Examining the Criminological Foundations of Intentional Crimes in the Criminal Law of Iran and Canada

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Abstract

Intentional crimes occur in two forms: intentional crimes against life, which result in the death of the victim, and intentional crimes below the threshold of life, which cause harm to a body part of the victim. The occurrence of crimes in societies fundamentally depends on the presence of underlying factors that facilitate criminal behavior. Therefore, the judicial system must identify the root causes of crime and take appropriate measures to address them. One of the significant causes of criminal behavior is the mental health issues of the perpetrator. Under Iranian law, an intentional crime is an offense committed by an adult, sane, and voluntary individual. The legislator has explicitly defined the concept of intent in the relevant provisions (Articles 289 and beyond) of the Islamic Penal Code, enacted in 2013, to determine the classification of intentional crimes. In Canadian law, under Section 229(a)(ii) of the Criminal Code, an intentional crime is defined as the deliberate intent to harm another person, with the perpetrator being aware that such actions are likely to result in death and displaying reckless disregard as to whether their actions lead to the killing of another human being. In intentional crimes against physical integrity, where direct harm is inflicted on individuals, the criminal lawsuit holds a private nature. In Iranian law, the primary punishment for intentional crimes is retribution (Qisas), whereas in Canada, which follows the common law system, life imprisonment is considered the principal punishment for such offenses. The research method employed in this article is descriptive and analytical. This study seeks to answer the question: What are the criminological foundations of intentional crimes in the criminal law of Iran and Canada? The objective of this research is to determine the criminological foundations of intentional crimes in the criminal law systems of Iran and Canada.

Keywords: Criminology, Intentional Crime, Iranian Codified Legal System, Canadian Common Law System

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1. Introduction

Given that the foundation and philosophy of punishment for intentional crimes can guide us toward either humane and reparable punishments or harsh and irreparable punishments in cases of judicial error, the underlying approach becomes crucial. If the sole purpose of punishing intentional crimes is the satisfaction of the victim, then the punishment will be fixed and severe. However, if the purpose is to deter criminals, prevent crimes, or rehabilitate and treat offenders, then the punishment will be variable and reparable. Therefore, it is essential to determine the criminological foundations of punitive policies in Iran and Canada. In Iran, if two close friends engage in a sudden altercation and one pulls out a knife to intimidate the other, inadvertently causing their death, the perpetrator will be sentenced to retribution (Qisas). However, in Canada, because the killing was not premeditated, the offender would be sentenced to indefinite life imprisonment, with the possibility of parole after 12 years.

Crimes occur in any society when the fundamental social and structural conditions that enable crime exist. Thus, the judicial system must identify and address the root causes of crime. Understanding the causes of crime is crucial, as the imposition of punishment alone does not necessarily lead to crime reduction (Roozbeh, 2018: 97). One of the significant causes of crime is the mental health issues of the offender. In intentional crimes that threaten bodily integrity, the direct harm inflicted on individuals makes such offenses inherently private in nature. The primary punishment for intentional crimes in Iranian law is Qisas. Given this reality, some scholars do not recognize an independent right of society in the punishment of crimes (Akrami & Heydari, 2021).

Iran's criminal justice system has sought to implement innovative transformations in the application of modern criminological teachings, categorizing offenders with a focus on minimizing material and social costs associated with imprisonment while promoting the rehabilitation and reintegration of offenders. However, alongside its functionalist nature, this transformation faces challenges such as populist penal policies and security-oriented interpretations of risk assessment criteria (Davoudi Salestani & Hashemi, 2019).

In Canada, a study conducted by the Canadian police on the risk factors associated with Indigenous offenders revealed that the causes of crime are linked to existing conditions in families, communities, and society, which may increase the presence of crime or fear of crime in a given community. Community risk factors include cultural norms supporting violence, social disorganization, and negative media influences. Family and peer-related risk factors include crime in the neighborhood, inadequate services, concentrated poverty, poor housing, neglect, negative parenting, weak peer influences, and parental criminality. Individual risk factors include behavioral issues, poor education, poor mental health, prior criminal behavior, and racism. These risk factors are multidimensional, overlapping with each other, and are particularly applicable to Indigenous populations. Additional environmental risk factors must also be considered, such as limited access to services, social isolation, and the effects of assimilation policies, which have all been identified as specific risk factors for Indigenous people (Meilleur & Torigian, 2022).

Due to the predominance of retributive thinking and the privatization of criminal justice in Canada, offenders from economically disadvantaged and racialized communities have been largely deprived of the benefits of imprisonment-reduction policies (Davoudi Salestani & Hashemi, 2019).

In 2023, the crime rate reported by Canadian police increased by 3% compared to the previous year. While the Violent Crime Severity Index (CSI) remained unchanged in 2023, primarily due to a decline in more severe crimes such as homicide, the overall rate of violent crime in Canada increased by 4%. Comprehensive data on the characteristics of homicide victims and accused individuals have been collected. A survey conducted in 1961 provided insights into the onset of homicides, and in 1974, extensive research was conducted on all incidents leading to homicide and infanticide ("Police-reported crime statistics in Canada, 2023," 2024).

The central question of this article is: What are the criminological foundations of intentional crimes in the criminal law of Iran and Canada? Ultimately, by comparing the legal systems of Iran and Canada, what are the legal gaps in Iranian law?

The hypothesis of this study is as follows:

1. It appears that the criminological foundations of intentional crimes in Iranian criminal law are based on retribution, victim satisfaction, and general and specific deterrence to prevent crime.

2. Additionally, the criminological foundations of intentional crimes in Canadian criminal law are based on general and specific deterrence and the rehabilitation and treatment of offenders. Finally, it seems that the strengths of Iran's punitive policies regarding intentional crimes lie in ensuring victim satisfaction, while the strengths of Canada's approach lie in its differential treatment of premeditated and non-premeditated intentional crimes and its capacity for judicial error correction.

2. Conceptual Explanation and Typology of Intentional Crime

2.1. Criminology

Criminology is a branch of empirical criminal sciences in which punishment is the main subject of study. The formation of this discipline dates back to the classical and positivist schools of thought. Initially, criminology focused on the examination of prison sentences and their effective implementation, which was essentially the science of prison administration. Over time, the scope of criminology expanded. Today, criminological studies, in conjunction with other fields such as criminal psychology, have introduced effective and innovative sentencing methods into criminal law. However, since the implementation of these methods is often economically inefficient and time-consuming, governments have been reluctant to adopt them.

In modern governance, states are increasingly delegating some of their responsibilities to the private sector to enhance efficiency. In this context, the state's primary duty is to ensure the security of its citizens, while crime is portrayed as an unlawful phenomenon that disrupts public safety. Consequently, the most effective way to counteract crime is through punitive measures, particularly by imposing harsh and decisive punishments. Such strict enforcement of penalties reassures citizens that the government is vigilant in protecting them. Thus, political transformations and the rise of penal populism, along with criminological and economic factors, have contributed to the evolution of criminology, leading to the emergence of modern criminology (Reeve, 2024).

2.2. Intentional Crime

The term *jinayah* is derived from the Arabic root *jani*, which linguistically means "to reap" or "to pluck." In Islamic jurisprudence, *jinayah* refers to a crime that results in both worldly punishment and divine retribution. Some linguists consider the first meaning to be its literal sense, while the second usage is regarded as metaphorical (Raghib Isfahani, 1991). The term *'amd* in Arabic means intentionality, referring to an act performed with prior intent and purpose. The phrase *jinayatu al-murtakabah 'amdan* signifies that the crime was committed with premeditation (Azarnoush et al., 2009).

The phrase *'amda ila al-rajul* signifies that the perpetrator had the deliberate intent to commit the act. When an action is described as intentional, it indicates that it was committed with intent rather than by mistake (Ma'loof, 2000: 529). The term *ta'ammud* also denotes intentionality, as reflected in verse 93 of *Surah An-Nisa* in the Quran, which states: *"Whoever intentionally kills a believer, his punishment is Hell, where he will abide eternally. Allah will be angry with him, curse him, and prepare for him a severe punishment."*

In Islam, human life is accorded a sacred status, a level of importance that is often not observed in other religious or political systems. Intentional crime, particularly premeditated murder, is considered a grave sin, and its prohibition is repeatedly emphasized in the Quran. For example, *Surah Al-Ma'idah*, verse 32 states: *"We decreed for the Children of Israel that whoever kills a person unjustly, it is as if he has killed all of humanity. And whoever saves a life, it is as if he has saved all of humanity."* Neither the Islamic Penal Code nor classical Islamic legal texts provide a singular definition of crime, although multiple definitions exist within Islamic jurisprudence and among scholars of criminal law.

In some Islamic legal sources, the term *jinayat* replaces the title *Qisas and Diyat*. However, in certain texts, Qisas (retribution) and Diyat (compensatory payments) are treated as separate sections, while in others, Diyat is categorized under an independent legal heading. The scope of *Qisas and Diyat* encompasses crimes committed against human life and bodily integrity. Islamic jurists generally adhere to traditional jurisprudential definitions of crime. Dr. Mohammad Hadi Sadeghi, in addition to the classical definition, describes crimes against bodily integrity as criminal offenses under statutory law, even in cases where the victim is no longer alive. The term *jinayah* broadly refers to any offense that harms life or physical integrity and where intent plays a crucial role. Consequently, offenses such as theft do not fall within this category, and similarly, acts

committed purely by mistake cannot be classified as crimes. There is a logical relationship between intentional crime and negligence, which can be described as a partial overlap in their legal implications (Sadeghi, 2022).

In specific criminal laws, each crime is distinctly defined along with its constitutive elements and conditions. This approach differentiates various offenses from one another (Sadeghi, 2022). Crimes are categorized based on their impact, and those affecting human life and physical integrity are classified as crimes against persons.

According to Article 206 of the Islamic Penal Code (2013), intentional crime is defined as follows:

a) Cases where the perpetrator commits an act with the intent to kill a specific individual or an unspecified person from a group, regardless of whether the act is inherently lethal or not, provided that it results in death.

b) Cases where the perpetrator intentionally carries out an act that is inherently lethal, even if there was no specific intent to kill.

c) Cases where the perpetrator has no intention to kill, and the act itself is not inherently lethal, but due to the victim's condition (such as illness, old age, physical weakness, or infancy), the act is deemed fatal, and the perpetrator is aware of this fact (Article 206, Islamic Penal Code, 2013).

2.3. Typology of Intentional Crime

For an offense to be classified as an intentional crime, the perpetrator must have both *mens rea* (criminal intent) and *actus reus* (a criminal act). If either element is absent, the offense is not considered intentional (Mir Mohammad Sadeghi, 2015: 104). Intentional crimes fall under crimes against humanity and can be divided into two categories:

2.3.1. Intentional Crime Against Life

The Islamic Penal Code provides characteristics of intentional crimes but does not offer a comprehensive definition to prevent legal ambiguities. Article 290 outlines the attributes and examples of intentional crimes. It consists of four clauses and two notes specifying the conditions and requirements of intent. One of the definitions of intentional murder states: *"Intentional murder is the deliberate deprivation of the life of a living person by another without legal authorization."*

2.3.2. Intentional Crime Below the Threshold of Life

The legislator defines bodily harm crimes in Article 387 as offenses involving harm less severe than homicide. Physical injuries involve amputation, disfigurement, loss of function of an organ, or other bodily harm. The criteria for intentionality in non-lethal crimes mirror those for premeditated murder, with the primary difference being the prescribed punishment. According to Article 386, intentional crimes against body parts are punishable by Qisas (retribution), subject to the request of the victim or their guardian and the fulfillment of conditions specified in Article 290 regarding the establishment of intent.

3. Perspectives of Criminal Schools on the Motivation for Committing Intentional Crime

Following the expansion and influence of philosophical thought in the 18th century, the prevailing principles of criminal law underwent a significant transformation and revolution. As a result, new ideas emerged in criminal law during this period. The publication of Montesquieu's *The Spirit of Laws* in 1748 and Beccaria's *On Crimes and Punishments* in 1764, along with contributions from scholars such as Bentham, Rossi, and others, stimulated public discourse. These intellectual developments opposed the medieval legal system and ultimately paved the way for criminal justice based on balance, equality, utility, and, most importantly, the principle of legality in crimes and punishments. Instead of harsh punishments driven by retribution, more moderate penalties were proposed.

This intellectual movement did not stop there. Rapid social and economic changes in modern Europe, coupled with a continuous rise in crime and a sharp increase in recidivism rates, necessitated a complete departure from the previous approach to criminal law. Unlike classical criminal law, which focused solely on the crime and its punishment, the new school of thought introduced crime prevention and the study of the offender's personality as fundamental considerations. A new chapter in

criminal jurisprudence was thus opened, shifting the focus from punishment to understanding the accused's character and motivations before imposing sanctions (Pradel, 2023).

3.1. Classical School

The classical school, which began with Montesquieu's *The Spirit of Laws* in 1748 and Beccaria's *On Crimes and Punishments* in 1764, concluded with the publication of Lombroso's *The Criminal Man* in 1876. Many scholars played a crucial role during this period, as their ideas continue to influence legal systems today. The classical theorists upheld two fundamental principles inherited from their predecessors without question. The first principle asserts that all individuals, except for the insane and children, have free will and can choose between good and evil. The second principle holds that abuse of this freedom warrants punishment, which must be proportional and effective in combating crime (Pradel, 2023). This school of thought is based on the concept of free will and maintains that society has the right to punish offenders. Punishment serves to preserve social order and is considered both useful and necessary. However, society can only impose punishments that are proportionate to both justice and utility. This notion is encapsulated in the famous maxim: *Punishment should be neither more nor less than what justice and utility demand* (Lazerge, 2022). The classical school, however, largely disregards humanistic and social criteria related to criminal acts, offender personality, and victim characteristics, focusing solely on the constituent elements of the crime and the conditions of its punishment.

3.2. Neoclassical School

Unlike the classical school, neoclassical theorists reject the direct link between responsibility and punishment. In other words, the imposition of punishment is no longer tied strictly to responsibility but is instead subject to the principle of individualization. The crime itself is punishable, but the offender's personal circumstances determine the appropriate measures to be taken. Responsibility serves as the foundation of punishment, while individualization dictates its application. Neoclassical theorists recognize the necessity for judges to have access to an offender's personality file when making sentencing decisions. This approach acknowledges that the motivation behind a crime should be considered in both the commission of the act and the determination of punishment. Iranian legislators, influenced by both Islamic jurisprudence and Western legal thought, have incorporated the concept of motivation as a factor in both criminal liability and sentencing.

3.3. Positivist School

Advocates of the positivist school argue that the primary threat to society is not the criminal act itself but rather the offender's criminal personality. Since motivation is one of the key determinants of criminal personality, it should not be ignored in assessing criminal responsibility. One proponent of this school writes that criminal responsibility requires two conditions: first, the offender's dangerous state, which is determined based on their motivation and objectives; and second, the necessity of punishment (Mohseni, 2017). The positivist school thus recommends adding motivation as an additional element to the traditional components of criminal intent—awareness, will, and purpose. According to Enrico Ferri, *lack of motivation* is one of the defining characteristics of intentional crime. Mere intent to commit a prohibited act is insufficient for establishing criminal intent; the offender's underlying motivation must also be considered. Since motivation is the driving force behind criminal intent, it significantly influences whether punishment should be imposed or mitigated. However, this idea has not been fully embraced by legal systems following the positivist school, as it could lead to subjective interpretations of crime based on personal motivations, undermining the social and objective foundations of criminal law. Most legislators following the neoclassical tradition continue to define intentional crimes based on the presence of both intent and criminal purpose (Mohseni, 2017).

3.4. Modern Social Defense School

The fundamental principle of the modern social defense school is that criminal justice should focus on rehabilitating and reintegrating offenders rather than merely punishing them. The goal is no longer to neutralize the offender but to protect society

through social reintegration. Criminal laws should guarantee respect for human rights, while principles such as liberty and the rule of law must be upheld. Social defense is inherently scientific, relying on empirical observation of criminals and the causes of crime, rather than metaphysical assumptions. Concepts such as free will and inherent evil are avoided. However, criminal justice must align with social conscience and appeal to individuals' moral responsibility. If traditional punitive systems are to be abandoned, they must be replaced with mechanisms that restore the offender's sense of responsibility (Pradel, 2023). The modern social defense school supports the individualization of social measures, arguing that criminal trials should comprehensively assess the offender's personality and apply appropriate social reactions. Since motivation plays a key role in determining an offender's character, courts should prioritize the analysis of motivation. Motivation is the underlying force that drives criminal intent and, consequently, the commission of a criminal act. Just as motivation reflects the offender's personality, the resulting criminal act also reflects their disposition.

3.5. Islamic Criminal Law

Islamic criminal jurisprudence acknowledges that *motivation* plays a significant role in certain cases, particularly in justifications such as self-defense. However, these cases are exceptions validated by textual evidence from religious traditions. In instances where no explicit religious or legal text exists, Islamic law does not recognize motivation as a factor that alters the nature of the crime. Motivation is not considered a mitigating factor in the determination of criminal liability. Instead, Islamic law distinguishes between *legitimate and lawful motivation* and *honorable or moral motivation*. Legitimate motivations may exempt an offender from punishment, such as in cases of self-defense. However, there is no evidence to suggest that honorable motivations can reduce criminal liability or mitigate punishment.

3.6. Italian Doctrines

The Italian positivist school of criminology placed special emphasis on the role of motivation in criminal behavior. Enrico Ferri, a prominent advocate of this school, identified motivation as a fundamental element in the principles of Italian positivism concerning criminal responsibility. He emphasized that regardless of the nature of human will, every human action is ultimately the result of motivations that influence an individual's conscience at a given moment. He argued that the moral value of all human actions is entirely dependent on the motivations that initially drove them. Consequently, motivations serve as an internal measure for determining the ethical value and significance of an act.

Ferri established a qualitative distinction between different types of motivations, categorizing them as either social or antisocial. According to him, social motivations are those that receive political approval, whereas antisocial motivations are essential elements in the formation of natural crime. Based on Ferri's theory, three key elements must be present to establish social criminal responsibility:

1. Will, defined as intent or proximity to achieving an objective.
2. Harm or injury.
3. Unlawful motivation.

Ferri believed that, without articulating his theory in a sufficiently systematic manner, an offender's psychological opposition to the rules of criminal law was a fundamental component of crime—more significant than mere intent to achieve a specific result. His theory on deliberate antisocial behavior provoked considerable reactions at the time. Over time, there has been a shift toward personalizing previously established legal definitions of unlawful acts.

Manzini, a legal scholar associated with the eclectic school of criminal law, emphasized that when an individual commits a crime, identifying their motivation is not particularly important. He argued that the execution of a criminal act itself is sufficient evidence of the perpetrator's criminal intent. He viewed this as an act of rebellion against social order. However, this perspective has been criticized as flawed. Manzini's theory rests on two main arguments:

- First, he claimed that examining motivation in criminal cases is practically impossible.
- Second, he argued that such an analysis would impose legal obligations that even moral philosophy does not require.

Both of these assertions have been challenged. Although all elements of a crime are nuanced concepts and not all of them may be immediately evident, they are nonetheless subject to legal examination. Determining motivation is a complex but essential process. Historically, legal systems have recognized the importance of motivation, particularly in cases where

establishing criminal liability depends on the presence of specific mental elements. Over time, motivation has become a relevant factor in classifying crimes, as well as in determining aggravating or mitigating circumstances.

Contrary to Manzini's claim that morality does not necessitate an inquiry into motivation, ethical reasoning suggests that different motivations imbue actions with varying moral qualities. While Manzini acknowledged the role of motivation in moral responsibility, he argued that motivations merely awaken an individual's will, which then leads to moral accountability. Given this reality, motivation cannot be disregarded in the study of criminal behavior (Bahrami, 2021).

3.7. Anglo-American Doctrines

The Anglo-American legal system, rooted in common law traditions, incorporates principles that are often overlooked in comparative legal studies. These doctrines enable English-speaking countries to systematically define fundamental legal concepts. In common law systems, judicial decisions not only derive from legal principles but also influence subsequent rulings.

Both Anglo-American judicial doctrines and legal precedents recognize two fundamental elements of crime:

1. *Actus reus* (the physical element).
2. *Mens rea* (the mental element).

However, an ongoing debate exists regarding the relationship between motivation and intent. Specifically, what role does motivation play in common law systems?

3.7.1. Austin's Perspective

Austin distinguished between motivation and intent. He argued that motivations are the origins of actions, and these actions, in turn, generate further motivations. Intent, on the other hand, arises from awareness—where intent represents the goal of an action, motivation serves as its source. From a psychological standpoint, motivation is a desire that precedes will, which is then followed by voluntary action. A primary motivation gives rise to an immediate motivation, which in turn leads to the formation of will.

According to Austin, the law does not consider motivation when determining criminal liability. For this reason, he criticized the common law definition of murder, arguing that common law fails to distinguish between *malicious motive* and *criminal intent* (Bahrami, 2021).

3.7.2. Hall's Perspective

Hall conducted an in-depth analysis of this subject. He explicitly differentiated motivation from intent, describing motivation as *the reason or basis for all observable behaviors.* From Hall's perspective, motivation is intrinsic to the individual, whereas intent is distinct from the person. Accordingly, motivation is a psychological factor that does not directly influence the commission of a crime, except in cases where judicial discretion allows for its consideration.

Hall asserted that while motivations cannot determine the existence of criminal liability, they can be used to assess the degree of culpability. However, he rejected the notion that motivation could override the principle of fault, as he did not consider motivation a primary causal factor in crime. Ultimately, he concluded that there is no direct relationship between motivation and the mental element of a crime (Bahrami, 2021).

This view has been criticized as flawed. Firstly, motivation can have a positive correlation with criminal behavior, meaning that for criminal intent to materialize, motivations must accompany intent. Secondly, motivation can have a mitigating effect on criminal liability, as certain motivations—especially those deemed socially acceptable—can, when combined with specific objective factors, lead to the decriminalization of an act.

3.8. Theory of Will in Committing Intentional Crime

The will to commit a crime refers to the desire to engage in a criminal act. It results from a cognitive and motivational interaction that is deeply embedded in the human psyche, manifesting as an individual's inclination to commit either ordinary

or criminal acts. In other words, the tendency to commit a crime is a psychological process driven by internal or external impulses, which, when influenced by rational and cognitive faculties, guide an individual toward specific actions.

Understanding this psychological characteristic—the force that compels an individual to act or refrain from acting—is essential. Whether in its basic form, such as hunger, thirst, anxiety, and fear, or in its more advanced manifestations, such as perceptions of justice, morality, or social duty, motivation plays a critical role. Motivation determines behavioral tendencies, but identifying the nature of human will and its impact on criminal behavior is inherently challenging due to its internal and unobservable nature.

This difficulty has long intrigued human thought. A fundamental question that arises for every individual is whether their conscious actions are shaped by developmental and external influences. Social, cultural, and economic factors ultimately determine the degree to which an action is voluntary or compelled (Bahrami, 2021).

3.9. Theory of Free Will and Choice

Supporters of the classical school of criminal law, drawing from Jean-Jacques Rousseau's social contract theory, define criminal responsibility in terms of a violation of the social contract. Rousseau argued that all human beings are created free and equal, inherently possessing complete freedom. However, because humans are dependent on each other to fulfill their needs, they must rationally choose to coexist within a structured society.

Living in a community necessitates that individuals relinquish some of their freedoms for the collective good, allowing society to maintain order and security. In this framework, society enforces laws, and individuals are expected to abide by them. Since humans are rational beings with the ability to deliberate and make choices, they must accept the consequences of their actions. Under this theory, if a member of society commits a crime, the state has the right to intervene and impose punishment (Aliabadi, 2013).

One criticism of the theory of free will and choice, as espoused by the classical school, is that its exclusive focus on human freedom and decision-making overlooks the impact of external factors. The realities of social life, environmental influences, and developmental conditions that shape human behavior are largely ignored. Although experience has shown that all individuals in society are influenced by social and environmental factors to varying degrees, the classical school did not adequately consider these aspects.

4. The Status of Intentional Crime in the Legal Systems of Iran and Canada

4.1. Elements of Intentional Crime in the Iranian Legal System

The elements of intentional crime include the legal, material, and mental (psychological) components, each of which will be discussed in the following sections.

4.1.1. The Legal Element of Intentional Crime

According to the Islamic Penal Code, homicide is categorized into intentional, quasi-intentional, and pure mistake killings. Article 290 of the Islamic Penal Code defines intentional crime under the following circumstances:

- When the perpetrator commits an act intending to inflict harm on a specific person or persons or on an unspecified individual within a group, and the intended crime or its equivalent occurs, regardless of whether the committed act is inherently capable of causing such a crime.
- When the perpetrator deliberately performs an act that is inherently capable of causing harm or its equivalent, even if they do not intend to commit the crime, but they are aware that the act is inherently harmful.
- When the perpetrator does not intend to commit the crime or its equivalent, and the act itself is not inherently harmful to an average person. However, due to the victim's condition—such as illness, weakness, old age, or other circumstances—or due to special environmental or temporal conditions, the act becomes inherently harmful, provided that the perpetrator is aware of these exceptional circumstances.

- When the perpetrator intends to inflict harm or its equivalent without specifying an individual or group as the target, and the crime occurs as intended. An example is planting a bomb in a public place.

Note 1: In the second scenario above, if the perpetrator's unawareness and lack of intention cannot be proven, the crime is considered intentional unless the harm results solely from the sensitivity of the affected area, which is not commonly recognized. In such cases, the perpetrator's awareness must be established; otherwise, the crime is not considered intentional.

Note 2: In the third scenario above, the perpetrator's awareness of the victim's specific conditions must be proven; otherwise, the crime is not considered intentional.

Intentional homicide occurs when the perpetrator specifically aims to kill the victim. Even when the act itself is not inherently lethal, but given the victim's condition—such as old age, disability, or infancy—it has the potential to cause death, the perpetrator is considered guilty of intentional murder.

Under Article 291 of the Islamic Penal Code, a crime is deemed quasi-intentional under the following circumstances:

- When the perpetrator intends to commit an act against the victim but does not intend the resulting harm, and the act does not fall within the definition of intentional crimes.
- When the perpetrator is ignorant of the nature of their action, such as committing an offense under the mistaken belief that they are acting upon an object, an animal, or a person covered under Article 302 of the Islamic Penal Code, but later discovering the error.
- When the crime occurs due to the perpetrator's negligence, provided that it does not meet the definition of an intentional crime.

Under Article 292 of the Islamic Penal Code, a crime is considered a pure mistake under the following circumstances:

- When it occurs during sleep, unconsciousness, or similar conditions.
- When it is committed by a minor or an individual who is legally insane.
- When the perpetrator neither intends to harm the victim nor intends the act itself, such as firing a bullet for hunting purposes, which unintentionally hits a person.

Note: In cases under the first and third categories, if the perpetrator is aware that their action is inherently capable of causing harm to another person, the crime is considered intentional. In such cases, the perpetrator did not intend to kill a specific person, but the victim was inadvertently placed in the path of death. An example of a pure mistake killing is a stray bullet unintentionally hitting a person. Another form of homicide, known as "lust murder," occurs when the act of killing results from the perpetrator's sexual assault on the victim. Lust murder is more common among male offenders and serial killers.

Furthermore, under Article 293 of the Islamic Penal Code, "If a person commits an intentional crime, but the consequences of their act exceed their original intent, and the resulting crime does not meet the definition of an intentional crime, the lesser crime is considered intentional, while the greater crime is deemed quasi-intentional." For example, if an offender cuts off a person's finger, and this leads to the amputation of their hand or their death, the cutting of the finger is considered intentional, whereas the amputation or death is classified as quasi-intentional.

According to Article 295 of the Islamic Penal Code, if a person neglects an act that they were obligated to perform or fails to fulfill a legal duty, resulting in a crime, they are held responsible, provided that they had the ability to act. The resulting crime is classified as intentional, quasi-intentional, or a pure mistake depending on the circumstances. An example includes a mother or a nurse who neglects to feed a child in their care, leading to the child's death, or a doctor or nurse who fails to fulfill their legal duty.

Under the principle of legality in crimes and punishments, the legal basis for intentional homicide is outlined in Article 205 and subsequent provisions of the Islamic Penal Code. These articles detail the punishments for intentional murder. The primary punishment for intentional homicide is *Qisas* (retribution). However, if the victim's family forgives the perpetrator or *Qisas* is not carried out for any other reason, the offender is subject to *Tazir* (discretionary punishment). The severity of punishment for quasi-intentional and pure mistake killings depends on the degree of the offense.

4.1.2. The Legal Element of Intentional Crime in Canadian Law

The legal element of intentional crime under Canadian law includes the following provisions:

- Section 21(2) of the Canadian Criminal Code states that when two or more individuals collaborate with a shared intention to commit an unlawful act and assist each other in its execution, and one of them commits a crime in furtherance of that act, each individual who knew or should have known that a crime could result is considered a party to the offense. This provision applies to armed robbery cases where the likelihood of homicide exists, making all participants culpable.
- Section 17 of the Canadian Criminal Code pertains to crimes where an individual directly engages in their commission.
- Section 464 of the Canadian Criminal Code states that anyone who counsels another person to commit an indictable offense, even if the offense is not committed, is guilty of an indictable offense and is subject to the same punishment as an attempt to commit that offense.
- Section 268 of the Canadian Criminal Code classifies an act as "aggravated assault" when a person wounds, maims, disfigures, or endangers the life of another. The term "assault" is defined in Section 265, which states that an individual commits assault when they apply force to another person, directly or indirectly, without consent. In cases under this provision, if the complainant initially consented to the force due to coercion, deception, threats, or fear of force, such consent is deemed invalid.
- Section 180 of the Canadian Criminal Code states that anyone who, through unlawful acts or neglect of legal duties, endangers public health, safety, or welfare, or causes bodily harm to another person, commits the offense of public nuisance.
- Section 229 of the Canadian Criminal Code, which will be discussed in the section on the mental element of crime, further defines intentional crimes.

This comparison illustrates the fundamental differences between the Iranian and Canadian legal systems in defining and categorizing intentional crimes, particularly in terms of the legal requirements for establishing criminal responsibility.

4.1.3. The Material Element

It is evident that the material element of a crime consists of various components, and the realization of criminal intent requires knowledge and awareness of these components. This means that when an offender, with full awareness of the criminal phenomenon, directs their will toward committing the act, their criminal intent is established. For example, in a shooting that results in homicide, the establishment of intent concerning the killing depends on whether the perpetrator's action (pulling the trigger) was voluntary and whether they were aware of all components of the material element, such as the act of shooting, the existence of a living human being, and the occurrence of death. The material element of homicide can be analyzed through the following aspects:

The subject of the crime must be a human being—a living person who is protected under the law and not considered *Mahdūr al-Dam* (a person whose killing is not punishable under Islamic law). If someone kills an individual classified as *Mahdūr al-Dam*, the act constitutes homicide in a literal sense but not in its legal definition. Intentional homicide is punishable by *Qisas* (retribution) only if the victim is legally protected from being killed (*Mahqūn al-Dam*). If the victim is deemed justifiably subject to killing, the perpetrator must prove this claim in court. Furthermore, any harm inflicted on a deceased person does not qualify as homicide but constitutes an offense against a corpse.

A key legal issue is determining when human life begins and ends. In homicide cases, the standard for defining life is birth—beginning at birth and ending with natural death. As a result, terminating a fetus does not legally constitute homicide. Similarly, if someone places an individual in a condition of irreversible death, they are guilty of committing a crime against a corpse rather than homicide. According to the *Law on Organ Transplantation from Deceased Patients or Patients with Confirmed Brain Death*, enacted in 2000, brain death is considered the end of life.

Regarding the perpetrator, homicide must be committed by a human being against another human. If a dog kills a person, or if someone commits suicide, it does not constitute homicide. As a result, the victim must be someone other than the perpetrator. Suicide and assisting suicide are not classified as crimes except in specific cases, as aiding and abetting a non-criminal act is not itself a crime. However, if the assisting party is deemed to have played a decisive role in the act, they may be held criminally responsible for homicide. This applies in cases where the person committing suicide is a minor, an incapacitated person, or mentally ill and has been manipulated, for example, into drinking poison under deceit or coercion.

The means used in homicide are legally irrelevant; the critical factor is the result—the deprivation of life. The act may be committed directly or indirectly, but what matters is that the perpetrator's actions result in the death of another person. The act of homicide can be positive (an act of commission) or negative (an act of omission). Article 291 of the revised 2013 Islamic Penal Code refers to different types of intentional homicide, recognizing only affirmative actions as means of committing the crime. Some legal scholars argue that "the relationship between the weapon used and an inherently lethal act is one of general to specific; that is, a weapon is a subset of inherently lethal actions, but not all inherently lethal actions necessarily involve a weapon." Others believe that an inherently lethal act is independent of the means used, as lethality is determined by the nature of the act rather than the tool employed.

Omissions may also constitute homicide under specific circumstances. For instance, *omission following an initial act* is referenced in Article 633 of the *Islamic Penal Code* (Discretionary Punishments section), which considers it a potential form of intentional homicide. Additionally, *pure omission* can lead to liability if there is a legal duty to act, such as a mother obligated to nurse her infant. If she fails to do so, causing the child's death, she may be held criminally responsible. Based on Article 290 of the *Islamic Penal Code*, acts that are inherently lethal, whether by commission or omission, can lead to criminal liability, and such individuals may be held responsible for homicide by causation. The fundamental requirement for establishing homicide is the occurrence of death; hypothetical or potential deaths are insufficient for the crime to be legally recognized.

4.1.4. Causation in Homicide

To establish intentional homicide, a causal link must be proven between the perpetrator's act and the victim's death. This means that without the defendant's conduct, the death would not have occurred. The causal relationship must be direct and substantial.

Article 371 of the *Islamic Penal Code* states: "If someone inflicts harm on a person, and subsequently another individual kills them, the latter is deemed the killer, even if the prior injury was sufficient to cause death. The first person is only liable for *Qisas* (retribution) concerning the inflicted injury." Consequently, a defendant cannot evade responsibility for homicide by arguing that the victim would have died from other causes, such as illness, regardless of their actions. The only exception is when the victim is already in a state of *de facto* death, meaning that despite some remaining signs of life, they are legally considered dead. In such cases, anyone who further contributes to ending the victim's life is only liable for crimes against a corpse rather than homicide.

4.1.5. The Mental Element

5. *In Iranian Law*

One of the fundamental elements of intentional crimes is the mental or psychological element. In fact, the distinction between intentional and unintentional homicide lies in their mental elements, which consist of various components, including *general intent* (intention in conduct) and *specific intent* (intention in result). Criminal liability is based on three criteria: maturity, sanity, and free will. Mere awareness of legal prohibitions, as well as the nature and characteristics of the act, is insufficient unless accompanied by volition. Therefore, for an intentional crime—such as intentional homicide—to be established, the presence of will is essential.

Intentional crime is thus defined as an offense committed by a legally competent, sane, and voluntary individual. The legislator has incorporated this principle in drafting the relevant articles (Article 289 and subsequent provisions) of the *Islamic Penal Code* (2013). For example, paragraphs (a), (b), (c), and (d) of Article 290, along with Notes 1 and 2, highlight the necessity of sanity, free will, and awareness (Moradi & Shahbazi, 2015).

A key question arises: if the element of will is absent in the psychological component of the crime, what triggers the transition from knowledge or intent to the actual commission of the act? In other words, what connects the mere decision to commit a crime with the actual occurrence of the criminal behavior? It becomes clear that beyond knowledge or intent, another factor is necessary to manifest the decision into action. This factor, known as *will*, is an internal psychological and mental process inherent in criminal intent. Until this factor is realized, criminal intent cannot be said to exist; otherwise, there would only be an incomplete decision to act, which does not constitute a criminal intent.

All voluntary actions are inherently intentional because will does not exist without cognition and awareness, along with the mental command to execute an act through bodily actions. However, in the legal context, "behavior" refers only to the physical movement of the body. If an additional factor is present, such as awareness of consequences, criminal intent requires both knowledge and purpose. This principle is recognized in Article 144 of the *Islamic Penal Code* (2013). A careful reading of this provision reveals that the legal concept of *will* applies to physical behavior and the resulting criminal outcome.

Therefore, in intentional homicide, the perpetrator must have willed both the physical act and the deprivation of the victim's life. If the perpetrator intended only the physical act but not the resulting death, the act is classified as unintentional homicide, which, in crimes against bodily integrity, constitutes a separate offense (Salahi, 2023). When a crime is defined by law as requiring a specific outcome, the offender must have intended that outcome for the crime to be classified as intentional. In such cases, the mental element of the crime consists of both the *will to commit the act* and the *intent to achieve the result*, as in cases where a person deliberately performs an act with the goal of killing another.

In conclusion, the mere voluntary nature of an act does not equate to criminal intent. Criminal intent requires that the perpetrator not only acts voluntarily but also possesses knowledge of the crime's elements and its intended result. Furthermore, the material element of a crime includes not only the act and subject matter but also, in some cases, the criminal result and necessary conditions for its realization. Consequently, an act's voluntary nature alone does not suffice for the entire crime to be classified as intentional.

6. The Mental Element in Canadian Law

The mental element of intentional crime under Section 229 of the *Canadian Criminal Code* is defined as follows:

Section 229(a)(i): The Ability to Cause Death (Intent to Kill)

This subsection covers cases of intentional homicide where the accused's primary objective is the victim's death. While the accused's motive for killing the victim is irrelevant and unnecessary, "mercy killings" are included in this provision alongside the most heinous and egregious cases of intentional homicide. This provision specifically addresses the "intent to kill an individual," which seems to imply the existence of a specific victim. However, it should also cover cases involving terrorists who, with the intent to kill anyone, plant a bomb in a public place. Canadian courts have paid little attention to this issue, assuming that, under Section 229(a)(ii), multiple definitions of homicide exist, and therefore, the mental element under Section 229(a)(i) is not a subject of broad discussion.

In other contexts, Canadian courts have approved the use of "indirect intent," for instance, in cases involving the promotion and incitement of racial hatred. However, this application does not appear to arise directly from homicide provisions. Although it is generally assumed that a classic example of a planted bomb on an airplane—where the accused seeks to make a statement and ensure attention but hopes the crew and passengers survive the explosion—constitutes indirect or deviated intent to kill, there is room for argument. Similarly, a doctor who administers pain-relieving drugs to a patient while knowing these drugs will accelerate the patient's death could also be considered to have committed intentional homicide. In such cases, prosecutorial discretion plays a crucial role.

Under Canadian law, when proving intent, it is essential to consider the history of legal proceedings in which the accused presents multiple defenses, most commonly intoxication, provocation, and self-defense. The jury may reject any of these individual defenses but must still evaluate their cumulative impact when determining whether the accused had definite intent to commit homicide. This issue affects both Section 229(a)(i) and Section 229(a)(ii), but it is best examined in the broader discussion of defenses against homicide charges. While this issue is closely related to proving intent, it is more effectively addressed after considering the available legal defenses.

Section 229(a)(ii): Intention to Cause Bodily Harm While Knowing It May Lead to Death, with Reckless Disregard for the Consequences

This subsection presents numerous challenges compared to the provision discussed above. It is vaguely and incoherently worded, making its meaning unclear. Justice Cory has stated that the gradation of culpability between Sections 229(a)(i) and 229(a)(ii) is not easily distinguishable. He argues that the part of the provision referring to recklessness and disregard is redundant, as once it is proven that the accused deliberately caused bodily harm and was aware of the likelihood of death, it follows almost axiomatically that the accused was indifferent to the fatal outcome.

In *Cooper*, the accused, in a fit of rage, strangled the victim with both hands. He later claimed he could not recall anything until he woke up in his car with the victim's body beside him, having consumed a significant amount of alcohol. The Supreme Court ruled that under Section 229(a)(ii), the mental element for intentional homicide requires both the intent to inflict bodily harm and awareness that such harm is likely to result in death. While the mental element must coincide with the act, the law does not require absolute simultaneity. Where a sequence of wrongful actions leads to death, it is sufficient for the mental element to align with the act at some point in the sequence.

In cases of sudden death investigations, proving that the accused maintained intent throughout the entire act of strangulation is unnecessary. Justice Lamer noted that temporarily blocking someone's airway for a few seconds may not fall under this provision if there was no intent to kill or knowledge that the harm inflicted would likely cause death, especially when intoxication is involved.

In cases of recklessness, such as driving at 100 km/h on a crowded street where pedestrians are at significant risk, the perpetrator does not fall under intentional homicide provisions because there was no intent to cause harm. However, what about a terrorist who plants a bomb in a public place, warning people of its presence to induce fear, panic, and chaos, while expecting it to be defused before detonation? If the bomb explodes and people unexpectedly die, is the terrorist guilty of intentional homicide? The perpetrator likely does not fall under Section 229(a)(i), but what about Section 229(a)(ii)? Convicting the perpetrator under this provision poses a challenge because there was no intent to cause bodily harm. If the prosecution argues indirect intent, doubts may arise regarding the accused's certainty that harm would occur. In such cases, using Section 229(c) may be a simpler approach.

Is Intentional Homicide Applicable in HIV Transmission Cases?

Consider a scenario where an HIV-positive individual, having been explicitly warned not to engage in sexual activity without informing their partner, transmits the virus without disclosure, leading to the partner's eventual death. These cases present complex legal challenges with no straightforward solutions. Past prosecutions have used various charges, including criminal negligence causing bodily harm, sexual assault, and aggravated assault, requiring courts to fit new legal dilemmas into existing criminal frameworks. Given the challenges of proving the mental element, some legal experts argue that homicide or attempted homicide charges are unlikely to succeed in such cases.

However, in the recent case of *Aziga*, the accused knowingly infected two women who subsequently died of AIDS and was charged with first-degree murder. Although it is unlikely that the accused intended to kill these women, the case was prosecuted under Section 229(a)(ii). Yet, this raises significant concerns. Doubts exist about whether the accused's primary objective was bodily harm and whether indirect intent should apply in such circumstances. The uncertainty surrounding whether HIV transmission inevitably results in death further complicates the prosecution's burden of proving the accused foresaw the fatal outcome. Due to these difficulties, trials for such cases often face delays.

This subsection requires proof that the accused knew such bodily harm was "likely" to result in death, which may lead jurors to scrutinize the degree of probability involved. Courts have emphasized that jury instructions must strictly adhere to the language of this provision. Attempting to elaborate on the meaning of "likely" could create grounds for appeals and should be avoided. In *Nygaard* and *Shiempens*, the Supreme Court ruled that Section 229(a)(ii) could be used in conjunction with Section 231(2), classifying second-degree murder as first-degree murder if it was "planned and deliberate." In this case, two accused individuals premeditated and carried out a brutal assault on the victim with baseball bats, fully aware that their actions were likely to result in death. The court held that intent to inflict such an attack, knowing it would likely be fatal, could constitute first-degree murder.

Section 229(b): Transferred Intent in Homicide Cases

This provision establishes that homicide occurs when the accused intends to kill or cause bodily harm that they know is likely to result in death, regardless of whether the actual victim was intended. This section codifies the doctrine of transferred intent, which common law courts have long recognized. It applies to cases of mistaken identity and accidental deaths.

For instance, if Person A aims to harm Person B but inadvertently strikes and kills Person C instead, or if A mistakenly believes C is B and attacks them, the accused remains liable under Section 229(b).

In a case where an accused planned to kill his wife by setting their car on fire after dousing it in gasoline, the fire killed their two children while he and his wife survived. The accused was charged with first-degree murder for the deaths of the children

under Section 229(b). The Supreme Court upheld this classification, ruling that although his primary target was his wife, the premeditated nature of the act warranted first-degree murder charges.

Section 229(c): Homicide Committed During an Unlawful Act

This provision states that homicide occurs when an individual commits an unlawful act knowing or believing it will likely result in death. Regardless of whether the person intended to cause bodily harm, the resulting death classifies the crime as homicide.

In *Vaillancourt*, the accused, an alcoholic, was convicted of killing the children of the woman he was living with. Following an argument, he poured flammable liquid throughout the house and ignited it, causing their deaths. He claimed he only intended to destroy the woman's property. The Supreme Court ruled that, under Section 229(c), the unlawful element required for homicide conviction is an act creating a foreseeable risk of death. The case reaffirmed that an inherently dangerous act, even if not explicitly illegal, could satisfy the requirements of this provision.

6.1. Intentional Homicide Resulting from Duress in Iranian and Canadian Law

6.1.1. Intentional Homicide Resulting from Duress in Iranian Law

In duress, the source of threat and danger is always a human factor, which is considered an external agent. This means that a person, by exerting their power or exploiting their position, compels another individual to commit a prohibited act, making them a mere instrument in executing the offense.

Punishment of the Coerced Individual

According to Article 375 of the *Islamic Penal Code*, duress does not justify homicide, and the perpetrator will be sentenced to *qisas* (retribution). Based on this provision, courts may exempt the coerced individual from *qisas* in cases where the murder was committed under threat of death. Furthermore, under Note 1 of Article 375, if someone coerces a non-discerning minor to commit intentional homicide, since the minor lacks full intent, consent, and legal capacity (even though the minor has willpower and, according to narrations, possesses intent, the intent of a minor is considered absolute mistake), the coercer is deemed the primary cause of the crime, overriding the direct perpetrator. As a result, the coercer assumes the position of the main offender and is subject to the primary punishment, which is *qisas*.

Previously, it was established that crimes committed by minors are considered absolute mistakes, with financial responsibility falling upon the *aqilah* (the offender's male relatives). However, Article 375 differentiates between discerning and non-discerning minors. The legislator, following the opinion of prominent jurists, stipulates that if a person coerces a non-discerning minor to commit murder, the coerced individual will not be subject to *qisas*, but if the minor is discerning, the *aqilah* must pay *diyya* (blood money), and the coercer will be sentenced to life imprisonment.

From this provision, it is clear that although the law generally recognizes the superior responsibility of the coercer over the coerced, as evidenced by Article 151, which states that in *ta'zir* (discretionary) offenses, the coercer is punished as the principal offender, the same does not apply in cases of murder. This is reaffirmed in Article 377, which specifies that duress in bodily injuries results in *qisas* for the coercer, whereas, in cases of homicide, the coercer is not considered more responsible than the coerced individual, except when the coerced individual is a non-discerning minor or insane. Even if the coerced individual is a discerning minor, the legislator does not recognize the coercer as the more culpable party, and the offense is attributed to the coerced individual. Consequently, the *aqilah* must pay *diyya*, although the coerced individual may still be sentenced to life imprisonment. This distinction is reiterated in Article 526 of the *Islamic Penal Code*.

There is no explicit Quranic verse or narration that states that if a discerning minor is coerced into committing murder, the *aqilah* must pay *diyya* and the coercer is exempt from *qisas*. Jurists have argued that since a discerning minor possesses will and choice, the crime is attributed to them rather than the coercer. For instance, Shahid Thani states in *Masaalik*:

"If the coerced individual is a non-discerning minor or insane, *qisas* applies to the coercer, as these individuals are mere instruments... However, if the minor is discerning and free, *qisas* does not apply because a minor's intentional act, when acting independently, is considered a mistake, let alone in cases of coercion, and therefore, the *aqilah* must pay *diyya*" (Amili, 1992).

The conditions under which *qisas* is not imposed on the coerced perpetrator of homicide are as follows:

1. Article 375 of the *Islamic Penal Code* does not explicitly state that duress justifies murder, even under the threat of death. The absence of reference to the threat factor, similar to the *Hadith of Zararah*, which serves as the foundation

of this ruling, along with doubts about attributing the offense to the coerced individual, creates uncertainty about the application of *qisas*. As stated by most jurists, doubts in *qisas* cases lead to its dismissal (Amili, 1992; Ardabili, 1983).

2. The term *duress* has four meanings in Islamic jurisprudence:
    - Coercion in the strict sense (i.e., physical compulsion)
    - Duress in the broader sense (coercion and compulsion)
    - Duress where proportionality is absent (e.g., threatening to cut off a hand if murder is not committed, which does not justify killing)

In Iran, *qisas* depends on the request of the victim's heirs. If they grant clemency or reach a settlement, the issue of whether a *ta'zir* punishment should be imposed arises. Article 612 of the *Islamic Penal Code* states:

"Anyone who commits intentional homicide and either has no complainant or has been pardoned by the complainant, or for any reason *qisas* is not carried out, will be sentenced to imprisonment ranging from three to ten years if the act disrupts public order or creates fear in society or emboldens the perpetrator or others."

In cases of duress-related homicide, the absence of the conditions in Article 612 may render a *ta'zir* punishment inapplicable unless the threat involved something other than the coerced individual's own death.

Notably, Article 375 does not address the punishment of an accomplice in a coerced homicide. The law does not consider coercion as a justification for murder, and the coercer is subject to legal consequences based on their role in the crime.

Punishment of the Coercer

Under Article 375 of the *Islamic Penal Code*, the coercer is sentenced to life imprisonment. However, according to Article 376, this punishment is the right of the victim's heirs and is subject to forgiveness or settlement. If the heirs pardon the coercer, their sentence is reduced to that of an accomplice to murder. Although Islamic jurisprudence does not explicitly discuss the commutation of life imprisonment, a response from Ayatollah Makarem Shirazi indicates that pardoning a coercer is permissible.

When asked whether the heirs of the victim can pardon the coercer and the individual restraining the victim, just as they can pardon the principal perpetrator, Makarem Shirazi responded:

"If the victim's heirs pardon the coercer and restrainer, there is no justification for implementing their respective punishments, as their punishment is akin to *qisas*." (Shams Natari et al., 2019).

According to Note 2 of Article 127 of the *Islamic Penal Code*, if the principal offender is not sentenced to *qisas*, the accomplice's sentence can be reduced. The question arises: if the coerced individual is not subject to *qisas*, should the coercer's sentence be life imprisonment or a lesser penalty for complicity in murder? The preference appears to be life imprisonment (Mir Mohammadi Sadeghi, 2015).

The reasoning behind this interpretation is the specificity of Article 375, which does not differentiate between cases where *qisas* is imposed or not. Moreover, Article 376 confirms that life imprisonment for the coercer is the victim's heirs' right and can be waived.

Under the *Islamic Penal Code* of 2013, life imprisonment for a coercer is considered a prescribed *ta'zir* punishment. While Islamic jurisprudence generally allows judicial discretion in *ta'zir* sentences, some *ta'zir* punishments have fixed amounts determined by religious law. Life imprisonment for a coercer is one such example.

Because Article 376 states that life imprisonment for a coercer is the right of the victim's heirs and can be waived, it is treated similarly to *qisas*. Consequently, life imprisonment for the coercer cannot be mitigated, suspended, or commuted. Additionally, since it is classified as a first-degree *ta'zir* punishment, legal provisions for delaying or suspending sentences do not apply. The only means of avoiding life imprisonment is the victim's heirs' pardon.

The Iranian legal approach to coercion in homicide cases lacks deterrence and may inadvertently encourage crime. By imposing life imprisonment on coercers, the law provides an incentive for criminals to avoid direct responsibility for murder by coercing others to commit the act instead.

6.2. Intentional Homicide Resulting from Duress in Canadian Law

Article 17 of the *Criminal Code of Canada* excludes duress as a defense for twenty offenses, including first-degree murder and attempted murder. Despite the explicit wording of this provision, the possibility of disregarding the conditions of duress and exceptions for certain offenses exists. Therefore, in order to determine the legal ruling on intentional homicide resulting from duress under normal circumstances, it is essential to review specific criminal case law.

6.2.1. The Paquette Case

In *Paquette v. R.* (1977), according to the defendant's statements, Claremont asked him for a ride due to his car breaking down. After getting into the vehicle, Claremont informed the driver of his intent to commit robbery. When the driver refused, Claremont brandished a firearm and threatened to kill him before escaping in the vehicle. Another individual present at the crime scene demanded that Paquette wait for them under the threat of retaliation. One of the robbers then committed first-degree murder during the robbery. Thus, Paquette did not directly participate in the homicide, and the initial intent was robbery, not murder.

However, Section 21(2) of the *Criminal Code of Canada* states that when two or more individuals form a common intent to carry out an unlawful act and assist each other in executing that act, they are deemed liable for any offense committed in furtherance of the common purpose, provided they knew or ought to have known that such an offense might occur. Given that the robbers were armed, the possibility of a homicide occurring was foreseeable, and their conduct falls within the scope of this provision.

In *Paquette v. R.* (1977, p. 193), the court rejected the prosecutor's argument that the principles governing duress as a defense were exhaustively defined in Section 17 of the *Criminal Code* and that an accused individual could not invoke this defense due to the explicit exceptions in the statute. The court ruled that the scope of Section 17 applied only to individuals who personally committed the offense, as indicated by the statutory language: "a person who commits an offense" and "the perpetrator of the offense." This interpretation was reinforced by Section 21(1) of the *Criminal Code* (Mir Mohammadi Sadeghi, 2015), which provides that the following individuals are considered parties to an offense:

a) The person who actually commits the offense.

b) A person who aids another in committing the offense or abstains from preventing its commission with intent to assist.

c) A person who counsels another to commit an offense.

In other words, Section 17 of the *Criminal Code of Canada* employs the term "commit," which, in light of the aforementioned section, refers exclusively to the principal perpetrator under subsection (a) and does not extend to accomplices mentioned in subsections (b) and (c). Consequently, the rules governing duress cannot be inferred from Section 17 in cases of aiding and abetting. Instead, judicial precedent must be applied (Mir Mohammadi Sadeghi, 2015).

It cannot be assumed that an individual who acts out of fear of death or serious bodily harm possesses the requisite intent to commit an offense. In this regard, motivation is erroneously conflated with the mental element of the crime. However, this argument was later rejected in *R. v. Hibbert* (1995, para. 44). While in *Paquette*, the accused was allowed to invoke the defense of duress in relation to aiding and abetting murder, this precedent is not a fixed rule in Canadian law. When the *Paquette* decision was issued, the prevailing legal standard in England was based on *Lynch*, which allowed duress as a defense for aiding and abetting murder. The ruling in *Paquette* was influenced by this standard. However, the decision in *Lynch* was subsequently overturned in English law, as reflected in paragraph 83 of *Ryan*.

One distinction between statutory duress and common law duress is the existence of an extensive list of excluded offenses in the statute. Nonetheless, it remains unclear whether these exclusions have been consistently applied in judicial practice. Provincial court rulings have varied on this issue, making the Canadian case law on duress-related complicity in murder in *R. v. Sandham* unenforceable.

6.2.2. The Latimer Case

Before analyzing *R. v. Latimer*, which concerns the necessity defense in homicide cases, it is essential to examine the concept of necessity in Canadian law. Unlike duress, the *Criminal Code of Canada* does not contain a specific provision for necessity.

However, Section 8(3) of the *Criminal Code* states that any common law rule or principle that recognizes an excuse, justification, or defense remains applicable unless modified or overridden by statutory law. In *Perka v. The Queen* (1984, p. 244), the Supreme Court of Canada referenced common law principles in international legal disputes to establish necessity as a defense in Canadian law. However, this defense is subject to stringent conditions:

- The first requirement for invoking necessity is that the emergency must stem from an imminent danger (Mir Mohammadi Sadeghi, 2015).
- Secondly, compliance with the law must be demonstrably impossible (Mir Mohammadi Sadeghi, 2015). In other words, there must be no reasonable legal alternative to breaking the law. If a viable legal alternative existed, the individual's decision would be considered voluntary (Mir Mohammadi Sadeghi, 2015).
- Thirdly, there must be proportionality between the harm inflicted and the harm avoided (Mir Mohammadi Sadeghi, 2015). In assessing proportionality, it must be determined whether the harm inflicted is lesser than the harm sought to be avoided (ibid., p. 254). The language of this criterion suggests that equal harm does not justify invoking the necessity defense.

In *Latimer*, the defendant was the father of Tracy, a severely disabled child suffering from quadriplegic cerebral palsy. Tracy was largely immobile and bedridden, requiring constant care from her family. An autopsy revealed signs of poisoning, and toxicology tests showed that her blood was saturated with carbon monoxide. Her father was found to have poisoned her.

Upon reviewing the facts of the case against the necessity criteria established in *Perka*, the court determined that none of the requirements for necessity were met. There was no imminent or obvious danger (Mir Mohammadi Sadeghi, 2015), no legal impossibility (ibid., para. 39), and no proportionality (Mir Mohammadi Sadeghi, 2015). However, an important issue arises regarding proportionality in homicide cases. The question is whether this criterion can ever be satisfied in cases of intentional homicide, and until this is clarified, the possibility remains that necessity could be accepted as a defense for murder in Canadian law.

On the other hand, the court in *Latimer* (ibid., para. 31) noted that proportionality does not mean that the harm avoided must always be demonstrably greater than the harm inflicted. Rather, the two harms must be at least of comparable severity—i.e., the harm avoided must be similar to or greater than the harm inflicted. The phrase "comparable severity" (as in *Latimer*) suggests a relaxation of the proportionality requirement, implying that the necessity defense may be permissible even when the two harms are equal.

According to Coughlan, since the standard for duress involves a subjective-objective test, while necessity is assessed using a purely objective standard, necessity is more likely to be an applicable defense in cases of intentional homicide, as indicated in *Latimer*.

6.2.3. The Ryan Case

In *R. v. Ryan* (2013, paras. 4-5), the accused and her daughter had repeatedly been threatened with death by her husband. Unable to think of any other way to protect herself, she decided to have her husband killed. She entered into an agreement with an undercover police officer to arrange for the murder, providing part of the agreed-upon payment along with her husband's address and photograph. However, no killing took place. The accused was later arrested and convicted of counseling an offense that was not committed. Under Section 464(a) of the *Criminal Code of Canada*, anyone who counsels another to commit an indictable offense, even if the offense is not ultimately committed, is guilty of an indictable offense and is subject to the same punishment as for an attempt to commit that offense.

According to paragraph 73 of the *Ryan* case, proportionality in duress has two components:

- The harm threatened must be equal to or greater than the harm inflicted by the accused.
- A deeper analysis must be conducted to assess the accused's actions in relation to societal expectations of a reasonable person placed in a similar situation.

Furthermore, the case (ibid., para. 4) established that duress cannot be invoked as a defense by the principal perpetrator of a crime, while accomplices may be able to use it as a defense.

From the *Ryan* case and other cases examined, the following conclusions regarding the *Criminal Code of Canada* can be drawn:

- Section 17 of the *Criminal Code* explicitly prohibits the use of duress as a defense for first-degree murder and attempted murder. However, just as the Supreme Court of Canada has invalidated the immediacy and presence requirements stated in Section 17, it is possible that exceptions for certain crimes, including murder, may also be set aside in the future. Some courts have already deemed parts of Section 17 inconsistent with the Canadian *Charter of Rights and Freedoms* (ibid., para. 36). This suggests that in the future, the Supreme Court of Canada may recognize duress as a valid defense in cases of first-degree murder. For instance, in the *Fraser* case (ibid., para. 36), the Nova Scotia Provincial Court ruled that to the extent that Section 17 of the *Criminal Code* prohibits the defense of duress in cases related to armed robbery, it is unconstitutional because it violates Section 7 of the *Charter*, and thus, it has no legal effect.

The conditions for accepting duress as a defense for the excluded offenses include:

- The accused's conduct must be involuntary. In such cases, imposing penalties, including life imprisonment for first-degree murder and attempted murder, violates the principles of fundamental justice and, consequently, contravenes Section 7 of the *Charter*.
- Since the exclusion of such offenses, particularly first-degree murder and attempted murder, is unjustifiable, this exception contradicts Section 1 of the *Charter*.

It is important to note that even before the decision in *R. v. Shepherd* (1988, p. 437), legal scholars had raised concerns that the exclusion of certain serious crimes from the defense of duress was incompatible with the *Charter*. The ruling in *Shepherd* stated that there is no logical connection between the desire to protect individuals and the exclusion of serious offenses, such as murder, from the duress defense. Any attempt to completely exclude a crime, even one as serious as first-degree murder, from the scope of the duress defense cannot be justified under the *Charter*.

Given that this chapter examines first-degree murder under normal conditions of duress, and that in most cases, the threat and the act requested are of equal severity, it is crucial to address the question of whether duress is a valid defense when an individual is coerced under the threat of death to commit murder. Based on the cases analyzed, this issue revolves around the proportionality requirement. As noted in various cases, particularly *Ryan*, the inflicted harm does not necessarily have to exceed the harm threatened for the duress defense to apply. Rather, duress may be invoked even if the two harms are equal. Therefore, in cases where an individual is coerced under the threat of death to commit murder, the first element of proportionality, as established in *Ryan*, is satisfied—that is, the harm inflicted and the harm avoided are equal.

On the other hand, while refraining from committing murder and sacrificing oneself to save another person may be seen as a noble and morally commendable act, society does not generally expect an average person to take such action. Instead, society views the act of committing murder under duress as a proportional response aimed at preserving one's own life. As a result, in cases where first-degree murder is committed under the threat of death to the accused or a close family member, the proportionality requirement may be deemed satisfied. If a case involving duress in first-degree murder is brought before Canadian courts, there is a significant likelihood that duress will be recognized as a valid defense.

6.3. Intentional Offenses Against the Person Short of Homicide in Iranian and Canadian Law

6.3.1. Intentional Offenses Against the Person Short of Homicide in Iranian Law

Intentional offenses against the person short of homicide, also referred to as bodily crimes, include any harm less severe than murder, such as amputation, injury, and damage to bodily functions. When such crimes are committed intentionally, the punishment, provided that the victim or their legal guardian requests it, is *qisas* (retribution). Otherwise, the penalty is the payment of *diyyah* (blood money).

Article 614 of the *Islamic Penal Code* addresses intentional bodily harm and states that if an individual deliberately inflicts an injury that results in permanent disability or causes the victim to lose a bodily function or suffer from a permanent illness, and *qisas* is not possible, the offender shall be sentenced to imprisonment for two to five years if the act disrupts public order or endangers society's security. Additionally, upon the victim's request, the offender shall be ordered to pay *diyyah*.

According to Article 614 of the *Islamic Penal Code*, any act of striking or injuring another person that results in the amputation of a body part or the loss of a bodily function constitutes an offense against the person short of homicide. In such cases, duress may be taken into account, and it may lead to a reduction in punishment. If it is proven that the perpetrator acted under duress, the punishment of *qisas* is removed, and the principal offender (the coerced individual) will not be punished. Instead, the coercer will be subject to *qisas*.

A crucial aspect in such cases is that claims of duress in bodily crimes must be substantiated in court. If duress is not proven, the victim's legal guardian can swear an oath, and the principal offender will then be subject to *qisas*. Therefore, proving duress is of significant importance. It should also be noted that the default presumption is that duress does not exist, and it is the responsibility of the principal offender to prove that they acted under duress.

Regarding duress in both first-degree murder and bodily crimes, the following points apply:

- Life imprisonment for the coercer is contingent upon the general conditions for *qisas* and the rights of the victim's legal guardians. It is subject to waiver or settlement by the victim's legal guardians.
- If, for any reason, the coercer is not sentenced to life imprisonment, they will be sentenced for aiding and abetting first-degree murder.
- If someone coerces another person into committing an act that results in bodily harm to the coerced individual, the offense is considered intentional, and the coercer will be subject to *qisas*, unless they can prove that they did not intend to cause harm and that they were unaware that the coercion would typically lead to such harm. In that case, the offense is considered quasi-intentional, and the coercer will be sentenced to pay *diyyah*.
- The coerced individual in cases of bodily harm must have done no more than what was demanded by the coercer. Otherwise, they will be held responsible for any additional harm caused.
- The bodily offense must have been committed to prevent a more severe crime. Otherwise, the coerced individual will also bear criminal liability.

6.3.2. Intentional Offenses Against the Person Short of Homicide in Canadian Law

According to Section 268 of the *Criminal Code of Canada*, an individual who wounds another person or endangers their life commits "aggravated assault." The term "assault" is defined under Section 265 of the *Criminal Code*, which states that a person commits assault when, without the consent of another, they apply force to that person directly or indirectly. In the context of this section, even if the complainant consents to the application of force under pressure from the accused, such consent is deemed invalid. Furthermore, any consent obtained through fraud, coercion, or fear of force against the complainant or others is nullified.

Additionally, Section 180 of the *Criminal Code of Canada* stipulates that: "Any person who, by engaging in unlawful conduct or failing to fulfill a legal duty, endangers the health, life, or well-being of the public or causes bodily harm to a third party commits the offense of public nuisance." In Canadian criminal law, the charge of "public nuisance" has been applied in at least six cases where individuals infected with HIV exposed others to the risk of infection:

- In *R. v. Thornton* (1998), it was clearly established that donating contaminated blood constitutes an instance of "public nuisance." However, the appropriateness of applying this charge to sexual behavior or the shared use of injection needles has been criticized in Canadian law. A key issue in this legal category is whether it can be said that the accused's actions endangered public health. Although in the first case of this nature (*R. v. Thornton*), the defendant accepted the charge brought by the court, no individual in Canada has since been prosecuted under this charge for engaging in sexual relations or sharing injection needles.
- In *R. v. Summe* (1989), the accused engaged in unprotected sexual intercourse with five individuals. The court first examined whether the accused's actions constituted an offense that directly concerned the public or if they were limited to the individual complainants in the case. The court concluded that the accused's behavior was reckless enough to pose a risk to public health.
- Conversely, in *R. v. Seanyonga* (1993), the court dismissed the charge of "public nuisance" against an accused individual alleged to have had unprotected sexual relations with three complainants. Despite this ruling, a year later,

the accused in *R. v. Cuerrier* pleaded guilty to "public nuisance." In this case, the defendant, who was HIV-positive, engaged in sexual relations with another individual on three occasions without informing them of their condition.

7. Conclusion

The commission of a criminal act under the conditions outlined in the *Criminal Code* may exempt the perpetrator from punishment. Justifications for criminal acts refer to circumstances in which the offender intended to commit a crime but, due to specific conditions, their intent was negated, preventing punishment from being imposed. Examples of exculpatory factors include: (1) childhood, (2) insanity, (3) coercion, (4) intoxication, (5) sleep and unconsciousness, (6) mistake of law, (7) lawful authority, (8) self-defense, (9) necessity, and (10) victim consent (such as participation in violent sports or undergoing surgery). These factors are outside the scope of this discussion, as they involve situations where criminal intent exists, but punishment is waived due to specific circumstances.

Section 17 of the *Criminal Code of Canada* explicitly prohibits the use of duress as a defense in twenty offenses, including first-degree murder and attempted murder. However, despite the clear wording of this provision, the possibility of excluding the requirements for duress and removing exceptions to certain offenses still exists.

If an individual, through their actions, intends to cause harm to a specific individual or an unspecified member of a group, and their intended crime or a similar offense occurs—whether or not the act committed was inherently capable of producing such a result—the offense is considered intentional.

If the perpetrator knowingly commits an act that is inherently likely to result in harm, even if they did not intend to cause that harm or its equivalent, but were aware that their actions were inherently capable of causing such harm, the offense is considered intentional.

If the perpetrator did not intend to cause harm but committed an act that, under ordinary circumstances, would not typically cause harm, yet under specific conditions—such as the victim's illness, frailty, old age, or any other special situational factors—resulted in harm, the offense is considered intentional, provided the perpetrator was aware of the victim's vulnerability or the specific circumstances.

If the perpetrator intends to cause harm but has no specific individual or group in mind, yet their intended harm or an equivalent offense occurs—for example, through planting a bomb in a public place—the offense is considered intentional.

Section 21(2) of the *Criminal Code of Canada* states that when two or more individuals collaborate with a common unlawful intent and assist one another in the commission of an offense, and one of them commits a crime in the process, all participants who knew or ought to have known that such a crime might be committed are considered accomplices to that crime. Given that armed robbers have a high probability of causing death, their actions fall under this provision.

Section 17 of the *Criminal Code* applies specifically to individuals who directly commit a crime.

Section 464 of the *Criminal Code of Canada* establishes that anyone who counsels another person to commit an indictable offense, even if the offense is not ultimately committed, is guilty of an indictable offense and is subject to punishment for attempting to commit that offense.

Under Section 268 of the *Criminal Code of Canada*, an individual who wounds another person or endangers their life commits "aggravated assault." The term "assault" is defined in Section 265 of the *Criminal Code* as the act of applying force to another person, directly or indirectly, without their consent. If a complainant consents to the application of force under coercion from the accused, such consent is considered invalid. Similarly, consent obtained through fraud, threats, or fear of force against the complainant or others is nullified.

Additionally, Section 180 of the *Criminal Code of Canada* states that: "Any person who, by engaging in unlawful conduct or failing to fulfill a legal duty, endangers the health, life, or well-being of the public or causes bodily harm to a third party commits the offense of public nuisance."

Under Iranian criminal law, intentional bodily harm is addressed as follows: If an individual deliberately inflicts bodily harm on another person, resulting in permanent disability or mental impairment, and *qisas* (retribution) is not feasible, the offender may be sentenced to imprisonment for two to five years if the act disrupts public order or endangers public security. Additionally, if requested by the victim, the offender may be ordered to pay *diyyah* (blood money).

Under Section 268 of the *Criminal Code of Canada*, an individual who wounds another person or endangers their life commits "aggravated assault." The term "assault" is defined in Section 265 of the *Criminal Code* as the application of force to another person, directly or indirectly, without their consent. If a complainant consents to such force under coercion from the accused, the consent is invalid. Additionally, consent obtained through fraud, threats, or fear of force against the complainant or others is considered void.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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