

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



October 30, 2017

The Anguish of Afghan Women

Afghan women have been highly vulnerable throughout the history. Afghanistan's patriarchal systems and cultural restrictions pressured women in one way or another. They were deemed as an inferior creature and treated as pariahs. Their social, cultural, and political roles were curtailed on a large scale. Despite the democratic and human rights discourse, after the downfall of the Taliban's regime, violence against women continue unabated. It is an undeniable fact that "all human beings are born free and equal in dignity and rights" and their fundamental rights - i.e. the rights to life, liberty, and property - are inviolable. Sexual discrimination is not acceptable in national laws or international instruments. Both men and women should be able to exercise their rights and freedoms without social or traditional barriers. In Afghanistan, cultural taboos and traditional prohibition impede women's social and political activities. Tradition holds strong sway in the society, mainly in remote areas where the Taliban's mindset rules. The Taliban nurtured a misogynistic mentality and treated women with great disdain. During their regime (1996 - 2001), women were not allowed to go out without chaperon. Moreover, they were coerced into wearing burqa (a head-to-toe covering) in public places. The Taliban's mandate had to be considered as religious Sharia and flouting that would eventuate in severe punishment or death. Women were flogged or stoned to death in desert courts, which is still being practiced in the Taliban-dominated areas. Despite the collapse of the Taliban's regime, the radical rehearsals against women continue. The mutilated face of Aisha, an 18-year-old Afghan woman, appeared on the cover of Time magazine in summer 2010. Her nose and ears was cut off by her husband as punishment for running away. Likewise, the death of a 27-year-old woman Farkhunda - who was lynched by angry mob in Kabul on 19 March 2015 after allegedly arguing with a talisman-writer who falsely accused her of burning the Koran - shows conducting sporadic desert courts in the country and men's harsh attitude toward women. Afghanistan's Constitution, which was approved in January 2004, invalidates gender discrimination and considers equal rights and freedoms for men and women. In article 22, it stipulates, "Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law." It adds in article 24 that "liberty and human dignity are inviolable".

It is also said in the Constitution's preamble and article 7 that the state will observe the United Nations Charter and the Universal Declaration of Human Rights (UDHR). Based on these two international instruments, men and women are equal in rights and dignity and sexual discrimination has no room in them. It is worth saying that with the approval of constitution in post-Taliban Afghanistan, the suffering of Afghan women were palliated to some extent. They play an integral role in social, cultural, and political arenas. Currently, Afghan women are holding the position of minister, ambassador, MP, head of Independent Human Rights Commission, etc.

If women are revered and their rights and freedoms are protected, they will be able to play a paramount role in the society. On the contrary, if they are discriminated on the grounds of their gender and treated unfairly, their role would be curtailed. In spite of this fact, violence against women is prevalent. Within the past decade and half, a large number of Afghan women were killed in terrorist attacks and suicide bombings. Corrosive acid was sprayed on their faces on the way to school. That is to say, the radical ideology of the Taliban militants is still taking its toll on women's social and political role.

Moreover, women are subjugated to the patriarchal system of Afghanistan. Scores of people consider women inferior to men. A plethora of women are not able to report the violence inflicted upon them either due to cultural restrictions or not having a rudimentary knowledge about their rights. A woman who told the court about a sexual harassment was called "prostitute" by a policeman. A report released by Special Inspector General for Afghanistan Reconstruction (SIGAR) says that some widows of Afghan National Security Force members killed in action were forced to perform sexual favors for officials before they could obtain pension benefits. A sense of disappointment still permeates the air as a result of unmitigated violence against women. In brief, women are still susceptible to sexual discrimination and radical mindset. Their plight was not ended despite democratic discourse and endorsement of constitution. It is believed that violence against women originates from radical ideology, arbitrary rule, and traditional culture. For example, the Taliban's misogynistic approach rooted in their dogmatic beliefs, the adherents of patriarchal system restrict women's role, and traditional custom stereotype women unfairly. To eradicate sexual discrimination, the government will have to strengthen the fledgling democratic system and broaden the horizon of the public through spreading awareness about women's status so that they could exercise their rights and freedoms without encumbrance. Moreover, since the harsh practices against women are at odds with religious tenets, enlightening women's rights and dignity from Islamic perspective is an imperative. The nation also needs to eschew from practicing upon absurd tradition and stop their reprehensible attitude toward women - who are in a really deplorable state. These issues seem the only feasible panacea for the sufferings of Afghan women.



The Need to Support Mass Media in Afghanistan

By Abdul Hamid Arifi

The right of access to information is considered one of the fundamental rights of mankind in the society. Based on this right, citizens are able to get access to national and international information. Ignoring or curtailing this right is tantamount to depriving citizens from information. Spreading public awareness is the most significant responsibility of the media, which are supposed to shoulder their responsibilities in social, political, cultural, and economic arenas. The media are a pivotal element of democracy in all societies since access to information will pave the ground for citizens to monitor the mechanism of designating government and make sure the government fulfills its duties devotedly. That is to say, all Afghan citizens are entitled to be aware of the government's reports and documents regarding public welfare. Smoothing path for right of access to information will result in transparency in the society that will be followed by responsible officials, which will eventuate in planning a rational mechanism for fighting corruption. Therefore, no power, including the state, will be able to keep people in dark or falsify social facts under the pretext of protecting public order. Discerning this fact, the National Unity Government (NUG) is seeking to prioritize supporting the right of access to information and let the public to exercise this right. Thus, backing journalists and protecting their life are focused by the government. It was underlined that supporting nationwide media is the most significant responsibility of the state.

The government has further stressed on supporting the safety and immunity of journalists by governors and security institutions in provinces. To support people have access to information, governors are supposed to protect the life of journalists. In case of not being secure, neither journalists nor the media can report news at proper time, fulfill their duties with peace of mind, or reveal economic and administrative offences with courage. Spreading awareness and getting access to information will not be possible without the safety of journalists.

Luckily, government has not ignored this fact and took practical step in this respect which includes: approving and endorsing law on access to information, issuing presidential decree and mandate to authorities to facilitate access to information, establishing a commission of access to information, establishing joint committee for providing security and coordinating between state and the media under the supervision of Second Vice President Sarwar Danish, conducting monthly meeting in the centers of provinces to review the problems of the media and journalists, establishing a coordination center at the ministry of the interior and security headquarters and support center at the National Directorate of Security in the center and provinces, outlining and categorizing cases of violence against journalists and pursuing them seriously through judicial in-

stitutions, and investigating the cases of officials who did not cooperate with the media or were not accountable.

It is worth saying that the media are not supposed to capitalize on such issues through spreading inappropriate news that will lead to public disorder or citizen's mental disturbance. Legal restrictions must not be crossed. Similar to other rights, the right of access to information is not absolute, either; rather it has some restriction to be taken into account. For example, the media ought to do their best to keep the order and stability and protect one's privacy. The media are not allowed to spread ethnic, linguistic, or religious hatred. These are the red line to be kept and transcending this will necessarily cause public disorder in the community.

Considering the aforementioned issues, the mass media have responsibility to spread awareness, widen the horizon of the public, and promote the level of their information. The media need to play their constructive role in a transparent way and monitor the function of government institutions, fight corruption, strengthen national unity, support the spirit of brotherhood, and endeavor to preach human rights and dignity. Fortunately, the criteria, limits, and borders of freedom of the mass media are specified in the law of the mass media and other legislative documents.

The obligations of each holder of media privileges have been drafted and approved. In case of infringement, there is possibility for legal prosecution. This issue will ensure freedom of the media and press. Promoting and supporting the freedom of thought and expression, safeguarding the rights of journalists, providing safe environment for their activities, developing the mass media, and smoothing an appropriate ground for expressing thought through verbal or written instruments have been the main objectives of this law. It is hoped that citizens will enjoy this right in the frame of the law with the cooperation and coordination of the government, security institutions, civil society, and the media.

While a major step has been taken in Afghanistan by enacting this law, it is important, especially for authorities, to keep in mind that the implementation stage poses significant challenges for the full enjoyment of the right of access to information. As international experience and empirical evidence suggest, the adoption of this kind of legislation is just a milestone on a long road. If this right is to fulfill its potential, effective implementation must follow.

In conclusion, and notwithstanding challenges ahead, Afghanistan has taken a strong step forward while paying its dues to democracy. The right of access to information is now at the disposal of all Afghans as an empowering tool for the enjoyment of other human rights.

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Catalan's Independence Referendum from Legal Perspective

By Darab Ali Aliyar

Preamble:

Following the referendum held by Catalonia on October 01, 2017 to secede from Spain, two perspectives emerged in this regard: First, the referendum had no legal basis at all and it is illegal according to Constitution and Catalonia's autonomous law. Second, referendum was in accordance with both the laws and it is legal based on the principle of "the right to self-determination". This principle states that a nation, based on respect for the principle of equal rights and fair equality of opportunity, have the right to freely choose their sovereignty and international political status with no interference. Essentially, the right to self-determination is the right of a nation to determine its own destiny. In particular, the principle allows a nation to choose its own political status and to determine its own form of economic, cultural and social development.

History of Catalonia:

Catalonia is one of Spain's richest and most highly industrialized regions, and also one of the most independent-minded. This county has roughly 7.5 million population and Barcelona is the capital. In fact, Barcelona is the second largest city of Spain. Barcelona was captured in 1714 by Philip V, which was a step towards the formation of the modern state of Spain. Catalonia is separated by the Pyrenean Mountains from southern France, with which it has close historical ties. When Spain became a republic in 1931, Catalonia was soon given broad autonomy.

During the Spanish Civil War, Catalonia was a key Republican stronghold, and the fall of Barcelona to Gen Francisco Franco's right-wing forces in 1939 marked the end of Spanish resistance to him. Under the rule of General Franco, even the use of Catalan language was banned in public places and its culture was suppressed. After the reestablishment of democracy in Spain, the state of Catalonia gained its autonomy within the country. It is worth saying that at present, the state has its own central government and functions somewhat independently of the central government of Spain, but taxes are controlled by and paid to central government.

The Spanish government provides up to 20% of its net income from the Catalan income tax area. It comes as the autonomous county and Catalonia's neighboring Basque does not divide its income with central government. However, this could also be considered as one of the main reasons for the independence and separation of Catalonia from Spain, it will not be discussed as a reason. There are pro and anti-Catalonia's independence.

Reasons of Anti-Independence

Those who are against the Catalonia's independence reason the Constitution of Spain. Spain's Constitution states in article 2 as, "The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees that right to self-government of the nationalities and regions of which it is composed and the solidarity among them all".

Opinion of the Spanish Constitutional Court

In recent years, the Spanish Constitutional Court has opposed the Catalan Independence Referendum, symbolically though. The latest decision by the institution was issued about Catalan referendum law and suspended the referendum for five months.

This law was passed on September 07, 2017 by a majority of 72 of 135 seats of the Independent Parliamentary Representatives of the Catalan Regional Parliament, which provided the ground for a referendum on October 01, 2017 with a one-sided "right to self-determination." The court made this decision at the request of the government of Madrid, hours after its approval.

Madrid government has argued that "lack of sovereignty for the people of Catalonia" was contrary to seven articles of the Constitution, including article 2 of the Spanish Constitution approved in 1978. Self-determination includes the right of a people of an existing State to choose freely their own political system and to pursue their own economic, social, and cultural development.

As such it does not, in light of the current state of international law, impose on all States the duty to introduce or maintain a democratic form of government, but essentially refers to the principle of sovereign equality of States and the prohibition of intervention which are already part of international law.

In fact, the international law suggests that the right to self-determination refers to those countries under colonization or occupied by another country rather than a single state. There is another type of separation which is supposed to be done as a last resort to resolve the conflicts.

Conclusion

From the constitutional perspective, the verdict of Constitutional Court and the principle of accepting solidarity and multi-culturalism are one of the general principles of customary international law and the United Nations. Declaring independence has no rational justification; perhaps this has led the Catalan's leader to postpone the independence of the state.

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