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**The Impacts of the Prohibition of the Legislator on the Transaction of Smuggled Goods, With Emphasis on Imam Khomeini's Viewpoints**

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**Introduction**

**Research Paper**

Legal prohibitions are necessary to regulate social relations and achieve the goals of the legislator. In some cases, the legislator specifies the guarantee for the execution of violations of these prohibitions, for example, according to Article 56 of the Law on the Implementation of Civil Provisions, any transfer, whether absolute, conditional or mortgage, is void and ineffective in this regard. The lawgiver did not have any effect on the legal actions of the person who violated the prohibition and declared it invalid (Razman 1396: 18), but in some other cases, he did not mention the sanction of the violation of these prohibitions.

One of the important examples that is forbidden by the legislator is the issue of goods smuggling. The purpose of criminal regulations in goods smuggling is to prevent its bad consequences. By prohibiting the smuggling of goods, the legislator has stated criminal sanction, but he has not determined and mandated the guarantee of legal enforcement and the effects of contracts based on smuggled goods, and this negligence of the legislator has become a legal problem. Some jurists believe in the invalidity of buying and selling contraband goods, and some believe in the validity of transactions. This has led to the issuance of various opinions from the courts. Therefore, the dignity of creating this research project and the main question of this article is based and focused on the legal status of contraband goods transactions. This question is raised in this way that if a petition regarding the effects of a contract related to smuggled goods, such as: obligation to deliver goods, obligation to pay the price, etc., is raised in the court, what will be the duty of the judge regarding the composition of the verdict? Is it possible to declare such transactions void under the pretext of punishment provided by the law and to assume that there is no effect on the concluded contract? Or should the authenticity of such contracts be confirmed?

In order to understand and analyze the problem in detail, some questions are raised, such as: Does the prohibition of corruption require the prohibition of it? What are the differences of opinion? What are the bases and documentation of these views? What is Imam Rahel's opinion on this matter? What can be the criteria for distinguishing Molawi's prohibition from Ershadhi?

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In this essay, to answer these questions, the authors have focused on generalities and concepts first, after evaluating and providing a detailed understanding of the concept of prohibition and smuggling, it examines the viewpoints of fundamentalists and jurists regarding the prohibition of legal actions, and while expressing the problems, , expressed the best opinion and provided solutions to clarify the situation of prohibited transactions. In the end, based on the presented bases, they explain the ruling on contraband goods transactions.

### **background research**

According to the investigations carried out regarding the research topic, no coherent writing such as a treatise, book, article or research project has been found by the authors until the time of compiling the following article. However, regarding the implication of prohibition on corruption, in general, works such as: Morteza Chitsazian. (2012) Master's thesis entitled "Prohibition in transaction and its effect on jurisprudential inferences" or the article "The use of the implication of prohibition against corruption in the interpretation of laws" Written by Zahra Faiz and Hamid Masjid Sarai, or the article "Review of the jurisprudential rulings of buying and selling contraband goods from the point of view of causing system disruption" by Hossein Abedian and Mohammad Reza Hossein Aramak has been submitted to the field of writing.

All the above writings have discussed the issue from the point of view of principles and provided their answers from the point of view of jurisprudence and principles. But what distinguishes the present research from the above writings is the special focus on contracts with the subject of contraband goods, which is presented through the analysis of legal and principled opinions (jurisprudence) with a view to the opinions of Imam Khomeini (RA). It is hoped that the current research and similar works will be the basis for changing the laws in order to respond to the problems created by the current needs of the society and to solve the legal problems in this field.

### **Results**

In the subject laws, in many cases, in case of opposition to the lawmaker's prohibition, the guarantee of its civil enforcement has not been defined and specified. One of those important cases is related to contraband goods contracts. The guarantee of legal execution and the effects of contracts based on smuggled goods have been neglected from the point of view of the law. In order to explain the issue and derive the verdict, one should refer to the texts of jurisprudence and the principles of jurisprudence.

.In the thoughts of the principles of jurisprudence, this issue has been compiled under the title, "Does the requirement of prohibition in acts of worship and transactions cause corruption or not?" and scholars of the principles of jurisprudence were looking for the answer that if a prohibition is imposed on an obligatory act, what is the requirement and result of this prohibition? Does this prohibition indicate invalidity or does it indicate correctness? Most Shia and Sunni scholars have devoted their efforts to this issue in their fundamental books and have tried to provide scientific answers and by analyzing this issue, reflect its results in jurisprudential chapters. This issue can also be seen in the scientific works of legal scholars, but few of them have mentioned this issue.

Imam Khomeini (may God bless him and grant him peace) with a customary approach to the problem, while creating innovation in this regard proposed good solutions This is the summary of her opinion: If the title of prohibition is not clear. It means that we don't know whether the

prohibition in transactions is an instructional prohibition or a Maulvi prohibition? Is it all forbidden or hateful? In this category, it should be said that the prohibition is a guide and the guide is to corruption. And if the title of prohibition is confirmed, if the prohibition is a directive: surely, the prohibition is a cause of corruption, and if the prohibition is of a Maulvi nature and is of a sanction type, then if the prohibition is attributed to the cause, then it is not appropriate for corruption, but if the prohibition is attributed to the Result, then rationally, in these cases, the guidance is corrupt. and the goal is not to affect the cause. If the prohibition is applied to the effects of the transaction, it is also a requirement of corruption because it does not mean that the verdict is given on the authenticity of the transfer and on the other hand, possession for the price is forbidden. And if the prohibition belongs to a specific reason, then the prohibition does not cause corruption, because the rationalists do not consider the prohibited works to be distorted, and these cases are not bound to cause corruption.

By examining the legal articles related to the Law on Smuggling of Permitted Goods, such as Article 2 and Article 18 of the Law on Combating Smuggling of Goods and Currency, it is concluded that the title of prohibition in this type of transactions is certainly not a directive prohibition. Because none of the components of directive prohibition are observed in it, and the existing prohibition does not have the conditions of directive prohibition. The goal of the legislator is not to guide the corruption of the transaction, therefore, the prohibition is the prohibition of the Maulvi, and it is also of the type of sanction, Prohibition belonged to a cause due to a special cause is neither the cause of the prohibition nor the effect., but the method of obtaining the cause of the prohibited object. . And the legislator does not have a problem with acquisition, what made the legislator to enter and prohibit is the method of obtaining the effects of the transaction, which is through smuggled goods. And for the legislator, this method of getting the transfer is important, and because of the bad consequences of smuggling, he has declared it prohibited.

The ruling on contracts related to prohibited goods should be found in other laws such as: Article 215 of the Civil Code, whose transactions are void in themselves.

Considering the differences in the issue and in order to achieve the goals in the field of combating goods smuggling, it is suggested that the the legislator should enter into this matter and express the guarantee of the implementation of the violation of this prohibition and clarify the status of contracts related to smuggled goods.

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