

Manifestations of spousal violence in the Algerian Penal Code

مظاهر العنف الزوجي في قانون العقوبات الجزائري

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الملخص:

العنف الزوجي هو كل سلوك عنيف يتضمن إيذاء أو اعتداء يقع بين الأزواج. ويتخذ العنف الزوجي صورا متعددة يمكن حصرها في العنف الجسدي، العنف النفسي، العنف الاقتصادي والجنسي. ولا شك أنّ هناك أسباب كثيرة تسهم في ارتفاع درجة العنف ضد الأزواج، وقد صنف العلماء أهم هذه الأسباب ضمن: عوامل نفسية والمنبثقة من الشخص نفسه، وسماته العقلية والانفعالية مثل الإحباط، الحرمان، القلق، الاكتئاب. وعوامل اجتماعية: مثل التنشئة الأسرية، وسائل الإعلام، الوضعية الاقتصادية، السكن... إلخ. ومع تنامي ظاهرة العنف الزوجي في المجتمع الجزائري كان يتعين على المشرع أن يتدخل بوضع ترسانة قانونية يهدف من ورائها إلى ردع هذه الظاهرة.

الكلمات المفتاحية: الأسرة، العنف، الجريمة، العقوبة، الأزواج.

Abstract:

Spousal violence is any violent behavior that involves abuse or assault between spouses. Spousal violence takes multiple forms that can be limited to physical violence, psychological violence, economic and sexual violence.

There is no doubt that there are many reasons that contribute to the high degree of violence against couples, and scientists have classified the most important of these reasons within: psychological factors emanating from the person himself, and his mental and emotional traits such as frustration, deprivation, anxiety, depression. And social factors: such as family upbringing, media, economic situation, housing... With the growing phenomenon of spousal violence in Algerian society, the legislator should have intervened by establishing a legal arsenal aimed at deterring this phenomenon.

Key words: family, violence, crime, punishment, couples.

Introduction:

Marital violence is considered a type of domestic violence, and it means any assault criminalized by law committed by one of the spouses on the other, as any person can be a victim of marital violence regardless of his gender, which contradicts the common belief that women are the ones who are subjected to marital violence, and since the husband's violence against his wife is the most prevalent because the husband is the strong party in the marital relationship, it was necessary for the penal legislation to address it of all kinds to protect the wife as the weakest link in the marital relationship.

In 2002, the World Health Organization (O.M.S.) defined spousal violence as: any conduct committed within the framework of an intimate relationship that causes physical, psychological or sexual harm or pain to the parties to that relationship.

1. Acts of physical assault such as punches, slaps, beatings with the leg... etc
2. Acts of psychological violence such as resorting to insult, degrading the value of the partner, making him feel ashamed, pushing him to withdraw, and losing self-confidence... etc
3. Acts of sexual violence, including all forms of sexual intercourse imposed under duress and against the will of the other, as well as various sexual practices that cause harm.
4. Violence that includes various authoritarian, tyrannical and unjust behaviors, such as isolating the wife from her family environment and friends, and limiting any possibility of obtaining help from an external source¹.

It is clear from this definition that the forms of marital violence are conceived in four forms, physical violence, psychological violence, economic and sexual violence, which are in accordance with what the Algerian legislator stated in Law No. 15-19 of 30-12-2015 amending and supplementing Ordinance No. 66-156 on the Penal Code.

The aim of this study is to shed light on the most important manifestations of marital violence and to identify its forms in order to highlight the extent of this phenomenon and its expansion in Algerian society.

The primary question addressed in this article is: How did the Algerian legislator deal with the various forms of violence against one spouse against the other in the Penal Code?

To address this issue, we decided to follow the analytical approach by analyzing the texts on the crimes of violence practiced against one spouse against the other, and the descriptive approach in terms of describing these crimes and explaining their forms. Based on this approach, the plan is bilateral, in the first section we address physical and verbal violence committed against one of the spouses, and the second section is devoted to the study of sexual and economic violence committed against the wife.

I. physical and verbal violence committed against one of the spouses

Physical violence is tangible violence resulting from the physical integrity of the victim ⁽²⁾, while verbal and psychological violence is any act that leads to compromising the victim's psyche and emotions without having any physical effects, and it is one of the common and most used types of violence within the family, and is characterized by its proportionality and variation according to the background and characteristics of each family. In this requirement, we will address physical violence committed against one of the spouses in the first section, to address Psychological and verbal violence committed by one spouse against the other in the second section.

I-1 physical violence committed against one of the spouses

Physical violence against spouses is any harmful behavior carried out by one of the spouses that harms the physical existence of the other spouse, and this type of violence appears in the crime of beating and intentional wounding, and this is what we will address in the first section. Section II will deal with the offence of giving substances harmful to health without the intention of causing death.

I-1-1 Crime of Intentional Beating and Wounding

The crime of beating and intentional wounding is one of the natural crimes of violence against persons provided for in the Penal Code, but the legislature, within the framework of the criminal policy, aims to establish protection for spouses from various forms of violence to which they may be subjected. Article 266 bis adds the first paragraph of Law No. 15-19 ⁽³⁾ which includes the amendment of the Algerian Penal Code, in which the crime of beating and intentional wounding committed by one of the spouses on the other, as it stipulates: "Anyone who deliberately injures or beats his/her spouse shall be punished as follows...".

A-Elements of the crime of beating and intentional wounding against one of the spouses

A husband who has a legal and legal relationship under a contract with his wife and who harms him by beating and wounding, whether or not he resides in the same dwelling as the victim's husband or wife, shall be deemed to be a predicate perpetrator of the crime of intentional beating and wounding, as provided for in article 266 bis of Law 15-19, if the cause of the assault is related to the previous marital relationship.

Beating is generally defined as "trauma caused by contact with the victim's body without causing blood to be shed or leaving traces on his body" ⁽⁴⁾. But the wound, it means any cut or tear in the body or in its tissues that leaves an impact on it, such as biting, breaking, burns, skinning and bruises, whatever they are internal or visible ⁽⁵⁾, it is any prejudice to the tissues of the body that leads to their rupture, and these tears may occur on the visible or hidden organs of the body, whether they occur on fleshy, bone, nervous or other tissues ⁽⁶⁾.

In this crime, the legislator stipulates that the result is embodied in the harm suffered by the victim's body as a result of beating, wounding, and assault on his right to bodily integrity ⁷ and there must be a causal relationship between the husband's act and the absolute harm that befell the body of the victimized spouse. If the causal relationship is absent, then the responsibility of the accused spouse is also eliminated ⁸.

The moral element of the crime of beating and intentional wounding against one of the spouses is represented in the general criminal intent with the elements of knowledge and will, it is sufficient that the will of the offender husband is directed to the act of beating and wounding, which results in damage, even if unforeseen, in order for the crime to be considered existing ⁹.

B- Punishment prescribed for the crime of beating and intentional wounding against one of the spouses

Article 266 bis of Act No. 15-19 defines the penalty for beating and intentional wounding against one of the spouses, which varies according to the result of the acts of beating and wounding, as follows:

- Imprisonment from one (01) to (03) years if the wound and beating do not result in any illness or total inability to work exceeding fifteen (15) days.
- If the period of disability exceeds fifteen (15) days, the penalty shall be increased to imprisonment from two (02) to five (05) years.
- If the beating and wounding result in permanent disability, the penalty shall be increased to temporary imprisonment from ten (10) years to (20) years, where the description of the crime changes from a misdemeanor to a felony.
- If physical violence leads to death without the intention of causing it, the penalty shall be life imprisonment, but if the beating and wounding lead to death with the intention of causing it, the spouse of the offender shall be punished by death in accordance with the general rules of the felony of intentional murder, under Article 261 of the Penal Code.

In the first and second cases, while in the third case, if physical violence leads to permanent disability, such forgiveness reduces the penalty, so that the temporary imprisonment becomes from five (05) to ten (10) years instead of temporary imprisonment from 10 to 20 years. A right specific to the victim, and here the victim is deceased.

In view of the seriousness and specificity of this type of crime, as it threatens trust between spouses, because it is committed by those who are trustworthy on the one hand, and the ease with which it is committed, on the other, the Algerian legislature has excluded the husband from benefiting from mitigating circumstances if the acts of violence are committed against the wife while she is pregnant or disabled, or if the crime is committed in the presence of her minor children or at gunpoint.

I-1-2 Crime of giving one of the spouses substances harmful to health without intending to cause death

The crime of giving others substances harmful to health without intending to cause death is one of the violent crimes stipulated in the Penal Code in Chapter Two, in Chapter I within Section I entitled "Murder and other major felonies and intentional acts of violence", as it was stipulated in Article 275 of the Penal Code and decided for different penalties according to the result that the act led to, and the legislator increased the penalty in cases including if it is committed by one of the spouses against the husband The other is in article 276 of the Penal Code, and the latter case is the focus of our attention in this study, and in order to understand this crime, we should address its elements (first) and then the prescribed penalty (second).

A-Elements of the offence of giving one of the spouses substances harmful to health without intending to cause death

The Algerian legislature punishes this crime under articles 275-276 of the Penal Code, article 275 of which stipulates: "Whoever ... Into... Article 276 of the Penal Code, which states the following: "If the misdemeanors and felonies concerned in the preceding article are committed by one of the ascendants or descendants, one of the spouses, the heirs of the victim or one of the persons who have authority over him or those who take care of him, and the penalty shall be ...", including this offence in which the penalty is increased if the offender is the victim's spouse, ascendant, descendant or caregiver, i.e. the penalty is increased in the crime of giving harmful substances if its scope is the family.

This crime requires a supposed element in its aggravated form only, which is that this crime is committed between the spouses, meaning that the husband is the perpetrator and the wife is the victim or vice versa, and this is in accordance with Article 276 of the Penal Code, and the material element is that one of the spouses deliberately gives the other spouse harmful substances, and these substances lead to a disorder in the cells and organs of the body and their functions, and in order for the law to punish this crime, it must result in an effect that is in its simple form Illness or total inability to work, even for less than 15 days, and examples of harmful substances are: cleaning materials, substances for the elimination of animals, harmful medicines... etc., whether these substances are solid, liquid or gaseous and do not have to be toxic, if they are toxic and their purpose is murder and here we move to another crime, which is murder by poisoning or attempted murder ¹⁰.

Article 275 of the Penal Code stipulates that: "... by deliberately giving him in any way...", including the crime of giving substances harmful to health, an intentional crime in which the general criminal intent is required by the elements of knowledge and will, that is, the offender knows that the consumption of these substances entails compromising the safety of the victim, yet the will of the offender tends to give these harmful substances. The motive for this offence is irrelevant, and therefore the existence of a special criminal intent, i.e. the intention to harm the victim, is not required.

B-Penalty prescribed by law for the offence of giving one of the spouses substances harmful to health without intending to cause death

Article 276 of the Penal Code of the Penal Code has increased the penalty for the offence of giving substances harmful to health when committed by one of the spouses against his spouse compared to the penalty established in article 275.

The penalty varies according to the outcome of the offence as follows:

- If illness or total incapacity to work occurs due to the administration of harmful substances by the husband, the penalty shall be imprisonment from two (02) to five (05) years.
- If illness or incapacity for work results for a period exceeding 15 days, the penalty shall be imprisonment from five (05) years to ten (10) years.
- If the administration of harmful substances results in an impossible disease, disability in the use of an organ or permanent disability, the penalty shall be temporary imprisonment from ten (10) years to twenty (20) years.
- If he leads to death without intending to cause it, the penalty shall be life imprisonment.

However, the legislator did not stop at this aggravation, but added other penalties under Article 60 bis of the Penal Code if the cases of Article 276 with its paragraphs (2) (3) (4) are available, all under Article 276 bis of the Penal Code, and this means the application of the security period to the offender's husband or wife convicted of this crime, and its meaning according to Article 60 bis of the Penal Code is to deprive the convicted person of temporary detention measures to apply Punishment, placement in external workshops or open environment, exit leave, midterm freedom and conditional release ¹¹.

I-2 verbal and psychological violence committed against one of the spouses

The Algerian legislature introduced the crime of repeated verbal or psychological violence against one of the spouses in Law No. 15-19, amending and supplementing the Penal Code, in order to protect the spouses from various forms of abuse and humiliation that may occur between them, which affects the morale of the victim and degrades her dignity.

In order to study this crime, it is necessary to address (first) its elements, and then the punishment prescribed for it (second).

I-2-1 Elements of the Crime of Verbal and Psychological Violence Committed against One of the Spouses

Verbal violence means everything that hurts the feelings of the victim in a deplorable manner, which makes her feel humiliated or degraded ¹², and the abuse is through speech or thick profanity, such as cursing, cursing or shouting at her ¹³. The psychological violence is

every behavior based on psychological abuse of women from weakening their self-confidence and breaching their sense of ability and confidence, and begins with unjustified criticism, sarcasm, ridicule, insult and use Refraining from talking to one's wife for a long time and without justification can also be considered a form of psychological violence as it causes psychological stress¹⁴.

The criminal conduct in the crime of verbal or psychological violence is the "act of infringement" or "repeated verbal or psychological violence" that puts the victim in a situation that violates her dignity or affects her physical or psychological integrity. The Algerian legislator did not specify what is meant by infringement, especially after it included in the text of Article 266 bis 01 of Law 15-19 the phrase "... any form of infringement..." Here the scope was left open for the judge's power to adapt the act¹⁵.

Article 266 bis 1 of the Penal Code stipulates that the assault must be repeated in order for the crime to be based on the existence of premeditation.

The legislature also requires the existence of a valid marriage contract between the spouses, whether existing or previous. The offence arises whether or not the perpetrator resides in the same dwelling as the victim, and the offence also exists if the acts of violence are committed by the former spouse and the acts are found to be related to the previous marital relationship.

I-2-2 Punishment for the Crime of Verbal Violence

According to article 266 bis 1 of the penal code, the Algerian legislature punishes this misdemeanor with one to three years in prison, which are aggravated penalties compared to the punishment for this crime in the general rules.

The male spouse offender may benefit from the mitigating circumstances provided for in article 53 of the Penal Code, but may be denied access to them if the wife is pregnant or disabled, or if the crime is committed in the presence of minor children or at gunpoint, and the victim's forgiveness puts an end to criminal prosecution in accordance with article 266 bis 1, paragraphs 5 and 6, of Law No. 15-19 amending and supplementing the Penal Code.

II - sexual and economic violence committed against the wife

Sexual violence is defined as any act of a sexual nature committed against a person subject to coercive circumstances, and it is not required to commit a physical act or violent physical harm against the victim, but it is sufficient for him to be present under circumstances that compel him to submit to the will of the offender¹⁶.

Economic violence against the wife means that the husband controls and exploits his wife's economic resources without her consent, sometimes leading to depriving her of her property and private property, such as the seizure of her monthly salary or the usurpation of her right to inheritance, etc. Using intimidation, threats and intimidation. In this request, we will address sexual violence against the wife in section I, and economic violence against the wife in section II.

II -1 sexual violence against the wife

Spousal sexual violence refers to violence that occurs within the framework of the intimate relationship between the spouses, and is represented in the form of the use of force, bargaining or threats to force the wife to have sexual intercourse without taking into account her psychological and health condition, and may also be by forcing the wife to engage in sexual practices contrary to what is permissible in Sharia. These actions of men are the result of their erroneous perception that the marital relationship is a monopoly right of the man to obtain whenever he wants and in the way he wants, even against the wife's will and will ¹⁷. In this section, we will limit our study to the crime of marital rape, and in this context we will clarify the legal framework for the crime of marital rape first, and then deal with the penalties prescribed for this crime second.

II -1.1 Elements of the Crime of Marital Rape

The crime of rape is one of the most severe sexual crimes in which a woman's body is assaulted through coerced sexual acts, a flagrant attack on her honour, an affront to her dignity and an infringement on her bodily freedom and sexual inviolability ¹⁸.

Jurisprudence and national legislation have differed in the criminalization of sexual violence committed by a husband against his wife.

Jurisprudential opinions were divided between supporters and rejectionists, so the first opinion tended to say that a man marrying his wife without her consent is not considered rape because the marriage contract originally has the basis of the legalization of sexual relations between the spouses ¹⁹, which was confirmed by the Lebanese legislator in accordance with Article 503 ²⁰ "Anyone who coerces other than his wife by violence and threats of sexual intercourse shall be punished with hard labor for at least 5 years," the same provision adopted by the Jordanian legislature in Article 292 ²¹ which requires that sexual intercourse be unlawful in order for the crime of rape to be committed.

Legislation such as the French legislation has expanded the concept of rape in the Penal Code to the extent of recognizing that a husband can be prosecuted for the crime of rape if he coerces his wife to have sexual intercourse ²², As for the position of the Algerian legislator, in view of the absence of a special provision criminalizing sexual violence against the wife, the text of article 333 bis 03 ²³ of Law 15-19 remains valid in our view to apply to the crime of marital rape.

II -1-2 Punishment for the crime of sexual rape

Article 333 bis 03 of Law 15-19 stipulates a penalty of imprisonment from 1 to 3 years and a fine of 100,000 DZD to 500,000 DZD for any attack committed surreptitiously, violently, under duress or threats and violating the sexual inviolability of the victim.

The penalty shall be imprisonment from two (2) to five (5) years if the perpetrator is a

mahram or the victim is a minor who has not completed sixteen years or if the commission of the act is facilitated by the victim's weakness, illness, disability, physical or mental disability or because of the state of pregnancy, whether these circumstances are apparent or the perpetrator was aware of them.

II-2 economic violence against the wife

Economic spousal violence is the husband's unlawful and unconsensual control of the wife's financial resources with the intention of depriving her of her personal needs. The legislature stipulates the crime of economic violence of the husband against his wife in article 330 bis of Law No. 15-19, which states: "The punishment of ... Anyone who practices any form of coercion or intimidation on his wife in order to dispose of her property or financial resources." In order to study this crime, it is necessary to address first its elements (first) and then the punishment prescribed for it (second).

II -2-1 Elements of the Crime of Economic Violence Inflicted by the Husband on His Wife

The criminal conduct of the crime of assault on the wife's financial disclosure consists in the act of coercion and intimidation carried out by the husband against his wife. Coercion means that a person carries another materially and is forced to carry out something, without there being any voluntary contact between the psychology of the executor and what happened from him, while intimidation is to intimidate the wife and make her in a state of panic, fear and psychological disorder, which makes her not in control of her actions²⁴.

The legislator requires for the existence of the material element in the crime of financial coercion against the wife that the result required by law in material crimes, which is the disposal of the property and financial resources of the wife ²⁵, without her consent, and this is the purpose of economic violence.

The legislator did not stipulate that this conduct be harmful to the wife's financial disclosure or spend it for her benefit, as soon as the element of consent to such conduct is absent, the crime arises regardless of whether this act benefits the wife or not.

The offence of infringing on the wife's financial disclosure also requires the element of general criminal intent based on the elements of knowledge and will, i.e. that the sound will of the husband who is the offender is directed towards bringing about the criminal consequence, knowing that his coercion and intimidation lead to the unlawful act criminalized by the legislator, namely the seizure of the wife's property.

II-2-2 Punishment for the Crime of Economic Violence against the Wife

The Algerian legislator for the crime of economic violence committed against the wife has established a penalty of imprisonment from six (06) months to two (02) years and a fine of 50.000 dinars to 200.000 dinars, and makes the victim's forgiveness one of the reasons that lead to an end to criminal prosecution in order to preserve the continuity of the marital

relationship and the cohesion of the family.

As important as forgiveness is in preserving the family, on the other hand, it may lead the offender to evade punishment when the victim forgives him, and this increases the victim's vulnerability to the intervention of the family and pressure on her to forgive him, and may discourage her from seeking redress before the court.

The wife, as a victim of this crime, is also entitled to file an ancillary or separate civil action demanding compensation for the damage suffered and the restitution of her property and property.

Conclusion:

In conclusion, it's evident that the Algerian legislator has provided the necessary protection for spouses through all the punitive provisions included in the Penal Code, incorporating various amendments. The most significant among these was Amendment 15/19, which specifically aimed to protect the wife, recognizing her as the more vulnerable party within the marital relationship.

Although the Algerian legislature seeks to combat any form of violence against spouses by establishing a legal arsenal, the negative and serious effects of spousal violence on the victim, the family and society make the State challenging to address this phenomenon that is contrary to our customs, values and the teachings of our Islamic religion. we propose a set of recommendations:

- The state should establish an effective preventive system to avoid spousal violence crimes by responding appropriately by police officers before it is too late, thus achieving effective protection in a preventive, rather than curative manner.
- Community institutions must support victims of marital violence, take into account their circumstances, encourage their integration into society by improving their social and economic conditions (education, job creation), and propose the creation of a compensatory financial system for victims of marital violence to be guaranteed by the state.
- Directing the media and its effective means to spread awareness and a culture of dialogue in order to renounce marital violence, while adopting the preventive and awareness aspect and changing the societal outlook that tolerates all forms of violence.

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24- Abdel Fattah Khader: Crime and its general provisions in contemporary trends and Islamic jurisprudence, Research Administration, Kingdom of Saudi Arabia, 1985, p. 366.

25- If the legislator did not specify what is meant by property and financial resources because they do not need to be stated, they are all the movable and immovable property that the wife owns, as well as her monthly salary and income from the activities she practices.