

THE ROLE OF THE VICTIM (MAJNI 'ALAYH) IN THE COMMISSION OF TA'ZIR CRIMES

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Abstract. *The present research, entitled “The Role of the Victim (Majni ‘Alayh) in the Commission of Ta‘zir Crimes”, examines the position of the victim in the process of criminal occurrence. In classical legal systems, the victim was predominantly regarded as an innocent party, deserving unconditional protection; however, modern victimology reveals that the victim may also play an active role in the genesis of crime. The value of this research lies in its focus on ta‘zir crimes, demonstrating how the conduct, personal characteristics, and social conditions of the victim can contribute to the commission of crime and, in certain cases, influence the determination of the type and degree of penal response. The importance of this subject stems from the fact that identifying the role of the victim not only assists criminal policymakers in adopting preventive measures, but also serves as a decisive factor in judicial proceedings and criminal justice. The objective of this research is to analyze legal and jurisprudential cases in order to clarify the relationship between the victim’s actions and the commission of crime, thereby uncovering dimensions of the issue that have received less scholarly attention. The principal research question is centered on the extent to which the victim can play a role in the commission of ta‘zir crimes, and how this role impacts criminal policy and penal response. The research method is library-based, relying on legal, jurisprudential, and criminological sources, and the type of research is descriptive–analytical. The findings indicate that in crimes against persons, property, and individual freedoms, the victim’s role may range from provocation to facilitation of the crime; in some cases, the legislator has even adjusted or modified the penal response based on the victim’s conduct. These findings underscore the necessity of incorporating victimology into Afghanistan’s criminal policy and reconsidering the framework of victim protection.*

Keywords: *Persons, Property, Ta‘zir, Crime, Victim.*

Introduction

The issue of the role of the victim (majni ‘alayh) in the commission of crimes, particularly in relation to ta‘zir offenses, is considered a relatively recent topic in criminal law and criminology. In earlier times, the victim was consistently perceived as an innocent, passive party in need of protection. However, scientific developments, particularly within the field of victimology, have demonstrated that the behaviors, psychological traits, social conditions, and even the specific circumstances of the victim may influence the commission of crimes and

contribute to the formation of criminal motives. From this perspective, studying the role of the victim in ta'zir crimes becomes significantly important, as this category of offenses encompasses a wide range of crimes against persons, property, and individual freedoms. In certain instances, the legislator has even considered the victim's conduct in prescribing different penal responses.

A review of prior scholarship indicates that many scholars have addressed the issue of the victim. For instance, Benjamin Mendelsohn, in the mid-twentieth century, classified victims and demonstrated that certain victims, through their specific behaviors, contribute to the occurrence of crime (Nadai, 2024: 34). Likewise, von Hentig's research highlighted the reciprocal relationship between the offender and the victim, presenting the victim not merely as a passive entity but as an active factor in the process of criminality (Mirkhalili, 2006: 363). In more recent works, Shahideh (2014) has emphasized the role of the victim in provoking or facilitating crimes against persons, showing that such behavior may result in significantly different penal outcomes in cases such as adultery-related killings or self-defense. Similarly, the Asia Foundation (2019), in its commentary on the Afghan Penal Code, scientifically examined the position of the victim in self-defense and other offenses. These works demonstrate that the present research lies within the broader discourse of victimology, yet specifically focuses on ta'zir crimes in Afghan law with a descriptive-analytical approach.

The value of this research lies in its effort to clarify the role of the victim in the process of committing ta'zir crimes, which constitute a substantial portion of criminal cases. In reality, an accurate understanding of the victim's share is significant not only for crime prevention but also for criminal policymaking, judicial proceedings, and the determination of punishment. The importance of this research becomes even more pronounced considering that many ta'zir crimes in Afghan society are rooted in cultural, social, and economic conditions, where victims may, directly or indirectly, contribute to their occurrence. The main objective of the research is to scientifically explain and analyze the role of the victim in the commission of ta'zir crimes and to examine the reflection of this role within Afghan criminal legislation. Alongside this general aim, subsidiary objectives include clarifying the role of the victim in crimes against persons (such as adultery-related killings or abortion), in crimes against property (such as fraud or failure to report theft), and in crimes against personal freedom and self-defense. Accordingly, the central research question is: To what extent does the victim play a role in the commission of ta'zir crimes, and how does this role affect penal responses and criminal policy? The research hypothesis is that the behavior, characteristics, and circumstances of the victim can facilitate the commission of ta'zir crimes, and in certain cases, the legislator, by considering this role, applies different penal responses not only toward the offender but also, in some instances, toward the victim.

The research method adopted is library-based, relying on legal, jurisprudential, and criminological sources. The type of research is Descriptive-analytical; in other words, it first describes the concepts, foundations, and examples of the victim's role, and then analyzes its effects and consequences in the Afghan legal system. The findings indicate that in many ta'zir crimes, the victim, through his or her actions and conduct, becomes a contributing factor to criminality. In adultery-related killings, the role of the wife's Infidelity and her partner; in criminal abortion, the consent or action of the mother; and in property-related crimes, the negligence or collusion of the owner, serve as illustrative examples. Moreover, in the sphere of self-defense, a victim who is himself the aggressor effectively contributes to the creation of a dangerous situation and, as such, receives less protection.

These results indicate that the perception of the victim must move beyond the traditional notion of a “mere sufferer” and instead recognize the victim as an active element in the process of criminality. In conclusion, the present research seeks to, through reliance on the principles of victimology and analysis of Afghan law, clarify the role of the victim in the commission of ta'zir crimes and highlight the necessity of reconsideration in criminal policy—a policy that, while protecting genuine victims, also attributes responsibility to those victims who directly or indirectly participate in the commission of crime.

1- The Victim (Majni 'Alayh) and Its Types

The term “victimology” and “victim (majni 'alayh)” was first introduced in 1947 by Benjamin Mendelsohn. Some criminologists define victimology as a method or a branch of knowledge aimed at studying the personality, physical and psychological traits, and the social and cultural characteristics of the victim, while examining his or her relationship with the offender and identifying the role of the victim in the commission of crime (Jose, n.d.: 78). One of the central pillars of victimology concerning the victim is the Examination of the causes and factors that lead to victimization and the role played by victims of crimes in reality. Today, the injured party of a crime is studied as one of the influential factors in the emergence of criminality. It is evident that the conduct and actions of the victim, whether directly or indirectly, can create criminal tendencies, stimulate motives, and facilitate the conditions for crime. Based on the findings of victimology, the victim of a crime—who was previously regarded as an innocent, blameless, and fully deserving of protection—can, through his or her social behavior and manner of interaction with others, inspire criminal thoughts and even provoke the commission of crime. Accordingly, scientific victimology may be defined as follows: “A branch of victimology that focuses on the study of the role and contribution of the victim in the commission of crime, examining the victim’s personality, psychological, social, and biological attributes, his or her relationship with the offender, and ultimately the victim’s share in the formation of the committed offense” (Shahideh, 2014: 25).

1-1- Victim

The term “Victim” in English corresponds to Majni-'Alieh in Persian, and in Arabic, terms such as Majni-'Alieh, Mutadar, Madhrur, and Dahiya are used. A victim is an individual against whom a crime has been committed. The victim is the person who has been subjected to a criminal act, suffering harm or injury to their life, property, reputation, dignity, or family, and experiencing material, physical, moral, or psychological damages. In other words, a victim is someone who suffers loss or injury as a result of a criminal event (Hussein & Hakimi, 2011: 108).

A victim is a person who directly or indirectly experiences material, moral, physical, or psychological harm from the occurrence of a crime. The victim is someone who, as a consequence of a criminal act, suffers moral, physical, material, or spiritual damage (Hussein & Hakimi, 2011: 110).

According to this definition, a person may be recognized as a victim or injured party during the stages of detection, preliminary investigation, or judicial proceedings. Material harm refers to the deprivation of a person from the use of their tangible assets due to the commission of a crime. Moral harm is the damage to one’s honor and reputation in society. Physical harm is the bodily injury or wounds inflicted on a person as a result of the crime. Spiritual harm indicates that the human dignity and status of a person are impaired because of the crime, causing suffering and distress to the injured individual.

To be recognized as a victim, the damage must have resulted directly from the criminal act. A victim is a person who has suffered physical, material, or moral harm as a consequence of a crime (Nadai, 2024: 16).

From Ezzat Fath's perspective, victims are those who, as a result of another person's act or omission, have been threatened, harmed, or lost. Harm may be inflicted by individuals or other structures and institutions in which people are involved. A victim is a person whose personal integrity has been violated and harmed by an external agent, identifiable both to the individual and to society (Abbasi, n.d.: 51).

1-2- Types of Victims

Criminologists, based on the degree of influence on the occurrence of a crime and the level of vulnerability, have classified victims into different types. Von Henting and Benjamin Mendelsohn categorized victims according to the extent of their involvement in the crime, which can be divided as follows: completely innocent victims, such as children; fully culpable victims, such as a person who attacks another and gets harmed in self-defense; or those who are harmed due to provocation or failure to protect themselves (Mirkhalili, 2006: 362).

1-2-1- Mendelsohn's Classification

Mendelsohn classified victims based on their responsibility, level of participation, and behavior. The first category is the innocent victim, such as children, the mentally ill, or those who have taken all protective measures but still suffer from the crime completely unexpectedly. The second category includes victims who have played a role in the crime, for example, someone who provokes an incident or crime, or who knowingly or unknowingly facilitates it, such as going to dangerous places. The third category is the criminal victim, a person who becomes a victim as a result of their own criminal act, such as a person committing suicide, who is both offender and victim (Nadaie, 2024: 34).

1-2-2- Von Henting's Classification

Von Henting, considering the relationship between the offender and the victim, divides them into three categories (Mirkhalili, 2006: 363). The first category is a person who is sequentially offender and victim: after committing the crime, the offender lives in a dangerous situation, constantly evading the police, feeling isolated from societal protection, and in some cases, even after serving punishment, remains at risk from accomplices or associates. The second category is an individual who is both offender and victim simultaneously, such as in suicide, where the person violates their own life, being both perpetrator and victim. The third category includes individuals whose behaviors unintentionally lead to becoming either an offender or a victim; this includes persons with psychological disorders.

Some criminologists further divide victims into the following categories:

1. Actual victim: a person who played no role in the occurrence of the crime and did not contribute to its commission; also called an innocent victim.
2. Culpable victim: a person who is primarily responsible for the harm inflicted upon themselves, such as a negligent driver who dies in an accident caused by their own carelessness.
3. Accomplice victim: individuals who create conditions facilitating the commission of the crime and, as a result of those circumstances, become victims themselves (Nadai, 2024: 34-35).

Victims, based on their role in the occurrence of the crime, can be divided into two major groups: the first group is completely innocent, including children, mentally ill individuals, and those who took all necessary precautions but still became victims by coincidence. The second group includes influential victims, who in some way participate in the crime, ranging from

negligence and provocation to acts in which they become victims through their own criminality (Bani, 2014: 419).

2- The Role of the Victim in the Commission of Ta'zir Crimes

The term Ta'zir originates from the root 'azar, meaning to prevent, restrain, or admonish (Mohaghegh Damad, 2011: 196). Ta'zir is a discretionary punishment imposed on the perpetrator of a prohibited act in cases where Hud, Qisas, Diyya, or Kafara have not been prescribed, or if prescribed, are not enforceable for specific reasons. Its purpose is to discipline the offender and prevent the recurrence of the crime. The type and severity of Ta'zir are not explicitly defined in Sharia and are therefore left to the discretion of the ruler or judge (Qazi, 1986: 279).

Accordingly, anyone who commits a sin for which a specific fixed punishment has not been prescribed is subject to Ta'zir. Examples include insulting someone or physically assaulting another person. In the context of Ta'zir punishments, no specific limitations are established, and the law only provides a general description of prohibited acts. Consequently, assessing the committed crime and determining the type and extent of the punishment depends on the discretion and judgment of the authority (Mohaghegh Damad, 2011: 207).

Article 2 of the Afghan Penal Code regarding the implementation of Hud states: "This law regulates crimes and Ta'zir punishments. Paragraph 2: The perpetrator of Hud, Qisas, and Diyya crimes shall be punished in accordance with the Hanafi jurisprudence of Islamic Sharia" (Afghan Penal Code, 2017: Article 2).

Certain legal provisions also refer to the role of the victim in the commission of Ta'zir crimes. From this perspective, the victim's role will be examined scientifically from the standpoint of victimology.

1-2- The Role of the Victim in Crimes Against Persons

In law, discretionary punishments (Ta'zir) are sometimes prescribed for perpetrators of crimes against the physical integrity of individuals. These punishments are applied in addition to Diyya, which is a personal right, and are enforced as a public right against the offender. Attention to the role of the victim in the commission of criminal acts can be observed in cases such as provocation or incitement of a husband in qatl-e-farash (killing in flagrante), the belief in the victim's madhar al-dam status, the unawareness of a pregnant woman in cases of abortion, and the actions or behavior of the victim provoking a reaction from the other party in self-defense, which results in harm to the victim (Shaheeda, 2014: 115).

1-1-2 The Role of the Victim in Qatl-e-Farash

Farash refers to a bed, nest, or place where people sleep (Rahimi Nia, 2004: 526). In qatl-e-farash, the killing involves an adulterous woman and an alien man caught in the act of adultery by her husband (Imani, 2003: 363).

The notion of killing in flagrante and permitting the killing of a woman committing adultery with a foreign man exists in ancient civilizations. According to the Assyrians, a husband had the absolute right to kill his wife caught in adultery. Similarly, in the Japanese Empire, a husband who observed his wife committing adultery could immediately kill both parties (Durant, 1988: 290, 292, 286, 323). In ancient Greece during the fifth century, direct retribution in specific cases was permissible; thus, a man observing illicit relations involving his wife, mother, lover, sister, or daughter could lawfully kill the offenders (Garo, 1984: 171).

The connection of qatl-e-farash with scientific victimology lies in the fact that if a husband observes his wife and an alien man in flagrante, he may even kill both, making their

victimization a result of their own role in committing the act. The legislator, considering their reprehensible Conduct, excludes them from protection and does not subject the offender to punitive consequences (Nadaie, 2024: 80).

2-1-2 The Role of Female Victims in Abortion

Abortion, or sacrifice of the fetus, has always been a matter of concern in societies, and its prevention and control are important issues. Abortion is classified into several types:

1. Natural or involuntary abortion;
2. Medical abortion;
3. Criminal abortion (Najabati, 2010: 147-149).

Criminal abortion is defined as the intentional termination of a pregnancy before the fetus is viable, or deliberately interrupting the natural course of pregnancy so that the fetus cannot survive (Goldouzian, 2004: 196). Since only criminal abortion is subject to legal protection, this type will be the focus. Criminal abortion is established under the following circumstances:

1. Expulsion of the fetal contents before the natural term by the mother through manipulation, ingestion of drugs, or intentional trauma (self-harm).
2. Manipulation of the uterus with abortifacient drugs by others.
3. Use of specific instruments by a physician, midwife, or unauthorized person to induce bleeding, terminate pregnancy, or disrupt gestation without legal authorization (Goudarzi & Kiani, 2001: 307).

Victimology teachings, taking into account the role of the victim in completing the victimization process, emphasize considering all root causes and factors affecting women's victimization and provide specific differentiated protection for vulnerable women. Some criminal abortions occur among women and girls outside the legal and religious frameworks, due to illicit relations, potentially leading to pregnancy and abortion (Nadaie, 2024: 81).

One category of victims, as identified by Mendelsohn, includes minimally culpable victims. A woman who deliberately undertakes measures that lead to an incomplete pregnancy and suffers the loss of her life as a result of ignorance or inexperience exemplifies this type of victim (Z. Lopez, 2009: 52).

Article 569 of the Afghan Penal Code stipulates: "A person who intentionally destroys the fetus of a pregnant woman or expels it before the natural term commits the crime of abortion." Paragraph 2 of this article states that if the Diyya conditions are not fulfilled or are nullified, the offender shall be punished according to this chapter (Afghan Penal Code, 2017: Articles 569(1) & 569(2)).

The question arises whether the mother can be punished as an accomplice for encouragement, facilitation, consent, or inducement. Article 572 of the Afghan Penal Code states: "If a pregnant woman, knowing the consequences, deliberately ingests drugs or uses other means herself, or permits another to do so, resulting in abortion, she shall be sentenced to short-term imprisonment or a fine of thirty to sixty thousand Afghanis" (Afghan Penal Code, 2017: Article 572).

Article 571 further provides that: "A person who deliberately causes abortion by providing drugs or using other means, even with the woman's consent, shall be sentenced to medium-term imprisonment" (Afghan Penal Code, 2017: Article 571).

Abortion may also occur to conceal a pregnancy from illicit relations or to preserve family honor, with circumstances such as provocation and facilitation contributing to its occurrence.

These women, in addition to being censured for illicit relations, may also facilitate their own victimization due to unhygienic medical practices, lack of facilities, or other medical violations. Moreover, women pregnant from illicit relations may avoid reporting these crimes out of fear of censure, dishonor, or social stigma and may resort to illegal abortion centers, increasing their prevalence. Given that official sources do not provide accurate statistics on illegal abortions, attention from authorities is necessary (Shaheeda, 2014: 133).

3-1-2 The Role of the Victim in Legitimate Defense

Humans generally do not submit passively to unlawful or illegitimate attacks and instead act to defend themselves. This tendency has existed throughout history. In Roman law, legitimate defense was not recognized as a crime, and Cicero considered it a principle of natural law. In early French law, under the influence of Christian thought, legitimate defense was accepted but with significant limitations. Similarly, in Islamic criminal law, legitimate defense is recognized under specific conditions, which have also been reflected in the Afghan Penal Code (Noorbaha, 2011: 258).

Legitimate defense is the right of every individual to protect their life, property, and honor—or that of another—in many circumstances. Exercising this right is permissible when society is unable to provide protection. Therefore, legitimate defense is considered an exceptional situation, subject to conditions that create mutual obligations for the defender. Equity and justice require that the defender be protected, and if in the process the attacker is harmed or the defender commits an act that would normally be criminal, the community and criminal justice system should not respond negatively. Consequently, the legislature has removed the criminal characterization from such acts (Nadaie, 2024: 83).

Potential offenders who intend to commit crimes against the life, property, honor, or liberty of individuals, and who, according to rational choice theory, select convenient and low-cost targets, may contribute to their own victimization through the victim's defensive actions.

Mendelsohn considers a person who attacks another, but is killed by the victim in legitimate defense, as a victim with full criminal responsibility (Z. Lopez, 2009: 53). In criminal law, if the defender's actions comply with statutory conditions, they do not constitute a crime, and the aggressor, who becomes the victim, receives less protection.

Accordingly, the Afghan Penal Code recognizes legitimate defense as a justification for crime. Article 118 provides: "A criminal act committed in the presence of any justification recognized as a ground for permissibility shall not constitute a criminal offense and shall not result in criminal liability" (Afghan Penal Code, 2017: Article 118). Various perspectives have been offered to justify the philosophy of legitimate defense, and specific conditions for its application will be studied.

1-3-1-2 Theoretical Basis of Legitimate Defense (Moral Compulsion)

Three main theories justify the legitimacy of defense: moral compulsion, exercise of a right and performance of duty, and social utility.

1. Moral Compulsion: According to this theory, the attacker's aggression destroys the defender's free will. Therefore, if the defender commits an offense against the attacker in this situation, causing their victimization, they are not punishable. Proponents argue that unlawful aggression negates free will, and the resulting offense occurs under the influence of instinctual survival impulses, compelling human action (Noorbaha, 2011: 259). However, this theory does not align fully with reality, as in many cases individuals act deliberately and with full will in self-defense.

2. Exercise of a Right and Performance of Duty: Some scholars justify legitimate defense based on natural law. Gaius and Wolf argue that the defense of life is a natural right, and when social protection is insufficient or unavailable, individuals are free to use personal means to safeguard their life. Defense in this context assumes the rights it seeks to protect. Therefore, if the right is a natural right, defense is also a natural right. Critics argue that this theory limits legitimate defense only to natural rights, while defense of non-natural rights, such as property, is also permissible (Baheri, 2005: 231).

3. Social Utility: Another justification is based on social benefit, asserting that defense carries social utility and society gains nothing by punishing a person acting in legitimate defense. Philosophically, legitimate defense is justified by preserving societal interests, allowing individuals to protect themselves and their honor when recourse to law enforcement is impossible. If the defender acts within statutory limits, they are exempt from punishment (Sanaei, 2003: 246).

4-1-2 Conditions for Legitimate Defense

Legislators have outlined conditions for legitimate defense, stating that if these conditions are met, the defender's act is stripped of criminal liability. Article 127 of the Afghan Penal Code provides: "The conditions of legitimate defense, as a justification and ground for permissibility of crime, are disciplined and precise. Absence of these conditions excludes the act from being considered legitimate defense" (Afghan Penal Code, 2017: Article 127). Paragraph 1 of Article 127 specifies these conditions.

Since legitimate defense inherently involves both attack and defense, the necessary conditions can be examined under two main categories.

1-4-1-2 Conditions Related to the Attack

An attack or threat that justifies legitimate defense must meet three conditions, all of which must be present:

1. The attack and threat must be unlawful and unjust: According to paragraph 1, subparagraph 1 of Article 127, for an act to qualify as legitimate defense, the attack must be illegal and unjust. If the act is lawful, legitimate defense cannot apply. For instance, lawful actions taken by law enforcement or security personnel do not justify legitimate defense. Article 131 of the Afghan Penal Code specifies that defense against actions of security personnel is not permissible unless they exceed their authority, causing imminent death or severe bodily harm based on reasonable evidence (Asia Foundation, 2019: Vol. 1, 351–373).

The attack must lack legal justification; if it is legally sanctioned, one cannot invoke legitimate defense. A question arises: if the attack occurs in circumstances where the attacker is exempt from punishment, is defending oneself by committing a criminal act considered a crime?

For example, if a husband finds his wife with a stranger in flagrante delicto and attacks to exercise his legal right, killing both, and one of them kills the husband in defense, is such defense legitimate? One legal scholar argues: although the attacker may be legally exempt from punishment, the act is unlawful and unjust, so self-defense is justified (Baheri, 2005: 332–333).

However, it can be counter-argued that the attack in this case has legal protection, as the law grants such rights to the husband; thus, it is not legitimate defense. Therefore, when an attack is lawful, even if the victim's actions scientifically provoke a defensive response, the legislator ignores the aggressor's influence to maintain public order and security, and does not support the defender (Nadai, 2024: 85).

2. The threat or attack must be actual or imminent: Legitimate defense is permissible only against an actual or imminent attack. Imminent attack means the attack has not yet occurred but is about to happen and is inevitable. Imminence must be established based on external, reasonable evidence. Accordingly, legitimate defense persists as long as the threat exists. Article 128 of the Afghan Penal Code states: “The right to legitimate defense continues as long as the threat exists and ends with its cessation” (Afghan Penal Code, 2017: Article 128). An actual attack begins when the assault is initiated, while imminent attack exists when the attack has not yet occurred but all conditions indicate it will soon occur, such as when an aggressor assumes an offensive posture with a weapon (Asia Foundation, 2019: 363–364).

3. The defender must not have deliberately caused the threat: The defender must not have intentionally created the danger. According to paragraph 6, subparagraph 1 of the same article, legitimate defense is applicable only if the defender did not deliberately provoke the threat. If the defender incited the aggressor or attacked first, they cannot invoke legitimate defense, as self-induced danger nullifies the justification (Nadaie, 2024: 85).

Individuals who facilitate a pre-criminal situation through their actions, provoking the aggressor, should not commit criminal acts under the guise of self-defense. For instance, women who provoke potential offenders or individuals who insult another person, leading to an aggressive response, and who then commit criminal acts such as homicide or assault in self-defense, may question whether they can rely on legitimate defense. Since one condition for legitimate defense is proportionality, it is generally permissible, but other conditions, such as necessity, must also be met; otherwise, the defender’s act retains criminal liability (Shahida, 2014: 149).

2-4-1-2 Conditions Required for Legitimate Defense

1. Defense must be the only means to avert the danger: Defense is legitimate only if it is the sole means of averting the threat. According to paragraph 5, subparagraph 2 of Article 127, if recourse to public officials is possible to repel the attack, defense is not justified. Article 130 of the Afghan Penal Code states: “If recourse to security personnel is possible to avert the danger, the right to legitimate defense does not exist.” Defense is recognized only when the threat cannot be otherwise averted, i.e., the attack is unavoidable. Assistance from authorities must be impossible; otherwise, legitimate defense is not applicable. The psychological or physical characteristics of the aggressor do not affect the defender’s right; even if the aggressor is a child or mentally ill, legitimate defense is permissible (Asia Foundation, 2019: 371).

2. Proportionality of defense to the threat: Defense must not exceed the threat. Paragraph 4, subparagraph 2 of Article 127 requires proportionality: the response must be equal to or less than the attack. While exact proportionality may be difficult to achieve, the principle is based on customary standards. For example, if an aggressor attacks without a weapon and the defender uses only non-lethal means, the defense is proportional. Excessive defense can incur criminal and civil liability. Article 132 notes that exceeding the limits of legitimate defense with good faith reduces punishment but remains unlawful. Punishment for exceeding legitimate defense is described in Article 130: “A person who, in good faith, exceeds the limits of legitimate defense, if the act constitutes a felony, it is reduced to a misdemeanor; if a misdemeanor, the penalty is mitigated accordingly” (Afghan Penal Code, 2017: Article 130).

Victims cannot react more harshly than the danger imposed by potential offenders. For example, a woman abused by her husband cannot kill him in self-defense (Nadaie, 2024: 88).

3. Defense must be concurrent with the attack: The right to defend ends with the cessation of the attack. The defender must act while under threat.

2-2 -The Role of the Victim in Crimes Against Property

Property and ownership are fundamental pillars of society and are thus protected by law to ensure that any infringement against them is met with an appropriate response. Since property can serve as a suitable target for potential offenders, who often act rationally and strategically, they are motivated to commit such crimes (Nadaie, 2024: 89).

The legislator, in addressing crimes against property, has implicitly or explicitly acknowledged aspects related to victimology. At times, the law considers the role of the victim as influential in crimes against property, a perspective that has persisted from early penal codes to the present. In some instances, the conduct of the property owner or possessor—through negligence, facilitation, collusion, or failure to observe legal safeguards—can not only reduce the punishment of the offender due to the absence of support for the victim, but also expose the victim to criminal liability. Examples include failing to report the transfer of property, or not notifying authorities about theft or loss of a motor vehicle or its license plate (Shahida, 2017: 149).

1-2-2 Failure to Report the Transfer of Property by the Victim

Unlike other property crimes, where property is typically taken without the owner's consent or knowledge, in fraud-related offenses the owner or possessor may voluntarily transfer their property to the offender, often motivated by the hope of significant benefits. These crimes, which require high intelligence, social standing, and persuasive ability, are often classified as "white-collar crimes" (Mir Muhammad Sadeqi, 2011: 25).

A person who, through the use of false names, titles, positions, misinformation about an event, or other deceitful means, induces another to transfer possession of money, property, or provide services or benefits to themselves or a third party, is punishable by medium-term imprisonment (Afghan Penal Code, 2017: Article 725, Paragraph 1).

In addition to fraud, the legislator has criminalized certain specific forms of fraudulent behavior, such as unauthorized transfer of another's property. In such crimes, the victim may, under specific conditions outlined by law, play a significant role in the commission of the offense. Early Afghan penal codes already reflected a subtle acknowledgment of victimology, considering the victim's role in facilitating the crime (Nadaie, 2024: 83).

Article 726 of the Afghan Penal Code states: "A person who, by deceit and with knowledge that they do not own or have the right to possess movable or immovable property, or acts despite prior possession or contractual rights, causing harm to another, shall be sentenced to medium-term imprisonment" (Afghan Penal Code, 2017: Article 726). The same article also addresses exploitation of the victim's incapacity: "A person who takes advantage of another's need, incompetence, or weakness, including minors over 18, by coercing signature on ownership documents, debt acknowledgments, commercial papers, or other positive documents, causing harm, shall be sentenced to medium-term imprisonment" (Afghan Penal Code, 2017: Article 726).

Through these provisions, the legislator acknowledges the victim's role and considers their being deceived as a form of facilitation in committing the crime, which may arise from collusion or prior relationships between the victim and the offender.

2-2-2 Failure to Report Theft of a Vehicle or License Plate by the Victim

If the victim fails to take necessary precautions, such as using alarms or securing potential targets to increase the psychological, physical, and legal costs of crime for offenders, and does not report the theft or loss of their vehicle or its license plate, they fail in their legal duty, facilitating the occurrence of the crime (Nadaie, 2024: 91).

According to Article 706 of the Afghan Penal Code: "A person who steals a vehicle license plate shall be sentenced to short-term imprisonment" (Afghan Penal Code, 2017: Article 706).

This highlights that the victim's proactive measures, or lack thereof, can directly influence both the likelihood of the crime and the degree of legal responsibility assigned.

Conclusion

The present study, focusing on the "Role of the Victim in the Commission of Punishable Offenses," demonstrates that a scientific analysis of crime cannot solely concentrate on the offender as the active element and principal actor; the position and role of the victim must also be considered. The findings indicate that in many offenses, the behavior, individual and social characteristics, and even specific circumstances of the victim can directly or indirectly influence the commission of the crime. For instance, in crimes against persons, such as adultery-related killings, the conduct of the spouse and the accomplice plays a decisive role in the occurrence of the offense, and the legislator has accordingly exempted the husband from criminal liability. Similarly, in offenses related to abortion, the consent or direct action of the mother may remove her from the status of a mere victim and transform her into an active participant in the offense. In crimes against property, victims may, through negligence, collusion, or facilitation, reveal their role in the perpetration of the offense. This indicates that a victim is not merely a defenseless party but may, in many instances, contribute to their victimization. This conclusion not only elucidates a scientific reality but also underscores the importance of victimology in shaping Afghanistan's criminal policy.

From a legal and jurisprudential perspective, it is also evident that the Afghan legislator, in certain cases, explicitly acknowledges the victim's role in the commission of the offense. In the provisions governing legitimate defense, an aggressor who has deliberately created a dangerous situation and is subsequently killed or injured is considered a victim; however, due to their active role in creating the situation, they are not entitled to full legal protection. This demonstrates that the legislator, in pursuit of criminal justice, does not grant complete protection to victims whose behavior has directly or indirectly contributed to the commission of the crime. In financial crimes such as fraud or deception, the victim's collusion or negligence may both facilitate the offense and mitigate the severity of the legislator's punitive response against the offender. Accordingly, the findings reveal that Afghanistan's criminal system, influenced by Islamic jurisprudential principles and victimological doctrines, establishes a balance between protecting genuine victims and holding accountable those victims who have themselves played a role in the offense. Such an approach not only ensures fairer administration of justice but may also enhance deterrence, as potential victims recognize that carelessness, provocation, or facilitation of criminal conditions may not only compromise their protective status but also impose civil or criminal liability upon them.

Ultimately, the results of this study clearly demonstrate that the role of the victim in the commission of punishable offenses is an undeniable reality, which cannot be overlooked in criminal policy or legislation. In many instances, the victim is not only the target of the crime but may also act as an unwitting or even conscious participant in the criminal process.

These findings highlight the need for a review of Afghanistan's criminal policies and a focused attention on scientific victimology. Absolute and unconditional protection of all victims is not only inconsistent with the principles of criminal justice but may also create opportunities for abuse and perpetuation of criminal behavior. Therefore, a distinction must be made between genuine victims and those who have, in some manner, contributed to the commission of the offense. Furthermore, the study indicates that addressing social, cultural, and legal education to raise public awareness and reduce victimization is of critical importance. The ultimate conclusion of this research is that studying the role of the victim in punishable offenses can assist policymakers in maintaining a balance between the rights of offenders and victims while developing effective strategies for crime prevention and the promotion of social justice.

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