



Qualis A3 ISSN: 2178-2008

ARTIGO

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Revista Processus de Estudos de Gestão, Jurídicos e Financeiros



The Gradation in the Formation of the Criminal Act between Islamic Jurisprudence and Algerian Law

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Publication Information

ISSN: 2178-2008

Received: 16-12-2025

Accepted: 24-02-2026

Published: 23-03-2026

Keywords:

Algerian Law.

Criminal Act. Execution.

Gradation.

Intent.

Islamic Jurisprudence.

Preparatory Acts.

Abstract

The criminal act follows a gradual path, beginning with the formation of the idea in the offender's mind, then transforming into resolve and intent, evolving into the preparation stage, and ending with the execution stage where the behavior materializes as a physical act harming an interest protected by law. Therefore, studying this gradation is crucial for determining the establishment of criminal responsibility and distinguishing between acts that fall within and outside the scope of criminalization. This article addresses the issue of the gradation in the formation of the criminal act by analyzing its main stages in both Islamic jurisprudence and Algerian penal law. The importance of this topic lies in defining the scope of criminal responsibility and clarifying the moment when behavior becomes subject to legal and Sharia accountability related to each stage, while identifying points of agreement and disagreement between Islamic jurisprudence and Algerian law. The study concluded that there is a convergence between them regarding non-accountability for mere intent; there is no punishment for mere intent unless it is translated into an overt act. However, openly declaring the intention to commit a crime is punishable in Islamic jurisprudence. Concerning the preparation stage, there is divergence. The core principle is the execution stage for establishing criminal responsibility, and consequently, for determining the appropriate punishment for the material conduct constituting the criminal act.

Introduction

Any action, regardless of its nature, necessarily goes through stages, both psychologically and materially. Psychologically, it is realized through the thoughts stirring within a person concerning that action, i.e., thinking about the circumstances of its realization and planning for its execution. Materially, it refers to preparing the necessary physical means to embody that idea in reality.

This is what occurs in the case of committing a crime. The offender thinks carefully about their criminal activity, which begins as an idea stirring within them, then settles, and they begin to resolve to execute it. Soon after, they start preparing the necessary means, culminating in the final stage where they execute their criminal purpose. The importance of studying this gradation lies in its help to determine the moment when

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human behavior becomes subject to accountability under Sharia and law. It also contributes to clarifying the dividing lines between each stage the criminal act undergoes. Islamic jurisprudence has paid attention to this issue by addressing matters of intent and inchoate crimes. In contrast, modern criminal law has addressed it within the framework of the general theory of crime or the criminal act when distinguishing between preparatory and executive acts. Algerian law falls within this context as one of the legal systems that regulated the issue of attempt (*شروع* / *shurū'*), clarifying its elements and effects, which the Algerian legislator terms "attempt" (*محاولة* / *muḥāwalah*).

The central problem of this article is as follows:

How does the criminal act progress from the stage of intent to the stage of execution in both Islamic jurisprudence and Algerian law, and what is the impact of this on the establishment of criminal responsibility?

To answer this problem, the comparative analytical method and the following plan were adopted:

1. **The Stage of Formation of Criminal Will**
2. **The Stage of Preparation for the Criminal Act**
3. **The Stage of Executing the Criminal Act**

1. The Stage of Formation of Criminal Will

The first stage the offender goes through in committing their crime is the stage of thinking and intent. It has been termed the stage of thinking and resolution (‘Āudah, 1982, p. 374; al-Shawārbī, 1991, p. 9), the stage of intent and thinking (al-Danāshūrī & al-Shawārbī, n.d., p. 281; Khiḍr, 1985, p. 94; al-Bahnasī, 1988, p. 38), and the stage of self-whispering (Hibah, 1985, p. 29). The most accurate term is the stage of thinking and intent, as the crime begins in the offender's mind as a mere idea, then develops into intent and resolve. This stage will be addressed by defining its meaning and then explaining its legal and Sharia implications.

1.1. Formation of Criminal Will

When discussing criminal will in Islamic jurisprudence, we refer to thinking and intent (*niyyah*). Linguistically, *niyyah* revolves around meanings of purpose and belief. *Nawā al-shay’a* means he intended it. *Nawā al-manzila* means he headed towards it. *Niyyah* also means the direction one takes. It implies transition from one place to another (Ibn Manẓūr, n.d., Vol. 6, p. 4588; al-Fīrūzābādī, n.d., Vol. 4, p. 396).

In Islamic jurisprudence, several definitions of *niyyah* exist. Some define it by its linguistic meaning, i.e., intention towards a thing and the resolve to do it (al-Ṣiddīqī, n.d., Vol. 1, p. 40). Others define it as the heart's action and its orientation. These definitions are similar. However, defining *niyyah* merely as the heart's action and orientation is not exclusive, as the heart's orientation and action may not be will and intent, such as desire, fear, love, or hatred (al-Ashqar, 1991, pp. 30-31). Therefore, the most correct definition is that *niyyah* is the intention towards a thing coupled with its action.

Before a person's thought reaches the degree of intent (*qaṣd*), it passes through several psychological stages. The first is the occurrence of the idea, called *hājis* (passing thought). It then develops into *khāṭir* (notion), then transforms into *ḥadīth al-naḥs* (self-talk), then into *hamm* (inclination/concern), and finally into intent (*qaṣd*) and resolve (*‘azm*). Al-Subkī arranged them into five stages (al-Suyūṭī, n.d., pp. 29-30):

1. **Hājis** : The weakest of these, it is what is cast into the mind.
2. **Khāṭir** : What runs through the mind and then immediately goes away.
3. **Ḥadīth al-Naḥs** : What occurs from hesitation—whether to do it or not? Sometimes leaning towards action, other times towards abstention.

4. **Hamm** : The preponderance of the intention to act.

5. **'Azm** : The preponderance of action and the resolve upon it. It is the strength of that intention and the commitment to it.

The criminal begins thinking about the crime from the *hājis* stage until they form the resolve (*'azm*) to commit it. In all these intellectual steps occurring at the psychological level, the criminal is still in the initial stage.

In criminal law, jurists define it as the stage of mental and psychological activity occurring within the offender's personality. The idea in question may be received favorably and accepted, increasing attachment to it and resolve to execute it, or it may not appeal to them, so they do not execute it. This stage is distinguished from others by being psychological; the crime remains within the mind's confines without any external effect. Hence, some term it "internal acts" (al-Shinnāwī, n.d., p. 104; al-Bahnasī, 1988, p. 33). It remains in the mental sphere, not yet having taken a positive or negative material criminal form.

Most legal commentators term it the stage of thinking and resolution because the criminal act begins in the offender's mind as a mere idea and reaches the degree of resolve, which we call intent. If the potential criminal is at this stage, meaning they intend to commit the crime, what is the ruling in Islamic jurisprudence and Algerian law?

1.2. Ruling on the Stage of Formation of Criminal Will in Islamic Jurisprudence and Algerian Law

The first three stages—*hājis*, *khāṭir*, and *ḥadīth al-nafs*—are unanimously not subject to accountability. *Hājis* is not one's own act; it is something that occurs to them beyond their control. *Khāṭir*, which follows, one might be able to repel. However, what follows, *ḥadīth al-nafs*, is excused based on the authentic hadith: "Allah has forgiven my nation for what their hearts whisper/think about (*mā waswasat bihi šudūruhā*), as long as they do not act upon it or speak of it" (al-Bukhārī, 1981, Vol. 3, p. 119). If *ḥadīth al-nafs* is forgiven, what precedes it is forgiven a fortiori. These three stages, even if concerning good deeds, no reward is written due to the lack of intent (al-Suyūṭī, n.d., p. 33). Al-ʿIzz ibn ʿAbd al-Salām also argued against accountability for notions (*khawāṭir*) because they overwhelm people (al-Sulamī, n.d., Vol. 1, p. 139).

Based on the above, the three stages—*hājis*, *khāṭir*, and *ḥadīth al-nafs*—incur neither reward nor punishment. The hadith from Abū Hurayrah states: "Allah has forgiven my nation for what their hearts whisper/think about, as long as they do not act upon it or speak of it" (al-Bukhārī, 1981, Vol. 3, p. 119). It is narrated that Ibn ʿUmar recited the verse: "To Allah belongs whatever is in the heavens and whatever is in the earth. Whether you show what is within yourselves or conceal it, Allah will bring you to account for it..." (Qur'an 2:283) and wept, fearing destruction. Ibn ʿAbbās explained that when this verse distressed the companions, the verse was revealed: "Allah does not charge a soul except [with that within] its capacity..." (Qur'an 2:285), referring to speech and action, and *ḥadīth al-nafs* is something one possesses but has no power over (al-Shāfiʿī, n.d., Vol. 1, p. 291; al-ʿAsqalānī, n.d., Vol. 17, pp. 63-64).

However, some exclude *ḥadīth al-nafs* from these three stages, although no explicit hadith indicates reward for good *ḥadīth al-nafs* without action, except the Prophet's saying: "Whoever dies without having fought or having even thought/felt in himself (*yuhaddith nafsahu*) about fighting, dies on a branch of hypocrisy" (Muslim, 2010, Hadith 1910, p. 852). They argued this indicates *ḥadīth al-nafs* wards off hypocrisy, thus warranting reward. This was countered by stating that "*ḥadīth al-nafs*" here means resolve (*'azm*) (al-Ashqar, 1991, p. 139).

As for *hamm* (inclination), the person is rewarded for it if it is good and not punished for it if it is evil. One who intends (*hamm*) a good deed but doesn't do it gets a complete reward; one who intends an evil deed but doesn't do it gets a reward, not a punishment (al-Ashqar, 1991, p. 140). Evidence includes the Qudsī hadith: "Verily Allah has written down the good deeds and the evil deeds, and then clarified it. Whoever intends (*hamm*) a good deed but does not do it, Allah writes it with Himself as a complete good deed. If he intends it and does it, Allah writes it with Himself as ten good deeds up to seven hundred times, up to many multiples. If he intends an evil deed but does not do it, Allah writes it with Himself as a complete good deed. If he intends it and does it, Allah writes it as one single evil deed" (al-Bukhārī, 1981, Vol. 5, p. 187). Another hadith states that if a servant intends an evil deed and leaves it for the sake of Allah, it is written as a good deed (Ibn Ḥanbal, n.d., Vol. 2, p. 317). Non-accountability for *ḥadīth al-naḥs* and *hamm* is conditional upon not speaking or acting; if one acts, they are accountable for both the action and the intention (*hamm*), and the intention is not forgiven.

As for *ʿazm* (resolve), it is unanimously agreed that the person is accountable for it if it is an act of the heart. They are rewarded if it is good and punished if it is evil, such as resolve upon faith or love of Allah. However, if the resolve concerns an act of the limbs, there is disagreement. Al-Subkī stated that the verifiers hold that one is taken to account for it, while some disagreed, considering it part of the forgiven *hamm*, perhaps relying on the linguistic equation of *hamm* and *ʿazm*, which is imprecise as linguists do not delve into such subtleties (al-Suyūṭī, n.d., p. 30). Proponents of accountability cite several evidences, including al-Qurṭubī's (1960, Vol. 1, p. 8) explanation of the verse "and they do not persist" as clear proof that one is accountable for what their conscience settles upon and their heart resolves regarding disobedience. Also, the verse: "Whoever intends (*yurid*) therein deviation [caused] by injustice, We will make him taste a painful punishment" (Qur'an 22:23), where deviation is interpreted as disobedience (al-Suyūṭī, n.d., p. 30). The verses about the companions of the garden (Qur'an 68:17-20) who resolved (*aqṣamū*) to pick its fruit early morning without exception show they were punished for their resolve before acting. The Prophet said: "When two Muslims confront each other with their swords, both the killer and the killed are in Hellfire." When asked about the killed, he replied: "Because he was eager (*ḥarīṣ*) to kill his companion" (Muslim, 2010, Hadith 2888). Here, punishment is attached to eagerness, which is resolve (*ʿazm*), regardless of drawing the weapon. The hadith about the four types of people states that the one who, lacking wealth but having knowledge, says, "If I had wealth, I would act like so-and-so (a pious wealthy man)," is rewarded equally by his intention (*niyyah*). Similarly, the one lacking both but saying he would act like a sinful wealthy man shares the same burden of sin by his intention (*niyyah*) (al-Tirmidhī, 1983, Vol. 3, p. 385). This is the view of most early scholars (salaf) and jurists, and the opposing view that settled resolve is not punishable is not considered. The hadith "Whoever intends (*hamm*) a sin and does not do it, it is not written..." is interpreted as "does not do it" meaning does not resolve upon it, while "does it" means manifests it or resolves upon it (al-Qurṭubī, 1960, Vol. 12, p. 34).

The root of the disagreement on accountability for *ʿazm* lies in the differing understanding of the concept itself. Those against accountability rely on the linguistic meaning equating *ʿazm* with *hamm*, which is not punishable. The other group views *ʿazm* as the definitive will that necessitates the act if capability exists. Once definitive will and complete capability are present, the act must occur (al-Ashqar, 1991, pp. 149-150). The preponderant view is accountability due to the strength of evidence, as *hamm* is more general than *ʿazm*; every *ʿazm* is a *hamm*, but not every *hamm* is *ʿazm* (al-Suyūṭī, n.d., p. 30). Proponents of accountability hold that resolve

and intent upon a major sin (*kabīrah*), though itself a sin, is less than the resolved-upon major sin (al-Suyūṭī, n.d., p. 30). Importantly, this accountability for resolve upon good or evil pertains to the individual's relationship with God—reward for good resolve, sin for evil resolve. At the level of worldly punishment, all scholars agree there is no worldly punishment for intentions and resolves unless they transform into actions. Intentions not manifested externally incur no worldly punishment, though they may entail religious sin (al-Zuhaylī, n.d., Vol. 6, p. 4575; al-Bahnasī, 1988, p. 38). Al-Shāfi'ī explained that God judges based on inner convictions, whether they match outward declarations or not, as with the hypocrites who outwardly professed faith but inwardly disbelieved (Qur'an 63:1-2; al-Shāfi'ī, n.d., Vol. 1, p. 299).

At the level of penal law, criminal will is a fundamental element for establishing criminal responsibility in Algerian legislation, representing the mental element (*mens rea*) of the criminal act. However, there is no division of the stages of will, as it holds no practical benefit for the judiciary. Although thinking about a crime and resolving upon it are the nucleus of criminal intent—the source of the real threat to societal security—modern legislations and jurists unanimously agree not to punish crimes at this stage (Muṣṭafā, 1967, pp. 281-282; Bsīswā, 1994, p. 54; al-Shinnāwī, n.d., p. 106; al-Danāṣūrī & al-Shawārbī, n.d., p. 290). The rationale is that criminal intent, even if proven, is generally not punishable unless revealed by an overt act posing a danger to social interest (Bsīswā, 1994, p. 54). Furthermore, these are hidden, inner matters impossible to ascertain, making criminalization futile. The gap between thought and execution is wide, allowing ample opportunity for desistance, which should be encouraged rather than closed off by punishment (al-Naḍrāwī, 1983, Vol. 1, p. 250; Ḥusnī, 1986, p. 340; 'Abd al-Malik, n.d., Vol. 4, p. 407). Non-criminalization of mere thought and design is also a guarantee of individual freedom; people are free in their thoughts as long as they don't progress to execution, even if they declare their intention, as declaration doesn't guarantee action. The crime lacks its material element (*actus reus*), which requires physical conduct, and mere thought or will has no place for criminalization (Faraj, 1986, Vol. 1, p. 225). This is what the Algerian legislator adopted, not punishing mere resolve or considering it an attempt, as understood from Article 30, which conditions punishable attempt on material acts, not mere resolve (Faraj, 1986, Vol. 1, p. 225).

Some legal scholars mention exceptions to non-punishment at this stage, such as threats, criminal conspiracy, and incitement. However, these are not exceptions but separate, independent crimes. Certain punishable acts may appear to be at the thinking stage, leading some scholars to classify them as exceptional cases, though they acknowledge them as independent crimes (Faraj, 1986, p. 257; al-Bahnasī, 1988, p. 35; al-Nawāwī, n.d., p. 214). For instance, the crime of criminal conspiracy under Article 176 of the Algerian Penal Code: "Any association or agreement, regardless of its duration or number of members, formed for the purpose of preparing for one or more felonies or one or more misdemeanors punishable with at least five years' imprisonment against persons or property, constitutes an association of evildoers. This crime is constituted by the mere common resolve to commit the act" (Law No. 04-15, 2004). Also, incitement under Article 100: "Any direct incitement to unarmed assembly, whether by public speeches, writings, or posted or distributed printed matter, is punishable..." (Law No. 06-23, 2006). In reality, these are not mere intentions but external acts that go beyond resolve. Punishment is not because they are stages of a crime but because they are independent crimes with their own material elements and distinct penalties (Muḥammad, 1994, p. 296; Najm, 2010, p. 220).

2. The Stage of Preparation for the Criminal Act

The stage of preparation for the criminal act is considered critical in the formation of the criminal act. It represents the transitional phase between intent and execution, revealing the extent of the offender's readiness and the potential social danger arising from these acts. After moving beyond the thinking stage and reaching resolve (*'azm*), the offender transitions to psychological preparation and material preparation, i.e., preparing sufficient means to commit the crime.

2.1. Definition of the Stage of Preparation for the Criminal Act

This stage follows the thinking/intent stage and precedes the execution stage, though it may coincide with it. In Islamic jurisprudence, it refers to acts performed by the offender to facilitate the occurrence of the criminal act without reaching the stage of direct execution (al-Zuhaylī, n.d., Vol. 6, p. 4575). Examples found in jurisprudence texts that can be included in this stage are selling weapons during times of turmoil (*fitnah*) and selling grapes to a wine presser.

In law, jurists define it as the stage intermediate between thinking about the crime and beginning its execution. Most legislations do not define this stage (al-Shinnāwī, n.d., pp. 118-119; al-Nadrāwī, 1983, Vol. 1, p. 251). Opinion differs on the nature of these preparatory acts: must they be material, or can they be moral—i.e., preparing what is necessary or merely getting ready? Examples of getting ready (*isti'dād*) include developing personal skills (physical, mental, psychological) or surveilling the victim. Examples of material preparation (*i'dād*) include procuring weapons for murder or tools for burglary. Opinion is divided: one view holds that preparatory acts are only material, not moral. The disagreement's significance appears in laws punishing preparatory acts: under the first view, they punish material preparation (*i'dād*) but not moral readiness (*isti'dād*). Under the second view, they punish both. The difference also affects the legal classification of criminal conspiracy and incitement if the crime is not committed: under the first view, they are excluded from preparatory acts and punishable as independent acts; under the second, they are considered preparatory acts and thus not criminalized (al-Shinnāwī, n.d., pp. 119-120). The preponderant view is the first, as the concept of preparation (*tahdīr*) refers to material equipping, while moral readiness falls outside its intended meaning (Khiḍr, 1985, p. 98). For the Algerian legislator, preparatory acts are acts performed before executing the crime to facilitate its occurrence, such as buying tools or gathering information about the victim. This stage encompasses everything preceding direct execution and reveals potential danger (Najm, 2010, p. 220).

2.2. Ruling on the Stage of Preparation in Islamic Jurisprudence and Positive Law

Preparation for committing a crime does not carry the same ruling as the crime itself. Buying a weapon does not make one a killer; the weapon could be for self-defense or hunting. Poison might be bought for a crime or for pest control (Ḥasan, n.d., Vol. 1, pp. 92-93). In Islamic jurisprudence, the ruling considers the nature of these acts. It distinguishes between acts that are inherently prohibited (*muḥarram*) or permitted (*mubāḥ*).

If the preparatory acts are inherently prohibited, like seclusion (*khalwah*) with a non-*maḥram* woman as a prelude to adultery—the Prophet prohibited seclusion: "A man must not seclude himself with a woman except in the presence of a *maḥram*" (al-Bukhārī, 1981, Vol. 7, p. 66)—or entering a house without permission (Qur'an 24:27-28). Such acts themselves warrant the punishment determined by the ruler (*walī al-amr*) by consensus

of the jurists (Abū Zahrah, n.d., p. 359). This agreed-upon punishment is less than the punishment for the target crime itself.

If the preparatory acts are inherently permitted, does committing them with the intent to prepare for a crime change their ruling, making the person liable to punishment? Jurists differed. The Ḥanbalī and Mālikī schools consider them crimes, based on the principle that the means to crimes are also crimes. Ibn Qayyim al-Jawziyyah (1987, Vol. 3, p. 147) argued that means follow their ends; prohibiting an end necessitates prohibiting its means. Permitting means that lead to a prohibited act would undermine the prohibition and encourage it. This is the basis of *Sadd al-Dharā'ī* (blocking the means to evil), a principle strongly upheld by the Mālikī school, as stated by al-Qarāfi (1345 H, Vol. 12, p. 303): "The means to the best ends are the best means, and the means to the ugliest ends are the ugliest means."

This juristic difference is evident in the issue of selling grapes to a wine-maker. Abū Ḥanīfah and al-Shāfi'ī permit the sale outwardly, though with disapproval, because it is not certain that the buyer will make wine. They hold that a person is accountable for their own intentions, not necessarily for potential uses by others. The prohibition relates to the underlying corrupt belief, not the contract itself (al-Zuḥaylī, n.d., Vol. 4, p. 2867; Abū Zahrah, n.d., pp. 357-358). The Mālikīs and Ḥanbalīs deem such sales invalid (*bāṭil*), citing the principle of *Sadd al-Dharā'ī* and the verse: "And cooperate not in sin and aggression" (Qur'an 5:2). This prohibition implies the sale is void (al-Zuḥaylī, n.d., Vol. 4, p. 2867). Ibn Qayyim (1987, Vol. 3, p. 170) strongly supported this, arguing that such sales constitute assistance in sin, analogizing them to selling weapons to enemies or renting property for sinful purposes. He contended that those who do not block the means (*Sadd al-Dharā'ī*) cannot logically prohibit such acts while claiming intentions are irrelevant and only outward appearances matter, which contradicts the Sunnah.

Thus, jurists differed on the ruling for acts that are inherently permitted when done with criminal intent. The Mālikī and Ḥanbalī schools consider them crimes, thus punishable. The Shāfi'ī and Ḥanafī schools do not consider them crimes. The basis of disagreement is the consideration of motive (*bā'ith*). The former look at psychological motives if they manifest in actions indicating intent, deeming the acts prohibited because they go beyond mere intentions, safeguarding God's prohibitions by intervening early. Ibn Qayyim provided ninety-nine proofs for this view (Abū Zahrah, n.d., p. 95; Ibn Qayyim, 1987, Vol. 3, p. 160 ff.). The latter do not consider motives in transactions as they relate to inner intentions, which God has forgiven as long as the act remains in the permitted sphere and is not inherently criminal. For those jurists advocating punishment for preparation, it is discretionary (*ta'zīrī*), left to the ruler's judgment (Abū Zahrah, n.d., p. 95). All agree that ultimate otherworldly recompense depends on intention, as per the hadith: "Actions are but by intentions, and every man shall have that which he intended..." (Muslim, 2010, Hadith 1908).

Regarding the legal response to this stage, most legislations generally do not criminalize preparatory acts. The Algerian legislator does not punish preparatory acts unless they reach a threshold directly threatening society (Awahībah, 2018, p. 210; Bsīswā, 1994, p. 55; al-Naḍrāwī, 1983, p. 252). The rationale is that preparatory acts lack legal significance, posing no danger to a protected right or interest. They are ambiguous regarding intent; the same act (e.g., buying a knife) could serve criminal or lawful purposes. Proving criminal intent is difficult. Furthermore, non-punishment encourages desistance, a societal interest outweighing potential punishment (al-Shawārbī, 1991, p. 27). Some commentators argue that the justification based on unclear intent is insufficient, as even when intent is clear, preparatory acts are not punished. The core

reason is the absence of danger to the right or interest and keeping the door open for desistance; the prepared crime exists only in the offender's mind and intent, with no causal link, only an intellectual one, which cannot ground criminal responsibility (al-Shawārbī, 1991, p. 27).

However, some preparatory acts themselves, regardless of their link to the target crime, cause such disturbance that the law must intervene to protect society. The legislator specifies these rather than leaving them to judicial discretion to avoid expanding punishment, balancing public interest and individual freedom (al-Shawārbī, 1991, p. 27). These acts are punished not as preparatory acts but in the following instances:

2.2.1. The Preparatory Act as an Independent Crime

Some preparatory acts constitute complete, independent crimes distinct from the intended crime. The legislator does so when the act involves inherent danger or clearly reveals the perpetrator's dangerousness (al-Shinnāwī, n.d., p. 125). For example, counterfeiting currency or state securities is preparatory to fraud but is an independent crime under Article 197 of the Algerian Penal Code (Law No. 06-23, 2006). Similarly, counterfeiting state seals (Article 205), forging or counterfeiting national stamps and marks (Articles 206, 208, 209), or forging keys (Article 359) are treated as independent crimes, not merely preparatory acts (Law No. 06-23, 2006). Unauthorized possession of a weapon is a crime (felony of weapons possession) regardless of murderous intent, and threats to commit murder are also punishable (Article 204). The Algerian legislator, following modern trends, punishes acts indicative of danger, acting preventively.

2.2.2. The Preparatory Act as an Aggravating Circumstance

If the offender performs preparatory acts and stops, there is no punishment unless the act itself is a crime. However, if they proceed to execution or completion, some preparatory acts become grounds for aggravating the punishment for the completed crime or attempt. They are legally significant as they affect sentencing, e.g., weapon possession is preparatory to theft but an aggravating circumstance for it (Ḥusnī, 1986, p. 342; ‘Abd al-Malik, n.d., Vol. 4, p. 411; Faraj, 1986, p. 259). Not all preparatory acts are aggravating circumstances, and there is no legal link between them, but in some cases, the legislator treats them as such.

2.2.3. The Preparatory Act as a Means of Participation (Complicity)

If an offender performs preparatory acts and stops, they are not punished. However, if these acts are linked to the activity of the main perpetrator as a means of assistance, they constitute participation, and the person becomes an accomplice. The accomplice who did not execute the crime is punished with the same penalty prescribed for the felony or misdemeanor in which they participated through incitement or assistance, like the principal perpetrator, as per Articles 42-44 of the Algerian Penal Code (Faraj, 1986, p. 259; al-Shādhilī, n.d., p. 91). For instance, possessing a weapon with intent to kill is not punishable for murder if stopped there, but handing that weapon to another who uses it for murder makes the possessor liable as an accomplice (al-Shibāsī, n.d., p. 166). Similarly, making a key for another to steal with makes the maker an accomplice to theft, as per Article 359, paragraph 2: "unless the act constitutes participation in a more serious crime" (Law No. 06-23, 2006).

Consequently, the Algerian legislator's general rule regarding preparatory acts is non-punishment as they precede execution (al-Shinnāwī, 1983, pp. 132-133). Exceptions

exist when these acts constitute independent crimes, forms of participation, or aggravating circumstances. Comparing this with Islamic jurisprudence, there is convergence in that preparatory acts do not receive the same punishment as the target crime. However, they differ in that Islamic jurisprudence considers preparatory acts prohibited if the means themselves are prohibited or if they are coupled with criminal intent, emphasizing the role of intention and moral dimension. Both systems have exceptional cases to the general principle.

3. The Stage of Executing the Criminal Act

The execution stage is the final phase in the formation of the criminal act. Here, preparation transforms into tangible external action recognized by Sharia and law. This stage is paramount as it marks the beginning of criminal responsibility in both systems. After thinking, resolving, and preparing the means, the offender begins to embody their criminal conduct in reality, moving from the sphere of permissibility to criminalization and punishment. Through this transition, the offender's situation falls into one of three scenarios:

1. Begins execution but stops, either voluntarily or due to an external cause.
2. Completes execution, but the criminal purpose is not achieved due to some cause.
3. Completes execution and achieves the criminal purpose.

If the offender begins execution and then voluntarily stops (e.g., a burglar enters, opens the safe, but their conscience awakens and they desist), this constitutes repentance (*tawbah*) in Islamic Sharia and voluntary desistance (*'udūl*) in positive law. If they stop due to an external cause (e.g., police arrive as the safe is opened), or execution is complete but the result is not achieved due to a cause beyond the offender's control (e.g., insufficient poison, the victim survives after medical aid), this constitutes attempt (*shurū' / muḥāwalah*) in Algerian law and an inchoate crime (*jarimah ghayr tammah*) in Islamic Sharia. The third scenario—completed execution achieving the criminal purpose—is a completed crime (*jarimah tammah*), entailing punishment (ḥadd, qisās, or ta'zīr in Islamic law; felony, misdemeanor, or contravention in Algerian law).

Legal scholars differ on the terminology of "attempt" (*muḥāwalah*), presenting three views:

First View: Attempt is a specific type of preparatory act. Proponents argue attempt comprises preparatory acts that directly lead to the completion of the crime, or acts that unambiguously reveal the offender's direction and persistence (ʿUbayd, n.d., p. 374; al-Shinnāwī, n.d., p. 140). The requirement of clear intent limits criminalization of attempt to some acts, e.g., intercepting a sealed envelope containing currency clearly indicates intent to smuggle currency.

Second View: "Attempt" (*muḥāwalah*) and "commencement" (*shurū'*) are synonymous. Attempt only materializes if the offender begins executing the crime intending to commit it, which is exactly commencement (al-Shinnāwī, n.d., p. 140). This is the Algerian legislator's position, defining commencement as attempt in Article 30: "Every attempt to commit a felony is considered a commencement of execution...", and Article 31 uses the term attempt when prescribing punishment (Order No. 66-156, 1966). Some other Arab legislations, like Lebanese and Syrian, follow this (Khidr, 1985, p. 100; al-Zughbī, n.d., Vol. 2, p. 180).

Third View: Attempt is an intermediate stage between preparatory acts and commencement. Proponents view attempt as midway between preparation and beginning execution, encompassing acts directly leading to commencement. It is like the commencement of commencement. An example: someone places money in a letter to

smuggle it. If the letter leaves the country, the crime is complete. If intercepted by censors, it's attempt. If handed to another to send and intercepted with that person, it's the intermediate stage of attempt (Khidr, 1985, p. 102; al-Shinnāwī, n.d., pp. 142-143). This view's application is limited to economic crimes.

Among these three views, the Algerian legislator's equation of attempt with commencement is the most preponderant. Those advocating a distinction confine the intermediate stage to economic crimes, which can itself be seen as commencement. Introducing an extra stage between preparation and commencement is unnecessary; acts are either preparatory or executive, each with its distinct ruling.

Conclusion

The study concluded that the criminal act undergoes a gradual process starting with thought, intent, and resolve, developing into preparation, and ending with execution. The comparative analysis revealed a clear convergence between Islamic jurisprudence and Algerian law in handling these stages, especially in non-punishment for the thought/intent stage. Islamic Sharia preceded positive laws in this, as modern laws only adopted it recently (late 18th century post-French Revolution); before that, punishable intent could be proven. Islamic jurisprudence has no exceptions to this principle, whereas positive laws still have some (e.g., aggravated punishment for premeditated murder). They differ when intent is accompanied by a public declaration of resolve to commit a crime; law does not punish this, while Islamic Sharia may impose discretionary punishment (*ta'zīr*), as Islam combats crime from its earliest moments, urging avoidance of all evils, both outward and inward.

Regarding the preparation stage, most legislations do not punish it generally, with exceptions specified by law. In Sharia, a distinction is made between inherently prohibited and permitted acts. For inherently prohibited acts, jurists agree the ruler may punish as required by public interest. For inherently permitted preparatory acts, jurists differ: the Shāfi'ī and Ḥanafī schools, aligning with modern legislations (including the Algerian), generally do not punish them; the Mālikī and Ḥanbalī schools, aligning with legislations that do punish some preparatory acts, consider them punishable based on intent and the principle of *Sadd al-Dharā'ī'*. The Algerian legislator aligns with the Shāfi'ī-Ḥanafī view.

Concerning the execution and completion stage, both systems agree on the necessity of imposing punishment, although they differ in its determination and characteristics.

This study contributes to refining the terminology of the crime stages. The first stage is the criminal will stage, comprising thought and resolve (intent). The second is the preparation stage, where psychological readiness precedes material preparation. The final stage is execution, resulting in either a completed crime or an attempt, possibly accompanied by desistance or positive repentance. The study also deepens theoretical understanding of the criminal act's structure and opens avenues for utilizing Islamic jurisprudence in developing contemporary criminal policy.

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