

Analysis and Explanation of Aiding in Crime from the Perspective of Islamic Jurisprudence and Law

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ABSTRACT:

After examining the various statements of jurists, aiding in crime can be defined as follows: If a person does not have any intervention in the executive operation that constitutes the crime, but rather his role is secondary and natural and is related to matters such as preparing the preparations for the crime or encouraging and instigating the perpetrator of the crime, he is considered an accessory to the crime. However, regarding the ruling on aiding in crime, it should be said that the jurists of the Shiite system have unanimously ruled that it is forbidden. This article attempts to write down and review the opinions of the jurists, narrations, articles and notes of the law in different stages and sections related to the subject. Finally, aiding in crime is discussed and separated into intentional and unintentional crimes.

Keywords: *Accessory to crime, Committing a crime, Islamic punishment, Assistance, Abettor, Inducement, Criminal act, Sin*

INTRODUCTION:

An accessory to crime is someone who does not personally interfere in the execution of a crime and assists the accomplice in the crime by performing behaviors such as incitement, enticement (inducing greed), etc. In other words, an accessory is a person who helps to commit a crime, but does not directly interfere in the execution of the crime. An important and noteworthy point regarding the realization of accessory to crime is that the behavior of the accessory is considered a crime when the behavior of the accessory is also a crime.

The legislator has determined laws and notes in these areas, and jurists have expressed theories, but what is certain is the sin of this act and its prohibition.

Part One: Accessory to Crime in Islamic Jurisprudence:

Linguistic definition of accessory to crime

Languageally, auun means to help, as stated in Majma' al-Bahrayn: auun: al-zuhair ali al-amr and al-jum' auwan. And also, Allama Ibn Manzur has defined it in Lisan al-Arab as: "Aid al-Dhahir 'ala al-Amr wa al-Wahid wa al-Ibn'an wa al-Ma' wa al-Muznab fiyyah, wa qadihiqi si taksira a'wan."

According to the literal definition, the meaning of aiding and abetting a crime is to help the criminal in his criminal act.

The terminological definition of aiding and abetting a crime:

Among the jurists, some of them have defined aiding and abetting a crime, some of which we will mention below:

1- The late Sheikh Ansari says in Makasib Muharram: Indeed, 'Aan'ah is the act of performing some of the preliminaries of a forbidden act with the intention of achieving it absolutely.

Assisting is the act of performing some of the preliminaries of a forbidden act with the intention of making it forbidden, not the act of performing those preliminaries absolutely.

2- The late Mirza Nayini, in his book Makasib wa al-Bay, defined assistance as follows:

The concept of assistance is an act that enables someone else to do something other than create what is desired... such as giving a whip to an oppressor.

Assistance is any act by which another person is helped and enables him to achieve his goal, such as giving a whip to an oppressor.

3- The late Mirza Hassan Bojnourdi, in his rules of jurisprudence, defined assistance as follows:

As for assistance, it means helping and assisting him in his action and occupation... The meaning of assistance in sin is: helping sin in the sin that comes from it, and that is by creating all the prerequisites for the forbidden that some of them commit.

Literally, aiding means helping... Aiding a crime is aiding a sinner in a sin that is committed by him, and that is by creating all or some of the forbidden preparations that the accomplice commits.

After quoting the sayings, aiding a crime can be defined as follows according to the great jurists: If a person does not have any intervention in the executive operations

that constitute the crime, but rather his role is secondary and natural and is related to matters such as preparing the preparations for the crime or encouraging and instigating the perpetrator of the crime, he is considered an assistant to the crime.

Ruling on aiding a crime in Islamic jurisprudence:

The great Shiite jurists have unanimously issued a fatwa on the prohibition of aiding a crime. Accordingly, before attacking their sayings, we will enter into the evidence for the prohibition of aiding a crime:

It is necessary to mention this point that a crime in Islamic jurisprudence is considered the same as a sin and a sin, although according to the opinion of jurists, it is any act for which the legislator has determined a punishment, therefore our discussion in the words of the jurists is about the absolute nature of aiding a crime.

The first argument: The third verse of the Quran in Surah Al-Ma'idah, where God Almighty says:

“Help one another in righteousness and piety, and do not help one another in sin and transgression and oppression.”

The implication of the second part of the Quranic verse on the prohibition of assisting in crime and sin is clear and does not need to be explained. If there is any doubt that the implication of the Quranic verse on the matter is that the word “helping” is used in the verse, not the word “assistance,” and it cannot be an evidence of the prohibition of assistance because assistance is bilateral and assistance is unilateral.

We answer: God Almighty’s command to assist in righteousness and piety, as well as His prohibition of assistance in sin and aggression, is not a single act, a single case, or a single event. Rather, it is addressed to all believers, men and women, to assist in good deeds and not facilitate or assist in evil deeds. And the fairness of the matter is that in the Holy verse, there is no omission in extending the prohibition of giving aid to sin and oppression.

The meaning of sin in the Holy verse is absolute sin, whether minor or major, therefore crimes are also considered as types of sins according to the opinion of Islamic jurists. Everything that is considered a sin and is considered as aggression and oppression.

The third reason: It is narrated in al-Kafi from Imam al-Sadiq (a.s.) that the Holy Prophet (s.a.w.s.) has narrated the saying of the Holy Prophet (s.a.w.s.):

“Whoever eats clay and dies, he has helped himself.”

From this narration, it can be understood that the Holy Prophet (s.a.w.s.) has considered the prohibition of helping oneself to be a sin and has considered it to be punishable. In this narration, the Holy Prophet (s.a.w.s.) has listed eating clay as an example of the fact that a person should abandon such help because it will be punishable.

Conditions for the person who is aiding in sin:

First condition: Knowledge of specific information:

Is mere knowledge and specific information about the fact that one is committing a sin and a crime sufficient to establish the crime, in which case if an ignorant

person helps him to commit a sin, his action will not be considered a crime?

Some jurists, such as Sheikh Tusi, Allama Mohaqiq Ardebil, Sahib Al-Hadaiyiq, Sahib Al-Riyadh, and Imam Quds Surah Al-Sharif, consider mere knowledge and information sufficient to establish assistance, regardless of whether the assistant also intends to assist in carrying out the haram preparations or not, and regardless of whether a criminal act is committed or not. Imam Quds Surah Al-Sharif says:

And similarly, selling grapes and continuing to sell wood to someone who knows that he is making wine and instruments for gambling and gambling, and allowing houses to someone who knows that he is selling them, and the likes of that are in a strong position - and the issue is very difficult from the perspective of the texts, and it seems that it is justified.

Imam Khomeini says: If someone sells dates, grapes, or wood to someone who knows that he is going to make wine or instruments for gambling and music, his action is haram, because the evidence for the prohibition of helping outweighs the sin of it.

Although Imam Quds Surah Al-Sharif has difficulty in the meaning of the texts and the strength of its chain of transmission, his fatwa proves that such an act is forbidden.

The second condition: Specific intention to reach the intended person:

If the helper was not knowledgeable that the sinner (criminal) intends to commit a forbidden act, the specific act that is not intended to commit a forbidden act on the part of the intended person cannot be considered forbidden and considered a crime. And if he was knowledgeable but did not intend such a forbidden act on the part of the intended person, it will not be forbidden.

The late Sheikh Ansari says in the book of Makasib, regarding the issue of selling grapes to someone who knows that he is making wine, that one of the reasons for the prohibition of such a transaction is the prohibition of shame over sin.

In this argument, some jurists have argued that it does not apply to this assistance. Why? Because two issues are under discussion.

1- The person who sells grapes to a customer who makes wine is a messenger for the customer to go and ferment the grapes, and in this case, the donation is valid for sin and is certainly forbidden.

2- The person who sells grapes to a customer is not a messenger for the customer to ferment them, meaning that the sale was not made with this intention. In this scenario, some jurists have questioned whether the seller's action is true and is also forbidden according to the scholars.

The first person to raise these objections was the late Mohaqiq Sani in the margin of the commentary on guidance. Based on this statement of the late Mohaqiq, whenever someone helps someone commit a sin but does not intend to commit that sin, even though he knows that he will commit such a wrongful act, his act

is not considered an instance of aiding and abetting sin and will not be forbidden.

The late Mohaqiq Karki says: In this second hypothesis, there will be no aiding and abetting at all.

In some cases, we require aiding and abetting sin to be true, and in some other cases, intention is not necessary, but if the mystics believe that an aid to sin applies to his action, it is sufficient, even if he is not the intended one. In some cases, the validity of an aid to sin is doubtful. For example, if a merchant knows that he must pay customs duties in trade, but if he does not pay, the validity of an aid to sin for this person is doubtful.

Two issues can be raised:

*When does an aid to sin apply?

*When is he responsible and his action will be forbidden?

The actions that are issued by individuals are one group based on intention, such as bowing and honoring, etc., and the other group is things that are not based on intention, such as hitting, eating, drinking, which are real and actual matters. Sometimes a person is excused from performing these actions and sometimes he is not excused. This excuse or lack of it does not interfere with the essence of the title. It can be said that assistance is a real matter and intention does not interfere with the fact of assistance. If the custom says that it is assistance, then it is considered assistance, whether he intends it or not.

According to the opinion of the late Imam Quds Surah Al-Sharif in Makasib Muharram, intention interferes with the validity of the concept of assistance against sin: A person's assistance to something consists of assisting and helping the agent with that thing, and it is true when the designated person wants to help him in achieving that thing, and this is realized when the designated person intends it. Therefore, if someone wants to build a mosque, all those who help him in building the mosque are considered assistants and it is said about them that they are helping and aiding in the construction of the mosque. However, those who sell bricks and other building materials to him, if their sale is for their own personal purposes and selfish desires, are not considered his assistants and assistants in building the mosque, even if they know that the purchase from them is for the purpose of building the mosque.

In the author's opinion, this argument is not complete because assistance is not a matter of intention or credit, but of reality. This illusion stems from the fact that in charitable matters such as building a mosque, assistance is valid when a specific person freely and voluntarily provides funds to the founders of the mosque and the charity. However, if he receives money in return, it is not said that he has helped in building the mosque, unless he receives a smaller amount in return.

The third condition: The crime is committed abroad by Maan:

Is the crime committed abroad a condition for the truth of the abetment?

Some jurists believe that the crime is committed abroad is a necessary condition for the truth of the abetment of

the crime. Because what is understood from the apparent meaning of the noble verse, "And do not cooperate in transgression and aggression," is that abetment is dependent on the external realization of the crime. If the crime does not occur abroad and the perpetrator carries out some of the preparatory steps for the crime and then the crime remains ineffective, the abetment in the crime will not be valid. If the crime does not occur, there is only the illusion of abetment, and the illusion of abetment is not abetment in the crime.

It is on this basis that we have stated that some jurists believe that abetment in the crime is a pseudonymous crime. According to this theory, the abettor of the crime is a metaphor for the criminality of the main perpetrator or the accomplice of the crime. Therefore, if the crime remains ineffective, the accomplice of the crime is not a criminal and the abetment in the crime is not valid.

The objections of the second group of jurists to those who consider abetment in the crime to be a pseudonymous crime are that if you mean the essence of the physical actions, then the truth of the abetment is correct, and if you mean the achievement of a result, then the abetment does not apply.

Some other jurists say that the realization of the result is not a condition for the realization of the accessory, but rather the accessory is an independent crime in itself.

Their argument: In considering the criminality of any person, it is necessary to consider his dangerous personality, and since such a person has helped the main criminal in committing the criminal acts that he wanted to commit, even though for some reason the crime remained sterile, he should be considered a dangerous person for society and punished.

In the author's opinion, the jurists of the realization school mean by this discussion a social discussion, but in the principles, if it is discussed that the act of the accessory has an actual or subjective ugliness and ultimately they choose his inner ugliness and consider him worthy of condemnation in this regard, it is a rational discussion, so it has nothing to do with each other.

The late Mulla Ahmad Naraqi is one of those jurists who says that the main act of the crime must be realized in order for the accessory to be valid. He has limited the validity of the accessory in a crime to four conditions: The assistant must carry out matters that can be haram preludes, such as selling grapes to a wine merchant and wood to make idols.

The knowledge and information of the assistant that the principal will use the prepared premises to realize and complete the forbidden act.

The purpose of the assistant in carrying out these premises is to realize the act of the assistant against him. The act of the assistant against him is realized by the perpetrator in the outside world.

On the other hand, the late Sheikh Ansari, who, according to the late Mulla Ahmad Naraqi, has raised objections and, while rejecting the necessity of realizing the main act, says: This statement is a matter of reflection because the reality of assistantship is to carry out some premises with the intention of achieving the

main act, whether it actually takes place outside or not. In addition, since he carries out some premises of the forbidden act with the intention of achieving it, this amount is considered as aiding and a sin, and assuming the main act is realized, multiple punishments, one for the purpose of aiding and the other for realizing the main act, are not applied.

Fourth Condition: Intent of the Conspirator to Commit a Crime:

Is it necessary for the conspirator to actually intend to commit a criminal act in aiding and abetting?

There is no doubt that a certain act is characterized as aiding and abetting a crime when the conspirator intends to commit a crime. Therefore, if the conspirator knows that the conspirator does not intend to commit a crime, the connivance is not true, and if he thinks that the conspirator has such an intention and then it turns out that he did not have such an intention, his act is considered abetting and will reveal the conspirator's inner wickedness and malice. In that case, we must go to the basis adopted in the discussion of 3 of abetting whether he is liable to punishment or not?

If the conspirator establishes that the conspirator does not intend to commit a crime, the connivance in a crime is not realized. Example: If someone gives a weapon to a person who commits a crime and hands it over to him, and by chance a stray bullet comes out of his weapon, the act of the person who gave the weapon becomes an abetting in a crime. And if the principal has total ignorance of the crime and the person has reason to know that the crime was committed by mistake on the part of the principal, then the principal is liable to retribution and the assistant does not apply because the reason is stronger than the principal.

Fifth condition: The commission of the crime depends on the specific act:

For example, someone has a weapon and wants to commit a crime, and when the assistant wants to commit the crime, another person gives him another weapon.

In this case, is the first person who gives the weapon considered an assistant to the crime or not?

Some say that the hope and hope in the use of the weapon by the first person will qualify him as an assistant, but some other jurists say that the principal must know from the beginning that the assistant will use his weapon and he will use it too, so that the act of giving the weapon is considered an assistant in the crime.

Sixth condition: The assistant's knowledge that with this assistance, the assistant will commit the crime:

Is it a condition that the principal must know that with this assistance and help, the assistant will commit the crime or not?

The late Naraqī: Intention is a condition, the assistant must have intended that the act of helping him result in the main crime. Because the custom understands the word "aid" as meaning that he helped him with all the

tools and equipment that he had. Therefore, intention is also a condition in its customary and idiomatic truth because it is in accordance with the mind of the custom, and on the other hand, the incorrectness of the denial also confirms this view.

His words are not accepted because it is possible for the custom to consider assistance as valid where there is no evidence, and if there is evidence, it does not consider the assistance as valid.

The seventh condition: Intention to commit sin:

Is the intention to commit sin necessary for the truth of aiding in sin or not?

Researcher Karaki says yes, intention is necessary. We have said that if intention is not a condition, knowledge is sufficient, and many transactions must be unlawful. Therefore, you must have the intention to commit sin in order for aiding in sin to be realized.

The words of Imam are that the act of the seller in selling the goods to the infidels is not a contribution to sin because the meaning is incomplete and his action is not considered a sin.

It seems that there is a difference between some infidels and some others who are under the protection of Islam. The assumption that they are incomplete is far from the mind and they should be considered guilty. Therefore, buying and selling with them is considered a contribution to sin, but for those who are not under the protection of Islam and do not understand the truth of Islam, dealing with them will not be considered a contribution to sin.

Eighth condition: Agreement between the designated and the intended in the intention

Is agreement between the designated and the intended in the intention necessary for the truth of the assistance or not?

If what is meant is unity of intention between the designated and the intended, even if there is no collusion, it can be said that the condition for the realization of the assistance has been fulfilled.

However, collusion is not a condition, although some jurists have considered it a condition, but what they mean by collusion is the same agreement in intention.

Collusion is not necessary because if there is a coincidental agreement in the intention, it is valid for the truth of the assistance. For example, if someone gives a weapon to Zayd to kill Amr, but Zayd's son kills Amr with the same weapon. In this case, an accidental agreement has been made between the designated and the intended, and this is sufficient.

Those who consider unity of intention to be a condition for the assistance are of two types:

- 1- Unity of Sharia is sufficient.
- 2- Unity of personality between the designated and the intended criminal intention is a condition.

It seems that unity of personality is a condition.

When he gave the weapon to Zayd to kill Amr, but Zayd did not commit it, and Zayd's son killed Amr with that weapon, personal unity was achieved, just like when he gave the weapon to Zayd to kill anyone he could.

However, if Mu'in intended to kill Amr with that weapon, but he killed Abu Bakr, personal unity was not achieved, so Mu'in's act is not considered assistance.

Ninth condition: The existence (positive) of the act of the assistant:

Is it a condition for the validity of assistance that the act of the assistant be an external positive act (existential) and not a non-existent matter?

Certainly, such a condition is necessary because it would not be true for the omission of the act of assistance, neither in terms of language, nor in terms of custom, nor in terms of jurists.

Part Two: The definition of assistance in a crime from a legal perspective:

From a legal perspective, assistance in a crime can be defined as follows, although the legislator has not defined assistance in a crime:

Assistance in a crime is cooperation with the perpetrator or accomplice in a crime in one of the legally defined forms, without interfering in the execution of the crime, before or at the same time as it occurs.

It seems necessary to note that:

The criminality of the main act is a condition for the realization of complicity. This means that the legal element of complicity in a crime is that the person who is in charge of the act must be criminal so that the act of the person who is the accomplice can be considered a complicity. Of course, the act of the accomplice in itself may be considered a crime, and his act may not be a crime.

The distinction between an accomplice and an accomplice in terms of the nature of the criminal act

If two or more people are directly involved in the commission of a crime, in such a way that the act of each has an impact on the realization of the nature of the crime, then they are considered accomplices in the crime.

However, as mentioned earlier, complicity in a crime occurs if the accomplice does not interfere in the actual commission of the crime, but rather provides the prerequisites for the criminal's work.

It should be noted that some laws have confused participation in a crime with complicity.

It seems that Article 40 of the Egyptian Penal Code, as evident in paragraphs 1 and 3, considers the accomplice to be an accomplice in a crime. The Islamic Penal Code has defined an accomplice in a crime, but has not provided a definition of complicity in a crime.

Article 42: Anyone who intentionally participates with another person or persons in one of the crimes subject to penal sanctions or deterrent punishments, and the crime is based on the actions of all of them, whether or not the actions of each one alone are sufficient to commit the crime, and whether the effects of their actions are equal or different, are considered accomplices in the crime.

Criteria for distinguishing the principal perpetrator and the accessory to a crime:

Two criteria have been presented to distinguish the principal perpetrator from the accessory to a crime, which are objective and subjective criteria:

In the objective or subjective theory, attention is paid to the manner of action and the quality of the intervention of the principal perpetrators and their accessories in committing the crime, and if that part of the acts committed is within the legal definition of the crime and one of its constituent elements, whether the act is considered to have been committed or to have begun to be carried out, the perpetrator is the principal perpetrator. If the act committed is merely in the form of preparing the preparations or in one of the legally determined forms, limited to encouraging, instigating, and facilitating, so that it has no connection with the material element constituting the crime, the perpetrator is considered an accessory to the crime. According to the subjective or personal theory, attention is paid to the state of mind and psyche of the offender.

Therefore, all persons whose actions clearly indicate the intention to commit a crime and who want to cooperate or participate in the realization of the material acts of the crime and become the principal perpetrator are called principal perpetrators, and on the contrary, those who want to play only the role of assistance and assistance, not an effective and decisive role, are considered accessory to the crime.

It can be said that the Iranian legislator preferred the objective theory over the second criterion and paid attention to the type of their action in distinguishing between the assistant and the foreman.

Metaphor of criminality in the context of aiding and abetting a crime:

Is aiding and abetting a crime considered an independent crime on its own or a crime committed with the assistance of the assistant? There are two separate answers and two opinions on this question:

1- The system that considers aiding and abetting an independent crime:

The aforementioned system is based on the idea that when several people commit a crime, independent crimes arise according to the number of participants. Therefore, distinguishing the main criminals from the assistants is not relevant and the responsibility of each one should be examined individually.

Some jurists, especially supporters of the realization school, argue as follows:

The dangerous character of the criminal should be considered and the punishment of the assistant, regardless of the punishment of the main criminal or the security measure that is determined, should be proportionate to the danger that the person, the assistant criminal, poses to society.

2- The system of metaphor of guilt:

The system of metaphor of guilt, which is also called metaphorical guilt or borrowed complicity and the like,

is that complicity is not an independent criminal title, but rather a secondary and consequential matter. Therefore, its realization requires the existence of the main criminal act. So that the complicity borrows the legal element of its action from that act.

It should be noted that the metaphor of guilt is of two types:

1- Absolute metaphor of guilt

2- Relative metaphor of guilt

A: The principle of equal punishment of the main offender and the complicity of the offender is called the absolute metaphor of guilt. The justified reason for this opinion has been expressed as follows: since the complicity and the main criminals have unity of opinion and unity of purpose, therefore their punishment is the same.

B: Relative metaphor of guilt: In this system, the punishment of the complicity is proportional to the main offender, but its amount is less and generally reduced to one degree. Because the role of the complicity in the crime is less than that of the main offender.

According to the beginning of Article 43 of the Islamic Penal Code, it can be seen that the legislator has basically welcomed the system of relative metaphor of guilt.

Elements and pillars of aiding and abetting in a crime

The realization of aiding and abetting in a crime has the following conditions:

1- The criminality of the main act

2- The realization of the material element of aiding and abetting in one of the legal forms, preceding or concurrent with the main crime

3- The existence of a causal relationship between the act and the main crime

4- The realization of the psychological element of aiding and abetting or the agreement of will and unity of two intentions (the criminal hand of the perpetrator and the intention of the accomplice in the crime).

First topic: Criminality of the main act:

In order to punish a person as an accessory to a crime, it is necessary that the act of committing the main act has been realized or at least that the crime has begun because the accessory's act in itself is devoid of criminality.

Therefore, the accessory is punishable if there is a criminal act and the accessory cooperates with the main offender based on the legally determined instances and there is a connection and dependency between the two acts.

Second topic: Material element of aiding and abetting in a crime:

To realize the act of aiding and abetting in a crime, the occurrence of the main crime alone is not enough, but it is necessary for the accessory to assist the main offender in one of the legally determined ways, that is, to commit an act that is materially related to one of the forms specified in the law preceding or concurrent with the main act. In this case, the material element of aiding and

abetting in a crime has been realized and the accessory is entitled to punishment.

According to the above definition, a negative or negated act such as silence or failure to take action to prevent the commission of a crime cannot constitute the material element of aiding and abetting in a crime.

And also, in order to realize the act of assistance, the act that the assistant undertakes in the capacity of execution must be fully manifested externally. That is, it has gone beyond the stage of initiation and is complete so that the assistant can be punished. Accordingly, it is well known among jurists that: "Assistant in initiating a crime is punishable, but initiating the crime of assistance is not punishable."

Another thing that can be obtained from the above definition is that the precedence or temporal symmetry between the act of the assistant and the master of the crime is a condition. Therefore, if the act of a person occurs after the commission of the main crime, assistance in that crime is not considered. Although it can be in itself or assistance in another crime. For example, if a person hides the body of the victim after a murder, his act is not considered assistance in the crime of the murderer. Although hiding the body of the victim to cover up his own crime is a crime in itself and is punishable.

Therefore, it can be said that aiding and abetting has three temporal forms:

1- Aiding and abetting before the act

2- Aiding and abetting at the same time

3- Aiding and abetting after the act

It is only in the latter case that the laws of the countries differ from each other, and the Islamic Penal Code, in Note 1 of Article 43 approved in 1991, has excluded cooperation after the commission of the main crime from the examples of aiding and abetting, and has stipulated as follows:

In order to realize aiding and abetting in a crime... precedence or temporal conjunction between the act of the abettor and the abettor of the crime is a condition.

Examples of aiding and abetting in a crime in the Criminal Code

Article 43 of the Islamic Penal Code stipulates as follows:

The following persons are considered aiding and abetting in a crime:

1- Whoever incites, encourages, threatens, or entices another person to commit a crime, or causes the crime to occur by means of conspiracy, deception, and trickery.

2- Whoever knowingly and intentionally provides the means to commit a crime or provides the means to commit it with knowledge of the perpetrator's intention.

3- Whoever knowingly and intentionally facilitates the commission of a crime.

The examples listed in the above-mentioned article can be categorized as follows:

1- Incitement

2- Persuasion

3- Threats

4- Allurement

- 5- Conspiracy, deception and trickery
- 6- Providing the means to commit a crime
- 7- Providing a way to commit a crime
- 8- Facilitating the commission of a crime

From a general point of view, aiding and abetting a crime can be divided into two types: material and spiritual. Threats, enticement, conspiracy, trickery and providing a way to commit a crime are examples of spiritual abetment, and providing and handing over the means and facilitating the commission of a crime before or at the same time as the act are examples of material abetment.

Causal relationship between the act of the assistant and the main crime:

Some jurists believe that there must be a customary and logical causal relationship between the act committed by the assistant and the result of the criminal act of the principal, and if this relationship is ruled out, the assistant loses its criminal nature and description, and as a result, it will not be punishable unless the legislator, based on interests, considers the punishment of the perpetrator necessary regardless of whether the main crime was committed or not.

We must examine the criterion for determining this relationship:

They have said that the causal relationship must be such that if the assistant's act had not occurred, the main crime would not have occurred, or at least it would not have occurred in the way it did.

For example, in inciting to commit a crime, it is the encouragement and incitement of the assistant that causes criminal thoughts in the mind of the principal, as well as in providing the means and providing a way to facilitate the commission of the crime.

The spiritual element of assisting in a crime:

In addition to the material element and the occurrence of the main crime and the nature and causal relationship between the two, it is necessary for the assistant to have malicious intent or criminal intent.

The criminal intent of the assistant differs depending on whether he is an accomplice in intentional or unintentional crimes. Malice in intentional accomplice means that the assistant knows and is aware of the nature and consequences of the committed act and that he has the will to commit it.

Therefore, the moral element consists of two components: knowledge and intent. In the absence of either of these two components, the assistant will not be investigated.

The meaning of criminal intent is that the assistant, despite knowing and being aware that the main act is criminal, freely wants to cooperate with the perpetrator and wants to commit the crime.

It is necessary to note that the assistant's intention must be precisely related to the commission of the crime or crimes that the perpetrator is in a position to commit. This is why it has been said:

The assistant is only held accountable for crimes that fall within the scope of his intention and intent and is

not responsible and accountable for possible crimes or crimes that are outside the scope of their agreement and collusion.

Accomplice in unintentional crimes:

In Iranian criminal law, aiding and abetting unintentional crimes has been the subject of disagreement among jurists, and some have absolutely denied the possibility of its realization.

Some others have considered aiding and abetting unintentional crimes to be conceivable without any conditions, and others, by distinguishing between cases of aiding and abetting, have accepted the realization of aiding and abetting unintentional crimes in some cases and have considered it impossible in others.

According to numerous opinions of the Supreme Court, aiding and abetting unintentional crimes is as true as aiding and abetting a person with knowledge and awareness that a person is not skilled in a task or that it is against the rules or is careless and may lead to a dangerous accident.

Therefore, if a driver gives the wheel of a car to his student who he knows does not have a license and is unaware of driving, and as a result leads to the intentional murder of another, the driver's action will be an abettor and subject to Article 177 of the General Penal Code.

However, in 1984, a question was raised in the Inquiry and Legal Advisors Commission of the Supreme Judicial Council as follows: If someone places their motor vehicle at the disposal of a person who does not have a license, and as a result of driving the motor vehicle overturns and causes the death of the driver or a third party, is the act of the provider of the vehicle an accessory to unintentional murder or only an accessory to driving without a license?

The Council's answer is as follows:

Considering that in the conditions of the realization of the accessory, the knowledge and information of the provider of the means of committing the crime and the knowledge and intent are considered to facilitate the commission of the crime and the unity of intent between the accessory and the mastermind of the crime, it is clear that accessory has no meaning in unintentional crimes. Therefore, in the case of the inquiry of the owner of the motor vehicle, the accessory to unintentional murder is not considered and will apparently only be subject to traffic laws.

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