

STUDYING ABETTING IN LEGAL SYSTEMS OF IRAN AND TURKEY

ESTUDANDO CUMPLICIDADE NOS SISTEMAS JURÍDICOS DO IRÃ E DA TURQUIA



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ABSTRACT

The presence of a just crime law is deemed necessary to establish safety and peace in a society. Today and as a result of rapid developments in technology, criminals try to use the technology and assist each other in order to not only commit the crimes easier and with more comfort, but also evade the criminal traces and make crime discovery more problematic. Also they would like to be punished less if they are detained. Therefore, abetting and participation in crimes is considered to be highly important. Today many societies have approved punishments for abetting and certain laws have been devised to fight against it. A comparative study of abetting can affect the prevention of related challenges. Thus, the present study is going to deal with investigating abetting using an analytic- descriptive method through comparing the criminal law in Turkey and Islamic punishments law in Iran. The findings showed that in former criminal law in Iran, the punishment for abetting in punishable crimes was identified vaguely, but the new Islamic punishment law has identified certain punishments for abetting in part 'd' of article 127. According to this criminal law, the punishment for abetting would be one to two levels lower than the punishment to commit it. In Islamic punishment law there are some types of crimes mentioned as: abetting, threat, provoking, direction, construction or supply of tools to commit the crime, and These concepts can be seen in the criminal law in Turkey, too. To approve abetting, there should be concurrency between the actions of the assistant and the abetting person and the assistant should have the same intention as the crime soliciting person. Therefore, abetting has three principal features of material, spiritual, and legal and this is exactly the same in the legal system in Turkey. The Islamic criminal law approved in 2013 has accepted the concept of relative culpability theory regarding abetting. The absolute culpability theory is known as the same law in article 38 (1) in the criminal law in Turkey.

Keywords: Abetting. Crime Partner. Turkish Criminal Law. Islamic Criminal Law. Culpability Theory.

RESUMO

A presença de uma lei criminal justa é considerada necessária para estabelecer a segurança e a paz em uma sociedade. Hoje e como resultado do rápido desenvolvimento da tecnologia, os criminosos ostentam usar a tecnologia e se ajudar em não apenas para cometer os crimes com mais facilidade e conforto, mas também para fugir dos rastros do crime e tornar a descoberta do crime mais problemática. Também gostariam de ser menos punidos se fossem

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detidos. Portanto, a cumplicidade e a participação em crimes são consideradas altamente importantes. Hoje, muitas sociedades aprovaram punições por cumplicidade e certas leis foram criadas para lutar contra isso. Um estudo comparativo de cumplicidade pode afetar a prevenção de desafios relacionados. Assim, o presente estudo tratará da investigação da cumplicidade por meio de um método analítico-descritivo por meio da comparação entre o direito penal na Turquia e o direito de punições islâmicas no Irã. Os resultados mostraram que no antigo direito penal do Irã, a punição por cumplicidade em crimes puníveis foi identificada vagamente, mas a nova lei de punição islâmica identificou certas punições por cumplicidade na parte 'd' do artigo 127. De acordo com esta lei penal, a punição por cumplicidade seria um ou dois níveis inferior à punição para cometê-la. Na lei de punição islâmica, há alguns tipos de crimes mencionados como: cumplicidade, ameaça, provocação, direção, construção ou fornecimento de ferramentas para cometer o crime e.... Esses conceitos também podem ser vistos no direito penal da Turquia. Para aprovar a cumplicidade, deve haver simultaneidade entre as ações do assistente e da pessoa que a cumpre e o assistente deve ter a mesma intenção que a pessoa que solicita o crime. Portanto, a cumplicidade tem três características principais: material, espiritual e legal, e isso é exatamente o mesmo no sistema legal da Turquia. A lei criminal islâmica aprovada em 2013 aceitou o conceito da teoria da culpabilidade relativa em relação à cumplicidade. A teoria da culpabilidade absoluta é conhecida como a mesma lei no artigo 38 (1) da lei criminal na Turquia.

Palavras-chave: Cumplicidade. Parceiro do crime. Direito Penal Turco. Direito Penal Islâmico. Teoria da Culpabilidade

1 INTRODUCTION

1.1 THE CONCEPT OF ABETTING

It is not always a man who commits a crime alone and sometimes the occurrence of a crime is out of control of a person and others may share the incidence. In other words, aside from the crime partner, there may be others who have helped the criminal to commit a certain crime. These people have not committed the crime and are not included in administration of the crime to call them crime partners. These people are called those who have been abetting (SANEE, 1992, p. 374).

On the whole, abetting refers to the one who enforces others to commit the crime without direct inclusion in the administrative operations of a crime through provoking or giving money or deception. Also it refers to the knowledge and information about the tool to commit the crime and to supply it for the major committer or to propose it to the major criminal to commit a crime. In fact, a partner is someone who does not have any culpability action denial role, but he/she has prepared the condition to realize the action through the major criminal and paves the way for the consultant or the crime committed to carry out the activity.

2 ABETTING IN ISLAMIC CRIMINAL LAW IN IRAN

In Islamic criminal law, abetting is not defined in a crime commitment, but abetting has been known to be recognized through some methods. Islamic criminal law approved in year 2013 has dealt with abetting in third part of chapter three of Islamic criminal law.

The following persons are called the ones who have committed abetting:

- a) Anyone who solicits, threats, gives money or solicits others to commit the crime or causes the occurrence of the crime through a deceit or a conspiracy.
- b) Anyone who makes the tools to commit a crime or supplies it or proposes the crime commitment method to a criminal.
- c) Anyone who fosters the occurrence of a crime.

Note- to realize abetting, the severity of the intention and the precedence or the time concurrence between the behavior of the partner and the one who commits the crime is the preliminary stake.

If the major crime committer commits a crime more severe than the one intended by someone who commits abetting, he/she will be sentenced with a milder punishment regarding abetting. Considering criminal law, abetting is noticed due to two dimensions; one is the extensive and the other intensive concepts. Abetting, if regarded as an intensive concept, refers to any partnership or assistance in committing the crime and it doesn't matter what role or position does anyone have in committing the crime or to what extent there was a responsibility for each of them. If anyone helps or assists in committing the crime, he/she has committed abetting and is considered as the partner or participant in the crime. The participation or lack of it in doing the crime materially is not important and the presence or lack of presence in the scene to commit the crime is not considered to be important (SHAMBIATY, 1993, p. 119).

Based on the viewpoint posed above, abetting is known as a type of cooperation and partnership with other criminals to commit the crime without considering that such cooperation or partnerships may be caused without prior decisions or exchange of money. Also in any case, each of the participants will be followed or judged regarding the criminal responsibility amount resulted from his/her criminal activity. For example, when a battery is committed in a group, each of the participants is responsible for the crime he/she has committed (GOLDOZIAN, 1997, p. 133-134).

Therefore, there is not any certain definition for different types of cooperation to call some as partnership and others as abetting. In this case, the merely cooperation has been done in crime commitment and there has not been any abetting or cooperation. The secondary concept

and viewpoint regarding abetting in a crime commitment encompasses the intensive concept through which abetting is a certain type of cooperation in committing a crime and it occurs through some conditions as: cooperation in committing a crime, lack of presence in material operation, and doing some limited and unique activities mentioned in criminal law as: fostering, supplying the tools, provoking, paying money, threat (MORADI, 1994, p. 119).

The central bureau of justice in Iran has defined abetting in an order issued by branch 2 numbered 317/10/28-2618 to some extent, and of course it is not a comprehensive and concise one, as follows:

The abetting party refers to those individuals who have not committed the criminal activity or who have not started it. Therefore, if some individuals make a deal to commit a crime and do it personally or start it as the major committer, they are the major criminal and not the abetting party. This definition has some problems regarding the newly approved laws. Some problems with it are: lack of notice to the time of abetting, and the psychological element of abetting are missing. Additionally, the term ‘the major activity’ is not conceptual and we can observe several definitions regarding abetting if we review and study law books, some of which are mentioned below:

Abetting refers to the agreement between two or more persons to commit one of punishable crimes within the framework of some limited and clearly stated cases in criminal law which pave the grounds to commit the crime indirectly (VALIDI, 2003, p. 338).

Abetting has been defined by the book entitled “Altashri-ol-jenae-e-al-eslami (Islamic criminal law description)” as follows:

A person who makes an agreement with another one to commit a punishable crime or solicits him/her or helps the activity done is committing abetting. Therefore, abetting requires doing the crime. The abetting party has intended to make an agreement or to solicit or help to do the crime (OUDEH, 1988, p. 365-366).

Anyway, the definitions presented above have dealt with introducing abetting to some extent, but they have not been able to pose a concise definition. The definition below is not an exception either, but we have tried to use different definition posed by the scholars in law to propose a more complete and more concise definition of the term:

The abetting committer is the one who has not done anything in the sheer criminal activity and has not done any certain physical criminal activity, but has had common agreement

with the major criminal to do it before or concurrently at the time it has been done in one of the forms mentioned in the criminal law as: provoking, encouraging, supplying the tools, giving money, ... to assist the major committer.

3 THE DISTINCTION BETWEEN ABETTING AND COOPERATION

Crime commitment through doing the material operation of a crime and the completion of it by the committer or the person doing it alone and directly is called cooperation in crime. For example, if a person presses the throat of another person and murders him/her or someone steals the property of another person he has committed the crime.

Also, if the crime committer does the crime using tools such as a gun, belt weapons, sticks or other tools, they are not considered as mediations and the person committing the crime is a criminal. Also the cooperator refers to the independent doer of the crime such as stealing and he/she can be traced and punished (KHOMEINI, 2001, p. 688).

But the abetting party refers to the one who has intended to commit a crime without directly inclusion and interference in doing the administrative part of a crime. He/she helps and assists a person or some persons through different methods to commit a certain crime. In other words, abetting party refers to the one who does not interfere in material operation of a certain crime directly, but helps or assists the doer of the crime to commit certain criminal activities through supplying or fostering the activity. For example, a person knowing the criminal intention of another person steals him/her at night intentionally and waits inside an automobile to let the burglar to transmit the stolen property into the automobile and then carries the property with the vehicle to another location. In this way, abetting in a crime refers to a condition through which the committer supplies the tools, solicits or encourages others without personally involvement in the material operation of the crime and does other activities clearly stated in the legal system to help the criminal to commit a certain crime. According to Islamic criminal law, the punishments for abetting party is lighter than the major criminal and crime partners. Based on part 'd' of article 127 of the criminal law approved in 2013, the punishment for abetting is one or two levels milder than the punishment for the major criminal.

4 ABETTING (MAJOR SPIRITUAL CRIME PARTNER)

Abetting refers to thinking of committing a crime through another person. Abetting occurs when the doer has not thought of committing the crime at all. The encouragement of someone who has thought of committing a crime is known as assistance and not abetting (YURTCAN, 2015, p. 346).

According to article 38 of criminal law in Turkey, abetting refers to solicit someone to do an activity which is a crime and has not been intended by the person. If doing the activity has been intended by the person, provoking him/her to commit the crime is not known as abetting. Those who are not qualified as sane persons and are solicited to commit a crime are not known as abetting party by the legal system in Turkey.

The text in article 38 criminal law in Turkey is as follows:

- (1) A person soliciting another person to commit offense is punished according to the degree of crime committed.
- (2) In case of solicitation to commit offense by using the power originating from lineage (antecedent/descendent) relation, the punishment of the soliciting person is increased from one-third to one half. The lineage relation is not sought for increase of punishment pursuant to the provisions of this subsection in case of solicitation of minors to commit offense.
- (3) Where the soliciting person is not known, the offender who plays role in identification of the soliciting person, or other accomplice is sentenced to imprisonment from twenty years to twenty-five years instead of heavy life imprisonment and to imprisonment from fifteen years to twenty years the offense requires life imprisonment. In other cases, one-third of the punishment can be abated.

The responsibility of the soliciting person is limited to the current constraints solicited. For example, if a person solicits his children to hit a person but the children go and kill that person, the solicitor is only responsible for the hurts in the person's body. On the contrary, if a crime is less than the limit of a solicitor crime; for example, in the example mentioned above, the children may only scorn the person instead of hitting him, in this case, the solicitor will be punished the same as the crime and it means that the solicitor will be punished for scorning the person (YURTCAN, 2015, p. 342).

In criminal law, article 1, the activity known as a crime will be considered as a joint culpability if there exist more than one crime partners.

Basically, crime partnership does not mean only presence in crime scene. An activity directed from distance such as using wireless instrument to commit a crime is known as partnership in a crime (OZGENC, 2017, p. 479).

There is no need to be present in an incident location for individuals sharing the crime commitment and they are known as common criminals. Lack of presence in an incident location and cooperation from a long distance which has had an important share regarding the administration of the crime should also accompany the doing of the crime. Being far from the crime scene and communication with the criminal through mass media such as wireless networks or telephone and cooperation or ordering while the crime is being done are known as joint crimes. Considering the viewpoints and regarding the current regulations, ‘common decision among all criminals to commit a crime’ and ‘having domination over crime commitment in a cooperative style’ are required conditions (ILHAN, 2018, p. 394).

In joint culpability, each of the members is known as a criminal along with committing the crime in a cooperative style, and to create joint domination in doing a criminal action. We should notice the roles while a crime is done or the importance of the role of each criminal in recognizing joint domination or lack of joint domination of the crime partners in doing the criminal action. If the crime partners complete the action of anyone else while the criminal action is being done, we should also talk about joint culpability. Regarding what was pointed out, each joint criminal with the related effects and criminal action being carried out is known as a member of the criminal action. A crime that can be carried out by a person but it is done jointly is known as a crime partnership. In the system the person who is a crime partner should be considered as a person with a share in the crime not only for the partnership but also the share he/she has had in doing the criminal action and the importance of the share. To consider each of the criminals as a guilty person, the action done by the person should be identified according to the law and the cooperation amount in committing the crime should be determined based on the legal system and the predetermined punishments should be identified accordingly (ILHAN, 2018, p. 394).

If the life sentence is issued, within the range of 15 to 20 years’ imprisonment, the abetting party will be given a sentence for imprisonment of 10 to 15 years. If not so, there would be half of this penalty. Of course, in this case the verdict issued would be at most up to 8 years.

In the following cases, the abetting party will be responsible:

Encouraging to commit the crime or reinforcement in decision to commit the crime or promise to help the criminal after doing the criminal action.

According to article 40 of the criminal law we would have:

- (1) If an act is executed intentionally and contrary to the laws, then this is considered as participation in commission of offense. Each person participating in commission of an offense is punished according to his involvement in the offense, irrespective of the personal reasons avoiding the punishment of the other.
- (2) In particular offenses the person possessing the characteristics of a perpetrator is defined as offender. The others who participate in commission of offense are kept responsible from commission of offense as soliciting or supporting parties.
- (3) In order to keep a person responsible from participation in commission of an offense, at least there must be an attempt to commit offense.

A person who participates in crime commitment in a way that he/she does not have any share in doing a criminal action is known as a partner and partner in law is divided into two types of encouragement and help. Therefore, if commission of an offense has not done any activity defined in the law as a crime, he/she would be responsible due to 'relationship law' (the person would be punished based on relationship with crime rule).

5 HELPING THE CRIME OCCURRENCE (MINOR COMMISSION OF AN OFFENSE)

Article 39 of criminal law in Turkey has represented a certain definition of the helper in a crime occurrence.

Article 39 of criminal law in Turkey is as follows:

- (1) A person encouraging another person to commit offense is sentenced to life imprisonment from fifteen years to twenty years if subject to heavy life imprisonment; and from ten years to fifteen years imprisonment if the offense requires life imprisonment.
- 2) A person is kept responsible under the following conditions from commission of offense as the party encouraging the offender;
 - a) To solicit a person for commission of an offense or to support his decision to commit offense or to guarantee help after commission of offense.

- b) To give idea about how the offense shall be committed or to supply the necessary tools to be used during commission of offense.
- c) To render support before and during the commission of offense in order to simplify the intended act.

Thus, according to article 39, the helper to occur a crime is someone who has been involved in the crime and is known as the assistant to the crime and abetting party. Helping the crime occurrence is divided into three parts by the legislator.

Based on article 39 in criminal law in Turkey, helping the crime without participation in the original crime and the cause of an activity to carry out the criminal activity. Here, the domination over the activity being carried out refers to facilitating the crime. The action by the helper is not the same as the crime done by the major criminal and the supporter, supplier, and facilitator are placed in second level.

According to part 2 of article 39 in criminal law in Turkey, the helper is divided into two parts of material and spiritual helps.

1- Variety in helping the crime regarding material aspect

- (a) Supplying crime tools
- (b) Material help before or while the crime is being committed is known as fostering the crime being carried out.

2- Spiritual helps

- (a) Encouraging to commit the crime: it refers to encouraging someone to commit a crime which he/she has been doubting about.
- (b) Soliciting to commit the crime: reinforcement of the crime being carried out meaning that we encourage someone to commit a crime which he/she has not had decided about it absolutely.
- (c) Promise to help someone after a crime is committed: promising someone to help him/her after the crime is committed is known as commission in an offense.
- (d) Direction about how to commit a crime: it includes presenting the information and experiences to the criminal or sharing the planning and the ways to commit the crime. It also involves helping to foster crime commitment in any way before the crime is committed or while it is being committed.

6 CONCLUSION

New Islamic criminal law in Iran, articles 126 and 127 and articles 36 to 41 in criminal law in Turkey have dealt with abetting. According to these articles, abetting party is someone who solicits, threats, gives money, or provokes someone to commit a crime or causes the crime through plots or deceit or misuse of the power. Also it refers to someone to who makes or supplies crime commitment tools or gives them to the criminal and finally, it refers to someone who fosters the crime occurrence. Of course, to realize abetting it is necessary to have intention unity and time precedence or concurrence between the behavior of the abetting party and the criminal. If the major criminal commits a more severe crime than it was intended by the abetting party, this person will be sentenced with milder punishments due to assistance in the crime.

According to Islamic criminal law in Iran, the punishments for abetting party relate to crimes whose legal punishments are capital punishment or lifetime imprisonment, level two and level three imprisonment. In stealing and intentional body part cutting, the imprisonment of level 5 and level 6 and in crimes whose legal punishments are whipping, 31 to 74 hits of level 5 would be the punishment. Also in crimes done through abetting, the punishment will be one to two levels lower than the crime carried out by the original criminal. According to the criminal law in Iran, whenever doing a culpability behavior is affected by personal characteristics such as young age or insanity where the crime isn't traceable or it is stopped due to any reason, abetting party doesn't have any acceptable excuse to be traced and punished.

Article 126 of the new law ended the questions about this fact and ambiguity that in criminal law in Iran there has always been mismatch between the viewpoints of the lawyers and law administrators regarding that if the commissioner of an offense does anything other than what agreed with the criminal, does the crime committed involve the abetting party or not and rejected the theory of abetting party being excused of the crimes such as giving guns to robbers to steal or to murder someone and approved that: "if the major doer of a crime commits a crime more severe than the one intended by the abetting party, the abetting party will be sentenced with a milder punishment due to the crime carried out".

The law approved in 1991 regarding abetting has many ambiguities. Articles 126 and 127 in the new law has dealt with this issue with more transparency.

On the other hand, article 126 considers abetting encompassing all intentional crimes and also with a clear declaration, article 726 of Islamic criminal law along with article 727 of the new law, unlike the previous law in all crimes (regarding the elimination of the halting agent) have

identified the limits and retribution of the soul and retribution of the body parts and even the ambiguous cases such as: beheading, life imprisonment, property confiscation, lifetime isolation, and abetting punishments based on levels of the punishments mentioned in article 19 and specifically with a one to two levels of milder punishments compared to the commissioner and regarding this, the ambiguities due to the dominant law have been put to an end.

Of course, still there are ambiguities regarding the punishments regarding religious orders when the religion has identified some other punishments for abetting (such as the one who avoids offense or the one who observes it); therefore, it would be better for the legislator to refer to the religion and investigate about the religious punishments for abetting personally and to mention it in the related article and to avoid the reference of judges to the religion themselves to prevent future differences in the decisions. Of course, it is not problematic to refer the punishments of the abetting party to the law whether in the form of prediction of punishments of abetting in certain crimes or in the form of prediction of abetting as an independent crime and a certain order should be issued due to the identification of legal punishments. By applying the punishments for the start of crimes in articles 122 to 124 in new law, the ambiguities in punishments for abetting in start of crimes have been alleviated.

Like Islamic criminal law in Iran, the criminal law in Turkey does not consider abetting as an independent crime and the criminal characteristic of the commissioner depends on the culpability description of the major action. The absolute culpability theory accords with article 38 (1) in criminal law in Turkey.

According to criminal law in Turkey, if someone helps another before doing the material action by the major criminal, or during the material action being carried out, or after that, he/she would be punished even if the material action is not being carried out considering the law due to the action of the abetting party. Practically, the one who has helped in the realization of a crime is known as a crime partner. The one who is abetting to commit the crime does not have any control over the action being carried out by the doer of the major crime. If such a control and domination exists between the abetting party and the committed action, the culpability title will be enforced on the joint doer or the abetting party will be changed. According to part 2 of article 39 in criminal law in Turkey, the punishment for abetting is divided into two types of material abetting and spiritual abetting. According to the same part of article 39, the material abetting could be realized in two forms. One form is that the abetting party supplies the required and



utilized tools in committing a crime. The other form refers to the fact that the abetting party fosters the realization of a crime before its administration or during the commitment of the crime.

Also this article introduces the spiritual abetting in crime commitment in the form of encouraging a person to commit a crime, reinforcing the thought of committing the crime by the major criminal, promising to help the crime committer after the realization of the crime and showing the crime commitment to the major criminal. If the punishment for the crime a person participated in it through abetting is life imprisonment, it would become 15 to 20 years of imprisonment. Also, if the punishment for the crime is life imprisonment, it would be 10 to 15 years for the abetter. In other cases, the share would be $\frac{1}{2}$ of the punishment of the major criminal. In this case, the punishment of the abetting party would not be more than 8 years. (according to part 1 of article 39 in criminal law in Turkey). Of course, in some cases the punishments for the abetting party has not been identified specifically. For example, in organized crimes or in supplying weapons for organized crimes (the cases in articles 314 and 315 of criminal law in Turkey).

If someone does not have any idea or thought or intention to commit a certain crime and another person solicits him/her to commit the crime, it is considered as soliciting to commit the crime and the person is called crime partner. If someone has had the thought to commit a crime, and another one solicits him/her to commit the crime, it would be entitled as a spiritual abetting mentioned in part 2 of article 39 and not as the solicitor of the crime commitment. The solicitor would be responsible merely for the crime he/she has intended. According to part 1 of article 38 in criminal law in Turkey, the solicitor to commit a crime will be sentenced for the crime commitment. Also in criminal law in Turkey, it would not be enough to leave the commitment of a crime by the abetting party to show resignation of participation in the crime; moreover, it would be necessary to stop the cause relation too. If the actions of an abetting party that resigns the crime commitment voluntarily, he/she would affect the crime and such a voluntary resignation would be meaningless.

A glance at the articles in Islamic criminal law in Iran and the criminal law in Turkey represents lack of enough notice of the legislator in devising the related articles related to these discussions. Regarding the test feature of the overall parts mentioned, it is hoped to reform and revise them again by the authors.

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