



THE EFFECT OF INTENTION IN CRIMINAL CASES: A COMPARATIVE STUDY IN THE CONTEXT OF BROOM'S LEGAL MAXIMS AND JURISPRUDENCE RULES

¹DR. ZAINAB AMIN, ²DR. RASHIDA PARVEEN, ³DR. SAMINA BEGUM, ⁴SIDRA BEGUM, ⁵AMMARAKHANAM

¹Associate Prof. / Chairperson, Department of Islamic Studies Shaheed Benazir Bhutto Women University, Peshawar, Pakistan

Correspondence Author: (zainabrauf@sbbwu.edu.pk)

²Assistant Prof. /Head of Department of Islamic studies Women University Mardan, Pakistan
drrashidaisb@gmail.com

³Prof. Islamic Studies, Shaheed Benazir Bhutto Women University, Peshawar, Pakistan
saminaphd@hotmail.com

⁴(Ph.D. Research Scholar, Department of Islamic Studies Shaheed Benazir Bhutto Women University, Peshawar, Pakistan)

⁵Lecturer, The Institute of Legal studies (TILS)
ammara@tils.edu.pk

Abstract

The rules of jurisprudence and Broom legal maxims clarify the importance of intention in life. Since the action of intention is involved in all spheres of life, therefore, the jurists and Muhadithin of the Prophet ﷺ begin their books of jurisprudence and hadith with the words "Intentions and Deeds". Accordingly, in this article, the beginning of the maxim, the effect of the maxim of intent was chosen in criminal cases. There is no field of life which is not affected by intention, when any action is started or when any action is done, there is a good or bad intention behind it. And the intention affects the legal consequences of this action. In both Islamic jurisprudence and legal maxims, intention is important and most of the issues are guided by intention. In both the laws, any act has a legal effect when the intention behind the act is proved. And by changing the intention, the legal results also change.

Islamic jurisprudence and the Broom's Legal Maxims in general and in the criminal law in particular, there is a special arrangement for the prevention of all those sources that pave the way for the violation of personal or collective rights. The criminal law has formulated some rules of a special nature that play a key role in the protection of these rights. Among these basic legal principles and rules, one of the rules is related to "intent to affect", which is considered in both Islamic jurisprudence and Western laws, there is an important achievement. In this article, an attempt has been made to briefly but comprehensively discuss Broom's legal maxims and jurisprudential rules on intent in criminal law.

Keywords: Intention, Criminal Cases, Broom's Legal Maxims, Jurisprudence rules

1. INTRODUCTION

It is necessary for the action of a human being that it is issued by his intention and discretion. And the purpose for which the will is directed towards action is called intention. As if intention is the name of the thing that engages the will or in other words, it is the intention to attract another intention. For example, if a person shoots at another in order to shoot him and it hits him, it means that the shooter intended to shoot so that the bullet hit him. Intent is the act of committing a crime. Intention and intent together bring out the crime when the action is the result of the intention, so only the intent crime will not be punishable unless the act of intent is accompanied by the act of committing the crime, even if the said act is considered a crime according to the



text. Just as intention is effective in actions, in the same way intention is also effective in action. But the difference of this influence is shown by the condition of the intention in the act and the abandon the process. In the criminal texts, there was no such rule among the jurists on the basis of which the code of intent can be built. However, this is not true because every criminal rule of Islamic jurisprudence necessarily has a general text in its background. It provides material for its development and formation.

The jurists have stated the rule that after the beginning of the crime or the beginning of the crime, they do not consider the original punishment unless it is proven that the crime has been completed. Therefore, according to them, if the accused started the crime and left it unfinished without any external influence, then the criminal will not be considered guilty. Just as intention is effective in actions, in the same way intention is also effective in action. Just as intention is effective in actions, in the same way intention is also effective in action. But the difference of this effect is shown by the condition of the intention of the action and the leave the action.

Similarly the Legal Maxim's of Broom has stated the rule that a person is not liable for an act which was not done intentionally.

2. PROBLEM STATEMENT

In criminal cases, intention plays an important role and usually judicial decisions are made based on it. In this regard, Islamic jurists have mentioned permanent rules, but the practical application of these rules is rarely done in the prevailing law. The main reason is the ignorance of the present-day lawyers and judges about these rules. The rules regarding the intention were compiled by Islamic jurists long before Herbert Broom's legal maxims, but Broom's legal maxims have been widely accepted in Western law, but the Islamic jurists would have expanded these rules more than Broom's legal rules. But they have not been applied. This comparative study will help in understanding the compatibility and application of both the legal and Islamic Maxims.

3. HYPOTHESIS


In the field of philosophy of law and principles of law, what Herbert and his fellow philosophers of law did in the 19th century AD was accomplished by the great and famous experts of jurisprudence and law in the 8th century AD. It is as if the jurists of Islam had not only crossed this milestone a century earlier than Western experts in law and philosophy, but had established their position in the field of jurisprudence, law and principles of law. The application of jurisprudence rules proved to be helpful in solving contemporary judicial problems. In addition to Islamic jurisprudence, the sources for other laws include social customs and traditions, human values, traditions and legislative institutions, as well as the efforts of legal experts and nightly efforts, etc. On the contrary, the basic sources for Islamic jurisprudence are the Shari'ah texts, i.e. the Qur'an and the Sunnah, and the Muslim Ijtihad's of the jurists and experts of Islamic jurisprudence in the light of the principles provided by them.

It is possible that as a result of this comparative study, the application of these jurisprudential rules related to the effect of intention in criminal cases can be brought forward (Amin et al., 2023).

4. MAIN OBJECTIVES

The intention and purpose determine the rules and consequences of all actions and activities, therefore, in Islamic legislation, determining good intentions and correct intention before any action is very important. This research seeks to achieve the following objectives:

1. To Actions express intention' applied study
2. In Criminal cases, the effect of the basis of every order is the intention thereof has been explained.
3. To examined the occurrence of errors and mistakes in human intention

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4. To Criminal Intent Defined in the Light of Jurisprudence and the Broom's Legal Maxims
 5. To Specific and general intention were compared and ranked.
To the exception was pointed out that every crime has an element of criminal intent.
 6. The exception was pointed out that every crime has an element of criminal intent.

5. LITERATURE REVIEW

Articles and books chapters have been written on it from different angles, but no comparative study has been done in terms of the impact of intention:

Md. Sahin Miah's Article titled "**Criminal Intention and Motive in Criminal Law: A comparative approach**" The main purpose of this Research Paper is to clarify the concept of Criminal Law along with that the additional afford is to identify the different approaches of criminal Intention, Motive and Knowledge (Shahin, 2021) Len Chantry's Article Titled "**Intention and purpose in criminal law**", this article deals with the purpose of intention in crimes and it is made clear that the purpose of every act shall be shown (Chantry, 1991) R.A Duff, "**INTENTION, AGENCY AND CRIMINAL LIABILITY: Philosophy of Action and the Criminal Law**" In this chapter, the philosophy of action and intention in criminal law has been discussed and it has been stated that in criminal law intention and action together complete a crime. (Thornton & Duff, 1991)

Dr. Gerard Coffey "**Codifying the Meaning of 'Intention' in the Criminal Law**", In this Article discussed What constitutes an intention to commit a criminal offence has proven to be a notoriously difficult concept to define. The issue as to whether the accused intended the consequences of the prohibited act or omission constituting the criminal offence charged in the indictment is a question of fact for the jury to determine based on the evidence tendered at trial in addition to the trial judge's charge to the jury. In the absence of a clear statutory definition of intention in the criminal law it is imperative for trial judges to instruct juries in accordance with clear judicial guideline. (Coffey, 2009)

Jeremy Herder, "**Intention in the Criminal Law -A Rejoinder**" This article examines the criminal laws relating to intent. (Horder, 1995)

Similarly, there are more articles regarding intent in criminal cases. But in this, there is no article on legal rules and jurisprudential comparison regarding the intention of criminal cases. For example: Nicolukcey Article "**A Clear Concept of Intention: Elusive or Illusory?**" (Lacey, 1993), MS. SATINDER KAUR, "**Revisiting Intention and Motive in Criminal Law**". (Kaur, n.d.)

Luqman Zakariyah, Ph.D dissertation under the titled "**Applications of Legal Maxims in Islamic Criminal Law with Special Reference to Shari`ah Law in Northern Nigeria (1999-2007)**" It describes the application of this Islamic legal maxim in Nigerian courts, which is a very good effort (Zakariyah, 2015). Fariha Fatima, Dr Shahzadi Pakeeza, Article titled "**Application of Five Fundamental Islamic Legal Maxims (alqawa'id al-fiqhiyyah al-khams al-kubra) to Islamic Criminal Law**" (Pakeeza**, 2020). In this article, the application of the five basic rules of jurisprudence is presented, on which a lot of material is available, but no judicial precedents are mentioned.

From the obtained literature review, it is known that there has not been any sufficient research on this subject in terms of comparative study.

6. METHODOLOGY

The method used in this Research work is qualitative which includes both descriptive and prescriptive approaches. The research exposes how the Islamic legal maxim regarding intention had been applied in the past and to what extent are their values and importance to the Islamic jurists And Broome's legal maxim is somewhat consistent in this regard On this hypothesis,



theoretically, the research gives the account of the concept of the subject. It analyzes the legal maxim of intention and their relevance to the Islamic Criminal law. In illustrating the legal maxims treated in this Research work, the intention rules Islamic jurisprudence is adhered to.

7. DISCUSSION

7.1. LEGAL MAXIM “ ‘AL- UMÚ’R BE MAQASIDIH’A “ (الامور بمقاصدها) (ACTIONS ARE CONSIDERED TOGETHER WITH THEIR INTENTIONS)

Definition Maxims” ‘al- Umúr be Maqasidih’a” : ‘al- Umúr the plural form of ‘amr is takseer (A lot) and in the dictionary it means event, work and state etc. (Ibn Mandhur, 1988) According to al-Asfahani, the word ‘amr, encompasses both action and utterances as the Qur’an says: “ وَمَا أَمْرٌ فَرَعُونَ ” (Qur’an 11: 97, n.d.). Command of Pharaoh was not the right guide. In the Arabic language, ‘‘Amr” also means command, and it is not intended here, rather ‘‘Amr” refers to the action of the organs. This refers to his utterances and actions. (Isfahani, 1412Ah)

The second word is al-maqäsid plural of maqсад which literally means willing, the determination to do something for a purpose. (Ibn Mandhur, 1988). It is also synonymously used as “niyyah” (Ibn Faaris, 1987) The maxim simply means that rulings on matters, whether they are physical or verbal actions, shall be determined by the purpose for which they are carried out.

From the point of view of psychology, there are several levels of thought before preparing for a task and intending to take practical steps for it. There is no opportunity to elaborate on them, so we only describe the level of intent, as Jalal al-Din al-Suyuthas described five levels of intent to sin: Hajis (Obsession), Khatir, (Risk) Hadith al-Nafs, (self-talk Presentment) Hum (Anxiety), and Azm (intention). (Al-Suyuti, 1990)

The first thing that arises in the mind of the human soul is ‘‘Hajis”, then there is the level of ‘‘Khatir”, meaning the flow of intention in the heart, then ‘‘Hadith al-Nafs”, which means the urge to do something or not. Be diligent in doing. Then the level of “Hum” means giving preference to not doing the work and finally the level of “Azam” means making a firm intention of something and sticking to it.

Since “Hajis” and “Khatir” are not in the power of man, therefore they are not impeached. In the same way, there is no impeachment in “Hadith Nafs” because of the hadith: (In other words, Allah has forgiven the thoughts of my Ummah that arise in disputes). Similarly, there is no impeachment of a human even in the level of “we” in the hadith.: “ إنهم بالحسنة، يكتبون حسنة والهمم بالسئنة لا يكتبون سئنة” (Al-Suyuti, 1990) A good deed is written for a good thought and a sin is not written for a bad thought) It should be clear that this explanation is intended to be done about sins. The rest of the issues are simply their intention which cannot be grasped because they do not know about it.

Second, because the one who intends also cancels his intention. Therefore, the intention cannot be grasped at any level until the practical form appears. Since everything depends on the intention, as stated in the Hadith: Actions are but by intentions, and each man will have but that which he intended, as stated in Section 2 of Majla-ul-Ahkm al-Adliyyah, which states that the affairs are objectives. “In other words, matters are suspended on intentions (Majallah Al-Ahkam Al-‘Adliyah, 2011)

7.2. SOURCE OF THE MAXIM

This maxim is derived from this hadith: “ إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا الْكَلَامُ بِرِيئَانَتِهِ ” (Actions are (judged) by motives (niyyah), so each man will have what he intended. (Bukhārī, n.d.) There are also many verses of the Qur’an and the ‘Ahadith of the Prophet that emphasize sincerity in all Muslims’ endeavors, although



most of these refer to the reward for acts that are in accordance with sincere intention in the hereafter. (Qur'an 11: 97, n.d.)

This is not to say that the hadith is not useful in determining the punishment of a criminal act concordant with men's rears. On the contrary, the hadith has implications for any action devotional, social, political and commercial. This means that actions and dispositions are subject to human intention.

7.3. TERM MEANING OF THE MAXIM

The meaning of the above-mentioned rule is that the results and effects of human behavior and actions, whether they are related to words or actions, are related to the objectives that are present in the heart and mind of the person at the time of committing the action. And I agree', so the difference in the objectives implies the difference in the results of the said actions. (Aḥmad Zarqā', 1959)

Similarly, according to the definition given by Muhammad Sadiq al-Borno, the meaning of the mentioned rule is that the words or actions issued by a person must be compatible with the Shari'ah and legal provisions and the objectives of the issued words and actions, that is, the said person's intention and The actions and words that have been chosen for the purpose will be decided according to the intention and purpose of the Shari'ah and the law, and the results and fruits of the said action will be arranged accordingly, as if the results of the actions and words are their goals is on. (Al-Burnu, 1997)

8. EFFECT OF MAXIM INTENT IN JURISPRUDENCE AND LEGAL BASIS

It is an undisputed fact that the current system of jurisprudence has gone through evolutionary stages and reached perfection, which is the result of the efforts and efforts of Islamic jurists over the centuries, and these Maxims are the basis of jurisprudence.

The use of this maxim relates to matters where the legal ruling is based on both action and intention. Conversely, in the Islamic religious framework, there are rulings that can be established with only intention - such as having the inner intention of apostasy, or willingness to perform ritual duties. For instance, if someone died with the intention of apostasy, or failed to actually perform the ritual duties, he would be rewarded according to his or her intention, even if the intention is not overtly expresses. This, in fact, implies that intention can be considered without the involvement of action.

Any human action is done on the basis of intention or power, the force is directed towards the administrative action, it is called intention or intention. As if intention is the name of the things that is intended. For example, if a person fires a bullet at another so that it hits him and he is hit, it means that the shooter intended to shoot so that the bullet hits him.

In other words, the judgment that will be given about a work should be based on the purpose that was intended by this work. From the above example, it is clear that the legal consequences and provisions of people's actions and actions and their words and actions. It depends on the intention and intention of the person doing or saying. According to the intention and intention, the legal consequences of this speech or action will be determined and the jurisprudence rules will be applied to it. (Aḥmad Zarqā', 1959)

This maxim is one the basic general maxims agreed upon by Islamic scholars because of its consistency with, and relevance to, Islamic jurisprudence. It implies that any action, whether it is done physically or verbally, should be considered and judged according to the intentions of the



doer. In fact, the whole sphere of fiqh is concerned with the rules or judgment of matters, not its essence (Ahmad Zaraqā', 1959).

The appropriate interpretation of this maxim should therefore be that the rulings to be made for or against a case should be in conformity with the intention of the person concerned with the case

In Islamic Law, intention is an important criterion for determining whether or not a criminal act is punishable or pardonable, or whether the punishment for such a crime is predetermined - Had - or discretionary - ta`zir. No criminal can be found guilty until his intention in committing the crime has been considered. The same is true of Western criminal procedure as the use of men's rea (mental element) alone is not sufficient to establish the guilt of the accused person if it is not accompanied by actus reus (physical element) (Mahmassani, n.d.) According to the Law: "It is the intention and the act must both concur to constitute the crime", (Turner, 1964)

Some actions do not have legal effect until the intent and intention behind these actions is traced. This is the reason that the law is concerned with the motives and factors behind these types of actions and it spends all its knowledge on finding out the intentions, goals and intentions of the person who performs the said actions. After gaining access, he pronounces judgments based on them and arranges the consequences and legal effects of actions according to them.

The application of the mentioned method of the law is usually more in the criminal or criminal law, because there, without knowing the reason of the act as well as the intention of the person who acts, it is difficult and difficult to reach the facts. In order to solve the matter in the right way, Haddak tries to provide justice to the affected party by passing himself through these patient stages, which is actually a very delicate and difficult process because the intention and intention is an inner thing which Access I can be helpful. And when any such legal act comes to the fore, from which the intention of the person who acts can be known, the law issues a ruling and decision of the said act in the context of this intention, and according to this intention, the results and legal effects of human actions are arranged.

As per the legal maxim " Things are determined according to the intended objectives. Herbert Broom in his book *Broom's Legal Maxims* states the Latin Maxims: "**ACTA EXTEIORA INDICANT INTERIORA SECRETA**" Eng.: Acts indicate the intention (BROOM, 1874).

That is, (human) actions are a manifestation of the intention, or that actions indicate the intention, or that the intention of a person can be known from the actions, that with what intention he is doing such and such action or action?. It means that the law determines someone's intention on the basis of their action. So, if a person goes to a place for an apparently legitimate work and there he gets involved in a criminal activity instead of this legitimate work, then in the eyes of the law, it is as if he has committed that crime. He had entered this place with intention, because a criminal must make some plan before committing a crime. Based on this, it makes him a criminal and, ignoring his legitimate and legal work, arrests him for his illegal act.

Broom has presented an example to explain the mentioned principle: The law in some cases, judges of a man's previous intentions by his subsequent acts; and, on this principle, it was decided in a well-known case, that if a man abuse an authority given him by the law, he becomes a trespasser ab initio, but that, where he abuses an authority given him by the party, he shall not be a trespasser ab initio. (BROOM, 1874)

As stated, by looking at the objectives, the rules of actions and actions and the Shari'a and legal consequences and effects of them are determined. This is the reason why all actions in general and in criminal matters in particular, the intention and purpose are given the first importance. Because the correctness of the intention and purpose requires the correctness of the action, while on the



contrary, as a result of the wrongness of the intention and purpose, wrong actions are born, which become the cause of Shari'a and legal arrest. However, in most cases, or as a fundamental principle, the essence of intention is ostensibly effective when it is coupled with action. Fundamentally there is no effect (in worldly matters) on intention devoid of act. (Al-Sarakhasi, 1986)

This is because the intention is not being overtly expressed or physically executed and is applicable only to mundane matters. Thus, if an action is coupled with intention, that act will be judged according to the intention. From the Islamic theological point of view, if someone has the intention of apostasy, it is believed that such a person has become apostate. But even then, there is no worldly punishment for him since he did not utter the statement or act upon it.

8.1. CORRELATION BETWEEN INTENTION AND ACTION IN ISLAMIC AND BROOM'S LEGAL MAXIM CRIMINAL LAW

Intent is the act of committing a crime. Intention and intent together bring out the crime when the action is the result of the intention, so only the intent crime will not be punishable unless the act of intent is accompanied by the act of committing the crime. According to this, the murder cannot be declared as premeditated murder when the act of murder does not include the intention of the killer. Therefore, if the killing was committed unintentionally, then the killing will be due to wrongdoing, but the killing will be due to retribution. (Ibn Nujaym, 1996) Ibn Najim has explained the rule that even after the beginning of the crime or the beginning of the crime, it is not considered as the actual punishment unless it is proven that the crime has been completed. Therefore, according to them, if the accused started the crime and left it unfinished without any external influence, then the criminal will not be considered guilty (Ibn Nujaym, 1996)

The intention of the defendant in a murder case, for example, must concur with the act that constitutes the crime in question before he can be convicted of murder. There are two important conditions in considering the concurrence of men's *rea* and *cactus rues*. Firstly, the intent must have driven the act. For instance, if A intended to kill B by gun and locked him (B) in a stuffy room, while he went to fetch the gun, but then before A returns, B dies, it cannot be said that a causal relationship exists between A's intention and B's death. The death of B does not concur with the intent of A, but from his recklessness or negligence. As such, A will rather be liable for manslaughter. Secondly, if the act's *rues* is a continuing act, it is enough that the men's *rea* exists during its continuance, although not necessarily at the accomplishment of the act's *rues*. For example, if A intended to kill B by inducing him with poison, but B did not die immediately from the poison and was rushed to hospital only to arrive and found no space for admission, and then died after a while from the poison. It can be said that although, the poison did not kill him instantly, it is the act's *rues* which caused the death. (226928674.Pdf, n.d.)

In the criminal texts, there was no such rule among the jurists on the basis of which the code of intent can be built. However, this is not true because every criminal rule of Islamic jurisprudence necessarily has a general text in its background. It provides material for its development and formation. In this regard, there is this verse in the jurisprudential rule of law: "ولا تقربوا الزنا". That is, do not go near adultery. This means that all those actions which lead to committing adultery as a case should be avoided. While every prohibition is permissible only when there is no text on its limitation. As if adultery is a permanent punishable offense and the initiation or trial of adultery without completion is punishable by adultery.

Just as intention is effective in actions, in the same way intention is also effective in action. But the difference of this effect is shown by the condition of the intention in the action and to leave action.



Ibn Najaim has stated the rule: “حرم ما فعله حرم طلبه” (Ibn Nujaym, 1996). In other words, every act which is forbidden to be committed is also forbidden to ask for it. There are two parts to this rule: the subject verb and the subject verb. According to the rule, both are forbidden. It is not beyond understanding that every request is preceded by a cry. Or every action is completed as a result of the request. Therefore, if the text is limited to the intent of the demand, then it will be exempt from legal effect. But if he incites the armed forces and the armed forces to move, then that intention will be considered a crime. Just as the desire for adultery in the heart is a reprehensible thought, but it is not derived from it.

When under this law, taking a woman by force with the intention of committing adultery, or wearing a veil with the intention of stealing, or tying someone with the intention of murder, or coming to the city by binding her with the intention of robbing them, then it will be a criminal offense or a premeditated crime, when the said crimes have not been brought to completion. Because what will be prohibited. So, in any case, its demand will also be prohibited. In this regard, Ibn Najaim has mentioned this rule: “حرم اخذهم حرم اعطاءه”. It means that what is forbidden to take is also forbidden to give.

Just as the act of taking and giving the forbidden is forbidden, so the ruling of taking and giving away the forbidden is also forbidden, because neither the act of haram is permissible, nor the ruling of haram is equal in both of them. Therefore, bribery means the wealth which is given to someone for a good purpose. Just as it is forbidden to take it and give it to someone, in the same way it is forbidden to give it to someone. These types of financial crimes are common in state institutions, where corrupt officials force superiors to accept bribes or make them do office work that is prohibited by state and institutional protocols. Similarly, if the death of someone else's land has been registered in his name in the court of law and the proof is marked before the death, then this initiation will be the first stage of the crime of possession of property or the intention of possession of property against crime and is not conceivable. In the said civil case, both the government officials and the bribe giver are guilty. If an act of crime is not done intentionally, there can be no impeachment. And in the same way, if a person uses his right to harm someone else instead of the intended purpose of it, then such use of the right is “taasaf” which is forbidden and its prohibition is obligatory. When a person intends to achieve an illegitimate purpose by using his right, which is not compatible with the purpose of the right, but an illegitimate purpose is hidden behind the legitimate use of the right, such as marrying a polygamist with this intention. It becomes lawful for her first husband when it is not intended to be a permanent marriage or to make the contract of sale a source of interest, as is the case in the case of sale.

Broom (1882) writes the following about Intention: “(Lt) CTUS NON FACIT REUM NISI MENS SIT REA (Eng) The act itself does not make a man guilty unless Ms Intention was so (BROOM, 1874). That is, a person is not impeached for an act that was not done intentionally. This problem is based on the criminal law and in the civil law, the issues are related to reparation and defamation and it is based on justice.

It has been interpreted in the western law that a person cannot be guilty until his desire is not accompanied by the nature of the act, Must be proven. But it is possible that the evidence of intention is manifest acts, because it is presumed in law that every person knew the consequences of his actions, for example, if an accused set fire to a place with the intention of causing damage or theft. If the charge is made, unless the intent to cause harm is known by setting the fire, For example, in the case of murder, it is not necessary that the accused does not have any enmity with the victim, nor can the accused be acquitted of impeachment on the basis that he has no enmity. But it must be proved that the killing was without any reasonable reason (BROOM, 1874).

Under these principles, it is clear that bad intention can turn any action into a crime at any time; however, sometimes presumption can be used to find out the intention, through which the crime



can be detected. Regarding presumption, Broome has written this Maxim: (Lt) **Res Ipsa Loquitur**.... (Eng) Things speak of themselves. (BROOM, 1874)

It means that things speak for themselves. Therefore, sitting on the road is permissible, but if the act of sitting is combined with the time and manner of movement and the nature of the weapon, then these things speak for themselves that the reason for the rule is. And even though this rule is apparently permissible, it is a crime from within. Therefore, according to the law, the intent to commit a mere misdemeanor is not a crime unless some intermediate actions turn it into a crime. And these kinds of actions are immediate and actions between intention and crime do not turn it into a crime. And these types of actions are immediate and intentional crimes are committed. In this sense, the causes of remote times cannot be accepted as beginnings or beginnings. Therefore, what involves intention can be immediately accepted, and in addition, the intention towards ancient times cannot be accepted as the cause. Between the final and the initial stages of the action, there is also a connecting element that connects the intention and the action and thus leads to the crime. Under expediency, Broome has stated the general rule that acts and intentions constitute a crime.

Ibn Nujaym has explained the interrelationship between intention and action as follows:

“القصد هو الإرادة المتوجهة إلى الفعل” (Ibn Nujaym, 1996) It means intention is the name of the will towards the action, therefore, after the intention and before the completion of the crime, starting from the middle stage, it will be punished according to the crime. According to western jurists, in the context of the formation of action and intent crime, the components of the guilty mind or at least the accused's intent are used behind every crime, as Broome has written, "A guilty mind is an essential ingredient of crime." (BROOM, 1874)

Just like the western philosophy of law, according to the Islamic philosophy of law, every intellectual claim or hidden matter cannot remain hidden in the case of its incumbent, or at least cannot hinder the emergence of its results by remaining hidden, that the law reveals the secret with the help of this representative. The maxim of Broome speak for themselves: “دلالة الشيء في الأمور الباطنية بقول” (Majallah Al-Ahkam Al-‘Adliyah, 2011) If the things that refer to internal affairs are its standing position, then both will definitely be included. Dropping a sack full of sugar on someone near the broom indicates intent to kill, the sack speaks for itself. According to the jurists, dropping a heavy stone on a person's head, or hitting him on the head with a heavy stick, or using a different instrument against someone speaks of intentional murder. In this regard, it is worthy of consideration in literature and law to take something as oral evidence. Intention or intention is not an act itself, but is directed towards action and is an element associated with action, as explained by Ibn Najaim. Therefore, the intention is not derived from them, but the action is derived after the intention.

Broome has expressed this interpretation: The will is not a deed unless there be some external act which shows that progress has been made in the directions of it. (BROOM, 1874) That is, the intention or desire of the heart cannot be considered as a self-action unless someone proves its progress towards the external action. According to this rule, the accused will be made guilty of a particular crime if it is proved that he initially committed an act which was considered as a stage of the relevant crime, then it must be said that the purpose of this initial act is to commit It was a crime. Therefore, it is said in Broome's commentary: the accused must have done an act which is a step toward the commission of that specific crime, and the doing of such act can have no other purpose than the commission of that specific crime. (BROOM, 1874)

That is, if the accused is found to have committed an act which is considered to be a step towards a specific crime and the purpose of committing this act is not visible other than a specific crime,



then it will be said that the criminal started this act. It has been found to do so. According to Broom, it is not unfair to make the crime proved punishable in the above mentioned manner.

In the same way, the Egyptian Criminal Code, Section 45, states that:” To start (Punishment according to) in fact, the intent to commit an act is to start. Even if the beginning of the action has been stopped due to the presence of other external factors without the intention of the subject or has reduced its effect. (‘Oudah, n.d.)

According to Broom, if the accused has started an act and the master has left it incomplete or his act has been useless, even then he will be the perpetrator of the crime and liable to punishment. Therefore, if he put his hand in someone’s pocket, but because the pocket was empty, he came out empty-handed, even then he would be guilty of robbery and he would be punished as a preliminary crime (BROOM, 1874). However, under the mentioned section of the Egyptian law, if the accused only put his hand on top of the pocket with the intention of stealing and did not enter the pocket, then he will not be held guilty of the beginning of the theft: The action of the person who intentionally touched the pocket of a person from the outside will not be presumed unless it is proved that the pocket was touched from the inside. (‘Oudah, n.d.)

In this regard, Broom writes “Our law, moreover, will sometimes, with a view to determining the intention, couple together two acts which have been separated the one from the other by an appreciable interval of time, and ascribe to the latter of these acts that character and quality which undeniably attached and was ascribable to the earlier; and the doctrine of relation is also occasionally brought into play with a view to determining the degree of guilt of an offender. Thus A. whilst engaged in the prosecution of some felonious act, undesignedly causes the death of B. ; in strictness A. may be convicted of murder, the felonious purpose conjoined with the homicide being held to fill out the legal conception of that crime” (BROOM, 1874)

In principle, the proximate intention of the jurists will be trusted when its consequences are directed towards the action, as it is clear from the definition of Ibn Najaym. In this regard, in the above-mentioned example of theft and murder, the intention of the perpetrator was not towards the act of murder, but towards the act of theft. Therefore, he would not be considered guilty of murder to begin with. The same intention or beginning is attributed to two crimes at the same time, then the criminal confesses the intention of both crimes or shows his intention or intention to commit both crimes. Therefore, drawing the same intention or the beginning of two crimes is against the rule of Ibn Najaym, and according to Broome’s rule, the intention and the act together constitutes the crime (Ibn Nujaym, 1996)

Therefore, the initiation will be attributed only to a crime that for the completion of the crime, there must be an act after the intention. In this regard, Section No. 511 of the Pakistan Penal Code, 1860/2006 regarding the initiation of crimes It has been said that:

“Intention is the direction of conduct toward the object chosen upon considering the motives which suggest the choice. But the law does not take notice of an intention without an act. Mere intention to commit an offence, not followed by an act can not constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress had been made in the direction of it”

Exactly the same interpretation that has been passed has also been given by Ibn Najaim. In this context, Islamic criminal law expert Dr Abdul Qadir Ouda has written that this type of term of punishment based on initiation is not found among the ancient jurists. Rather, the terms of complete crime and incomplete crime are used near them. Their immediate beginning is not taken as part of any crime, but as a future crime. Therefore, if a crime becomes a prelude to a major crime in its quality and content, then it will not be a beginning but a permanent crime. And if a major crime is committed as a result of this, then the minor crime will be dissolved into the major



crime and will lead to the specified punishment. Therefore, every incomplete crime is punishable until proof of its completeness is provided. Therefore, in this regard, if the thief returns by merely committing adultery, he will be considered to have committed an incomplete crime instead of an initial crime. This rule will be applicable in other crimes as well. (‘Oudah, n.d.)

In this way, there is no difference in the basic concept of initial crime and incomplete crime. If incomplete crime is taken as a case of complete crime, then the viewpoint of jurists and commentators of statutory laws will be based on the "initial theory". It means that every criminal case is prohibited like the original crime, even if the punishment is not fixed for it. For example, taking a knife with the intention of stealing and picking up a sword with the intention of murder is incomplete robbery and murder according to the jurists, and according to the established laws, the beginning of robbery and the beginning of murder are considered, and as it is said in the jurisprudence that if an action is prohibited by itself, then its beginning and end will also be prohibited. Or his request will be prohibited.

Therefore, this rule of Ibn Najaim: every work which is prohibited to be done will also be prohibited to ask for it. However, under some existing laws, initial attempts towards small crimes or remote causes related to a major crime cannot be accepted as the beginning of that crime. Except that immediate causes can be initiated. Broom wrote: "We don't think that all acts towards the committing a misdemeanor are indictable.... Act remotely leading towards the commission of the offence are not be considered as attempt to commit it, but acts immediately connected with it are" (BROOM, 1874)

This is not the case according to the jurists, because the complete crime is related to the original crime as a remote cause and constitutes the complete crime. That is, if Islamic criminal law maintains the concept of the beginning of the crime, according to the jurists, the act or cause of the past tense can be considered as the beginning of the crime of the present tense. For example, according to the jurists, if a sharp blow is inflicted on the accused, then the accused will not be beaten again and his body will not be recovered until the injured person is found. Therefore, after some time, if the wound worsens and the injured person dies as a result of it, then the murder will be presumed, even though the cause of death, i.e. the blow, is remote in terms of its occurrence, and if the victim recovers after the blow, then in this case I will imagine the perpetrator of the crime of cross-examination. This means that the Islamic law considers the criminal causes as far as possible, while Western laws consider far causes ineffective.

This criminal concept is reinforced by the jurisprudence rule which states: "العارض كالمقترن بأصل السبب قبل حصول المقصود" (Kitab Mousaa al-Qawaid nd) That is, every new event will be considered to be related to the original cause unless the purpose of the cause is fulfilled. In this case, cross-examination is the purpose of attaining the goal. Therefore, if the death of the injured person occurs before the end of the examination, then the death will be considered as adjunct to the examination. And if, after cross-examination, the disappearance is realized, then the original cause of the disappearance of the dispute will remain within its scope and a separate rule will be applied to it according to the rule.

8.2. CONTRADICTION BETWEEN INTENTION AND ACTION

According to the relevant provisions of the Islamic Criminal Law, it is not necessary that every crime has a criminal beginning. These types of cases are more common in homicide or cross-examination cases. For example, if a shooter shoots a target and it hits a person, then according to the Islamic law, this type of crime will not be considered as murder.

Basically, an action, whether physical or verbal, is enough to reach a verdict in criminal cases as explained above, as opposed to an act of devotion in which the action is of no consequence unless



it is coupled with intention. However, before mere action can be used as the basis of a verdict in a criminal act, such an action should have a degree of clarity and coherence so as to leave no doubt that it is intended by the perpetrator. For example, if someone tied another and then knifed him - and his action cannot be attributed to any external force such as legal impediments, insanity or coercion - it is sufficient to take that action as deliberate murder. Or if a person falls under the vehicle and dies, then the driver will not be initially at fault. Because shooting and driving are not prohibited as actions themselves. On the previous line, reference has been made to the crime of intention with action, while the case under discussion, i.e. murder, appears to be in conflict with the fact that the combination of intention and action is necessary for the formation of a crime, while here it is an intention without investigation. A crime is considered to constitute a crime.

It should be noted that in the first mentioned case, murder means deliberate killing, which results in the death penalty, while in the second case, that is, a crime without intention and without initiation or murder without intention and without initiation, the murderer is not punished physically, but in the form of death. . And this includes the community even though they were not involved in the shooting.

There are cases however, where contradiction exists between what could be the intent of the perpetrator and his action. For example, if a parent struck his child with a stick - which normally does not lead to death - and the child eventually died, the action of the parent cannot be said to have been intentional murder since the tool in use does not ordinarily cause death. Convicting the parent without considering the intention would amount to injustice. Thus, it is necessary to investigate the intention in any such case Contradiction between Intention and Action.

In this case, the term of incomplete crime and complete crime of the jurists seems to be effective. Instead of the actual punishment of Qissas, it requires financial punishment in the form of money. Before this, it has been explained that from the point of view of Shari'ah, the intention and intent of the crime cannot be interpreted as the beginning or the beginning of the crime, because the intention, the intention and the thought. All the three elements are not covered by Sharia law

Under the Islamic criminal law, preparation for a crime and the initiation stage are not crimes. Unless this type of preparation is prohibited by itself, then it will be regarded as a sin, like buying narcotic drugs to intoxicate a person so that his pocket is cut by intoxicating him. Here, the purchase of drugs is not punishable as theft, but it is punishable in the sense that the purchase, sale and transportation of drugs as such is prohibited. Now, if the purchase of drugs is not prohibited under the existing laws, then under them, this type of action will be interpreted as theft. But the suspicion will also arise that it is possible that the purpose of the accused by buying drugs is not to commit a crime, and then the initial sentence will also be suspended. While in Islamic criminal law, if buying drugs itself is a crime, then as a permanent crime, it will be higher than the punishment of abortion on suspicion

Broom's maxim in this regard: (Lt) "IN MALEFICIIS VOLUNTAS SPECTATUR NON EXITUS" Eng: In criminal acts the Intention is to be sought or examined rather than the result. In these various approaches the law starts from the principle (that) the finding of criminal intent or an element of the crime is essential for criminal liability, in these various ways the law, starting from the idea that a MENS REA or element of moral guilt is a necessary foundation of criminal liability (Chesney, Concept of Mens Rea in the Criminal Law, 644 - Google Search, n.d.)

In section 68 of Majlata-ul-Ahkam-ul-Adliyyah, it is stated in these words: "In matters not visible an inference of a thing has validity: that you judge by the appearance where it is difficult to ascertain fact" In other words, an argument based on the truth of an object from among the internal affairs will be the representative of the said object, so everything that is difficult to understand the truth will be judged on the basis of its external state.



While explaining and interpreting the rule, Broom started with a famous case of Western laws known as "The Six carpenter's case", which is summarized that in some cases, the law of human beings is antecedent or previous to human rights, preserves the judgment of present or past actions and actions, keeping in mind the intention. In this regard Broom expressed: "The law in some cases, judges of a man's previous intentions by his subsequent acts". (BROOM, 1874)

Broom provides further detail: "In the law the immediate, not the remote, cause of any event is regarded".

There are factors that render action inconsistent with intention, and in effect, a verdict may not be reached because of these factors. Some of these factors will be discussed here: namely, jahl (ignorance); Ikräh (coercion); nisyän (forgetfulness); and siglhar (puberty) It is not possible to explain them in detail here, there is a lot of material on this in jurisprudential literature.

9. CONCLUSION

From the above-mentioned rules of Islamic jurisprudence and Western law expert critic Herbert Broom regarding intention, it can be inferred that intention is of some importance in both laws. The application of intention in Islamic jurisprudence is very broad, which includes religious matters, so we discussed the role of intention in religious matters without mentioning only criminal matters, so that the applications of intention in crimes in both laws. A comparative review of different aspects can be done. There are discussions on the effect of expression and intention. Should effect be given to the intention of the locutor or the explicit form of the expression? To decide that, the rights of one against who the crime is committed must be established. If the right involved is God's right, then the effect may be given to the intention of the speaker but if the right involved is of human, then the explicit expression will be considered especially where the expression is demanded before the court of law. There is no crime without intent; it is called complete crime when there is a criminal mind or intention behind it. In some cases where it could be very difficult to establish criminal intention, but where there are clues to suggest the involvement of the accused person in the alleged crime, the stand of Islam is to avert the punishment when there is any iota of doubt.

Broom's legal maxims and rules of jurisprudence are consistent in the rules of intention, but there is a difference in application, as if this article has been shortened. Therefore, it was not possible to describe the detailed court decisions here. Intentions are the intention of the heart and it is impossible to know the intention of someone's heart, but action is the manifestation of the intention, so good or bad intention can be judged by looking at the way of any crime or action. And by looking at the action, legal conclusions are drawn.

In Islamic and Western law, any crime is seen in different ways. Since the intent and the act constitute any crime, there are two types of crime:

- ✓ The first is that the intention is a crime and the act is also a crime, murder is an example of this.
- ✓ Second, if the intent is to commit a crime, but the act of committing a crime is not committed, it is to make an unsuccessful attempt to kill.
- ✓ Thirdly, if the act of crime is committed, but the intention of the crime is not fulfilled, murder is an example of involuntary manslaughter..
- ✓ The Maxims regarding intention are found in jurisprudence in absolute generality, while in Broom Legal Maxims there are specifics related to a few cases. Since the jurisprudence maxims are applicable to their related matters as well as to other matters, so the jurisprudence rules are extensive in this regard. For example, these rules are applied in worship, ethics, civil matters, criminal matters. While Broom's legal maxims apply to their

subject matter and its details. Also, Fiqh rules are the predecessors of all these legal rules and therefore Fiqh rules have priority.

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