



Criminalization of sorcery and witchcraft under penal code n°. 24-06

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Abstract:

This study aims to shed light on sorcery and witchcraft, practices as old as human civilizations but relatively new in terms of legal criminalization. These crimes are widespread and have devastating effects on humanity. Islamic law has a clear stance on such practices, prohibiting them. However, from a legal perspective, the Algerian legislature criminalized them under Law No. 24-06, which defines their elements and the penalties prescribed for them. This article will examine the effectiveness of legal texts in curbing the spread of these crimes and achieving deterrence.

Keywords: Sorcery, Witchcraft, Criminalization, Punishment, Objective Combating.

Introduction:

Sorcery and witchcraft have been known since ancient times, as old as humanity itself (Abdul Rahman bin Abdullah Al-Khalifi, p.2998). The Chaldeans considered the people of Babylon the oldest to practice sorcery. The sorcery of Babylon and Egypt in the days of Moses had many arts, and it was known to the people of Pharaoh (Ahmed Mahmoud Khalil Al-Kharouf

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and Rajih Abdul Hamid Al-Kurdi, 1990, p. 17). The nations that have known sorcery since ancient times, the Assyrians (3000 BC) and the Canaanites (2500 BC), who emigrated from the Arabian Peninsula and inhabited southern Syria (Palestine), as well as the ancient Romans (753 BC) and the Persians (539 BC), have also known sorcery. Arabs, like other nations, have known magic and have traded it among themselves (Abdul Rahman bin Abdullah Al-Khalifi, p. 2998-2999).

The Jews excelled in these practices, as evidenced by the Talmud, which is filled with rituals of sorcery and witchcraft. They transmitted these practices to Europe, where every king had his own sorcerer to fulfill his desires (Rasim Musayr Jasim Al-Shammari, 2015, p. 32). These practices have persisted throughout history and remain prevalent today.

Recently, there has been a noticeable trend among some segments of society, both educated and uneducated, to resort to sorcery and witchcraft. Due to the absence of explicit legal texts in Algerian law criminalizing these practices, and given the increasing dangers they pose to physical and mental health, as well as their threat to faith and religion, the Algerian legislature decided to criminalize these acts and impose criminal penalties to combat and deter their spread in our Arab-Islamic society, which rejects such immoral behaviors indicative of weak religious and moral conscience. Algerian Penal Law dedicated an entire section titled "Acts of Sorcery and Witchcraft" to address this criminal phenomenon, which disrupts rational thinking and binds individuals to illusions, distancing them from their religious and moral principles (Law No. 24-06, issued on April 28, 2024).

Thus, we pose the following question: How has the Algerian legislature addressed the crime of sorcery and witchcraft under Law No. 24-06, and to what extent are these penal provisions sufficient to combat their spread and mitigate their harms?

To answer this question, the study is divided into two sections: The first section deals with the conceptual framework of the crime of sorcery and witchcraft, while the second section examines the objective combating of this crime under Penal Code No. 24-06.

FIRST SECTION:

THE NATURE OF THE CRIME OF SORCERY AND WITCHCRAFT

Sorcery and witchcraft are ancient beliefs as old as human civilizations. Given the mystery surrounding these practices, it is essential first to understand their linguistic and terminological definitions and then explore their legal definitions.

First requirement: Definition of Sorcery and Witchcraft

Before addressing the Algerian legislature's stance on sorcery and witchcraft and its definition of these practices, it is necessary to define them linguistically and in the terminology of Islamic jurisprudence.

First branch: Linguistic Definition of Sorcery and Witchcraft

Sorcery (Sihr) refers to diverting something from its true nature to something else as if the sorcerer makes falsehood appear as truth and presents something as other than what it truly is. The term "Sihr" is derived from the idea of transforming health into illness (Ibn Manzur, 2010, p. 384). It also refers to



presenting falsehood in the guise of truth, often synonymous with deception (Abu Al-Hasan bin Zakariya, 1979, p. 138).

Witchcraft (Sha'watha), on the other hand, is derived from the root (ش ع ذ), meaning to excel in deceit or to present something as other than its true nature, relying on sensory deception (Anas Ibrahim Anas, 1972, p. 484). It also refers to sleight of hand and speed, with some defining it as quickness in all matters (Murtada Al-Zabidi, p. 426).

Second branch: Terminological Definition of Sorcery and Witchcraft

Sorcery is a science that enables the practitioner to acquire a psychological ability to perform unusual acts through hidden means (Ibn Abidin, 1992, p. 44). It is also an agreement between a sorcerer and a demon, in which the sorcerer commits certain forbidden or polytheistic acts in exchange for the demon's assistance and obedience (Bali Waheed, 1992, p. 14).

Ibn Qudamah Al-Maqdisi defined sorcery as knots, incantations, words spoken or written, or actions performed that affect the bewitched's body, heart, or mind without direct contact. It has real effects, such as causing death or illness, preventing a man from approaching his wife, or causing discord between spouses (Ibn Qudamah Al-Maqdisi, 1409AH, p. 299).

Witchcraft, however, consists of pure lies and illusions, rituals without the involvement of jinn or demons. It relies on sleight of hand, tricks, and deception, making things appear other than what they indeed are (Mohamed Zuhair Al-Hariri, 1985, p. 120). It also involves illusions and the manipulation of perception. For example, the practitioner distracts the audience with one action while performing another quickly, creating the illusion of something extraordinary (Abdul Rahman bin Abdullah Al-Khalifi, p. 3020).

Some consider witchcraft a form of sorcery. Ibn Kathir, for example, stated that the sorcery performed by Pharaoh's magicians was a form of witchcraft, as mentioned in the Quran: "So when they threw, they bewitched the eyes of the people and struck terror into them, and they presented a great sorcery." (Quran 7:116) and "And it seemed to him from their sorcery that their ropes and staffs were moving." (Quran 20:66), though in reality, they were not moving (Ibn Kathir, 1420AH, p. 194).

From the above definitions, it is clear that both sorcery and witchcraft involve presenting falsehood as truth and relying on deception. However, sorcery involves using earthly spirits, such as jinn and demons, to achieve specific goals and harm the bewitched. At the same time, witchcraft aims to present things as other than their true nature, often for financial gain without causing harm like sorcery.

Third branch: Legal Definition of Sorcery and Witchcraft

Prior to the amendment of the Penal Code under Law No. 24-06, the Algerian legislature did not explicitly criminalize sorcery and witchcraft. Article 456 of the Penal Code criminalized fortune-telling and divination but did not address sorcery and witchcraft. Due to the inadequacy of Article 456 in combating the spread of these practices, it was repealed, and the crime of sorcery and witchcraft was introduced under Law No. 24-06 through Articles 303 bis 42 to 303 bis 44 of the Algerian Penal Code (Law No. 24-06, issued on April 28, 2024).

The legislature defined the crime of sorcery and witchcraft in Article 303 bis 42 of the Penal Code No. 24-06 as: "Sorcery and witchcraft, within the meaning of this article, refer to creating hope or fear of the occurrence of an event or any other imaginary incident through the illusion of possessing a supernatural ability or authority or assuming a false identity. Acts of fortune-telling



and divination are considered forms of sorcery and witchcraft" (Penal Law No. 24-06, dated April 28, 2024).

This article clearly shows that the Algerian legislature equated sorcery and witchcraft, treating witchcraft as a form of sorcery and including fortune-telling and divination under the same category. The focus is on the psychological effects on the victim, such as creating hope for success or marriage or instilling fear of harm. The legislature also emphasized the immaterial means used by the sorcerer or witch to influence the victim, excluding physical rituals, talismans, and other material tools often used as evidence of these crimes.

Second requirement: The Dangers of Sorcery and Witchcraft

The practice of sorcery and witchcraft has harmful effects on society, including undermining the faith of Muslims, causing discord between spouses, sexual exploitation under the guise of healing, the use of intoxicants and deceptive substances, financial exploitation, spreading enmity among individuals, and threatening societal security. Sorcery also affects human will without the need for tools or intermediaries (Hajj Reda and Maash Nisreen, 2023, p. 609; Ben Ashour Al-Zahra, 2014, pp. 47-50).

It is widely accepted that sorcery distances individuals from religion and its teachings, as engaging in or believing in sorcery leads one to learn harmful practices that offer no benefit. While the benefits may be material, the loss is disbelief and polytheism. Sorcery also leads to various physical and psychological illnesses due to the use of harmful substances by sorcerers (Bouhantala Yacine and Dhabih Hicham, 2024, p. 780).

SECOND SECTION:

OBJECTIVE COMBATING OF THE CRIME OF SORCERY AND WITCHCRAFT

Given the dangers of sorcery and witchcraft, the Algerian legislature classified them as criminal offenses deserving punishment and deterrence. Law No. 24-06 criminalized sorcery and witchcraft and imposed penalties of up to 10 years imprisonment, leaving no room for sorcerers and witches to escape criminal liability (Law No. 24-06, issued on April 28, 2024).

First requirement: Criminalization of Sorcery and Witchcraft in Algerian Law

Through the amendment of the Penal Code under Law No. 24-06, the Algerian legislature addressed the legal gap regarding sorcery and witchcraft. Article 303 bis 42 criminalized these acts, which, like other crimes, consist of legal, material, and moral elements.

First branch: The Legal Element

Article 303 bis 42 of the Penal Code criminalizes sorcery and witchcraft. Anyone who practices these acts for material or moral gain is punished with imprisonment ranging from 1 to 3 years and a fine of 100,000 to 300,000 DZD. The penalty is increased to 3 to 7 years imprisonment and a fine of 300,000 to 700,000 DZD if the sorcery or witchcraft results in physical or moral harm unless the act constitutes a more severe crime.

The penalty is further increased to 5 to 10 years imprisonment and a fine of 500,000 to 1,000,000 DZD if the sorcery or witchcraft violates individuals' privacy, honor, or dignity or



involves fraud and deception (Penal Law No. 24-06, dated April 28, 2024).

Second branch: The Material Element

The material element of the crime of sorcery and witchcraft requires the presence of criminal behavior, a result, and a causal relationship.

First: Criminal Behavior

The criminal behavior in sorcery and witchcraft takes two forms: practicing sorcery and witchcraft as a profession, making it a source of livelihood, and using various means and methods outlined in Article 303 bis 42 of the Penal Code, such as:

- Creating hope: Instilling the expectation of a positive future event in the victim, such as a young woman seeking marriage being led to believe the sorcerer can facilitate it.
- Instilling fear: Making the victim fear an imaginary event, such as convincing an employee with job issues that they will be fired and that the sorcerer can prevent it (Bouhantala Yacine and Dhabih Hicham, 2024, p. 781). The perpetrator relies on deceiving the victim into believing they possess supernatural abilities or a false identity.
- Fortune-telling and divination: Gaining knowledge of people's secrets and predicting the future through the assistance of demons (Ahmed Mahmoud Khalil Al-Kharouf and Rajih Abdul Hamid Al-Kurdi, 1990, p. 29).

Second: The Result

The result is the effect of criminal behavior, such as material gain (money, jewelry, etc.) or moral gain (fame, influence, etc.). Sorcery and witchcraft can also cause physical or psychological

harm, such as severe illnesses or mental and emotional distress, as outlined in Article 303 bis 42 of the Penal Code (Penal Law No. 24-06, dated April 28, 2024).

Third: The Causal Relationship

The causal relationship links the criminal behavior to the result. For the crime of sorcery and witchcraft to be established, it must be proven that the harm suffered by the victim resulted from the perpetrator's actions. If this relationship is absent, criminal liability is negated.

Proving the causal relationship between sorcery and witchcraft is challenging due to the mysterious nature of these crimes, which often rely on talismans, symbols, and herbal concoctions. Judges may rely on expert testimony, but identifying suitable experts for such cases remains problematic (Bouhantala Yacine and Dhabih Hicham, 2024, p. 784-785).

Third branch: The Moral Element

The moral element represents the internal aspect of the crime, consisting of knowledge and intent. The crime of sorcery and witchcraft is intentional, requiring criminal intent. The perpetrator must be aware that their actions constitute sorcery or witchcraft and that these acts are unlawful. Their free will must be directed towards deceiving victims for material or harmful purposes, as Article 303 bis 42 of the Penal Code outlines (Law No. 24-06, issued on April 28, 2024).

Second requirement: Penalties for Sorcery and Witchcraft in Algerian Law

The Algerian legislature classified sorcery, witchcraft, fortune-telling, and divination as misdemeanors, imposing



criminal penalties, including primary, secondary, and complementary penalties.

First branch: Primary penalties

The Algerian legislature established penalties for the misdemeanor of sorcery and witchcraft, ranging from imprisonment to fines, as follows:

First: Penalty for the Misdemeanor of Sorcery and Witchcraft

Article 303 bis 42 of the Penal Code imposes a penalty of 1 to 3 years imprisonment and a fine of 100,000 to 300,000 DZD on anyone who practices sorcery and witchcraft for material or moral gain.

Second: Aggravation of the Penalty for Sorcery and Witchcraft

The penalty for sorcery and witchcraft is aggravated in two cases:

- Aggravation in case of physical or moral harm: If the sorcery or witchcraft results in physical or moral harm to the victim, the penalty is increased to 7 years imprisonment and a fine of 700,000 DZD. If the act constitutes a more severe crime, such as causing the victim's death, the perpetrator may face charges of murder.
- Aggravation in case of violation of privacy, honor, dignity, or fraud: Article 303 bis 42 imposes an aggravated penalty of 5 to 10 years imprisonment and a fine of 500,000 to 1,000,000 DZD if sorcery or witchcraft violates privacy, honor, or dignity or involves fraud and deception.

Third: Penalty for Promoting Sorcery and Witchcraft

Article 303 bis 43 of the Penal Code imposes a penalty of 2 to 5 years imprisonment and a fine of 200,000 to 500,000 DZD on anyone who intentionally promotes sorcery and witchcraft.

Second branch: Secondary penalties

In addition to the primary penalties outlined in Article 303 bis 42, the Algerian legislature imposed complementary penalties, including the confiscation of assets and tools used or obtained from the commission of the crime, the closure of websites used for these crimes, and the closure of the premises where the crime was committed if the owner was aware of the activities, as per Article 303 bis 44 of the Penal Code.

Conclusion:

The Algerian legislature criminalized sorcery and witchcraft under Law No. 24-06, which amended the Algerian Penal Code, in response to the widespread prevalence of these crimes and their harmful effects on individuals and society economically, socially, psychologically, and religiously. The study concluded with the following findings and recommendations:

Findings:

-The Algerian legislature defined the crime of sorcery and witchcraft, but the definition lacks precision in distinguishing between the two terms.



-The legislature adopted a policy of classifying the crime as a misdemeanor, with varying penalties ranging from lenient to severe, depending on the outcome of the crime.

-The penalty for sorcery and witchcraft is aggravated if certain circumstances are present, such as causing physical or moral harm, violating privacy, honor, or dignity, or committing fraud and deception.

-To achieve deterrence and prevent the spread of sorcery and witchcraft, the Algerian legislature criminalized the promotion of these practices.

-Through Law No. 24-06, the Algerian legislature addressed a legal gap related to sorcery and witchcraft, criminalizing these acts as major sins.

Recommendations:

-Strengthening the penalties for sorcerers and witches to align with Islamic law, which prescribes the death penalty for such offenders without the possibility of repentance, as sorcery and witchcraft are major sins. This would achieve the goal of deterrence and justice for victims.

-Raising awareness about the dangers of these deviant practices through seminars, workshops, and scientific conferences to warn people about the deceit of sorcerers and witches.

-Providing legal protection for whistleblowers who report crimes of sorcery and witchcraft and publicly exposing offenders to warn the public.

-Encouraging researchers and academics to study the criminal policy on sorcery and witchcraft.

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