

FROM CRIME TO LIABILITY: A STUDY OF THE DIFFERENT ROLES IN THE COMMISSION OF OFFENSES UNDER THE AFGHAN PENAL CODE

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Abstract. *In the Afghan criminal justice system, criminal liability is determined in a simple and direct manner only when all elements of the offense are committed by a single individual. However, when multiple persons are involved in the commission of an offense, identifying the type and degree of liability for each requires precise legal analysis. The central question of this research is: How has the Afghan legislator classified and defined the different forms of participation in an offense within the Penal Code? Proceeding from the assumption that the legislator distinguishes in the Penal Code between principal offenders, co-perpetrators, accomplices, and other subsidiary forms of participation, this study examines the relevant legal provisions and seeks to clarify the scope of criminal liability for each party involved. The main objective of the research is to provide a clear understanding of the jurisprudential and legal concepts of direct commission, co-participation, and complicity in crime. The research method is descriptive-analytical, and the data has been gathered from library sources, particularly the Afghan Penal Code and scholarly opinions. The findings demonstrate that the Afghan Penal Code, in Articles 57, 58, 59, 70, and 71, explicitly addresses various forms of participation in crime and assigns appropriate criminal liability to each. This legal differentiation plays a significant role in achieving criminal justice.*

Keywords: *principal offender, co-offender, accomplice, direct commission, participation in crime, complicity, conspiracy to commit crime.*

Introduction

One of the fundamental and significant issues within the scope of Afghan criminal law is the examination of various forms of individuals' involvement in the commission of crimes. The importance of this subject arises from the fact that the system of criminal liability is not solely based on the fulfillment of the material and mental elements of the offense by a single person; rather, in many cases, the commission of a criminal act results from the participation or intervention of several persons with different roles and degrees of involvement. Therefore, the legislator is obliged, in order to ensure criminal justice and to determine fair and proportionate liability corresponding to each individual's role, to carefully define and distinguish the different forms of participation in crime. In this regard, the Afghan Penal Code recognizes the concepts of direct commission, participation (co-perpetration), and complicity as the primary forms of involvement in crime and explains them in several provisions, including Articles 57, 58, 59, 70, and 71.

Nevertheless, an accurate and distinguishable analysis of these forms of involvement cannot be achieved solely through reliance on the legal element; it also requires the examination of three other fundamental elements, namely the material element, the mental element, and the causal link. While the legal element provides the general framework and definition of the offense, it alone cannot adequately address the complexities of individual conduct and motives

within the criminal process when determining criminal liability (Ardebili, 2014). For a precise evaluation of each person's role in the occurrence of a crime, it must first be established that a tangible, objective, and attributable act was committed by him; second, that the act was accompanied by criminal intent or *mens rea* (general or specific); and third, that a direct causal relationship exists between this conduct and the harmful result.

In addition, the role of knowledge and intent in establishing criminal liability and distinguishing different forms of participation in crime is of particular importance; for without establishing conscious intent and will, criminal liability cannot be properly recognized or allocated (Asia Foundation, 2001). From a legal perspective, the determination of the exact boundary between co-perpetration and complicity also depends on an analysis of the mental element of the crime, since the distinction between these two institutions is primarily based on differences in intent, motive, and the degree of psychological influence exerted by the individual in the commission of the offense (Danesh, 2019). Moreover, a clear and comprehensive definition of criminal behaviors plays a key role in understanding the forms of involvement, for without precise identification of the manifestations of criminal conduct, a correct analysis of the type and degree of individuals' involvement would not be possible (Rezaei, 2018).

This research, which adopts a descriptive-analytical method and relies on library sources, seeks to answer the essential question of what forms of involvement in crime exist in Afghanistan's criminal system and on what basis criminal liability is distinguished among them.

The research hypothesis is based on the assumption that the Afghan legislator, by drawing a clear distinction between principals, co-offenders, and accomplices, has sought to determine the criminal liability of each in proportion to their actual role and contribution in the commission of the crime.

The main purpose of the study is to precisely elaborate the concepts of involvement in crime and to provide a coherent and practical interpretation of the relevant legal provisions in the Afghan Penal Code. The findings indicate that the legislator, with a realistic approach and under the influence of advanced legal systems, has designed a systematic structure for differentiating criminal roles—a structure that can, in practice, significantly contribute to transparency in the criminal proceedings and the realization of criminal justice.

Ultimately, this research, by making use of authoritative theoretical sources and focusing on the Afghan Penal Code—particularly Articles 50, 58, and 70—seeks to move beyond mere description and provide a structural and comparative analysis of the forms of involvement in crime. In this respect, subtle distinctions between principals, co-offenders, accomplices, and even indirect perpetrators are examined, and efforts are made to precisely determine the legal position and criminal liability of each role. This analytical approach, which has received little attention in the legal literature, lends the present study a novel and distinctive perspective.

1- The Concept of Crime

The term *crime* is of Arabic origin and, in its literal sense, means sin, error, acquisition, and the commission of reprehensible and undesirable acts. In other words, crime in linguistic usage denotes sin, fault, disobedience, reprehensible conduct, and insubordination (Moein, 2005: 28). The word *jurm* is a noun, with its plural form being *jaraem*. In Persian, it refers to sin and delinquency (Amid, 2000: 46). In *Dehkhoda's Dictionary*, crime is defined as sin, fault, guilt, transgression, disobedience, and similar terms (Dehkhoda, 1993: under the entry *jurm*).

1-1- The Concept of Crime from a Jurisprudential Perspective

Crime is a social phenomenon that has existed since the time of Abel and Cain and has continuously accompanied human societies. Even during the era of the Prophet of Islam, this phenomenon was not entirely eliminated, as Islamic texts contain multiple reports of criminal occurrences. Thus, crime is an undesirable yet inevitable reality, and governments bear two essential responsibilities: preventing the commission of crimes and prescribing appropriate punishments for offenders. The more effective a criminal justice system is in these two areas, the more it guarantees justice, security, and the dignity of citizens (Asia Foundation, 2019: 121).

From the standpoint of Islamic Sharia, the purpose of criminalization and punishment is to preserve five fundamental interests: religion, life, intellect, lineage, and property. Accordingly, acts such as blasphemy, murder and assault, consumption of intoxicants, adultery, and theft are considered crimes and subject to punishment (Zuhayli, 1989: 114–115).

Jurists are not unanimous in defining crime and hold different views. Some define it as the commission of a prohibited act or the omission of an obligatory act, while others extend it to any act forbidden by Sharia or the command of the Islamic ruler. This divergence stems from different jurisprudential foundations and perspectives regarding the scope of Sharia and the authority of the ruler (Zuhayli, 1989: 115).

1-2-The Concept of Crime from a Criminological Perspective

From the perspective of criminology, not only acts or omissions for which punishment is prescribed by law are considered crimes, but also any conduct harmful to society, even if no punishment is formally provided for it in criminal law, remains a matter of criminological inquiry. Thus, the scope of criminology is far broader than that of criminal law, as criminology attaches great importance to dangerous or antisocial states of the individual, irrespective of the legality of the act (Nourbaha, 1998: 59).

1-3-The Concept of Crime from the Perspective of Jurists

In legal science, various definitions of crime have been provided, often grounded in criminal laws or legislative definitions in different jurisdictions. Some jurists maintain that the violation of a law by an external act, unless justified by a duty or right, constitutes a crime if punishable (Deh Abadi, 2009: 48). Others define crime as any act or omission that disrupts social order, peace, and tranquility, for which the law prescribes punishment (Danesh, 1995: 44).

1-4-The Concept of Crime under Afghan Criminal Law

Criminalization, in essence, entails imposing restrictions on individuals' ordinary conduct for the protection of individual and social interests, such that only behaviors threatening order, security, or the five fundamental interests (religion, life, intellect, lineage, and property) are criminalized, and punishment is imposed upon the offender. This demonstrates that the primary purpose of Sharia and law in criminalization is safeguarding public interests. The distinction between crime and sin is that sin predominantly carries moral and otherworldly dimensions, whereas crime refers exclusively to conduct recognized by the legislator as punishable.

Accordingly, the Afghan Penal Code defines crime as: *"The commission of an act or omission of an act which, under the provisions of this law, is recognized as a crime, its elements are specified, and for which punishment or security measures are prescribed"* (Afghan Penal Code, 2017, Article 27).

Article 27 of the Afghan Penal Code provides a precise and comprehensive definition of crime by outlining four essential elements. First, crime may arise either from the "commission of an act" or from the "omission of an act" mandated by law, demonstrating that both positive acts and omissions that violate a legal duty can constitute crimes.

Second, such conduct must be explicitly “recognized as a crime under this law,” thereby upholding the principle of legality, ensuring that no conduct is punishable without statutory prescription. Third, the elements of the act or omission must be specifically and clearly defined to eliminate ambiguity for law enforcers and society. Fourth, the article underscores the necessity of prescribing punishment or security measures for the crime so that the offender is subjected to legal consequences. Accordingly, this definition provides a precise and coherent framework, preventing arbitrary or unlawful criminalization, while simultaneously safeguarding individual rights and freedoms under the principle of legality in crimes and punishments.

-2Direct Commission of the Crime

According to Article 57 of the Afghan Penal Code, the perpetrator or direct agent of the crime is defined as: “The perpetrator is a person who commits the material act of the crime either alone or jointly with others.” This definition indicates that the perpetrator is the individual who performs the most criminal element of the offense and directly enters the domain of criminal conduct. The said article expressly stipulates that the perpetrator shall be sentenced to the specified punishment of the committed crime, and this rule constitutes the basis for the direct responsibility of the perpetrator. Such liability arises from the performance of the material act of the crime either by the person himself or in collaboration with others, in such a way that without his act or omission, the criminal result would not have occurred.

However, the distinction between the perpetrator and the accomplice or the accessory, under Articles 58 and 59 of the Penal Code, lies in the type and degree of involvement. The accomplice is a person who directly and knowingly, along with the principal perpetrator, carries out part of the material act of the crime (Article 58). In other words, the accomplice shares materially and tangibly in the commission of the crime without independently completing all the material elements of the offense. On the other hand, the accessory, according to Article 59, is one who, without direct involvement in the material act of the crime, assists the perpetrator by means of inducement, threat, bribery, deception, facilitation, or material and moral support to enable the crime. The result of this distinction is that the liability of the accessory is lighter than that of the perpetrator and the accomplice, and he shall be sentenced to one degree lower punishment, unless otherwise provided by law.

2-1 -Definition and Types of the Perpetrator of the Crime

Article 57 of the Penal Code defines the scope of the perpetrator broadly. Sometimes, the perpetrator commits the crime alone, which is the clearest example of single perpetration, such as when a person steals property by himself or kills another person. Such a person, by virtue of carrying out the material act of the crime directly, is called the direct agent. Sometimes, the commission of the crime results from the joint participation of two or more persons who all perform the material elements of the crime, for example, two persons simultaneously throwing the victim from a height, causing his death. This constitutes collective perpetration. In addition to direct commission, perpetration of crime can also occur through causation (tasbib), meaning a person, without direct physical involvement, brings about the criminal result by means of certain tools. For example, one who trains a bird to steal jewels or compels an insane or mentally incompetent person to commit the crime is considered the material perpetrator due to his intellectual dominance over a non-labile direct agent. Such indirect forms of perpetration are classified into three categories: sensory causation, legal or Shari’a-based causation, and customary causation. In sensory causation, the causal link is tangible, such as digging a pit in someone’s path.

Legal or Shari'a-based causation includes acts such as giving false testimony before a judge, leading to wrongful conviction. Customary causation refers to acts that society deems to be the cause of a criminal result, such as feeding poisoned food to another person (Asia Foundation, 2019: 195–197).

2-2 -Criminal Liability of the Perpetrator

According to Paragraph 2 of Article 57, the perpetrator shall be punished with the same penalty prescribed for the offense. This general rule may, under special circumstances, be subject to mitigation or aggravation. For instance, Article 60 of the Penal Code stipulates that the person who organizes a criminal group shall be sentenced to one and a half times the maximum punishment of the same crime, since his role goes beyond simple perpetration and extends to directing and coordinating the group. Likewise, Article 549 of the Penal Code states that one coerced into participating in a killing still bears criminal liability, and such liability does not preclude the liability of the intellectual perpetrator. Therefore, the responsibility of the perpetrator is direct and complete, and no distinction exists between the material perpetrator and the intellectual perpetrator concerning the principle of conviction, unless the law expressly provides otherwise (Asia Foundation, 2019: 197).

On the basis of Article 57 of the Penal Code, the perpetrator of the crime is the person who, either alone or with others, performs the material element of the offense and shall be punished with the prescribed penalty. This distinguishes him from the accomplice, who only performs part of the material act, and the accessory, who without material involvement, facilitates or incites the commission of the crime. The major difference among these three categories lies in the type and extent of their direct involvement in the criminal act, such that the liability of the perpetrator is full and direct, the liability of the accomplice is proportional to his participation, and the liability of the accessory is lighter. This precise categorization assists the justice system in assigning punishment in proportion to each individual's role and share in the realization of the criminal result.

Since offenders often resort to cooperation and collusion with others to ensure the success of committing a crime, legislators have always established special provisions for participation in crime within their penal laws so that each person is held accountable and punished according to his role and contribution in the commission of the offense. In Afghan criminal law, this matter has also been carefully considered, and various articles of the Penal Code have elaborated its dimensions. Participation in crime is realized when two or more persons, with prior intent and will, directly and actively engage in the commission of a criminal act, such that each one performs a part of the executive operations of the crime (Danesh, 2016: 116–123).

According to Article 70 of the Afghan Penal Code, the accomplice in crime is one who “deliberately and with prior intent, participates in the commission of the crime with another person or persons.” (Afghan Penal Code, 2017: Article 70). For a better understanding, consider the following example: several individuals decide to burglarize a house; one of them breaks the wall, the second enters the room and collects valuables, the third opens the door, and the fourth loads the goods into a vehicle. In this scenario, although none of them individually completes all the acts constituting the crime, since the executive operations of the offense are collectively and coherently carried out, they are all considered accomplices and bear similar criminal liability (Rezayi, 2018: 170–172).

It is important to note that the accomplice has direct involvement in the material operations of the crime, and his conduct constitutes part of the complete cause of the offense.

This distinguishes him from the accessory, whose role is indirect and limited to preparing the groundwork or facilitating the offense. The Afghan legislator, by establishing this distinction, seeks to maintain a balance between justice and criminal liability so that each individual is judged and punished according to his degree of participation and criminal intent. Moreover, the Penal Code explicitly states that the existence of prior intent and implicit agreement among accomplices is a fundamental condition for the realization of participation in crime. In the absence of common intent, cooperation between two or more persons does not necessarily constitute criminal participation. Therefore, judicial and prosecutorial authorities are obligated to carefully assess the circumstances of each case to determine whether the cooperation constitutes participation in crime, falls within the scope of accessory liability, or even results in acquittal.

Such careful differentiation of liabilities ensures fairness in punishments and the proper administration of criminal justice in the country (Asia Foundation, 2019: 195–197).

3- Participation in Crime

In criminal law, the cooperation and involvement of individuals in the commission of a single act gives rise to the concept of participation in crime. Based on established principles of criminal law, mere cooperation or presence at the scene of a crime does not by itself result in criminal liability, unless such cooperation is considered by the legislator as part of the *actus reus* (material element) of the crime and a penalty has been prescribed for it. In other words, participation in crime is realized only when individuals, with awareness and common intent, directly interfere in the executive operations of the crime.

The distinction between an accomplice (*sharik*) and an accessory (*mo'aven*) lies in the manner of their involvement. According to Article 58 of the Afghan Penal Code, an accomplice is a person who, together with the principal perpetrator(s), knowingly and directly performs part of the material acts of the crime, and is punished with the same penalty as the main perpetrator.

In contrast, an accessory, under Article 59 of the Penal Code, without direct involvement in the material element of the crime, merely induces, threatens, bribes, guides, or provides the means and facilities for the commission of the crime. Thus, complicity (accomplice liability) is considered direct participation in the crime, while assistance (accessory liability) is considered indirect support. This distinction reflects the different degrees of liability and roles in the realization of the offense: the accomplice is regarded as part of the direct commission, while the accessory is recognized only as a facilitator. Consequently, the severity of punishment and the extent of liability differ between them.

Article 58 of the Afghan Penal Code stipulates: “An accomplice is a person who, in the commission of one or more material acts of a crime, knowingly and directly participates with the perpetrator or perpetrators.” (Afghan Penal Code, 2017, Article 58).

This provision clearly demonstrates that for participation in crime to be established, three essential conditions must exist: (1) the commission of one of the material acts of the crime, (2) knowledge of the criminal nature of the act, and (3) direct and effective participation in that act.

3-1- Different Forms of Participation in Crime

In analyzing participation in crime, two major scenarios may be distinguished:

First Scenario: Multiple perpetrators with independent liability

In this case, each participant independently commits an act that contributes to the criminal result. For example, three individuals attack a person using different tools: one strikes with fists, another with a stick, and the third with a knife. If forensic reports confirm that each individual blow could have independently caused the death, then all three are recognized as

independent perpetrators of the crime of murder and sentenced accordingly. This scenario represents the case of unity of act with multiplicity of perpetrators, where, despite temporal and spatial unity, each person's liability is assessed independently (Allama, 2014: 220–230).

Second Scenario: Joint contribution to elements of the crime

Here, each accomplice performs only part of the criminal operations, and the crime is realized solely through the combination of their acts. A classic example is the forgery of an identification card: one person alters the printed form of the document, while another enters falsified personal information. Neither alone completes the *actus reus*, but their combined conduct results in a forged document. Accordingly, both are considered accomplices in the crime of forgery and punished with the prescribed penalty (Allama, 2014: 220–230). Paragraph 2 of Article 58 of the Penal Code affirms: "The accomplice shall be sentenced to the penalty of the crime in which he participated." (Afghan Penal Code, 2017, Article 58, para. 2).

This means that participation in the commission of part of a crime entails liability for the entire crime, provided that the result is causally linked to the direct cooperation of the accomplice.

3-2- The Material Element of Participation in Crime

The material element of participation in crime consists of the performance of at least one of the executive acts of the crime by the accomplice, in such a way that it contributes to the criminal result. Thus, mere encouragement, instigation, or planning without direct entry into the execution phase falls under accessory liability, not participation. Participation exists only when the accomplice himself enters the scene and directly takes part in the criminal conduct. For instance, if two individuals simultaneously enter a house, one breaking the window while the other collects valuables, both are accomplices in theft, since they each directly participated in the *actus reus* (breaking and taking) of the crime (Ardebili, 2014: 63). As also stated in Article 58, the essential condition is conscious and direct involvement in the material acts of the crime.

3-3- The Mental Element of Participation in Crime

Just as the commission of any crime requires a mental element, participation in crime likewise necessitates the existence of criminal intent, awareness of the criminal nature of the act, and free will in its performance. The absence of any of these elements prevents the attribution of criminal liability to a supposed accomplice. For example, if someone assists a friend in moving furniture without knowing that the goods are stolen, due to lack of awareness of the criminal nature of the act, he cannot be considered an accomplice. Similarly, if participation occurs under duress, serious threats, or insanity, the mental element is absent, and no liability arises (Rezaei, 2018: 174–175).

Furthermore, criminal law scholars maintain that participation presupposes some form of prior agreement or collusion between accomplices. However, even in the absence of prior arrangement, if a person joins during the commission of the crime and directly intervenes in its execution (e.g., by effectively participating in a group fight), he may still be considered an accomplice (Shambiani, 2012: 56–77).

3-4 -The Possibility of Participation in Negligent Crimes

An important question arises: can the concept of participation in crime apply to non-intentional (negligent) crimes, such as involuntary manslaughter or injuries caused by recklessness? Both theory and practice reveal disagreement. In intentional crimes, the mental element rests on intent and awareness, whereas in negligent crimes the offender merely acts out of carelessness, recklessness, or violation of regulations.

Therefore, establishing participation in such crimes is difficult, as the common intent and unity of will required for participation are lacking (Rezaei, 2018: 176–179).

Nevertheless, some jurists recognize joint liability in specific cases. For instance, when several drivers engage in street racing that results in a person's death, each is deemed jointly responsible, since each knowingly undertook a dangerous act and accepted the risk of harmful consequences (Bolok, 2008: 78). Thus, although unity of intent may not exist in negligent crimes, when collective conduct produces a harmful result and an element of awareness and acceptance of risk is present, participatory liability can still be recognized.

Conclusion

In sum, participation in crime requires direct and conscious involvement of individuals in the material acts of the offense, accompanied by unity of intent and will, so that each participant's conduct contributes directly to the criminal result. This concept differs fundamentally from accessory liability, as the accessory provides only indirect support without engaging in the actus reus. Moreover, participation in negligent crimes remains a contested issue, given the absence of intent; however, in exceptional cases such as fatal street racing, collective liability may still be recognized. Thus, the criminal liability of accomplices and the scope of participation in negligent crimes depend on nuanced considerations articulated both in statutory law and legal doctrine.

-4Complicity in Crime

Complicity in crime constitutes one of the key and challenging issues in criminal law, the precise explanation of its nature and constituent elements playing a decisive role in the proper administration of justice. This significance stems from the fact that identifying the position of the accomplice and distinguishing his conduct from that of the principal perpetrator and the co-perpetrator assists in determining the scope of criminal liability and the type of punishment. The primary question is whether complicity is to be recognized as an independent offense or as subordinate and dependent upon the commission of the principal crime. Some jurists are of the view that complicity has an independent nature, and the individual who facilitates the commission of an offense, regardless of the realization of the criminal result, must be held accountable for his conduct. This opinion is founded upon the rationale that active participation in creating the circumstances of the offense necessitates separate prosecution and punishment, such that any form of effective assistance, irrespective of the final result, may be prosecutable (Ardebili, 1999: 44).

In contrast, another group maintains that complicity is subsidiary in nature and dependent upon the principal offense, and without its occurrence, it cannot give rise to punishment. From this perspective, the accomplice is not considered an independent offender; rather, his criminality is contingent upon the criminality of the principal perpetrator, and if the principal act is not committed, complicity becomes devoid of substance. This approach strengthens the coherence of the criminal justice system and prevents the punishment of individuals in the absence of a principal crime (Asia Foundation, 2019: 203–237).

Article 59 of the Afghan Penal Code defines complicity as follows: "An accomplice is one who, without direct involvement in the executive operations of the crime, intentionally facilitates its occurrence or encourages the principal to commit it" (Afghan Penal Code, 2017: Art. 59). Although this definition clarifies the general framework, it nevertheless requires further elaboration and a precise distinction between complicity, co-perpetration, and direct perpetration.

Moreover, the statutory text remains ambiguous regarding the differentiation between complicity and causation. Causation refers to the causal relationship between the act and the criminal result, whereas complicity signifies conscious assistance and support of the criminal act without directly producing the result. Such conceptual overlap may, in practice, lead judges into error; hence, clarification of these distinctions within legislation and legal scholarship is essential (Ardebili, 1999: 45–48).

Article 59 also enumerates conducts constituting complicity. For example, instigation, threats, inducement, or encouragement of the perpetrator, providing tools and facilities for the commission of the offense, or assisting in its planning are all considered instances of complicity.

Furthermore, an express or implied agreement between the accomplice and the principal resulting in the commission of the offense constitutes evidence of the accomplice's liability.

According to this Article, the punishment of an accomplice is generally one degree less severe than that of the principal, except in cases where the law provides otherwise. This approach contributes to the principle of proportionality between the crime and punishment and fairly takes into account each individual's share of responsibility (Asia Foundation, 2019: 204–206).

In analyzing Article 59, particular emphasis must be placed on the mental element of complicity. Complicity cannot be realized absent the accomplice's knowledge and intent, and if a person acts without awareness of the criminal nature of his assistance or of its result, he cannot be held liable. Free will and volition are prerequisites to the commission of complicity, and coercion, duress, or ignorance of the result exclude the accomplice from criminal liability.

Likewise, the existence of prior collusion or agreement between accomplice and principal is considered a condition for complicity; however, such collusion need not be formal or explicit, and it may be inferred from the parties' conduct. Indirect participation without prior agreement, provided it is intentional and conscious, remains prosecutable, which highlights the necessity of precision in establishing the elements of complicity (Asia Foundation, 2019: 200–209).

Another important question is whether complicity may arise in negligent crimes. The prevailing opinion is that due to the absence of intent and specific knowledge, complicity rarely applies in such offenses. However, where an individual, with knowledge of another's negligence and recklessness, deliberately creates the conditions for the commission of the crime, some form of liability may still be established. In such cases, it is essential that the mental element of the accomplice be accurately ascertained and that his conduct demonstrably contributed to the criminal result. Therefore, acceptance of complicity in negligent offenses requires the analysis of specific factual circumstances and a restrictive interpretation of the law, and judges must approach this issue with heightened care (Sanai, 2009: 568–576).

The recognition of complicity in crime demands conceptual clarity, precise differentiation from causation and direct perpetration, identification of its material and mental elements, and determination of its applicability to intentional and negligent crimes. Such analysis not only aids in the observance of the principles of criminal justice but also prevents ambiguity and arbitrary interpretation in judicial practice. Hence, the revision and refinement of the relevant legal provisions and doctrines constitute an effective step towards the realization of fair trial standards and proportionate accountability in relation to each individual's role in the commission of crime.

-5Concurrence in Crime

In criminal justice systems, distinguishing among the concepts of participation, conspiracy, and concurrence in the commission of an offense plays a decisive role in analyzing

criminal liability. Participation in crime occurs when several individuals, with a shared intent and will, take part in the physical and direct execution of a criminal act. In this situation, all participants are regarded as principal offenders and bear equal criminal liability (Ashworth, 2013).

By contrast, conspiracy refers to a prior and deliberate agreement between two or more individuals to commit one or more crimes, even if the contemplated crime is never carried out. In many legal systems, such as those of the United States and the United Kingdom, conspiracy is recognized as an independent offense subject to prosecution (Ormerod & Laird, 2022).

In other instances, several individuals, without a prior agreement, may simultaneously and in coordination participate in the commission of an offense within a particular situation. This condition is termed “concurrency in crime” or “situational collective criminality.” It is often analyzed under the doctrine of Joint Criminal Enterprise (JCE), which is also applied in international criminal law (Cassese, 2008). In such cases, although there is no pre-existing conspiracy, practical and behavioral coordination at the time of the crime can ground joint criminal liability.

Concurrency in crime constitutes a key subject in criminal law, requiring careful definition and distinction from related concepts. “Concurrency” means the organized and continuous union of two or more individuals to commit a specific offense, without the necessity that such agreement reach the execution stage. This notion differs from “conspiracy,” which involves merely the initial agreement to commit a crime and may remain unpursued. “Concurrency” emphasizes ongoing and continuous coordination among offenders with a unified objective. Likewise, “participation” refers to the direct and material intervention of individuals in executing the offense, while “complicity” involves aiding or facilitating its commission without direct material involvement. These distinctions are vital for determining the type of criminal liability and its legal consequences. Article 70 of the Afghan Penal Code defines concurrency in crime as: “Concurrency in crime means the organized and continuous union of two or more persons for the commission of a felony or misdemeanor.” This definition highlights the importance of continuity in cooperation among perpetrators and their shared objective.

Furthermore, the article establishes significant legal consequences: even if the agreement does not advance to the execution stage, the very coordination is prosecutable and punishable. A close analysis reveals that the Afghan legislator emphasizes the common mental element, the continuity of wills, and the intent to commit a crime collectively, thereby extending the scope of criminal liability (Asia Foundation, 2019: 237–238).

Historically, criminal law, without distinguishing the type and extent of individuals’ involvement in an offense, relied merely on suspicion and disregarded legal principles in imposing punishment. This approach resulted in violations of criminal justice and the punishment of individuals without effective responsibility. Consequently, criminal law doctrine shifted toward a precise differentiation of forms of involvement and the degree of individual responsibility. Thus emerged the “theory of modes of participation in crime,” under which criminal liability is distributed fairly and proportionately to the type and degree of participation.

This theory consistently underscores a precise separation of the criminal conduct of principal perpetrators, accomplices, and other participants, serving as an effective mechanism to prevent both excessive and inadequate punishment (Danesh, 2016: 127–128).

Moreover, many contemporary jurists argue that the scope of principal perpetrators should not be interpreted so broadly as to include accomplices and other contributors.

Such an approach risks conflating the concept of “intellectual perpetrator” with that of “accomplice.” An intellectual perpetrator is one who, without direct material involvement, causes the commission of an offense by incitement, persuasion, inducement, or threat. Unlike the accomplice, this person devises and directs the plan of the crime and shapes its mental element, though without performing any material act. In other words, the intellectual perpetrator functions as the director and mastermind of the offense, whereas the accomplice plays a supporting role in facilitation and never assumes leadership. This legal distinction has significant implications for the type of punishment and degree of culpability, and is expressly recognized in many criminal laws, including Afghan law (Rezaei, 2018: 179).

Conversely, the “material perpetrator” is the person who directly and physically commits the offense. This individual, through material criminal conduct, is the primary agent of the offense and bears the heaviest criminal liability. For example, if several individuals jointly commit theft and each plays a tangible role in the act of appropriation, they are all material perpetrators and are subject to full punishment. This distinction between intellectual and material perpetrators not only enhances accuracy in assigning liability but also prevents the neglect of secondary roles in the commission of offenses, thereby ensuring justice (Sanai, 2003: 32).

In conclusion, “concurrency in crime” entails the organized and continuous union of individuals to commit an offense and must be clearly distinguished from conspiracy, participation, and complicity. Equally, a precise differentiation between legal doctrines and codified law is necessary to avoid confusion and to clarify the legal consequences of such collective participation. This comprehensive and analytical approach is particularly significant in complex cases involving multiple roles, as careful identification of each individual’s form of participation prevents injustice and disproportionate punishment.

Conclusion

In analyzing the various institutions of participation in the commission of crime—including direct perpetration, joint participation, complicity, and prior agreement—it becomes evident that the Afghan legislator, relying on a precise conceptual framework, has succeeded in designing a relatively coherent structure for distinguishing different criminal roles. This differentiation is not only grounded in the material and mental elements of each form of involvement but also reflects a justice-oriented approach within the country’s criminal justice system. In other words, inspired by Islamic jurisprudence and principles of comparative law, the legislator has endeavored to uphold the principle of proportionality between criminal liability and the actual role of each individual in the commission of an offense.

By distinguishing among the principal perpetrator, co-offender, and accomplice, and by prescribing liability based on the degree of involvement and the mental element, Afghanistan’s criminal justice system has taken a significant step toward the realization of substantive criminal justice. In particular, by incorporating notions such as the intellectual perpetrator and tacit agreement in the commission of crime, the legislator has attempted to account for the complexities of organized and multi-actor crimes. This perspective has moved the Penal Code beyond its traditional framework, steering it toward a dynamic and flexible system.

Nevertheless, certain shortcomings and ambiguities remain evident—for instance, the absence of a clear distinction between complicity and causation, or the lack of precise definitions of key concepts such as tacit agreement, which may lead to discretionary interpretations within judicial bodies. Furthermore, in some contexts, such as non-intentional crimes, the current framework does not provide adequate responses for addressing indirect roles.

In these respects, revisiting legislative provisions and enhancing specialized training for judges and legal practitioners appear to be necessary.

Overall, the present analysis indicates that Afghanistan's criminal law structure, in addressing the various forms of participation in crime, while drawing upon Islamic jurisprudence and comparative legal doctrines, holds considerable potential for the realization of criminal justice. With the elimination of existing deficiencies, the clearer articulation of concepts, and the advancement of judicial expertise, it may reasonably be expected that the system will operate more successfully in achieving its preventive and reformatory objectives.

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