



The comparative study of drugs maintenance crime in Iran and Afghanistan

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Abstract: Today, the most societies are exposed to the effects of drug abuse, which affects various aspects of society's economic, social, cultural and political life. The extent of drugs use is so widespread and profound that not only includes the consumer himself, but also it involves all social networks from family to friends and from educational and occupational environments. The main aim of the present article is a comparative study of drugs maintenance in Iran and Afghanistan that has been conducted with a descriptive-analytical approach. In Iran's law and in Afghanistan's criminal justice law, the drugs crime has been defined and drugs offenses are punished as prescribed punishment is considered to be politically or ordinary crime is a general crime. The results of the study show that in the law of Iran and Afghanistan, the crime of drugs smuggling is insignificant, the need to investigate these crimes and the denial of the right to review the narcotics trafficking cases are common but it is different from the principles of prosecution. The fundamentals of drugs smuggling in Iran and Afghanistan depend on the legal and executive considerations of the legislature of that country. Iran's criminal policy, unlike Afghanistan's criminal policy against drug trafficking, is a very, vigorously repressive policy. In this regard, the awareness of the fact that most of those affected by this standard are punishable under the long-term, low-level offenders are drug markets play an important role in the change of legislation. In fact, it is better to be tried by the application of preventive programs to reduce the presence of these people in the market until the implementation of the sanctions more complex problems is long. The signs and symptoms of this repressive criminal policy can be seen in determining the hanging to death penalty for many drug crimes, imposing life imprisonment and long term imprisonment, punishing corporal lashes, and prosecuting more widely. In Iran's criminal law, about drug smuggling is also a separate criminal policy that is different from the adopted criminal policy for other criminals.

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1. Introduction

The word opioid refers to the softener and so-called anything that disrupts the human nervous system and creates abnormal conditions in the person's body. The Drugs are now traditional and industrial ones. Since the use of these substances will cause a person's dependency, and over time, the individual is deliberately looking for a more powerful type, it is very destructive and may even cause death. Trafficking in the Black Law Dictionary (Latin) Instead of the term (smuggling) The term "smuggling" And "Traffic" Use. The Black's Law Dictionary the word English First, insert or remove the prohibited items without incurring insert or remove the items listed in illegal goods from one country to another. In the second term, drug trafficking, trade and commercial activity in connection with drug trafficking and psychotropic come. In the late 1980s, the term drug trafficking became popular as a general term (Mortazavi, 1388, 76).

Several principles **for the criminalization of drugs use** can be outlined. These bases can be

divided into moral and religious and losses. Morality of society can be the basis for the prohibition of drug use. Maybe a result of taking the drug, the person consuming tasks that would not be compatible with the moral standards of society, the moral feelings are hurt by the drug. To realize the moral foundations of a society that does not tolerate drugs or not, should pay attention to the social and cultural beliefs of the community.

For example, in Iranian society, despite the fact that some of the roles of the popular culture, in tendency to use drugs and common traditions and a wrong way of thinking and a deep belief that human beings have taken root note (Ghanbari, 183-1379:195).

If it can be said that according to popular culture, especially in some Iranian cities implies, taking some drugs such as opium is rooted in the culture of the people. So, perhaps one of reasons of the failure of a legal struggle with the substance use, lack of compliance with the law governing the society's culture. In fact, the society does not show that the use of this material seems so bad that the criminal wants to deal with it. But it seems that social

evil can be made about other drugs. So, one of the foundations of criminalization of drug use can be considered a social atrocity.

Smuggling crime the same as other crimes have some elements, in fact, we should pay attention that the smuggling such as another crime has some special feature that because of this, it has been separated of other crimes and these elements have made the base of this crime.(Al-Haidari 2012).

One of elements that is always in the form of Assumption,, there is the human –business in crimes and it means that a human whether male or female have been always used as goods and a person who has been as a good, will be face all legal and illegal occupations and almost all of laws that are related to it agree it. I have to point out that in Iran and Afghanistan’s law have been stated when the crime of human-business has been proven that this act has been occurred on real human, since, due to these laws: The human-business isn’t proven if it happened on an unreal (valid) person. Due to the first line of the second paragraph about the human – business combat law in Afghanistan: The meaning of victim is real or valid human who has been harmed by physically and spiritually.

2. The Criminal policy in Afghanistan and Iran

Since the country's borders with Afghanistan and the Islamic Republic of Iran are sometimes very long borders and it has water and soil characteristics – economic and political environment is different, so we can say that in the border with neighboring countries in the north, Afghanistan several different challenges that we will mention them below:

1. Economic and information activity of the US and Israeli Zionist agents on the territory of Afghanistan;
2. The lack of correspondence between pasture and livestock in major parts of the border to the Iranian border and attitude domestic animals across the border and the negative consequences of political and security due to the fact;
3. Corruption and prostitution attitude of some young Iranians across the border and transit drivers to travel in terms of sexual promiscuity;
4. There ethnic and religious affinities and attitudes of pan-Turkism (of Afghanistan) who may attempt to exploit trans-regional powers in this respect there;
5. High unemployment and widespread poverty of young people on both sides of the border on the Afghan frontier and the gap the price of drugs across the border to drug trafficking likely tendency of people residing in border regions;
6. Pull off part of the problem of smuggling drugs in Afghanistan, armed to the Tri-border area at the

gate of Zulfaghar and Frontier Constabulary Khatoon Bridge; 7 Range of bilateral problems between the two countries in the Caspian Sea and determine the legal regime of Caspian Sea. (Mahdavi, 1386, p. 89).

2-1. Iran

Trafficking has been prevalent in Iran since many years ago, so some laws have been laid down to suppress it. These laws generally cover the dominant aspect of smuggling. The approach to smuggling, taken from international regulations on the one hand, and the realities existing at the time of the adoption of those laws on the other hand, was marked by a significant change in the adoption of the anti-smuggling law in 2004. The cause of this change, which deals with the various aspects of trafficking as well as the development of the concept of human trafficking, should be sought in the new ways of committing it and the development of human rights and its related concepts internationally.

One of the important problems about the criminal policy of the drugs is the conflict of the legitimate criminal policy with the judicial criminal policy that is due to the severity of the mentioned punishments in the fight rule against the drugs especially about the execution punishment. while that collection to the targets of the legitimate criminal policy depends on the agreement of the judicial criminal policy.

If there isn’t any agreement among references of the legitimate and Judiciary or their relationship will be unstable, the fight against the crimes will be disturbed and finally will be lost its way, especially, when the criminal law doesn’t match with the beliefs of coordinators of the criminal justice device by explanation of performing the punishment that affected from the public thoughts of society and it will convert to a neutral and Unsuccessful law. (Akbari, 1393: 24) So, the legislator should consider the suitable warranty execution by the rate of social atrocity of crimes until the judges executives won’t face some problems along executing it,, however they are judges and they must execute on the base of law, but in issuing of the judiciary votes, another force will interfere, too. The force that will arise from human inside against the power politics and that inside force is the conscience of the justice who is asked to rule fairly although it doesn’t seem that the fair laws don’t match with fair, too. (Goodarzi, 1381: 27; Katouzian, 1377: 665).

2-2. Afghanistan

In Afghanistan, the legislator in recent years has accounted for expressing anti-trafficking law in 2012. Smuggling is a subject with a variety of faces

and types with its own complexity; this is one of the major problems facing developing countries and a major contribution to the resources and forces of society. It has a wide range of cultural, social, political and economic effects. This dilemma threatens the current and future economic life of the country by neutralizing or mitigating the policies and economic and commercial policies of the state. The phenomenon of smuggling in Afghanistan, in addition to the adverse effects of the economy as a social and economic challenges is important. In addition to this phenomenon as a serious threat in the way of free trade, on the economy of the country also imposes large costs. The Government tax revenues and foreign exchange smuggling on the one hand and the other hand reduces the unfruitful due to the withdrawal of currency, massive capital flight, rising unemployment, decline in industrial production and domestic, and so on. In a healthy economy, all economic activities are recorded (Khosroshahi, 1388, 65).

Significantly, in Afghanistan's law, smuggling of goods is a contractual offense and has a credit crunch, that means, behaviors that have been penalized for some time from the time of the alleged criminal offense. From this perspective, the crime is no longer inherent and historical, but the rule of law, based on the political - economic interests, creates criminal offense through the criminal law. However, since the perpetrators of these acts, mostly residents of coastal and border areas, and despite the physical resources of the country, suffer from the poverty and chronic unemployment are and in this way to victims of violations of economic, social and cultural (Like the right to freely choose work with appropriate facilities and protection against unemployment, the right to fair wages, in accordance with human rights, the right to welfare, rest, leisure, recreation), They consider them a kind of economic activity and employment, and readiness and they bear the cost of it and the costs that are sometimes paid off by their own lives due to the use of their rights. Executives Due to their sharing in the value of smuggling and gaining education, they aim to arrest a vehicle carrying goods under any circumstances, and sometimes, without complying with the provisions of the law, how to use the weapon. In this way, until the economic, social and cultural rights of citizens are not achieved by the sovereignty, the state-of-the-art – technical – technological – technical measures will not have the expected efficacy as it has already been established.

Drug offenses between articles 188 Until 192. The Afghan Penal Code is set up. In general, in the abovementioned cases, the offenses of dealing with (trading), producing, facilitating the use and

consumption of narcotics are set. Along with the Penal Code, some of the cases that are related to narcotics are also mentioned in other laws and regulations, such as the Drugs Act No. 3298 and the Drug Control Law No. 2313.

Other legal sources that have a direct impact on the outcome of criminal and legal proceedings are the judicial procedures and judgments of the Supreme Court of Afghanistan. Afghan Supreme Court Branches, as the authority and the appeal court have verified the rulings from the primitive courts that were referred to the court in order to appeal to the court in proportion to the verdict of the primary court with the laws of the matter, confirming or defeating the ruling of the primary court. In both cases (i.e., confirmation or violation of the initial court ruling) The case file is returned to the court of first instance. In general, if the lower court accepts the Supreme Court's ruling, the verdict is finalized. Otherwise, the case will be sent to the General Assembly of the Branch of the Supreme Court. The vote of the General Assembly of the Supreme Court is definitive. The judgments issued by various branches of the Supreme Court of Afghanistan, as interpretations of the laws and jurisprudence and jurisprudence, play a significant role in the decision-making process and the issuance of sentences by the primary courts, but courts are not forced to enforce these judgments. But the unanimity vote issued by the Supreme Court's Supreme General Assembly is considered a law and courts are forced to enforce these sentences. In addition to the laws, regulations, and judgments of the Supreme Court, the international agreements reached by the major house of assembly of Afghanistan have an effective effect on the Afghan legal system, and judges and criminal and legal tribunals have to comply with the provisions of these memoranda. In accordance with Article 90 Afghan Constitution, Understanding International letters, which have been approved by the major house of assembly of Afghanistan in accordance with the rules and principles, are legally binding, and in legal and judicial matters, such as domestic and national laws and regulations, they have a legal value and courts are required to enforce the provisions of this wording. Before discussing the main issue of the research, it is important to explain the important issue facing many Iranian drug traffickers who are facing it. Contrary to Iran's laws, the drug law's maximum limit in Afghan law is not significantly related to the amount of drugs. That is, the penalties for trade, the supply and transport of narcotics and the like, referred to in the Afghan Penal Code, are related to the action, and the amount of discovered narcotics have little effect on the determination of the punishment (Andarzi, 1385, 89).

3. The crime of drugs maintenance in Iran and Afghanistan 3-1-Investigation of the legal punishment of drug trafficking in Iran's law

It seems that the idea of regulating the rights of the Iranian Drugs precedent. Although lawmakers have approved legislation explicitly have not mentioned it, but the content of some materials and some of the implications of certain laws mean to regulate in the law of Iran. As previously mentioned, until the date of enactment of "The Law of opium imitation" on 12 Rabi al-Awal 1329 AH, in any government oversight of opium and other drugs did not exist and the government wanted to pass this law and taxation of domestic consumption, and trade of opium and bring it under control. On 26 July, 1307 as "state monopoly of opium law" in Article 1 was approved and it was decided to regulate "the date of enactment of this Act all trades and transportation maintenance and preparedness, transport and export of opium, juice and lime**, both internal and external consumption is limited to the state." The state monopoly of opium monopoly was called.

In fact, up to 16 Mordad, 1307 that "the punishment for perpetrators of trafficking opium" was passed and too light cash penalty was considered for trafficking opium, they were active in the field Z-:(A plan of survey of Tehran residents about severe penalties for drug addicts and drug dealers, the Headquarters for Combating Drugs, 1376)

Iranian drug law did not constitute a crime and it didn't considered as a guilt and in fact the government on the supervision and control it, and for those who intend to work in this field were issued licenses of activity. Ban on the drug until the date of enactment of regulations dated 25 Tir 1313 continued. Article 3 of the said regulations, the activities in the field of drugs subject to an official permit from the valid authorities of government. At 7 Aban 1334, with the adoption of "a law prohibiting the cultivation of opium poppies, and opium smoke "according to its Article 1, poppy cultivation and the production and flow of narcotics (opium, wine and other derivatives) across the country from the date of approval of the draft law became banned. According to Article 4 of the law on executive commission process addicted to opium and its derivatives or more than the age of 60 years due to aging and disease, addiction is not recognized them as long as possible, in order to act is:

A) Doctor and his signature certificate to the risk that the samples are prepared and issued by the Ministry of Health.

B) After verifying the certificate by the Ministry of Health will announce one of the centers, the centers of the photo card that has addicted person to buy shares will be issued where full profile

addicted, daily consumption, Address for credit card sales and that in any case will not exceed six months should be noted. »

Article 41 Amendment to combat drug has been prescribed: " making, producing, Buying, selling, keeping, importing, exporting, smoking and carrying drugs are banned The use of banned substances and carrying case for medical purposes, Research and Industry with the permission of the Ministry of Health, Health and Medical Education are exempted from the provisions of this law. "This provision implies regulating the use of medical and other actions related to the drug trade; And especially with regard to the conditions and restrictions prescribed and administered drugs is unknown and diagnosis of all cases rests with the Ministry of Health, Health and Medical Education has given indications that it should be up to the doctors concerned, in this case planning can avoid many of the problems caused by the consumption of dangerous drugs without medical supervision to prevent. The word "Shipped" Means Moving Something from One Point to another Point that is synonym with transit, too and this crime has been stated as one of physical manners of the drugs ".

"In fact, it's necessary to move these materials from one point to another point for Committing crime importing, exporting and transit of opium, so, shipment is one of bases of smuggling and we can say, it means the same meaning of the mentioned cases. Hence, there are the triple constitutive elements of this crime include in:

The physical element; "Any kinds of action that causes to transfer the delusional drugs. Hence, Shipping drugs have various forms and shapes. Sometimes, the person who takes these drugs is carrying by himself and sometimes, the drugs are carried by the other person and it is called the transit. shipping the delusional drugs is along with embedding them, since the person who committed the crime wants to hide the drugs and the action of embedding has different kinds, too.

The below note of article 30 of law of 1376 is still in the amendment law 1389. Due to this note, those who try to embed the psychedelic drugs and if the crime of shipment is proved, they will punish because of their assistance in carrying or shipping the drugs, but if the crime of shipment is not discovered, due to this law, embedding the drugs is a distinct crime and it will be determined a separated punishment.

So, the act of committing an offence of embedding even without its shipment is an offensive action that includes in an act of thing on a vehicle in order to embed drugs in it and finally for shipping them.

4 - The spiritual element

This crime is classified one of the intentional crimes and committing that is along with punitive mischief. Here, the spiritual element includes in: 1. Awareness of subject. 2. It is a Public mischief. 3. It doesn't want a specific or individual mischief.

1 - Awareness of subject: As a matter of fact the person must have awareness of subject and he must aware that the drugs that he is shipping, are psychedelic drugs. 2 - public Mischief: It means that the person intended to ship the psychedelic drugs or he has had the public mischief, so if there is some drugs in a person's bag and in which he doesn't aware that they are some psychedelic drugs and he thinks that they are normal medicines, the first step about the awareness of the subject will be excused and if he doesn't aware of shipping drugs, the second step of intention in shipping will be excused, too and he will be forgiven, too.

5. The legal element:

Shipping the psychedelic drugs in reformed law of 1389 has been clearly considered as a crime and it has been assigned it punishment as well. Some points that have been considered for it, contain:

1. In article 1 that passed in 1376 in which there is its 1389 reformed, shipping drugs is a crime in clause 3 and this article also states that "The below actions are considered as a crime and a committed person will condemn to punish legally."

clause 3: "keeping, shipping, distributing, hiding and embedding, transit, supplying and selling drugs and psychedelic industrial non-medical drugs."

6. Review of the legal penalty for drug trafficking in Afghanistan's law

Since the beginning of the familiar of human populations of subject of drugs ever, communities and the states have taken different policies against of them that we can divide them in three different outlooks: The outlook of counting drugs as a crime, decriminalizing and empowerment of drugs. Afghanistan has experienced such as these kinds of outlooks from 1302 to 1389 about combatting against drugs. The most important of counting drugs as a crime are morality, religion and individual or public harm. Taking a suitable behavior in society especially in societies such as Afghanistan is really important and due to this idea, breaking the rules or moral behaviors always seem terrible and offenders will be abandoned of the family and social environment. Some crimes such as the ones refer to the drugs or especially addicted to it will have terrible morality

outcomes and they will face with criticism of the public thoughts. Hence, breaking the moral rules is one of bases for counting as a crime in these kinds of societies, the crimes about the drugs will clearly count as a crime. Ahle Sonnat and Emamieh religions have had a lot of words about smoking drugs. For instance, depend on a sentence of the holy prophet (peace be upon him): "If someone counts the guilt of using drugs nonsense, he is an unbeliever." (Nouri, 1408:86) and he has also some sentences about this subject.

Among of Ahle – Sonnat 's jurists, there are a lot of opinions and beliefs about forbidding and banning on using drugs and additionally, there are three different ideas about the base of punishment of consumer that contain: some of them have put the drugs in group of drinks and they have issued the decree of the impurity of them and also they have assigned a punishment for them and it has been taken 40 or 80 whips for it and additionally, they declared that there are three rules and penance for shortening the punishment.

b. The other group have assigned some higher punishments for purchaser, seller and user of drugs such as murdering and hanging in public and etc.

c. the third group has assigned the general punishment for smoking the drugs except in remedial aspect of them. " (Aghababaei, 1384: 43)

The third reason for assigning the using the drugs as a crime is "To be harmful for individual and society". A person could harm himself and the others by using the drugs. On the other hand, the government charge to make some necessary thoughts for preventing to harm to people and society. Due to this, the government has possibility of general interference. Some of people for rationalizing the interference of the legislator in this case have pointed the "legal moralization", It means that if one behavior is false, they count the person who committed the crime for tolerating the punishment." (Rahmdel, 1386,41) It has already said to a person about using the drugs that "Using the drugs has inebriant effects in brain and they have a fatal effect in body and also they have converse effect on behavior. The most of analysis in supporting of counting as a crime agree with this point, too."

The approach of crime erasing / The concept of crime erasing

There are various opinions about the concept of crime erasing. Some people believe that crime erasing is omitting all of sanctions on executions and the others think that it causes to decrease the executions. There is another group that they believe

that to change sanctions of penal outlook to civil outlook in stating the meaning of crime erasing.

The first implication of crime erasing is considered by Juris consults. So, the crime erasing in this implication “is a process that because of that, the authority of penal system for executing for reacting to a special kind of behavior – a special kind of crime-will be declined. Crime erasing is one of ways of recession of execution that the lawmaker will do it by formal and legal form or judicature and legal institutions, too. Here, the intent of actual crime erasing is exactly formal or legal crime erasing that the lawmaker as an only confident source will do it, in this part. An important point that it has been proven by experience a lot is that crime erasing doesn’t mean to exit a kind of manner of authority of the executive system and put it in the area of the individual freedom, but also this assumption is just one of forms of crime erasing. The other cases that will be analyzed later could be definable such as executive erasing and withdrawal of judicial inquest and it is impossible to call with crime erasing synonym, although, they are related together and can complete each other as well.”(Mahmoudi Janaki, 1387,324)

The principles of crime erasing

The most explanation about crime erasing of drugs is being useless of combating with drugs. Due to this subject, some experts up to the economic ways explain that massive amount of investment has been spending against combating with drugs, but in fact, this action is useless, because despite arresting a great number of the drug criminals and discovering and destructing a great amount of drugs, drugs are easy available for consumers. So, combat and costing money don’t have a desirable result. Some of experts also believe that the disadvantages of finding crime are much higher than the disadvantages of using drugs and by crime erasing of drugs, the society will be preserved from these harms.

Crime erasing in legal system of Afghanistan

Despite of some essential political changes in Afghanistan, the executive system of this country has been related to the crime finding and completing this policy from past to present. Due to the process of legislating, it will be found out that at least from the legislating viewpoint, the range of crime finding of the new law has been more extensive and developed than the former law. This new law has been considered drug combating generally in two aspects of executive and non-executive by which of the policy of the lawmaker. So, we can see the approach of merely crime finding against to the drug crimes in Afghanistan’s law and crime erasing opinion hasn’t applied, yet.

The approach of legalizing

“Some ones believe that the empowerment is removing all of limitations in producing and selling drugs and psychedelic drugs except in children. Here, the meaning of empowerment is to control the government in framework civil justice system (and no in executive justice system) over producing and selling and using drugs and for controlling on the people behavior will use of executive justice system such as controlling people’s behavior on drinking alcohol. On the other hand, the most of drugs that were illegal to will be available to use legally for adults by government. It means that the government will be available a lot of drugs for adults and remedial controls of drugs will be accessible for people who need them. The educational programs offer the disadvantages of drugs to children and selling or using of drugs without Dr.’s transcript is forbidden and it counts as a crime.” (the same: 50)

The backgrounds of legislating in Afghanistan implied on both meaning of legislating. For instance, in some situations, we see legal distribution of drugs from the legal sources for addict in a remedial form and also, in some cases such as planting, producing and even exporting and importing of drugs, a legal license will be issued for working the rightful people.

The difference between the legislating approach with crime erasing and the criminalization

The legislator in crime finding approach, it didn’t already count as a crime and it didn’t even have a penal punishment, causes to enter the penal rules area and process of enforcement for it, such as, when the government forbids the drug cultivation but it was already free. On the base of crime erasing considered the former action as a criminal act but in surrounding of penal law counted as a crime, not only it didn’t count as a penal act, but also, it counts as a permitted action. It means that the same criminal action returns to the state before criminalization, such as this case that the government cancel the ban of cultivation drug and then its cultivation will completely make free.

The legislator in making law approach, the pure criminalization and crime erasing don’t count in favor of the social expedient. Hence, he will pass some rules that they get along with the social expedients and simultaneously, doesn’t have any of the former status. For example, the government might cultivate a special kind of drugs legally and allows to distribute and consume it to some special kinds of organs.

Legalization in the legal system of Afghanistan

We can find the bills in the Legalization in the legal system of Afghanistan from the very beginning of the relevant provisions of the drug to the new laws. We Said that in the first codified criminal law text that it is” the public penal system” of country, hashish and cannabis are two productions of Afghanistan that not only, its cultivation is allowable, but also, its marketing is free, too. Only one prohibit is here and that is use and purchase of the sale is forbidden just inside of the country. It wasn't even forbidden for consumers entirely. The code of practice of this country has been divided of people in two categories of upper and lower of 25 years old and for each age if they are new consumers, too and different penalties are considered in clause 131. If they have background of using hashish and cannabis or taking opium, they will be scot-free for two years and their punishment is the same as upper 25 years old punishment. The people who are using opium, it was enough to an advise. So, taking or eating opium has most extreme punishment than other ways. (clause 131)

After 4 years, 1306 public penal system passed as the same method as the former law against cultivating and smuggling of drugs. There was only one difference between old and new law and that was, the drug users who were upper than 15 years would be punished under the general penal law and for people lower than 15 years old would have a kind of judicial security. For the other ages and effective advise was canceled. It was stated in clause 109 of this law: “ People who smoke hashish and cannabis or taking opium, after 15 years old will be liable to general penal law.” So, addicts lower than 15 years old won't be prosecuted.

The prohibition of cultivating, smuggling and other related crimes were emphasized intensively in the combat against drugs law of 1369. The legislator in 13 clause just for solving of the health problems to the ministry of health allowed to work in special cases had been issued. Up to this clause: “ The ministry of health can solve the problems of health problems under the international conventions, start to cultivate, produce, sell and purchase, supply, deposit and transit of drugs.”

So, the legislator permitted to the ministry of health have an activity in all steps of drugs from cultivating to depositing and transit. Here, we can ask a question and it is why did the legislator permit these extensive options to the ministry of health? The first of this clause, the legislator stated the cause of permission of drugs sale was solving the health problems. It seems that the legislator tried to legalized the activities of the ministry of health in drugs by this permission.

Up to clause 12 of Taleban's law, the legislator put a dictum except of the health problems which it seems that stats for Taleban's desire to legalize their activities about drugs. It was said: “ 1. Drugs smuggling is forbidden. Perpetrator will punish under the legal laws.

Producing, processing, purchase and sale, importing and exporting, depositing and transit of drugs without any permission of government will be smuggling.”

The opposite of this clause states that all mentioned steps are legal by permission of Taleban government. In the combat against drugs law of 1382, the signs of drugs legalizing is clear. This law was passed first on the base of medical usages and intensive controlling, and was divided in 4 separated charts. Clause 5 of this law stated that: “ The drugs for controlling from producing, processing, purchase and sale, importing and exporting, transit and usage is divided in four charts:

1. The first chart includes in bushes and materials that are not used in medicine.
2. The second chart include in bushes and materials that are used in medicine and they are under an intensive control.
3. The third chart includes in bushes and materials that are used and under control.
4. The fourth chart includes in chemical raw materials that they are synthetic ingredients and they are used in drugs ingredients, too.

The legalization approach of the legislator about the first chart, the same as the former laws, was a permission for cultivating and other steps for solving the health problems. The difference of this law with the other laws was in addition to the medical needs, the permission of act about the principles of the first chart issued to the ministry of health for scientific investigations and educating and training the people.

Due to 12 clause: “1. The ministry of health can under the permission of the center of combat against drugs and the ministry council, issue the license of cultivation, production, import and usage of bushes up to the first, second and third charts for scientific investigations and health problems and educating and training people.”

Due to 69 clause, the ministry of health forced to take license for legalizing its activities in drugs case. It states that: “ The ministry of health must take its license for producing, processing, purchase and sale, importing and exporting, transit and usage for its health purposes. “

The legislator has preserved the legalizing approach about the second and third charts about bushes and ingredients that are used in medicine, but

they are under intensive control and he forced to take a formal license of the ministry of health. The legislator permitted to both rightful and incorporative people permitted to take part and this license includes in all steps from cultivation to even use as well. Due to 7 clause: “Both rightful and incorporative people who own formal license can utilize of each step of the second and third charts for cultivating, producing, selling and purchasing, supplying, depositing and transit of drugs.”

The legislator permitted to work in addition to people inside the country, it permitted to the private companies for international business and importing and exporting of the subsumed materials in the second and third charts work by license. The legislator’s only condition for international business was the constitutionality of their license with the forms of the UN Office for controlling drugs and crime that the ministry of health issued it after consulting with head of combat against drugs. Due to clause 8: “ The qualified selected private firms for license can have international business up to the outlines of the second and third charts. “ Due to clause 9: “ 2. The inserted license 1 of this clause is up to the forms of the UN Office on Drugs and Crimes is issued of the ministry of health along counsel of the head of combat against drugs.”

In addition to legalization approach, the legislator took precaution about the fourth chart that indicated about chemical raw materials which as combined ingredients for adding to the drugs. Hence, the people who would like to produce, process, export and supply the drugs up to the materials of the fourth chart must take an exclusive license and also, any kinds of importing and exporting of these materials must insert in registry. Due to clause 14: “ The rightful and incorporated people who supply the inserted materials of the fourth chart for producing, processing, exporting and supplying, force to take an exclusive license for each time.” Due to clause 15: “The imported, exported and commerce goods up to the fourth chart this law must insert their address in registry.”

We can see the legalizing approach in the law of combat against drugs of 1384 obviously and even extensively. One of aims of this law is to monitor on organize, control and prevent of illegal use of drugs and in contrast to medical, scientific, investigated and industrialized aims had been counted legal. Due to this clause: “ The aims of this law include in: 2. Organize and control the drugs, mental spice, chemical substances, materials and equipment that are used in producing and processing drugs and mental spice for preventing illegal usages of them and take an assurances of that mentioned materials will be

used just for medical, scientific, investigative and industrial ones up to the law.”

This law such as self –law, have been divided the drugs in four class. The only difference of this law with the former law that in the fourth chart, mental spicy was added to the drugs. Additionally, the drug organized committee was established that it was substituted for the ministry of health and it accepted specific duties for controlling drugs. The other traits that this law was separated from another was, adding the distinct chapter for legalizing the drugs, for example, “ third chapter: issuing the cultivation - certificate, preparation, distribution, business and use of vegetables, substances and citrus inserted in the numbers (1, 2, 3, 4). “ This certificate, under the clause seventh would be granted by the committee. The committee also had this authority to limit the issued certificate in a special place and specific kind of activities of the drugs.

Due to this law for grasping the certificate are some conditions that include in:

1. Having medical or scientific aim.
2. Reputation and proficiency of applicant.

In the legal systems of Iran and Afghanistan, is used to determine the crime severity criterion for the length of the incarceration period in drug offenses. The severity of the offense based on the injury of society is calculated. Accordingly, the greater the amount of stored material, the more severe penalties for offenders will be determined. The relationship between crime and drug default is one of the assumptions that policy makers always use of it for attracting the public confidence and the need to serious and severe combat against the drugs for their benefit. According to them, the severe penalties are usual and appropriate reaction to Cope with these crimes. This case is seen in combat with supplying drugs so obviously that the head of penal justice intend to omit the drugs suppliers by considering severe punishments in order to decrease crimes. Investigate the origin of the fight against drugs indicate the approaches adopted strict criminal laws in the field of drugs. Since a legal period in Iran’s criminal justice system the permissive approach toward drugs under international pressure requirements, as well as increasing the numbers of consumers, gradually replaced itself to the strict guidelines. In particular, the law that passed the harsh penalties, including hanging to death and long-term imprisonments for drugs criminal offenses, the law amending the law of prohibiting the cultivation of opium poppies that was approved in 1338.

Due to this, the rising tide of strict punishment with more intensity kept on. After the Islamic Revolution, not only the intensity range of dealing with drug crimes didn’t decrease, but also the

strongest provisions can be approved in the field of aggravation of punishment for the perpetrators of drug crimes (adopted in 1359) found that in it for carrying and concealing and storing more than 5 grams industrial drugs for the first time and more than one kilogram of traditional drugs punishment of hanging to death was determined. After that, however, little reforms in the combat against drugs taken, but still harsh penalties for drug offenders have been remained. Emphasis on these strict approaches during the various years have changed the prisons to a storage for drugs offenders who have occupied the great numbers of prisoners in prisons. On the other hand, in the legislative system in Afghanistan, the crisis of drugs in the early 1980s and increased damages caused by drugs tended to strictest approaches and in particular became the beginning of the policy of war on drugs. In this regard, determining the severe punishments derived from constant development of mandatory penalties in the form of Nun Drug Act law passed in 1986 and it was one of the best measures to deal with drug criminals so that, as after the various laws in the United States to achieve a society free from drugs was passed and applied.

5. Conclusion and suggestions

One of causes of the degeneracy and backwarding of one nation or society is the phenomenon of drug addiction and drug trafficking. These opiates are thought to be the weakening of the nerves and the willpower of the individuals, which cause the depression and imbalance of behavior and indifference to the family and the community. A chain of consequences associated with this also undermines this vulgarity and social deviation, which ultimately causes a passive society and destroys the country's capital. From the geographical point of view, the countries involved in this destructive community flood can be pointed out to the neighbor who had an unpleasant incident in this area and has a long, 925-kilometer border of Zulfiqar crater in the north of Khorasan Razavi province to the Mount Malak Seyah near the North of Sistan and Baluchestan province, which includes important cities of Iran. Across the border, in Afghanistan as well as three large large provinces: Nimroz, Helmand and Zabul were composed each of which is divided into several cities. On both sides of the border, there are nearly 4 million people who are somehow involved with the phenomenon of drug trafficking. The inhabitants of the border areas with their own regional geography have various tribes and clans with different customs and traditions as well as different biological welfare levels. Many of causes, such as having a dry climate and its periodic exacerbation, financial and

cultural poverty and lack of investment, and the attention of officials to providing decent livelihoods, have led a number of residents to invade and plunder neighbors and the trade of smuggling goods and drugs encourages. In this article, measures are being taken to change the performance of these individuals to adhere to the rights of others and to have a safe and secure border to facilitate their lives. In this regard, it is recommended to create several cross-border stretches of territory, which includes several kilometers from the border of the two sides. The Frontier Development Initiative can be created through a special joint management with the cooperation of foreign investors and the United Nations oversight body, which will bring about mutual understanding with the investment and employment of the parties and the creation of industrial, agricultural, commercial and industrial centers of the city. And will increase cooperation and improve the living standards of the inhabitants, and the consequence of eradicating these professions and the security of the border cities will be followed.

Based on investigations, we found out that the criminal policy of Afghanistan's legislators have been pointed out on two approaches of crime empowerment and legalizing. The empowerment of crime approach has in all periods of legalizing. There is just one difference, here and that is difference in rate or level of crime empowerment. The crime empowerment in international level's criteria started since 1369 and it converted to a base for next periods of legislating.

The legalizing approach has had an important place in various periods of legalizing and it has been used in different forms and levels. The usage process of this approach states a kind of ascending and descending pace from the beginning to now. This approach started from 1302 code by assigning hashish and cannabis as agricultural productions of Afghanistan. Due to 1369 law, authority of activity in all levels of drugs for medical aims was given to the ministry of health. There was the same of this approach in law of Taleban 's dominion while they could issue the permission for acting in this field.

Due to 1382 law, the license of activity was issued clearly for people who had medical, investigative and training and educating aims. Additionally of preserving this approach in 1384 law, the range of permitting to work got to peak and caused to develop industrial activities. In addition to that, pharmacists, dentists and vets and nurses included in this law. The right of exporting and importing was even issued to individuals. Due to 1389 law about keeping on the approach of legalization, any kinds of activity by individuals depended on receiving license.

So, from the beginning of legalizing about drugs to now, the legislators have used both different approaches – crime empowerment and legalizing - as simultaneous and combinatory. Although, the criminalization with 1369 law got high and it hasn't had very changes in both different approaches. Because it had been passed on the base of the international convention of drugs combat. Although, the legalization approach has had ascending and descending trend, because, until before of 1389 law, by entering any kinds of law, the range of acts about legalizing of drugs has been increased. So, we can see the developing the range of activity of public sector to the private sectors and organizations. This movement has had to a descending trend by passing 1389 law.

Due to the present situation of Iran's community that hasn't found the importance of remedy of addiction and it is possible that addicts not to react well for remedy and since, the related services to are limited and they haven't been developed, addicts don't want to remedy and we should force them to remedy themselves and due to crime erasing, make force them to remedy themselves will be almost impossible. It seems that addiction should be remain as a crime to develop the people's conscience and knowledge to police can make force addicts to remedy, but, not only, criminalization doesn't mean to act severe and intensive punishments, but also, up to the definition of crime that each act or quit act that has been assigned a penal. It is possible to remove punishment as same as the present, only supporting and training acts must be done. Also in the call criminal-type actions funded from other responses also suggested that criminal policy can be used.

A glance at the evolution of the world in order to restrain and reduce the consumption and trafficking of drugs, the convention between international institutions and sub-founded by the United Nations' efforts and cooperation in the region and between foreign countries, national anti-drug program, in fact that the drug phenomenon is one of the main problems involved with this dilemma. Driven effort between the International until 1950 that the limitation of the production and export of narcotic drugs to the general needs has been medical and scientific in contemporary and all countries with different ethnic, cultural, religious and political are needs. After considerable efforts to coordinate, collaborate, create unity between the government and the nation for the common fight against the production, distribution and consumption of illegal drugs and psychoactive drugs has been done on the outcome of this effort that signing of the three conventions and a reform protocol included: Single Convention on Narcotic Drugs, adopted in 1961 New

York and amended in 1972, the Convention on Psychotropic Substances, adopted in 1971 Vienna, the UN Convention to Combat Trafficking in narcotics and psychoactive drugs, adopted in 1988 Vienna is.

Due to the persistence and pervasiveness of contraband between international drug developments of new forms of crime that have affected other. Crimes such as laundering the proceeds of crime (money laundering), arms trafficking, terrorism, fraud and kidnapping are some of the crimes that by international smugglers of narcotics occurred and the rule of countries with political and military challenging have been faced. In addition to the progress of science and technology as a better condition to deal with this phenomenon has given and has led to the complexity and organized and extraction of the drugs.

In Iran's legislative system, amount of drugs is the most important predictor for severity of the criminal. On these basis, PUNITIVE consistent with their roles in drug crime is not distributed and therefore cannot an appropriate index finally to determine the severity of the offense and the penalty to be considered. Sentencing based on the amount of utilitarian perspective rooted in legislator and stresses the need to avoid damage to people. But, even with acceptance this view point utilitarian isn't applied well, because, original distributors of drugs on the base of this criteria may have escape from the long punishments.

So, it's better instead of an emphasis on the criterion of an amount of drugs, the level of criminal fault as a primary criterion in determining the sentences be considered. Therefore, having knowledge of this subject that the most of those who are under the influence of these criteria include in long punishments are the long-term, low-level offenders who are drug markets play an important role in the change the approach of the legislator. In fact, it's better through the application of preventative programs that an effort is to reduce the presence of these people in the market until the implementation of long-term sanctions of these problems cause to be them more complicated. In this case, according to the large amount of drug retailers criminals have formed the consumers, applying the rehabilitation policies instead of making them forced to bear the long-term punishments, can reduce these crimes and rationalize them to deal with the drugs could be very effective. In addition, applying some reformations of the anti-drug law in order to mitigate the punishment of transporters who are not actual owners of drugs and empower the retailers who are consumers have been offered.

Recommendations

Lack of international will (The determination of governments and great powers) for the elimination of drugs.

Lack of sense of threat and lack of serious national resolve in tackling the drug issue.

Lack of adequate oversight of relevant drug control processes.

The use of advanced satellite systems, information, communication, support, transportation and more. by international smugglers and using information from other countries' technology.

Inadequate budget, facilities, equipment. and the lack of training and new skills in combating drugs.

Lack of attention to the international dimension of the drugs issue and the weakness of the effective cooperation of countries and international organizations despite the transnational and organized crime-related narcotics.

Inadequate structure, management weakness and inefficiency in some drug control headquarters and relevant organizations and institutions.

Neglecting mafia networks and over emphasizing operational measures on the elements of the transfer of drugs are the ineffective components of these networks.

Failure to take into account the source, the source and the requirements of combating smuggling and neglecting the use of long-term and effective software methods to deal with the subject of addiction.

The absence of a serious and effective fight against drug precursors in the transit route, which is used to create laboratories and industrial production and supply centers.

Priorities and Strategic Requirements

Creating the most believable, national resolve, and popularizing the struggle in such a way that the drug issue is always a concern and concern of the general public, high authority officials, and the heads of the three branches.

The drug is a multifaceted issue) in the hidden and internal dimensions of the interior (And the program of struggle should also be multifaceted.

Review and agility of all organizations engaged in counter-narcotics in proportion to the importance of the subject, size and size of threats.

Development of technical, scientific and human resources development in the field of counter-narcotics.

Increasing effective preventive and preventive measures in various areas and supporting at-risk groups, treatment, rehabilitation and insecurity for addicts.

Review and adapt the practices, volume, and variety of cultural packages, educational and informational.

Strengthening public institutions - Private and Public Institutions in the field of combating smuggling and strengthening the general coping with drug addiction and drug use.

Strengthening effective information and strategic cooperation between relevant national institutions and international organizations and developing diplomacy measures.

However, the crime empowerment of addict in the form of applying some supportive-educative actions against a temporary solution and by preparing cultural and scientific conditions (in order to bear crime erasing of addiction) of society (in terms of providing a treatment facilities) addiction must be crime erased. It should be noted that the crime erasing of addiction means that crime erasing of crimes won't be those crimes which are related to drugs (buying, selling, importing and exporting and.) and these actions must preserve their criminal case, too. Crime erasing of addiction have more benefits than crime empowerment.

Dealing with each phenomenon that bothers social discipline requires to apply a rational strategy based on sufficient knowledge of that issue and finding the appropriate mechanism to deal with it. Combating with disastrous phenomenon of drugs in Iran requires a comprehensive and multilateral operation. One of appropriate mechanisms to deal with this disastrous phenomenon, accomplish efficient and effective rules. Unfortunately, the first unscientific response to the phenomenon of criminal suspects by some officials 'ideas, apply heavy penalties and severe reaction against this subject. The experience In our country has been showed that passing some severe punishments against drugs crimes especially against drugs smugglers that will convince to endure most severe punishments in this case could never have been controlled even to border of restrictions, too. However, the predicted sanction of laws that related to crimes of drugs is always in terms of severity has been had ascending trend and sometimes, the government will make the punishments more severe for making fear and terror in criminals and applying intensive combats against criminals and not only, it couldn't achieve anything but also, the small caravans of drugs smuggling have been changed to big international bands and poor drugs retailers to small caravans of smuggling drugs.

What the role of Iran as a key player in the combat against smuggling of drugs make further includes in: being neighbor with the hugest center of drugs production in the world which means Afghanistan and Pakistan during 1845 Kilometers

common border, the political instability in Afghanistan and Pakistan and the absence of a strong government to deal with the cost of living, the highest percentage of addicts and disease caused by the trafficking of drugs, political aims of aliens in area, population and vast expanses of the Islamic Republic of Iran and the percentage of high population of youth and also more vulnerable, lack of employment and low wages due to the high percentage of abusive of drugs in the country, preserving the historical places of the country of history of the country, preventing of rob them by drugs traffickers and etc.

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