

In the Name of God, the Most Merciful, the Most Kind



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## A State Should Promote General Welfare

In the present times, mostly among the developed nations, there is a greater emphasis on the positive role of the state, because it is now clearly realized that the influence of the state permeates all our relations, even those of the personal kind. Every state must ensure that all the citizens are provided their basic rights and requirements of life. First of all, the state should create conditions for the growth of free individuality and personality of its citizens. The function of the state is not merely the business of the policeman, of arresting the criminals or of ruthlessly enforcing contracts but of providing for men equal chance, as far as possible, of realizing what is best in their intellectual and moral natures.

State must protect and promote the welfare and well-being of the individual by preserving law and order. But this is not enough. Mere protection of the rights of an individual and enforcement of his duties do not exhaust the list of its functions. Every state now espouses the cause of the economically and socially weak, so that the mere requisites of health and decency shall not be denied by accident or misfortune or incapacity to any member of the community.

Furthermore, modern state now assumes the duty of promoting general welfare. It is now clearly realized that the state is a collective body and not a joint-stock company of the privileged class. It should promote social conditions for the welfare of all. It is now universally recognized that society cannot be happy, prosperous and progressive if some people suffer from the pangs of hunger or are illiterate and ignorant or are unhealthy and miserable. Modern society is becoming collectivistic. Hence modern state can no longer be individualistic, as it was in the nineteenth century. It is now recognized that state should interfere and regulate social and economic lives, if such interference and regulation promotes general welfare. Hence the sphere of state activity should extend to new fields of social and national life for there are many things of general well-being which are not provided by the efforts of individuals and associations either because their private efforts are insufficient or they are incapable of doing so.

The state should be the custodian of the future of the nation. It must conserve what the nation has now, and develop its resources for the future generations. The state with its command on the resources and its universal reach can build for the future in ways that no partial organization can exert. It should take different constructive plans and projects whose benefits will be shared by the future generations. Individual or private enterprise does not undertake it because it is selfish, its resources are limited and its methods haphazard and it aims at immediate gain. The state does not suffer from such limitations or short comings. While private enterprise cannot risk its limited resources in long-term projects, the state can undertake ambitious plans and schemes of conservation and development, as it possesses abundant resources. It can develop national economy by planning and building industry and agriculture by undertaking industrial and scientific research and discovery and encouraging such higher activities of life as science literature and art. In short, it can promote culture and civilization.

It is important to understand from another point of view that human personality in general cannot develop freely without the external conditions of social living which are of universal concern in view of the acknowledged objects of human desire. These conditions are peace and order, protection, safety and prosperity. The state must maintain peace and order not because it is a sort of universal policeman but because in peaceful and orderly atmosphere alone each individual can rise to the full stature of his personality. In other words, man develops his individuality and personality only when the state regulates the dealings of the citizens with one another, prevents confusion and chaos, maintains the rights of its citizens and enforces their duties. The state should maintain order not for the sake of order but for the higher ends of protection, conservation and development. Modern state cannot become merely police-state as the laissez faire wanted it to be. It is a positive state, for it actively creates conditions of human development and welfare. As put by Garner, "The same reason which justified it yesterday in abolishing slavery, justifies it today in abolishing ignorance and will justify it tomorrow in abolishing other degrading conditions of life."

Analyzing our own country with this perspective we find that there are many shortcomings that we need to amend in order to make it a better society. The responsible authorities in this regard should take positive steps and let the people of Afghanistan achieve their basic requirements so that they are able to strive for the realization of their personalities in an atmosphere of peace, tranquility and justice. It is their right and no one should neglect them their due right.



## Lawbreaking – A Common Practice

By Hujjatullah Zia

Man is entitled to live a free and dignified life without barriers to hamper his liberty. He has the right to express his thoughts and beliefs. Whenever the public find one's thoughts and attitudes in conflict with the society, they cannot lynch him/her without legal process - otherwise it will be considered a flagrant violation of law. On the other hand, one can exercise his human rights and liberty to the extent that they are not harmful to others. In case of breaking the law, no one, other than competent governing bodies, is allowed to prosecute the accused.

Constitutionally, the police and district attorney are responsible to prosecute suspects or criminals. The police have the duty to collect evidence, investigate crimes, question or keep the suspect in custody, however, without torture. The Constitution states in article 134 as, "Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney's Office, in accordance with the provisions of the law. The Attorney's Office shall be part of the Executive organ and shall be independent in its performance..."

To view the foundation of Attorney Office historically, it was first established in Napoleonic Code in 1808 in France Criminal Law. The Code, which was founded in 1804 with its stress on clearly written and accessible law, was a major step in replacing the previous patchwork of feudal laws. The Napoleonic Code was very influential on developing countries outside of Europe, especially in the Middle East, that were attempting to modernize their countries through legal reforms. Napoleon set to reform the French legal system in accordance with the ideas of the French Revolution because the old feudal and royal laws seemed confusing and contradictory to the people. The French Revolution's Declaration of the Rights of Man and of the Citizen had declared that suspects were presumed to be innocent until they had been declared guilty by a court.

Even though the Napoleonic Code was not the first civil code and did not represent the whole of his empire, it was highly influential and significant. It was adopted in many countries, including Afghanistan. Afghanistan's legal system is highly influenced by French law. Although, democracy is immature, the legal system is modern and in accordance with international civil and democratic standards. For instance, considering innocence as original state and crime as a personal act, prohibiting discrimination and distinction on the grounds of race, color, sex, etc, prohibiting tor-

ture, persecution and the acts which are contrary to human dignity, recognizing freedom and dignity as inviolable, etc. are universal principles which are stated in Afghanistan's Constitution. The law regarding the formation and authority of Attorney Office has passed four periods of influence in Afghanistan. It was first approved in the solar year of 1343 during the reign of Muhammad Zahir Shah, who was bestowed the title of "Father of the Nation" in Emergency Loya Jirga of 2002. The higher administration of attorney, which was initially dependent to the Ministry of Justice, was established on the basis of this law. The second law of attorney was approved in 1358. Similarly, the third and fourth ones were endorsed in solar years of 1369, during Dr. Najib's government, and 1392.

Law has been widely violated in Afghanistan, mainly by dictatorial regimes. As a result, the communist parties (1358) held their political opponents in custody and some were tortured or lost their lives during regimes without standing on trial. Political prisoners were kept in damp and dark basements and their rights and dignity were trampled upon in the worst possible way. Laws were approved to prevent the individuals from committing crime and to protect the rights and dignity of the public. Now, the question is that can people exercise their rights to life, liberty and property under the current law?

The public still show interest in violating law and order in the country. As a result, just a few days back, I witnessed that a car, whose driver was suspect of a moral crime, was pelted with stones by an angry mob in a part of Kabul city and sought to pull the driver out to punish him. But the police reached on time and rescued him from the mob. The case of Farkhunda, a 27-year-old woman who was lynched by irate mob in Kabul more than a year ago, demonstrates the same fact. Similarly, desert courts take place every now and then in some villages, wherein traditional mindsets are deeply embedded. In short, people tend to punish the accused or suspects without the right to do so.

It is not only the common people who violate the law but officials also break the law on a large scale - based on a survey released only days earlier. Administrative corruption, bribery and keeping the suspects or criminals in prison longer than their detention-time are some common practices in government's machinery. However, the government is supposed to enforce the rule of law, protect the rights and dignity of the public and prevent them from infringing the law. Citizens should be able to exercise their natural rights, i.e. the rights to life, liberty and property, without barriers.

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## Afghanistan's Main Concerns

By Dilawar Sherzai

Insecurity in Afghanistan is not the only trouble for the common people. There are many other problems as well that haunt their lives and make them miserable. Some of the problems are directly linked to insecurity; like, people are not able to have access to health and other facilities of life.

With the growing concerns in Afghanistan, the prospects of peace and tranquility do not seem very much clear; yet, there are possibilities to start afresh from this point and reach to a somewhat reputable position in the times to come and save the nation from another age of instability and misery. There is no doubt that for its journey to stability Afghanistan would require a great deal of assistance from the regional countries and Western allies. However, the most dominant role has to be played by Afghanistan itself. Afghan authorities in contribution with Afghan people can really change the destiny and can guarantee a promising future for the generations to come; all it needs to do is to focus on certain considerations.

It depends largely on how Afghan authorities will deal with the circumstances ahead. At this crucial juncture, when the Western allies have withdrawn most of the forces and the regional countries are very much interested in pursuing their own interests, the Afghan government does not have any other option but to be more responsible and deal with the situation on its own. Currently there are many concerns about the Afghan government; addressing them is in its total control if other things are out of it. Afghan government can listen to the different voices in the country that are peace-loving and want a better future for Afghanistan in the form of better political system. Moreover, Afghan authorities can make sure to hold the parliamentary election on time that strong foundation of a democratic setup is put in place. At the same time they can work on developing the political institutions and make them as much strong as possible as it is the institutions that make the evolution of political system towards stability and prosperity possible. This is possible if the government is ready to adopt a flexible and democratic attitude towards different opinions regarding the political amendments in the country.

Afghan government can control the rampant corruption that has incapacitated the assistance from being used in the right direction. It has penetrated deep within the country's socio-political and socio-economic atmospheres and will keep on doing so unless proper attention is paid to it. It can adopt a strict policy regarding the poppy cultivation and smuggling that has not only debilitated the lives of Afghan people but has been fueling the terrorism to a large extent, as well.

Afghan government can adopt a clear policy regarding the reconciliation process in the country. Taliban, even after very welcoming remarks have denied to take initiative regarding talks with the government. In fact, they, as a response, have continued violence and terrorism, while Afghan government apart

from welcoming them has not been able to offer anything else. It is not necessary that Afghan government must pursue the issue militarily but they have to come up with a practical policy regarding the issue.

At the same time, Afghan government can revise its relations with the neighboring countries so that they should be improved. It is correct that neighboring countries have not fulfilled much as far as their responsibilities are concerned, yet Afghan government has to bring about innovations and flexibility and diplomatic prudence in its approach towards them.

Afghan government has to keep in consideration as well that as a result of decades of instability and socio-economic and political problems, the Afghan people have been suffering from myriads of problems. Though there have been certain important improvements made in the last decade or so, some very concerning issues still exist that threaten the lives of the common people of Afghanistan. There are claims that changes have been brought within Afghan society; however, it should be noted that if the effectiveness of the changes have to be felt or observed, they should be observed by the changes in the lives of the common people. If there is any change in the condition of living of the common people as the outcome of the change; the change should be guarded for and even backed and supported vehemently. If not, either the claim must be discarded as wrong or the efforts should be improved to make the changes effective. And that is what Afghanistan needs to do - it has to improve its efforts to bring about necessary changes in the lives of the common people that have been jeopardized both by insecurity and lack of rudimentary requirements of life. Moreover, development works to improve the standard of living of the common people are not carried out because of the security threats, thus the desired objectives are not attained in this regard. People, in some parts of the country, are not able to have access to education as well. Schools are shut by force and the school going children are irritated. While living in a state, the people expect and expect rightly that they should be provided their basic requirements of life by the state and the government. In the modern concept of state, protecting the basic rights of the people and providing them the requirements to live a better life are considered as the basic functions of a state. As a matter of fact, the functions of a state, to a large extent, depend on the end it pursues. There was a time when the state performed very limited functions and was primarily concerned with the maintenance of law and order and protection of the country from external aggression. However, in the modern times the nature of the state has undergone complete transformation. It now strives to attain welfare of the common people. The government of Afghanistan, therefore, needs to make sure that the common people of Afghanistan are provided their basic requirements like food, cloth, shelter and security and other important requirements of life like education, health facilities, job opportunities and other facilities.

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