

An investigation of Legal Foundations of Tourism in Iran

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Abstract

Certainly, in any field principles are foundations of rights and in this regard tourism is of no exception. Since, tourism is believed to be the main element for constant development, codification of laws and familiarity with tourists' rights for having support and security seems crucial. The prerequisite for implementing rights of tourism is identifying other important laws which are known as the human's essential laws of freedom. If tourism right is considered as a natural right for human being, but a tourist is banned from entering and residing in another country and his life and property are not safe and in case of any aggression is not allowed to refer to any court for prosecution and defending his rights, tourism rights would be meaningless. Some countries, based on their internal policies prefer to limit tourism and tourists' rights while others advocate unconditional tourism and tourists' rights. Obviously, any country based on the its principle of sovereignty and policies may act toward or against accepting the theory of unconditional tourists' rights.

Keywords: tourist, principles of tourism, tourism's rights

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Introduction

Getting access to practical development in tourism requires attending all acts of tourists, including legal aspects which have a systematic and complicated process. In Iran's legal system, there are two types of laws: some parts are internal and some parts are external.

Based on the article five of the civil laws and the article three of the Islamic punishment laws, internal laws are applied to all people of Iran. It means that any foreigner who enters this country should behave based on Iran's public regulations and laws and our laws is one of the main sources of public discipline. This principle that any foreigner should respect the host country's laws and regulations is accepted universally (11). But the question is, from legal perspective, who is a tourist? And what are his rights and responsibilities?

In this regard and based on the legal perspectives of the present study, first the concepts of tourism and tourists should be defined based on the perspectives of international organizations. World organization of tourism defines a tourist as a person who travels to another country or city different from his usual residential area for a period which is not less than 24 hours or more than a year and his intention for this act is entertainment, resting, sport, visiting relatives and friends, business, mission or attending a seminar or conference, medical treatment, research or religious acts (3).

Commuting between countries is inevitable for people of different countries and neglecting the importance of this point may cause unpleasant results. Islam religion has paid attention to tourism and its positive effects. In this regard, various verses of the holy Quran and many sayings of the infallibles have asked and encouraged touring and travelling to consider the material and spiritual aspects of tourism (3). The laws of tourism are defined based on human's constitutional laws. The main points may include, the right of resting, entertainment and leave with pay and freedom of commuting.

The most important principle which justifies the rights of the tourists is the right of commuting. This undeniable principle permits people to commute freely unless the formal and essential cautions of international systems of human rights have limited using these rights in certain cases (5). So, the right of tourism refers to human's capacity and capability to leave his usual residence and to travel to another country or city for legal purposes such as entertainment, sport, studying, etc.

This capacity and capability is the part and parcel of human nature and inseparable from his character and that is why in any society this chance and the right of travelling besides other constitutional laws like the right of living and freedom are accepted formally for humans (6). The present article has considered the legal foundations of tourism in Iran.

Special rights related to tourism

Except fundamental rights like the rights of security and freedom, there are rights which are related to the process of tourism which facilitates tourism and helps tourists to use all the possible advantages of travelling. For example, the right of getting access to needed data especially about places and roads are among these rights which are predicted in article one of act one of tourism ethics codes.

Based on the first act of article six of the universal code, the host countries should guarantee that the conditions mentioned in the documents which are produced by public and private tourism organizations and suggested to the customers, considering the type and quality of the promised services and also the payable compensation in case of one sided cancellation of the agreement, he would be legitimate completely and clearly to benefit and in case of breach of the contract the organizations would be responsible to compensate.

Under the act one of article eight of the universal code, tourists should be allowed to get access to temporary roads and residential areas and cultural and touristy places without being posed to any additional regulations and experiencing no discrimination. Moreover, based on the act two of article eight of the universal code of tourism ethics, tourists should have access to all internal and external communication devices and facilities. Based on the same act, tourists should be able to

get access immediately and easily to all local, official, legal and medical offices and to use their services. Also, based on enforceable political treaties they should be permitted to have enough freedom to call the agents and embassies of their own countries (11).

Based on act four of article eight of the universal codes, passing the formalities of borders and border formalities which are performed based on countries' laws and regulations or international treaties such as: medical or customs cases or regulations should be simplified to the extent that this simplification maximizes freedom of travelling and expanded accession to tourism in international levels. Moreover, for creating more harmony and facilitating the formalities through documenting agreements and comprehensive treaties with other countries and international groups, special taxing and taxing in general which has impeded the development of tourism industry should be revised or omitted gradually(13).

Based on act five of article eight of the universal tourism ethics codes, tourists should be enabled to get access to exchangeable currencies needed for their journeys in relation to the economic conditions of their counties. Moreover, based on act five of article six of the universal code, governments are permitted and should aware their citizens of the difficulties and hazards that they may face during their journey to other countries especially when a disaster or crisis has happened. And also, to support tourism industry of host countries and benefits of touristy agencies, governments should publicize these information without any ill intention and exaggeration. Some of the above mentioned rights, requires duties which should be shouldered by tourist agencies and the government is required to provide enough guarantee in this regard(8).

Tourism as a new and constructive field in legal studies, includes various issues which justifies the necessity of considering it from legal and jurisprudential perspectives. Especially, since this phenomenon is both a common and manageable in all legal systems. The legal system of Islam, before all other legal systems, whether past or present, has investigated the issues of tourism from several perspectives; including the rights of tourists, the rights of natural resources, the law and cultural jurisprudence, the law and economic jurisprudence and the jurisprudence dominating a society (11).

Methodology

Present study used library research for its research methodology. In this regard references like: the Holy Quran, interpretations, dictionaries and other sources like the ethics of tourism in Islam and the materials of Iran tourism website were used.

Tourism from the holy Quran's perspective

There are plenty surah in the holy Quran about tourism and the purpose of tourism. For example, verse 20 of Ankabout surah (Spider) goes like: Say: Travel in the earth and see how He makes the first creation, then Allah creates the latter creation; surely Allah has power over all things (20). A word which is used in the Quran in relation to tourism is "travelling". The origin of this word means movement and continuous walking and for this reason, any flowing water is called "sayah". For flowing water moves softly and slowly and humans' movement which are based on thinking and attention are related to this topic (7).

Travelling is among the topics which is recommended and emphasized in the holy Quran. There are seven cases that the Quran inquires human beings like "So have they not traveled through the earth and Have they not traveled through the land" for not travelling through the earth. In other six cases requires travelling through the earth "travel". Although, there are various reasons for travelling, a concise review indicates that the cases mentioned in the Quran all were based on cultural purposes. In eleven cases, thinking and contemplating about the life and destiny of the forefathers are mentioned as the purpose of traveling and in four cases thinking and considering about the destiny of the past liars and culprits are also emphasized. In other two cases, thinking about the origin of mind, logic and feelings creation and growth are allocated.

Obviously, through travelling to different parts of the world, one may observe unique creatures like animals, deserts, jungles, mountains, oceans, cities and different humans which are different in their color and type, culture and traditions, religion and ritual, character, etc. And also may see God who is the creator of all creatures through his own eyes and surrenders superstition and blasphemy. For this reason, travelling is recommended and emphasized by Islam. History has shown that, since the past, human, to satisfy his material and spiritual

needs and to follow his curiosity, has travelled throughout the earth in a way that one can claim that tourism has been started since the beginning of life on the earth.

Tourism in Islam

Tourism has gained considerable attention in Islam. Also Islam has recommended studying and investigating the works and destiny of the past and observing the signs of God's greatness in different parts of the world. This is what the Quran calls it "travel through the earth" (10). Islam approves formally the rights of all people who exist in the Islamic countries, including the citizens and those who are permitted by the Islamic government to enter the country and observing this right is necessary for all people. Tourists are among the people who are permitted by the government to enter the country and based on the fundamental principles of Islam, including respecting, abiding by their agreements, invitation, etc., government and all people are required to observe formally the rights of tourists.

The most important rights are: the right of security, commuting, social justice, respecting the social characteristic of the person, providing the least amount of human rights and the right of exiting. In Islam, from the very beginning, tourism has stated with the Immigration and has continued throughout Islam history. Although, at the beginning, the reason for the Immigration was gaining freedom from the enemies and the blasphemous but the main aim of the Immigration was strengthening Islam and expanding newly developed religion. Through investigating the preserved itineraries, one may conclude that between the third and seventh centuries, Moslems' travelling to middle east and far east like Japan, Africa and Europe was abundant (12).

The legal issues of tourism

The fourteenth principle of the constitutional law which is produced based on Al-momtahene surah of the Quran, requires the Islamic Republic of Iran to observe justice and to behave ethically with non-Moslems and also to treat foreigners based on human rights. While they do not act and plot against Islam. Articles 5 to 9 and 961 to 991 of the Civil law and also some articles form the Civil procedure laws about receiving security from foreigners, has predicted the rights of the foreigners. In addition to the mentioned articles of the Civil law

and international multilateral laws which are irrevocable, generally or considering the conditions of inter- mutual behavior and the conditions of formal governments, the rights of the foreigners are defined.

Two types of laws are considered for tourists: private laws and common laws. In this regard, a few questions may be raised for the interested people. First: what are the rights for a tourist who comes from another country? Second, while a tourist is residing in a country and tours the country, does he receive legal support like an Iranian citizen? And finally, what are his duties and responsibilities in the country? It seems that the intended rights should be the ones which brings safety and security for him. For a tourist, his life and properties are the most important things. The host government, should pay due attention to this point. So the most important rights of the tourists can be divided into the following categories(4).

A. Security right

Modern lawyers, on different occasions, have talked about the responsibilities of the governments in relation to dependents to the foreign countries and its fundamentals. Generally, the topic of supporting the life of a foreigner, for example, a tourist is among the topics which has been attended recently by lawyers and its trustworthiness will be proved very soon.

Since seventeenth century till now, due to new circumscription, the definition of country has changed and the government of any country is only responsible for creating security for the citizens of his country and if someone, even if a Moslem, trespasses its borders without getting permission from the Islamic government, the government would not be responsible for that person's security and that person will be treated as the violator of the country's regulations. Obviously, from Islam's view any aggression to peoples' life, property and reputation, without any legal and justified reason is forbidden (9).

b. Arresting a tourist for no reason

Any tourist should feel security and comfort in a country and also should feel that he is under the legal cover and support of the country in which he is touring. And nobody is allowed to arrest him. If Iranian officials for no legal and good reason arrest a foreigner, this may create this fake feeling in other unauthorized people that they have

the same authority and in this regard, this behavior may cause the tourists abstain from entering the country (14).

C. The right of entering, residing, commuting and leaving the country
Nowadays, from legal perspective and also based on the international law principles, the capacity of the governments in giving visa or entrance permission to foreigners is an optional capacity. In other words, the host government has this authority to give or not to give permission. So, if a country considers harmful the entrance of foreigners to his country, is allowed to abstain from providing visa for them(4). While the government's capacity in issuing passport or leaving permission for his citizens is a required capacity. Moreover, everybody has the right to enter his own country.

As it is mentioned in clause 4 of article 12 of International Covenant on Civil and Political Rights: "No one shall be arbitrarily deprived of the right to enter his own country". So, only the citizens are allowed to enter their countries and government is not allowed to deprive them arbitrarily of the right to enter their own country. But, foreigners, from the very beginning, do not have this right and the government's capacity is also optional. Obviously, they would be permitted to enter after receiving their visa.

D) The right of leaving easily the visited country

All tourists should have the right of leaving the visited country whenever they intend. This principle is also accepted based on Islam principles. In reality, the right of leaving is not only the right of all people who have received permission to enter Islamic countries, but also the right even includes those who supposed they had the right to enter the country. All people have the right to leave the country in complete security.

E) Equal right in courts and the right of taking an action

Another right of people in society is the equal right before the law and when standing in a court. All people should be attended equally in courts. Governor or ordinary people, foreigner or citizen, rich or poor, Moslems or non-Moslems, all are equal before the judge and the judge's mission is enforcing justice and retaining the right of oppressed from oppressor. In other words, like all Iranians, a tourist should be able to take an action to the court easily and recollect his lost right or obtain his legal right and being a foreigner should not

deprive him from his rights. The more simple the process of legal procedure is for tourists, the more confidential they would be about our legal system. Of course, this right is defined in Iran's civil and criminal procedure which is correct under certain conditions, especially if it is based on the other countries mutual behavior.

F) the right of becoming familiar with regulations, traditions and culture of other countries

Any host country should pave the way for tourists to become familiar with laws, very important religious or national regulations, customs, culture and traditions. The reason is that the tourists could avoid causing any probable trouble for themselves and the host country. That is why all these important points should be collected in a booklet and be given to tourists.

G) The host country is obliged to provide suitable facilities for achieving this purpose. For, in case of any trouble or problem, the tourist will be able to solve the problem and if any country takes the right measures in this regard, will receive more tourists. So, to support tourists, it seems necessary, to consider this awareness as their natural right and in case of emergency, he should be helped as fast as possible.

H) The right of respecting the tourist's character

Any tourist as a human being has this natural right that should be treated respectfully and this right should never be neglected. Regardless of the tourist's language, religion or nationality, the host country should pay due attention to this issue and considers it as its first priority.

I) The right of using social justice

Based on this Prophetic Hadith "anybody who documents an agreement with an unbeliever (who has already documented an agreement with the Moslem ruler and has entered the Islamic country) and oppresses him or forces him to do something which is beyond his capacity and patience or damages him or gets something from him against his satisfaction, on the Punishment Day, I will treat him the same way"(5).

Tourists' duties in host country

Every country, to avoid any aggression to its cultural heritage and respecting its public discipline may issue regulations which should be

respected and attended by all native people and foreigners. Every government, to create peace and security in his country, should enforce policies and measures so that based on them is enabled to create public peace and comfort while considering all points. Furthermore, in international level, there are crimes which committed by any one, he should be punished and penalized. All people, regardless of their country and having or not having the nationality of the place in which the crime has happened, all these points should be attended in the duties and responsibilities of tourists.

This a common and agreed point in almost all legal systems of the world. Crimes like fraud, aggression, assault and battery, defamation and insult and etc. which have punishments in all the countries of the world. However, the punishments may be different internationally.

So, any tourist who enters Iran, based on his awareness of the punishments is required to observe the regulations so that is kept away from our courts. The case of preserving national masterpieces and cultural heritage has the same importance. In other words, a tourist knows and must know that respecting the others' rights is his duty and responsibility. Understanding this point does need any special inference or evidence. But it is not as easy as listing the responsibilities for tourists and overloading them with our expectations.

So, the traditions and customs of a country should be defined and described carefully and presented to them and they should not be expected to have the same behavior like a citizen and be punished for even a minor violation. Nevertheless, the followings are among the most important duties of tourists:

1. Respecting the main principles of constitutional law of Islamic republic of Iran
2. Observing the executive regulations
3. Observing the traffic laws
5. Non-interference in political affairs
5. Not having bad intention about national masterpieces and cultural heritage
6. Respecting national, cultural and religious customs and traditions
7. Having good relations with Iranians during his staying

Summary

Based on the present study one may conclude that tourists in Islamic countries, like other people have certain rights. And any disrespecting their rights is forbidden. Obviously, almost no law and regulation has ever considered all its citizens' rights for tourists, too. First, for the tourist's residential is temporary and does not need those rights.

Second, having and using those rights are followed by responsibilities which may be beyond his capacity. Third, granting all those rights to tourists is not advisable and even may result in corruption. So, the rights which are demanded for the temporary staying of tourists should be considered formally. It is worth noting that now a days, one of the best ways for inviting non- Moslems to become familiar with other Moslems and the noble Islam is through tourism and hospitality (4).

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