

SIMILARITIES AND DIFFERENCES IN CRIMINAL RESPONSES TO GOODS SMUGGLING (A COMPARATIVE STUDY IN THE CRIMINAL SYSTEM OF IRAQ AND IRAN)

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Abstract:

Criminal reactions are the penalties specified by legislators for offenders, and the judge must rule on them if the accused is proven guilty and it cannot be applied against the convict, unless the judge clearly specifies it. Given the severity of this criminal phenomenon and its impact on societal interests, legislators in both Iraq and Iran have established laws to address these issues. Law-abiding citizens must trust that these laws will be enforced, and those who violate them will be duly punished. Implementing punishments is one way to ensure this certainty. However, contemporary considerations, due to the negative effects of criminal interventions, have led to a cautious approach towards criminalization and the use of punitive measures as a last resort. The research revealed both similarities and differences in the punishments for goods smuggling in both countries. The results indicated variations in response, with Iran employing various punishments, including whipping, while there is no whipping punishment in the Iraqi legislative framework. Additionally, the research findings showed differences in the severity of punishments between the two countries. Moreover, the prescribed punishment for initiating a smuggling offense differs between Iraq and Iran.

Keywords: Goods Smuggling - Punishment - Execution - Imprisonment - Monetary Fine.

Introduction:

In the present era, nations are increasingly prioritizing customs control efforts to combat the rising tide of goods smuggling. This heightened vigilance is driven by the earnest appeals of many countries to curb smuggling activities, a menace that poses a significant threat to economic plans. The adverse impact of smuggling, particularly on the economies of developing nations, has prompted the implementation of rigorous programs.

The trade activities of Iranian and Roman merchants are permitted on the condition that their goods adhere to the customs regulations established by the involved parties. This collaborative effort signifies a shared commitment to eradicate smuggling, evident in the terms of the agreement (Ejtehad, 2005: p. 56). Moreover, in the Law of Hammurabi, Article (6) addressing the theft of government property draws parallels to the crime of smuggling, as it juxtaposes the broader concept of theft with the smuggling of government assets (Ahmadi, 2015: 48).

The legislative bodies have delineated various penalties for smugglers of goods and currency. Typically, perpetrators of goods and currency smuggling face three primary types of punishment, with these penalties serving as the principal sanctions directly subject to judicial verdicts (Ejtehad, 2001: 150).

Concerning the core punishments associated with goods smuggling, both Iraqi and Iranian legislators have employed diverse forms of enforcement measures within their criminal frameworks. These measures encompass fines, the seizure and confiscation of property, imprisonment, and, in extreme cases, the death penalty.

In contemporary legal scholarship, the comparative analysis of different legal systems and the exploration of related issues are not only beneficial but also imperative. Through a comparative

examination of the laws pertaining to the criminal repercussions of goods smuggling in Iraq and Iran, we can discern both the commonalities and distinctions. Evaluating the severity and transparency of each legal framework allows us to identify shortcomings in one system that may be addressed by the other, fostering continuous improvement.

This research aims to elucidate the legislator's response to the crime of goods smuggling by investigating the definitions of smuggling crimes in Iraq and Iran.

The research approach is to investigate and compare the punishments for the crime of smuggling goods in Iran and Iraq. The initial step involves determining the definitions of the crime in a comparative manner. Subsequently, the research evaluates and considers the prescribed punishments for smuggling goods in both Iraq and Iran.

First Section: Definitions of Goods Smuggling in Iraq and Iran

To establish a comprehensive understanding of any concept, it is essential to articulate its characteristics and general meaning. Examining smuggling as a crime within the context of the prevailing legal systems involves exploring its lexical and idiomatic roots.

First Part: Word of Smuggling

The term "smuggling" in Arabic signifies escape, connoting an attempt to depart with a sense of fear. It can also denote compelling someone to flee and clandestinely importing prohibited items from one territory to another. The individual engaging in the act of importing or exporting forbidden items is referred to as a "Moharrab" (Mustafa, 2004: 980).

Referencing Amid's Persian dictionary sheds light on the Turkish origin of the word, emphasizing its meaning as a skill, verb, or action that demands a proficient individual to execute and is conducted covertly (Amid, 1977: 784). Over time, this term found its way into the Persian language, assuming the additional connotation of evading legal regulations (Yoozbashi, 2012: 174).

In essence, smuggling may carry diverse definitions across various cultures and nations, and researchers might offer distinct interpretations. Nonetheless, a common ground in the definitions of goods smuggling in Iran and Iraq can be identified in the clandestine introduction of forbidden goods.

The second Part: Smuggling in the term

In the literature of international economics, the word smuggling means illegal trade (Yoozbashi, 2012: 174). Since the smuggling of goods is related to the work of customs, we have to know the origin of the word customs. This is a Turkish word whose root is kamaarak and its plural is kamarak and it means a tax that is taken from goods. (Reinhart Dozi, 1999: 14).

In the amendment of the Customs Law No. 23 approved in 1984, the Iraqi legislator defined smuggling and defined smuggling in its article 191¹. While the Law on Combating Smuggling of Goods and Foreign Exchange of Iran, approved in 2013, article 1, paragraph A, defines smuggling of goods.² In the definitions of smuggling in Iran and Iraq, it seems that most of the issues of the action are taken into account and the issues of omission of the action are less discussed, but in the laws of Iran, the abandonment of the action is included in the definition of smuggling in some cases in the customs, and on the other hand, in the definition of Iraq, states that import or export of goods takes place in Iraq, while the law of Iran states that violation of legal formalities related to the entry and exit of goods and even its supply in the domestic market is stated.

The Second Section: Punishments for Smuggling Goods

The criminalization of smuggling reflects a legislative effort to both penalize wrongdoers and instigate reform, all while safeguarding societal interests and preserving social order. This article delves into the legal landscapes of Iraq and Iran, scrutinizing the defined crimes and corresponding punishments for those engaged in smuggling activities (Mousavi, 2017: 116).

¹ "Smuggling is defined as the act of importing goods into Iraq or exporting them from Iraq without paying the full or partial customs duties or other tariffs. This activity is considered contrary to the provisions outlined in this law or in violation of import prohibitions and restrictions specified in this law or other applicable laws."

² "Any action or failure to comply with the legal procedures governing the entry and exit of goods and currency, resulting in a breach, is deemed smuggling according to this law and other relevant laws. The corresponding punishment is prescribed for such offenses, whether at entry points or any location within the country, including the point of supply to the domestic market."



First Paragraph: Execution As A Punishment

In the realm of economic offenses, the death penalty emerges as a potential punitive measure, justified by the profound impact such crimes can have on national economies and public welfare (Abd al-Amir al-Akili, 1948: 38).

Iraq's legal evolution is evident in its Customs Laws, where the death penalty, present in the 1931 iteration (Law No. 56)³, is notably absent in the contemporary 1984 version (Abdul Latif, 2015: 102). Conversely, Iran continues to uphold execution as a consequence for crimes such as hirabah or corruption on earth.

Despite this, Order No. 95 of 1994, issued by the now-dissolved Council of the Revolutionary Command, reintroduced the death penalty for certain offenses.⁴

Furthermore, the Oil and Petroleum Products Trafficking Law No. 41, approved in 2008, imposes severe penalties on individuals engaged in the destruction of oil facilities for the purpose of smuggling. Offenders are punished in accordance with the provisions outlined in the Anti-Terrorism Law.⁵

Individuals involved in terrorist acts, whether as the primary perpetrator or as accomplices, face the death penalty. This indicates that the Iraqi legislature considers the punishment for certain types of trafficking crimes occurring during wartime and under exceptional conditions in Iraq to be particularly severe. The rationale behind such stringent measures lies in the perceived dangerous nature of these crimes and the adverse economic and social consequences they inflict (Mansour, 2002: 147).

The commission of goods smuggling, regardless of scale, may lead to the imposition of the death penalty. However, if the offense is characterized as Hirabah or corruption on the land, the severity of the punishment can escalate to execution (Habibzadeh, Mohammad Jafar, 2018, 75).

The Islamic Penal Code of 2013 intricately differentiates between the category of hirabah and the corruption on earth. Article 282 presents four potential punishments for hirabah: execution, crucifixion, amputation of the right hand and left leg, and the exile. In contrast, Article 286 stipulates the death penalty for the corruption on earth (Zekliki, 2018: 188).

The sentence of Article (282) should be seen as referring to the case where persons have first committed the crime of smuggling goods and therefore the title of smuggler applies to them. If the other conditions are related to the material and spiritual elements of hirabah, then the title of mohareb applies to him as well (Ahmadi, 2015: 239).

Article 34 of the Law on Combating Trafficking in Goods parallels Article 281 of the Islamic Penal Code, addressing situations where punishment for the hirabah is warranted. This occurs when the behavior involves relinquishing weapons and compromising public security (Aghazadeh, 2011: 98).

In another scenario, the death penalty can be imposed on individuals convicted of the crime of goods smuggling as outlined in Article 30 of the Law on Combating Foreign Goods Smuggling. According to this provision, if the act of smuggling results in significant disruption to the country's economic system and is carried out with the intention of opposing the Islamic Republic of Iran's system, knowingly causing such disruption, the perpetrator may face the penalty of disruption. If proven true, the charge could escalate to "corruption on earth" under Article 286 of the Islamic Penal Code, warranting the death penalty (Abbasi, 2016: 17).

³ Refer to Article 144/B of the repealed Iraqi Customs Law No. 56 of 1931, which provides for the death penalty or hard labor for life in the following cases:

- 1) Anyone who takes a weapon against the customs or any authority that is in charge of combating smuggling, or resists it with armed violence with the intention of hindering the work of combating smuggling.
- 2) Any employee or employee who is assigned to combat smuggling and has performed or participated in one of the actions mentioned in paragraph A above.

⁴ Impose the death penalty on anyone who smuggles a car, truck or any of the machines or tools used for drilling, filling or any similar purpose out of Iraq or for any other purpose. Published in Iraq newspaper, number / 3521 dated 1/8/1994.

⁵ Refer to the first paragraph of Article 6 of the Law on Combating Oil and Petroleum Products Smuggling, published in Al-Waqeeh Al-Iraqi newspaper, No. 4095 on 3/11/2009.

Another instance where a link is established between the crime of goods smuggling and hadd crimes is outlined in Article 31 of the Anti-Smuggling of Goods Law. This article pertains to a scenario where an individual has initially committed the crime of goods smuggling and subsequently, depending on the circumstances, commits another smuggling offense, and is consequently penalized according to the provisions specified in this law (Ebrahimi, 2015: 78).

In cases where the proceeds of the smuggling crime are deliberately allocated or spent to finance terrorism, act against national security, or strengthen groups opposing the Islamic Republic of Iran, the offender may face the punishment of waging war or corrupting the earth, depending on the circumstances (Rozman, 2016: 86).

The imposition of the death penalty in such cases is justified by the dangerous nature of these crimes and the resulting economic and social damages, exacerbated by situations like the economic blockade or wartime conditions experienced by Iraq.

Second Part: Imprisonment

One of the punishments stipulated in certain cases of the crime of smuggling is imprisonment. In addressing the offenses related to goods smuggling, and with the aim of earnestly combating this phenomenon while eliminating corporal punishment, legislators have opted for the penal response of imprisonment to address significant instances of goods smuggling. This involves depriving the convicted individual of their freedom, with the obligation to work in some cases and exemption from this duty in others (Hassani, 1975: 706).

Imprisonment is categorized into two types: severe imprisonment and simple imprisonment. In both types, the convicted individual is confined to one of the penal facilities designated by law for the duration specified in the sentence (Moheb Hafez, 2013: 174).⁶

The existing Iraqi Customs Law No. 23, enacted in 1984, stipulates a term of imprisonment ranging from one month to five years. It grants the customs court the discretion to choose between imprisonment, a fine, or a combination of both as a permissible penalty.⁷ In contrast, the Law against Oil and Oil Product Smuggling No. 41, approved in 2008, specifies that violators, whether the principal offender or an accomplice, will face both imprisonment and a fine of five times the value of the smuggled substance. This implies that the customs court is obligated to impose both penalties, without the option to choose between them.⁸

In Iran's Law on Combating Smuggling of Goods, there are instances where either imprisonment or a fine is considered as a standalone penalty, and in some cases, a combination of both punishments is mandated. For example, Article 22 of the Law on Combating Smuggling of Goods and Currency, Amendment 1400, highlights the necessity of imposing both penalties concurrently (Zebhi, 1397: 141). Notably, the Iraqi Customs Legislator has vested the Customs Court with the authority to issue a prison sentence only when deemed appropriate, without granting the Customs the right to independently impose this punishment through its customs regulations.

Examining historical texts reveals a shift in the Iraqi legislator's approach to the punishment for trafficking crimes. The penalty has transitioned from imprisonment to either life imprisonment or temporary imprisonment, signifying a fundamental change in the classification of trafficking offenses and their severity (Alkanani, 2008: 110).

In contrast, as stipulated in Article 44 of the Law on Combating Goods and Currency Smuggling, when the imprisonment sentence for goods smuggling is stated, the case is classified as a crime. Consequently, the Revolutionary Court handles the proceedings. It is noteworthy that Iran's legislator restricts the imposition of imprisonment sentences to aggravated instances of goods smuggling. Hence, the legislator has refrained from prescribing imprisonment as a penalty except when the offense meets specific aggravated conditions (Behremend Bag Nazar, 2017: 170).

⁶ Refer to articles 88 and 89 of the Iraqi Penal Law No. 111 of 1969.

⁷ Refer to the first paragraph of Article 194 of the Iraqi Customs Law No. 23 of 1984.

⁸ Refer to the first paragraph of Article 3 of the Law on Combating Oil and Petroleum Product Smuggling No. 41 of 2008.

However, especially for the smuggling of prohibited goods, the legislature has not used imprisonment in small amounts, and its use is limited to high amounts of smuggling of prohibited goods or its aggravated cases (Sotoudeh Gandeshmin et al., 2016: 106).⁹

Concerning the commission of smuggling by a professional smuggler, individuals classified as professional smugglers under this law are subject to penalties, including the confiscation of smuggled goods, fines, a maximum of seventy-four lashes, and imprisonment, as follows (Nabi Asal (2021: 134)).¹⁰

It is essential to highlight that there exists ambiguity in the wording of Article 22's note. The phrase "this article" leaves room for two interpretations. The first interpretation is that "this article" refers to Article 22 itself, the article mentioned preceding the noted phrase. The second interpretation suggests that the phrase may instead be alluding to Article 32, which contains a note beneath it, as indicated in its note (Rostami Ghazani 2023: 239).

In this context, some legal scholars have asserted that the legislator likely intended the phrase "this article" in the note of Article 32 to refer to the imprisonment specified in Article 32 itself, rather than in Article 22 (Behremend Baghnazar, 2017: 170). This argument suggests that if the phrase in question pertains to Article 22, it could raise concerns about the proportionality of punishments. In

⁹ A: Smuggling of prohibited goods, as per the amended Article 22 of 2014, results in punishment for individuals engaged in smuggling, keeping, transporting, or selling prohibited goods. Besides the confiscation of the goods, the penalties are as follows:

- If the value of the goods ranges from one hundred million to one billion Rials, the punishment includes imprisonment for more than six months to two years and a fine equivalent to five to seven times the value of the prohibited goods.
- If the value of the goods exceeds one billion Rials, the penalty involves imprisonment for two to five years and a fine ranging from seven to ten times the value of the smuggled goods.

It's important to note that if the value of the prohibited contraband is less than 100 million Rials, imprisonment is not considered. However, an exception exists for the smuggling of alcoholic beverages. If the customary (commercial) value of alcoholic beverages falls within clauses (a) and (b) of this article, the perpetrator is subject to imprisonment ranging from six months to one year, as per Note (1) of Article 22 of the Law on Combating Smuggling of Goods.

B: Smuggling of prohibited goods in an organized manner, as outlined in Article 28 of the law on combating smuggling of goods, incurs the following penalties in addition to the fine specified in Article 22:

- Regarding paragraph (a) of Article 22, imprisonment for ninety-one days to six months.
- Regarding Clause (B) of Article 22, imprisonment for more than six months to two years.
- Regarding paragraphs (p and t) of Article 22, the maximum imprisonment specified in the said paragraphs.

A noteworthy point is that those responsible for organizing, directing, or leading an organized group in committing these crimes will face the maximum punishments prescribed in clauses (a) and (b) as applicable, as per the amendment of the anti-trafficking law in 1400.

P: Smuggling of authorized, conditionally authorized, and subsidized goods in an organized manner, as per Article 29 of the law on combating smuggling of goods, incurs additional penalties, depending on the case of the perpetrator, in addition to the penalties under Article 18 of this law:

- If the value of the permitted or conditionally permitted goods is up to one hundred million Rials, imprisonment for ninety-one days to six months. If the value exceeds this amount, imprisonment for more than six months to two years.
- If the value of subsidized goods or currency is up to one hundred million Rials, imprisonment for two to five years. If the value exceeds this amount, the maximum penalty specified in this paragraph applies.

Note: Individuals involved in organizing, directing, or leading the organized group in the mentioned crimes will be sentenced to the maximum penalties outlined in paragraphs A and B, depending on the circumstances.

¹⁰ A: For the smuggling of prohibited goods, the following imprisonment terms apply based on the value of the goods:

- A period of ninety-one days to six months for goods valued up to one billion Rials.
- More than six months to two years for goods valued at more than one billion Rials.

Note: Individuals engaged in professional smuggling of prohibited goods will, in addition to the penalties outlined in Article 22 of this law, receive a sentence equal to half of the maximum imprisonment specified in this article, depending on the circumstances.

such a scenario, engaging in smuggling prohibited goods under the conditions outlined in clauses A and B of Article 22 may not incur imprisonment. On the other hand, smuggling non-prohibited goods or currency valued between ten million and one hundred million rials would be punishable by imprisonment.

However, if smuggling results in the disruption of the country's economic system, Article 30 of the Law on Combating Trafficking in Goods and Foreign Currency comes into play. In cases where the offense of trafficking in goods falls under the Law on Punishment of Disruptors in the National Economic System, ratified in 1990, imprisonment is also prescribed. According to Article 2 of the Law on Punishment of Disruptors in the National Economic System, a range of 5 to 20 years of imprisonment is specified (Kirimi, 2006: 119).

Based on the above, it appears that legislators in both countries have opted for imprisonment as a penalty for committing smuggling offenses. This alignment underscores a similarity between the laws governing customs affairs in Iraq and those addressing the smuggling of goods in Iran. Similar to Iraqi law, only the court in Iran has the authority to issue a prison sentence.

Third Part: Financial Fines

Moving on to fines, this form of punishment entails the convicted individual paying a specified amount to the treasury.¹¹ Fines have been found as a guarantee of execution of many crimes and even in a significant role. Substitutional punishment is one of the criminal responses that use its various types in the judicial system (Jooyandeh, 2012: 13)

In economic crimes, the punishments are financial in nature (cash punishment), because most of these crimes are committed out of greed and illegal profit, so it is appropriate that the punishment of the offender should also be towards his financial responsibility (Mustafa, 1979: 156). The objective of imposing heavy fines for smuggling crimes is to curb the activities of smugglers who seek substantial profits at the expense of public interest. The purpose of heavy fines for the crimes of smuggling goods is to suppress the activity of the smuggler who, in order to obtain a large profit from the public interest, does such a thing that this profit may reach three, four or five times the value of the smuggled goods (Al-Daghaq, 1957: 139). Usually, depending on the importance of the crime and the condition of the accused, the fine is applied between the minimum and maximum limit determined by the Shariah (Mansour, 2002: 156).

The Iraqi customs legislator employs various methods to determine customs fines, sometimes relying on numerical or relative values. The fine may equal the goods' value or cost, be twice that value, or exceed it. In contrast, the Law on Combating Goods and Currency Smuggling calculates fines relatively (Kochaki et al., 2019: 63).

Moreover, according to paragraph 1/b of Article 194, a customs fine is deemed civil compensation for customs.¹²

The value of goods for imposing a customs fine in smuggling cases refers to the value of the smuggled goods or transportation means based on the local market price at the crime's discovery.¹³

These fines are imposed by competent authorities, whether the customs court or designated customs officials, in accordance with customs orders and powers outlined in Article 195 of the Customs Law for smuggled goods valued over two million dinars that aren't classified as prohibited goods (Abdul Latif, 2015: 110).

¹¹ Refer to Article 91 of the Iraqi Penal Law No. 111 approved in 1969.

¹² Referring to Paragraph 1/B of Article 194 of Customs Law No. 23 approved in 1984, the prescribed fines are as follows:

- a) Six times the value of specified prohibited goods.
- b) Three times the value and tariff of prohibited or embargoed goods.
- c) Four times the tariff of the goods subject to the tariff, if the goods are not prohibited, embargoed, or blocked, provided that the said fine is not less than the value of the goods.
- d) 25% of the value of goods that are not subject to tariffs and are not prohibited or suspended or restricted.

¹³ Decree of the Dissolved Council of the Revolutionary Command No. 98 of 1994, published in Al-Waqeeh al-Iraqiya Newspaper, No. 3522, dated 8/8/1994.

These fines are enforced by competent authorities, whether it be the customs court or designated customs employees appointed by the general manager. The imposition of fines is undertaken by the competent customs officials in accordance with customs orders and the authority vested in them by Article 195 of the Customs Law. This authority specifically pertains to smuggled goods valued at more than two million dinars, provided they do not fall within the category of specified prohibited goods (Abdul Latif, 2015: 110).

Furthermore, fines are levied by customs officials according to the specified percentages and in accordance with the authority delegated to them as outlined in Article 239 of the current customs law.

In cases where individuals involved in smuggling have a previous history of such offenses, the aforementioned competent authorities have the discretion to order the doubling of the prescribed penalties when issuing customs orders and decrees.¹⁴

This provision is reflected in Article 59 of the Law on Combating Goods and Currency Smuggling approved in 1400 in Iran.

This issue in Iran is shown in Article 59 of the Law on Combating Goods and Currency Smuggling approved in 2021, which states that if there is a history of people in the field of goods smuggling, the amount of punishment is increased, of course, doubling, etc. in Iranian law. It did not happen and in this sense there is a difference between the Iranian and Iraqi legislators.

The customs court in Iraq, when applying the law against oil and oil product smuggling, determines a fine equal to five times the amount of the smuggled material for both the main perpetrator and accomplice.¹⁵ However, in the case of oil products in the smuggling of Iranian goods, the increase in punishment is mentioned in Note 4 of Article 18, which is five times the amount of the smuggling article but does not specify whether it applies to the main perpetrator or accomplice.

The Iranian legislator recognizes that the smuggling of goods can occur in varying volumes. Thus, predicting a fixed fine or monetary penalty may not create proportionality between the crime and the criminal response. Consequently, a relative fine or monetary penalty is employed, with the fine amount being a function of the value of the goods (Tavasolizadeh, 2013: 239).

Iran has consistently used a monetary penalty as one of the executive guarantees for smuggling crimes, as stipulated in Article 18 of the Law on Combating Smuggling of Goods. Pursuant to Article 18 of the Law on Combating Smuggling of Goods, along with subsequent amendments, fines should be used (Zekliki, 2018: 191).¹⁶

This article considers factors such as the nature of the smuggled goods (allowed, conditional, or subsidized), the perpetrator's behavior (entry, export, transportation, or storage), and the method of commission (through the media or virtual space), resulting in different fine amounts.

Regarding Article 20 of the Law on Combating Smuggling of Foreign Goods, if a vehicle, whether by water, land, or air, is used to transport goods or smuggled currency under Article 18 of this law, the penalties outlined in the aforementioned article will be accompanied by an additional fine equivalent to the value of the vehicle. If the value of the vehicle precedes the value of the smuggled goods or currency, the fine of the carrier will include the equivalent of the value of the smuggled goods (Rostami Ghazani, 2023: 242)

¹⁴ Refer to the second paragraph of Article 194 of Customs Law No. 23 of 1984.

¹⁵ Refer to the first paragraph of Article 3 of the Law on Combating Oil and Petroleum Product Smuggling No. 41 of 2008.

¹⁶ Anyone engaged in the smuggling of goods and their transportation or possession will face the following fines, in addition to the confiscation of goods or currency:

A- For permissible goods: a fine ranging from one to two times the value of the goods.

B- For conditionally permitted goods: a fine equal to one to three times the value of the goods.

C- For subsidized goods: a fine equivalent to two to four times the value of the goods.

Note 1: The supply or sale of contraband goods, as outlined in this article, is strictly prohibited. Perpetrators will be sentenced to the minimum penalties specified in this article, along with the confiscation of the goods. If the supply or sale of contraband goods occurs through media or virtual spaces such as social networks, websites, or SMS or phone, the perpetrator will face a sentence of twice the value of the smuggled goods, in addition to the confiscation of the goods.

In the context of smuggling prohibited goods, Article 22 of the law imposes a monetary penalty. Due to the inherently prohibited nature of these goods, a more severe punishment is justified compared to other smuggling cases.¹⁷

The legislator adopts a stringent approach toward professional smugglers,¹⁸ resulting in a prescribed maximum fine for them, reflecting the severity of the offense (Rozman, 2017:85)

When smuggling is committed by employees of institutions and organizations involved in the fight against goods smuggling, as covered by Article 35 of the Law on Combating Goods Smuggling, the legislator stipulates punishment for both smuggling and embezzlement. Considering the penalties for embezzlement in the Law on Intensifying Punishment for Bribery, Embezzlement, and Fraud, it implies that the relative monetary penalty applies to both offenses (Zabihi, 2018: 220).

For legal entities involved in smuggling, the legislator employs fines as a criminal response. If smuggling is committed by a legal entity, the sentencing authority will confiscate the openly smuggled goods. The legal entity, in addition to a fine, faces a penalty of two to four times the maximum fine prescribed for a natural person. This severity can be justified by the strict stance of the legislator in the Law on Combating Goods Smuggling.

Concerning the offense of goods smuggling, specific types and degrees of punishment have been established for individuals. Consequently, Articles 20 to 22 of the Islamic Penal Code are not applicable, and instead, the special sentence outlined in Article 67 of the Law on Combating Goods Smuggling should be invoked. In accordance with Article 21 of the Islamic Penal Code, minimum and maximum fines are stipulated for natural persons. However, for the crime of goods smuggling, as per Article 67 of the Law on Combating Goods Smuggling, the minimum and maximum fines for a legal entity are twice and four times the maximum amount, respectively, compared to the fines prescribed for a natural person. This heightened severity is justifiable given the stringent stance adopted by the legislator in the Law on Combating Goods Smuggling (Rostami Ghazani, 2020: 99-100).

It's noteworthy that before the amendment of the Anti-Trafficking Law in 2021, some skepticism existed regarding the extension of punitive punishments outlined in Article 19 of the Islamic Penal Code to smuggling offenses.¹⁹ However, the unanimous decision No. 759 dated July 11, 2017 validated the applicability of these punishments to smuggling violations under the jurisdiction of government penal branches.

Fourth Part 4: Punishment of Flogging

Historically, physical punishments like whipping were prevalent, believed to be reflective of the severity of crimes during those times (Foucault 2003: 69). Cesare Beccaria believed that punishments should be selected in a manner that maximizes their impact on the mind while minimizing their effect on the body of the individual (Beccaria, 2015: 67).

One prominent feature of the Anti-Smuggling of Goods Law, enacted in 2013 with subsequent amendments, is the deliberate exclusion of corporal punishments by the architects of criminal law. This law primarily focuses on employing various financial penalties and imprisonment as the key criminal responses. In this direction, corporal punishments have been replaced with sanctions that

¹⁷ According to Article 22 of the Anti-Trafficking Law, individuals involved in the smuggling of prohibited goods or those who keep, transport, or sell such goods will face the following punishments, in addition to the confiscation of the goods:

A- If the value of the goods is up to ten million Rials, a fine equivalent to two to three times the value of the prohibited goods.

B- If the value of the goods ranges from ten million to one hundred million Rials, a fine equal to three to five times the value of the prohibited goods.

C- If the value of the goods is more than 100 million to 1 billion Rials, the penalty includes imprisonment for more than six months to two years and a fine ranging from five to seven times the value of the prohibited goods.

T- If the value of the goods exceeds one billion Rials, the punishment involves two to five years of imprisonment and a fine equal to seven to ten times the value of the prohibited goods.

¹⁸ Article 32 of the anti-trafficking law states that individuals recognized as professional smugglers under this law will be subject to a maximum fine, in addition to the confiscation of the smuggled goods.

¹⁹ Article 63 of the Anti-Smuggling of Goods Law specifies that all the general rules and regulations related to the crimes and violations covered by this law are in accordance with the Islamic Penal Code.

are deemed more suitable for contemporary conditions and are considered more acceptable from both domestic and international perspectives (Rahami, 2012: 32).

In Iran, the legislature has mandated the punishment of whipping, outlined in Article 2 of the Law on Punishment of Disruptors in the Economic System of the Country, as well as Articles 30, 32, and 34 of the Law on Smuggling of Other Goods, enacted in 2013 with subsequent amendments and additions. However, this punishment is specifically reserved for individuals carrying and possessing contraband who resist government agents and professional smugglers. It's noteworthy that Iraqi laws do not include a whipping punishment for similar offenses (Mousavi, 2016: 118).

It appears that the Iranian legislature could have opted for alternative measures in these limited cases. By employing lengthy imprisonment sentences or increasing monetary penalties, the authorities could effectively address these types of crimes without resorting to corporal punishment. Whipping, as a preventive measure against crimes committed by professional smugglers or those resisting government officials, lacks distinct characteristics compared to other punishments that are often considered more effective and preferable (Niyazpur, 2015: 207).

Paragraph 5) Punishment for Starting to Smuggle Goods

Initiation of a crime involves actions carried out to fulfill criminal intent, stopped by external obstacles before achieving the desired result. In other words, passing the criminal intent and preparatory operations and entering the execution stage of the crime, in such a way that the actions performed are connected to the crime, is called the beginning of that crime. Provided that the crime does not occur completely and is not classified as a total crime (Noorba, 2016: 243).

In the context of goods smuggling, initiation applies to all forms of tax smuggling, whereas non-tax smuggling, except for suspended or impossible crimes, doesn't allow initiation due to ineffectiveness (Alkanani, 2008:103).

Iraqi customs legislation prescribes the same punishment for both the full commission of smuggling and its initiation, treating them alike in Article 194.²⁰ In contrast, Iranian law, according to Article 68, assigns a lesser punishment for the initiation of the crime compared to the full commission. This divergence highlights a difference in the severity of penalties between the two legal frameworks (Bahram, 2004:104).²¹

Sixth Part: Punishment of Being an Accomplice in the Crime of Goods Smuggling

Due to the absence of specific provisions (except in exceptional cases) for aiding and abetting in the crime of goods smuggling within the Anti-Smuggling of Goods Law, the identification of behaviors falling under the category of aiding and abetting, as well as the conditions for its realization and subsidiary punishments, is governed by Article 63 of the law. Pursuant to this article, reference should be made to the Islamic Penal Code. Depending on the type and degree of punishment prescribed for the primary perpetrator, the punishment for an accomplice in the crime of smuggling is determined in accordance with Article 127 of the Islamic Penal Code (Hassani et al., 1401: 97).

It's important to note that in certain cases, the legislator has designated a special sentence for the crime of smuggling in the anti-trafficking law. According to Article 35 of this law, government investigative or revenue collection agency agents acting as accomplices in the crime of smuggling are not only subject to the punishment prescribed for an accomplice in the crime of smuggling but are also liable to the penalty for embezzlement outlined in Article 5 of the Law on the Punishment of Bribery Perpetrators, Embezzlement, and Fraud.

For individuals deemed accomplices according to Note 3 of Article 20, as per the general provision in Article 125 of the Islamic Penal Code concerning offenses that result in ta'zir (discretionary punishment), the accomplice is sentenced to one to two degrees lower than the punishment for the

²⁰ Article 194 of the amendment of Customs Law No. 23 approved in 1984 states, "Without prejudice to the severest punishment prescribed in the current laws, for smuggling and what is included in the decree of smuggling, as well as for starting and attempting to carry out any of them, the following punishment is considered..."

²¹ According to Article 68 of the amended law on combating smuggling of goods (2015), the punishment for initiating the act of smuggling goods, in addition to the confiscation of goods or currency, as applicable, is the minimum punishment prescribed for smuggling goods under this law.

committed offense. Additionally, the accomplice is fined an amount equivalent to the value of the vehicle or the value of the contraband, whichever is lower. The vehicle is also confiscated, and if the fine is not paid within the specified time, a fine will be levied through its sale (Sabzehai, 1383: 71-72).

In the amendment 2021 of the Law on Combating Smuggling of Goods, the legislator, in Article 65,²² addressed the punishment for individuals covered by the provisions of Note 3 of Article 20. Despite existing differences, it is emphasized that the ruling of Note 3 of Article 20, along with Articles 23, 24, and 65, is fully applicable. Vehicle impoundment under Article 20, confiscation of the vehicle under Article 23, and confiscation of the storage location under Article 24 remain valid. Notably, the legislator considered individuals covered by Note 3 of Article 20 as accomplices, and consequently, the accomplice's punishment is imposed on them. However, individuals covered by Article 65 may also be subject to penalties. Given the overlaps between these two provisions and the specificity of the language in Note 3 of Article 20, the provision of this specialized note takes precedence over Article 65 (Rostami Ghazani, 2023: 269).

Seventh Part: Punishment for Participating in the Crime of Goods Smuggling

Criminal partnership involves the joint commission of a crime by multiple individuals, with each playing a material role and harboring criminal intent (Babaei, 2020: 17). The main perpetrator is the individual with the primary role, while those with secondary roles are considered accomplices (Shaban, 2000:283). Participation is realized through actual acts permissible before entering into the crime but constituting aiding and abetting during its commission. Participation is also termed "subsequent contribution," encompassing activities causally related to the criminal act and its outcomes without directly executing the crime or playing the main role (Khalaf et al, 2009:203).

Ancillary contribution is any activity that has a causal relationship with the criminal act and its result without including the execution of the crime or playing the main role in its commission (Hosni, 1960: 227).

This secondary contribution is either before the occurrence of the crime or only at the time of its execution, but after the completion of the crime, the contribution to the crime is not realized and this text has limited the forms of participation to three forms of encouragement, agreement and assistance. And secondary participation is illegal only in the act (Al-Masadeh, 2009: 191).

Criminal law does not necessitate direct contact between the accomplice and the perpetrator. Sufficient is the occurrence of the crime based on the accomplice's agreement, instigation, or assistance, even if connected through an intermediary (Abdulmalek, 1941: 713).

In terms of criminal responsibility, the Iraqi customs legislator views partners as principal agents in customs crimes,²³ including smuggling. Civil liability extends to not only the main perpetrator but also partners, each determined within the limits of their responsibility.²⁴

Participation in goods smuggling is recognized when an agreement or assistance occurs before the crime, and the crime's occurrence is a consequence of this participation (Alhayari, 1997:107).

The Anti-Smuggling of Goods and Currency Amendment 2021 law does not explicitly mention accomplice, but Article 125 of the Islamic Penal Code references partners. It should be noted that the definition included in this article is almost similar to the definition of participation in Iraq, but different in terms of content.

In the context of the crime of smuggling, Article 66 stipulates that in cases where a fine or a relative monetary penalty is imposed, the penalty for each of the partners should be determined based on

²² ((If the evidence such as embedding and the like indicates that the owner of the vehicle or the place of storage is aware of their use in smuggling goods or transporting or storing smuggled goods, and the owner of the vehicle or the place of storage has not taken preventive measures, or the occurrence has not informed about the crime or violation, in addition to his conviction to the minimum punishment prescribed for trafficking for the perpetrator, in the case of the vehicle, as described in Article 20 of this law and its comments, and in the case of confiscation of the place of storage of prohibited goods, Article 24 and the note 5 Article 22 of this law is applied. The ruling of this article does not include the owner for whom it was not possible to take preventive action)).

²³ Refer to Article 193 of Customs Law No. 23 of 1984.

²⁴ Refer to Article 222 of Customs Law No. 23 of 1984.

the total value of the smuggled goods. However, considering the absence of a distinction between the sentence in Article 66 and the sentence for participation in the crime outlined in the Islamic Penal Code, some argue that Article 66 may be unnecessary.²⁵ It is suggested that Article 66 might pertain specifically to participation in "trafficking" and "other related crimes and violations," while Article 63 encompasses all "crimes and violations subject to this law." Therefore, the scope of Article 63 is considered more specific than Article 66. However, it should be noted that if Article 66 does not cover certain crimes and violations of the Anti-Smuggling of Goods Law, Article 63, following the ruling of Article 125 of the Islamic Penal Code, may still be applicable in those cases (Rostami Ghazani, 1402: 264-265).

Regarding the punishment of accomplices in the crime of trafficking and the method of determining the degree and amount of responsibility of each accomplice, the application of government punishments does not provide specific details. However, the third article of the law on the punishment of perpetrators of the crime of trafficking, dated May 19, 1974, acknowledges that accomplices of the crime of smuggling, if seized and composed of partners, are sentenced to imprisonment as stipulated in Article 1. The court determines the share of each partner in the total monetary penalty and condemns them jointly to pay it. If the property is lost, the price is collected from all partners together (Aghazadeh, 2004: 98).

It's worth noting that in Iraq, the partner's punishment is the same as the main punishment, whereas in Iran, the partner's punishment is significantly less than the main punishment. Even though partners may be sentenced to imprisonment and whipping, the extent of the punishment is less than that of the principal offender in this regard.

The Third Section: Conclusion:

After completing our research by clarifying the response to the smuggling of goods, a comparative study between the laws of Iraq and the laws of Iran, we reached the results that we try to summarize as follows:

The crime of smuggling goods is one of the economic crimes known in ancient societies and laws related to it have been established, it can be said that both the Sassanid government and the Roman Empire were the first to use the international cooperation of two countries to fight smuggling and regulate trade. they used About the definition of smuggling in the word in both languages, smuggling means running away, but in Persian, the original word for smuggling is Turkish. In the material element in Iran, criminal behavior is in the form of a positive action and omission, which is based on Article 2 of the Islamic Penal Code, while material behavior in Iraq is only performed in the form of a positive action. Another difference in the behavior of committing the crime of goods smuggling is the points of entry and exit and the borders of smuggling. In Iraq, the points of entry and exit are only the customs borders, while in Iran, in addition to the points of entry and exit, the supply of smuggled goods in the domestic market is also considered as smuggling. It is considered that this issue is a difference.

The main punishments are the punishments that are used as the main punishments in the field of goods smuggling for deterrence. In Iraq and Iran, some main punishments are similar and some are different. Execution is one of the things that existed in both countries, but in Iraq, this law has become obsolete, and the difference between the two countries lies in this issue. After execution, there are freedom-depriving punishments, which in Iraq include prison and imprisonment. These punishments are also considered as the main punishment. Cash crimes are also respected as the main punishment in Iraqi law. It is important to mention here that in Iraqi law, the punishments for starting to smuggle goods are equivalent to the main punishments in which a person receives one of these punishments. In the case of accomplice, the Iraqi customs lawmaker has considered the accomplice to be the main culprit in customs crimes, including the crime of goods smuggling, in terms of criminal liability. In Iran, the main crimes include the punishment of war and corruption, which still exists

²⁵ According to Article 63 of the law on combating smuggling of goods and other goods (all the general rules and regulations related to the crimes and violations of this law are in accordance with the Islamic penal law, except for the cases provided)

and the sentence is death. The second is imprisonment, which is considered for some cases of goods smuggling, whose jurisdiction is given to the Revolutionary Court, but in Iraq, it is the responsibility of the Customs Court. Cash fines and financial punishments, which confiscation and cash fines are one of the main crimes that are created in authorized, conditionally authorized, subsidized goods. In Iran, there is another main punishment, which includes corporal punishment, which is not the case in Iraq, and this punishment is specified in Article 2 of the Law on Punishing Economic System Disruptors, as well as Articles 30-32 and 34 of smuggling goods and currency.

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