

## The effect of kinship on aggravating the penalty The case of Rape crime

أثر القرابة في تشديد العقوبة: جريمة الإغتصاب أنموذجاً

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### Abstract:

Rape is one of the most serious and most heinous crimes that threaten the family's entity and break the morality and structure of society, especially if committed from one of the victim's ascendants. The Algerian legislator moved therefore quickly to sentence the perpetrators with severe penalties because these acts were considered to be a deviation from the human common sense, given the trust and mutual respect that these family ties require. From this perspective, our study aimed to learn about the punitive policy of our own legislator to protect these ties.

### key words:

Rape crime, the ascendants, aggravating penalties, protection of family ties.

### المخلص:

تعتبر جريمة الإغتصاب من أخطر و أشنع الجرائم التي تهدد كيان الأسرة وتسحق أخلاق المجتمع و بنيانه، خاصة إذا ارتكبت من أحد أصول الضحية. لهذا سارع المشرع الجزائري إلى مقابلة مرتكبها بعقوبات مشددة لأن هذه الافعال تعد خروجاً على الفطرة البشرية السليمة، نظراً لما تقتضيه هذه الروابط الأسرية من ثقة واحترام متبادل بين أفرادها. ومن هذا المنطلق هدفت دراستنا إلى معرفة السياسية العقابية التي إنتهجها مشرعنا لحماية هذه الروابط وتأثير هذه الأخيرة عليها.

### الكلمات المفتاحية:

جريمة الإغتصاب - الأصول - عقوبات مشددة - حماية الروابط الأسرية.

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### **Introduction:**

The family has attracted special attention in the most canonic and positive laws as the basic cell in society, so the legislation has established special rules for regulating relations between its members in order to maintain their persistence and cohesion, especially those acts that affect the moral fundamentals of the family such as rape as one of the most dangerous types of sexual violence against women. And it gets worse when the perpetrator is a relative of the woman who is supposed to protect her honor, whereas he is assaulting her himself, especially when the perpetrator has an authority over to the victim, which makes it easier for him to commit his heinous crime; that is why this relationships is an aggravating circumstance of penalty in this crime.

For our part, we will try to know how the relationship has affected the aggravation of the penalty for rape, following the analytical approach, as we analyze the legislation and on this issue in order to figure out the penal policy adopted by our legislator regarding this serious crime and how effective it is in reducing it. This is by answering the following problematic: "How does a kinship affect the crime of rape? Which kind of kinship is more influential?" Which we will respond to:

- First section: Conceptual framework for the crime of incest rape.
- Second section: Legal framework for the crime of incest rape.

### **Section I: Conceptual framework for the crime of incest rape**

The crime of rape is one of the most serious crimes of morality, Because it affects the sexual will and the general freedom of the victim . However, the difficulty lies in defining the concept of rape because it mixes with other concepts of similar crimes .So we will distinguish rape from similar crimes to make it easier for us to define the crime of rape.

#### **A- Distinguishing rape crime from similar crimes.**

**1- Differentiating rape from adultery:** There are similarities and differences between the two crimes, so that similarities are apparent in:

- Both crimes are based on sexual intercourse between two parties by natural coition occurrence, whether a full or a partial sexual contact.

Gender difference is a fundamental condition for carrying out the two crimes.

The two crimes are different in terms of:

- **The consent:** Crime of adultery is not established if the coition occurred against the will of one party, and whether it is physical coercion or mental coercion that does not deprive the will without harming the body.

- **Attempted criminal crime:** the jurisprudence tends to say that it is inconceivable to attempting it, and it is not punishable under Algerian law. Therefore, the initiation of the adultery crime cannot be criminalized, unlike attempting rape, which is punishable by the same penalty as finished crime<sup>1</sup>.

- **Evidence:** Adultery is a crime in which mere privacy is required and the two parties took a situation similar to adultery, meanwhile the rape requires penetration in the natural location.

-**The civil status of the crime's two parties:** Adultery required that at least one of them is married, but the crime of rape does not require it<sup>2</sup>.

## **2- Differentiating rape from indecent assault:**

The most important differences can be summarized as follows:

- Rape occurs only from a man and occurs only on a female, but indecent assault occurs on male or female and the offender is not required to be of a particular gender, it not makes difference if the offender is a male or a female.

- Rape is only occurred by the sexual intercourse on the natural location, but indecent assault occurred by hurting the dignity of the male or the female through touching genitals.

## **3-The difference between the crime of rape and the criminal offence of incest:**

Article 337 bis of the Algerian Penal Code stipulates the crime of incest, and this crime differs from the crime of rape in that:

- The material element of the crime of incest occurs when a sexual relationship between a man and a woman takes place completely naturally, based on an explicit mutual consent between them, unlike the crime of rape that occurs under duress.

- It is stipulated in the crime of incest that it occurs between a man and a woman who are related by kinship or affinity. This, however, is not required in the crime of rape, and in the event that it occurs by a man on one of his female descendants, this constitutes an aggravating circumstance rather than an element of the material basis forming the crime.

- With regard to attempting the crime of rape, it is punished because the crime always constitutes a felony, in accordance with the provisions of Article 30 of the Algerian Penal Code. As for the crime of incest, if it is characterized as a felony, that is, it occurred between relatives of descendants or ascendants,

between brothers and sisters, from the father or the mother with one of their descendants, and between the kafeel and the minor placed in kafala, it takes the same rule as the previous crime. That is, s/he or they are punished for attempting it. In case it occurs from a person and the son of one of his brothers or sisters, or from the father or from the mother or with one of its descendants, or from the mother or father and the husband or wife and the widow or the widow of his son or with one of his descendants, and from the husband's father or wife or the mother's husband or the stepmother and the other descendants of the husband, or from people of whom one of them is the husband of a brother or sister, all of these cases constitute an offence. Attempting a misdemeanor is not punishable except by an explicit provision in the law, and with reference to Article 337 bis, we do not find it punishable for attempting it.

#### **4 - Discriminating rape from sexual harassment:**

Both crimes vary in terms of:

- **The constituent act of the material pillar:** in the crime of rape, the act of sexual intercourse penetration by the offender against the victim is required; in the sexual harassment, meanwhile, it consists in material act done by the titular of authority such as: flirting, public slander with hurtful and insolent words that cause decency, or by touching acts.<sup>3</sup>

- **The offender status:** Rape did not require a certain status, but in sexual harassment the offender must have authority over the victim.<sup>4</sup>

#### **B) Definition of rape crime:**

Rape is the prescribed act and is punishable under article 336 of the Algerian Penal Code.<sup>5</sup> Rape is one of the gravest and awful crimes against honor, which has led the international community to consider it as war crimes and serious crimes for which the International Criminal Court is competent to dispose of.<sup>6</sup>

The Algerian legislator did not define the rape and did not determine its exact pillars, while Algerian jurisdiction consider it as a sexual intercourse by a man against a woman without her consent, as stated in Supreme Court Second Criminal Chamber decision of 19-02-2013.

Contrary to some legislation that define it, such as the Moroccan legislature, in article 486 of the Criminal Code by stating: "Rape occur when a man have sexual intercourse with woman without her consent".<sup>7</sup>

The French legislator defined it in article 23 of the Penal Code as follows: "Any sexual penetration of any kind committed on others whatever its nature, using violence, coercion, threat or surprise".<sup>8</sup>

Since our study on this point is the effect of the family relationship on aggravating the penalty, we will limit it to analyzing the crime of incest rape, which is defined as an incestuous and illegal coition by a man on a woman, under coercion and without her consent.

## **Section II: Legal framework for the crime of incest rape.**

The Algerian legislator did not know the crime of rape and did not specify its elements, Rather it is sufficient to determine its punishment only. but by referring to the rulings of the Algerian judiciary and legal jurisprudence. We find that the criminal act does not constitute a crime of rape incest unless the following elements have died in it : The intercourse act ; The element of consent's lack ; Kinship element.

### **A) The pillars of the incest rape crime:**

These are based on the following elements:

#### **1-The intercourse act:**

It is meant an incestuous natural sexual contact of a man with a woman by the penetration of a his male member within the appropriate location for that act; that is why any other female body abuse that does not reach the degree of this act is not considered as an intercourse.<sup>9</sup> That is why putting the finger, a sex toy, or any other object in a woman's vulva is not a rape, nor the penetration of the phallus in other parts of the body other than a woman's vulva.<sup>10</sup>

But these facts and acts in which there has not been full sexual contact can be described as act of indecency; or an attempted rape crime if the complete intercourse is not done for a reason beyond the will of the offender such as a resistance by the victim, or the sexual intercourse has not been achieved because of the young age of the victim or a sexual illness that has lost the ability of the offender to initiate contact.<sup>11</sup>

The attempt is based on two main pillars: The execution's initiation and the forced retraction of the offender. But, what are the acts that can be considered as an attempt to execute the rape, since the male member penetration within the female member is the distinctive element of this crime?

While some of the jurisprudence underlines that rape occurs when the offender uses violence against the victim in order to have sexual intercourse, still the first acts of the offender do not necessarily indicate his intention to commit an act of indecency with a use of the violence. This is what makes us wonder how to

distinguish between the attempted rape crime and the act of indecency crime using violence ?<sup>12</sup>

However, this question do not constitute an ambiguity if the crime has occurred against an adult due to the similarity of penalty prescribed for both the rape and the act of indecency using violence , while the gravity is whether the victim is minor given the difference in the prescribed penalty compared to the above-mentioned crimes. This makes the criminal escape punishment if he is unable to complete the rape for a reason beyond his will.

Since arguing that he attempted to commit an act of indecency rather than rape in order to get a temporary imprisonment from 05 to 10 years instead of 10 to 20 years, the legislator must therefore address this legal gap in order to avoid impunity.<sup>13</sup>

### **2- Femininity status<sup>14</sup> :**

Rape occurs only from a man on a female, there is no difference between a woman who is virgin, deflowered, married, divorced or a widow. This is not related to the degree of female morality, she may be from a noble pedigree or a whore who practices prostitution, since the law protects every woman's complete sexual freedom.

The rape occurs on prostitutes if the intercourse was without her consent, and so offender argument that he once had frequent sexual intercourse with the female or even having with her a natural child during an illegal past sexual intercourse is rejected.<sup>15</sup> The original offender of the rape must be a man, and the crime did not occur by a woman against a man forcing him to commit sexual intercourse by using force or violence, but women can achieve that through deception, cheating, circumvention or mental coercion, and here the consent for the man is not available. But in this case, the crime is considered as an act of indecency.<sup>16</sup>

### **3- The element of consent's lack:**

The crime of rape requires that the act of sexual contact has occurred without the consent of the victim and that consent can take two forms:

- **The first form:** Voluntary consent, where the will of the victim is explicitly expressed as she refuses the sexual intercourse. Woman's lack of consent is proved by the methods of violence practiced over here by the man. It may be physical coercion such as the offender uses his physical force to satisfy his sexual appetite by beating her for example or tying her hands or legs, or muzzling her mouth so that she could not cry out for help.<sup>17</sup>

Coercion can be mental, it consist in forcing the victim to accept sexual contact by threatening her by serious harm in a way that paralyzes her will and forces her to submission,<sup>18</sup> as the one who threatens the woman through a weapon to submit to him or threaten her with a scandal. As was the case of the French policeman who surprised a woman with a stranger in a public place, after what he threatened her with exposition as well as prosecution if she did not offer herself to him, so she submit for fear of scandal.<sup>19</sup>

- **The Second form:** the lack of consent by force of law, it is a consent that the victim's will is inexistent even if she expressed her approval explicitly and without coercion for having incestuous intercourse. This is the case where the victim lack discernment i.e. a minor under the age of 13 or she is insane; there is also a lack of consent without coercion as a state of incautiousness, such as a doctor who seizes the opportunity of the patient's sleep because of syncope, anaesthesia or hypnosis.<sup>20</sup>

#### **4- Kinship element:**

Kinship is intended to determine the position of a person in a particular family, being one of its members, who is linked to the rest of its members by lineage or kinship by affinity.<sup>21</sup>

However, what is the relationship that the Algerian legislator considered in tightening the penalty for the crime of rape?

By referring to the legal texts that address this crime in Articles 336 and 337 of the Penal Code, it becomes clear that the Algerian legislator has taken the direct blood lines into consideration. It is the kinship that binds people according to one lineage from the other. It is the kinship of birth confined to the column of lineage, or it is the relationship of ascendants and descendant. The ascendants are those from whom a person descended like the father and his ascendants, and the descendant is whoever descends from him, such as the son and his descendants. This kinship binds the person to his ascendants, even if they descended. In addition, it is equal for branching to be through males or through females. Thus, the father and the father of the father, the mother of the father, the mother and the father of the mother, the mother of the mother, being ascendants to one another, and the son and the son of the son, being descendants, each of these is a direct relative (direct blood lineskinship) of the other.

In calculating the degree of direct kinship, Article 34, first paragraph of the Algerian Civil Code stipulates that: (In calculating the degree of direct kinship, each branch shall be considered a degree when ascending to the origin). This requires that each branch (descendant) count as a degree, whereas the origin

(ascendant) is not calculated as one. The son in his relationship to the father is considered in the first degree, because we are facing one branch that we count as a degree and the father that we do not count because he is the origin. The son of the son is considered in the second degree. This is because if we ascend from the branch to its origin, we first find the son of the son, who is a branch, thus, counted as a degree, then we find the son who is a branch, and calculated, thus, as a degree also, then the grandfather, who is the origin, is not counted. Thus we have two combined degrees, where the son of the son is in the second degree, because there is one degree between the son and his father, and one degree between the father and grandfather, this brings the total to two degrees. Knowing the degree of kinship is important, because the law may have a certain legal effect on it.<sup>22</sup>

What can also be noticed is that the Algerian legislator did not limit the occurrence of the crime of rape between the ascendants and the descendants. However, he narrowed its scope so that the woman who was subjected to the act of rape should be one of the accused's descendants, meaning that the accused is the victim's father or grandfather and above.

The law does not require that a woman who has been raped should be one of the accused descendants, i.e. the accused is the father or the grandfather of the victim or older.<sup>23</sup> The establishment of a proper lineage relationship requires that the offender and the victim have a legitimate and legal relationship, but if the latter is his daughter from adultery or an adopted daughter; this act constitutes a crime of rape in accordance with article 336 of the Penal Code, we shall not be under an aggravating circumstance, in accordance with article 337 of the same code.

This is because adultery and adoption are not valid for the establishment of a legal lineage relationship,<sup>24</sup> whereas the victim is protected by article 337 of the Penal Code if she was under the authority of the offender as if he was her foster parent or her tutor.

The crime of rape does not take place if there is a marital relationship between the offender and the victim, even if the sexual intercourse was engaged in violence, and the husband is punished for the crime of beating, wounding or slander, if he exceeded the limits. But he can never be pursued with rape, either in its simple or aggravated form, because what he got from his wife, even under coercion, is one of the main aims of marriage. On the other hand, because marriage is generally a presumption of the wife's consent of the husband's sexual intercourse, and there is no need to reiterate this consent in every sexual contact.<sup>25</sup>



Nevertheless, if the husband approached his wife in a way that is contrary to human nature and the method of legitimate cohabitation, such as a husband's intercourse with his wife in the back passage, or in times forbidden under Sharia law, such as the time of menstruation, then these actions do not constitute a crime of rape in any way. However, these actions fall under the description of a crime of indecent act with the use of violence.

#### **5 -The element of criminal intent:**

The criminal intent in this crime is to be found by the perpetrator's intention to initiate the act of sexual intercourse, knowing about his unlawfulness and the absence of any consent by the victim, that is why the intent is not available if the offender believes that his act was legitimate, for example by ignoring the invalidity of the marriage he links him to the victim. The criminal intent also relays if the offender, contrary to reality, believes and proves the sexual intercourse consent of the victim.<sup>26</sup>

The Supreme Court ruled in a decision that "it is stated that if the reasons for the ruling are not sufficient to face the evidences presented in the case and the requests and arguments expressed by one of the parties, this decision will be deficient in its reasoning and will contradict all the provisions of the law.

Since it was well-established in his case, the accused is known by practicing witchcraft, he went to the husband's residence at the request of the latter in order to treat him because he was unable to have sexual intercourse with his bride during their wedding night, but the accused seized this opportunity to have sex with her, the indictment chamber has therefore ruled that the facts are not an offence of indecent assault (rape currently). But the offense is an act of public indecency, depending on the fact that the sexual relationship was carried out with the consent of the wife and the approval of her husband, unlike the reality, without the availability of the elements of this delict, by the fact that it has ruled so, the decision was deficient in its reasoning and contradicted all the provisions of the law.<sup>27</sup>

It should be noted in this field that the criminal intent of this particular crime is just a general intent that can easily be concluded from the circumstances of the act, and from the manner and circumstances of its occurrence.

The fact that the accused resorted to threats against the victim or resorted to one of the means of disrupting the victim's will to refrain and paralyzing its ability to resist or exploiting her illness is on its own sufficient to deduct the design and criminal intent of the accused.<sup>28</sup> However, the requirement for special criminal intent, i.e. the knowledge of the offender about his kinship with the

victim, is a prerequisite for the application of the aggravated circumstance for the crime of rape.

**B) The effect of kinship on establishing criminal responsibility and punishment for the crime of rape:**

Criminal responsibility falls on all those who participated in the commission of the criminal act, whether they were principal perpetrators or accomplices. The principal perpetrator means everyone who contributed directly to the execution of the crime or instigated the commission of the act with a gift, promise, threat, abuse of authority or power or illicit plotting or ruses. As for the partner in the crime, s/he is everyone who contributed indirectly to the crime, but assisted knowingly, in every way and helped the perpetrator or perpetrators in committing preparatory, facilitating or executing acts<sup>29</sup>.

However, the question that we ask is: Is it possible to participate in the crime of rape, and what is the punishment for the participator/s, in the event that his responsibility is established?

Yes, participation in the crime of rape can take place. As for the punishment prescribed for the partner in the crime, the Algerian legislator has adopted the theory of dependency. He, therefore, considered the partner's act as a stand-alone crime. That is, the only relationship of the partner with the perpetrator is the necessity of the occurrence of the criminal act of the original perpetrator as a condition of punishment for the partner.

The dependency results in the following:

- In terms of the quantum of the penalty, the partner's responsibility is estimated in a manner that takes into account his own dangerousness, regardless of the dangerous nature of the perpetrator, which means that the partner's punishment may be more severe or lighter than the original perpetrator's punishment.<sup>30</sup>

- The independence of both the perpetrator and the partner with their personal circumstances, and not the material, circumstances of the crime that determine the description of the crime and for which all parts are asked.<sup>31</sup>

- The independence of both the perpetrator and the partner with impediments of liability and impediments to punishment, and this is what Article 44 of the Penal Code stipulated: "The partner in a felony or misdemeanor shall be punished with the penalty prescribed for that felony or misdemeanor. The personal circumstances that result in the aggravation or reduction of the penalty or exemption from it only affect the perpetrator or partner to whom these circumstances relate. The aggravation or reduction of the penalty according to the

objective circumstances surrounding the crime, depends on whether or not the perpetrator knows about these circumstances.”

The crime of descendants being raped by ascendants shall be committed if all of the above-mentioned elements combined, and the judge shall therefore have to sentence the offender to life imprisonment in accordance with article 337 of the Penal Code, which is an aggravating penalty compared with the penalty of imprisonment from five to ten years in other cases of rape.

The offender is also sentenced to the loss of all or some of the guardianship's rights for a maximum period of ten years from the day of the sentenced person release due to the benefit of or presidential amnesty, which is a supplementary and mandatory penalty as stipulated in the article 9 bis of the Penal Code.

### **Conclusion:**

This study has found the following results:

In amending the text of article 336 of the Penal Code, Act No. 01-14, the legislator has introduced radical changes in the concepts of rape, including his use of the term "rape" rather than "indecent assault". He also used the term "minor", i.e. he raised the age to 18 years old rather than 16 years old. As well as "mineur" instead of " la mineur" in the old text, that means that the crime can be committed on both male and female and as a result, the condition of having a female sexual intercourse on her vulva has no longer been considered and the act sexual intercourse is achieved by any means, as is achieved by the penetration of the male member in any location of the body.

-The aggravation of the penalty by the legislator if the crime is committed by an ascendant of the victim or by one of those who take care of him such as his foster parent for example.

We therefore appeal to the legislator to accept the following suggestions:

- The legislator can be faulted for the use of the term " indecent assault " in the article 337 of the Penal Code, although amended in article 336, which is related to it, he should therefore remedy this in the future amendments.

- It would be preferable if the legislator expanded the circle of close kinship for the crime of rape to make it the same as stipulated in Article 337 bis of the Penal Code. Consequently, rape is punishable if it is committed by a person related to the victim by paternity or brotherhood kinship or by his in-laws up to the fourth degree, or by a fostering agreement (the foster and the sponsored).

- It will be welcomed if the legislator extends the kinship sphere aggravating penalty for the crime of rape to the same as provided in article 337 bis of the Penal Code.

- The legislator must carefully identify the pillars of this crime to avoid conflicting judicial decisions and impunity.

-The legislator should expand the concept of "sexual intercourse" so that it does not be based solely on natural coition.

-The sanctity of the link between the offender and the victim in this crime prompts us to demand a more severe penalty as death sentence.

- It would be preferable if the legislator expanded the circle of close kinship for the crime of rape to make it the same as stipulated in Article 337 bis of the Penal Code. Consequently, rape is punishable if it is committed by a person related to the victim by paternity or brotherhood kinship or by his in-laws up to the fourth degree, or by a fostering agreement (the foster and the sponsored).

- The legislator must take into account the effects of rape, such as defloration and the pregnancy, so he makes them an aggravating circumstance.

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<sup>5</sup> - Abed Al-AzizeSaad, *Moral crimes in the Algerian penal code*, *Second Edition*, *Dar Houma for printing publishing and distribution*, AinMelila, Algeria, 2015, p51.

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<sup>7</sup> - Karima Mahroug, *Criminal protection of the family in light of the lastest amendmets in the Algerian and comparative penal legislation*, *First edition*, *Legal El-wafa library*, Alexandria, Egypt, 2020, P289.

<sup>8</sup> - For more details refer to Ahcen Bouskia, *Al-wajiz in private criminal law*, *Dar Houma for printing publishing and distribution*, AinMelila, Algeria, 2015, p p159,164.

<sup>9</sup> - Nabil Sakr, *The previous reference*, P326.

<sup>10</sup> - For mor details, refer to the reference of Karima, *The previous reference*, 2020, P289.

<sup>11</sup> - The Algerian legislator has defined the attempt in article 30 of the Penal Code: "Any endeavor to commit an offence which is initiating by attempt or unambiguous acts that lead directly to its perpetration shall be considered as the offence itself if it is not suspended or concealed unless circumstances independent from the perpetrator's will, even if the intended target cannot be achieved because of a material circumstance unknown by the perpetrator". For more details refer to Ahcen Bouskia, *Al wajiz in Public Criminal Law*, Fifteenth edition, Dar Houma for printing publishing and distribution, Algeria, 2015-2016, P P 126, 141.

<sup>12</sup> - The Egyptian Court of Cassation ruled that it is considered as a rape attempt "dragging a woman from her hand by a person, and putting his hands on her clothes in order to remove it with the intention of having sexual intercourse without her consent". and also ruled that: "lifting the clothes of the victim by the accused during her sleep and grabbing her legs is legally considered as an attempt, once the Court is convinced that the accused intended it, because these actions would immediately and directly lead to that purpose."

<sup>13</sup> - Ahcen Bouskia, *Al-wajiz in private criminal law*, The previous reference, P109.

<sup>14</sup> - Referring to the amendment of the legislator to draft the article 336 of the Penal Code by law 01-14; we find that in the second paragraph of the French text, the legislator used the term "le mineur" rather than "la mineur" as used in the old text. It is understood that the legislator wants to widen the scope of victim's sex in this crime, following in that the French legislator approach who defined rape in article 222, paragraph 23, as "any sexual penetration whatever its nature committed on others by using violence, coercion, threat or surprise", and hence, it can be said that the only and most accurate elements in distinguishing rape from other sexual crimes are the elements of the lack of consent and coition.

<sup>15</sup> - Nabil Sakr, The previous reference, P294.

<sup>16</sup> - Karima Mahroug, The previous reference, P281.

<sup>17</sup> - Makki Dardos, *Private criminal law in Algerian legislation*, The second part, University Press Office, 2005, P164.

<sup>18</sup> - Nabil Sakr, The previous reference, P295.

<sup>19</sup> - Ahcen bouskia, *Al-wajiz in private criminal law*, The previous reference, P108.

<sup>20</sup> - Nabil Sakr, The previous reference, P295.

<sup>21</sup> - Aziz Mustafa, *Degrees of Kinship*, First edition, Dar El moujaded, Setif, Algeria, 2013, p10.

<sup>22</sup> - Aziz Mustafa, The previous reference, pp11, 12.

<sup>23</sup> - Abed Al-AzizeSaad, *Crimes against the family system*, Second Edition, Dar Houma for printing publishing and distribution, AinMelila, Algeria, 2014, P113.

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<sup>25</sup> - Makki Dardos, The previous reference, P165.

<sup>26</sup> - Nabil Sakr, The previous reference, P296.

<sup>27</sup> - Supreme Court, Criminal Chamber, appeal No. 40236 of 20/11/1984, *Judicial Review*, p247, quoting Karima Mahroug, KarimaMahroug, The previous reference, P281.

<sup>28</sup> - Abed Al-AzizeSaad, *Crimes against the family system*, The previous reference, P112, 113.

<sup>29</sup> - Ahcen Bouskia, *Al wajiz in Public Criminal Law*, Fifteenth edition, Dar Houma for printing publishing and distribution, Algeria, 2015-2016, p212.

<sup>30</sup> - Saaid Bouali and Dounai Rachid, *Explanation of the Algerian penal code*, Second Edition, General section, Dar Belkise, Algeria, 2016, p160.

<sup>31</sup> - *Ahcen Bouskia, Al wajiz in Public Criminal Law, The previous reference,p214.*