

Comparison of Examples of Assistance in Crime in Iranian and English Penal Law

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ABSTRACT

Like other crimes, giving punishment to individuals as an accomplice involves penal liability presence and verification of the three elements of crime. In addition to the presence of these elements, unity of intention and precedence or temporal coincidence between accomplices is necessary for proving assistance in crime. However, it seems as if the necessity of the presence of these conditions should not result in the fact that assistance in crime or its punishment is not independent, but assistance in crime has separate causes and independent elements. In spite of this, authentication of these elements and conditions or doubt about the presence or absence of a causal relationship between accomplice's action and criminal's crime and necessity of commitment of criminal's crime for giving punishment to the accomplice results in problems in determination of accomplice's material behavior limitation and raises this question how much of behavior of a person includes legal examples of assistance in crime? Answer to this question is one of the most important and complex issues in England penal law. Considering the similarity between the rules and examples of assistance in crime in England penal law and Iranian penal law, it seems that investigation of these similarities and differences in both penal laws can clarify the ambiguous concept of some of these examples and the level of needed behavior for assistance in crime.

KEYWORDS: assistance in crime, luring, abetting

INTRODUCTION

Islamic Penal Code (IPC) passed in 1991 has not presented any definition for assistance in crime but article 43 of this law has mentioned examples of assistance in crime and has clarified its concept partly. The clauses of article 43 are examples of assistance in crime which include a concept of psychological element and determine material element. This kind of mentioning examples is similar to examples of assistance in crime in England penal law and its examples include Aiding, Abetting, Counseling and Procuring according to the 8th chapter of Crime Abettors and accomplices Law passed in 1861. Penal courts of England can sentence someone to the punishments of assistance in crime only when the accomplice's behavior matches with one of the examples. According to this, in Klarlson's case in 1971, the behavior of those people who watched the scene of a sexual assault in a room in a garrison was not considered as punishable because it was out of the scope of assistance in crime examples. Moreover, this shows the necessity of presence of a positive action in most cases in assistance in crime in this legal system (Ardebili, 2006).

The concept of the examples of assistance in crime and the importance of matching accomplice's action with one of the legal examples has been verified in different verdicts of National Supreme Bureau branches in the previous years and indicates that courts must determine the way of way of assistance in crime. Accomplice's behavior must be compatible with one of the legal examples of assistance in crime. However, what is called as the authentication of presence of a causal relationship or lack of necessity for this relationship between accomplice's action and criminal's crime results in an increase in complexities of determination of assistance in crime examples and accomplice's behavior level. The concept of assistance in crime examples and investigation of determination of accomplice's behavior limitation along with the role of causal relationship in both penal law systems is the subject of this paper discussion which will be dealt with in two sections. In the first section, examples of assistance in crime which influence on psychological element of criminal (like abetting and similar examples) and in the second section, examples which are more tangible and influence on the material element of criminal's crime more clearly were studied, like procuring crime tools and facilitation of crime commitment through showing the way (Ardebili, 2006). Abetting and similar examples (examples close to and related to criminal's psychological element) in the first clause of article 43 of IPC state similar examples of assistance in crime. In this part of the article we read: "... 1- everyone who abets or encourages or threats or lures someone else to commit a crime or causes a crime commitment by means of deception and machination or craft..." is considered as accomplice. First, it must be mentioned that separation of assistance in crime examples by The Legislator in three clauses must not be pointless, but The Legislator has separated these examples considering

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the difference in examples nature. Abetting examples and similar examples have been mentioned without mentioning conditions "knowingly" or "intentionally". Therefore, it seems that commitment of abetting behaviors and actions have "knowledge" and "intention" embedded in them and there is no need to prove these two elements in them. The mentioned examples influence on criminal's psychological personality, or, in other words, impact spot of them is in criminal's thought regardless of the fact that they are committed with material or spiritual behavior or speech. Abetting or encouraging or threatening or luring must address criminal and understanding of accomplice's meaning should be possible by criminal. The necessity of presence of this relationship in England penal law is known as psychological relationship between accomplice and criminal (Ardebili, 2006).

In England penal law system, two similar examples have been mentioned for abetting which are similar to the first four examples mentioned in article 43 of IPC. It must be mentioned that abetting takes place sometimes at the same time as crime commitment and in the crime scene which is determined with a word or an example (Abetting) and if abetting takes place before or out of crime scene, the word "counseling" is used. Of course, England courts have issued different verdicts contrary to this classification in the past. For example, in Gambel claim in 1959, a verdict has been issued which is in contradiction with this classification. In this case, an operator of coal complex scale gave permission and exit license to a truck carrying additional load in a public highway and was convicted of abetting and aiding (driving with additional load). In fact, because the accomplice's action was at the same time as crime commitment and did not take place in crime scene, it must be regarded as counseling and not abetting. In spite of this, England courts now adhere to this classification (Ashworth, 1998).

Common characteristics of abetting examples in both Iranian and English systems is that accomplice influences on criminal or on his/her crime's psychological element as well as committing these examples and no material influence trace is found in material element of criminal. This is while accomplice's action has closer relationship with material element of the crime of criminal in examples like paving the way for crime commitment, preparation of tools for crime commitment and facilitation of crime commitment and the influence of these examples are obvious in crime commitment (Heaton, 2005).

Abetting characteristics include being explicit, being individual and being effective. Being explicit is the state which can be seen in the appearance of words and actions and guides criminal through becoming aware of the reason or intention of the accomplice. Being individual means abetting a particular person or unspecified people from a particular crowd. Being effective means being abetting and criminal's ability to become aware of accomplice's intention and motivation and it seems that it does not refer to the presence of a causal relationship between accomplice's and criminal's action and proof of relationship which is common in crimes is almost impossible in assistance in crime by means of abetting and similar examples. Kalham's case can be mentioned in this regard which clarifies behavioral limit of accomplice and necessity or lack of necessity for relationship between accomplice's and criminal's behavior. In this case which is an example of luring in Iranian penal law, important parts of English penal law can be observed. But it must be pointed out that examples luring, persuasion and threatening are special titles for abetting but in these three examples, a specific name has been considered depending on the type of feeling they arouse. Therefore, if fear is aroused in people due to some actions, it is called threatening and if greed is aroused in people, it is called luring. Concerning the difference between abetting and encouraging it can be said that when a severe arousal takes place, it is called abetting and human rebellious instincts are in this example and results of a crime following abetting may be more severe but when arousal is less severe and it cannot be regarded as examples of threatening or luring, it is called encouraging. In spite of this, one accomplice is possible to behave in a way that it includes several examples.

Abetting to commitment of crime physical behavior seems to include any type of speech or action which is stimulating. In English penal law, this can be only in the form of stroking someone gently on criminal's head or even nodding in approval (Gianto's case, 1977) or it can even include clapping, screaming or shouting and other physical actions. The appearance of article 43 of IPC has differentiated between "abetting and similar examples" and "machination and deception and craft". The first examples are formed in confrontation with criminal but direct influence of machination and deception and craft can influence on criminal and also can influence on victim or even both of them. If these actions do not influence directly on any of them, it is called machination. On the other hand, the first clause of article 43 states clearly that these examples must "cause" crime commitment. Therefore, it is the influence of these actions (machination and deception) on commitment of a crime that counts and not their direct influence on accomplice's intention or changing his/her internal state (Herring, 2002).

Furthermore, due to lack of correct separation of examples influence in the first clause and the third clause of article 43 of IPC, i.e. facilitation of crime commitment, makes it difficult to distinguish example and matching with legal case. This is while accomplice's action goes beyond distant preliminaries of the crime and is close to the crime in facilitation of crime commitment and in some cases, it lies somewhere between participation and assistance in crime. In this example, accomplice's action has material influence on crime commitment by criminal and this action attaches itself to the result of the crime and in the material element of

criminal. However, machination and deception and craft cause crime commitment through distant preliminaries of crime and the influence of action is not obvious in material element of the crime. In fact, it is a kind of condition for starting criminal intention of criminal or his/her action. For example, accomplice devises a deception and provides conditions for meeting two people who may commit crimes towards each other, without taking part directly in material element or its implementation. Furthermore, some lawyers believe that procurement of a crime in English law is the equivalent of machination and deception and craft in Iranian penal law but the word "aiding" may be more suitable for it because we will say that procurement of a crime conditions needs presence of a causal relationship between accomplice and criminal actions but this condition is not necessary in aiding and procurement of crime has machination quality in English penal law but it does not mean these two examples match completely. In some cases, we must care that in machination and deception and craft, deception may result in abetting or encouraging and then crime might take place in this way. In English penal law, abetting is an independent crime and receives punishment, regardless of commitment of criminal action by criminal. This is while in Iranian penal law, abetting has been considered as an independent crime only in special cases and in crimes against public tranquility and security like stimulation of people to murder and massacre (article 512 of IPC). Article 21 of Armed Forces Crimes Law passed in 2003 and article 25 of Press Law passed in 1985 is also examples of this). (Hojjati, 2005).

Examples close to and related to material element of criminal crime

In the second and third clauses of article 43 of IPC, other examples of assistance in crime have been mentioned: "... 1-everyone who provides crime commitment tools intentionally and knowingly or shows the way of crime commitment with knowledge about criminal's intention. 2- Everyone who facilitates commitment of a crime deliberately or knowingly..." is regarded accomplice. First, we investigate the second clause of the article and then we investigate the third clause comparatively.

Preparation of tools and showing the way of crime commitment

It seems that "tool" means any kind of instrument with any material or size which even includes building, place and so on. Knowledge and deliberateness mentioned in assistance in crime in such examples is authenticated through utilization of these tools. Verdict number 2022 (date 26/4/1335) of one of the branches of Supreme Bureau branches indicates that when criminal uses a gun which has been taken from someone else, no assistance in crime in murder take place if gun owner's knowledge about murderer's intention is not authenticated. Use of a tool prepared in a crime is mainly an indicator of psychological element rather than material element. Anyway, the tool must be used by criminal in the material element of the main crime or it must be put on criminal way such that it can be considered as utilization of the tool. Therefore, knowledge of criminal about accomplice's action is not a condition in this example. The same rule is true in England's penal law and accomplice must help the main criminal to be regarded as an accomplice. For example, one who prepares a knife or gun for commitment of a crime is considered as aider (accomplice). (Shokri, 2003).

In some cases like Gambel case, aiding and abetting have been considered as the same. In Linch case, aiding and abetting have the same concept and aiding has been considered a material element and abetting has been considered as the spiritual element of this concept.

Abettor is a person whose behavior results in stimulation of criminal in the crime scene but aider's behavior can take place at the time of or before commitment of crime, while abetting before a crime is considered as counseling in English penal law. It seems that such a separation can be conducted in Iranian penal law between abetting and encouraging and abetting can be limited to crime scene and encouraging can be limited to outside of crime scene. As it was mentioned, excitement weight is lesser in encouraging and in fact, when someone is stimulated a long period of time before crime commitment, this stimulation is reduced until crime commitment and it is better to call it encouraging. Of course, judicial procedure has not made any comments on this matter. In England penal law system, aiding is an example which is the equivalent of giving information or a tool or showing the way of commitment of a crime. Therefore, even when a provided tool is not used but it stimulates criminal's determination and intention in commitment of a crime, it is regarded as an example of assistance in crime or aiding. However, in Iranian penal law, this is not applicable considering the necessity of use of the tool in crime scene and it must be cared that preparation of crime commitment tool necessarily means influence on material element of the final crime. In spite of this, it seems that if provision of a tool can be regarded as a kind of "showing the way of a crime", it is considered assistance in crime even if the tool is not used in final crime (Kelarkson, 1990).

Facilitation of a crime commitment

The most pronounced example of assistance in crime or the clearest role of an accomplice in final crime is facilitation of a crime. Facilitation of crime has a clear concept and has been issued in many verdicts of Supreme Bureau. For example, the verdict number 2671-1/12/17 of the second branch states: "if a person catches victim's neck and another person shoots at victim's face and kills him, the first one is considered as accused of assistance

in murder". In other verdicts, sitting on the chest of victim, fastening victim and holding victim are all considered as facilitation of crime commitment and confirm this idea that facilitation of a crime must have direct relationship with commitment of that crime and there must be a kind of logical and rational relationship between accomplice's action and the crime. Therefore, actions which are indirect and distant rings of crime causes chain will not be considered as assistance in crime. (Shokri, 2003).

Examples like lying in ambush and scouting which are regarded as examples of assistance in crime in England's penal law, are considered as facilitation of a crime in Iranian penal law and the influence of such actions must be at the same time as accomplice's presence around the crime scene because they are not accompanied by an object or physical role of accomplice is not important in crime commitment. It is completely obvious that such examples have close relationship with material element of final crime and an action must be done during crime commitment or at least its influence continuity is necessary during crime commitment (Ardebili, 2006).

Procurement of crime is the closest example in England penal law to facilitation of crime which has been mentioned in article 43 of IPC. In this example, criminal commits a crime as a result of accomplice's actions. In England penal law, assistance in crime in unintentional crimes are also recognized while in Iranian law, because the examples mentioned for assistance in crime have been stated with "deliberately" condition, and because the condition of "unity of intention" between accomplice's action and criminal action has been mentioned in the note of article 43, criminal crime will naturally be regarded as intentional and only in this case assistance in crime will take place but this idea seems to be challengeable.

The important fact is that in English lawyers opinion, presence of a knowing relationship which exists in other three examples (aiding, abetting and counseling) is not necessary in procurement of a crime example and a particular kind of causal relationship is necessary in procurement example which is not necessary in other three examples. Furthermore, this (causal relationship) indicates the necessity of doing a positive action for this example. However, commitment of this example can be imaginable by not doing something according to the third clause of article 43 of IPC (facilitation of a crime) but this does not mean that silence of law also means facilitation of crime. Therefore, Supreme Bureau stated in verdict number 564 (date 22/4/1326): "silence and lack of prevention from crime commitment cannot be regarded as assistance in crime ... (Shokri, 2005).

In spite of this, in some cases in Iranian penal law, when a duty has been given to someone, not doing that duty is regarded as a kind of assistance in crime (like helping prisoners with escaping from a prison, article 549 of IPC). In England penal law and in Allen's case (1965), the accused watched his friends quarrel and also had a hidden intention for helping his friends but he was acquitted because he did not do anything for contribution to the crime and its facilitation and stimulation of criminals. Concerning proper separation of facilitation of crime commitment from machination and deception and craft, it must be mentioned that in the latest example, accomplice's action is not close to crime scene and it cannot be a part of material elements of criminal. If machination and deception and craft were similar to facilitation of a crime commitment in The Legislator's opinion it must have been mentioned in the very 3rd clause. In spite of this, some legal authors believe that facilitation of a crime includes machination and deception and craft. However, it must be said that in England law, facilitation of a crime (procurement and preparation) means doing a series of attempts which are suitable for criminal action and there is a causal relationship between accomplice's action and criminal crime. In spite of this, in Iranian law, this is not a criterion for facilitation of crime commitment and also presence of such relationship in machination and deception and craft is not necessary and accomplice's actions lies at a further distance to material element of criminal crime and this distance is more than the distance of the 2nd and 3rd examples of criminal. (TaheriNasab, 2009).

Conclusion

In England penal law, aiding can be in the form of provision of crime tool(s) for criminal, lying in ambush in crime scene, doing preliminary works and any other kind of assistance but in the article 43 of IPC, aiding concept has three examples of facilitation of a crime, showing the crime way and provision of crime commitment tool(s). Furthermore, aiding can be done during or at the same time as crime commitment and there is no need to presence of a causal relationship between "the aid" and "final crime" and there is no need to criminal knowledge of accomplice's aid and this consensus might exist in aiding or might not exist. Concerning abetting, it must be said that it includes any type of criminal encouragement to commitment of a crime and it can be accompanied by an aiding behavior. Anyway, abetting which is done in crime scene, contrary to aiding which can take place at the same time as or in crime scene or before that. Counseling in its common meaning includes abetting commitment but it also includes behaviors like advice, persuasion or giving information necessary for a crime. This example is limited to behaviors which take place outside crime scene. Commitment of this example involves presence of an agreement or mental relationship between accomplice and criminal but there is no need to prove causal relationship. Encouraging and presentation of way of committing a crime is a close equivalent to this example in the article 43 of IPC. However, there is a kind of causal relationship between accomplice's action and criminal crime in procurement of crime commitment in spite of the fact that

accomplice's action takes place before and outside of crime scene. criminal does not need to be aware of accomplice's action and even ignorance of criminal of is the condition of commitment of this example in England penal law in most cases. Necessity of proving a causal relationship and lack of need to accomplice's knowledge of criminal action makes the domain of this example very wide and even it approaches to doctrine of innocent agency. This is while in doctrine of innocent agency, the intention embedded in crime is accomplice's intention (crime deviser), while in this example of assistance in crime, criminal has penal liability as well as accomplice. In facilitation of a crime commitment in Iranian penal law, presence of a causal relationship between accomplice's action and criminal action is not necessary. Although there is similarity between this example and procurement of crime in England, criminal usually is not aware of accomplice's action in most cases of procurement and in Iranian penal law, although ignorance of criminal of accomplice's action is not necessary, criminal is usually aware of accomplice's actions.

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