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Protective Measures for Abused Women within the Context of Marital Relationships

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Abstract :

This study aims to shed light on the phenomenon of violence against the wife, as she is one of the vulnerable groups most vulnerable to violence within the family. All forms of violence to which a wife may be exposed were explained, whether physical, economic, psychological, or verbal. In addition to clarifying the protective mechanisms that the Algerian legislator introduced through a legal arsenal, which is mainly represented in Law 15/19 amending the Penal Code, through which it aims to deter the phenomenon of marital violence and preserve the entity and stability of the marital bond.

Keywords:

Domestic Violence; Wife; marital relationship ; Protection; Penal Law

Introduction

The phenomenon of violence against women is not a new one; it is an old issue. Women have long suffered from violence and oppression. Before the advent of Islam, men would dislike the birth of a female child and rejoice at the birth of a male⁽¹⁾. With the arrival of Islamic law, there was a profound and comprehensive concern for the family, which established legislation governing family matters at all times and in all places, guiding the marital relationship from the very beginning. During the engagement period, the prospective spouse is shown how to choose and the principles involved. Once married, there is encouragement for good treatment and reconciliation in case of disputes, and finally, there are regulations for divorce when living together becomes untenable.

International legislation has also given significant attention to this issue, especially as it has worsened across many societies. This concern has led to the issuance of a series of international conventions and treaties aimed at mitigating the phenomenon.

Turning to the Algerian Constitution⁽²⁾, which is the fundamental law of the state, we find that it also criminalizes any actions that harm the physical and moral safety of women⁽³⁾. Additionally, the law in all its branches seeks to protect individuals within society. The criminal legislator, in particular, is a key defender of private and public rights and freedoms, and continuously strives to develop new mechanisms to protect individuals, whether male or female, from various forms of abuse. It addresses various types of disturbances that arise and pose a threat to societal stability, with violence against spouses being one such disturbance.

To address this, the criminal legislator introduced Law No. 15-19 dated December 30, 2015⁽⁴⁾, which established a set of provisions aimed at providing broader criminal protection for women. Through this law, the legislator sought to fulfill its international commitments on one hand⁽⁵⁾, and meet the demands of Algerian society on the other. This law specifically addressed violence within the context of marital relationships and broadened the scope of women's protection within society at large. This study will focus on the protection of wives from domestic violence.

It is important to note that domestic violence against wives occurs in various forms and at rates exceeding official statistics and reports. Customs and traditions held by some individuals, which favor keeping forms of violence and abuse against women hidden to preserve family integrity, contribute to the concealment of many instances of abuse. Despite this, violence in all its forms (verbal, physical, material, and sexual) has a negative impact on the health, psychological well-being, and social situation of the abused woman.

Since spousal violence is the most prevalent form of domestic violence, given that the husband is typically the stronger party in the marital relationship, this research paper focuses on studying this particular form of violence.

Domestic violence is a type of family violence and represents a pattern of aggressive behavior arising from unequal power dynamics within the family's division of labor between men and women. This, in turn, determines the roles and status of each family member according to the prevailing economic and social system.

The United Nations General Assembly, in its 1993 Declaration on the Elimination of Violence Against Women, defined violence in Article 1 as "any act of violence against women, whether physical, sexual, or psychological, including threats of such acts or arbitrary deprivation of liberty, whether occurring in public or private life."

Domestic violence refers to any action or behavior by the husband that takes various forms with the intent to cause harm or physical and psychological injury to the wife. This behavior is deliberate and repeated, often occurring within the home during moments of anger and conflict⁽⁶⁾.

Violence can be defined as poor conduct and mistreatment by one or both partners, and may manifest as physical assault, such as hitting or slapping, psychological threats like verbal or emotional abuse, or through control, oppression, and intimidation.

Hence, the following question arises: How effective is the criminal protection implemented by the Algerian legislator in addressing the issue of spousal abuse?

To address the issue at hand, we have decided to adopt a descriptive-analytical approach by highlighting the main forms of violence inflicted on the wife by her husband and analyzing the key legal texts established by the Algerian legislator to ensure broad protection for wives.

The Algerian legislator, through the amendment of the Penal Code No. 15-19, explicitly criminalized certain behaviors by the husband towards his wife that could affect her material (physical or financial) or moral well-being. Therefore, our study will focus specifically on the provisions of this law concerning crimes of violence committed against the wife by her husband.

Based on the above, this research paper is divided into two sections: the first section will address mechanisms for protecting the wife from physical violence, while the second section will cover mechanisms for protecting the wife from psychological violence.

THE FIRST TOPIC: Mechanisms for Protecting the Wife from Physical Violence

Physical violence against the wife is one of the most severe and widespread forms of violence in societies. It is typically perpetrated by the husband due to the wife's vulnerability. Physical violence includes all forms of bodily harm, such as hitting and wounding. It also encompasses attacks on her financial assets, meaning economic abuse where the husband manipulates or controls her financial resources.

First requirement: Physical Harm

This type of violence includes any physical harm inflicted on the woman, which results in significant health and psychological risks for the victim. It is considered one of the newly introduced crimes under the amendment to the Penal Code No. 15-19, as stipulated in Article 266 bis: "Anyone who intentionally inflicts a wound or physical harm on their spouse shall be punished..." It is notable that this article is divided into four paragraphs, arranged from the lightest to the most severe penalties. The first two paragraphs address offenses classified as misdemeanors, while the last two paragraphs cover offenses classified as felonies.

This crime is based on the following elements:

First section: The Material Act

The material act consists of physical assault and injury inflicted upon the wife.

An injury is defined as a tear or cut in the body or its tissues, regardless of its severity⁽⁷⁾. By "tear," we mean the disruption of the natural continuity of body tissue. An injury is considered to occur with any cut in the skin, whether superficial, affecting only the skin's surface, or deep, involving the underlying tissues. Injuries also include abrasions, scratches, and burns.

An injury is also considered to be present if some of the victim's bones are fractured, as such fractures are only possible through the disruption of the tissues surrounding the bones⁽⁸⁾.

The method used to inflict the injury is irrelevant; it could be a sharp weapon, a tool of any kind, or even parts of the assailant's body, such as their fist, leg, or teeth⁽⁹⁾.

As for beating, it is one of the most common and oldest forms of violence in human history. Beating involves applying pressure to the body's tissues without tearing them⁽¹⁰⁾.

The means of external pressure on the body are varied; it could be a stick, a stone, or any object. The assailant might also use parts of their body as a means of exerting pressure, such as slapping with the hand, striking with the head, or kicking with the foot.

It is not required for the victim's body to be stationary at the time of the beating; the assailant might push her into another object or a pit, causing injury due to her body's movement. Even minimal pressure, even if applied just once, is sufficient. Additionally, beating can become an injury if it results in any tearing of tissues, whether externally or internally⁽¹¹⁾.

The crime is constituted whether the perpetrator lives with the victim or not. It also applies if the violence is committed by a former spouse, whether the marital relationship is ongoing or has ended, as long as it relates to the previous marital relationship.

If the act does not result in any physical harm, such as an injury or beating, the crime does not occur. For the material element to be complete, there must be a causal link between the acts of beating and the resulting injury, which is confirmed by the forensic medical expert in their certificate or report⁽¹²⁾.

Second section: The Intentional Nature of Physical Harm Against the Wife

The crime must involve criminal intent, which includes knowledge and will. The husband must be aware that the act of harm he inflicts is criminal and exceeds the limits of discipline. Additionally, the husband must intend to commit the act, though he does not need to intend the specific harm that results. He can be held accountable for the effects of the beating, even if he did not intend them, as they are considered potential outcomes of the deliberate act of beating.

Third section: Penalties for Physical Harm

Penalties vary based on the severity of the results of the violent acts according to Article 266 bis of the Algerian Penal Code. Generally, if the violence does not cause illness or total incapacity to work for more than 15 days, it is considered a misdemeanor⁽¹³⁾. However, the legislator has classified it as a misdemeanor punishable by imprisonment from one to three years to enhance the protection of the wife.

If the period of incapacity exceeds 15 days, the penalty is imprisonment from two to five years. If the violent acts result in permanent disability for the wife, the punishment is imprisonment from 10 to 20 years.

Permanent disability is defined as the total or partial loss of function of a body part, whether through the severance of the limb or the impairment of its function, provided that it is permanent and final, meaning it is not expected to heal⁽¹⁴⁾.

The determination of permanent disability is left to the judge's discretion, who will assess the condition of the injured wife based on the doctor's report. The key requirement is to establish a causal link between the beating and the permanent disability, even if the perpetrator did not intend to cause it, as long as the beating was intentional⁽¹⁵⁾.

If the beating results in the wife's death, even if there was no intent to cause it, the penalty is life imprisonment.

Whether the result of the beating or injury is incapacity, permanent disability, or death, the judge must rely on forensic medical expertise. The forensic doctor is tasked with examining the victim to determine the nature of the injuries, their cause, severity, and the potential for worsening⁽¹⁶⁾.

The perpetrator does not benefit from mitigating circumstances if the victim is pregnant or disabled, or if the crime was committed in the presence of minor children or under the threat of a weapon. Consequently, some acts of injury and beating carried out solely within the context of discipline are excluded from criminalization and punishment.

The victim's forgiveness terminates criminal prosecution in the first and second cases. In the third case, where the result is incapacity or permanent disability, the penalty is imprisonment from five to ten years. Thus, the legislator has excluded the fourth case, where beating or injury results in death, from the possibility of forgiveness.

It is important to note that this provision does not specifically address violence perpetrated by the husband against the wife, meaning violence against women. Instead, it refers to violence between spouses. However, in the final paragraph, it does mention that the perpetrator does not benefit from mitigating circumstances if the victim is pregnant, thus referring to the wife as the victim in this specific instance.

Second requirement: Economic Violence

Economic violence is a form of abuse that a wife may experience from her husband. Despite being widespread in contemporary contexts, this form of violence remains underacknowledged.

Economic violence is often linked with other types of violence. When there is financial conflict, other forms of violence (verbal, psychological, and physical) inevitably emerge. This form of violence primarily occurs within marital relationships and has been criminalized under the Penal Code⁽¹⁷⁾. This provision serves both as a privilege and protection for the wife against the increasingly prevalent economic violence, especially given the deteriorating conditions and the spread of poverty and unemployment in society⁽¹⁸⁾.

First section: Forms of Economic Violence

Economic bullying can take various forms. For example, a husband might object to his wife obtaining a job or refuse to grant her any financial independence and control over her spending.

The abuse may reach the point where the husband blames his wife for her spending or desires to spend, even if the family's resources are sufficient. He might also demand that she deposit her salary into his account, seize her checkbook, or deny her access to her own money. In some cases, he may prevent her from going to the bank or post office to withdraw her money and force her to give him power of attorney.

The husband might also control his wife's career choices, belittle her work, or even force her to resign⁽¹⁹⁾.

The wife is often highly susceptible to this form of violence. It represents an exploitation of the wife's economic resources by the husband, controlling how the money is used and depriving the wife of her legally and religiously guaranteed rights. The husband may misuse his authority by being stingy, denying her personal allowance, or taking her private funds, pressuring her to spend her salary on the family or children's needs.

Considering that wives are generally emotional, if the husband asked her to share in life's hardships and assist him in a friendly manner, she would likely agree, without resorting to violence or coercion.

Economic violence can also manifest in the opposite way, such as by preventing the woman from working if she is employed, or by controlling her career choices in a way that may stifle her creativity and ambitions in the workplace.

Generally, even if the money belongs to the woman, the man often assumes responsibility for managing financial affairs. Economic violence can occur in various environments, including affluent ones, and is not solely related to poverty.

Second section: Elements

To constitute this crime, the perpetrator must engage in two actions defined by Article 330 bis: coercion or intimidation. One of these actions must be related to obtaining property or any financial resources owned by the wife.

Coercion and intimidation, which are essential for this crime, are defined as "any unlawful act by a person with the intent to compel another to perform an act or refrain from doing something." Coercion can affect the will of the coerced person while diminishing their freedom of choice. It is categorized into two types: physical coercion and psychological coercion. Intimidation can take on the characteristics of coercion in that it forces the intimidated person to meet the demands of the other party⁽²⁰⁾.

It is noteworthy that Article 330 bis specifically limits the victim to the wife, thus excluding the husband from being a victim of this crime.

The legislator requires that the violation of the wife's financial resources involves the husband's control over her property without her consent. The crime is constituted as soon as the element of consent is absent, regardless of whether the action is beneficial or harmful. This article uniquely specifies the perpetrator as the husband and the victim as the wife, meaning the crime does not apply to the husband.

Additionally, it is necessary to establish general criminal intent, which includes both knowledge and will. The husband's intention must be directed towards causing the criminal result, with the awareness that this act is legally prohibited.

Thus, the husband is not permitted to use intimidation or coercion to influence the wife to relinquish her property or part of it without her consent, or he will be subject to the prescribed legal penalties.

The legislator has set the penalty for economic violence at imprisonment from six months to two years, according to the aforementioned Article 330 bis.

It is important to note that this article does not specify that the husband cannot benefit from mitigating circumstances if the wife is pregnant or disabled. Although one might imagine that such circumstances, especially disability, could enable the husband to seize her assets, such as inheritance.

THE SECOND TOPIC: Mechanisms for Protecting the Wife from Psychological Violence

Psychological violence is among the most severe forms of abuse a wife may experience, as it disrupts her mental health and can lead to psychological disorders. Its effects extend beyond the wife to her entire family, threatening her overall stability. This type of violence is characterized by its intangibility and the lack of clear physical evidence, making it difficult to prove. Psychological violence takes two forms: emotional abuse and verbal abuse, as specified by the Algerian legislator in Article 266 bis 1 of the Penal Code.

First requirement: Emotional Abuse

Every act of violence contains elements of emotional abuse, regardless of its form. Physical violence, verbal abuse, and sexual or financial abuse all have psychological consequences.

Emotional Abuse, also known as psychological violence, profoundly impacts the victim's being. It destroys the victim's mind and attempts to overcome their psychological strength. Psychological violence is a very effective weapon for subjugation, control, and enslavement. The goal is to manipulate and devalue the other person. Unlike other forms of violence, psychological abuse does not disappear on its own; instead, it intensifies and worsens.

Often, the wife suffering from this abuse initially finds it difficult to recognize it. When she eventually understands what is happening and dares to speak out, people frequently do not believe her or downplay the reality⁽²¹⁾.

First section: Elements

The crime of psychological abuse is realized through various scenarios, all aimed at demeaning the woman, tarnishing her reputation, and humiliating her. The abusive husband gives the wife a negative image of herself. Additionally, the abuse must involve repetition and criminal intent.

- Regarding the material act, psychological abuse can manifest in several ways:

- Insulting and hurtful comments, verbal abuse, negative judgments, humiliation, baseless criticism about her attire, displays of jealousy, lies, and manipulation.
- Threats, retaliation, emotional blackmail, aggression, and hostility;
- Mockery, insinuations, indifference, and exclusion based on comments and intellectual level;

- Sudden outbursts of anger, intolerance of even minor disturbances, and a kind of "sensitivity" to everything coming from the wife;
- Social isolation, constant monitoring, imposition of extremely harsh living conditions, and harassment;
- Criticizing the wife and belittling her in her methods of raising children and managing the household, threatening to evict her, taking the children away from her, unrealistic demands, and rejecting behaviors.

The second element is the requirement for repetition in this crime, meaning it is a crime of habitual nature. If a husband abuses his wife only once, it does not constitute a crime; however, if he abuses her multiple times, then the crime is established⁽²²⁾.

The result in the crime of verbal abuse is the impact on the wife's dignity or the effect on her physical or psychological well-being.

- Criminal intent constitutes the third element of this crime, meaning that the husband must be aware that he is harming his wife through psychological abuse, with the intention of achieving the resulting harm. In this form of abuse, the legislator has stipulated not only general intent but also specific intent related to harming the wife's dignity or physical or psychological well-being, as understood from Article 266 bis 1.

The legislator has allowed for the proof of domestic violence through all available means. The crime is established regardless of whether the perpetrator resides with the victim or not, or if the perpetrator is a former spouse; what matters is the connection to the previous marital relationship.

Second section: Penalty for Repeated Psychological Abuse

Article 266 bis 1 of the Penal Code penalizes anyone who commits repeated psychological abuse against their spouse with imprisonment from one to three years. The perpetrator does not benefit from mitigating circumstances if the victim is pregnant, disabled, or if the crime was committed in the presence of minor children or under threat of weapon.

Second requirement: Verbal Abuse

Verbal abuse is what can be heard, involving the continuous repetition of offensive and degrading words. There is an undeniable strong connection between verbal abuse and psychological abuse, with the latter being manifested through the former. Hurtful and degrading words are what cause the psychological harm that the woman experiences.

To discuss verbal abuse in its precise sense, specific elements must be highlighted.

First section: Actions Constituting Verbal Abuse

Verbal aggression is characterized by raised voices, shouting, and aggressive word choice, as well as a persistence in making demeaning statements. It involves the use of strong and hurtful words. Therefore, verbal abuse can take several forms:

- Shouting loudly, with a condescending and contemptuous tone, never asking politely and always giving orders to the woman.
- Discussing only topics of interest to the husband, disregarding what the wife says, and interrupting her when she speaks.
- Not listening to her, insulting her, criticizing what she says, continuously demeaning her, and belittling her words.
- Words intended to demean the wife: This includes making her feel worthless, insulting, cursing, shouting, calling her degrading names, using obscene language, mocking her in front of others, showing disrespect and lack of appreciation, or insulting her or her family, which undermines her self-confidence and makes her feel unwanted.

If the husband engages in verbal abuse in public, it humiliates her in front of others, causing her to feel embarrassed and ashamed, which may lead her to withdraw and lose self-confidence.

Second section: Recurrence of Verbal Abuse

Just like psychological abuse, verbal abuse requires repetition. The use of such degrading and insulting words must occur repeatedly. The abuse must result in harming the wife's dignity or impacting her physical or mental well-being. The assessment of the damage is subjective and depends on the judge, as it varies from woman to woman. Some women may be more affected by certain words, while others may not be as impacted. A woman accustomed to a calm family environment will react differently from one who grew up in a setting full of harsh language⁽²³⁾.

- Verbal abuse is considered an intentional crime requiring criminal intent. This means that the husband must be aware that his words hurt the wife's dignity and affect her psychological well-being, and he must intend to achieve this result. Criminal intent in verbal abuse involves the perpetrator knowing that his words harm the victim's dignity or physical and mental health, regardless of any motivations or subsequent effects.

Third section: Penalties for Verbal Abuse

The Algerian legislator has established the same penalty for verbal abuse as for psychological abuse, which is imprisonment from one to three years according to Article 266 bis 1 mentioned earlier. Additionally, the perpetrator does not benefit from any mitigating circumstances if the victim is pregnant or disabled, or if the crime was committed in the presence of minor children or under the threat of a weapon.

It's worth noting that Algerian legislation does not address sexual violence perpetrated by a husband against his wife. In Algerian society, sexual relations between spouses are seen as part of marital life and stability, and women are expected to fulfill this obligation even if coerced. This contrasts with Western societies, where forced sexual relations by a spouse are legally considered marital rape⁽²⁴⁾.

Additionally, Algerian law allows for the withdrawal of criminal prosecution if the wife forgives the husband in cases of any form of domestic violence.

While this provision reflects the legislator's intention to maintain marital stability and avoid conflicts, it may deprive the wife of comprehensive protection. A wife who files a complaint against her abusive husband often endures the violence for months, or even years, and faces significant pressure from family members. By the time she decides to turn to authorities, her decision is not final, as the possibility of withdrawal and suspension of prosecution means she will face additional pressures from family elders, associates, and others to retract her complaint. It is evident that in 90% of cases, the complaint is withdrawn, leading to the suspension of further legal proceedings and the discontinuation of public prosecution.

Conclusion:

In this study, we addressed the issue of protecting the wife from violence within the framework of the marital relationship by analyzing the acts criminalized by Law No. 15-19 dated December 30, 2015, which amends and supplements the Algerian Penal Code. The legislator has criminalized violence against the wife in all its forms and types, including physical assault, injury, verbal abuse, psychological abuse, and even economic violence that affects the wife's dignity. This violence has severe and negative impacts that extend to the family and society. This underscores the legislator's commitment to and care for the wife's rights as a fundamental element in building society. We have reached several conclusions, which we summarize as follows:

- Penalties for violence against the wife, whether physical, psychological, or economic, have been increased, with penalties doubled if the wife is pregnant or disabled.
- The legislator requires that there be a valid marital relationship between the spouses, whether current or previous; what matters is that the violence is related to the marital life. In this case, the law does not protect lovers or mistresses, which aligns with our noble Islamic religion that forbids such relationships. The law also does not protect fiancés during the engagement period, even though the legislator legally recognizes engagement.
- Some criticize the legislator for extending the perpetrator's status to include ex-spouses, but we believe this is a positive development. It provides greater protection for both parties since issues often remain after separation, especially if there are children involved, and we know that the psychology of Algerian society is naturally volatile.
- The legislator made a good choice by using the term "spouse" in Article 266 bis, as it does not overlook cases where husbands are victims of domestic violence by their wives, although we understand that the intention of this amendment is to protect the wife, i.e., the woman.

Finally, we have reached some suggestions:

- Focus on preventive measures through raising awareness about the harms of violence, promoting a culture of consultation and understanding, and avoiding early marriage.
- Domestic violence crimes against wives may not necessarily require harsh penalties. It would be more appropriate to include these crimes within the category of offenses suitable for mediation, similar to crimes related to family abandonment, in order to preserve family stability and cohesion rather than engaging in conflicts in court.
- The issue of proving such crimes, as the legislator has relied on traditional means of evidence, makes it difficult to access justice due to economic and social conditions, as well as a lack of awareness and illiteracy.
- There should be a reconsideration of the value system and correction of many misconceptions, such as clarifying the meaning of a man's responsibility, which is intended to refer to fulfilling responsibilities rather than exercising control and using violence as understood by many men.

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