

Iran's Policy-making in Anti-Contraband and Foreign Currency Smuggling in the Mirror of Analysis and Criticism

Currently, smuggling in general and smuggling of goods in particular are major problems in the country. This phenomenon has taken on so many different dimensions and has had such negative and destructive effects on the country's economy that a significant portion of national resources have been mobilized to combat it. According to the "Law on Combating Smuggling of Goods and Currency", smuggling of goods is defined as any act or omission that violates the legal procedures related to the entry and exit of goods from the country. If smuggling is detected at the entry points of goods in any part of the country or at the place of their supply in domestic markets, a punishment is considered for the offender. Smuggling of goods is a crime that has existed in human societies for a long time and has acquired a new concept and approach with the emergence of political borders. Smuggling in the country's economic system is one of the crimes against the public interests of the country. Considering the empty place of this issue in the sacred business, explaining the jurisprudential principles governing it can be of great help in the creation of dynamic jurisprudence. By examining jurisprudential sources, according to the principle of harmlessness, expediency, and government decree, it can be said that smuggling is a forbidden economic act and its perpetrator is entitled to ta'zir. The phenomenon of smuggling of goods is considered one of the important challenges of civil society and the criminal justice system today. This issue has been growing, especially in the current century. Therefore, today's world is in dire need of a comprehensive and planned effort in order to reduce the severity of this type of crime and crime in society to a large extent. Considering the laws that exist regarding the sale of smuggled goods, it seems that the government considers the transfer of smuggled goods that have value to be valid and proceeds to sell those goods as a penalty for the violator; because if the transfer were not to take place, the goods should be returned to the previous owner; therefore, the government's prohibition on smuggling has a mandatory effect; but it does not have a status effect and does not corrupt the transaction. Smuggling of goods and currency is considered a major threat to social and economic programs and institutions and, therefore, has been criminalized. The formation of the crime of smuggling of goods and currency is the result of several factors such as economic, social, cultural and sometimes political reasons, among which poverty and unemployment, which are clear examples of hardship, have a special place; because smuggling of goods, the volume and value of which are not exactly known, disrupts economic planning and makes it impossible to achieve the economic goals of the government and causes budget deficits and disruptions in the implementation of development programs and creates stagnation in the country's domestic industries and reduces domestic production and increases unemployment. It should be noted that one of the most important crimes that has clearly, directly and long-term undermined the security of the country is the phenomenon of smuggling of goods and currency, which has also had a negative impact on various social, economic, political and cultural areas of the country. Currently, smuggling of goods and currency has become a serious and threatening problem in the country's economy, so that combating it is one of the priorities of the three branches of government. With the approval of the "Law on Combating Smuggling of Goods and Currency Approved in 1392", new horizons were opened in terms of preventing and combating the harmful phenomenon of smuggling of goods and currency; However, we are always faced with serious shortcomings and damages in preventing and combating this phenomenon. The "Law on Combating Smuggling of Goods and Currency", which was approved by the Islamic Consultative Assembly on 10/11/1400, was notified to the executive bodies by the President on 07/12/1400 with the final approval of the Guardian Council on 23/01/1401.

Smuggling of goods and currency, as a sinister economic and social phenomenon, has very undesirable effects in economic fields. Smuggling of goods and the importance of combating it, organizing the situation of border exchanges, moving towards a transparent economy and adapting the behavior of supervisory agencies are among the most important operational axes in combating smuggling of goods. The problem of smuggling of goods and currency has very bad and deep effects and consequences in society. These effects can be seen in various social, economic, political and cultural areas of the country; in such a way that this

issue and its various aspects can be of interest to the relevant authorities and the general public. Currently, smuggling of goods and currency has become a serious and threatening problem in the country's economy, so that combating it, at least in slogans, has become one of the priorities of the three powers. Although, at the same time as the adoption of the law on combating smuggling of goods and currency, new horizons were opened in terms of preventing and combating the harmful phenomenon of smuggling of goods and currency, and significant innovations (such as the comprehensive trade system) took place in this process; However, the performance of the responsible agencies in this area is always faced with numerous ambiguities. The criminal policy governing the fight against smuggling of goods and currency is basically based on government responses, both criminal and non-criminal; however, due to the multifaceted nature of this phenomenon and the necessity of reducing the resulting damage, the government has no choice but to resort to preventive measures and the participation of civil society in the process of preventing and combating this phenomenon. The Headquarters for Combating Smuggling of Goods and Currency, as the main custodian of this area, has adopted various policies, programs, and measures to prevent and combat smuggling of goods and currency, and has achieved some achievements in controlling this phenomenon; however, the volume of smuggling entering and exiting the country is still very significant and is estimated at about 13 billion dollars, which confirms the existence of gaps, challenges, and serious obstacles in the criminal policy adopted. Considering the widespread prevalence of smuggling of goods and currency in the country and comparing the volume of smuggling committed with the amount of legal exports and imports of goods and the adverse economic and non-economic effects of this phenomenon, there is no doubt about the necessity of dealing with this crime in a differentiated manner as an economic crime; however, committing this crime in an organized manner can increase the scope of these damages. The combination of organized smuggling with other crimes, such as crimes related to administrative corruption (such as bribery and corruption) and financial crimes (such as money laundering) doubles the necessity of a differentiated response to this crime. In this regard, the legislator introduced the concept of organized smuggling into the legislative literature of Iran for the first time in the Law on Combating Smuggling of Goods and Currency and defined it in accordance with Article 1, Clause 3 of the aforementioned law. Although the legislator has tried to adapt the criminal policy to the nature of organized smuggling in the "Law on Combating Smuggling of Goods and Currency" by anticipating differential mechanisms in the field of formal and substantive criminal policy; However, in practice, this interpretative criminal policy has not been reflected much in the field of executive and judicial criminal policy. What emerges from the estimate of about 12 to 25 billion dollars in smuggling in the country in recent years is that at least a significant part of this smuggling is organized, and perhaps examples such as: kolbari and tahlanji smuggling, which are apparently carried out individually by border residents, are actually part of a complex process in which border residents are hired by organized smuggling groups, while in practice, filing and processing cases under the title of organized smuggling rarely occurs. This is rooted in several factors, such as the lack of proper explanation of the concept of organized smuggling for investigative agencies and investigating authorities, the lack of sufficient explanation of the evidence that leads to suspicion of organized smuggling in the law, the lack of effort by investigative agencies and investigating authorities to identify the hidden dimensions of smuggling cases, and the haste of investigating authorities in investigating smuggling cases due to the time limits set by the law. In addition to the aforementioned problems, the existence of numerous ambiguities in the Law on Combating Smuggling of Goods and Currency has also added to the ineffectiveness of the criminal policy to combat organized smuggling of goods and currency. In this regard, there is a need to amend the Law on Combating Smuggling of Goods and Currency, especially in cases such as removing ambiguity from the conceptual scope of smuggling of goods and currency and including it on behaviors such as: transportation, storage, supply and sale, etc., the limits of the Ministry of Intelligence's role in cases of organized smuggling of goods and currency, the method of determining the fine for perpetrators of organized smuggling, etc.