

The study of the status of customs offenses in the laws and legal provisions of Iran

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Abstract: Customs offenses as an example of economic crimes can have a negative effect on a country's economy and also can disrupt the safety and security of society which are the most important elements of growth and sustainable development (by document to paragraph (b) of Article 109 and Article 36 of the Penal Code). And also have a decreasing effect on investment, domestic production and employment. Committing these offenses may be due to the country's foreign trade policies, or misused by officials and employees of the Customs Department. Sometimes it is due to the failure of the laws and customs Or violations and abuses macro and opportunistic criminals, And even sometimes it is done by people who intentionally commit a crime behind such legislation and intellectual actors. What was achieved in this research is that dating of formulation of laws about customs offenses in Iran comeback to one hundred years ago. The legislator has relied primarily on goods seized, but after a decade, put the jail along with other penalties. Actually the regulatory approach of legislator has been more toward penalties. But contrary to this topic, Use institutions such as suspension, commutation of sentence and release their conditions are reasons for short attentions of legislator to teachings and criminological studies.

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Introductions:

Customs like other organizations such as the military, education, civil service organizations has a long history as old as history. Customs, according to researchers and historians renowned word, has been derived from the Latin word *Commercium*, which means trade and exchange of goods. Which itself is derived from the Greek word *Cummers* (*Kvmrks*) means rights reserved goods and merchandise. Currently, the Islamic Republic of Iran Customs Administration composed of a headquarters and 10 field monitoring. The minister of customs that is the assistant director of Economic Affairs and Finance is the highest Customs authority of the Islamic Republic of Iran. Headquarters which controls the administrative customs and ten regions in Tehran's supervision has been consisting of head chairmanship and four deputies. Customs duties means customs duties (import or export) and other rights, taxes, fees or other complications when the import or export of goods from the collection (or deposit contract), but these rights are not include the cost or side effects that are limited in terms of amount to the approximate cost of the services.

Background research

Articles

1. Abbas. Memarnzhad, Behzad Shiri, Hussein Kakhaki, summer 1392, the customs and needs of its evolution: Principles, programs and actions, particularly a record quarterly financial and economic policy of the state economy.

This article studied the evolution of the role of customs in the recent decades. And with the importance and necessity of economic and commercial customs of the country, this article tried to introduce the different role and duties and customs. Also, by examining the growth of business operations in the procedures of import, export, Transit and customs revenues during the fourth and fifth development plan of country, study the challenges which customs encounter with them and also study the reasons of customs for being the as one of the pillars of the government's economic development plan. And also offers Customs measures in the context of development projects in 10 districts in the customs system, offers some proposal to solve the challenges and establishment of the costumes.

2. Fazlolah 2. F. Amirhajloo, 1392, Iran's penal policy against the smuggling of customs legislation, International Institute for Iranian Studies Law and soaring: In this study, according to the law the legislative penal policy of Iran has been investigated toward the smuggling customs from 1306 up to now.

3. Gholamhosseyn Biyabani, Mohammad Reza Babab poor, 1309, smuggling. Overt and covert aspects of it, Detective Quarterly, number15, in this article has been discussed the reveal hidden aspects of trafficking.

The importance of research

Since the trade and trade between the countries and governments of the world has the height inevitable necessity as well as history, and among the governments and in this situations the governments

want to develop international trade and commodity, also manage and control the Import and export of goods. Customs organization has been designed as an extensive arm of the government to implement this matter. On the other hand Smuggling and customs offences have heavy consequences for the economy of any country. And in fact it causes to institutionalized aversion economic order. According to the International Labor organization, for the six-billion-dollar smuggling of goods equivalent to 000/600 jobs will be lost. It also has a high rate of crime in Iran. In order to solve this problem it requires scientific planning and coordination between institutions in terms of legislative and executive. It seems that there are no rules and regulations have not been enough to dispose of or reduce the occurrence of this pest destroyed the country's economic vigor.

Hypothesis

1. Iranian policy and legislative approach was based on the enforcement and penalties approach and depriving liberty and even death until 1390. But from 1390 onwards, based on the teachings of criminology and considering developments in Islamic criminal law and criminal procedure code it can be seen credible changes in using alternative punishments in prison than the past.

2. Developments in the use of criminal law substances of punishment of detentions offenders. But the rate of change is slow.

Research purposes

1. Explain and clarify the legal shortcomings and gaps. In order to develop appropriate new rules to prevent or reduce customs violations.

2. Changing the attitude of the legislative procedure. In order to implement preventive criminal policy reform due to lack of efficacy repressive policy and depriving freedom.

3. Collecting the feedback and suggestions that the legislator should be aware of it.

4. The presentation of scientific subject for students to continue research and other aspects of their community based on the new situation.

5. Presenting the real scientific knowledge for law enforcement and the judiciary and the staff of the Customs Department if anyone wants to research.

Rights Customs

1. Customs law in general which is not financial means legal privileges which are installed to its rightful status of it. Such as the right to visit the product and packaging equipment, or open and view their contents for the sampling protest against the vote commission, deviating from the initial statements (provided), and changing of the its title under one of the 5 titles of the 19 customs act in 1350.

2. 1. Customs law in specific means rights (import or export) and other rights, taxes, fees or

means the other complications when the import or export of goods from the collection (or deposit contract), but these rights don't include the cost or side effects that are limited in terms of amount to the approximate cost of the services.

Customs contravention

Act to every action or inaction to any action which is caused the actual rights of goods don't be receipt. If it is not subject to the provisions of the Customs Smuggling is a customs violation. Also every declaration of goods or not expressing of it (apart from trafficking) or action contrary to the law or constitution or other customs regulations or government guarantees a financial loss, whether good, called customs violation.

The main difference between the offense customs and fraud

1. Article 2 of the Penal Code Act in 1370 and 1392 identifies. Punishment by the legislative authorities as clear criteria for identifying the specific criminal behavior and that behavior is such as act or intact. All customs offenses contained in Chapter I of Part VIII of the Association of Customs Act, including the provisions of the above article is out 09/02/1390. If fraud (customs trade), such as crime and human smuggling is under criminal law (public) and especially their own.

2. Reference verification: Fraud investigation (customs trade), such as smuggling and human, And forging customs documents and purchase and transportation, embedded fraudulent are only the jurisdiction of such courts (revolution or general courts). In the event that violations of the customs union or quasi-judicial authority (Commission Disputes customs) investigation comes to acting.

3. Only financial penalty related to customs offenses: Penalty is (civil fine) which is received by Customs premises or quasi-judicial authority above in accordance with the difference (ten to one hundred per cent) and the designation. While the courts for criminal fines set no penalty.

4. The works: The perpetrators of customs offenses are aboard from the implementation of financial convictions. But criminals such as drug traffickers, for example are within the scope of this provision implemented.

5. The intent of terms of the attributable crime. Basically, there is no such element in customs violations. And the severity of the penalty, the circumstances considered being the head of Customs, type intent. In fact, dealing with bad faith is the jurisdiction of the courts. In the absence of bad faith, there will be no crime.

Investigating of crimes and violations of customs in Iran's laws after the victory of Islamic Revolution

The rule of operations of governmental suspended about smuggling, adopted 1374.

Rule2: In order to expedite the investigation and final disposition of cases involving seizures of contraband, including commodities and currencies, departments of government revenue collectors or organizations that combat trafficking law are considered as compliment. In case of obtaining goods or currency smuggling they have to complete the file within the 5 days. And they have to act based on the crimes and penalties stipulated in the relevant laws and provisions of this act.

Rule3: "Carrying contraband is crime and committed person to be punished as follows: If the goods are deemed illegal under the law is transported whit any vehicle if such evidence (embedded or trafficking of smuggling) comprehensive information suggests that there is contraband seized vehicle and whit the commandment of law they have to pay a fine equivalent to double the price of the goods. If the fine is not paid within two months from the date of the judgment it will be picked up from the sale of the vehicles.

Rule4: The judicial authorities have to report after reception of compliment within one month and announced the cases to Customs or other relevant departments.

The rules of commands customs 02.09.1390

Customs Affairs include one hundred and sixty five acts, and one hundred and sixty-seven notes which were approved in the open session of parliament on Sunday 08/22/1390 and on 02.09.1390 were approved by the Guardian Council. This law has been developed in thirteen sectors that titles are as follows:

The first part of the definition, organization and general (Articles 1 to 13)

Section II Valuation and Rules of Origin (Articles 14 to 17)

The third section formalities before appearance (Articles 18 to 22)

Section IV storage of cargo on customs areas (Articles 23 to 32)

Part V products deserted, recording (recorded) and transfer to customs (Articles 33 to 37)

Section VI stated and clearance procedures and general requirements (Articles 38 to 46)

Section VII- customs procedures (Articles 47 to 101)

Section VIII Abuse and Trafficking (Articles 102 to 118)

Section ninth- exemptions and prohibitions (Articles 119 to 127)

Section ten-Customs brokers (Articles 128 to 132)

Section eleven-review and actions after discharge (Articles 133 to 143)

Section twelve-authorities who are responsible for customs Disputes (Articles 144 to 149)

Section thirteen-other provisions (Articles 150 to 165)

Conclusion

Today the tools of social control is so various and includes a range of criminal practices such as mediation and restoration guarantees other administrative performances and disciplinary action is compensation for damages. Unlike criminal law and criminal policy, because of the fading characteristics and boundaries of criminal category, and the formation of new categories of human rights system; it has got the extensive range of territory. When the crime (Anti-social behavior norms) is committed the criminal justice system knows him obliged to resort to practices proven effective and also by preventing of recidivism in the future, emphasized. The need to respect the laws and social norms that once again. The looking out of criminal system to protect and respect the rights of public has different forms. The criminal policy of Iran is currently dealing with customs smuggling crimes the emphasis is on punishment of those who violate the rules. During the last hundred years of legislation in Iran (Roughly "Since the approval of the Board of Governors and provincial guidelines in 1286 AD) adapted several rules In relation to the crimes and violations of customs. Of course, these rules repeatedly "have been reviewed and modified. The thing which is clear is that Iranian lawmakers intensify this issue by relying on deterrence theory of punishment and with this view that more punishment makes more, deterrence according to the teachings of criminology without penalty prescribed in the law on customs offenses against the law to. We can see that in the tobacco taxes law in the years 1294 and 1303on tobacco smuggling, just consider the recording of smuggling good as punishment, but in the rules of punishment about people who committed smuggling in the year of 1306 addition to property prices smuggled goods imprisonment is anticipated. And punishment of the perpetrators of the crime of trafficking in the Penal Code, adopted on 12.29.1391 and subsequent amendments exacerbated. After the Islamic Revolution, this trend has been continued, but the punishment has been organized. However, with respect to all terms and aspects of this research study customs offenses and offenses in the Penal Code of Iran following results were obtained:

1. In the study of criminal law can be seen that the Iranian legislators on laws related to customs charges will follow an integrated crime policy,

because in some cases the model of a democratic society and in some cases the procedure and the authority of the government has complied. The legislature as a public institution and its relationship with the criminal justice system in line with the principle of legality of penalties and fines and also the creation of competency for organizations such as Customs or suspended state in imposing punitive sanctions, Such as goods seized or determine a fine (instead of fines) and leaving a prosecution witness against democratic policies is the business model to deal with customs violations. On the other hand the acts of headquarters combat to smuggling and customs agency as exclusive agents' preventive measures in respect of customs offenses. In accordance with the laws of 1381 and 1382 general budget the prevention of such crimes to the government's authoritarian approach.

2. In the hundred-year period, Legislation on customs offenses (1286 to 1390) in two different time two different ways of encounter with crimes and customs offenses. In the first period from 1307 to 1374, despite attempts to address the diversion of customs offenses but most of the punishment actions has been relied on intensity of punishment. And first addressing to this crimes is belong to criminal justice system and legislative by creating competence of the judicial system has been delegated some authority investigate and impose administrative action against these crimes. But with ratification of law the way of applying the government suspended on smuggling in 1374, The territory of the competent administrative authorities. In suffice to impose a financial sanction in the developed office and in some cases criminal proceedings and impose reaction was transferred from the judiciary to the executive branch.

3. Study in Iran in connection with the exercise of the legislative function of moderating bodies penalties for customs offenses by virtue of criminological shows that this doctrine significantly has been influenced legislation some of them are:

A short bets: for example we can note to Clause 2, Article 41 of the Penal Code (1370) that if you start committing the crime of trafficking and leave it voluntary, you will be revised more mitigation.

(B) The suspension of punishment: According to Article 25 of the Penal Code (1370) all suspended prison sentences and preventive conditions are permitted. It can be said that due to the mandatory penalties for customs offenses suspend all or part of the punishment press. As one of the prescribed penalties for customs offenses cribbed for the offense (other than fines) is possible.

(C) Conditional freedom: According to Article 5 of the punishment for perpetrators of trafficking is punishable by imprisonment and in this law and the

law of government suspended and how to apply the law is about to smuggling and other laws, in this regard there is no limitation for applying this rule. Therefore, in the general provisions of the Penal Code in relation to conditional freedom there is no prohibition against the sentence imposed for the crime. Therefore, the use of Iranian law enforcement institutions such as suspension, commutation of the sentence and the releasing of provisions as well as the diversion. In relation to the punishment of imprisonment for perpetrators of customs offenses shows the Iranian lawmaker marker according to the findings of criminology at the policy and laws are criminal.

4. Collection of customs rules and smuggling offenses and determining their punishment until 1306 was based on financial penalties (fines). And since that year the prison along with other penalties was included for customs offenses. But in general punishment of customs criminal was more based on the cash punishment (Non-criminal aspects) or cash punishment and recording or the confiscation of property. And generally in all customs violations (Apart from the laundering) criminal punishments has been financial.

Conclusion

Unlike criminal law and criminal policy, because of the fading characteristics and boundaries of criminal category, and the formation of new categories of human rights system; has extensive range of territory. When the Anti-social behavior norms crime is committed the criminal justice system bound itself by resorting effective and fixed methods also prevent the recidivism in the future emphasized the need to respect the laws and social norms that once again. However, with respect to all terms and aspects of the study, in the study of customs offenses and offenses in the Penal Code of Iran following results were obtained:

1. In the study of criminal law can be seen that the Iranian legislators performance about laws related to customs charges follow an integrated crime policy, because in some cases followed by a democratic society, and in some cases model state of the procedure and the authority of the state. On the other hand measures to combat smuggling and customs agency headquarters as exclusive performer of preventive measures in respect of customs offenses in accordance with the laws of 1381 and 1382 the whole country, the prevention model of the crime closes the model of authoritarian government.

2. In the hundred-year period of codifying laws about violations of customs (1286 to 1390) in two point has two different tack in dealing with the crimes and violations of the customs act and from

1307 to 1374 despite the first section attempts to deal with the customs Violations diversion of punishment and sanctions, but legislative competence has relied on punishment a lot and the first survey to the crimes of the criminal justice system and the legislator by creating the judicial system qualify exceptional powers of investigation and enforcement in administrative reaction against the crimes was enacted to the administrative body.

3. Study and research on the Iranian legislators in relation to penalties imposed by moderator institutions relies on customs offenses, criminological shows that these doctrines significantly, although is insufficient has effects on the formulation of laws. It can be said that due to the mandatory penalties for customs offenses it is possible to suspend all or part of the punishment prescribed for the offense (other than fines).

4. conditional Freedom: As one of the prescribed penalties for customs offenses under Article 5 of the Penal Code is imprisonment for perpetrators of trafficking and the mentioned law and the law of actions of the government suspended about to Smuggling and currency and other laws in this regard is no limit to the actions unforeseen, so in general, including the provisions of the Penal Code provides for imprisonment of conditional release in relation to the offenses is no restriction.–

5. Codifying of the related laws to customs offenses and determining their punishment until 1306 based on financial penalties (fines) and from that year the prison was along with other penalties for customs offenses. But generally, more punishable customs crime relies on a fine (non-criminal aspects) or and

confiscation of property or has been recording and generally in all customs offenses (apart from smuggling) punishment was based on financial penalties. Also in the Customs Act 1390 and the Penal Code Act of 1392 (Products 64 to 87) with the shift procedure of alternative punishment, imprisonment is considered.

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