

## The difference in the effect of the childhood bond on family crimes

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### Abstract

The impact of the childhood link on the way criminal law is applied differs from one law to another and from one offense to another within the same statute. In each instance, the legislator's goal is to safeguard the family and prevent its dissolution while accounting for the many sociological quirks. The nature of the relationship that binds its members is what gives these crimes their specificity. In contrast to other bonds like brotherhood and marriage, which are mentioned in the Penal Code, we define the family bond in our study as the ties of marriage, paternity, and filiation because these two relationships have a major influence on criminalization, punishment, and procedural aspects.

### Introduction

Despite the intimate nature of the connections between parents and their offspring, there has been significant regulatory involvement from both international and national authorities, particularly following the incorporation of principles concerning equality and human rights within familial units, the dynamics of family relationships, previously influenced by the integration and fairness derived from religious doctrines and cultural traditions, have shifted toward being grounded in legal and practical principles between parties who hold equal responsibilities and privileges across all dimensions, be it ethical or monetary, considering that familial relationships encompass a range of both financial and ethical stakes.

Nevertheless, the involvement of the Penal Code in familial affairs has elicited a variety of responses, given that family issues are deeply personal. There are those who advocate for limited

legislative involvement, viewing the family as a secure refuge for individual privacy. Yet, when family dynamics turn into a battleground for financial disputes and threats to both physical and mental well-being, it necessitates a societal response. In such cases, intervention is required as per the Algerian Constitution, which clearly states that the family is entitled to state and societal protection.

Based on this foundation, safeguarding the family initiates with its structure established by Family Law, outlining the responsibilities and entitlements of its members. Should this legal framework lack effectiveness through civil sanctions, a shift is made to the criminal system where the state steps in via the Penal Code. It is important to point out that the Penal Code does not offer protection for all rights, as its application is limited to situations where actions pose a threat to the greater societal good. The concern of the criminal lawmaker regarding the family is reflected in the dedicated section of the Penal Code that addresses crimes and offenses concerning the family.<sup>1</sup>

Criminal law, as a tool for protecting the family, is a double-edged sword. Its rules stand against any behavior that threatens the family unit through a set of effective penalties that ensure the continuity and survival of the family through the severity of the punishment, even if the perpetrator is a family member. However, the family and punishment are two different institutions. The first leads to life, while the second is often described as deadly, especially since punishments affect not only the criminal but also his family, who often bear the consequences of his punishment more than him.<sup>2</sup>

This is what made the criminal legislator give great importance to the family bond when he formulated criminal texts, whether in terms of criminalization or punishment, by establishing purely family crimes that cannot be imagined outside the family framework, or allocating special provisions for existing crimes whose treatment method changes when they are committed in the family context, taking into account the family bond that links the victim and the perpetrator. The criminal protection of the family is not limited to the substantive level, but rather extends to the procedural level, as the course of the public lawsuit in family crimes is subject to controls. TA procedure aimed at protecting family ties and family unity.

The penal code texts provide that criminal protection for the family is manifested in five cases. The family bond can constitute a constitutive element in criminalization, as is the case in the crime of adultery, the crime of incest between relatives, or the crime of family neglect. The family bond can also constitute a circumstance for aggravating the punishment, such as the crime of rape, the crime of intentional assault and battery, and the crime of murder. The family bond can constitute a mitigating circumstance, as is the case in the crime of killing a newborn child or the crimes of assault, battery, and murder in the case of being caught in the act of adultery. The family bond can constitute

a circumstance exempting from punishment in family thefts, and the family bond can constitute a reason for permission, as is the case in marital rape and disciplining children with light beating.

### **1/ The bond of childhood as an aggravating circumstance**

One manifestation of criminal protection of the family is the increased punishment for some crimes when they are committed within the framework of family ties. The legislator has increased the penalties for intentional acts of violence committed by a person in Right of origin The legitimate ones, as stipulated in Article 762 of the Law Penalties, And it stated Article 725 of the Penal Code on the crime of intentionally administering substances harmful to health without intent events Death caused illness or disability to another person And by referring Also for the material 344 From the Penal Code, we find that the legislator has increased the penalties prescribed for the crime of incitement On the debauchery and prostitution stipulated in Article 343, if it occurred within a family framework, and the marital bond was added as an aggravating circumstance for punishment in crimes of intentional assault and battery pursuant to the December 2015 amendment.

### **1/1/ The concept of aggravation in crimes**

In some cases, legislation resorts to increasing the amount of punishment in certain circumstances in order to preserve some essential interests, the violation of which, if tolerated, could lead to the destabilization of society and the disruption of public order. In Algerian legislation, the family bond is considered one of the aggravating circumstances considered in the group of crimes in which the penal code cannot be withdrawn, as it affects the stability of the family and society alike.<sup>3</sup>

Before we explain the impact of family relationships on the severity of punishment, we must first provide a simple clarification of the concept of aggravating circumstances for punishment. These circumstances necessitate a harsher penalty for the offender, which can either be judicial, inferred by the judge from the facts of the case before him, or legal, as specified by law through specific texts. An aggravating circumstance may change both the description and type of the crime simultaneously, such as coercion, which transforms theft by coercion into a felony rather than a simple misdemeanor if it is stripped of coercion. The effect of the aggravating circumstance may also be limited to a change in the severity of the penalty without affecting the description or type of the crime, as is the case with the presence of a recidivism circumstance.<sup>4</sup>

The criminal legislator can specify the objective circumstances related to the crime that make the criminal activity more serious. These circumstances may pertain solely to the offender, such as their professional status in certain crimes or conditions related to their person. Additionally, the

aggravation may arise from the relationship between the offender and the victim, such as parenthood or marriage. Regardless of the nature of the aggravating circumstances, whether personal or objective, their presence results in the application of a harsher penalty than that prescribed for the crime not accompanied by any circumstances, as stipulated by law in advance.<sup>5</sup>

The existence of a familial relationship at the time of the crime is the aggravating circumstance being examined. When a group of people have a real or legal emotional relationship, like a marriage or kinship bond, it is referred to as a family bond. However, in the area of aggravation, the penal law has long been influenced by the parent-child bond. However, this was remedied by the penal legislator in 2015 when the penal code was amended to make the marital bond an aggravating excuse. We shall concentrate on parental violence against children because of the variety of offenses where the marital bond is broken as an aggravating justification.<sup>6</sup>

### **1/2/ Aggravating the penalties for physical assaults by parents on children**

The Algerian legislator considers the discipline of the child—within its limits—as an inherent right of guardians legally guaranteed to parents. However, this has not prevented the Algerian legislator from addressing the phenomenon of child abuse, including parental abuse. Laws have been enacted to protect children from maltreatment, and those who harm them are criminalized and subjected to the harshest penalties. The punishment for assaulting a minor is intensified, especially when the perpetrator is one of the parents or guardians of the child.<sup>7</sup>

We notice that Algerian law is strict regarding the practice of intentional assault and battery, and it distinguishes between minors and adults in several legal provisions, as minors cannot defend themselves. A section has been dedicated to this in the Penal Code, which states in Article 269 that the penalty for the perpetrator is increased if the victim is a minor who has not reached the age of sixteen. The penalty is further intensified according to Article 272 if the perpetrator is one of the legal guardians or anyone who has authority over the child or is responsible for their care.<sup>8</sup>

Childcare and nurturing is a shared responsibility that falls on both spouses, requiring them to care for their children physically and intellectually. Any intentional harm or injury that could harm a minor constitutes a crime that warrants punishment for the parents, with the minimum penalty being three years in cases of minor assaults that do not result in serious harm, and the death penalty in cases where the assault and injury lead to death without intent to cause it.<sup>9</sup>

Along with the aforementioned components, the crime in this case necessitates the development of a kinship relationship between the offender and the victim, which is symbolized by legitimate fatherhood. This means that the offender must be the victim's mother, legal grandfather, legal grandmother, or biological and legal father. The judge is not allowed to use Article 268's

provisions alone if the victim is determined to be the perpetrator's ward or stepchild. The link that strengthens the punishment for ascendant abuse of minor descendants is that the victim's existence imposes a duty of kindness, generosity, and the protection of the victim's life on the perpetrator rather than its contempt. Additionally, this familial connection suggests that the person has an innate human emotion, and the fact that this crime occurred validates that the person does not, indicating a dangerous criminality in the offender that calls for harsh punishment.<sup>10</sup>

### **1/3/ persecution penalties in cases of aggression between parents and children**

The legal classification of the incidents of assault and injury appears after the forensic doctor's examination of the victim to clarify and determine the judicial jurisdiction. If it is a misdemeanor, it is adjudicated by the misdemeanor section of the primary court, and if it is a felony, it is adjudicated by the criminal court at the level of the judicial council. Medical expertise plays an important role in the correct legal classification of the criminal incident and its connection to legal texts, as the description of the crime varies according to the duration of temporary incapacity: if this duration is less than, equal to, or more than 15 days, the act is classified as a misdemeanor. However, if the incapacity is permanent and lifelong, which is referred to as a permanent disability, the act is classified as a felony, as well as in the case of death caused unintentionally.<sup>11</sup>

It is noted that the Algerian legislator used the term "legal origin" in the upper direction of the vertical relationship, as an aggravating circumstance for acts of violence committed against parents. However, in the lower direction of this relationship, the term "branch" was not used; instead, the term "minor under 16 years old" was used, as previously mentioned. However, above the circumstance of being a minor, the legislator imposes a harsher penalty if this minor is one of the children. The aggravation extends to affect, in addition to the parents and legal ancestors, anyone who has authority over the minor and anyone who is responsible for their care.<sup>12</sup>

Comparing Article 264 to the severe punishments specified in Articles 269, 270, 271, and 272 of the Algerian Penal Code, we discover that the lawmaker has twice increased the severity of the penalties for violent crimes: once when the victim is a minor under the age of sixteen, and again when the offender is a family member or someone who is in charge of them. With the exception of the requirement that the offenders be the victim's legal guardians, such as parents or grandparents, or those in charge of the victim's care, such as a guardian or custodian, there does not appear to be any difference between the elements of Articles 269 and 272. Anyone who looks after the child while their parents are away, like a babysitter or a neighbor, falls under this category.<sup>13</sup>

Article 272 of the Penal Code states that if the perpetrators are one of the legal parents or other legal ascendants or any person who has authority over the child or is responsible for their care, their punishment shall be as follows:

- If the acts constitute intentional hitting or injury against a minor child of the perpetrator, who has not reached the age of sixteen years, or if they intentionally deprived the child of care, attention, and food, and committed various acts of violence and abuse against them as stipulated in Article 269, they shall be punished with the penalty prescribed in Article 270 of the Penal Code, which consists of imprisonment for three to ten years and a financial fine ranging from five hundred to six thousand Algerian dinars. Additionally, the court may impose deprivation of the rights stipulated in Article 14 of the Penal Code.
- If the acts committed by the perpetrator against the victim resulted in illness, loss of mobility, or total incapacity to work for more than 15 days, or if the act was accompanied by premeditation or stalking, the prescribed penalty is temporary imprisonment for five to ten years.
- If the acts and incidents attributed to the perpetrator, related to hitting and injury and various forms of violence and abuse as stated in Article 269 of the Penal Code, resulted in the loss or amputation of a body part, deprivation of its use, or loss of sight, etc., or resulted in death without intent to cause it, the prescribed penalty is life imprisonment<sup>14</sup>

## **2/ The bond of childhood as an excuse exempting from punishment**

Family ties have an effect on the criminal justice system that extends beyond the problems of criminalization and aggravation. The criminal legislator's protection of family unity and coherence is in the best interests of the family. In certain situations, criminal protection of the family manifests itself by removing the punishment and not applying it to the perpetrator, particularly when the offense is minor and has little bearing on public order or family interests. Here, the interests of the family and its unity are taken into account more so than the punishment's inherent goals..<sup>15</sup>

Financial crimes including theft, fraud, embezzlement, and breach of trust are among the many offenses for which an exemption is given in order to preserve family unity. The legislator has particularly addressed these offenses with special rules when they are committed within the context of a family. Given the financial solidarity and shared resources among family members, maintaining family unity is prioritized over administering punishment. Since the legislator took into account the emotional ties that bind extended family members, there are also a number of crimes that are related to aiding in the administration of justice, such as the crime of failing to report a felony or misdemeanor, which are also exempt from punishment. But we shall concentrate on the crime of theft, describing the criminal and individual contexts in which the exemption from penalty can be used.

## **2/1/ The concept of exemption from punishment**

Legal excuses refer to the facts stipulated in the law that can mitigate the penalty for the perpetrator or completely exempt them from it. Legal excuses only exist by virtue of a legal text. Some have defined legal excuses as "any circumstance or fact that the law has specifically addressed in a clear text, resulting in the mitigation or complete exclusion of the penalty, despite maintaining the criminal nature of the act committed and the essence of attribution and responsibility for it." Others have defined it as "specific circumstances defined by law that necessitate the mitigation of punishment or exemption from it without affecting the elements of the crime or responsibility." It has also been defined as "a set of mitigating circumstances explicitly stated by the legislator, which have specific effects, requiring a reduction in the penalty when they exist to a lower level than what the penalty would be in the presence of other mitigating circumstances. These excuses are numerically defined in legislation and are of two types: general and specific."<sup>16</sup>

It is essential to differentiate between justifications, impediments to punishment, and reasons for exemption from punishment. The former refers to reasons that, when presented in relation to conduct subject to a criminalization text, remove it from this text and eliminate its unlawful nature, reverting it to lawful conduct with no punishment. Therefore, it has an objective nature that benefits all participants in the act that has become permissible; thus, there is no crime and consequently no punishment. On the other hand, impediments to punishment or reasons for exemption from punishment refer to specific cases that prevent the application of the state's authority to impose punishment, due to considerations related to criminal policy. These do not remove the criminal nature of the act concerning specific crimes, as the act remains unlawful; however, the consequence that arises is the prevention of punishment for those to whom it applies, and this is of a personal nature.<sup>17</sup>

The excuse exempting from punishment is one that relieves the perpetrator from the full penalty without negating their criminal responsibility. Granting the exempting excuse to the perpetrator does not prevent them from being subjected to precautionary and reformative measures. As for the mitigating excuse, as its name suggests, its effect is limited to reducing the punishment by certain proportions. This study aims to shed light on exempting the thief from punishment for reasons related to kinship or marital ties between the offender and the victim, and what good relations should be based on, fearing that punishment may disrupt and corrupt them, along with the potential exposure of family secrets during trials that could have negative implications on family and community relationships.<sup>18</sup>

Family immunity has a special legal nature that obliges criminal judicial authorities (investigation and ruling) not to pursue crimes covered by this immunity, as it is neither a reason for

non-accountability nor one of the impediments to responsibility that are solely decided by the judicial authorities. It is also not an act that justifies the illegality of the act; rather, this immunity only leads to the non-criminal accountability of the perpetrator without removing the illegitimate nature of the crime..<sup>19</sup>

## **2/2/ Exemption from punishment for theft crimes committed by children against their parents**

According to Article 368 of the Penal Code, which only provides the right to civil compensation and does not punish ancestors and descendants for thefts that take place between them, Algerian lawmakers have taken note of the relationship between ancestors and descendants in the crime of theft. The exemptions outlined in Article 368 are applicable to crimes of fraud, breach of trust, and concealment of stolen property that take place between ancestors and descendants, as stated in Articles 373, 377, and 398 of the Penal Code. Some people think that, from a legislative standpoint, it would be preferable to forbid exemptions altogether and instead need the victim's complaint before a lawsuit may be filed against a relative, and to use the victim's withdrawal as grounds for the lawsuit is termination. It is crucial in these situations to retain the option of punishment available, which can be used when necessary, in order to prevent entrenching impunity for individuals who steal the assets of their parents and children..<sup>20</sup>

Generally speaking, the Public Prosecution is in charge of filing criminal charges for all crimes in its role as a representation of society. However, as an exception to the rule and in accordance with Article 369 of the Algerian Penal Code, family theft prosecutions can only begin in response to a complaint made by the victim. In addition, the complaint's withdrawal puts a stop to all further actions. This is done because private interest outweighs public interest in family theft cases. As a result, the victim is left to decide whether or not to prosecute the criminal, with the Public Prosecution only getting involved after the victim has lodged a complaint. The victim also has the option to stop the proceedings and withdraw the complaint..<sup>21</sup>

It is important to note that thefts between spouses, which were previously regarded as an exempt excuse from punishment, were now included in the scope of criminal prosecution procedures with regard to filing a complaint, which is typically one of the Public Prosecution's responsibilities, as a result of this article's amendment under Law No. 15/19. In theft cases, this stops the process since, according to Article 6 of the Criminal Procedure Law, if the complaint is withdrawn, the public action will end, unless it is a prerequisite for its start..<sup>22</sup>

Misappropriation, or taking something without the owner's or possessor's permission, is a necessary component for the crime of theft among relations to be established. The taking of possession is the material component of misappropriation, and the absence of agreement from the

object's owner or possessor is the moral component. Since the misappropriation is a legal theft of possession rather than a real estate theft, it must involve transportable things. Since items are not considered stolen if their owners voluntarily give them up, it follows that the moveable property involved in the crime must belong to someone else.<sup>23</sup>

The broad wording of Articles 368 and 369 states that both simple and aggravated theft are free from punishment where the aggravating circumstance—such as carrying a weapon or employing violence—qualifies as a felony unrelated to the theft. Article 350 applies when an illegitimate son steals from his mother or father, or when a ward steals from the person who is responsible for him. This is because family immunity does not apply unless there is a legitimate link between the parent and kid. Furthermore, the exemption is applicable regardless of whether the thief is the parent, grandfather, grandmother, son, or grandchild, and stealing is not restricted to a certain sum..<sup>24</sup>

### **Conclusion**

Through this study, we observe that there are many crimes that affect the family in its essence and its members, threatening the disintegration of the family and undermining its stability. The legislator has been keen to protect the family and society from all forms of assaults that may occur against them. Anyone who dares to commit an act that threatens the family or any of its members or causes them harm will face legal consequences. The legislator has worked to safeguard the family from all assaults that threaten its stability, whether from within the family or from outside it, and has criminalized all acts that threaten the family and compromise its security and safety.<sup>25</sup>

We discover that the criminal legislator is eager to safeguard these links by making all types of assault against them illegal in order to uphold the family unit and the strong ties and affectional bonds that bind its members. He has acknowledged these connections in the criminalization area on numerous occasions; sometimes he views them as a tangible object in certain crimes, and other times he views them as a supposed requirement for committing a crime. The legislator takes into account these connections not only at the criminalization level but also at the punishment level, where he recognizes them as an aggravating element at one point and a mitigating circumstance at another. Not to mention how these ties obviously affect who deserves punishment because they could operate as a deterrent or an excuse for an exemption.<sup>26</sup>

Although the Algerian legislator's special procedures help to maintain family bonds, prevent dissolution, and ensure stability, they are insufficient to stop crimes that could be committed by one of the family's members, endangering the family's existence and cohesiveness. Since the phenomenon is constantly growing, it is vital to look for preventive and therapeutic measures to reduce these crimes and to give experts like psychologists, sociologists, and legal professionals the opportunity to carry

out research to determine the root causes of these crimes and come up with solutions. In order to address the issue of domestic crime, more needs to be done..<sup>27</sup>

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