations and oppression. This is at a time when religious minority acceptance was one of the goals of the United States of America and its allies after the overthrow of the Taliban government, and the Sikhs make up about 1% of the population of Afghanistan. But in practice, the government has less dealt with the prejudices of ethnic majorities against ethnic minorities, which has made the attackers more daring. Theft and theft of Sikh property, humiliating and spitting on them in the streets, ordering to throw away the dastar (lame) and trying to take over Sikh land are the most important crimes against these religious organizations in Afghanistan. Therefore, the religious minority of Sikhs and Hindus of Afghanistan have suffered the most in the last three decades. These religious minorities have not played any role in the violence of the last few decades, but they have endured many sufferings. This vulnerability is multi-dimensional and has taken even this minority to the border of forced collective grouping and genocide. The collective reduction of the number of Sikhs and Hindus in Afghanistan in the last few decades from about a hundred thousand to several thousand and their migration from most provinces to a few limited provinces is a sign of a potential threat and lack of security for minorities. So with this situation, security in the country of Afghanistan is one of the categories that has become an unattainable dream for the entire nation of Afghanistan, especially for the minorities. After the defeat of the Taliban and the Bonn conference, the people of Afghanistan thought that their country might be safe, but on the contrary, not only was it not safe, but with the occupation of false preachers of human rights, it has become more unsafe day by day. All the people of Afghanistan live in despair. This has caused the racial, ethnic and religious minorities to take the hard and difficult migration paths of the European countries, as well as such religious minorities (Sikhs) gradually from Afghanistan to other countries. Europeans immigrate that this matter (immigration of minorities) will end in the not too distant future to the detriment of the country of Afghanistan, because if the history of Afghanistan is examined carefully, it has the most honest and caring people. Throughout the history of Afghanistan, Hazaras have always been in the front against the invaders and have never betrayed their

country. Also, during the history of their stay in Afghanistan, the Sikhs were always engaged in business with all sincerity. It can definitely be claimed that the most honest people in Afghanistan are the Sikhs.

3. Financial security

Property ownership is considered as one of the private rights of individuals, which is accompanied by respect and emphasis in the rights of the subject. Property ownership is one of the rights and unavoidable necessities of human life, and its guarantee is one of the basic duties of the government, and the owner has the right to use any kind of property and benefit within the framework of the law. It is as follows in the articles of the Civil Code of Afghanistan regarding the right to property:

Article: 1900: Ownership is a right that is placed under the will and control of a person, and only the owner can use, exploit and take any kind of ownership in it within the limits of the law (Constitution of Afghanistan, 2003). Article: 1901: The owner of the object is known as the owner of all that is considered as one of its main elements and it is not possible to separate it from the object without destroying or losing or changing the object (ibid). This article refers to all the fruits, belongings, signs, and products of the property that belong to the owner. Article 1904 refers to the right of possession (ibid). Also, in the Constitution, in Article 42, it is stipulated as follows: "Property is protected from interference." it is no one will be prevented from acquiring ownership and taking possession of it. In this article, the word "no person" is used, which is general and includes minorities, that is, this article says that the property of all people living in Afghanistan is respected and no one can know. In the continuation of the same clause, "Except within the limits of the law, no person's property shall be confiscated without the law and the decision of the competent court" (ibid). Since the security of life and property is one of the basic needs of human life and it is considered the most vital part of human rights and citizenship that the people of Afghanistan in the past and now especially in the last quarter of a century, financial and life security They have always seen themselves in danger and have been faced with its violation. For many of the rulers and autocrats, local governments and tribes, people's lives and especially property were not important, so the constitution respects the property of all the people of Afghanistan, considering the situation of the country of Afghanistan. He considers it safe from violence (ibid).

4. Economic Security of Work and Activity

Having a job is one of the unavoidable necessities of human life, which has constructive effects on human life and economy, because providing the necessities of life is necessary for

human life and requires earning. Having a suitable, safe and profitable job is to provide these needs. So it can be said, job security is about having a good job security and maintaining and maintaining it (Hashemi, 2012). The unbalanced economic relationship and the vulnerable position of the worker require that special social measures be taken for the security of the worker's job, so in the Afghan constitution, work is considered the right of every Afghan citizen. which says in article 48: Work is the right of every Afghan. Working hours, leave with wages, worker's rights and other related matters are regulated by law. The choice of occupation and profession is free within the limits of the law.

Because workers are one of the most basic social and economic foundations of any society, and work and workers contribute a lot to the development of the nation, and the goal of the legislator is to protect the rights of workers, prosperity and prevention (Constitution of Afghanistan, 2003). Considering the background of unemployment and forced labor in Afghanistan, on one hand, "imposing forced labor is prohibited in Afghanistan" and especially "imposing work on children is not allowed" (Constitution of Afghanistan Article 47) on the other hand Also, in special cases, people's participation is considered necessary: "Active participation in war, disasters and other situations that affect public life and well-being. it is the duty of every Afghan" (Ibid., Article 49). Also, in the constitution, the business of all the people of the society has been officially recognized without any restrictions, and in various cases, it has assigned duties to the government in economic matters to the government or the period of economic growth. Provide or perform actions directly. The government is responsible for creating a progressive society based on social justice and balanced development in all regions of the country. In Article 6 of the Constitution, the legislator says: The government is responsible for creating a prosperous and progressive society based on social justice, among all nations and tribes, and balanced development in all regions of the country. The government should encourage and support private investments, and protect them. Article 10 of the Constitution states:

The government guarantees the incentives, protection and immunity of private investments and enterprises based on the market economic system, in accordance with the provisions of the law. (Constitution of Afghanistan, 2003). The government should organize and implement special strategic programs for the development of industries, growth of production, improvement of people's living standards and support of professional activities. The government should implement special programs in the field of agriculture and property and improving the economic, social and living conditions of farmers and nomads (Constitution of Afghanistan, Article 14). As it has been said, the constitution has exempted the economy, work

and activity, which is one of the most important and vital issues of every country, and obliges the government to support workers and social and economic activity of every nation. (Constitution of Afghanistan, 2003).

5. Security and Freedom in Choosing Housing

One of the issues of personal security of individuals is the security of housing. A residence is a place of residence and peace for individuals and their families who should be able to live and rest in it with safety and leisure. Therefore, this condition is verified when this place must be protected from any kind of attack and unauthorized persons should not be allowed to enter without the permission of the owner of the house. The constitution of Afghanistan has also supported this right, that is, freedom of residence. Article 39 of the Constitution says: "Every Afghan has the right to travel to any part of the country." And choose housing, except in the areas where the law prohibits it. The right to housing in the constitution has several elements, including the freedom to choose housing, the freedom to use housing, and the inviolability of housing (Constitution of Afghanistan, 2003).

1. Freedom to choose housing: this aspect of housing freedom includes several rights, including the right to have or not have housing, the right to freely determine housing, and the right to change housing; It means that every citizen has the right to have a permanent residence or not, it cannot be forced to have a permanent residence and home, and also every citizen can live at will. Only in some cases where the law has prohibited residence there, some people cannot determine their residence in some places. As an example, some criminals may be sentenced to imprisonment in some places of the city or village (Penal Law, Article 193). Article 39 of the Constitution also emphasizes this: Every Afghan has the right to travel to any part of the country and choose a residence, except in the areas where the law prohibits. Every Afghan has the right to travel outside Afghanistan and return to it according to the provisions of the law. The government supports the rights of Afghan citizens abroad.

This means that a person can come and go within a country whenever he wants, choose a place of residence wherever he wants, and also be able to leave that country or return to his country whenever he wants. An obstacle cannot take away this right, the security of the place of residence is one of the basic rights and freedoms of an individual, so that a person can choose the most suitable place with his own creativity and taste and take advantage of its advantages and privileges. Be within the limits of the applicable law. Everyone should have the security of residence in order to obtain a prior permission to choose their residence or change it and come and go there (Constitution of Afghanistan, 2003). 2. housing invulnerability; Respecting each

person's home is one of the traditional freedoms, according to which, no one has the right to enter a person's home and inspect it without his consent. In the Holy Quran, the safety of housing is mentioned in various verses (Verse Noor 27, 28). In the constitution of Afghanistan, it also provides immunity from abuse as individuals and it has forbidden to encroach on them except through the law. In article 38 it says: A person's home is safe from abuse. No one, including the government, can enter or inspect a person's home without the resident's permission or a competent court order, except in the circumstances and in the manner specified in the law. do. Violation of other people's housing without the owner's permission is a criminal offense, which is punishable by imprisonment of up to two years or a fine. Cash from 60,000 to 100,000 Afghani is fined. Also, Article 38 of the Basic Law stipulates the following in confirming the security of people's privacy and denying spying: The freedom and privacy of personal messages and communications, whether in written form or by telephone, telegraph and other means, is protected from interference. The government does not have the right to inspect the messages and communications of individuals, except in accordance with the provisions of the law. As it can be observed, the legislator has accepted an exception to the law for the principle of the security of people's communications, so that based on that, the privacy of people who are likely to disturb the safety and well-being of the society is subject to inspection. will be decided Of course, the implementation of this necessity should be done in such a way that the dignity of individuals is not harmed. The basic law has assigned the basis of identification to the legislator. It should be noted that today, the existence of advanced technical and electronic spying tools and their ease of use by governments is considered a very serious threat to the dignity of private life. It is in this way that the safety and freedoms of individuals are practically taken away, the secrets of the people are revealed, and the privacy and family activities of individuals are easily exposed to the eyes and ears of the powerful and agents. At the present time, it is possible to enter people's privacy by listening in on phone conversations, much easier than entering private homes without permission. Committing such actions is definitely considered to be a deprivation of the legal security of individuals and a reckless violation of the government's rights. Therefore, in order to deal with this danger, the country's legislature, in the position of establishing the law, must establish a proper law regarding cyber and electronic crimes in a precise way and with ethical considerations, so that it can prevent such crimes. Take it and ensure the security of privacy. Minorities in Afghanistan enjoy full freedom and security in choosing their housing, although in some parts of the history where the country has been plagued by war and insecurity, religious minorities have lost their homes and some The areas have been resettled, but in times of war and insecurity, which all the people of Afghanistan have

suffered from, the minorities enjoy complete security and complete freedom in choosing their housing.

As a result of what has come, the legislator has paid special attention to the security of people, considering the past history of Afghanistan, and has stated that security is one of the most fundamental and basic rights of the people of the society. After all, security is a blessing that is the basis of other components of development and growth (Constitution of Afghanistan, 2003). From the side of not recognizing and ensuring the rights of ethnic minorities and ethnic insecurity, it can be different. They even lead to violence. This situation actually causes reactions and the growth of militant nationalism among peoples, in which the ethnic consciousness of the minority appears as a political force. Identity-seeking demands, which often become a game of political interests, are expressed in the form of a demand for autonomy. When this demand is ignored and no solution is foreseen to solve the crisis, it is difficult to avoid a violent conflict and even a civil war. Because in the case that the security of the peoples and minorities is not ensured and they do not feel peace and security, the last way to get rid of this situation is rebellion and rebellion against violence and oppression. It is in that situation that the country is dragged into a conflict and a conflict that Afghanistan has been in for years. There were many witnesses of this conflict, conflict and war between the minority and the ruling majority. After all, security forms the social, cultural, economic and development infrastructure of the country. The lack of security threatens the coordination between the nations, the minority and the majority, and macro-political infrastructures.

6. Religious Equality

The number of religious beliefs and the presence of followers of different and diverse religions in human societies and the interest of each of these religions and religions in the preference and superiority of their religion and belief along with the bloody wars, the pain and the suffering of other people's thoughts. Discrimination against the followers of other religious beliefs has been accompanied by the occurrence of crusades in ancient times, 30 years of bloody battles between Protestants and Catholics to the general killing of Muslims by Buddhists in Myanmar, the massacre of Yazidis by Daesh in Iraq and the bloody religious conflicts in the Middle East, especially in Afghanistan, which carried out brutal massacres in the heart of religion, as well as the events of war. The second world, which is considered as the origin of many changes in international law, has not left out religious and ideological aspects. However, with the growth of collective wisdom, humanitarian groups and the international community have realized that in order to reduce the amount of such wars, pluralism and religious tolerance

should be encouraged in the societies. Because the religion forms the basis of the beliefs and beliefs of the people of Afghanistan and has penetrated into the spirit of tribal traditions. Perhaps there is no other element in the society of Afghanistan that determines the structure of social and ethnic relations as much as religion, religious tensions and antagonisms in various regions in the form of discrimination, malice and The right of mass killings has been promoted and practiced against the followers of one religion. There have been many cases of religious malice to the extent of hatred towards the followers of rival religions, and sometimes the blood of the followers of the religions has been shed. It has been regarded as an acceptable competitor and even a reason for the afterlife reward. The spread of such a belief in the tribal and tribal society of Afghanistan has not only destroyed the trust, sympathy and cooperation, but has caused social chaos and national differences and caused the accumulation of ideas and the creation of Hostile relations within the nation and as a result explosion, turmoil and diversity have become national. The social and political history of Afghanistan has repeatedly witnessed such conflicts and bloody confrontations arising from fanaticism and religious affiliations. Afghanistan is a country that can be studied and is important in terms of religious, ethnic and linguistic structure. Paying attention to these facts has been a factor in strengthening national unity, and ignoring them will lead to concerns and dangers. From the religious point of view, the majority of the people of Afghanistan (99%) are Muslims, but they are not the same from a religious point of view. In a general classification, the Muslims of Afghanistan are divided into two major groups, followers of the Sunan and Shia religions, each of which can be divided into sub-branches. Therefore, the main religions in the country are:

1. Hanafi religion: Most of the Muslims of Afghanistan follow this religion. Researchers have reported their number in an approximate statistic of 55 to 65% of the country's population; Followers of the Hanafi religion are made up of different Pashtun, Tajik, Uzbek, Nuristani, Baloch and Turkmen peoples (Dulat & Ahmad, 1992).

2. Jafari Shia religion: followers of this religion are composed of Hazara, Qazlbash, Tajik and Pashtun peoples, but most of the followers of Jaafari Shia religion are Hazaras, as they are known as Shia Zara is used interchangeably. Shiites have allocated about 10 to 15% of the country's population to themselves (ibid, 314). Throughout the history of the ruling system of Afghanistan, on the one hand, it has been religion-oriented and has named Hanafi as the only official religion of the country, and on the other hand, it has always been a supporter of a particular race and has supported the Pashtun race. It is natural that other peoples, races and religions are marginalized in such a military system, some of them cannot enjoy all their basic

rights and freedoms because they are not of the same race and some of them are not of the same religion.

For this reason, various ethnic minorities, which make up half of the population of Afghanistan, are not happy with the Pashtuns' control over the country. In the meantime, the people who do not agree with the ruling people in terms of religion and race, are in double deprivation. The Shiites of Afghanistan have such a situation; From a religious point of view, on the one hand, and from his ethnic and linguistic background on the other hand, he was oppressed by the rulers and suffered multiple deprivations (Sajjadi, 2001). Based on the diagram of social divides, the ethnic and religious divide in Afghanistan overlaps in the case of the Shiites (the Hazaras, who are the main Shiites, and the Tajiks). It will intensify the conflict within the group to a certain extent. In the general culture of Ahl al-Sunan, they use the title of Shia for the name of a special tribe (Hazara) (Hoydi, 1985). For this reason, the Hazaras of Afghanistan throughout history, especially in the last 250 years, have been greatly weakened and oppressed due to severe racial, religious and linguistic discriminations that were practiced by the rulers of the time. In this way, as long as the religion-based and race-based attitude disappears in the country of Afghanistan, unjust discriminations and class oppressions will continue and the political participation of the Shia-based religion will naturally be isolated. According to most of the past constitutions of Afghanistan, only the Hanafi religion is recognized as the official religion. It would have been done and followers of other religions such as Judaism and Hinduism, which constitute less than 1% of the country's population, were given the freedom to perform ceremonies within the limits of the law (Constitution of the Government of Afghanistan approved 1922; Basic Law 1930; Article 2 of the Basic Law 1976; Basic Law 1980). But the Shia religion was not even mentioned in their list. This approach means that Shiites do not have the right to freedom of religion and must either follow Hanafi jurisprudence or live in poverty, so the constitution of 2003 is dark with the view of Afghanistan's past. There is no other name from religion and ba This approach has officially recognized all religions and eliminated any religious discrimination that existed in the past laws of the country of Afghanistan, which says in the preamble of the constitution: "In order to create a civil society free from oppression, Tyranny, discrimination and approval of this law we did" and also in article 22, it says that "any kind of discrimination and privilege between the citizens of Afghanistan is prohibited." And the tribe forbids, that is to say, just as the majority has a formal religion and religion, the minority also has a formal religion and performs the ceremony. Their religions are free and no one has the right to prevent them from performing their religious

ceremonies. Therefore, Article 2 of the Constitution stipulates as follows: Followers of other religions are free to follow their religion and perform their religious ceremonies within the limits of the law. The constitution explicitly supports the free performance of religious ceremonies of minorities within the limits of the law (Constitution of Afghanistan, 2003).

7. To Officially Recognize the Language of Minorities

Human biodiversity should be considered as a source of continuous enrichment and for this reason it should be protected. Multiplicity of languages, nations, cultures, knowledge and even human genetic capital is a heritage that should be preserved.

From this past in our era, only through the preservation of various cultures, especially the unwritten cultures known as primitive people, can quickly learn about the diversity accumulated from centuries and thousands of years ago Plant and animal life was obtained; Even if we look at the issue from this point of view, the preservation of languages, their vocabularies and their verbal body and all the traditions that you know in the form of people (Ethnic knowledge) are decided, it is necessary (Burton, 2001). Language is the first and simplest, most direct and most effective means of understanding and understanding and the most important forming factor, culture and the best means of transmission from one generation to another and from one society to another. The language is the translator of the thoughts of scientists and intellectuals, and of course there is no such thing as a thoughtless speech or a thoughtless thought (Al-Tayi, 1989). Considering this feature and importance of language, language can be the identity of a nation and a nation. Language is a way of distinguishing nations from each other; Therefore, peoples and nations are trying to preserve their language, which is actually preserving their ethnic and national identity. The conscious effort of the nations and minorities to learn and speak their mother tongue in addition to the official language of the state is to save and revive the said language, if it is destroyed forever the identity of the community Ai, their politics and culture will definitely be strongly affected. Because it has lost its important element which is language. The opinions and feelings of individuals and groups should be expressed with the authenticity of the language in the same way, the past should be written and the future should be recited (Ibid). On the other hand, an important factor in maintaining the unity and solidarity between the members of a nation and a nation has an undeniable role, and that is the lack of a linguistic identity in the creation of a coherent state and organizations It creates a lot for an ethnic group that was not one. A land base will create such problems. If there is no connection or no land base, it is the main obstacle to the formation of a state. The lack of base identity or linguistic harmony can also be a big problem At this time, it is taken into account in such a way that all In the absence of such unity, ethnic movements

place their emphasis on the creation of common standards and finally on the expansion of language in all ethnic sections (Burton, 2001). On the other hand, when the national or ethnic or mother tongue of a group is gradually destroyed for any reason, the social identity of that group will be destroyed from the sociological point of view, because the mother tongue A singular group, a set of constituent elements, social identity. It is a group (Al-Tayi, 1989). Considering the role of language in creating ethnic identity and solidarity, peoples and groups are not ready to forget their linguistic identity easily. The constitution of Afghanistan also declares that the people of Afghanistan have equal rights regardless of their race, color, religion, etc It is in the article, 16 Pashto languages, Dari, Uzbek, Turkmen, Balochi, Pesh'a'i, Noorstani, Pamiri and other languages have been identified and counted in the country and then declared: "Pashto and Dari are the official languages of the state". The interesting point is that the constitution of Afghanistan has established and specified the task of strengthening local languages on the responsibility of the government: "The government should design and implement effective programs to strengthen and develop all the languages of Afghanistan" (Constitution of Afghanistan, 2003). This article has declared the publication of mass media in common languages in the country free. The government's compulsion to ensure the fulfillment of the principles contained in the constitution and to give the government the authority to accelerate and implement those rights has a full effect. Article 43 of the Constitution obliges the government to: In order to spread knowledge evenly throughout Afghanistan, provide compulsory secondary education, design and organize an effective program, and provide time for teaching native languages in the areas where they are spoken. Another appropriate right that Article 135 considers for Afghanistan's ethnic minorities, which is interesting from a human and human rights point of view, is that if the party does not know the language of the lawsuit, the right of at Get rid of the materials and documents of the case speaking in the court in his mother tongue is ensured by a translator (Constitution of Afghanistan, 2003). After the constitution came, due to the past of Afghanistan, non-Pashto languages were neglected in government offices and schools, to the point where no language other than Pashto was used as an official language in some government offices It could not be done, but in the law approved in 2003 It has supported the common languages of the country and obliged the government to strive for the development of all the languages of the people of Afghanistan. It is also stated in Article 66; The President of the Republic cannot use his/her position in terms of language, position, race, religion and party during his/her tenure. All this emphasis that the constitution has shown on language conveys the importance of the constitution to all the languages of the

people living in Afghanistan. So, the government should define a macro strategy and implement it to strengthen and develop (expand) all languages. This work is part of the government's positive commitments towards the national and native culture, and it is the duty of the government to protect it. With the aim of guaranteeing and supporting the freedom of all languages, it is free to publish press and group media in all the common languages in the country.

In fact, this is a kind of negative support for all languages, which should not be prevented from the press and media that are published and broadcast in the common languages of the country, because of the choice of a common language. Basically, it has placed another heavy duty on the shoulders of the government, which must provide the time for teaching the mother tongue in the areas where it is spoken (Constitution of Afghanistan, 2003, Article 16). In fact, from the point of view of indigenous culture, including language, the strategy of the constitution is based on the plurality of languages. Plurality in the category of culture, including in the category of language, on the one hand, can lead to unity and empathy, because cultures are respected equally. On the other hand, excessive emphasis on cultural pluralism may harm national unity and Islamic harmony. For this reason, the government should take measures to use this initiative for national solidarity in its programs to support indigenous culture, but with all this, the constitution is the language of all nations. A resident in Afghanistan has supported. Therefore, the language category is very important in Afghanistan. Considering the historical background of this category in Afghanistan and its observance in the constitution and the society, it can create a bright and promising future for the society and the spirit of national understanding and cooperation in the society. strengthen and create a very solid harmony and unity among all the peoples living in the land of Afghanistan.

8. The Right to Freedom of Education

Education and training is one of the natural rights of every human being who lives on this earth and forms the main pillar of human life. For this reason, it has been considered as one of the goals of prophethood and Shariah. The Constitution of Afghanistan emphasizes the need to expand education and upbringing for all and it says in Article 43: Education and training is the right of all citizens of Afghanistan, which should be free from the beginning to the level of bachelor's degree, and the government should do its best to provide education and training for the citizens of the country. In fact, the goal of the drafters of the constitution was to eradicate illiteracy from the country and at the same time raise the level of public awareness. At the same time, in this document, special attention has been paid to the principle of education and upbringing, its provision, universality, and free education at the primary to secondary level have

been emphasized, therefore, one of the basic duties of the government with regard to Article 43 of the Constitution has decided to provide free education, upbringing and physical training for everyone at all levels and to facilitate and generalize higher education. As a result, education is considered as a natural, natural and inherent human right and has an irreplaceable role in different fields of social, cultural and political life. Therefore, based on the commitments, social contract and applicable laws of the country, governments and people's and national governments are responsible for updating and funding the costs of education and training for all citizens. Interested and interested in science and knowledge without considering discrimination and differentiation in terms of gender, religion, race and until the time of learning and learning, I will provide education and upbringing. No one has the right to deprive people of their natural rights. In any case, it is clear that education is an extremely important element to support and deepen the personal characteristics of minorities. If the minorities of the society are deprived of this right and do not have the right to education, it is possible that all the characteristics that distinguish the minorities from the majority will be destroyed, and from the side of the society, a significant number of the society will not progress. They are deprived of development, and this issue is to the detriment of the society and the nation in which they live. But unfortunately, the religious minorities in the society of Afghanistan do not receive full education and training, because the Sikhs, who are a religious minority in the country of Afghanistan, many of their children, due to the limitations There are those who are deprived of the right to education. This has caused a number of Sikh children to miss out on education, which is one of the most fundamental rights. The young generation of Sikhs and Hindus can hardly be found in universities.

Among the Sikh community and the Indians of Afghanistan, there are zero students who can find their way to university and have excellent education. Most of them cannot even finish the twelfth grade. Most of them study until the sixth or seventh grade. They have read that this is a violation of Article 22 of the Constitution, which prohibits discrimination among Afghan citizens (Constitution of Afghanistan, 2003).

9. The Right to Education in the Mother Tongue

Teaching and learning in mother tongue is one of the rights and demands that ethnic minority groups seriously want to benefit from. In fact, without providing education, there is no possibility of survival of the mother tongue in the long run. There is even a discussion based on the fact that in order to protect the mother tongue of the minority groups and prevent their gradual disintegration, it is necessary to use the local language in the local areas where the

minorities live. Of course, this does not mean that in order to preserve the language of the minorities, teaching these languages or teaching them in the areas where there are minorities will be mandatory, but it can be expected that according to the constitution that says: In order to spread knowledge evenly throughout Afghanistan, the government is obliged to provide secondary, compulsory education, to design and implement an effective program, and to teach native languages in the areas where they are spoken. First of all, there should not be an obstacle for learning these languages, and secondly, assistance will be provided for their learning. Although this right is not directly stated in international law, but from the text of Article 27 of the Covenant, which says:

In the countries where there are racial, religious or linguistic minorities, the persons belonging to the said minorities cannot be denied the right to refrain from their own culture together with other members of their own group. Be religious and act according to it or speak in your own language. But it is possible to extract the right of the language learner from the content of this article, because it is necessary to speak with the mother tongue so that the minorities can preserve this language if the children are in school with their own language (Constitution of Afghanistan, 2003) If they don't learn, their language will disappear. It should be said, in the minority agreements of the United Nations, it was decided that in the regions where a significant proportion of the population belongs to the minority group, primary education in schools should be in the language of the minority (Azizi, 2006). Also, in the recommendation of the Hague letters, the right of minorities to be educated in their mother tongue has been emphasized and education has been mentioned as an important element in preserving the identity of minority groups. Experts add that the right of minorities to preserve their identity will be fully realized only when they acquire proper knowledge of their mother tongue through the learning process (Dashti, 2014). There is no doubt that the human group has its own social structure. An organization that is based on the manners and customs of the religious and linguistic characteristics of that group. This structure is transferred to other generations as a social heritage and is inextricably linked with the identity of the members of the group. From the heart of this social structure, the specific way of life of the group appears. Therefore, the language, religion, way of life and attitude of a social group towards the world around it are considered to be elements of culture and without the existence of these elements, there can be no spiritual life for that group. It was depicted socially (Salimi, 2000). In this way, when it comes to preserving the identity of minority groups, it is inevitable to protect minority elements. The components of minority groups' cultural identification and minority identity elements are generally manifested in language, religion and lifestyle, but language is very

important in preserving the identity of minorities. Because language is one of the important symbols of culture and all people try to preserve this symbol of their identity in order to preserve a part of their culture. Preservation of language is one of the rights that should be respected, and trying to destroy a language is actually erasing a part of the identity of people who communicate with each other through it. Usually, in racist governments like Afghanistan, the language of a minority is destroyed and the minority is dissolved in the majority in terms of language and culture, and as a result, the culture of the majority dominates the rest of the country's inhabitants. be imposed In order to negate this attitude and move in a positive direction, the constitution, as stated, has made positive commitments to the government so that the language, as the most basic symbol of a national culture, survives and avoids destruction.

10. Judicial Justice

Judicial justice is one of the biggest goals of any judicial system, which has been presented as a value among all societies, religions and civilizations. The importance of Islam on the implementation of justice and the establishment of law based on the standards of Sharia is evident at this time, because the purpose of judicial justice is to have and respect equality between the parties of the case by the authority. A case is in the course of preliminary investigations, maturity and the issuance of a verdict in favor of the right holder with respect to public interests in the framework of legal and Islamic standards. Judicial justice and non-discrimination between people in the court regardless of gender, race, religion and language have been accepted in all legal systems, especially in the Islamic legal system of equality and respect. Justice has been ordered to the judge even to look at the parties of the case. In the Constitution of Afghanistan, there is no article that specifically recognizes this right, but there is a general article based on the prohibition of any kind of discrimination and privilege between the citizens of Afghanistan and the equal rights and obligations of the citizens of Afghanistan. There is a law (Article 22) and the right of access and freedom in choosing courts can be inferred from it, because in that article, the lawmaker has prohibited any kind of discrimination between the citizens of Afghanistan. As it was said before, there is any kind of discrimination in this article.

This is a general type and includes equality and non-discrimination in the selection of the court and courts, that is, all Afghan citizens are free to choose the court. In the same way that the Constitution in Article 131 has given the freedom to the Shiites to choose the court, to apply the rulings of the Shia religion in accordance with the provisions of the law in personal cases, and in the rest of the lawsuits, if it is in the constitution or in the laws. If there is no other ruling,

the courts should decide the case based on Shia jurisprudence (Constitution of Afghanistan 2003). The right of access and freedom in choosing the courts means that every person has the possibility to refer to a court to establish his right, without legal regulations or other material resources preventing access, so If citizens do not have the freedom to choose courts, but are limited, it is possible for people to refuse to go to court and claim their rights themselves, which may lead to involvement and reaction. On the other hand, this process continues and leads to many conflicts, or sometimes people may ignore their rights, and in this case, apart from harming people's rights, the society will turn away. Lawlessness occurs and the order of the whole society collapses. For this reason, Article 22 of the Constitution has negated any kind of discrimination. One of the examples of discrimination is discrimination in the court, which is denied in the constitution and it is emphasized that all people, including the president of the republic, are under the rule of law. On the other hand, the staff of prisons and detention centers, prosecutors, judges and other people who deal with prisoners and people under arrest in some way, when performing their duties towards prisoners and people under arrest Arrests must respect human and civil rights. Therefore, he should behave and act impartially without taking into account ethnicity, nationality, religion, religion, race, social or political position or other discriminatory considerations. (Afghanistan Prisons and Detention Centers Law, Article 3). Also, in Article 5 of the Penal Code, it says the following about the equality of people in court and the equality of arbitration and judges:

The suspect, the accused, and the convicted regardless of nationality, race, language, tribe, religion, religious belief, political opinion, gender, education, occupation, lineage, age, position, social status, place of residence and residence. He has complete equality before the law. In the Penal Code, like the Constitution, all people are completely equal before the law, so that characteristics, race, religion, political opinion, and other obstacles do not prevent equality in the court. In the constitution, equality in the execution of punishments is the right of all defendants, especially minorities, and in article 27 it says: No person can be chased, arrested, or arrested and punished except by the judgment of the court with authority and in accordance with the legal provisions that were passed before committing the accused act. That is, only a court can deal with this crime that has jurisdiction and has been approved by that law before committing the act. Without these conditions, no one can be punished. It also says in Article 29: "Determining a punishment that is against human dignity is prohibited." One of the punishments that is against human dignity and also against the constitution and criminal justice is discrimination between minority and majority punishments. If someone has committed a crime, he must be punished according to the law, no matter what his beliefs are, or from any

race or religion. Another one of the rights of the minorities in the court is to have a defense lawyer, which is stipulated in the Basic Law in Article 31 of the Basic Law: "Any person can be arrested alone or for To prove his right, appoint a defense attorney. Article 18 of the Law on Temporary Penal Procedures is specific to the right of a defense attorney for the suspect and the accused. Paragraph 2 of this article foresees that "suspects and accused are always assisted by their chosen defense lawyers". Article 43 of the same law states: "The accused and his defense attorney have the right to observe and obtain the documents including the file and the seized items". The content of the last article, in the direction of guaranteeing the principle of equality of arms, which is one of the important principles of fair trials and modern criminal law, is considered very useful, and in its kind, it is a commendable step by the legislator. Afghanistan, in order to recognize the rights of the accused and minorities in the court. The main importance of the equality of arms to ensure the defense rights of the accused is that the accused often faces the public prosecutor (prosecutor) who has all the possibilities of the government to make accusations and impose them on the accused. It is harmful, because if this principle is not respected, many innocent people may confess to crimes they did not commit and cannot defend themselves against baseless accusations.

According to what has been said, the right of minorities to have a defense lawyer for the accused has been emphasized in different parts of the laws of Afghanistan. As it was observed, in the laws of Afghanistan, the same right to benefit from a defense lawyer has been officially recognized. Also, the phrases used in the mentioned laws indicate that many of the principles governing the agency have been approved by the compilers of the laws of Afghanistan. For example, the phrase "anyone can appoint a defense attorney" means that all people living in Afghanistan have this right, because the laws of Afghanistan have the right to have a defense attorney. Minorities have been officially recognized in the court at all stages, so that no one can deprive them of this right (Constitution of Afghanistan 2003).

Conclusion

When the accused can understand the accusations well and be aware of their legal consequences and understand them if he is familiar with that language. Today, there are people living in many countries who speak different languages. In addition to this, in international courts, this requirement becomes more common, because the defendants of these courts often speak in a language other than the official language of the court. Due to this fact, the necessity of having a translator for the accused is evident (Alame, 2011). The jurists also consider it necessary to have access to a translator for those who need a translator and say: "Two just people

should be in charge of this work, because the translation is in the judgment of the testimony on the testimony that there are two just people in it." It is necessary" (Najafi, 106:40 and 107). This can prevent the violation of people's rights, because the number of translators and especially their fairness will reduce the error and mistake or intentional wrong translation to a certain extent, and in this sense, a fair and just trial. If the translator is one person, the possibility of error and mistake is high, and if he is corrupt, the possibility of incorrect translation is also high. Accuracy is very important in this matter, and any kind of deviation may violate the right of greatness. The right to use a translator in the laws of Afghanistan for minorities has been confirmed in the court stage. In the procedure law, this right has been identified for all defendants, both minority and non-minority, both in the investigation phase and in the trial phase. Article 135 of the Constitution says: If the party to the lawsuit does not know the language in which the trial is conducted, the right to know the materials and documents of the case and to speak in the court in his native language will be ensured by the interpreter. Article 20 of the Law on Temporary Criminal Procedures states:

If the suspect or the accused is not familiar with the language used in the investigation or trial, or is deaf or dumb, an interpreter will be appointed for them so that they can be informed about the crime and the allegations against them. and also help them in the process of recovery and confrontation. From all the discussions that have been said, it can be concluded that equality and non-discrimination have been emphasized in the constitution; The principle of equality is that all people have the same rights and responsibilities. The original and basic term of individual rights and freedoms should be found in front of people. It is impossible to achieve social justice, equality and freedom in a society until there is complete equality between people in every aspect (Constitution of Afghanistan, 2003). Social difference, in any form, paves the way for oppression, aggression, and rebellion, so this principle (equality and equality) has been emphasized a lot in the constitution of Afghanistan. By observing the equality between the members of the society, people can be supported against their arbitrary deprivation of their basic rights, including the right to life, liberty, and security, and the enjoyment of other civil and political rights. It has guaranteed their economy and culture. It is obvious that equality does not mean that all people have a complete and complete similarity with each other, and it also does not mean that people are identical to each other. The principle of equality means that all members of society (under equal conditions) have rights and duties. Based on this, it is impossible to achieve social justice, brotherhood and freedom in a society until there is equality between the people of the society.

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Qur'an karim.