

المستحدث في الجريمة الأسرية من منظور العلاقة الزوجية بين الضبط القانوني وسبل المكافحة

Recent Developments in Domestic Crimes from the Perspective of Marital Relations Between Legal Control and Means of Combat

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يعتبر موضوع الجريمة الأسرية من القضايا الراهنة المطروحة على طاولة القضاء، والمتداولة في مرفق العدالة بين النصوص القانونية التجريبية وبين الملفات القضائية، إذ اتخذت أشكالاً متعددة إلى أن أصبحت من الجرائم المستحدثة أو المستجدة التي تماشى مع مختلف مستجدات العصر الحالي ومن جوانب اجتماعية واقتصادية وحتى تكنولوجية، متحدة في هذا أنماط متنوعة تظهر بين الواقع الحي في سلوكيات إجرامية مادية مستحدثة، أو تجسد من خلال الواقع الافتراضي في شكل غير ملموس، هذا الطابع الإجرامي المستجد للجريمة الأسرية دفع بالجهات القضائية إلى ضرورة التدخل لإعادة التوازن للنظام الأسري والحفاظ على الرابطة أو العلاقة الزوجية، متخذة في ذلك مختلف التدابير والإجراءات القانونية والقضائية بالاستناد على وسائل التكنولوجيا الحديثة في توفير طابع المكافحة لهذا النوع المستجد من الجرائم الأسرية.

الكلمات المفتاحية: الجريمة الأسرية، العلاقة الزوجية، التكنولوجيا الحديثة، الجريمة المستحدثة.

The issue of domestic crime is one of the current issues on the judiciary's table and circulated in the justice facility between criminal legal texts and judicial files. It has taken multiple forms until it has become one of the emerging or new crimes that have kept pace with various developments of the current era from social, economic, and even technological aspects. It has united in this various patterns that appear between living reality in emerging material criminal behaviors, or are embodied through virtual reality in an intangible form. This emerging criminal nature of domestic crime has pushed judicial authorities to the necessity of intervention to restore balance to the family system and preserve the marital bond or relationship, taking in this various legal and judicial measures and procedures based on modern technology means in providing a combating character for this emerging type of domestic crimes.

Keywords: Domestic crime, marital relationship, modern technology, emerging .crime

الفرع الثاني: أنواع الجرائم الأسرية المستحدثة

تختلف الأنواع التي تشكل الجريمة الأسرية المستحدثة بتنوع أسبابها، غير أنه ما هو شائع في العصر الحديث تماشياً مع توجهات المشرع الجزائري، نجد جرائم العنف في إطار العلاقة الزوجية بشكل عام، سواء كان في نمطه التقليدي مع ممارسة سلوكيات تجعل منه مستحدث، أو كان في بيئة رقمية غير الملموسة، إذ تتعدد صور وأنواع هاته الجرائم التي تلمس بالأسرة عامة كالإهمال الأسري الرقمي، وإدمان الأجهزة الذكية على حساب التفاعل الأسري، أو ترك الأطفال أمام الشاشات دون رقابة، ضف إليه جرائم الابتزاز الإلكتروني داخل العلاقة الأسرية، والتجسس الرقمي داخل الأسرة، حيث بدأت بعض النصوص تجرمه ضمن انتهاك الحياة الخاصة، لكن ستسلط الدراسة على نوعين أساسيين لارتباطهما ارتباط مباشر بالعلاقة الزوجية، وهذا بالتطرق إلى كل من العنف الزوجي (أولاً)، والعنف الرقمي كمنط إجرامي مستحدث (ثانياً).

أولاً: العنف الزوجي المواكب لتغيرات العصر الحديث

يعتبر موضوع العنف الزوجي من أهم المواضيع الأسرية العريقة في جل الأنظمة القضائية، غير أنه تطور مع مستجدات العصر الحديث وأخذ أبعاداً مختلفة، إذ يعرف العنف بوجه عام على أنه سلوك يصدر من فرد أو جماعة تجاه آخرين، سواء كان مادياً أو لفظياً، إيجابياً أو سلبياً مباشراً أو غير مباشر، ينشأ هذا عادة نتيجة لمشاعر الغضب أو الإحباط، أو للدفاع عن النفس والممتلكات، أو بدافع الانتقام، أو لتحقيق مكاسب معينة مؤدياً إلى إلحاق الأذى البدني أو المادي أو النفسي بالطرف الآخر بشكل متعمد.

بالرجوع إلى التزامات الجزائر الدولية في سبيل توفير الحماية للمرأة من جميع أشكال العنف أجد أن اتفاقية القضاء على جميع أشكال التمييز ضد المرأة تعتبر الأقرب والأكثر ملائمة للمنظومة التشريعية. وتماشياً مع التطورات الحاصلة في المجتمع الجزائري اتجهت ظاهرة العنف الزوجي توسع المشرع الجزائري أكثر في الاهتمام بوضعية المرأة لأنها غالباً ما تكون الطرف الضعيف في العلاقة الزوجية، وهو ما يتضح من خلال تعديل قانون العقوبات في 2015 بموجب القانون رقم 15-19 حيث أضاف المشرع الجزائري بنوداً خاصة بجريمة العنف ضد المرأة بجميع أشكاله، وقسمه إلى شكلين:

أ- العنف المادي: يمكن تعريفه على أنه أي فعل عنيف على أساس النوع ينجم عنه أو يحتمل أن ينجم عنه أذى أو معاناة جسمية أو نفسية أو جنسية للمرأة، بما في ذلك التهديد باقتراف هذا الفعل. وقد اعتمد المشرع الجزائري في القانون رقم 15-19 معيار تسليط الأذى الجسدي (المادة 266 مكرر) والاعتداء الجنسي (المادة 333 مكرر 2 و 3).

ب- العنف المعنوي: يعتبر العنف المعنوي ضد المرأة الصورة الثانية من أشكال العنف، ويعرف أيضاً بالعنف الرمزي أو النفسي، ويشمل أي إساءة تترك أثراً سيئاً في نفسية المرأة، كالتلاعب بالمشاعر، التهديد، الإهمال العائلي (المادة 330)، والعنف اللفظي (المادة 266 مكرر 1).

ثانياً: العنف الرقمي كمنط إجرامي مستحدث يستهدف الأسرة

مع مستجدات التحول الرقمي ظهر نمط إجرامي جديد للعنف يعرف بالعنف المرتبط بالتقنية الحديثة، أو العنف الرقمي ضد المرأة، الذي يشمل مجموعة من الأفعال العنيفة القائمة على النوع الاجتماعي التي ترتكب باستخدام تكنولوجيا المعلومات والاتصالات. وقد حددت هيئة الأمم المتحدة للمرأة أنواع العنف الرقمي في ستة أشكال:

1. الاختراق: الوصول غير القانوني للحسابات للحصول على معلومات أو الاقتراء.
2. الانتحال: انتحال شخصية الضحية للإضرار بها.
3. التتبع: مراقبة أنشطة الضحية إلكترونياً.
4. التحرش: الاتصال المستمر والمزعج.
5. التوظيف: استدراج الضحايا عبر وظائف وهمية.
6. توزيع مواد مزعجة: نشر مواد تشهيرية.

وقد تبني المشرع الجزائري العديد من القوانين لمكافحة العنف الرقمي تحت مضمون الجرائم الإلكترونية (مثل القانون 04-09)، ويسعى لتنفيذ استراتيجية "نحو صفر عنف ضد المرأة في 2030".

المبحث الثاني: تعزيز الاستراتيجيات الرقمية للجهود القضائية في مكافحة الجريمة الأسرية المستحدثة

إن تنامي الجريمة الأسرية المستحدثة أصبح يشكل خطراً كبيراً على استمرارية العلاقة الزوجية، مما دفع المشرع والقضاء لوضع خطط واستراتيجيات رقمية وقضائية.

المطلب الأول: دور القضاء الجزائري في التصدي للجريمة الأسرية المستحدثة

فرض تطور الجريمة على مرفق القضاء ضرورة تطوير أساليب التوقي، وذلك عبر مستويين:

الفرع الأول: على مستوى الجانب الإجرائي:
اتخاذ أساليب إجرائية مثل: وضع قيود على تحريك الدعوى العمومية (الشكوى في الزنا)، المراقبة واعتراض المراسلات، التسرب في الجرائم الخطيرة، وعصرنة قطاع العدالة (المحاكمة عن بعد).

الفرع الثاني: على مستوى العمل القضائي:
تدريب القضاة على المنازعات الأسرية الحديثة، وإصدار قرارات هامة من المحكمة العليا، مثل:

- القرار رقم 1191251 (2018): إثبات الزنا بالقرائن القوية دون اشتراط معاينة الوطاء.
- القرار رقم 1246037 (2018): عدم جواز الاعتماد على البصمة الوراثية في نفي النسب وتقديم اللعان عليها.

المطلب الثاني: دور التكنولوجيا الحديثة في نطاق الجرائم الأسرية

تم دمج العمل القضائي بوسائل العلم الحديث عبر فرعين:

الفرع الأول: ظهور البصمة الوراثية في جرائم الزنا لإثبات النسب:
رغم أهمية البصمة الوراثية (ADN) كدليل علمي، إلا أن المشرع الجزائري (المادة 40 من قانون الأسرة)

وقرارات المحكمة العليا جعلتها وسيلة إثبات في المرتبة الأخيرة، ولا يجوز بها نفي النسب الثابت بالفراش الشرعي، لكنها تبقى دليلاً قوياً في التحقيقات الجنائية.

الفرع الثاني: فاعلية الأدلة الرقمية في إثبات الجريمة الأسرية المستحدثة:
الدليل الرقمي هو البيانات المخزنة التي تثبت أو تنفي الجريمة. وفي ظل ظهور "الخيانة الإلكترونية"، أصبح الدليل الرقمي (رسائل، محادثات) محورياً في كشف الحقائق، شريطة الحصول عليه بطرق قانونية مشروعة لا تنتهك حرمة الخاصة إلا بإذن قضائي.

الجريمة الأسرية لم تبق حبيسة النمط التقليدي، بل سايرت التغيرات التكنولوجية وظهرت في أشكال هجينة كالغف الرقمي. خلصت الدراسة إلى أن الجريمة الأسرية المستحدثة نتاج عولمة الوعي، وتطلب تأطيراً قانونياً وقضائياً أكبر لسد الفجوات التشريعية، مع ضرورة نشر الوعي الرقمي والأخلاقي لحماية الأسرة.

Section Two: Types of Emerging Domestic Crimes

The types that constitute emerging domestic crime differ according to the diversity of their causes. However, what is common in the modern era in line with the trends of the Algerian legislator, we find crimes of violence within the framework of the marital relationship in general, whether in its traditional pattern with the practice of behaviors that make it emerging, or in an intangible digital environment. These crimes affect the family in general, such as digital family neglect, addiction to smart devices at the expense of family interaction, or leaving children in front of screens without supervision. Additionally, there are crimes of electronic blackmail within the family relationship and digital espionage within the family. While some texts have begun to criminalize this as a violation of privacy, the study will focus on two main types directly linked to the marital relationship: Marital Violence (First) and Digital Violence as an emerging criminal pattern (Second).

First: Marital Violence Keeping Pace with Modern Changes

Marital violence is considered one of the most long-standing family issues in most judicial systems, but it has evolved with modern developments and taken on different dimensions. Violence is generally defined as behavior emanating from an individual or group towards others, whether physical or verbal, positive or negative, direct or indirect. This usually arises as a result of feelings of anger or frustration, or for self-defense and property defense, or out of revenge, or to achieve certain gains, leading to intentional physical, material, or psychological harm to the other party.

Referring to Algeria's international obligations to provide protection for women from all forms of violence, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is considered the closest and most appropriate to the legislative system. In line with developments in Algerian society regarding the phenomenon of marital violence, the Algerian legislator has expanded interest in the status of women as they are often the weaker party in the marital relationship. This is evident through the amendment of the Penal Code in 2015 under Law No. 15-19, where the Algerian legislator added clauses specifically for the crime of violence against women in all its forms, dividing it into two forms:

A. Physical Violence: Can be defined as any violent act based on gender that results in, or is likely to result in, physical, psychological, or sexual harm or suffering to women, including threats to commit such acts. The Algerian legislator adopted in Law No. 15-19 the criterion of inflicting physical harm (Article 266 bis) and sexual assault (Article 333 bis 2 and 3).

B. Moral Violence: Moral violence against women is the second form of violence adopted by the Algerian legislator. Also known as symbolic or psychological violence, it includes any abuse that leaves a bad impact on a woman's psyche, such as manipulation of feelings, threats, family neglect (Article 330), and verbal violence (Article 266 bis 1).

Second: Digital Violence as an Emerging Criminal Pattern Targeting the Family

With the developments of digital transformation, a new criminal pattern of violence has emerged known as technology-related violence, or digital violence against women. It includes a range of violent acts based on gender committed using information and communication technology. UN Women has identified six forms of digital violence:

1. **Hacking:** Illegal access to accounts to obtain information or slander.
2. **Impersonation:** Using the victim's identity to harm them.
3. **Tracking/Stalking:** Monitoring the victim's activities electronically.
4. **Harassment:** Continuous and annoying contact.
5. **Recruitment:** Luring victims via fake job postings.

6. Distribution of disturbing materials: Publishing defamatory materials.

The Algerian legislator has adopted several laws to combat digital violence under the content of cybercrimes (such as Law 09-04) and seeks to implement the strategy "Towards Zero Violence Against Women in 2030".

Section Three: Enhancing Digital Strategies for Judicial Efforts in Combating Emerging Domestic Crime

The growth of emerging domestic crime has become a major danger to the continuity of the marital relationship, prompting the legislator and the judiciary to develop digital and judicial plans and strategies.

Requirement One: The Role of the Algerian Judiciary in Addressing Emerging Domestic Crime

The evolution of crime has imposed on the judiciary the necessity of developing prevention methods across two levels:

Branch One: At the Procedural Level:

Adopting procedural methods such as: placing restrictions on moving public action (complaint requirement in adultery cases), surveillance and interception of correspondence, infiltration in serious crimes, and modernization of the justice sector (remote trials).

Branch Two: At the Judicial Work Level:

Training judges on modern family disputes and issuing important decisions from the Supreme Court, such as:

- Decision No. 1191251 (2018): Proving adultery through strong circumstantial evidence without requiring the witnessing of the act itself.
- Decision No. 1246037 (2018): It is not permissible to rely on DNA to negate lineage if it contradicts the legal presumption of marriage (Li'an takes precedence).

Requirement Two: The Role of Modern Technology in the Scope of Domestic Crimes

Modern technology is considered a double-edged sword; just as it can cast shadows on one side, it can shine light on the other. With the emergence of digital violence as the latest model expressing emerging domestic crime, national legal and judicial efforts have mobilized to find a way out of the danger of this phenomenon. This has necessitated integrating judicial work with modern scientific means and linking them with modern technology techniques to serve the marital relationship and stand against domestic crime, according to two main branches: the emergence of DNA fingerprinting in adultery crimes to prove lineage (Branch One), and digital evidence (Branch Two).

Branch One: The Emergence of DNA Fingerprinting in Adultery Crimes as a Means to Prove Lineage

DNA fingerprinting is considered an expression of the genetic material present in the cells of living organisms. From the perspective of judicial procedures, it is a modern means of proof and identification of a person, which is abbreviated as DNA (ADN). Some define it as "the genetic characteristics that are transmitted from ancestors to descendants, which determine the identity of each individual through the analysis of a part of the DNA acid contained in the cells of his body. More than that, it is the genetic pattern consisting of repeated sequences within the DNA (A.D.N), and these sequences are considered unique and distinctive for each individual, and will not be identical in distant persons, under the name of genetic composition that forms the systems of genetic indicators."

In judicial work, litigation bodies today are crowded with adultery files within the framework of the marital relationship, the most important of which is Decision No. 1177903 dated 07-03-2018, which is based on the principle that if lineage is established by marriage or acknowledgment, it cannot be negated by scientific means. Additionally, Decision No. 1246037 dated 07-11-2018 states that it is not permissible legally and religiously to rely on DNA fingerprinting to negate lineage, nor is it permissible to present it before Li'an (mutual imprecation). This has left judges perplexed about proving lineage cases. However, the Algerian legislator in Article 40 of Law No. 84-11 containing the Family Code, as amended and supplemented by Order No. 05-02, used general terms by employing the phrase "scientific methods."

Through examining the text of this article, it is clear that the legislator did not use the term "DNA fingerprint," but rather referred to scientific methods aimed at achieving a certain truth to prove the child's lineage. Although the legislator's intention seems directed towards DNA testing technology as a more certain means than blood sample testing, proving a child's lineage is done through methods that can be divided into establishing and revealing, such as valid marriage, intercourse by mistake, acknowledgment, and DNA fingerprinting. The Algerian legislator has placed DNA fingerprinting in the last rank among proof methods, and made its use permissive, allowing the judge to make the decision regarding resorting to it or overlooking it.

Referring to jurisprudence that integrates modern technology with family issues, DNA fingerprinting can be considered an important technique in the field of criminal evidence, especially in lineage proof cases. It provides reliable scientific evidence of illegitimate relationships within the framework of marriage, which helps confirm the existence or negation of the crime of adultery.

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Branch Two: The Effectiveness of Digital Evidence in Proving Emerging Domestic Crime

Initially, digital evidence can be defined from a technical standpoint as the trace built on data stored in computers or transmitted through them, which proves or disproves the occurrence of a crime. Information and data in the technical world cannot be obtained except through the use of scientific and technical methods that are consistent with the nature of criminal behavior.

On the other hand, marital infidelity is defined as establishing an illegitimate relationship outside the family framework, whether by the husband or wife with a third party. Electronic infidelity has been defined as a term describing practices that some people engage in under the pretext of personal freedom, which threatens the stability of family relationships. It includes establishing illegitimate relationships through social media or telephone, and is considered a new type of infidelity that relies on technology that has invaded marital life in the age of globalization. Although this infidelity may remain virtual, it may turn into tangible reality, reflecting its danger to family cohesion.

As a result of such negative acts on the marital relationship, digital evidence has emerged, described from a legal perspective as what can be used to know the truth, and it is what proves the right, or it is the totality of means from which the judge deduces the validity of the lawsuit. This means it is linked to the direct procedural activity aimed at achieving judicial certainty according to the principle of material truth, through investigation or confirmation of the accusation or its negation, because its purpose is to establish the environment and proof against the person before the judiciary in accordance with the provisions of the law on a legal fact.

The legitimacy of electronic evidence is reflected in resorting to the procedures stipulated in the law, as they must comply with its provisions and adhere to them. These procedures aim to provide an essential and serious guarantee for individuals to protect their freedoms and personal rights against the arbitrariness of authority, except in

specified exceptional cases to preserve the public interest. Therefore, the existence of electronic evidence requires the legislator to include and accept it within the scope of criminal evidence, allowing the judge to rely on it in forming his conviction to rule on conviction and proof in criminal cases before the court. As previously stated, digital evidence is obtained through searching the virtual environment and seizing its contents, whether paper outputs produced through printers or non-paper outputs, such as magnetic tapes, disks, and video clips related to the case subject.

However, the Algerian legislator indicated the possibility of remote search, which allows access to the internal content of the computer without the owner's permission, targeting moral entities that may contain information related to the crime. This means any evidence obtained by means that violate legal provisions is considered null and excluded from evidence. Therefore, a question arises: How should technology be used in collecting digital evidence related to emerging domestic crimes?

The answer to this question can be found in considering that the family has been greatly affected by the changes of the modern era, even in the nature of crimes occurring within its framework, where there has become an extension of digital evidence regarding crimes occurring within its sphere, taking into account social media sites and remote conversations that have destroyed many marital homes. Therefore, adopting technology in collecting digital evidence related to emerging domestic crime can be within the framework of:

- Providing immediate, recently occurring information and data
- Facilitating criminal investigations through integrating judicial work with artificial intelligence technology
- Enhancing cooperation between concerned parties and breaking the barrier of time and place
- Encrypting spouses' digital data to preserve their safety from hacking
- Providing support and reporting applications while ensuring protection for informants and victims of emerging domestic crimes
- Analyzing the virtual reality of digital networks that contain abuse to the family
- Employing face recognition technology in smart applications to preserve privacy and avoid family problems including divorce

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Conclusion

Domestic crime has not remained confined to the traditional pattern but has kept pace with technological changes and appeared in hybrid forms such as digital violence. The study concluded that emerging domestic crime is a product of the globalization of awareness and requires greater legal and judicial framing to close legislative gaps, with the necessity of spreading digital and ethical awareness to protect the family.