

## COMBATING PSYCHOLOGICAL VIOLENCE AGAINST THE WIFE IN ALGERIA

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### **Abstract**

*Psychological violence against wives is one of the most widespread types of violence in the world, regardless of civilization. It has become increasingly prevalent in Algerian society in recent years, prompting the legislature to address it by criminalizing it through the introduction of Article 266 bis 1 of the Penal Code of December 30, 1915, as amended and supplemented.*

*This law aims to protect the wife, as she is the weaker party in the marital relationship, and because this type of violence is often intangible, imperceptible, and invisible. This can have serious consequences for the wife's mental and physical health, and can even lead to death. It also poses a major threat to the stability of the family, its foundations, and society as a whole.*

### **INTRODUCTION :**

Violence is a widespread social phenomenon that affects all societies, regardless of their culture or civilization. A closer look at this phenomenon reveals that women in general, and wives in particular, are the most vulnerable groups to violence, especially psychological violence within the marital relationship.

Many calls have been made to end the injustice and violence that wives endure daily, but the problem persists. This is partly due to the corrupt patriarchal references that have been ingrained in the minds of men, which favor men over women and view women as servants who should obey without question. In pre-Islamic times, women were considered slaves or concubines who could be bought and sold and had no rights as wives.

Psychological violence has existed since the dawn of humanity, beginning with Cain's assault on his brother Abel through verbal violence, which is a form of psychological violence that includes threats and intimidation.

With the advent of the 7th century AD, Islam emerged and honored women, granting them a high status and considering them a symbol of honor and chastity. Islam lifted the injustice and violence that women were constantly subjected to and gave them their rights as mothers, daughters, sisters, and wives, not just as weak and subservient beings.

Islamic law came to eradicate and correct the prevailing ideas and beliefs. Despite the rights that Islam has granted to women, such as honor, respect, and the scientific, cultural, and literary status that they have achieved today, psychological violence remains one of the most dangerous types of violence that can destroy a woman's psyche. Its danger lies in the fact that it is intangible and leaves no physical marks, but it can cause much more damage.

Given the alarming spread of psychological violence against wives in recent times, as well as the increasing number of divorce cases due to this violence, especially in Algerian society, the Algerian legislator has been forced to criminalize it. This was done through an amendment to the Penal Code No. 15-19, as amended and supplemented, issued on December 30, 2015. The amendment was aimed at protecting wives and combating this crime, as well as punishing those who commit this inhuman and immoral act, which is considered alien to us as Muslims.

From this, we can ask the following question: How did the Algerian legislature address the phenomenon of psychological violence against the wife? What is the concept of psychological violence against the wife? What are the elements of this crime and the penalties imposed for it?



## Chapter One: The Nature of Psychological Violence Against the Wife

### Section One: The Linguistic and Technical Definition of Psychological Violence :

#### 1. The Linguistic Definition of Violence

Violence, in French "violence"<sup>1</sup>, is the mistreatment and physical cruelty of one person by another. It ranges from simple beatings and non-injurious means of violence to attempted murder and serious slander. This can be a ground for divorce<sup>2</sup>.

In the Lisan al-Arab dictionary, it is defined as: "The violation of an order and the lack of kindness towards it. It is the opposite of kindness. It is said that he took the matter violently, meaning that he took it forcefully. It can also mean hardship and difficulty. So, everything that is good in kindness is like evil in violence<sup>3</sup>."

#### 2. The Technical Definition of Violence

The term violence has been associated with many other terms, such as harm, beating, intimidation, and others. There are several definitions of violence. Dr. Muhammad Mamoun Muhammad Salama defined it as: "The freezing of energy or physical forces in any contact with the safety of the human body that is likely to cause harm, assault, or threat<sup>4</sup>."

Some jurists have also defined it as: "The use of force, either physically or through intimidation and threats, to harm people, damage their property, or dispose of it by force<sup>5</sup>."

Scheffer defines violence as: "Behavior that leads to personal harm to another, which may be psychological or physical<sup>6</sup>."

Violence is the abuse of another person through the use of force or power, which affects the physical and psychological safety of the victim. It is a relationship based on control and domination<sup>7</sup>.

The Algerian legislator has not defined the term violence because the legislator's task is to enact laws, not to define terms. However, referring to legal scholars, have defined violence as: "A crime punishable by law that consists of an assault by one person on another, either physically, such as beating, or morally, such as insults and swearing, or economically, such as economic deprivation, or sexually, such as harassment<sup>8</sup>."

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 gender-based violence that results in or is likely to result in, physical, psychological or sexual harm or suffering to women.<sup>9</sup>

Article 266 bis 01 defines psychological violence as: "... any form of repeated verbal or psychological abuse or violence that places the victim in a situation that undermines their dignity or affects their physical or psychological integrity<sup>10</sup>."

The Algerian legislature has defined psychological violence as emotional abuse. It causes a psychological and emotional crisis that affects the wife and her physical and psychological health, making her emotionally and sensually weak<sup>11</sup>.

Psychological violence against women is more widespread than physical and economic violence. There is hardly a single Algerian household where a husband does not abuse his wife with hurtful words that undermine her being by insulting her with vulgar or obscene language or by violating her honor. This violence is not limited to Algeria but is present in all countries of the world.

Psychological violence is the most harmful or dangerous type of violence for the wife compared to physical violence. This was confirmed by UNESCO, which "considered psychological violence to be a deeper and more dangerous form of violence than physical violence for women's lives."

### Section Two: Causes of Psychological Violence :

The phenomenon of psychological violence is one of the most dangerous and complex phenomena that is practiced against the wife by the husband. It is linked to many causes and effects that contribute significantly to its spread.

The following are some of the personal causes that lead to the perpetration of violence against the wife:

➤ The husband may be of a nervous type who only deals with his wife with his tongue and hand, i.e., he insults her, curses her, and humiliates her with all sorts of vulgar and obscene language simply because she disagrees with his opinion. He may also beat her if he does not

achieve his goals to satisfy his needs. Likewise, some husbands may believe that the only successful way to treat their wives is to insult and beat them. They believe that the more cruel and violent the husband is in hurting and destroying her morally, the more prestigious he will become in her eyes and the more she will love him<sup>12</sup>.

- A person who suffers from psychological problems is an unstable person who may suffer from psychological issues and frustration<sup>13</sup>," which leads to aggression. Aggression is the natural response to frustration, so the husband's feeling of failure to achieve his goals inevitably leads to aggression that is directed directly at the person who caused it (and this may be the wife<sup>14</sup>.
- Jealousy and suspicion: "Violent husbands are jealous and suspicious of their wives, for the simplest of reasons. For example, a husband may see his wife talking to someone, such as a colleague at work, and believe that they have a relationship<sup>15</sup>."
- Lack of communication and understanding skills between the spouses in solving the problems they face throughout their lives. If the intensity of disagreements and conflicts increases, they will worsen instead of being eliminated, alleviated, and treated.
- Alcohol and drug abuse: "Alcohol and drug abuse can cause the husband to lose his emotional and psychological balance and, for no good reason, resort to violence against his wife<sup>16</sup>."

## **Chapter Two: The Elements of the Crime of Psychological Violence and the Punishment Prescribed for It**

The crime of psychological violence against the wife has a set of elements on which it is based, which it shares with all crimes in three elements (the legal element, the material element, and the moral element), in addition to the presumed element, which is not required except in some crimes, including the crime of psychological violence due to its specificity from other crimes.

This is also due to the punishments that the legislator has approved in the new amendment to the Algerian Penal Code by adding Article 266 bis 1, which criminalizes psychological violence committed by a husband towards his wife, or an ex-husband towards his ex-wife. This is what will be discussed in this section.

### **Section One: The Elements of the Crime of Psychological Violence Against the Wife**

No crime can be committed except based on a legal text, according to Article 1 of the Penal Code, which states: "There is no crime, no punishment, or security measures without a law<sup>17</sup>."

Accordingly, the legal element of the crime of psychological violence against the wife is embodied in the text of Article 266 bis 01 of the Algerian Penal Code, which states: "Anyone who commits against his wife any form of repeated verbal or psychological abuse or violence that places the victim in a situation that undermines her dignity or affects her physical or psychological integrity<sup>18</sup> shall be punished by imprisonment of one (1) to three (3) years."

The crime of psychological violence cannot be committed unless its three elements are met, which were mentioned earlier: the legal, material, and moral elements, in addition to the presumed element. This is what we will try to address in some detail in this section in three branches: the first branch: the presumed element, the second branch: the material element, and the third branch: the moral element.

#### **Subsection One: The Presumed Element**

The presumed element is the characteristic of the victim, i.e., the injured party (the wife). For this element to be established, the injured party must be the wife of the perpetrator, whether the marital relationship is actually or legally existent, i.e., the marriage contract has been concluded but not consummated, or she is in a waiting period from a revocable divorce<sup>19</sup>.

It can be inferred from all of this that any illegitimate relationship outside the framework of marriage, as well as fiancés who have not yet concluded a marriage contract, are not subject to the provisions of Article 266 bis 1 of the Algerian Penal Code. Therefore, it is not considered marital psychological violence if the marriage is customary, or those who are in Islamic rulings on the relationship between engaged couples, and therefore the perpetrator is presumed to be the husband or the ex-husband according to the text of this article. The latter requires that the previous marital relationship be the reason for committing this act<sup>20</sup>.

#### **Subsection Two: The Material Element :**



By reading the text of Article 266 bis 01 of the Algerian Penal Code, we find that the legislator mentioned three types of psychological violence committed against the wife, stating: "... by any form of repeated assault or verbal or psychological violence that places the victim in a situation that undermines her dignity or affects her physical or psychological integrity..."<sup>21</sup>

We notice that the Algerian legislator used the letter "or", which indicates a choice. It can be inferred from the text of this article that the inclusion of the phrase "any form of assault" includes all forms or types of violence that the legislator did not mention in this article<sup>22</sup>.

The material element of the crime of psychological violence against the wife consists of three essential elements: criminal behavior, criminal result, and the causal relationship between them.

The criminal behavior of psychological violence against the wife is the repetition of the act that the husband practices on his wife<sup>23</sup>, which affects the wife's psyche and undermines her dignity.

The wife may be subjected to psychological abuse by the husband, which is represented in any form of psychological violence that she may be subjected to. The Algerian legislator, by including this type of violence within the text of Article 266 bis 01, has provided the wife with protection from any act that may be issued by the husband. However, it can be said that the Algerian legislator has repeated the terms of psychological violence, as it was more appropriate to adopt only one term, which is psychological violence because all forms of assault that the wife is subjected to and that undermine her dignity fall within the term psychological violence<sup>24</sup>.

Despite this, the Algerian legislator, through the provisions of Article 266 bis 01 of the Algerian Penal Code, intends to provide legal protection for the wife from the violations she suffers from her husband and to criminalize such acts under a specific provision.

It can also be defined as damaging the wife's honor and insulting her<sup>25</sup> and swearing at her with all sorts of vile expressions, as well as insulting her in front of family members<sup>26</sup>.

The Algerian legislator has introduced the repeated verbal violence against the wife in Law 15-19 dated December 30, 2015, amending and supplementing the Algerian Penal Code. It came to limit the various verbal abuses and hurtful words that the wife is subjected to continuously and to criminalize them by putting an end to all perpetrators of these acts. The Algerian legislator considered in its text Article 266 bis 01 of the Penal Code, which states: "... Whoever commits against his wife any form of repeated assault or verbal or psychological violence that places the victim in a situation that undermines her dignity or affects her physical or psychological integrity ...<sup>27</sup>" shall be punished by imprisonment for a period of 1 to 3 years.

Therefore, it is considered one of the most dangerous types of violence, despite not leaving clear and tangible material effects. It is not limited to a young or poor category only but affects all segments of society<sup>28</sup>.

verbal violence, in turn, takes on different forms, either verbal or spoken, heard by the recipient, and has a psychological impact, or written, carries a semantic charge in writing, is sent in a physical form, and is received by the intended individual, and has a psychological impact, and in both cases, it goes beyond that to a similar or different reaction."<sup>29</sup>Some forms of verbal violence will be mentioned as follows: Cursing, insulting, slander, libel, and intimidation

However, the Algerian legislator did not include the crime of coercion and intimidation among the types of verbal violence practiced against the wife if he considered it to be one of the acts that the husband commits to obtaining his wife's money to dispose of it,

Psychological violence is the violence practiced on the wife's psyche by her husband and is carried out in different forms such as exploitation, marginalization, humiliation, isolation, etc.<sup>30</sup>

It means not providing a suitable and positive environment for the wife and committing acts that harm her physical and psychological health. it is also difficult to diagnose, understand, and categorize its manifestations,<sup>31</sup>

The Algerian legislature has defined psychological violence in the Penal Code as any attack that affects the dignity and safety of women and their physical or psychological health<sup>32</sup>.

Psychological violence is a continuous vile behavior or act that destroys the emotional relationship with the wife and is manifested in verbal harassment that insults the wife's reputation, and serious accusations that affect her and cause her to suffer from severe psychological crises<sup>33</sup>.



The result is the second element of the material elements of the crime of moral violence against the wife, and it is everything that the criminal act committed by the perpetrator may cause harm to an interest protected by law. The result of this crime is the infringement on the dignity and pride of the wife and the undermining of her value<sup>34</sup>.

The Algerian legislator considered the criminal result to be immaterial in this crime, i.e. it is not required that any material result be present.

The causal relationship "is the link between the behavior and the result, i.e. the perpetrator's behavior must have caused the result to occur<sup>35</sup>."

The causal relationship in this crime is that the moral abuse suffered by the wife must be caused by the moral violence she has suffered from her husband or ex-husband, which has led to the impact on her psychological and physical safety and the infringement on her dignity and pride<sup>36</sup>.

This means that it is required that the perpetrator's behavior and his moral words aimed at insulting the wife be the cause of the result, i.e. the moral violence committed against the wife must be the basic act that led to the infringement on the wife's dignity and affected her psychological and emotional safety and led to her instability<sup>37</sup>.

This crime also requires a moral element consisting of two essential elements, namely knowledge and will. The element of knowledge is that the perpetrator (the husband) must be aware of the criminalization of this act, while the will is that the perpetrator's intention must be directed to the commission of the crime<sup>38</sup>.

This crime is one of the intentional crimes that does not require criminal intent, whether the husband is unaware of insulting his wife or is not deliberate. We see that the legislator in the text of Article 266 bis 01 stipulated in this crime that the husband must repeat the aggression against his wife because the repetition of the act indicates the intention to commit this crime. Therefore, if the act is committed only once, this crime does not occur<sup>39</sup>.

### **Section Two: Sanctions Prescribed for the Crime of Moral Violence Against the Wife**

« Sanctions <sup>40</sup>» The Algerian legislator has established sanctions against a husband who commits the crime of moral violence against his wife, as per Article 266 bis 01 of the Algerian Penal Code. This article was introduced by Law No. 15-19 dated December 30, 2015, which amended and supplemented the Code mentioned above. The primary objective of these sanctions is to enhance the protection of the wife.

#### **Subsection one: The Punishment of Imprisonment**

According to Article 5 of the Penal Code, imprisonment is considered a primary punishment. There are two types of imprisonment: one that may be related to felonies, for which the legislator has set a period of more than two months to five years, except in cases where the law provides for other limits. The other type of imprisonment may be related to misdemeanors, in which case the legislator has set the punishment at one day at least to two months at most. As for the crime of verbal violence against a wife, the legislator has set the punishment in Article 266 bis 1 at imprisonment from one to three years. It is therefore considered a felony and falls under the classification of primary punishments<sup>41</sup>.

#### **Subsection Two: Aggravating Circumstances**

The Penal Code does not explicitly mention aggravating circumstances for this crime. Instead, it limits the perpetrator's ability to benefit from mitigating circumstances <sup>42</sup>if the victim is pregnant, disabled, or if the crime is committed in the presence of minor children or under the threat of a weapon. This is stipulated in paragraph 5 of Article 266 bis 01, which states:

"The perpetrator shall not benefit from mitigating circumstances if the victim is pregnant, disabled, or if the crime is committed in the presence of minor children or under the threat of a weapon<sup>43</sup>."

By way of contradiction, the offender can benefit from mitigating circumstances in this crime in other cases, following the provisions of Article (53 bis 4) of the Penal Code, which states: "If the punishment prescribed by law in a misdemeanor is imprisonment and/or a fine, and it is decided to grant the natural person who has no criminal record the mitigating circumstances, the imprisonment sentence may be reduced to two months and the fine to 20,000 DZD."

However, Article 53 bis 5 clarifies that imprisonment and fine sentences for intentional misdemeanors cannot be reduced below the legal minimum, and both must be imposed if stipulated together. No substitution of imprisonment with a fine is ever permitted in such cases<sup>44</sup>.

Cases in which the husband is denied mitigating circumstances in the crime of moral violence:

**First: If the victim is Pregnant**

This refers to the assault committed against a pregnant wife by her husband, which leads to risks that affect her body and psyche, and harm the health of both the fetus and the mother. This assault may result in miscarriage or premature birth, in addition to bruises, fractures, and low birth weight that the fetus may be exposed to. This is why the legislator prevented the perpetrator from benefiting from mitigating circumstances, due to the seriousness of his criminal act and his disregard for even the health of the fetus<sup>45</sup>.

**Second: If the Victim is Disabled**

"Disability is that deficiency, shortcoming, or chronic illness that affects a person's abilities, making them disabled, whether the disability is physical, sensory, or mental. This prevents the individual from fully benefiting from the educational and professional experiences that the ordinary individual can benefit from, and it also prevents them from engaging in an equal discussion with other ordinary individuals in society<sup>46</sup>."

Therefore, it is the inability to achieve self-sufficiency that puts the person in dire need of asking for help from others. Accordingly, the perpetrator husband who abuses his disabled wife does not benefit from mitigating circumstances, since he does not care about the health of his wife who needs special care and treatment. The assault on her strips him of his humanity and its criminal seriousness at the same time. Hence, the Algerian legislator, by preventing the husband from benefiting from mitigating circumstances, has enshrined the protection of the disabled wife who is subjected to violence by her husband<sup>47</sup>. In particular, this type of violence hurts her, making her feel inferior and ashamed in front of her children or relatives, especially if the hurtful words are related to her disability. This can worsen her health and psychological condition, and she may feel that she is worthless and has lost her role as an active member of society or her family<sup>48</sup>.

**Third: If the Crime is Committed in the Presence of Minor Children:**

The commission of the crime of moral violence against the wife in the presence of minor children is likely to affect the healthy balance of the children, and it will harm their natural development. In addition, it will lead to behavioral replication in them, so that they become a picture of their father in the future<sup>49</sup>.

**Fourth: If the Crime is Committed with Threats of Violence:**

"Carrying a weapon is considered a formal crime that is punishable by the Algerian legislator regardless of its use as a means of proving criminal behavior. Carrying a weapon is an indication of the seriousness of the perpetrator while threatening with it has a terrible impact on the psyche. Since the family is a haven of security, tranquility, and peace of mind, the use of weapons within it conflicts with these goals, which leads to the creation of a state of family insecurity<sup>50</sup>."

For this reason, the Algerian legislator prevented the perpetrator's husband from benefiting from mitigating circumstances in this case.

"However, we may have a question about whether the husband brandished a stick at his wife to threaten her with it, considering that the legislator, according to the text of Article 93 of the Algerian Penal Code, does not consider this means to be a weapon unless it is used as a tool for killing, wounding, or beating. So in this case, does the perpetrator benefit from mitigating circumstances or not? This is something that the legislator must consider, either by including the stick within the concept of the term 'weapons' or by explicitly excluding it from that without setting any exceptions<sup>51</sup>."

### Conclusion

The phenomenon of violence against women is one of the most widespread criminal phenomena that has spread its roots in Algerian society and the world as a whole. Despite the antiquity of this phenomenon, it did not receive the attention of the Algerian legislator until it spread frighteningly

and terrifyingly in society, which prompted the legislator to confront it by criminalizing it to protect the wife by creating a new article, Article 266 bis 1, in the 2015 amendment under Law 15-19 dated December 30, 2015, amending and supplementing Ordinance No. 166-156 dated June 8, 1966, containing the Algerian Penal Code. This is in line with the international and regional agreements ratified by Algeria, especially the CEDAW Convention, which prohibits all forms of discrimination against women, in addition to the constitutional amendment of 2008.

Before discussing all of this, our Sharia and our true religion were the first to criminalize these heinous and abhorrent acts against women in general and wives in particular.

The study of moral violence against the wife in Algerian law requires us to understand the nature of this crime by identifying its concept, the causes that generate it, the effects that result from it, as well as mentioning its elements and the penalties prescribed for it, passing through the stages of Algerian prosecution in it from the preliminary investigation before the judicial police to the preliminary investigation before the investigating judge, and finally the final stage, which is the trial stage with how its procedures are conducted and the methods of appealing its rulings.

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- <sup>22</sup>Qaffaf, F. (2020). *Ibid*, p. 279.
- <sup>23</sup>Laarfi, F. (2019). *Ibid*, p. 232.
- <sup>24</sup> *Ibid*, p. 280.
- <sup>25</sup>Al-Tayyari, A. H. (2015). *Domestic violence: Its manifestations, causes, and treatment*. 1st ed., (n.p.), Kuwait.
- <sup>26</sup>Mustafa Rashid, M. (2016). *Ibid*, p. 157.
- <sup>27</sup>Article 266 bis 1 of the Algerian Penal Code.
- <sup>28</sup>Masmar, M. F. (2018). *Crimes of violence against women and their effects on society from the perspective of workers in family protection centers: A field study on Jordanian society*. Arab Journal of Scientific Publishing, Police College, Issue 22, Qatar, (n.p.), p. 111
- <sup>29</sup>A group of researchers. (2019). *Ibid*, p. 40.
- <sup>30</sup>Al-Tayyar, A. H. (2015). *Ibid*, p. 19.
- <sup>31</sup>Bouziane, R., & Mazari, Z. (2019). *Ibid*, p. 27.
- <sup>32</sup>Chennatlia, S. (2019). *Ibid*, p. 49
- <sup>33</sup>Riyaq, I. (2019). *Ibid*, p. 14
- <sup>34</sup>Rouahna, Z. (2019). *Ibid*, p. 280.
- <sup>35</sup>Rouahna, Z. (2019). *Ibid*, p. 280.
- <sup>36</sup>Laarfi, F. *Ibid*, p. 288.



<sup>37</sup>Qaffaf, F. (2020). *Ibid.*, p. 289

<sup>38</sup>Rouahna, Z. (2019). *Ibid.*, p. 280.

<sup>39</sup>Allal, Y. *Ibid.*, p. 10.

<sup>40</sup>Bousquia, A. (2018). *A concise guide to general criminal law*. 17th ed., Dar Houma for Printing, Publishing and Distribution, Algiers, p. 289.

<sup>41</sup>Laadjali, L. (2021). Violence against women in the Algerian penal code (the model of verbal violence). *The Comprehensive Journal of Law*, Faculty of Law and Political Science, "Boudaou", University of Mohamed Boukjar, Boumerdes, September 2021, p. 97.

<sup>42</sup>Aissaoui, F., & Nafaa, A. K. (2022). The crime of verbal and psychological violence against the wife in Algerian and Iraqi legislation. *Diaries of Politics and Law*, Vol. 14, No. 3, p. 198.

<sup>43</sup>Article 266 bis 1 paragraph 5 of the Penal Code.

<sup>44</sup>Article 53 bis 4 of the Algerian Penal Code.

<sup>45</sup>Badaoui, N. *Ibid.*, p. 80.

<sup>46</sup>Naayou, S. (2021). Domestic violence in Algerian legislation. Master's thesis, Family Law specialization, Faculty of Law and Political Science, Department of Law, University of Mohamed Khider Biskra, 2020-2021, p. 60.

<sup>47</sup>Badaoui, N. *Ibid.*, p. 81.

<sup>48</sup>Qaffaf, F. (2020). *Ibid.*, pp. 295-296.

<sup>49</sup>*Ibid.*, p. 296.

<sup>50</sup>Badaoui, N. *Ibid.*, p. 81.

<sup>51</sup>Qaffaf, F. (2020). *Ibid.*, p. 296.