

A COMPARATIVE STUDY OF HUMAN TRAFFICKING CRIME IN THE CRIMINAL LAW OF AFGHANISTAN AND IRAN

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Abstract. Human trafficking, as one of the crimes against human dignity and security (when organized), threatens all political, economic, social, and cultural dimensions of countries.

To combat this perilous phenomenon, numerous international documents have been contracted, one of which is the Protocol on Human Trafficking. This protocol asks countries to criminalize this crime in their domestic laws. Accordingly, the lawmakers of Afghanistan and Iran inspired by the human trafficking protocol, have criminalized this crime. The background of criminalizing human trafficking in Afghanistan criminal law dates back to 2008 in the law of Combating Abduction and Human Trafficking, followed by the Law on Combating Human Trafficking and Migrant Smuggling in 2016 and the Afghanistan Penal Code in 2017. The background of criminalizing human trafficking in Iran criminal law dates back to 2002 with the enactment of the Law on Combating Human Trafficking, which is still in effect. This law predicts the crime of human trafficking and the actions related to human trafficking. In the definition of human trafficking as stated in Afghanistan's Anti-Human Trafficking Law, the material behaviors differ from those outlined in Iran's Anti-Human Trafficking Law, as noted in Articles 1 and 2 of the law. In Article 3 of the Law on Combating Human Trafficking and Migrant Smuggling, the methods of commission are largely similar to those in Iran's Human Trafficking Law; however, regarding the mental element of this crime, Afghan criminal law encompasses a broader scope compared to Iran criminal law. The definition provided for this crime in Iran law regarding the material and mental elements is somewhat different from the protocol on human trafficking, but it is completely aligned with the methods of commission. In Afghanistan criminal law, the material element and the means of commission are in accordance with the protocol, but its mental element has a broader scope compared to the protocol. In the criminal law of Afghanistan and Iran, there is a similarity in terms of imprisonment and fines; however, in the discussion of armed rebellion and corruption on earth, the initiation of a crime and complicity in a crime the laws of Afghanistan diverge from those of Iran. Regarding the responses derived from civil and administrative law, there are many similarities in the criminal laws of both countries.

Key words: Abduction, Afghanistan, Iran, Exploitation, Human Trafficking, Migrant Smuggling.

СРАВНИТЕЛЬНОЕ ИССЛЕДОВАНИЕ ПРЕСТУПЛЕНИЯ ТОРГОВЛИ ЛЮДЬМИ В УГОЛОВНОМ ПРАВЕ АФГАНИСТАНА И ИРАНА

Аннотация. Торговля людьми как одно из преступлений против человеческого достоинства и безопасности (когда она организована) угрожает всем политическим, экономическим, социальным и культурным измерениям стран. Для борьбы с этим опасным явлением были приняты многочисленные международные документы, одним из которых является Протокол о торговле людьми. Этот протокол требует от стран криминализировать это преступление в своих внутренних законах. Соответственно,

законодатели Афганистана и Ирана, вдохновленные протоколом о торговле людьми, криминализировали это преступление. Предыстория криминализации торговли людьми в уголовном праве Афганистана восходит к 2008 году в законе о борьбе с похищениями и торговлей людьми, за которым последовал Закон о борьбе с торговлей людьми и незаконным ввозом мигрантов в 2016 году и Уголовный кодекс Афганистана в 2017 году.

Предыстория криминализации торговли людьми в уголовном праве Ирана восходит к 2002 году с принятием Закона о борьбе с торговлей людьми, который все еще действует. Этот закон предсказывает преступление торговли людьми и действия, связанные с торговлей людьми. В определении торговли людьми, как указано в Законе Афганистана о борьбе с торговлей людьми, материальное поведение отличается от того, которое изложено в Законе Ирана о борьбе с торговлей людьми, как отмечено в статьях 1 и 2 закона. В статье 3 Закона о борьбе с торговлей людьми и незаконным ввозом мигрантов методы совершения во многом аналогичны тем, которые указаны в Законе Ирана о торговле людьми; Однако, что касается ментального элемента этого преступления, афганское уголовное право охватывает более широкую сферу действия по сравнению с иранским уголовным правом. Определение, данное этому преступлению в иранском законодательстве относительно материальных и ментальных элементов, несколько отличается от протокола о торговле людьми, но оно полностью соответствует методам совершения. В афганском уголовном праве материальный элемент и средства совершения соответствуют протоколу, но его ментальный элемент имеет более широкую сферу действия по сравнению с протоколом. В уголовном праве Афганистана и Ирана есть сходство в плане тюремного заключения и штрафов; однако, при обсуждении вооруженного мятежа и коррупции на земле, инициирования преступления и соучастия в преступлении законы Афганистана расходятся с законами Ирана. Что касается ответов, вытекающих из гражданского и административного права, в уголовных законах обеих стран есть много сходств.

Ключевые слова: похищение, Афганистан, Иран, эксплуатация, торговля людьми, незаконный ввоз мигрантов.

Introduction

Alongside the progress of human society and the ever-increasing development, globalization and the facilitation of movement between countries, which has accelerated significantly in recent decades, human relationships have also expanded. Consequently, anti-social phenomena and criminal acts have seen a remarkable rise. These criminal activities are usually characterized by specific complexities and occur with planning. A significant parts of these activities is carried out in an organized manner through criminal groups. One of the organized crimes both at the international level and in the criminal law of Afghanistan and Iran is human trafficking that is also known as white trade.

Smuggling, due to its numerous kinds, encompasses various instances such as human trafficking, weapon smuggling, drug trafficking, trafficking of organs and body parts, cultural heritage of countries, endangered species, and so on. Human trafficking essentially consists of

actions through which criminals gain control over individuals, employing coercive, deceptive methods, or exploitative relationships to do so. (Salimi, 1382: 85).

Organized groups consider human trafficking as an activity with very low risks and very high profits on an international scale, which occurs through air, sea, and land borders (Biyabani, 2012: 68). This crime has a long history and is characterized by its organized nature, so valuable steps have been taken in the fight against this crime. International and regional documents, including the Palermo Protocol and the Warsaw Convention, have focused on three main strategies for effectively combating human trafficking in light of international cooperation among the countries namely preventing the occurrence of crime, criminalizing and punishing the perpetrators, and supporting the victims of the crime (Ayni, 2011: 21). Due to the prevalence of human trafficking between Afghanistan and Iran, I am doing this research because a large number of individuals, especially women and children, are trafficked from Iran to Afghanistan using deceptive methods. Additionally, many Afghan people are trafficked through Iran to Turkey and Persian Gulf area. Needless to say that women and children are the primary victims of this heinous phenomenon. This crime has been criminalized in the criminal law of Afghanistan and Iran.

Afghanistan has not been safe from the dire consequences of this crime, having been a country of origin, transit, and in rare cases, a destination for human trafficking. With the adoption of the Palermo Protocol, human trafficking was addressed for the first time in 2008 in the form of the Law on Combating Kidnapping and Human Trafficking. This law was later repealed in 2016 by the Law on Preventing Human Trafficking and Migrant Smuggling. The new law, with some amendments by Penal Code in 2017 is being observed and has taken all three measures outlined by the Palermo Protocol into account

Iran country, due to its unique geographical position, such as being bordered by Arab countries of the Persian Gulf, Turkey and Pakistan has not remained safe from the harm of this ominous phenomenon. Although this country has signed the Palermo Convention, it has not yet ratified it. Nevertheless, it has been influenced by the convention and for the first time in 2004 criminalized human trafficking within the framework of the Law on Combating Human Trafficking. In Articles 1 and 2 of this law, human trafficking and acts equivalent to human trafficking are criminalized. This crime is also characterized by its being organized and extraterritorial feature.

Research Questions:

- 1 -What is the definition of human trafficking in the criminal law of Afghanistan and Iran, and what are its elements?
2. What are the criminal policies of Afghanistan and Iran regarding human trafficking?

Research Objectives

Explaining the concept and elements of human trafficking crime in the criminal law of Afghanistan and Iran.

Clarifying the criminal policy of Afghanistan and Iran regarding human trafficking.

The Importance of Research: Human trafficking has a long history and is the most profitable crime after drug trafficking and weapon smuggling. It's not just a matter that only some countries are grappling with. This organized and extraterritorial crime is economically profitable on a global scale and has a direct relationship with the violation of human dignity. Throughout the

entire process, human rights and human dignity are trampled upon, which highlights part of the significance of the issue. On the one hand, there are negative effects for the victims and consequences for governments, as various countries become countries of origin, transit, and destination for this crime. Among these, Afghanistan and Iran are primarily countries of origin and transit rather than destination. This article compels us to thoroughly identify this phenomenon within the legal frameworks of both countries, define this crime in the laws of both nations, specify its types and strengths and weaknesses, and propose joint solutions to combat this dreadful phenomenon.

Research Method: The method considered in this research will be descriptive-analytical, where the materials will first be studied and collected, and then explained in order to clarify this crime in the criminal law of both countries and to identify the strengths and weaknesses of the two laws. We will begin by defining this crime in the legal systems of both countries, outlining its characteristics and elements, and analyzing the penalties associated with this crime in the criminal law of both countries. The aim is to conduct this analysis comprehensively and with complete precision to establish a coherent and systematic connection between the research topics.

The method of data collection in this research is library-based during which we will utilize various written materials including books, laws, monographs, and articles.

The Literal and Idiomatic Concept of Human Trafficking

The word "trafficking" comes from the Turkish root "Qachmaq," which means "slave" or "to be taken away," and refers to anything that is prohibited by the government from being brought into the country or traded. It denotes an illegal act carried out secretly or goods whose trade and entry into the country are forbidden (Dehkhoda, 1994: 5252). It has also been stated that "a smuggler is someone who brings in or sells goods that are prohibited from entry or trade without obtaining permission from the government or paying customs duties" (Mo'in, 1997: 2608). In the Persian dictionary, smuggling is defined as follows: According to linguists, this word has two distinct meanings. In fact, this word has both the meaning of a gerund and is often used as a noun for an instrument. When this word is used as a gerund, it refers to doing something against the law and in a covert manner, and when it is used as a noun for an instrument, it refers to goods whose trade and entry into the country are prohibited. Goldouzyan, 2013: 17). Human trafficking refers to the act of managing the illegal or legal entry, transit, or exit of individuals (both women and men) across national borders, through coercion, threats, deception, or the exploitation of the trafficker's power or position or the vulnerable situation of the individuals involved with the intent of sexual or economic exploitation, forced labor, organ removal or coercion into forced marriage. (Gandeshmin, 1394: 117)

The legislator in Iran's law on combating human trafficking has made a distinction between two categories: human trafficking and acts equivalent to human trafficking, as specified in Articles 1 and 2 of the aforementioned law. Article 1 of the mentioned law states the following:

A: The act of forcibly and coercively transporting or transiting an individual or individuals across the country's borders through threats, deception, trickery, or by abusing one's power or position, or by taking advantage of the situation of the trafficked individuals, with the intent of exploitation for purposes such as prostitution, body parts, slavery, or marriage.

B- Transferring and concealing, or providing the means for the concealment of the individual or individuals mentioned in paragraph (A) of this article after crossing the border with the same intent.

Article 2 of Iran's Anti-Human Trafficking Law anticipates acts equivalent to human trafficking and considers the following actions as human trafficking:

A - The formation or leading of a group whose purpose is to carry out the matters specified in Article (1) of this law.

B- Facilitating (either bringing in or taking out, or transit), legal or illegal transport or transfer of an individual or individuals in an organized manner for prostitution or other purposes specified in Article (1) of this law, even with their consent.

C- Smuggling (bringing in or taking out or transit), the illegal transportation or transfer of individuals for the purpose of prostitution, even with their consent.

In Afghanistan criminal law, there are two enforceable laws regarding human trafficking.

One is the Law on Combating Human Trafficking and Migrant Smuggling, ratified in 2016, and the other is the Afghan Penal Code, ratified in 2017 which has annulled Articles 11 to 22 of the aforementioned law. According to paragraph 1 of Article 3 of the Human Trafficking Prevention Law and Article 510 of the Penal Code this crime is defined as follows:

"Human trafficking refers to the recruitment, transportation, transfer, harboring, or receipt of a person for the purpose of exploitation, using methods such as threats or the use of force or other forms of coercion, abduction, deception, abuse of power, exploitation of vulnerability or necessity, payment or receipt of money or benefits to obtain the consent of the victim of human trafficking or a person who has control over them." "Controlling a child to exploitation even if the aforementioned methods have not been used is considered human trafficking".

In paragraph 2 of this article, instances of exploitation are enumerated. Exploitation for profit from the victim through buying, selling, sexual exploitation, forced dancing, employing in the production of indecent images or films, slavery, forced labor, begging, armed conflict, body organs cutting, medical experiments or coercing into other illegal activities.

The Elements of Human Trafficking Crime in the Criminal Law of Afghanistan and Iran

The elements of the crime of human trafficking in the criminal law of Afghanistan and Iran will be examined comparatively below.

Legal Element

The most important element of any crime is its legal element. As long as an act is not a crime according to the law, one cannot discuss its material or mental elements. Therefore, in the analysis of any crime, it is essential to first examine whether the mentioned behavior is punishable according to the established regulations or not. Because without the law there is no crime no punishment.

In Afghan criminal law, the legal element of this crime is mentioned in Article 3 of the Law on Combating Human Trafficking and Migrant Smuggling, which specifies the criminal behaviors, the method of commission, and the objective of this crime. Additionally, the Afghan Penal Code addresses this element in Article 510, which includes the same behaviors outlined in Article 3 of the Law on Combating Human Trafficking and Migrant Smuggling, with no

differences between them. It is worth noting that this law came into effect one year after the Law on Combating Human Trafficking and has addressed the general aspects of this crime.

In Iran criminal law, before this crime was specifically criminalized, instances of it were addressed and criminalized in some laws, such as Article 213 of the General Penal Code of 1925 in section B. Although the 1925 law did not explicitly mention human trafficking, its wording was such that it referred to one of the most significant forms of trafficking, namely trafficking for sexual exploitation. (Habib Zadeh and Colleagues, 2008: 107). Article 3 of the Law on the Protection of Children and Adolescents, enacted in 2002, for the first time prohibits any form of buying and selling, exploitation, and employment of children for the purpose of committing illegal acts, such as trafficking. The offender, depending on the case, is subject to imprisonment for six months to one year, in addition to compensating for damages, or a fine ranging from ten million Rials to twenty million Rials. Zaghli, 2010: 105). The third law, the Anti-Human Trafficking Law, specifically criminalizes this offense under the influence of international obligations. In distinguishing human trafficking from acts equivalent to human trafficking, an explanation of these two crimes was provided. Articles 1 and 2 of this law constitute the legal basis for the crime of human trafficking and acts equivalent to human trafficking.

Material Element

The crime of human trafficking is one of the crimes that includes various behaviors which are specified in paragraphs 1 and 2 of Article 3 of the Law on Combating Human Trafficking and Migrant Smuggling, as well as in the article 510 of the Penal Code of Afghanistan. These behaviors include hiring, transferring, transporting, maintaining, or receiving a person. All of these actions require a positive material act from the perpetrator and cannot be realized through inaction. It should be noted that according to the aforementioned information, the methods or means of committing this crime include threats or the use of force or other forms of coercion, kidnapping, deceit and trickery, abuse of power, and exploitation of a person's vulnerability.

In Iran criminal law, according to Article 1 of the Law on Combating Human Trafficking, this crime is committed through a positive material act. The material element of the crime of human trafficking includes a series of actions and means or methods of committing this crime, which are: "exporting or importing, transit, receiving, transferring, hiding, and providing the means for concealment." According to Article (2) of the aforementioned law, the material component of acts considered as human trafficking includes: "forming or managing a group or organization and facilitating the passage, transporting or transferring". In addition to the aforementioned material behaviors, also requires means or methods of commission. These means or methods of commission, as stated in Article 1 of the Law on Combating Human Trafficking, include coercion and intimidation, deception and trickery, abuse of power or position, and exploitation of an individual's situation. All of these methods are exhaustive and can be realized through a positive material act.

Mental Element

The crime of human trafficking is one of the intentional crimes that requires not only general intent but also specific intent. This means that both the act of violating the rules and achieving a criminal result are necessary. General intent refers to the will to perform an act that is prohibited by law (Gaston Valvasor, 1998: 351). Therefore, human traffickers must possess not

only general malice but also specific malice, which refers to the intent to achieve a particular result or specific harm that the legislator has deemed necessary for the commission of the crime.

The mental element of the crime of human trafficking in Afghan criminal law is outlined in Article 4 of the Law on Combating Human Trafficking and Migrant Smuggling, as well as in Article 510 of the Penal Code. Behaviors such as hiring, transferring, transporting, and receiving a person are considered general intent, and in paragraph 2 of this article, it enumerates the instances of exploitation. Based on this, exploitation for profit from the victim occurs through buying, selling, sexual exploitation, forcing to dance, employing in the production of indecent images or films, slavery, forced labor, begging, armed conflicts, organs cutting, medical experiments, or coercing into other illegal activities. These instances involve specific malice.

In Iran criminal law, this crime is considered an intentional and absolute offense, which requires not only general intent but also specific intent. The general intent of this crime in the law against human trafficking is defined as: the intention to export or import, transfer, transit, conceal, and provide the means for concealment. Specific intent in the crime of human trafficking, according to Articles 1 and 2 of the Law on Combating Human Trafficking, refers to prostitution, slavery, organ removal, and forced marriage. This means that the behaviors and methods specified in the above article constitute smuggling only when they are carried out for these purposes or objectives.

The Penalties for Human Trafficking Crime in the Criminal Law of Afghanistan and Iran.

In this section, we will explore the penalties for simple and severe smuggling in the criminal law of two countries.

The Punishment for Simple Smuggling

The penalties for simple smuggling in the criminal law of Afghanistan and Iran are imprisonment and fines.

Imprisonment

In the criminal law of Afghanistan, for the crime of human trafficking, a long-term imprisonment of up to ten years is considered but if the victim is a child or a woman a long-term imprisonment of more than ten years is anticipated, as stated in Article 511 of the Penal Code.

In Iran criminal law, according to Article 3 of the Law on Combating Human Trafficking, if the act committed under the definitions stated in the Islamic Penal Code, it shall be punished according to the penalties specified in that law. Otherwise, the offender shall be sentenced to imprisonment for a period of two months to ten years and to pay a fine equivalent to twice the amount of money or property obtained from the crime, or the money and property promised to the offender by the victim or a third group.

Financial Penalty

In the criminal law of Afghanistan, the penal code only considered financial penalty for legal entities. It means that for real persons, only imprisonment is anticipated as a punishment. The lack of provision for monetary penalties for individuals refers back to Article 143 of the Penal Code. This article states that monetary penalties are not permissible for capital crimes, and according to the penal code, human trafficking is considered a capital crime. Article 515 of the Penal Code states the following regarding monetary penalties:

1 -Whenever a legal entity commits the crime of human trafficking, in addition to the punishment for the criminal, the legal person involved shall be sentenced to a fine of three to five million Afghanis.

2. The monetary penalty stated in paragraph (1) of this article shall be adjusted, taking into account fluctuations in the value of money, based on the proposal of the High Commission for Combating Human Trafficking and Migrant Smuggling and the approval of the government.

In Iran criminal law, according to Article 3 of the Law on Combating Human Trafficking, the monetary penalty considered for traffickers is equivalent to twice the amount of money or property obtained from the crime, or the amounts and properties promised to be paid to the perpetrator by the victim or a third group.

The Severe Cases of Human Trafficking In the Criminal Law of Afghanistan and Iran

Specific aggravating qualities are those that pertain to a particular crime or certain offenses according to the legislator (Shambiyati, previous: 452). These qualities may be related to external events, and if they coincide with material acts of crime, they add to the intensity and unity of the dangerousness of the crime, referred to as "specific aggravating qualities." Alternatively, they may pertain to the characteristics or status of the criminal, whether direct or indirect, and accomplices. "Personal Severe Qualities" (Ardebili, previous: 218-219).

The severe situation aspects of human trafficking crimes in the Afghanistan Penal Code are outlined in Article 512 in the form of four clauses, which include: being a spouse, parent, or legal guardian of the victim or being a public service official, committing adultery or sodomy with the victim, recruiting the victim for armed conflict, and forced medical examination. The penalties for each of these are determined according to the Penal Code.

-If the perpetrator of human trafficking is the spouse, parent, or legal guardian of the victim, or a public service employee, the offender shall be sentenced to imprisonment for more than ten years.

-If the human trafficker has committed the act of adultery or sodomy with the victim, in accordance with the provisions of paragraph (2) of Article 2 of this penal law, and considering the relevant rules regarding the multiplicity of crimes stated in this law, they shall be sentenced to a maximum of long-term imprisonment or permanent imprisonment of the second degree.

-If the victim has been subjected to sexual exploitation or has been used in the production of unethical images or films (pornography), a maximum long-term imprisonment is anticipated.

-If the victim has been assigned to armed conflict or if any member or tissue of their body has been cut or removed, resulting in permanent physical or psychological disability or if they have been subjected to mandatory medical testing or if of the victim dies, the human trafficker shall be sentenced to a minimum of permanent imprisonment of second of first degree.

In Iran criminal law, one of the aggravating factors of the crime of human trafficking is its organized nature. Iranian legislator, in paragraph B of Article 2 of the Anti-Human Trafficking Law, has sought to make the organized trafficking of individuals for the purpose of prostitution or other aims a reason for increasing penalties. Because in this case, human trafficking is considered a crime even if the trafficked individuals have given their consent. While the trafficking of individuals for purposes other than prostitution is not considered human trafficking if it is not organized. Another quality of the crime of human trafficking in Iran law is the age or status of the

victim. Some individuals, due to their specific circumstances, easily find themselves at risk of committing a crime. Therefore, the legislator has provided them with protection and imposes harsher penalties on human traffickers who exploit the weaknesses and circumstances of these individuals to commit crimes.

Note 1 of Article 3 of the Human Trafficking Law states: "If the trafficked individual is under 18 years of age and the act committed does not fall under the definitions of warfare or corruption on earth, the criminal shall be sentenced to the maximum punishment specified in this article".

Another characteristic that aggravates the crime of human trafficking in Iran criminal law is the position of the criminal. The crime of human trafficking is inherently socially reprehensible, but if this crime is committed by an employee of one of the three branches of government or in any way contributes to the realization of the aforementioned crime, it deserves a harsher punishment. This is because it leads to distrust and skepticism among the people towards the government and the state. The involvement of government employees in human trafficking can include direct participation in the crime of human trafficking, complicity in its commission, or even the formation and operation of a group aimed at human trafficking. As stipulated in Article 4 of the Anti-Human Trafficking Law: "Whenever government employees or institutions, organizations affiliated with the government, armed forces, or public non-governmental institutions or Islamic Revolutionary institutions, or generally employees of the three branches of government are involved in the crimes of this law in any way, in addition to the penalties provided for in this law, they will be sentenced to temporary or permanent dismissal from their positions, as applicable".

Punishment for Complicity and Participation in Human Trafficking Crime

The Penal Code of Afghanistan applies a stricter approach regarding complicity and partnership in the crime of human trafficking, holding accomplices and partners to the same punishment as the principal offenders. As stated in Article 517 of the Penal Code: "An accomplice or partner in the crime of human trafficking shall be punished with the same penalty as the principal offender." In this article, the legislator has considered the punishment for the accomplice and partner in the crime of human trafficking to be the same as that of the perpetrator, whereas according to the principle, the punishment for the accomplice is less than that of the perpetrator.

Based on the theories of criminal law professors, this type of complicity is regarded as specific complicity and falls outside the general rules governing the punishment of accomplices in crimes. Therefore, the legislator can impose harsher penalties for crimes that have a severe nature and undesirable consequences (Allameh, 2011: 151-152). In Iran criminal law, the law on combating human trafficking identifies two types of complicity: one as an independent crime and the other as complicity in the commission of the main crime. In paragraph b of Article 1 of this law, concealment of trafficked individuals, which is essentially one form of complicity in the commission of a crime, is considered an independent offense. This reflects the legislator's stringent stance towards this phenomenon. The law on combating human trafficking specifically considers complicity in the commission of the crime and subjects the perpetrator to a harsher punishment compared to the punishment for complicity in other crimes.

Note 3 of Article 3 of this law stipulates that the punishment for complicity in human trafficking is imprisonment for two to five years and a fine equivalent to the amounts or assets obtained from the crime, or the amounts and assets promised to be paid to the perpetrator by the victim or a third party. The objection to this article is that it anticipates punishment for complicity in human trafficking, while the Iranian legislator has made a distinction between human trafficking and acts equivalent to human trafficking. Therefore, under this law, complicity in acts equivalent to human trafficking is not punishable. In this case, for punishment related to acts equivalent to human trafficking, one must necessarily refer to the Islamic Penal Code under which a punishment of degree 5 or 6 would be applicable.

Punishment for the Attempt to Commit Human Trafficking

The Penal Code of Afghanistan regarding the punishment for those who initiate human trafficking offenses has considered the same penalties as those outlined for accomplices and partners in crime. As Article 520 of the Penal Code stipulates regarding the punishment for the attempt to commit human trafficking: "The initiator of the crime of human trafficking shall be punished with the same penalty as that for the crime of human trafficking".

Iran law on combating human trafficking in paragraph 2 of Article 3 stipulates the punishment for the attempt to commit the crime of human trafficking as follows:

"Anyone who begins to commit crimes subject to this law, but the intended result is not achieved without their will, shall be sentenced to imprisonment for six months to two years".

With the establishment of the regulations of Article 122 of the Islamic Penal Code and its note, all attempts at crimes have been unified, and punishments for these attempts will be applied as stipulated in the Islamic Penal Code. As a result, note 2 of Article 3 of the Human Trafficking Prevention Law has been implicitly repealed by Article 122 of the Islamic Penal Code, and Article 122 of the Islamic Penal Code also applies to the attempt to commit human trafficking and acts equivalent to trafficking.

Conclusion

The analysis of criminal law concerning human trafficking in Afghanistan and Iran reveals significant differences and similarities that reflect each country's unique social, cultural, and legal contexts. The following key points summarize the findings:

1. Focus on Victims: Afghanistan's criminal law prioritizes the prevention and protection of victims alongside the criminalization of human trafficking. In contrast, Iran's approach is more centered on punitive measures against traffickers, with less emphasis on victim support.
2. Scope of Criminalization: Afghan law criminalizes specific behaviors related to human trafficking, while Iranian law has a broader scope that includes acts equivalent to trafficking, indicating a more comprehensive legislative framework in Iran.
3. Type of Crime Commission: Human trafficking can occur both nationally and extraterritorially in Afghanistan, with potential for individual and organized crime. Conversely, Iranian law restricts this crime to extraterritorial and organized contexts.
4. Range of Criminal Behaviors: Iranian law encompasses a wider range of criminal behaviors related to human trafficking, including preparatory acts and complicity, which may enhance its effectiveness in addressing the issue.

5. Methods of Commission: Both countries exhibit similarities in the methods of committing human trafficking, largely influenced by international standards such as the Palermo Protocol.

6. Specific Intent: Afghan legislation demonstrates a broader understanding of specific intent in human trafficking cases, potentially allowing for more nuanced legal interpretations and applications.

7. Punishments: Both countries impose imprisonment and fines for human trafficking offenses, with provisions for aggravated penalties in certain circumstances, indicating a shared recognition of the severity of these crimes.

8. Punishment for Complicity and Attempt: Afghan law treats complicity and attempts to commit human trafficking similarly to actual offenses, while Iranian law differentiates these with lesser penalties, reflecting varying approaches to accountability.

In conclusion, while both Afghanistan and Iran recognize the gravity of human trafficking and have established legal frameworks to combat it, their approaches differ significantly. Afghanistan's focus on victim protection and broader definitions of intent may offer strengths in addressing the complexities of human trafficking. In contrast, Iran's comprehensive scope of criminalization could provide a more extensive legal basis for prosecution. These differences underscore the importance of tailored strategies that consider each country's specific challenges and cultural contexts in the fight against human trafficking.

Suggestions

1- The studies conducted indicate that this crime exists in all parts of the world and is a growing crime. Therefore, to combat this heinous offense, countries must take more significant steps. In this regard, the best way for Iran to establish more appropriate laws and to better combat this crime is to join the Human Trafficking Protocol.

2- As mentioned, Iran's law on combating human trafficking only focuses on criminalizing this offense and this law lacks preventive measures and support for the victims. Therefore, it is suggested that these actions be included in the law as well.

3- Due to the many similarities between human trafficking and migrant smuggling and considering that one of the areas of human trafficking involves the smuggling of migrants especially at the borders between these two countries, it is suggested that both countries approve a specific law in this regard.

4- Due to the lack of resources regarding this crime and lack of details in the related laws, it is necessary for the countries to approve agreements with various countries concerning this crime to be made available to everyone and not kept confidential.

5- The High Commission for Combating Human Trafficking and Migrant Smuggling, established under the law against human trafficking and migrant smuggling, should take appropriate measures to prevent and support victims, as well as to raise public awareness.

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