

A Juridical Exegesis of the Algerian Legislative Framework on the Social Reintegration of Incarcerated Offenders

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Abstract :

The modern era has witnessed the proliferation of divergent penological schools of thought, whose theorists have engaged in sustained dialectic over whether the transgressor of criminal statutes ought to be subjected to punitive sanction or, conversely, afforded therapeutic intervention in lieu of retribution. Among the eminent voices in this discourse Rousseau, Montesquieu, Hegel, Lombroso, and Ferri there emerged an irreconcilable bifurcation of opinion: certain jurists and philosophers espoused a rigorous, encompassing punitive paradigm as a bulwark for the safeguarding of society against the malefactor and his antisocial propensities, whilst others championed the primacy of rehabilitative treatment as a prophylactic measure, forestalling future criminality and eschewing retrospective accountability prior to therapeutic engagement.

Yet, the conceptual framework articulated by Gramatica and Ansel under the rubric of social defence proved to be the most empirically tenable of these paradigms. Their doctrine advocated for the holistic re-socialization of the deviant, achieved through moral and social reconstitution, predicated upon the principle of collective solidarity—an acknowledgment that culpability is not the solitary burden of the offender but a manifestation of structural social dysfunction to which the body politic is partially answerable. Consequently, society itself bears the moral and juridical obligation to facilitate the offender's rehabilitation and his reintegration into the communal fabric.

Within this penological milieu, Algeria has aligned itself with the reformist school, promulgating a statutory framework for the social reintegration of prisoners as an instrument for attenuating criminal recidivism. This study endeavors to elucidate the principal provisions of said legislation by interrogating its definitional architecture and the operative mechanisms of prisoner reform and re-education, designed to reinsert the offender into civic life, thereby diminishing the prevalence of

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recidivism while concurrently arresting the upward trajectory of crime rates that have markedly escalated in recent years.

Key words: *social defence; crime; law; social reintegration.*

Introduction :

The socio-cultural metamorphoses experienced by contemporary Algerian society engendered by processes of liberalization, accelerated urbanization, and the pervasive infiltration of advanced technologies into virtually every sphere of activity have precipitated novel individual and collective conditions, necessitating vigilant oversight and dispassionate, scientifically informed engagement.

While Émile Durkheim's sociological axiom holds that criminality is an intrinsic and ineluctable phenomenon inasmuch as no conceivable social order exists in a state of absolute normativity its manifestations in the Algerian context have assumed increasingly perilous dimensions. Durkheim (1894)¹ contended that the form of deviance and crime is contingent upon spatiotemporal and cultural variables; thus, while the specific typology of proscribed conduct may vary, there persists in every society a subset of individuals whose deterrence requires the imposition of penal sanctions. An infraction against codified social norms elicits a societal counter-response, which may assume the form of punishment, rehabilitation, or clinical treatment, contingent upon the prevailing sociocultural and legal ethos.

Recognizing the existential threat posed by criminality to both individual security and the collective good, Algerian policymakers have discerned the inadequacy of purely retributive measures, particularly given their manifest inability to redirect deviant youth toward lawful comportment. The resultant attrition of the nation's human capital exacerbated by the progression of deviance into codified criminality has impelled the search for alternative modalities. Skinner's behaviorist critique of orthodox penal regimes underscores this imperative: behavior subject to punitive suppression tends, in the absence of structural reform, to re-emerge post-sanction.²

In response to this exigency, the Algerian state has embraced a rehabilitative jurisprudence, adopting correctional strategies aimed at reconfiguring the offender's behavioral repertoire and worldview, thereby transforming the carceral interval into an opportunity for moral recalibration and societal reconciliation. This initiative is subsumed under the doctrine of social defense, a paradigm in criminal policy grounded in the interdisciplinary application of human sciences to the etiological study of crime and its perpetrators.

Algeria's legislative intervention in this domain is epitomized by Law No. 05-04 of 6 February 2005, governing the Organization of Prisons and Social Reintegration of Prisoners, which supplanted the antiquated Law No. 72-02 of 10 February 1972. This statute codifies the state's commitment to a dual approach: the deterrence of recidivism through security measures and the cultivation of rehabilitative opportunities for offenders of all categories, anchored in the theoretical and practical precepts of social defense. The present inquiry will delineate the substantive contours of this law and critically examine the Algerian legislator's conceptualization of crime, criminality, and the reintegration process, irrespective of the nature of the offense, within the broader context of societal responsibility.

1- Social Defense: A Historical Perspective

The International Society for Social Defense (1955) defined social defense as a symbol of social and criminal policy that studies the phenomenon of crime and the criminal in order to socially prevent the causes of that phenomenon and to treat criminals and delinquents in a humane manner that ensures their rehabilitation for social harmony.

The modern social concept is based on combating crime and deviation by focusing on the individual, caring for his personality, identifying the factors and motives of his crime and deviation, and working on them. This term is not a creation of this century, nor is it modern; rather, it is as old as the idea of punishment itself, though its concept changes over time according to the development of human societies. It is fair to note that Plato, one of the Greek philosophers, was the first to think of adopting imprisonment as a punishment instead of the prevailing capital punishment of that era. His means for this was the deprivation of liberty, which allows an opportunity to attempt to reform the criminal.³

The use of the term "social defense" began after the end of World War II, thanks to a group of thinkers and researchers such as Filippo Gramatica, who founded the Center for Social Defense Studies in Genoa (1945). He paved the way for the first Social Defense Conference, held in Sanremo (1947), and to this day, these international conferences are held periodically.

Social defense was defined as the deliberate social imposition of punishment on the individual, which fulfills a function in the life of society. It includes processes of formal and informal social education and adaptation, in addition to the application of the law.

Social Defense according to Filippo Gramatica:

Gramatica emphasized the necessity of treating every person suffering from illness or psychological disorders with a set of ideas and opinions related to the individual and society. He stressed replacing criminal procedures with preventive and psychological therapeutic measures, guiding those who have gone astray, and directing those who have deviated from societal expectations and agreements, with the aim of restoring each deviant individual, helping him to adapt properly to society, reform himself, and comply with the law.

Gramatica believed that those whom society fails to treat must be isolated, and efforts should be made to re-socialize, re-educate, refine their behavior, and rehabilitate them physically. However, according to interpreters of his theory, he did not recognize the criminal aspect of punishment and overlooked the role of the state as an established system in implementing punishment on offenders.⁴

2- The Concept of Crime and the Criminal:

2.1- The Concept of Crime from a Psychological Perspective:

Psychologists and proponents of psychoanalysis view criminal behavior as antisocial behavior, similar to any other form of abnormal or deviant behavior. Thus, the criminal is no different from a patient who also exhibits deviant behavior. They see every criminal act as an indication and expression of psychological conflicts driving its perpetrator to commit crime.⁵

Burt stated that criminal behavior is nothing more than the free release of instinctive drives without restraint. Harold Linder referred to crime as deliberate unlawful behavior stemming from psychological manifestations that are symptoms of inner repression and disorder, done to satisfy needs that require such behavior. Cohen (1959) defined deviant behavior or crime as behavior that violates expectations recognized as legitimate by social institutions and systems. Merton (1961) considered deviant behavior as that which clearly departs from the standards established for people in their social circumstances.⁶

Adler argued that crime results from the conflict between the instinct of self—i.e., the tendency toward superiority and the social feeling. He believed every human is free and capable of choosing between a cooperative social life befitting his humanity, or a selfish, self-centered life in which case he predisposes himself to crime.⁷

From a psychological perspective, crime can thus be defined as: "The satisfaction of a human instinct in a deviant manner not followed by the ordinary person in satisfying the same instinct, due to a quantitative defect

*or qualitative deviation accompanied by one or more psychological ailments, occurring at a time when higher instincts and fear of punishment collapse."*⁸

2.2- The Concept of Crime from a Sociological Perspective:

*From a sociological perspective, crime is defined as "any act contrary to what is beneficial to the group and what is considered just in its view," or "any act committed by an individual for purely personal motives that disturbs the life of the group and conflicts with its prevailing moral standard at a given moment in time." It is also "antisocial behavior directed against the interests of society as a whole," or "a violation of the moral norms of the group."*⁹

Sutherland stated: "The true function of crime is to serve as a warning signal of social maladjustment, just as pain serves as a warning to the organism that something has afflicted it. Thus, crime serves as an alert to social maladjustment, especially when it becomes common and widespread in society, acting as evidence of social disintegration."

*However, Émile Durkheim (1894) states in his book *Le crime, phénomène normal* that crime is a normal phenomenon, meaning that it is not tied to a particular society or born of the present time; it cannot be found that a society is free of it, despite the difference in its degree of prevalence and type. He says: "Crime is a normal thing because the ideal society is something impossible; this is the clear and evident premise that should guide sociological thinking. Crime is not observed in one society and absent in another, but rather in all societies of all kinds. Indeed, it differs in form, and the acts are not the same; but each time and everywhere, there are people who can only be led by applying punitive deterrence against them".*¹⁰

On the other hand, George Lundberg sees that "deviant or criminal behavior is any behavior that fails to comply with certain standards, bearing in mind that deviation from the norm recognized in society is explained in light of the amount of deviation tolerated, which differs according to cultures."

2-3- The concept of crime from a legal perspective:

Crime is legally defined as "an act punishable by law," and is also defined as "an act that violates criminal law and is punished by the political authority in society" or as an act or omission that the law stipulates as criminal and prescribes a penalty for committing it. Accordingly, from a legal perspective, the commission of any act not criminalized by law is not considered a crime.

Therefore, behaviors disapproved of by society are deemed contrary to the laws, rules, and regulations of society, and if we wish to give a synonymous term to these behaviors, we borrow from the law the term “crime.” The prevailing view in jurisprudence and legislation defines crime as “activity committed by a person, whether positive or negative, for which the law prescribes a penalty from among those stipulated in the Penal Code.”

2-4- The concept of the criminal from a psychological perspective:

Followers of Freudian analysis hold that criminals are people who suffer from personality or trait disorders resulting from abnormal emotional development and flawed relationships between the id, the ego, and the superego, pushing them toward criminal behavior. According to psychoanalysis advocates, criminals suffer from a lack of harmony between their instincts and innate inclinations on one hand, and the requirements of the external environment in which they live on the other.

Thus, it becomes clear that proponents of this current focus on criminal behavior centered on the psychological characteristics distinctive to the criminal, which prevent him from embodying the values of society and adhering to its rules and regulations.¹¹

2-5- The concept of the criminal from a sociological perspective:

Burgess defines the criminal as “the person who considers himself a criminal and whom society also considers as such.” This definition points to an important aspect, namely the criminal’s self-conception; however, its shortcoming is that defining the criminal solely as one considered so by society lacks precision, since each society’s view differs from another’s. Frank Garting defines him as an ordinary human being, but living in a disintegrated society.

Some see the criminal as a person who has committed behavior criminalized by society, which leads to excluding the criminal label from some who commit acts criminalized by law but not considered crimes by society, even if the law does not stipulate criminalization.

2-6- The concept of the criminal from a legal perspective:

A criminal is defined as any person who has committed an act criminalized by law, whether apprehended or not, and whether in the investigation stage or on trial, even if no conviction has yet been issued.¹²

He is also defined as any person against whom a final judicial conviction has been issued, meaning that the accused during investigation or trial is not yet a criminal.

Mr. Ramadan defines him as “a person who violates the criminal law enacted by the legislative authority under which he lives,” and this term is only applied when the court issues a conviction that has become final and unappealable.¹³

Generally, criminals are divided into different categories, each with characteristics distinguishing it from others in terms of formation or other traits. There are two main categories: the “normal criminal,” who possesses enough awareness and choice to bear full criminal responsibility, and the “abnormal criminal,” who lacks such capacity. The abnormal criminal is further divided into one suffering from mental illness and one who is deviant with partial disorders—mental, organic, or psychological.¹⁴

3. The process of social reintegration of prisoners:

The concept of rehabilitation is linked to the concept of prison, synonymous with detention, and rehabilitation institutions are centers for care and qualification. This description came after many phases, replacing the idea of deterrence and revenge with reform and correction. The prison’s mission has gone beyond merely protecting society from offenders to actively contributing to reducing crime by returning the largest number of inmates to professional, cultural, and social life, fit in body and mind to regain their place in society.¹⁵ Thus, the correctional institution becomes an institution of reform, treatment, care, qualification, and reintegration of the inmate.

3-1- The law on social reintegration from the perspective of the Algerian legislator:

The Algerian state has sought to implement justice reform programs as a cornerstone in building the rule of law. This reform paid great attention to the prison sector by adopting a modern national policy in line with the paths of modern systems in this field. The Ministry of Justice issued legal texts regulating and defining the functioning of this sector, the most important being the Law on Prison Organization and Social Reintegration, issued by Presidential Decree No. 05-04 dated February 6, 2005. This law enshrined the principles and ideas of social defense, making punishment a means to protect society and rehabilitate and re-educate the inmate.

Accordingly, the Algerian legislator defines the process of social reintegration of prisoners in Article (88) as a rehabilitative process aimed at educating the inmate, developing his skills and qualifications, raising his intellectual and moral level, instilling in him a sense of responsibility, and reviving in him the desire to live in society while respecting the law.

Article (112) stipulates that social reintegration is a task undertaken by state bodies with the participation of civil society, according to programs set by the Joint Ministerial Committee for coordinating rehabilitation and social reintegration activities for inmates, as stipulated in Article (21) of this law. (Articles 88 and 112, Law 05-04, 2005)

3-2- Mechanisms of social reintegration of inmates in Algeria:

To support the activities of rehabilitation institutions, the prison administration, in line with Law 05-04 dated 06-02-2005, has developed a

program prioritizing prison reform, rehabilitation, and the social reintegration of inmates. All necessary means were made available to inmates to ensure reintegration, and effective measures were established to ensure their qualification and reintegration into society as normal individuals. Among these measures and mechanisms are:

3-2-1- Health care:

Health care is a right guaranteed by law to all categories of inmates within correctional institutions. Articles (57–63) set the mechanisms for ensuring this right.

At the prison system level, the standard of staff has been improved and their capacities enhanced, since the inmate requires comprehensive medical examinations immediately upon admission and periodically as necessary, either inside the institution or in another hospital if required. Inmates are vaccinated against infectious diseases, and sick prisoners, drug addicts, or those with other addictions are isolated and cared for in specialized facilities if they wish to be treated. Meals must be balanced and complete. ⁽¹⁵⁾ Daily and periodic inspections are carried out by the doctor of the rooms, restrooms, kitchen cleanliness, and the inmate's personal hygiene. Inmates also have the right to exercise and go to the yard during breaks.

3-2-2- Psychological care:

Article (91) of the Prison Organization Law assigns psychologists, educators, and staff in the correctional institution the task of understanding the inmate's personality, improving his general education level, and helping him solve his personal problems.

There are various mental disorders affecting a person's instincts and emotions, causing abnormal deviations that can lead to crime. Criminologists note that certain psychological abnormalities closely linked to crime render the individual unable to control his instincts, resulting in antisocial behavior.¹⁶

In prison, deep human relationships develop between inmates themselves and between them and the staff, enabling prison to play an important role in reviving inmates' psychological skills, such as communication, which helps them solve or avoid psychological problems caused by the stressful atmosphere of confinement. This aids in developing inmates' mental capacities for future reintegration into society. The psychologist plays a key role in identifying the inmate's personality by closely monitoring him during morning and evening visits, individual interviews, or observation in rooms or yards.

The inmate may express himself in various ways, such as gossiping, writing (to share past experiences or current suffering with the psychologist or keep them private), going on hunger strike, self-harm, or attempted suicide. Other behaviors observed such as facial expressions of laughter or sadness, staying in one place for long periods, extreme attention to cleanliness, or total neglect can indicate psychological states through which the inmate seeks care and treatment.¹⁷

To successfully identify diseases and disorders affecting inmates, the psychologist must possess several skills, including:

- **Verbal communication skills:** Conducted in the examination and treatment office, where the inmate is free to express feelings, thoughts, and aspirations while the psychologist listens and offers advice and guidance.
- **Group communication skills:** The psychologist accompanies groups of inmates to attend religious sermons and guidance sessions given by an imam appointed by the Directorate of Religious Affairs inside the prison, helping improve their behavior. He also visits different wings to identify overall problems faced by inmates.

3-2-3- Social care:

Social care is one of the most important elements of inmate rehabilitation programs. The Algerian legislator ensured the appointment of social workers in every correctional institution (Article 88). They form an independent department responsible for providing social assistance to inmates and facilitating their reintegration into society (Article 90).

The social worker's role includes studying inmates' family and financial problems and gathering information from the moment they enter prison, particularly since inmates may leave behind families they support. Solutions are sought and communicated to the inmate to ease his mind, helping him accept the system and rehabilitation willingly. Social assistance ensures connections between correctional institutions and external social institutions on one side, and between inmates, prison administration, and their families on the other.¹⁸

Articles (92–95) outline mechanisms for communication between inmates and the outside world. The prison administration must allow inmates to follow radio and TV programs, read newspapers and magazines, and attend educational, cultural, sports, and religious lectures. Audio or audiovisual programs aimed at rehabilitation may also be broadcast.¹⁹

The supervising authority recommended that prison directors' issue internal newsletters in which inmates contribute with literary, scientific, and cultural work.

To integrate inmates practically, they are assigned certain tasks as part of training, with due regard for their health, physical, and psychological readiness, and are given financial compensation upon completion of their sentence.

The legislator also granted inmates the right to family visits from relatives up to the third degree and to converse with visitors without barriers under the internal regulations of the correctional institution, strengthening social ties and supporting social and educational reintegration.

4- Programs applied in correctional institutions under the Algerian Law on the Social Reintegration of Prisoners

4-1- Educational programs:

Education in prison serves multiple purposes. The social reintegration program sought by the penal system requires guiding the inmate and helping him find lawful work in society after release, which is only achievable by providing necessary knowledge to raise his intellectual and social level while instilling moral values.²⁰

Law 05-04, in Article (94), stipulates organizing general and technical education lessons according to officially approved curricula for the benefit of inmates through agreements between the prison administration and the Ministry of National Education.

To ensure success, the legislator set the material and human framework, covering all levels from literacy to distance learning to university. The prison sector has witnessed a noticeable increase in the percentage of inmates benefiting from education at all levels.

Within the education departments, lessons and lectures are given according to inmates' educational levels and official curricula approved by the Ministry of National Education. These lectures include calm discussions that foster understanding and scientific persuasion in inmates, aiming to eradicate violence from their behavior.

As magazines, newspapers, and books are distributed in order to connect the inmate with his outside world and inform him about national and international situations and news, and to establish a library inside correctional institutions that contributes to educating prisoners and reintegrating them through the types of books and works displayed.²¹

4-2- Religious programs:

The absence of religious deterrence is an important factor that drives an individual to commit crimes without remorse or consideration of the consequences of his actions. Therefore, religious guidance can make the individual reconsider what crimes he has committed, urging repentance, seeking forgiveness, and following the right path. Due to this importance, the Algerian legislator, under Article (66), granted the inmate the right to practice his religious duties and to receive visits from imams.

Religious guidance relies on two important means:

- Organizing lectures and religious lessons by men of religion with knowledge and experience to reach the souls of the inmates and address their minds in an appropriate manner.
- Holding religious rituals by allocating a place for prayer so that the inmate's connection with his Lord is strong, helping him to repent and rehabilitate morally, provided that places of worship

are opened outside study and work hours so that the inmate does not use prayer as an excuse to avoid work.

4-3- Cultural and recreational programs:

As for programs that directly concern the inmate's education and entertainment, they are comprehensive and touch various aspects of his personality. They aim to instill moral values in him, and this role is carried out by a team of specialists. The educational and sports program includes the following:

- Issuing internal newsletters and magazines that serve as a space for prisoners to express their ideas through their literary and cultural productions (Article 93). An example of this is the periodical issued by the General Directorate of Prison Administration called Message of Reintegration, which contains a section dedicated to prisoners' contributions under the title "Prison Publications."*
- Following radio and television programs, which are considered among the most important and influential programs for the individual due to their reliance on direct speech. This is stipulated in Article (92) of Law (05-04), which enables prisoners to follow programs subject to administrative monitoring.*
- Practicing sports activities, as correctional institutions have benefited from equipped halls for sports practice. Engaging in sports and physical effort can reduce tension and release excess emotional energy.*
- Organizing cultural competitions among prisoners during national and scientific occasions, such as Science Day, along with organizing sports competitions, with symbolic incentive prizes awarded to the winners.*

4-4- Social reintegration offices:

Society's duty does not stop at the release of the prisoner but goes beyond that. Governmental and private structures must be provided that can offer assistance to the prisoner after his release, attempting to reduce the issuance of judgments against him and allowing him to be reclassified in his community.²²

According to Article (113) of Law (05-04), which established the external services of the Prison Administration in cooperation with the competent state and local authorities, these services are tasked with implementing prisoner reintegration programs. According to the Ministry of Justice (2009), the first external service was established in Blida in 2008,

followed by Oran and Ouargla in 2009, then Batna and Chlef in 2010, and later generalized to the rest of the provinces.

These services, later called “offices,” monitor inmates inside prison and after their release, receiving them and conducting psychological and orientation interviews, helping them in their relations with public authorities, and supporting them to benefit from social network services, employment agency services, and microcredit management.

Conclusion:

The development of penal thought has led to an effective strategy for combating crime, represented in an intensive process of reintegrating inmates. Algeria is among the few pioneering countries in this field, having adopted in recent years a modern reintegration policy by adapting the penal system to align with national transformations. The most important step in this regard was the issuance of Law No. (05-04) on the organization of prisons and the social reintegration of prisoners, dated February 6, 2005. Algeria ranks first in the Arab world and Africa in respecting international conventions and applying human rights within correctional institutions. This criminal policy is capable of reducing the phenomenon of recidivism, which is growing significantly among prisoners, as well as reintegrating prisoners into their society and enabling them to become good citizens who benefit themselves and their community.

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