



Investigating the Concealment of Criminals from the Viewpoint of Islamic Jurisprudence and Afghanistan criminal Code

Mir Obaidullah Haidari; Saifuddin Jahed

Professors of Faculty of Law and Political Science, Parwan University, Afghanistan

E-mail: mobaidullahhaidar4@gmail.com

<http://dx.doi.org/10.47814/ijssrr.v7i8.2158>

Abstract

Concealment of crime and criminal is one of the topics that has been less noticed by jurists and criminal legislators and their attention is focused on the main perpetrator of the crime. The issue of crime and the criminal is largely solved because with little attention and reference to most books of jurisprudence and state laws can be seen, which the main part of Tazir to these works is devoted to this issue. Therefore, in the Tazirat section, the topic of concealment of offenders is less discussed and this issue is summarized by describing the participation in the crime and the implementation of the same criminal punishment on the accomplice, which is an indication of the existence of a legal vacuum in this section. The purpose of this study is to investigate how criminals hide, from the perspective of jurisprudence and law. The importance of this investigation is that in order to prove the crime of secrecy, the realization of a number of conditions is necessary in the concealing and concealing person, otherwise, the act of secrecy plus not being a crime is often legitimate. The research method of this article is mostly library and it has been tried to use cluster sampling method among jurisprudential opinions and Islamic scholars. The result of this research is that concealment for the purpose of non-implementation of punishment is a crime and the concealer deserves to be punished of tazir because it is a form of co-operation in the crime and evading the criminal from justice. For the sake of this action on the concealing and concealing person, some conditions are necessary because in some cases, secrecy is not only a crime, but it is necessary for such an action to save the life of the person at risk.

Keywords: *Concealed; Crime; Punishment; Accomplice and Criminal*

Introduction

Concealment of offenders is one of the most important issues in the implementation of punishments of Ta'zir on the offender and the accomplice, because any secrecy in the crime cannot be considered as a complicity, i.e., collusion in the crime is a type of secrecy, While the act of hiding the

criminal and the crime has different situations and forms. In order to prove the penalty for concealing the offender, the presence of a number of conditions in the person hiding the criminal and the criminal in hiding is necessary, otherwise the act of secrecy cannot be considered a crime.

On the other hand, Abdulqader Audeh considers the definition of complicity in crime to be realized when the crime is a result of a partnership, i.e., the partnership between two people from the beginning and the beginning of the criminal action (Odeh, 1995).

The son of Taymiyyah, The Imam considers concealment of the person who is guilty of a sin which the criminal is ordered to be a co-defendant and the concealer deserves the same punishment if the perpetrator is to escape from the execution of the punishment (Taymiyya, 1998).

The real question is whether secrecy itself is considered a crime in such cases, or is it possible to attribute the application of being a crime to such actions? The existence of a number of conditions is necessary to prove this penalty in the concealed person and the concealer. Because there are situations that happen to a person who is hiding, in which not only the act of concealment is not a crime, but in many cases if there is no secrecy, it leads to the occurrence of the crime (Zuhaili, 1998).

The main purpose of this study is to investigate the secrecy of offenders in Islamic jurisprudence and law. In addition, in this research, it is intended to achieve goals such as: Stating the punishment of concealing the offender in Islamic jurisprudence and law, the difference between participation in crime and concealment of the offender, and the expression of situations in which secrecy is not considered a crime, is considered. It seems that hiding the criminal is considered a crime in Islamic jurisprudence and criminal law. Also, hypotheses such as: there seems to be a big difference between participation in a crime and the act of concealing a criminal, it seems that concealment in all its forms is not considered a crime, the prevailing assumption is that It can be proposed in this research that in order to prove the crime of concealment, the presence of certain conditions in the concealer and the concealer is necessary.

The philosophy of legislating in Sharia and statute laws is to make the people aware of the rules that govern their actions and behavior. Therefore, the awareness of the people in the community that hiding the criminal and the person guilty in the law is considered as the type of crime and that the perpetrator is punished in this world and in the hereafter, somehow reveals the importance of this investigation.

Therefore, the issue of knowing the type of secrecy, the conditions and the realization of the conditions in both persons (concealer and concealing) is very important for proving the crime description; the judicial organs should acquire knowledge of all the above and then issue verdicts against the individuals.

In this paper, the method considered is mostly library and descriptive and analytical methods have been used. Also, in this research, most of the works and investigations that have been done on the issue of concealing offenders and penalties that have been foreseen in the laws of different countries, and in a way this article has been influenced by the methods of the previous works and researches, especially in the legal aspect and the best method has been modeled.

1 .Concealment of Criminals in Islamic Jurisprudence

Felonies are crimes committed on Life and physical integrity of human being, including those that are subject to the crime of retribution and punishment, whether it is a crime on the soul such as murder or if it is done in the form of an injury or amputation of human limbs (Radwan, 2012). Therefore, secrecy in crimes can be carried out in many cases, some of which we discuss as follows:

1.1 . Multiple Cases of Concealment in Felonies

The first case is the case in which secrecy leads to the annulment of the victim's right, including the right to retribution or Reparation, or other than these two rights that have not been pardoned by the victim.

The case is that the person who conceals the act of the murderer or the criminal hides and denies it, so its concealment causes the punishment to be incompatible with the felon or the murderer, the concealer with such action will actually be the curtain between the murderer and the felon and the murderer and cause the punishment to be unmatched, as well as the loss of blood and the rights of the free. Concealer is deserving of such an act of tazir from the perspective of Sharia and law.

Especially when it comes to the awareness of that act and he refuses to give information to the competent authorities, that the punishment for such action has been specified in the Afghan Penal Code, which God willing, will discuss in the following discussion (Taymiyya,1998).

The second case is that in which secrecy causes crime and infringement, including murder, injury or even amputation :

The case is that the person is aware of which other person intends to kill a third person and plans matter, so despite knowing his plan, he conceals its action while he is able to reveal it. In such a case, it is necessary for the person to reveal the act of the criminal and prevent it from occurring, because concealing it in such a state is forbidden and according to the religious point of view this secrecy is cooperative on sin and aggression and the person commits a grave sin (Radwan, 2012).

The third case is when the crime is committed as a result of non-secrecy, so that it is not hidden from the oppressed person before the oppressor.

The problem is that if secrecy leads to the salvation of the oppressed person from the oppressor's hands, and on the contrary, the cover-up causes oppression on the oppressor's side to be inflicted on the oppressor, including beating, injury or even murder, then the person is required to do this secrecy to save the oppressed and prevent the shedding of blood and disgrace from the oppressor (Al-Sakit,2005).

It should be noted that in such a case, the concealing situation is considered and its ability and inability to conceal it in this regard is criterion that the view of most scholars is the same because in Shari'ah the duty beyond the power of the person is not acceptable and the Islamic law has not made man responsible more than its tolerance and ability. As Allah has said in the Holy Quran: (لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا).

These issues are somewhat different among Ulema and the opinions of jurists and scholars can be summarized briefly in three perspectives:

1.2. Opinions and Theories of Jurisprudence and Scholars

The first promise of the Ulema, including Hanafiyya and Shafiyya and most scholars of Hanbali believe that the claimant is not guaranteed, but the guilt remains (Al-Kasani,1986).

The second statement of some scholars, including Judge Ya'li, Abil-Khattab from Hanabele, believe that if someone has the ability to save a person who is on the verge of death, and leaves that person in the same state and suffers a heavy loss of life and money from this area, the person will be killed as compensation for the victim's death (Odeh, 1995).

1.2.3. The third promise of some Malikiah and Ibn Hazm from Zaheriya is that if the person is able to save the life of the convict and does not perform this protective responsibility and as a result of this

negligence causes the murder of the victim, then the person of Tarak will be liable for Qisas because the murder is a result of its abandonment. But given these three votes from jurists, the vision of the jurisprudential president has more power and this is the promise of Rajeh (Ibn Hazm).

2. Concealment of Criminals in Afghan Penal Code

In the Afghan penal code, it deals with some kinds of secrecy and evading criminals through several substances, which I don't think covers all the dimensions of this issue. Therefore, in the fifth chapter of this law in Article 488 in this regard, it has these poems:

- 1) A person who is caught legally and escapes shall be sentenced to imprisonment of six months or a fine of thirty thousand Afghanis.
- 2) If a person sentenced to imprisonment is caught for the purpose of the court order and escapes after the arrest, he shall be sentenced to an average imprisonment of up to two years or a fine of sixty thousand to one hundred and twenty thousand Afghanis in addition to the fine.
- 3) If a person's escape in the cases referred to in paragraphs 1 and 2 of this Article is due to the use of force or another crime, the perpetrator shall be convicted of the crime in addition to the punishment of escape.

The addition from jurisprudence is mentioned in this article is that the person's own escape is discussed in this article, while in jurisprudence more focus is on the second person who is the escaper. Again, there is no contradiction between jurisprudence and this article of penal code, because violation of the law, whether by the perpetrator or the deputy, is considered a crime.

The Afghan Penal Code also provides punishment for the officials of public services if they cooperate in the escaping of the offender. Therefore, Article 492 of this code provides for the assistance of the official of public service to escape prosecution of the accused (if the official of public services is subject to the plight of the person and assists in the necessary actions to escape from prosecution of the defendant, he shall be sentenced to a moderate imprisonment).

This punishment applies on the officials of public service, but if the act is carried out by an ordinary person, the punishment is as prescribed by law. Therefore, Article 492 of the Afghan Penal Code in this regard is as follows: "If a person hides himself or by another person who has escaped after legal difficulty or is accused of a crime which has been ordered to be caught, or aids in escaping the person from prosecution despite the knowledge of the law, shall be punished as follows:

- 1.If the person in hiding, concealing or escaping from prosecution is sentenced to death the imprisonment is up to ten years.
- 2.If the person referred to in subparagraph (1) is sentenced to a had punishment or imprisonment of a degree (2), or degree (1) or long imprisonment or charged with a crime punishable by execution, he is sentenced to moderate imprisonment.
- 3.Except from the conditions set forth in (1 and 2) of this Article, with a short imprisonment or a financial penalty ranging from thirty thousand to sixty thousand Afghanis.

These were the cases that are intended by law for a criminal to co-operate with the defendant, who was convicted according to the court order, in evading the law or fine.

Again, Article 493 of this law provides for the following punishments in relation to assisting and cooperating with the accused person: (A person who has knowledge of the occurrence of a crime or misdemeanor and assists in the escape of the accused from prosecution of justice, whether his assistance is in the form of sheltering or concealing the reason from proving the crime, shall be sentenced to a fine of ten thousand to thirty thousand Afghanis).

In Afghanistan's penal code, there is an issue that seems contradict to Islamic jurisprudence, because in jurisprudence whoever is the perpetrator is punishable by punishment, it does not matter whether the crime is committed by family members of the person or who is a foreigner, in Article 494 of this law, in relation to the failure to apply punishment to the accused's relatives if they help the criminal to escape: (If there is any concealment or assistance in concealing or evading a person's prosecution by his wife, her husband, principal, or brother, or sister, he/she shall not commit such punishment.)

Therefore, taking into account Islamic jurisprudence and law, it can be said that the law in this area with the exception of the first-degree relatives of the criminal criminalizes concealment, while in Islamic jurisprudence such a case is considered as negligent and considers the implementation of Sharia to be the same for all, the same is the requirement for justice and fairness.

3. Scrutiny

Often, secrecy is made against a person who has sought refuge from tyranny, or that secrecy is a result of reluctance and threats from the criminal, in such cases the implication of the offender cannot be disguised. So not all forms of secrecy are considered crimes, but action is described as a crime when the right is lost as a result of doing it or not giving it away.

The subject of controversy is that if, according to the above example, the crime occurred as a result of not hiding the person, i.e., it causes injury or even murder or the loss of property, is the person responsible for the revelation of crime and criminal or not? The Criminal Code of Afghanistan has remained silent about which this has created a legal vacuum, but what it has referred to in Islamic jurisprudence

In such a case, the concealing situation is considered and its ability and inability to conceal in this regard is criterion, which is also the view of most scholars because there is no obligation acceptable beyond the power of the person and the law has not made man responsible more than its tolerant.

So if a person is able to save the oppressed from the hands of the oppressor and the aggressor, the person has taken refuge in his house and he refuses to hide him/her, and as a result the asylum seeker loses his life and money, the owner of the house is responsible and from the point of view of some jurists, the punishment of Ta'zir and in the opinion of others is merely a matter of religious and spiritual aspects and the person has committed a crime against the sinner. It gets organized.

But if the owner of his or her own house is incapable or in such a way that if the defector hides the escapee, he or she is in danger of life and property, then no responsibility will be placed on him.

What has been discussed in this research is a cluster of opinions of jurisprudence in general, most of the previous research lacks the same comparison between Islamic jurisprudence and statute laws, and on the other hand, the true meaning of the word concealment and secrecy in the various situations with which people are dealing with, contrary to the suspicions of most people in the society, clearly stated in this research. It has happened.

Conclusion

Considering the concealing of offenders in light of Islamic jurisprudence and law, I concluded that concealing of crimes or offenders in such a way that the act prevents the execution and implementation of Shari'ah on the criminal, although secrecy wastes the rights of God or human's rights, the act is considered a crime and the punishment for crime is proportional to the severity and humiliation of the crime committed on the offender. It will be.

As it was known, the modes of secrecy of crime against the perpetrator differ from each other and can be distinguished by considering the hidden situation and seeing its expediency.

Therefore, if the act of concealment is in the interest of concealing and in the absence of this act the life of a person is threatened without cause, then the act of doing so is preferable to leaving it and such secrecy should be done to save the life of the victim, especially when the victim is against the oppressed and in the absence of secrecy is oppressed by the oppressor.

finally, it can be said that the act of concealing (except in cases where the person is innocent or is afraid to be oppressed) in a crime or concealing the perpetrator in a way that prevents the execution of a punishment that is not imposed on the offender and does not provide grounds for justice, is considered a crime in Islamic jurisprudence and is capable of Judicial prosecution.

Reference

Holy Quran.

Al-Kasani, Aladdin Abu Bakr. (1986). *Bada'i' al-Sana'i fi Tari'at al-Shar'i'*. Chap dom. Egypt: Dar Al-Kutub Al-Ilmiyyah.

Ibn Qadamah, Muwaffaq al-Din Abdullah. (1968). *The tempted one*. Egypt: Kitab Khan Qahira.

Ibn Taymiyyah, Taqi al-Din bin Abdul Halim. (1998). *Sharia policy*. Chapter One, Arabistan: Ministry of Da'wa and Guidance.

Ibn Hazm, Ahmed bin Saeed Al-Andalusi. (beta). *Local antiquities*. Beirut: Dar Al-Fikr.

Al-Zuhaili, Wahba bin Mustafa. (beta). *Islamic jurisprudence and its evidence*. Chapchaharm. Syria, Damascus: Dar Al-Fikr.

Al-Sakit, Hamad bin Atta. (2005). *Covering up the perpetrator between Sharia and law, an applied and comparative study*. Master message.

Radwan, Asaad Muhammad Asaad. (2012). *Covering up the crime in Islamic jurisprudence*. Master message.

Odeh, Abdul Qadir (1995). *Islamic criminal legislation compared to positive law*. Beirut: Dar Al-Kutub Al-Arabi.

Ministry of Justice, (2017). *Penalty code, official gazette, no. 1260*.

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