

Crime, Partner in Crime, and Criminal Complicity

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Abstract

In criminal law, an accomplice and a partner in crime refer to individuals involved in committing a crime, though they participate in different ways. A partner in crime is someone who, through direct cooperation and collaboration, takes part in the execution of a crime. Their legal and criminal liability is equal to that of the primary perpetrator. In other words, a partner, by directly or jointly committing a criminal act, is as legally accountable as the main perpetrator and is subject to prosecution.

An accomplice, on the other hand, is a person who, without direct involvement in the criminal operation, supports the main perpetrator by providing resources, tools, advice, or encouragement. Since the role of an accomplice is less direct than that of a partner and is viewed as aiding rather than fully participating, their punishment is generally lighter than that of a partner. The accomplice's criminal liability derives from the main perpetrator's offence, making their legal responsibility dependent on the primary crime committed. Overall, the roles of an accomplice and a partner are considered from different legal perspectives, and depending on the level of involvement and influence, different punishments are determined for each.

Keywords: *Crime, partner, Criminal Complicity*

Introduction

Crime is one of the fundamental concepts in criminal law, referring to the violation of laws set by the state or society. This violation can take various forms, such as theft, murder, fraud, or financial corruption. The purpose of criminal punishment is to ensure public safety, reform and rehabilitate criminals, and prevent the occurrence of similar crimes in the future. Any individual who commits a crime is held criminally responsible, but in some cases, other individuals are also involved in the commission of the crime, who are categorized as partners in crime and accomplices. These categories differ significantly in terms of legal responsibility and the nature of the punishment.

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Crime itself is an immoral or illegal act that is recognized in criminal law as an action that disrupts public order and harms the rights of others. Typically, crime requires that an individual or group acts with intent and awareness of the illegality of their actions. However, in some instances, the commission of a crime is not limited to the primary perpetrator, and other individuals also play a role in it. These individuals are known as partners in crime and accomplices.

A partner in crime refers to someone who is directly and actively involved in the commission of a crime. They may act alone or collaborate with others in carrying out the criminal act. A partner in crime has the same criminal liability as the primary offender and is pursued legally to the same extent. For example, in a theft, a partner in crime might assist with the theft or provide the tools or plan necessary for committing the crime. In this case, the partner in crime has equal legal responsibility as the main offender, and their punishment will be similar to that of the primary perpetrator.

An accomplice, on the other hand, is an individual who indirectly supports, aids, or encourages the main offender in committing the crime. An accomplice may not play a direct role in the criminal operation, but they influence the commission of the crime by providing the necessary tools, advice, or encouragement. The criminal liability of an accomplice depends on their level of involvement in the crime, and their punishment is generally lighter than that of a partner in crime, as their role is indirect. For example, someone who helps another person gather tools for a theft is considered an accomplice.

Ultimately, the primary differences between partners in crime and accomplices lie in the nature of their involvement and the extent of their responsibility in committing the crime. While a partner in crime is directly involved in the criminal act, an accomplice only aids in the commission of the crime indirectly. As a result, the punishments for these two categories are distinct, based on their level of involvement and impact on the crime's commission.

The concepts of criminal complicity and partnership in crime are highly significant in modern criminal law, as judicial justice demands that individuals be tried and punished according to the extent of their involvement in the crime. These distinctions are crucial not only for more accurate assessment of individuals' responsibility in a crime but also for determining the appropriate punishment for each person involved.

Here is the translation of your text into English:

Study Questions

1. What is the difference between a partner in crime and the primary offender?
2. Can a partner in crime be independently prosecuted, or are they only held responsible by association with the primary offender's crime?
3. What are the legal and criminal differences between an accomplice and a partner in crime?

4. How can the criminal responsibility of an individual recognized as a partner in crime or accomplice be determined precisely?
5. Are there specific conditions that may reduce or increase the criminal responsibility of a partner in crime or accomplice?
6. Are the laws regarding partners in crime and accomplices similar in different legal systems, or are there significant differences?

Study Objectives

1. To explore and clarify the legal distinctions between a partner in crime and the primary offender, focusing on their roles, actions, and responsibilities in the commission of a crime.
2. To investigate whether a partner in crime can be independently prosecuted or if their legal responsibility is solely tied to the primary offender's actions, and to assess the implications of this relationship in criminal law.
3. To examine the legal and criminal differences between an accomplice and a partner in crime, focusing on their levels of involvement, liability, and punishment under the law.
4. To determine how the criminal responsibility of individuals recognized as partners in crime or accomplices can be accurately assessed, considering factors such as intent, participation, and legal frameworks.

Research Methodology

Regarding the research method and the process of collecting organized and prepared resources, the present study is descriptive in nature and utilizes library and research-based approaches for gathering the required resources. This study refers to published articles and research papers, as well as laws related to crime, complicity, and accomplices in crime in Afghanistan, such as the Afghan Penal Code, the Civil Procedure Code, the Law on the Formation and Jurisdiction of the Judiciary, and others.

First Topic: Definition of Crime from the Perspective of the Penal Law of the Country

1- Definition of Crime from the Perspective of the Penal Law of the Country

An act that the law prohibits or abstaining from an act that the law deems necessary, and carries a prescribed punishment for any deviation from either.

2- Elements of a Crime

A. Material Element: It refers to the concept that an act recognized as a crime by Islamic law or penal law is considered as such only when it is actually and habitually committed. If it is not actually and habitually committed, then it cannot be considered a crime. For example, the crime of drinking alcohol, which is prohibited by law, does not exist until it is actually consumed. But once consumed, the material element of the crime is realized, and the crime of drinking alcohol comes into existence.

B. Moral Element: The moral element refers to the involvement of a person's will in a criminal act. In fact, the involvement of a person's will in a criminal act is referred to as the moral element of the crime. Therefore, if the first two elements of the crime,

namely the legal element and the material element, are present in an act but the moral element is absent, meaning the person's will is not involved in committing the criminal act, then the person in question is considered non-responsible and non-punishable. For example, if the perpetrator of a criminal act is insane or a child, then that person is considered non-responsible and non-punishable.

C. Legal Element: The legal element means that an act is considered a crime only when it is recognized as such by Islamic law and penal law. So, if an act is not recognized as a crime by Islamic law or penal law, then it is not considered a crime.

3- Definition of the Perpetrator of a Crime

A perpetrator of a crime is someone who, through the completion of a physical act by them, or in other words, someone who alone and directly carries out the physical operations of the crime (perpetrator of the crime). For example, someone who uses their own hands to strangle another person to death or someone who individually initiates the theft of movable property belonging to another. Additionally, if the perpetrator commits a crime using tools such as a gun, weapon, stick, etc., these tools are not considered intermediaries according to custom, and the crime is attributed to the individual. Finally, during the pursuit and prosecution, the legal status of each of the co-conspirators is separate and independent from the others.

In this sense, because fundamentally the institution of penal responsibility has a personal aspect and does not have a direct relationship with the responsibility of other accomplices, and sometimes some of the accomplices may not be attributable to the crime due to reasons such as young age, insanity, or political immunity. In these cases, the abolition of penal responsibility of one of the accomplices will not affect the degree of penal responsibility and punishment of the other accomplices.

4- Definition of Accomplice of a Crime

An accomplice of a crime is someone who, with the intention of committing a crime without directly intervening in the physical execution of the crime, assists and supports various individuals or other individuals in committing the crime, i.e., aids and abets them. In other words, an accomplice of a crime is defined as someone who does not directly participate in the physical operations of the specified crime but rather facilitates and enables the commission of the criminal act by providing assistance and support to the perpetrator of the crime.

For example, someone who, with knowledge and awareness of another person's criminal intent, waits with their car for the thief to transfer stolen goods into the car and then transports those goods to another location. Or someone who is present around a carpet shop that a thief intends to steal from and takes care of the lookout, so if the shop owner or law enforcement officers arrive, they can inform the thief, who is busy gathering someone else's belongings. Thus, in the crime of complicity, without personally carrying out the physical operations of the crime, the individual prepares and incites by providing tools or encouragement.

According to Islamic Penal Code, the punishment for complicity is lighter than the punishment for being a direct perpetrator of the crime, except in cases where a

specific punishment for complicity in the commission of a crime is prescribed by law. In other cases, the court can sentence an accomplice of a crime to punishments such as admonition, threats, or other disciplinary punishments.

The former General Penal Law, which was influenced by the French Penal Code, had provided for the punishment of accomplices in crime in the same punishment as that of the perpetrator of the crime.

Forms of Collaboration in the Commission of a Crime:

Sometimes the perpetrator of a crime is an individual, and sometimes there are several individuals, each of whom carries out a part of the crime, or the perpetrator commits the crime with the help of another person.

Collaboration in crime is not excluded from four situations:

Sometimes the perpetrator of the crime shares the execution of the material element of the crime with another person. Sometimes they agree with another person to commit the crime. Other times, they incite someone else to commit the crime, or they assist the perpetrator without themselves having a role in the execution, using various means. Each of these individuals has intervened in the commission of the crime, whether they have shared materially in the execution of the material element or not.

To distinguish between someone who has a material share in the execution of the material element of the crime and someone who does not, the person directly involved in the execution of the material element is called the perpetrator of the crime, and the person who is not directly involved in the execution of the material element is called an accomplice of the crime. They call the action of the perpetrator the direct participation or causal participation. The basis of this distinction is that direct participation has occurred in the execution of the material element of the crime, so they have directly participated in the crime. And the accomplice, by agreement, encouragement, and assistance, causes the occurrence of the crime. However, they do not have direct involvement in the execution of the material element of the crime. Therefore, this person is an accomplice. This distinction between different accomplices in a crime may lead to avoiding an error that would result from naming all accomplices as perpetrators without distinguishing between direct and non-direct participants.

5- Incitement to Commit a Crime

Article 1 of Article 39 of the Penal Code considers incitement as one of the forms of participation.

Incitement itself has various forms; sometimes financial tools are used, and it takes the form of persuasion. Other times, it may have a material aspect, and financial, physical, or emotional threats may be used to coerce the perpetrator into committing the crime. Sometimes, the weaknesses in the mental, emotional, and psychological aspects of the offender are exploited. In any case, as long as the will of the main offender is not impaired (incitement does not take on a coercive aspect), the instigator

will be punishable as an accomplice. Otherwise, the issue of direct participation versus indirect and causal involvement will be raised.

The legislator states that when someone incites a person to commit one of the acts constituting a crime, it means that if the material element of the crime is a combination of several acts, incitement to commit one of those acts is sufficient to consider the accomplice in the crime, assuming that the material element of the crime is simple. Or in a conspiracy where incitement to commit all acts constituting the crime has occurred, the instigator is considered a co-conspirator in the first case.

6- Assent in a Crime

Article 2 of Article 39 of the Penal Code considers the second form of participation in a crime, where an individual agrees with the perpetrator of the crime to commit the crime, and the crime is committed as a result of this agreement.

Assistance in the commission of supplementary equipment, facilities, and accessories to the crime:

The phrase 3 of Article 39 refers to all actions that are perceived as assistance in the commission of a crime, such as preparing crime tools, teaching the method of committing a crime or the method of using crime tools, preparing a place and making property and residence available, and generally all actions that facilitate the commission of a crime in any way are considered assistance, provided that the accomplice has the criminal intent.

General Conditions for Participation and Complicity in a Crime

There are two conditions necessary for the validity of participation and complicity in a crime, whether it be through direct participation or complicity, and those two conditions are as follows:

First - There must be multiple perpetrators; therefore, if there are not multiple perpetrators, neither participatory nor non-participatory involvement is realized.

Second - The criminal act for which punishment is determined must be attributed to the perpetrators. Therefore, if the act attributed to them is not punishable, there will be no crime, and the absence of participation and complicity in the crime will not be realized.

Topic Two: Accomplice in Crime

Article 28 of the Penal Code

A person is considered an actor or accomplice in a crime under the following circumstances:

- 1- When a person commits a crime alone or jointly with another person.
- 2- When a person intervenes in the commission of a criminal act in a way that includes acts constituting a crime, one of which is intended to be committed by the actor.

1-Participation of Actors

In principle, this type of participation occurs when multiple perpetrators are involved in the commission of the material element of the crime. This type of participation is referred to today as multiple primary actors and involvement of more than one primary actor in the crime.

However, some jurists have associated certain forms of complicity with this type of participation and have considered the accomplice's judgment to be the murder of the primary actor. Even if a person does not directly participate in the commission of the material element of the crime, complicity in the crime has been recognized in this way.

First: When a person commits a crime alone or with another person, so if two or three people participate in a murder and each of them shoots towards the victim and hits him in a way that kills him, each of them is considered an actor or accomplice in the crime. When they steal someone's property together, they are all considered thieves. The responsibility of the actor is in two cases of agreement and coercion. Most jurists agree that in the case of agreement, each accomplice is only responsible for the result of his own actions and is not responsible for the actual result achieved by another. For example, if two people beat someone, one cuts off his hand, and the other decapitates him, then the first is questioned about cutting off the hand and the second about the murder.

But in the case of criminals agreeing in advance to commit a crime together, all of them are responsible for the murder. Therefore, even if the agreement is such that the intention of the accomplices is to commit the crime without prior agreement, but each of the perpetrators acts under personal defense and sudden thought, it is still the case in sudden disputes where it arises between a group of disputants without prior agreement.

Each of them acts according to their own inclination and sudden thought. Therefore, in this case and similar cases, it is said that there is an agreement among the participants, but each of them is only responsible for his own action. He is not liable for the consequences of another's action.

Agreement implies that the intentions of the participants in the crime become apparent without prior agreement among them. This means that each of them acts under personal and sudden intellectual motivations. If this type of participation is seen in sudden disputes.

"Complicity" is when the participants in the crime have come together beforehand with the aim of committing the crime and agree with each other to achieve a specific goal. During the incident, they act in accordance with a pre-determined destination together, such as two people agreeing to murder a third person in advance and then one cutting off his finger and the other slaughtering him, so both of them are responsible for the committed crime (murder) and are subject to prosecution.

2-Forms of Participation in Crime

The forms of participation in a crime include:

1. Direct Participation in a Crime: Here, we will first discuss the meaning of direct participation in a crime, followed by its various forms.

- a. The Meaning of Direct Participation in a Crime: This refers to a situation where several criminals directly execute the physical elements of the crime. In this case, all of them are considered the executors of the crime.

b. Forms of Participation in a Crime: This type of participation can take several forms, such as: Someone committing a crime alone or with others. For example, if someone kills a person, they will be considered the direct perpetrator. If two or more individuals participate in the killing of a person and each of them fires a bullet at the victim, causing dangerous harm to the victim, both of them are considered to have directly committed the crime.

3-Punishment for Direct Participation in a Crime

According to Islamic law, the multiplicity of criminals does not affect the punishment required for the crime. The punishment or penalty for someone who directly participates in a crime is the same as if they had committed the crime individually, even if, in the case of multiple offenders, the individual has not carried out all the actions that constitute the crime.

Section Two: The Nature of Participation in a Crime

Regarding the nature of participation in a crime, there are two major theories, which are:

1. The Theory of Derivative Criminality in Participation

The first theory believes in the derivative nature of criminality in participation, meaning that participation in a crime by itself is not a crime, and it derives its criminality from the main act. Therefore, if the main act is lawful and legitimate, participation in it is also lawful, even if the accomplice acted with criminal intent. This is because the essence of the main act is inherently lawful, and the accomplice has assisted and collaborated in a legitimate act.

However, this does not apply to personal factors preventing responsibility (e.g., minority, insanity, coercion), where the criminality and wrongfulness of the behavior remain, but the law does not punish the main perpetrator due to the absence of responsibility. In such cases, the intervention of an accomplice who has criminal responsibility will lead to criminal punishment. Therefore, in this view, objective factors negating responsibility (justifying causes) lead to the lack of responsibility for the accomplice, while personal factors are associated with the responsibility of the accomplice.

2. The Theory of Independent Criminality in Participation

The second theory considers participation to have independent criminality and sees it as punishable, regardless of the nature of the crime and the criminality of the main perpetrator.

Section Three: Types of Participation in Crime and Their Forms

Considering the presence of knowledge and intent among accomplices or their individual negligence in unintentional crimes, participation in a crime is divided into two categories: participation in intentional crimes and participation in unintentional crimes. The criterion for this division is based on the mental element of participation in a crime, which will be discussed in detail in the following sections. Now, let's define these two categories in detail:

1. Participation in Intentional Crimes

Article 42 of the Islamic Penal Code discusses participation in intentional crimes. It states: "Anyone who knowingly and intentionally participates with another person or persons in one of the punishable crimes or preventive offenses, and if the crime is attributable to the actions of all participants, whether the actions of each alone are sufficient for the occurrence of the crime or not, and whether the effects of their actions are equal or different, is considered an accomplice in the crime, and their punishment will be the same as that of the independent perpetrator of the crime."

The definition of complicity in a crime is explained differently in Article 43 of the Islamic Penal Code: "(The following individuals are considered accomplices in a crime and are punished according to the specific conditions, circumstances, the seriousness of the crime, and discipline with warnings, threats, and degrees of punishment)."

In previous laws, instead of the phrase "knowingly and intentionally" in the opening of the article, only the phrase "knowledge and awareness" was mentioned. Therefore, currently, mere knowledge and awareness of the criminal nature of one's actions are not enough to establish participation in an intentional crime. The accomplice must also have intentionally sought the criminal outcome. Both knowledge and intent are necessary at the time of committing the crime for participation in an intentional crime to be established. If the knowledge of the criminal nature of the act is absent at the time of the crime, for example, someone mistakenly believes they are helping a friend move and assists in removing items from a house, the act of participation in the crime is not established in this case.

Similarly, if there is no intent regarding the committed act, for example, one of the accomplices participates in the crime due to coercion or duress, participation in the intentional crime is not realized for that person.

2. Participation in Unintentional Crimes

The mental element of unintentional crimes consists of criminal negligence, and in the case of participation in unintentional crimes, this "criminal negligence" occurs by several people. Examples of criminal negligence include carelessness, inattention, lack of skill, and failure to comply with governmental regulations.

Therefore, the criminal negligence inherent in these examples may be committed collectively and in agreement by several individuals. For instance, two pharmacists together act carelessly and, instead of providing a healing medicine, give a poisonous drug to the buyer, leading to their death. In this case, the criminal negligence is considered the result of carelessness, and this constitutes an error, which can be committed collectively and jointly by multiple individuals.

The second paragraph of Article 42 of the Islamic Penal Code addresses this situation and states: "In the case of unintentional (negligent) crimes resulting from the negligence of two or more people, each of them will be punished as an independent perpetrator."

Section four: Direct Perpetration of a Crime

The simplest form of committing a crime is direct and immediate perpetration. For example, a person intends to kill someone, acquires a weapon, and shoots the person,

causing their death. This person is referred to as the direct perpetrator of the murder. In other words, a direct perpetrator is someone who personally and without mediation performs the material element of the crime and causes the criminal outcome.

In crimes of omission, the direct perpetrator is the person who is personally obligated to perform a specific duty and fails to fulfill that obligation. For example:

In the crime of failure to provide maintenance, a husband who refuses to pay maintenance to his wife is considered the direct perpetrator of the crime. Even if he appoints someone else to carry out this duty or if someone else provides the maintenance, as long as the legal maintenance is not paid, the husband remains the criminally responsible direct perpetrator of the crime, not anyone else.

The Supreme Court, in ruling No. 1086 dated July 1937, clarified this issue, stating that the commitment of others, even the mother, does not absolve the father of his responsibility. The court ruled: "The mere commitment of the mother to support the children does not relieve the father of his obligation, nor does it prevent his criminal prosecution in the event of failure to provide maintenance."

In all such cases, since the perpetrator personally performs the act and material element of the crime, the full weight of criminal responsibility falls on them. For this reason, most provisions of criminal law begin with the phrase "anyone who," to emphasize the responsibility of the direct perpetrator of the crime.

1-Participation in Premeditated Murder

Participation in murder occurs when a person is killed as a result of blows or injuries inflicted by multiple individuals, and the death is attributed to the collective actions of those involved. This applies whether the actions of each person alone would have been sufficient to cause death or not, and whether the impact of their actions was equal or different. Similarly, if two or more people inflict injuries on someone, leading to their death, either at the same time or at different times, and if the death is attributable to the acts of all, they are all considered murderers. Their punishment should be determined in accordance with other provisions of this law, considering the relevant conditions.

Conditions for Participation in Premeditated Murder:

1-Collaboration of Two or More People in Inflicting Fatal Injuries: The first characteristic of participation in murder is that the physical act of causing death must be carried out by two or more individuals for them to be considered accomplices. Otherwise, if one person alone completes the physical act of murder, they will be considered the sole perpetrator or direct agent of the murder.

2. The Actions of Each Accomplice Must Contribute to the Physical Act of Murder: The second condition for establishing participation in the crime is that the criminal actions must be the result of the collaboration of the accomplices and must be attributed to the actions of all involved, regardless of whether the effect of their actions in causing the death was equal or unequal.

Therefore, the conscious actions of those who, without being present at the scene of the murder, merely facilitate its occurrence, do not qualify them as accomplices in the murder.

3. Establishing a Unified Criminal Intent Among the Perpetrators: Another necessary condition for establishing participation in murder is that the individuals involved in committing the physical act of murder must be aware of and share each other's intent to take the life of the victim. If one of the accomplices assists without knowing or intending the actions of the others, they will not be considered an accomplice in the murder.

It is evident that the knowledge and awareness of the accomplices about the unlawful nature of their actions must exist before the start of the physical acts of murder and during its occurrence for them to be considered accomplices in the murder.

From what has been discussed so far regarding the conditions for participation in premeditated murder, it can be concluded that participation in murder occurs when two or more individuals collaborate, fully aware of the unlawful nature of their actions, and the victim's death is attributed to their collective actions. This holds even if it is impossible to determine the exact role or influence of each accused in causing the death. In other words, the equal criminal responsibility of the direct perpetrators of the murder will be established.

Specific Issues of Aiding and Abetting in a Crime

A) Aiding and Abetting in Crimes of Omission :Crimes of omission are those in which the physical element consists of a "negative act" or "failure to comply with legal requirements." Since the physical element of these crimes is formed by a negative act, the question arises: Can aiding and abetting be applicable in crimes of omission?

A small number of legal scholars believe that since the physical element of crimes of omission consists of a "negative act," and aiding and abetting requires a "positive act," it is not possible to have aiding and abetting in such crimes. However, this reasoning is incorrect. The physical element of crimes of omission involves the criminal's failure to comply with legal requirements. The criminal may independently and directly disobey the law, or they may do so due to the encouragement or provocation of another person. In such a case, there is no barrier to prosecuting the instigator as an accomplice to the crime of omission.

B) The Difference Between Participation and Aiding and Abetting in a Crime: The first difference between participation and aiding and abetting in a crime relates to criminal responsibility and the system of that responsibility.

Since a participant in the crime takes part directly and immediately in the execution of the crime, they have independent and separate responsibility, which is, in principle, unrelated to the responsibility of other participants. Therefore, if one of the participants decides to abandon their criminal actions, but the others continue, the withdrawal of one participant does not affect the responsibility of the others, and each participant is independently responsible for their actions.

In contrast, an accomplice in a crime does not have independent responsibility; their responsibility is dependent on and linked to the responsibility of the main perpetrator. If the perpetrator decides not to commit the crime, the accomplice cannot be prosecuted either.

The second difference is that participation in a crime is only possible in intentional crimes. It is not possible in unintentional crimes.

C) How to Distinguish Between Participation and Aiding and Abetting in a Crime: The best and simplest way to distinguish between an accomplice and a participant in a crime is to refer to the definitions of these two roles.

A participant in a crime is defined as someone who, with knowledge and intent, collaborates with one or more persons in the execution of the criminal act. In other words, a participant in the crime is someone who directly takes part in the execution of the crime.

On the other hand, an accomplice is someone who does not directly participate in the execution of the crime but instead encourages or facilitates another person to commit the crime.

For example, a person who stands guard outside a house during a burglary, or someone who provides a weapon for murder, or someone who tries to prevent others from hearing the victim's cries during a murder, is considered an accomplice, not a participant. This is because, in these cases, the accomplice did not directly take part in the criminal act.

While the method of distinguishing between a participant and an accomplice is quite simple and clear, there are instances where the distinction becomes difficult, particularly when aiding and abetting involves facilitating the means for committing the crime.

Chapter One: Definition of Aiding and Abetting in a Crime

Aiding and abetting in a crime occurs when a person, without directly or personally participating in the execution of the crime, incites, entices, or deceives another into committing the crime, or knowingly provides the means to facilitate the crime for the main perpetrator, or advises the principal offender on how to commit the crime.

1-Definition of an Accomplice

An accomplice is someone who, without being directly involved in the execution of the crime alongside the main perpetrator, facilitates the crime through their actions or incites the perpetrator to commit it.

2-Elements Constituting the Crime of Aiding and Abetting

A) Legal Element

Aiding and abetting in a crime is punishable only if the person assists the principal offender in committing a crime for which the law has prescribed punishment. The legal element of this crime is found in Article 43 of the Islamic Penal Code. There is some debate about whether aiding and abetting is an independent crime. Some consider it to be an independent offense, arguing that the number of participants in the crime corresponds to independent crimes. Others believe that aiding and abetting

is dependent on the principal crime, arguing that the accomplice derives their criminality from the main perpetrator or direct offender.

B) Physical Element

Four factors are involved in establishing this element:

1. Committing a Positive Act

A passive omission cannot constitute the physical element of aiding and abetting. Therefore, if someone who is aware of the crime does not report the offender or fails to assist in the crime, they will not be considered an accomplice.

2. Completion of the Criminal Act

If the accomplice begins aiding in the crime but later abandons it due to external factors beyond their control, and the crime does not occur, the mere attempt to aid is not punishable. However, aiding and abetting in the initiation of a crime is itself punishable.

3. Unity of Intent

In committing the crime of aiding and abetting, it is necessary for the accomplice to be aware of the nature of the act and its criminal aspects. They must intentionally collaborate by preparing the groundwork and be willing for the direct perpetrator to achieve the criminal result.

4. Timing Between the Accomplice's Action and the Principal Offender's Act

If the accomplice's assistance occurs after the crime has already been committed by the principal offender, it is not considered aiding and abetting. Instead, it may be classified as a different crime, which is addressed in specific laws, such as Article 553 of the Islamic Penal Code.

C) Mental Element

The accomplice must have a criminal intent or awareness of their actions and knowingly and deliberately perform one of the acts of aiding and abetting.

Section Two: Conditions for Aiding and Abetting in a Crime

In summary, aiding and abetting in a crime only exists if three conditions are met:

1. The first condition: There must be a punishable act, meaning a crime has been committed.
2. The second condition: There must be a means for this act, such as an agreement, encouragement, or assistance.
3. The third condition: The accomplice must intend to commit the punishable act using these means.

We will discuss each of these conditions in detail:

Condition One: The Existence of a Punishable Act

For collaboration in a crime to occur, there must be an act for which a punishment has been assigned. It is not necessary for the act to be fully completed; an attempt to commit a punishable act is sufficient for holding the accomplice accountable. Moreover, the principal offender does not need to be punished for the accomplice to be punished. For example, if the principal offender is exempt from punishment due to being a child or mentally ill, the accomplice may still be punished.

Condition Two: Agreement, Encouragement, or Assistance Must Be Present

-A) Agreement

Many jurists differentiate between an agreement and a mutual intention to commit a crime. Agreement means that several people decide together to commit a crime without necessarily having a formal understanding between them. Those who agree to commit a crime are considered accomplices, but only if a forbidden act is committed. The agreement implies prior mutual understanding and a joint intention to commit the crime.

If there is no prior agreement, there is no collaboration. Additionally, if there was an agreement to commit a non-criminal act, it would not constitute collaboration in a crime. For instance, if two people agree to steal a specific buffalo, but the offender assaults the owner or steals another person's buffalo, there is no collaboration.

However, the absence of collaboration does not mean there will be no punishment, as the agreement itself can be considered a sin.

To constitute collaboration, the crime must result from the agreement. If a crime happens, but it is not the outcome of the agreement, there is no collaboration. For instance, if two people agree to murder a third person, but before the agreed time, the third person finds out and attacks the person assigned to commit the murder, and the offender kills the attacker in self-defense, the offender is not responsible because it was an act of self-defense. However, the offender and the person who agreed with them to commit the crime will still be held accountable for the agreement to commit murder, even if the crime itself was not carried out.

In order for the agreement to commit a crime to be considered independently punishable, it does not matter whether it is related to the execution of the crime or not.

If a person agrees with another to commit a crime and is present during the crime, but does not directly participate in it and merely assists the principal offender, Imam Malik considers him a partner of the principal rather than an accomplice. This opinion is specifically related to Imam Malik's view on aiding and abetting, regardless of whether the means of assistance involve agreement, encouragement, or assistance. This perspective is unique to Imam Malik, and other jurists do not agree with this view.

B) Encouragement

Encouragement refers to inciting or urging a criminal to commit a crime. The assumption is that this encouragement leads the offender to commit the crime. Therefore, if the offender is already inclined to commit the crime, encouragement is not considered effective. It does not matter whether the encouragement has any effect or not.

Thus, according to Islamic principles, punishment for encouragement is permissible on its own. Encouraging someone to commit a crime is considered sinful and an exhortation to commit an evil act.

Commands and coercion regarding murder are considered forms of encouragement; however, there is a distinction between command and coercion. A command does not affect the subordinate's discretion, as the subordinate can either commit the crime or endure what they have been threatened with. When the commander has power over the subordinate, such as a father's authority over his minor child or a teacher's authority over a student, a command may sometimes reach the level of coercion. However, if the subordinate is not a minor or mentally incapacitated and the commander has no authority over them, then the command lacks the force of normal encouragement, which sometimes has an effect and sometimes does not.

In cases where the commander has power over the subordinate, a distinction is made between those who have the ability to understand and those who do not. Therefore, if the subordinate is incapable of understanding, opposing the commander becomes impossible for them, making them merely a tool for the commander's orders. Even if the subordinate commits the crime, the commander would be considered the principal offender, not an accomplice.

Imam Malik considers an encourager of the crime to be the principal offender if they are present during the commission of the crime, provided that if they do not participate directly, they still support the principal offender, whether they assist the principal or not.

C) Assistance

A person who aids another in committing a crime, even without prior agreement to commit the crime, is considered an accomplice. Therefore, a person who watches over a thief or killer is regarded as assisting them. Similarly, someone who brings the victim to the crime scene and later leaves them there to be killed or robbed is considered to be assisting the killer or thief.

Moreover, someone who waits outside during a robbery to help the offender(s) in transporting stolen goods is seen as an aide to them. Scholars differentiate between the principal offender and the aider. The principal offender is the one who commits the prohibited act or is responsible for committing it, while the aide does not directly commit the act itself nor is responsible for committing it; they merely assist the principal through actions that do not pertain to the unlawful act, and their help does not count as participating in the prohibited act.

There is a disagreement among scholars regarding the status of someone who detains a person so that another can kill them. Some scholars view the detainer as an accomplice, not the principal in the murder. This is the view of Imam Abu Hanifa, Imam Shafi'i, and a perspective within the school of Imam Ahmad. Their reasoning is that the detainer causes the murder through their action but does not directly commit the murder; thus, causation prevails over direct action.

Conversely, some scholars consider both the detainer and the killer to be principal offenders in the murder. This is the opinion of Imam Malik and a second view in the school of Imam Ahmad. Their reasoning is that the killer directly commits the murder, while the detainer is the cause of the murder.

Both direct action and causation play equal roles in the outcome of the act, which is the murder. If one of the two (the principal or the cause) is absent, the occurrence of that outcome is impossible. The disagreement among scholars revolves around the classification of one as an aider and the other as a principal. Therefore, there is no difference in the definitions of the aider and the principal; the only distinction lies in the application of rules that clarify whether the means of committing the crime is through direct action or causation.

These rules can be summarized in three scenarios when direct action coincides with causation:

1. Causation dominates over direct action: This occurs when the direct action is not driven by hostility, such as false testimony leading to the death of the accused, which results in a sentence against them.

Second: Direct action prevails over causation if the direct action is separable from the cause and the cause is not coercive. For example, if someone throws a person into the sea without the ability to save them, and a third person sees them in the water and kills them.

Third: Causation and direct action are equal when the actions of the principal and the cause are the same, such as in coercion leading to murder. This is because the coercer stimulates and compels the principal to commit the crime, and without them, the principal would not take any action. If the principal does not take any action, coercion does not lead to murder.

Therefore, the differences only lie in the application of these rules. The person detaining the victim is considered the cause of the murder, while another individual is considered the principal in the murder.

Concealing the Principal or Accomplice of a Crime

If someone witnesses a crime, whether it is a misdemeanor or a felony committed by another person, and they assist the perpetrator in various ways, their actions will be deemed criminal.

Theories Regarding Complicity in Involuntary Crimes:

A. The Theory That Accepts Complicity in Involuntary Crimes: In some rulings issued by the Supreme Court and in the works of certain criminal law scholars, there is support for the theory that complicity can exist in involuntary crimes. Although some deny this and argue that complicity requires prior agreement between the principal offender and the accomplice, questioning how such an agreement could be conceived in involuntary crimes.

It is then stated that "this objection is not acceptable because involuntary crimes involve mistakes, and multiple individuals can jointly commit a mistake, making all of them responsible." However, it is established that in cases of collective error, it is difficult to determine the share of responsibility of each participant. For this reason, they should be regarded as accomplices in the crime rather than as the principal offender and accomplice unless there is conclusive evidence of complicity.

Conclusion

Now it is appropriate to state the conclusion derived from the previous discussions. Participation and assistance in a crime do not constitute an independent and separate offense; rather, the culpability of an accomplice stems from the criminal nature of the primary perpetrator's act. This is because the actions taken by the accomplice, such as preparing tools and instruments for the crime, using deception or trickery, or providing the necessary facilities for committing the crime, are generally voluntary actions based on an agreement with the main perpetrator. Nonetheless, these material actions lack inherent criminal characteristics.

The accomplice in the crime, in terms of offense and punishment, is entirely dependent on the primary offender or co-partner in the crime. In other words, the accomplice is recognized as guilty due to the criminality of the primary offender or partner. The accomplice's action is prosecutable because of the link between the accomplice's act and the actions of the main perpetrators.

This means that the accomplice derives their criminal liability from the primary perpetrator, and the accomplice's alleged action is attributed to the act of another, which itself constitutes a crime. As discussed regarding the characteristics of criminal assistance, an accomplice, fully aware of the intent of the main perpetrator or co-offenders, assists and supports the primary perpetrator or co-offenders with intent and will, without personally engaging in the material acts of the crime.

By taking this action, the criminal's accomplice, based on the theory of borrowed culpability, must bear consequences they did not foresee beforehand. Since they will be punished with the material acts and main crime, for example, an agreement may exist between the accomplice and the perpetrator to commit a simple theft. The accomplice willingly aids the main perpetrator by providing the necessary facilities for the theft, but, during the act, due to unforeseen circumstances that the accomplice could not have predicted, the crime agreed upon takes on a more severe form than the accomplice intended. The primary perpetrator commits a theft that entails *ḥadd* (a fixed punishment under Islamic law).

Thus, imposing a harsher punishment on an accomplice for a crime they did not foresee appears unjust.

References

1. The Holy Quran.
2. Ibrahim, B. A.-D. A.-W. (2003). **Tafsirat al-Hukkam fi Usul al-Aqdiyyah wa Manahij al-Ahkam** Beirut, Lebanon: Dar al-Kutub al-Ilmiyyah.
3. Atasi, M. T. (1350 AH). *Sharh Majallah al-Ahkam al-Adliyyah* (M. S. R. Saljuqi, Trans.). Kabul: Supreme Court Publications, Kabul Printing Press.
4. Ahsad, F. (1989). *Wasail al-Ithbat bayn al-Fiqh al-Islami wa al-Qanun al-Wad'i*. Al-Alukah Network.
5. Rasuli, Mohammad Ashraf (1394 AH). *Explanation and Commentary on the Criminal Procedure Law*.
6. Abu Dawood, S. ibn Al-Ash'ath Al-Sijistani. *Sunan Abi Dawood*. Beirut: Dar al-Fikr.
7. Al-Qazwini, A. A. M. ibn Yazid. *Sunan Ibn Majah*. Beirut: Dar al-Fikr.

8. Ouda, A. Q. (1994). *Islamic Criminal Law* (Vol. 2, 1st ed.). Tehran: Mizan Publishing.
9. Afghanistan Penal Code of 1976. (1976). Kabul: Official Gazette, Government Printing Office.
10. Kusha, J. (2002). *Crimes Against Judicial Justice* (1st ed.). Tehran: Mizan Publishing.
11. *Special Criminal Law: Crimes Against Persons* (6th ed., 2001).
12. Velayati, M. S. (2003). *Foundations of General Criminal Law* (1st ed.). Tehran: Khorshid Publishing.
13. Nazir, D. M. (2009). *Islamic General Criminal Law* (1st ed.).
14. Ardabili, M. A. *General Criminal Law*.
15. *Legal Terminology Encyclopedia* (2008).
16. Stanakzai, P. (2022). *Principles of Criminal Proceedings*. Mustaqbal Pub.
17. Faryabi, M. A. (2020). *Principles of Criminal Proceedings*. Saeedi Pub.
18. Ministry of Justice. (1386 AH). *Law on Prisons and Detention Centers*. Official Gazette, No. 923.
19. Ministry of Justice. (1387 AH). *Legal Aid Regulation*. Official Gazette, No. 950.
20. Ministry of Justice. (1358 AH). *Law on the Investigation and Prosecution of Crimes and the Oversight of Prosecutors on the Legality of Its Implementation*. Official Gazette, No. 424.