

The Impact of the Wife's Status on Criminalization and Punishment Provisions in Algerian Legislation.

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Abstract:

Islamic law emphasizes protecting and respecting the wife, highlighting her elevated status through rights such as proper treatment and financial support. This stands in contrast to the inferior view of women that prevailed before Islam. The Algerian legislator incorporated these principles into the Family Code and safeguarded them through the Penal Code by criminalizing actions that harm the wife, disrupt family stability, or threaten its unity. Examples include criminalizing abandonment of the wife for over two months without valid reason, to uphold the duty of cohabitation and respectful treatment, and acts of coercion or intimidation to seize her financial assets, ensuring her right to financial independence, as stated in Article 37 of Order 05-02. These offenses, introduced by Order 15-19, highlight the impact of the wife's status on criminal provisions, alongside the principle of equality between spouses in other contexts.

Keywords: Abandoning the wife; financial coercion; intimidation; seizure of the wife's property; financial independence.

INTRODUCTION

The wife plays a crucial role within the family, reflecting her significant status. Islamic law underscores her importance, advocating for her respect and protection from any form of harm. This aligns with the principles of marriage, aimed at fostering tranquility, affection, and mercy, as emphasized in the teachings of Prophet Muhammad (peace be upon him) and the Quran. Recognizing these values, the Algerian legislator has focused on safeguarding women, particularly wives, by introducing amendments to the Penal Code through Law 15-19.

An analysis of the Penal Code reveals that the legislator generally upholds equality between spouses in criminalization and punishment. This is evident in cases where the marital status is a factor, such as in adultery or physical and verbal abuse. The principle

also applies when penalties are increased for crimes committed against a spouse, as seen in cases involving the administration of harmful substances without the intent to cause death.

In the 2015 amendment to the Penal Code, the legislator introduced specific protections for wives, including the criminalization of abandonment, which previously required the wife to be pregnant, and financial coercion against her. These measures reinforce the principle of financial independence established in the Family Law through Ordinance 05-02. This highlights a selective approach to criminalization aimed at safeguarding the rights of one spouse.

This raises a key question: Has the Algerian legislator effectively provided exclusive criminal protection for the wife, distinct from the husband, through the criminalization of abandonment and financial coercion against her?

To address this question, an analytical approach was adopted by reviewing and analyzing legal texts that exclusively criminalize actions against the wife, excluding the husband. This method aims to evaluate the extent to which the legislator has succeeded in providing the wife with specific criminal protection.

The hypotheses of this research propose that, starting in 2015, the legislator recognized the importance of protecting the wife and began considering her status as a factor in criminalization. This represents a form of positive discrimination, acknowledging her vulnerability and the need for protection from potential harm by her husband.

The study aims to examine the stance of the Algerian legislator in granting protection exclusively to the wife, exploring whether this represents positive discrimination in favor of the wife or negative discrimination against the husband. It seeks to evaluate the criminal policy adopted by the Algerian legislator in protecting the wife.

To address the topic and answer the central question, the study focused on two key areas: the criminalization of abandoning the wife (1) and the criminalization of coercion or intimidation aimed at seizing the wife's property or financial resources (2).

1- Criminalization of Abandoning the Wife

The legislator classified the crime of abandoning the wife under family abandonment offenses, commonly referred to in jurisprudence as crimes of family neglect or failure to fulfill family obligations. This is outlined in Article 330, Paragraph 2

¹, of the Penal Code, which states:

"He shall be punished with imprisonment from six months to two years and a fine of 50,000 DZD to 200,000 DZD... 2- The husband who deliberately abandons his wife for a period exceeding two months without a serious reason."

To fully understand this crime, it is necessary to explore its legislative definition (1-1) as established in Article 330, Paragraph 2, and examine the legislative measures taken to address it (1-2).

1-1- Legislative Definition of the Crime of Abandoning the Wife

The crime of abandoning the wife was introduced by the legislator through Law 15-19, amending the Penal Code and replacing the previous provision that criminalized the abandonment of a pregnant wife under Article 330, Paragraph 2². The crime of abandoning the wife is defined by the following key elements:

- **The requirement of the wife's status as the victim (1-1-1):** The offense specifically applies to cases where the victim holds the legal status of a wife.
- **The element of abandoning the wife for a period exceeding two months without a serious reason (1-1-2):** This establishes the time frame and lack of justification as critical factors in constituting the offense.
- **The element of intent in abandoning the wife (1-1-3):** The crime necessitates deliberate intent on the part of the husband to abandon his wife.

1-1-1- The Requirement of the Wife's Status in the Victim

The crime of abandoning the wife, as defined by the legislator, includes a prerequisite that precedes the crime's occurrence. This prerequisite is not part of the material element but is a prior condition required by law. Without this condition, the crime cannot be established. This prerequisite is the status of the victim as a wife, meaning the perpetrator must be a husband who neglects his duty of cohabitation with his wife for over two months without a valid reason. Unlike the previous law, which required the wife to be pregnant, this condition applies regardless of pregnancy, reflecting the legislator's focus on protecting women as individuals due to the increasing incidence of unjustified abandonment by husbands.

1 Key Legal Requirements:

1. Existence of a Valid Marriage Contract:

- The marriage must be legitimate, based on mutual consent, and meet Sharia and legal conditions, such as eligibility, dowry, the presence of a guardian (if applicable), and two witnesses (per Articles 9 and 9 bis of the Family Law)³.

- The marriage must be registered in civil status records, similar to the requirements for crimes involving the abandonment of the family residence.

2. Official Marital Bond:

- The crime can only be committed by a husband against his wife, presupposing a valid and official marital bond.
- To prosecute under Article 330, Paragraph 2, the complainant must provide a marriage certificate registered in the civil status records.
- The marriage must still be ongoing and not dissolved, except in cases of revocable divorce, where the marital bond remains intact.

3. Customary Marriages:

- Customary marriages, even if concluded in line with Islamic Sharia, are not recognized by Algerian judicial or administrative authorities unless the complainant formally registers the marriage following legal procedures⁴.

These requirements ensure that the crime is tied to a legitimate and ongoing marital relationship, providing a legal framework for addressing cases of abandonment while aligning with both Islamic principles and Algerian law.

1-1-2- The Element of Abandoning the Wife for a Period Exceeding Two Months Without a Serious Reason

In Article 330, Paragraph 2, the legislator defines "abandonment" as the husband leaving the marital home and leaving his wife alone. This includes scenarios where the husband forces his wife to return to her father's house or another person's residence and leaves her there. The essence of protection lies in ensuring the husband's cohabitation with his wife⁵. The crime is established when the husband departs from the marital residence, neglecting the duty of cohabitation⁶, whether the neglect is material or moral. However, the neglect of other obligations, such as maintenance, is addressed separately under Article 331 of the Penal Code. The crime assumes the marriage has been consummated; if the consummation is postponed by agreement, the crime does not apply.

A related issue arises when the husband refuses the wife's invitation to consummate the marriage, whether his justification is valid or not. This raises the question of whether such refusal constitutes abandonment. Maintenance becomes obligatory under Article 74 of the Algerian Family Law⁷, and failure to provide it may lead to prosecution under Article 331 of the Penal Code, provided its legal elements are met. Abandonment is tied to the notion of cohabitation, where the wife is expected to

live with her husband in the same home, similar to cases of leaving the family residence.

The crime persists even if the husband maintains communication with his wife via phone or social media, as the legislator prioritizes physical cohabitation unless there are valid circumstances preventing it. Abandonment must last for more than two months without a serious reason, as a valid reason nullifies criminal intent. However, the legislator does not clarify whether a return to the wife interrupts the two-month period, unlike in cases of leaving the family residence⁸. Some interpretations suggest that a genuine return to the wife, indicating a permanent resumption of marital life, could interrupt the period.

The legislator does not explicitly define what constitutes a serious reason, leaving it to the judge's discretion. Valid reasons may include military service, medical treatment, education, or serving a custodial sentence⁹. Furthermore, the crime does not apply if the wife leaves the marital home to stay with her family without her husband's consent.

1-1-3- The Element of Intent in Abandoning the Wife

The crime of abandoning the wife is classified as intentional, requiring the presence of criminal intent, which comprises two elements: knowledge and will. Article 330/2 explicitly states, "...the husband who deliberately abandons...", indicating that the husband must be fully aware of the act of abandonment, its neglect of his obligations, and its criminal nature. Despite this awareness, his will must still direct him to commit the act, causing harm to his wife.

Criminal intent is negated if knowledge is absent. For instance, if the husband believes his wife is still with her family for a legitimate reason and delays returning to the marital home, intent cannot be established. In such cases, the burden of proving this lack of intent rests on the husband.

1-2- Punishment for the crime of abandonment of the wife

To safeguard the moral rights of the wife, particularly her right to good treatment, the legislator addressed the crime of abandoning the wife by introducing it into penal legislation. This crime is accompanied by a stipulated criminal penalty aimed at achieving both general and specific deterrence (1-2-1). Furthermore, distinct procedural rules were established for this crime (1-2-2), setting it apart from the general procedural framework.

1-2-1- The Penalty Prescribed for the Crime of Abandoning the Wife

Article 330 prescribes a penalty for the crime of abandoning the wife, consisting of imprisonment for six months to two years and a fine ranging from 50,000 DZD to

200,000 DZD. Additionally, a supplementary penalty may be applied under Article 332, which could include the deprivation of one of the rights outlined in Article 14 of the Penal Code, for a duration of one to five years.

The criminal penalty serves as a means for authorities to safeguard legally protected rights and freedoms. However, in the context of this crime, some critics argue that the imprisonment penalty is inappropriate, as it exacerbates the separation between the husband and wife, undermining the purpose of criminalization, which is to ensure the husband's duty of cohabitation. The minimum imprisonment term, being three times the period of abandonment, is seen as counterproductive. Alternatively, the penalty can be replaced with community service or suspended. This approach allows the objectives of punishment to be achieved without further harm to the victimized wife.

1-2-2- Procedural Specificities in the Crime of Abandoning the Wife

The procedural specificities of the crime of abandoning the wife include several unique measures:

- **Criminal Mediation (1-2-2-1):** Introduced as an alternative to public prosecution, allowing disputes to be resolved without proceeding to trial.
- **Filing a Complaint (1-2-2-2):** Public prosecution is restricted and can only be initiated if the wife files a formal complaint.
- **Direct Summons (1-2-2-3):** The crime can also be prosecuted through direct summons procedures, bypassing the traditional prosecution route.

1-2-2-1- Criminal mediation as an alternative mechanism to public prosecution

The Algerian legislator, as part of a penal policy aimed at resolving disputes outside the judiciary, introduced criminal mediation through the Child Protection Law 15-12¹⁰ and the amendment of the Code of Criminal Procedure by Law No. 15-02¹¹. Article 37 bis 2 defines the scope of mediation, restricting it to infractions and certain misdemeanors, excluding felonies. One of the misdemeanors included is the crime of abandoning the family, which encompasses the abandonment of the wife.

Criminal mediation is described as a non-judicial procedure initiated solely by the Public Prosecution before criminal proceedings commence. Its purpose is to compensate the victim and address the consequences of the crime¹². It serves as a legal alternative to public prosecution, facilitated through an agreement between the perpetrator and the victim, decided by the Public Prosecutor either independently or at the request of the parties. The aim is to remedy harm, compensate the victim, and resolve the effects of the crime.

The goals of mediation include expediting procedures, reducing costs, preserving confidentiality, and balancing the interests of both parties. While mediation is valuable, it is especially preferable in family-related disputes to avoid court intervention. Family arbitration is recommended, with the agreement documented in a report and submitted to the Public Prosecutor for enforcement, ensuring the resolution aligns with familial harmony.

1-2-2-2- Restricting the initiation of public prosecution to the filing of a complaint

The Algerian legislator has limited the initiation of public prosecution for the crime of abandoning the wife to a complaint filed by the wife herself, as stipulated in Article 330, Paragraph 4, acknowledging the sensitive nature of the marital relationship. Only the wife has the right to file this complaint, though she may delegate this authority through a special power of attorney after the crime occurs. Once the complaint is filed, the public prosecutor regains the discretion to initiate the prosecution, leveraging their authority under the law.

Since prosecution is contingent upon a complaint, general criminal procedure rules (Article 6, Paragraph 3, Law No. 66-155) dictate that the withdrawal or retraction of the complaint results in the termination of the prosecution. The legislator explicitly affirms this principle by referencing "pardon" in the final paragraph of Article 330.

1-2-2-3- Permitting the initiation of public prosecution through direct summons procedures

Since the abandonment of a wife falls under the category of family abandonment, criminal proceedings can be initiated through a direct summons to court. Article 337 bis of the Code of Criminal Procedure permits this under specific conditions, including the payment of a bail amount determined by the public prosecutor and the requirement for the accused to choose a domicile within the court's jurisdiction if they do not already reside there.

Although this system originates from the accusatory legal framework and was designed to benefit the victim, it imposes significant responsibilities on her. The wife is required to deliver the summons along with a copy of her complaint, and she is also responsible for covering the associated costs, adding to her burden in pursuing justice.

2- Criminalizing coercion or intimidation aimed at forcing a wife to act regarding her property or financial resources

This crime, referred to as financial coercion against the wife or economic violence¹³, is addressed in Article 330 bis of Law No. 15-19. The article stipulates that "anyone who exercises any form of coercion or intimidation on his wife to control her

property or financial resources shall be punished." To understand this crime comprehensively, it is essential to examine its legislative definition (2-1) and the corresponding legislative response (2-2).

2-1- Elements of the crime of financial coercion against the wife.

The legislative definition of the crime of financial coercion is based on specific legal elements required for its establishment:

- **The status of the wife as the victim (2-1-1):** The crime presumes that the victim is the wife, making her legal status a fundamental element for its applicability.
- **The material element (2-1-2):** This involves the act of coercion or intimidation exercised by the husband to control the wife's property or financial resources.
- **The intentional element (2-1-3):** The crime requires the presence of intent, where the perpetrator knowingly and willingly commits the act of financial coercion.
- **The legal element:** The act must be explicitly criminalized, as stipulated in Article 330 bis of Law No. 15-19.

These elements collectively define the crime and establish its legal framework.

2-1-1- Requiring the wife's status as a victim to be considered an implied element in the crime of financial coercion.

Examining marital violence crimes reveals that most aim to ensure equal protection for both spouses, aligning with the principle of equality upheld by international conventions. However, the crime of financial coercion specifically protects the wife from the husband's encroachment on her financial assets. This protection became necessary as women increasingly entered the workforce, accumulated financial resources, and faced situations where some husbands exploited their authority to illegitimately seize their wives' salaries or income through coercion or intimidation. To address this, the Algerian legislator criminalized such actions, classifying them as a misdemeanor punishable by law.

The crime requires the victim to be the wife, meaning a valid and ongoing marriage contract must exist, registered in the civil status records. Customary marriages are excluded unless formally registered according to legal procedures. Unlike other forms of marital violence, this crime's protection ends with the dissolution of the marital bond. This contrasts with crimes such as intentional assault and battery (Article 266 bis of Law 15-19) or repeated verbal and psychological violence (Article 266 bis 1), which may relate to the marital relationship even after its dissolution.

Notably, the legislator did not classify financial coercion as a form of violence, despite researchers identifying it as economic violence. Instead, it falls under crimes of family neglect or breach of family obligations, highlighting its unique legal treatment within the framework of marital and family responsibilities.

2-1-2- The Element of Coercion or Intimidation to Control the Wife's Property or Financial Resources

The material element of the crime of financial coercion is established through the husband's criminal behaviors, which include coercion, intimidation, exerting influence, and pressuring his wife to relinquish her property or part of it, or preventing her from managing her salary and income. These actions constitute moral violence. The legislator, by stating "...any form of coercion or intimidation...", granted judges broad discretion to classify such acts as economic violence, ensuring comprehensive protection for the wife from practices aimed at seizing her money and controlling her financial resources.

Coercion involves exerting pressure¹⁴, either physical or moral, such as threatening to withhold financial support for the wife and children. Intimidation, a form of moral coercion, includes threats such as divorce¹⁵. Both forms aim to create psychological pressure, nullifying the wife's will and compelling her to surrender her property unwillingly. Coercion can also manifest passively, for example, when the husband withholds financial support despite being capable, or when he ceases communication, creating psychological distress that forces the wife to give up her money.

The legislator does not require the outcome seizing the wife's property or financial resources for the material element to be established. However, if the result occurs, there must be a causal link between the coercion or intimidation and the outcome. This crime assumes that coercion or intimidation must precede or coincide with the act of taking the wife's property. Situations where the wife willingly gives her money to the husband for family benefits, such as investing in a project, do not constitute a crime unless the husband later resorts to intimidation to avoid returning the money when the project fails.

This crime was introduced to protect the wife's financial independence¹⁶, as stated in Article 37, Paragraph 1, of the Family Code. This article affirms that each spouse retains the right to manage their own financial resources and remains responsible for their debts, independent of marriage. This principle aligns with Islamic law, which for over 14 centuries has recognized women's financial autonomy. Women have historically been able to manage their wealth, donate, and engage in lawful financial transactions without interference, preserving their independence even within marriage.

The wife's property includes both movable and immovable assets acquired due to marriage, such as the dowry and gifts, or through other means like inheritance, donation, bequest, and purchase, whether before or after marriage. This also encompasses her monthly salary and income from the activities she engages in.

2-1-3- Intent in Committing the Act of Coercion or Intimidation

The crime of financial coercion against the wife requires **general criminal intent**, which is established when the husband knowingly commits acts of coercion or intimidation, aware that these actions infringe on his wife's financial rights. His intent must encompass both the act and its intended outcome. Additionally, **specific intent** is required, meaning the husband's purpose for the coercion and intimidation must be to seize his wife's property or control her financial resources without her consent. If his intent differs, the crime cannot be established, though his actions may fall under other offenses, such as theft or fraud, if their elements are met.

Consent is presumed unless the husband can prove otherwise, such as demonstrating that the wife voluntarily gave him the money or allowed him access to her bank card for specific purposes like buying household necessities or paying bills.

By criminalizing financial coercion, the legislator aimed to safeguard the wife's financial independence from the husband's greed. This decision followed the introduction of penalties for theft between spouses, addressing situations where husbands previously took their wives' money secretly, an act that had gone unpunished under earlier legal frameworks.

2-2- Legislative response to the crime of financial coercion

The legislative response to the crime of financial coercion against the wife involves two key components:

- **Penal Sanction (2-2-1):** The legislator established a penal sanction to deter offenders and protect the wife's financial independence. This serves as a direct response to prevent and punish coercion or intimidation targeting her financial resources.
- **Provision for Pardon (2-2-2):** Recognizing the importance of maintaining family unity, the legislator allows for pardon in this crime. This aligns with the approach taken in many family-related crimes, particularly those affecting the marital relationship, to preserve the sanctity of the marital bond and support reconciliation.

This balanced approach reflects the legislator's aim to deter harmful behavior while safeguarding the integrity of the family unit.

2-2-1- The penalty prescribed for the crime of coercion or intimidation

The crime of financial coercion against the wife is classified as a misdemeanor, aimed specifically at protecting the wife's property. This follows the legislator's decision to abolish the exemption in property crimes between spouses and to restrict prosecution to a complaint filed by the victim spouse. The penalty for this crime is imprisonment ranging from six months to two years. However, some argue that replacing imprisonment with a fine would be more appropriate. A fine would not only align better with the nature of the crime but also avoid potential harm to the wife and family caused by the husband's absence, thereby maintaining family cohesion. Additionally, the law does not penalize attempted coercion, as there is no specific provision addressing it.

Critics have also claimed that criminalizing this offense exclusively for the wife constitutes negative discrimination against the husband. They propose expanding the protection to include the husband's property to achieve equality between spouses¹⁷. This argument, however, lacks merit for several reasons. First, societal and cultural norms generally make it unlikely for a wife to exert coercion or intimidation against her husband. Second, the duty of financial support rests on the husband, as mandated by both religious and legal texts, even if the wife is wealthy. In cases where the husband refuses to provide financial support, the wife has legal recourse to seek a court judgment compelling him to do so, and failure to comply can result in criminal prosecution. From a religious perspective, a wife is also allowed to take a reasonable amount from her husband's money for her and her children's needs if he refuses to provide for them. These factors justify the focus on protecting the wife's property in this crime.

2-2-2- The wife's right to forgive her husband in order to halt legal proceedings and preserve the marital relationship.

The legislator has allowed the victim's pardon to serve as a reason for halting criminal prosecution, prioritizing the preservation of the marital relationship and family cohesion. Only the wife has the authority to grant this pardon, and no one else may act on her behalf, regardless of their relationship to her. However, she can authorize another person to grant the pardon after the crime has occurred.

The legislator did not specify a particular form for the pardon; it can be verbal or written, provided the wife explicitly expresses her forgiveness and her intent to discontinue prosecution. While this crime is categorized as a form of violence—specifically economic violence—which typically does not require a complaint to initiate prosecution due to its impact on societal interests, the legislator made an exception in this case. To maintain family stability, the husband can avoid punishment if the wife pardons him at any stage of the public prosecution process. This approach recognizes that the crime primarily affects the wife's private interests rather than broader societal interests.

Given this, we recommend that the legislator make criminal prosecution contingent on a complaint from the wife. This would align with the legislative focus on protecting the family's interest above all else. In our society, it is rare for a wife to resort to the courts to file a complaint against her husband, especially when children are involved, as her primary concern is often preserving the family and home. Such cases typically stem from financial disputes rather than physical violence. Making prosecution dependent on a complaint would better reflect these realities and further support family cohesion.

Conclusion

Through this research, the impact of the wife's status on the rules of criminalization and punishment has been analyzed, leading to several important conclusions.

The legislator recognizes the wife's status as the victim in two specific crimes: the crime of abandoning the wife and the crime of financial coercion. Each crime addresses distinct protected interests. The first focuses on preventing family neglect, while the second tackles economic violence and the infringement of financial independence.

Efforts to protect the wife from actions that deny her legitimate rights reflect a positive and commendable legislative approach. By criminalizing these behaviors, the legislator aims to safeguard the wife's role within the family and ensure her access to her legal entitlements.

The crimes of abandoning the wife and financial coercion align with broader policies to protect women, especially wives, from abuses rooted in outdated cultural practices or misinterpretations of religious principles. This shows a deliberate effort to address systemic challenges affecting marital relationships.

However, the crime of abandoning the wife exhibits negative discrimination against the husband. In many cases, wives may leave the marital home without considering the husband's needs, especially in situations where the husband requires care due to illness or incapacity. This imbalance raises questions about equitable protection for both spouses.

Conversely, the crime of financial coercion represents positive discrimination. By prioritizing the wife's financial independence, the legislator seeks to address a critical social issue, particularly in the context of abolishing exemptions for property crimes between spouses. This highlights the importance of economic autonomy for women within marriage.

To achieve a balanced approach, it is recommended that the penalty for abandoning the wife be reduced but increased in cases where the wife is pregnant, ill, or

disabled. This would ensure proportionality in punishment based on the circumstances of the crime.

Furthermore, to uphold equality, the legislator should criminalize the act of a wife abandoning her husband when he is disabled or ill. This change would address the disparity and recognize the husband's rights in similar situations.

Finally, prosecution in cases of financial coercion should be conditioned on a complaint from the wife. This would prioritize the family's interest, reduce unnecessary legal interventions, and align with the legislator's broader commitment to preserving marital relationships.

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⁷- Which stipulates that "the wife's maintenance is obligatory for her husband to consummate her or invite her to him with clear evidence...".

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