

## **Consumer Security in Virtual Space: A Study of the Integration between Criminal Protection and Jurisprudential Guarantees in Light of Jurisprudential Rules and Algerian Legislation**

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**Submission: 14.02.2026 | Acceptance: 01.05.2026 | Publication: 01.06.2026**

### **Abstract:**

This study examines “consumer security in virtual space” through an integrative approach that combines mechanisms of criminal protection under Algerian legislation with the guarantees established in Islamic jurisprudence. It proceeds from the premise that electronic contracting has created an imbalance in contractual power, whereby the consumer faces “technical dependency” and “informational vulnerability” before a supplier who controls the software environment. This situation requires a protective system that combines the strictness of criminal deterrence with the flexibility of jurisprudential guarantees, in order to restore the lost contractual equilibrium.

The significance of this study lies in its engagement with one of the most complex contemporary issues arising from the comprehensive digitalization of transactions. It seeks to ground emerging technical concepts, such as digital najash and algorithmic deception, within established jurisprudential rules, while offering an analytical reading of the adequacy of Algerian legal texts, particularly Law 09-03 and Law 18-05, in securing the consumer’s “digital consent” and protecting rights closely attached to the person in an environment where direct material and sensory inspection is absent.

The problem of the study revolves around a central question concerning the extent to which Algerian legislation and jurisprudential rules are capable of formulating an integrated “consumer security protocol” that protects the electronic consumer from forms of digital domination and the dispossession of will. It also examines how jurisprudential guarantees, such as legally recognized options, can address the ethical and procedural gaps that may remain within rigid statutory texts.

The study reached several findings, the most significant of which is that virtual consumer security cannot be achieved through criminal deterrence alone, but through its integration with jurisprudential guarantees that provide “preventive” protection through moral restraint and “subsequent” protection through the system of options, including inspection, stipulation, and defect. These guarantees constitute the most flexible instrument for remedying harm suffered by the digitally “trusting” consumer. The study also demonstrated that Algerian legislation has achieved a significant qualitative shift in confronting technical dependency; however, it remains in constant need of drawing upon universal jurisprudential maxims in order to legally characterize emerging forms of fraud and deception in cyberspace.

**Keywords:** consumer security, Algerian legislation, virtual space, criminal protection, jurisprudential guarantees, electronic consumer.

### **Introduction:**

The contemporary digital transformation has produced a new economic reality that has moved the “contractual session” from its tangible material setting into an immaterial virtual space. With this transition, the traditional rules of contract theory are no longer sufficient, on their own, to protect the weaker party in the contractual relationship. A wide informational and technical gap has emerged between a supplier who possesses technological expertise and control over algorithms, and an electronic consumer who finds himself facing a form of “digital adhesion” that weakens his will and places him in a state of continuous dependency.

This study focuses on the concept of “virtual consumer security” as a legal and Sharia-based protective shield surrounding the consumer against the risks of technological targeting. The idea is based on an “integrative” approach that examines the activation of criminal protection under Algerian legislation, through Laws 09-03 and 18-05, alongside jurisprudential guarantees derived from the “jurisprudence of sales,” with the aim of establishing a comprehensive protective system that ensures the integrity of transactions against fraud and digital deception in an environment where sensory inspection is absent.

### **Study Significance:**

The significance of this research lies in its engagement with highly complex contemporary legal and technical issues, through an attempt to regulate behavioral disorder in cyberspace and to ground modern concepts, such as digital najash, within established jurisprudential rules. Its practical significance is also reflected in offering a vision for legislators and the judiciary on how to bridge the gaps created by the consumer’s “informational vulnerability,” in a manner that ensures transactional stability and preserves the integrity of digital commerce.

### **Study Problem:**

The consumer’s inability to conduct an inspection capable of eliminating uncertainty in virtual space, together with exposure to techniques of “psychological attraction” and advertising deception, has made the intervention of criminal law a necessary “surgical instrument” for correcting contractual deviation. However, the strictness of positive criminal law remains in need of an “ethical spirit” to support it, a spirit provided by Islamic jurisprudence through its system of guarantees and options. This raises the question of the extent of synergy between these two paths in achieving consumer security.

The central problem of the study is embodied in the following fundamental question:

To what extent has the Algerian legislator, through criminal protection, and have jurists, through Sharia-based guarantees, succeeded in formulating an integrated consumer security system that ensures the protection of the electronic consumer against the risks of technical dependency in virtual space?

The following sub-questions arise from this main problem:

1. How have the Algerian legislator and jurists defined the legal specificity of the electronic consumer in order to determine the scope of protection?
2. What criminal protection mechanisms has the Algerian legislator established to secure the stages of digital contracting?
3. How do jurisprudential guarantees, such as options and liability for description, function as preventive and subsequent protection for the consumer?

### **Study Objectives:**

The research aims to assess the effectiveness of the deterrent system under Algerian legislation and to demonstrate the capacity of Islamic jurisprudence to accommodate digital developments and provide options, such as deliberation and stipulation, that guarantee the consumer's right of withdrawal upon discovering a contractual defect.

### **Study Methodology:**

To achieve the objectives of the study, the following methods were employed:

1. **Analytical Method:** This method was used to deconstruct Algerian legislative texts and analyze the elements of electronic consumer crimes. It was also employed to analyze universal jurisprudential maxims in order to determine their compatibility with digital reality.
2. **Comparative Method:** This method was adopted to establish a systematic comparison between the positive-law approach and the jurisprudential approach, not merely to identify differences, but to explore the functional integration through which jurisprudence fills the ethical gaps left by rigid legal texts.

### **Previous Studies:**

A review of the scientific material indicates that some studies have addressed "criminal protection of the consumer under Law 09-03," while others have examined the "technical aspects of Law 18-05." Despite their scholarly rigor, these studies remained limited to a separate descriptive treatment of each aspect. By contrast, the present study is distinguished by reinforcing the concept of comprehensive contractual security; the objective is no longer merely to punish the offender, but rather to protect public trust, which constitutes the cornerstone of stability in the contemporary digital economy.

### **First Requirement: Conceptual Foundation and Intrinsic Characteristics of the Electronic Consumer**

Defining the concept of the "electronic consumer" constitutes an indispensable methodological threshold for determining the scope and limits of criminal protection. This protection is not established as an abstract objective in itself; rather, it exists or ceases to exist according to the status of its beneficiary and is determined by the nature of the rights violated within the digital environment. The effectiveness of criminal deterrence is closely linked to the precision of this conceptual determination, as it represents the decisive criterion for activating deterrent

mechanisms capable of confronting the emerging forms of technological targeting to which the consumer is exposed in cyberspace.

### **First Branch: The Legislative Approach to the Electronic Consumer in Algerian Law**

Despite the difficulty of formulating an exhaustive and exclusive definition of the consumer in traditional jurisprudence, given the complexity and diversity of consumer relationships, the Algerian legislator has sought to frame this concept through a mechanism of “methodological combination” between the purposive criterion, namely the purpose of acquisition, and the technical means used:

#### **1. Textual Determination under Electronic Commerce Law 18-05:**

In this law, the legislator adopted a modern criterion that links legal status to the instrument of contracting itself. Article 6 defines the electronic consumer as: “Every natural or legal person who acquires goods or services, whether for consideration or free of charge, provided that this is carried out through electronic communication media”<sup>1</sup>. It may be noted here that, although the legislator broadened the scope of this status to include legal persons, he remained faithful to the “narrow criterion” in terms of purpose, since protection is limited to consumer transactions falling outside the professional activity of the contracting party.

#### **2. The Harmonizing Approach with Law 09-03 on Consumer Protection and Fraud Repression:**

Article 3 of Law 09-03 adopted a broader formulation, considering the consumer to be anyone who acquires goods or services to satisfy personal needs, the needs of others, or those under his responsibility<sup>2</sup>. By reconciling these two texts, it becomes clear that “digital consumption” within the Algerian legislative system rests on two inseparable foundations: the use of the “electronic contract” as the sole mechanism of contracting, and the condition of “non-professional use” as a fundamental pillar for entitlement to exceptional criminal protection.

### **Second Branch: The Philosophy of Legal Protection for the Consumer in Digital Space**

Through an examination of the aforementioned texts and an analysis of their dimensions, it is possible to formulate the philosophical vision upon which the Algerian legislator has built the system of protection in digital space, through the following axes:

#### **1. The Shift from Material Confrontation to Informational Gap:**

In the digital environment, the contractual relationship is no longer a traditional one based on material face-to-face interaction between the parties. Instead, it is shaped by a vast “technical and informational gap,” whereby the professional supplier possesses technological mastery and control over information, while the consumer remains in the position of a “technical dependent.” This has required the intervention of the “scalpel” of criminal law to restore the lost balance in this relationship.

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<sup>1</sup> Article 06, Law No. 18-05 dated 10 May 2018, relating to electronic commerce, *Official Gazette of the People's Democratic Republic of Algeria*, No. 28.

<sup>2</sup> Article 03, Law No. 09-03 dated 25 February 2009, relating to consumer protection and fraud suppression, *Official Gazette of the People's Democratic Republic of Algeria*, No. 15.

**2. The Association of Status with the Technical Means:**

The legislator did not limit himself to the purposive criterion, namely final consumption, in determining the consumer's identity. Rather, he made "electronic media" an essential condition for conferring this status. Thus, the technical mode of contracting has become the criterion that distinguishes the protection of the traditional consumer from that of the electronic consumer.

**3. The Adhesion Nature of the Digital Contract:**

Electronic contracting, in its predominant form, reduces the space for "free negotiation," often transforming the contract into a technical "contract of adhesion." This has made the "obligation of electronic information" the final methodological safeguard and the essential guarantee against digital misinformation and deception.

**4. Criminal Protection as a Privilege Linked to Status:**

Criminal protection in this field remains a "restricted" protection, conditional upon the absence of professional status. Whenever it is established that the contracting party has entered the sphere of "professional activity" or speculation, this exceptional immunity ceases to apply, and the party returns to the general rules. This confirms that the legislator's philosophy is based solely on protecting the technically and cognitively "weaker party."

However, establishing criminal protection on the basis of consumer status cannot be properly sustained without examining the complex technical environment generated by the digital mode of contracting. These technical characteristics constitute the objective and factual justification for the intervention of the criminal legislator, which requires a detailed analysis of their features in the second requirement.

**Second Requirement: Essential Characteristics and Legal Justifications for Criminal Intervention**

The radical transition from the traditional mode of contracting, based on material confrontation, to the virtual digital sphere has produced a "structural imbalance" in the balance of power between the parties to the contractual relationship. The consumer is faced with a contractual reality technically and informationally dominated by the supplier, which has created an urgent need to invoke punitive rules in order to restore the lost equilibrium.

**First Branch: The Intrinsic Characteristics of Electronic Commerce Contracts**

Electronic commerce contracts are characterized by a set of structural features that distinguish them from classical contracts. These same features constitute both a justification and a point of departure for criminal intervention aimed at protecting the consumer:

**1. The Virtuality of the Contractual Session and the Transcendence of the Classical Concept of Unity of Place:**

Digital transformation has led to the collapse of the material framework of the "contractual session" in its traditional sense, which previously brought the two parties together within a tangible geographical space. It has been replaced by the concept of the "virtual session," which has "transcended the traditional concept of unity of place"<sup>3</sup>. This gives rise to a contract

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<sup>3</sup> See: Khaled Mamdouh, *Conclusion of the Electronic Contract*, Dar Al-Fikr Al-Jami'i, Alexandria, 2008, p. 45 et seq.

concluded between persons who may be separated by continents and connected only through a technical and virtual link. Such a situation has raised complex legal issues concerning the precise determination of the time and place of contract formation. Establishing this element constitutes the first and fundamental step in protecting the consumer from the risks of being caught between conflicting cross-border laws, and in identifying the criminally competent court when any technical infringement occurs.

**2. The Digital Intermediary as a Contracting Environment and the Problem of Electronic Adhesion:**

The digital intermediary is no longer merely a temporary “communication channel”; rather, it has become a legal environment and an autonomous contractual authority. The supplier exercises absolute control over the software platform and becomes the “architect” of the contractual process, designing algorithms and pre-establishing technical and legal conditions in a manner that serves his professional interests<sup>4</sup>. This situation generally transforms contractual relationships into “electronic contracts of adhesion,” in which the consumer lacks the ability to negotiate or modify the terms, thereby exposing him to abusive clauses and informational deception, and requiring preventive criminal protection.

**3. The Global and Cross-Border Nature of Digital Contracting:**

Electronic commerce is, by its very nature, a distinctly “global” activity, giving rise to serious issues relating to conflicts of laws and the difficulty of prosecuting organized crimes targeting consumers<sup>5</sup>. This broad scope represents a dual legal and security challenge. In many cases, the consumer finds himself contracting with suppliers whose geographical identity is unknown or who are subject to foreign legal systems. This renders “national criminal protection” insufficient unless it is characterized by flexibility and the capacity to confront forms of cross-border cyber-targeting.

**Second Branch: The Philosophical Justifications for Criminal Intervention**

The intervention of the criminal legislator in regulating digital consumer relationships is neither a legislative luxury nor an incidental form of interference. Rather, it is an inevitable response to a reality produced by cyberspace, where the justifications for such intervention have crystallized into philosophical and legal dimensions that may be summarized as follows:

**1. Technical Dependency and Structural Inability to Conduct Material Inspection:**

The digital environment has produced a new form of “technical dependency,” whereby the supplier monopolizes the privilege of designing “algorithms” and managing software platforms. This shifts the consumer from the status of a free contracting party to that of a technical dependent<sup>6</sup>. The relationship between the two parties is therefore no longer a merely

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<sup>4</sup> See: Mohamed El-Said Rushdi, *Contracting through Information Networks*, Dar Al-Nahda Al-Arabiya, Cairo, 2005, p. 112.

<sup>5</sup> See: Oussama Ahmed Badr, *Consumer Protection in Electronic Contracting*, Dar Al-Jami'a Al-Jadida, Alexandria, 2005, p. 89.

<sup>6</sup> See: Hassan Abdel Baset Jomai'i, *Proof of Legal Transactions Concluded via the Internet*, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 34.

classical contractual relationship; it has become a state of software-based dispossession. The consumer's will is able to move only within the logical pathways previously drawn by the "code," which represents a contemporary form of adhesion that goes beyond the economic dimension and becomes embedded in the very cognitive structure of the contract.

From this perspective, what may be termed the "structural inability of inspection" emerges. This condition results from the nature of the digital subject matter itself, not from any deficiency in the consumer's perception. While inspection capable of removing uncertainty has traditionally been based on perceiving the "object sold" itself, in digital reality it is directed toward a "visual interface" controlled by the supplier in terms of presentation, while the technical reality remains concealed behind algorithmic barriers. This reality overturns the standards of "knowledge of the subject matter of the contract," shifting them from the criterion of "visual perception" to that of "technical transparency" as a necessary legal and Sharia-based alternative for removing uncertainty.

## **2. The Imbalance of Cognitive Power and Volitional Vulnerability in the Face of Artificial Intelligence:**

In digital space, the consumer faces an intense flow of advertising based on techniques of "psychological attraction" and behavioral prediction algorithms. This has transformed the imbalance from a mere "disparity of information" into a complete "dispossession of will"<sup>7</sup>. Such digital psychological pressure removes deception from its traditional form based on verbal misrepresentation and places it within a pattern of "silent coercive direction," whereby the decision-making environment, rather than the decision itself, is manipulated through the analysis and exploitation of the consumer's psychological vulnerabilities.

Here, the philosophical justification for "restoring the lost balance" becomes apparent. The consumer's legal vulnerability in this context results from the superiority of the "machine" in data processing, which requires the supplier to disclose the "algorithmic logic" guiding the advertisement. Accordingly, necessity requires the activation of deterrent rules against practices of "technological overreach," and the systematic exploitation of psychological data should be regarded as an indication of the absence or defectiveness of consent. This grants the criminal judge the authority to reclassify such contracts as the product of a "directed" will rather than a "chosen" will.

## **Third Requirement: Mechanisms of Criminal Protection for the Consumer Across the Stages of Digital Contracting**

Criminal protection is manifested as a legal shield surrounding the consumer in order to avert the risks of "technical dependency" imposed by the supplier. This protection is not limited to remedial intervention after harm has occurred; rather, it extends across all stages of the contractual process to ensure that the consumer's will remains free from digital defects.

### **First Branch: Preventive Protection — The Pre-Contractual Stage**

This stage aims to safeguard the consumer's "presumed consent" before entering into the contractual relationship, through two essential mechanisms:

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<sup>7</sup> See: Nazih Mohamed Al-Sadiq Al-Mahdi, *The Duty of Disclosure in Contracts*, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 76.

### **1. Protection of Informational Privacy — The Right to Be Left Alone:**

Personal data constitute the repository of digital privacy. In light of the definition adopted by the Algerian legislator in the law relating to the protection of natural persons in the field of processing personal data<sup>8</sup>, the most appropriate legal characterization of such data is that they constitute a “right closely attached to personality” and a fundamental constitutional entitlement<sup>9</sup>.

Criminalizing violations of these data aims to prevent the phenomenon of “technical targeting,” which covertly directs the consumer’s will. Through the “psychological profile,” the supplier becomes capable of predicting the consumer’s desires and steering his choices through deceptive patterns. This transforms the “right to be left alone” into a procedural guarantee that protects consent against systematic digital fraud.

### **2. Combating “Digital Najash” and Advertising Deception — Protection of Technical Integrity:**

Deception in the digital environment has evolved into what may be termed “systematic digital najash,” namely the use of algorithms to create false impressions regarding the popularity of a product through fake reviews or artificially generated views. This conduct finds its jurisprudential foundation in the prohibited practice of najash under Sharia, as a form of deception that corrupts consent. Legally, however, it raises the issue of “advanced advertising deception.” Protection in this context is embodied in the criminalization of every form of “misleading representation” that disrupts cognitive balance, thereby granting the judiciary authority to monitor the supplier’s “technical integrity” and ensuring the soundness of the consumer’s will before the moment of contract formation.

In this context, Article 12 of Law 18-05 on electronic commerce emerges as a procedural mechanism for protecting this will. It requires that an order for a product or service pass through three mandatory stages: first, enabling the consumer to access the contractual terms so that he may contract with knowledge and awareness; second, verifying the details of the order, including its nature, price, and quantity, so that he may modify or cancel it; and finally, issuing the final confirmation that forms the contract. At the end of this article, the legislator emphasized the necessity that the consumer’s choice be explicit, prohibiting any pre-filled data or boxes intended to direct his choice or technically confiscate his will<sup>10</sup>.

## **Second Branch: Current Protection — The Stage of Contract Formation**

At this stage, protection shifts toward ensuring the integrity of the technical instruments that embody mutual consent:

### **1. Criminal Protection of the Electronic Signature:**

The electronic signature constitutes the “legal fingerprint” that gives evidentiary force to virtual obligations. According to the Algerian legislator, it consists of a set of data logically linked to

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<sup>8</sup> Law No. 18-07 dated 10 June 2018, relating to the protection of natural persons in the field of processing personal data, *Official Gazette of the People’s Democratic Republic of Algeria*, No. 34.

<sup>9</sup> Article 47, Algerian Constitutional Amendment of 2020, *Official Gazette of the People’s Democratic Republic of Algeria*, No. 82, issued on 30 December 2020.

<sup>10</sup> Article 12, Law No. 18-05, previously cited, p. 10.

the data message and used to identify the signatory<sup>11</sup>. The legislator has surrounded this signature with criminal protection in order to ensure the continuity of transactions and remove uncertainty<sup>12</sup>. This protection aligns with the Sharia requirement of “documenting covenants,” whereby the falsification of a digital signature is assimilated to major forgery offences, in protection of its identificatory function and to prevent any impersonation of the consumer or infringement upon his will.

## **2. Protection of the Electronic Document against Forgery and Destruction:**

If the signature is the spirit of the contract, then the digital document is its material vessel that preserves obligations. Protection intervenes here as a dual guarantee: it confronts “intellectual forgery” at the moment the instrument is drafted, and “material forgery” targeting subsequent alteration of data, with the aim of preserving “contractual stability.” This protection is reflected in the supplier’s obligation to keep transaction records and their dates and to send them automatically to the National Centre of the Commercial Register, together with the obligation to secure connection to the payment platform through an electronic certification system in order to ensure the integrity and confidentiality of exchanges<sup>13</sup>.

## **Third Branch: Subsequent Protection — The Stage of Contract Performance**

This stage focuses on remedying the deficiency of practical inspection and ensuring actual contractual justice through two mechanisms:

### **1. Repression of Electronic Commercial Fraud — Remedying the Deficiency of Practical Inspection:**

Electronic fraud relies on the use of digital media to attribute false qualities to the subject matter of the contract. Given the absence of material inspection, legal protection comes to compensate for this practical deficiency through the activation of the rules of Article 429 of the Penal Code. The judiciary characterizes the lack of conformity between the product actually delivered and the detailed characteristics advertised on the digital platform as the material element of the offence of “deception concerning the essential qualities of the goods.”

Through Law 18-05, the legislator did not confine himself to civil obligations; rather, he made violation of digital display standards a fully constituted offence of fraud, thereby granting the consumer reassurance as a substitute for the material examination that is impossible at the moment of contract formation<sup>14</sup>.

### **2. Application of the Options of Deliberation and Protection of the “Trusting Consumer” — Balance of Power:**

Protection here aims to prevent the supplier from exploiting the consumer’s “cognitive dependency” by recognizing the “right of withdrawal” as an inviolable legal guarantee. This

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<sup>11</sup> Article 02, Law No. 15-04 dated 1 February 2015, establishing the general rules relating to electronic signature and electronic certification, *Official Gazette of the People’s Democratic Republic of Algeria*, No. 06.

<sup>12</sup> See Article 327 bis 1, Ordinance No. 75-58 dated 26 September 1975, containing the Civil Code, amended and supplemented by Law No. 05-10 dated 20 June 2005, *Official Gazette*, No. 44.

<sup>13</sup> See Articles 25, 27, and 28, Law No. 18-05, previously cited.

<sup>14</sup> Article 429, Ordinance No. 66-156 dated 08 June 1966, containing the Penal Code, as amended and supplemented. (See also: Articles 13 and 23 of Law No. 18-05, previously cited).

right, namely the option of deliberation, grants the consumer a period for review after actual inspection.

The law allows him to return the product within four (4) working days in the event of non-conformity or delay in delivery, thereby breaking the intensity of “algorithmic fascination,” which the legislator sought to combat by prohibiting the supplier from using any technical data intended to direct the consumer’s choice. Criminal protection serves as a shield preventing the supplier from delaying the refund of amounts paid, thereby consolidating the concept of “digital contractual justice” based on material conviction rather than technical pressure.<sup>15</sup>

#### **Fourth Requirement: The Philosophy of Preventive Jurisprudential Protection and the Logic of Cyber Control**

An examination of jurisprudential protection for the consumer in digital space reveals an integrated legal and ethical system that precedes positive legislation in establishing guarantees capable of safeguarding the will. This protection does not emerge from a vacuum; rather, it embodies the objectives of “preserving wealth” and “removing hardship,” as the authority of Islamic jurisprudence extends to “digital content” and algorithmic platforms, considering them modern vessels for trust-based sales.

#### **First Branch: Integrity in “Digital Disclosure” and Supervisory Authority over Descriptive Data**

##### **1. The Duty of Disclosure as a Preventive Sharia Obligation:**

Islamic jurisprudence establishes the principle of “absolute transparency” on the basis of the Almighty’s saying: *﴿Not a word does he utter except that with him is an observer prepared [to record]﴾* *﴿لا يحسب الله جوداً ولا يكتم الله السوء﴾* (atadatem) *﴿لا يظن بالله شيئا﴾* *﴿لا يظن بالله شيئا﴾*.<sup>16</sup> { patterns; rather, they treat them as “covenants and commitments” that carry legal and moral consequences under Sharia. Responsibility for description in electronic commerce serves as a Sharia-based substitute for direct physical inspection, which is impossible at the moment of contract formation.

This elevates technical description to the status of “testimony,” which cannot tolerate deception. Accordingly, any concealment of product defects within databases, or the use of “digitally altered” images to obscure reality, does not merely constitute a technical violation; rather, it amounts to a breach of the “integrity of disclosure,” which vitiates consent and entitles the consumer, under Sharia, to rescind the contract. This represents one of the highest forms of preventive protection.

##### **2. The Jurisprudential Characterization of Digital Najash:**

The Prophetic methodology warned against consumer deception in the saying of the Prophet ﷺ: *«Swearing may help sell the commodity, but it destroys blessing»*<sup>17</sup>. In virtual space, traditional najash has evolved into what may be described as “algorithmic digital najash,” whereby suppliers deploy “electronic armies” or automated software programs (bots) to post

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<sup>15</sup> See Articles 22, 23, and 26, Law No. 18-05, previously cited.

<sup>16</sup> Surah Qāf, Verse 18.

<sup>17</sup> Muhammad ibn Ismail al-Bukhari, *Sahih al-Bukhari*, Book of Sales, Chapter: “Allah obliterates usury and gives increase for charities,” Hadith No. 2087, Vol. 3, p. 68.

false positive reviews. This conduct constitutes a contemporary form of “actual inducement through deception,” as the consumer places trust in the numerical abundance of evaluations, leading him to contract under the assumption that the product is popular and of high quality. The jurisprudential prohibition here extends to both the “designer of the algorithm” and the supplier alike, since such manipulation constitutes an infringement upon the consumer’s will and a falsification of the system of informational awareness. This necessitates the intervention of supervisory authorities to regulate the “integrity of digital platforms.”

## **Second Branch: Protection against Price Domination and the Risks of Algorithmic Monopoly**

### **1. Confronting Informational Monopoly and Manipulation of Supply:**

The monopolization of data, or the concealment of competitors’ offers through manipulation of search engine results, represents a modern manifestation of prohibited monopolistic conduct, in light of the saying of the Prophet ﷺ: «No one monopolizes except a wrongdoer»<sup>18</sup>. While Islamic jurisprudence recognizes the principle of freedom of trade, it imposes a fundamental restriction embodied in the principle of “preventing harm.”

Thus, when a supplier employs “discriminatory pricing” algorithms, which raise prices based on monitoring the consumer’s immediate need, this falls within the prohibited realm of exploiting necessity. Such technological overreach requires the activation of Sharia-based oversight over the “fairness of the algorithm,” to ensure that technology does not become a tool for extorting the consumer or monopolizing his essential needs.

### **2. The Rule of “No Harm and No Reciprocating Harm” as a Mechanism of Criminal Protection:**

The legal maxim «No harm and no reciprocating harm»<sup>19</sup> constitutes the overarching protective framework under which the consumer seeks shelter against “digital domination.” In light of the imbalance of power between a “professional supplier” possessing technological control and a “trusting consumer” unfamiliar with its underlying mechanisms, jurisprudence intervenes to restore equilibrium through the imposition of a “duty of technical disclosure.”

Harm in the digital environment is informational and intangible before it becomes material, which legitimizes the intervention of the authority, namely the legislator, in establishing punitive legal rules criminalizing any conduct that leads to the obscuring of consumer awareness or places the consumer in a state of contractual error. In this way, jurisprudential protection becomes a “dynamic” form of protection that evolves alongside changing criminal methods, placing consumer welfare as a paramount priority to ensure transactional stability and integrity.

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<sup>18</sup> Muslim ibn al-Hajjaj al-Naysaburi, *Sahih Muslim*, Book of Musāqāt, Chapter: “The Prohibition of Hoarding Foodstuffs,” Hadith No. 1605, Vol. 3, p. 1227.

<sup>19</sup> Ibn Majah, *Sunan Ibn Majah*, Hadith No. 2341; al-Daraqutni, *Sunan al-Daraqutni*, Hadith No. 4540.

### **Fifth Requirement: Subsequent Jurisprudential Guarantees and Mechanisms for Remediating Digital Harm**

If preventive jurisprudential protection seeks to safeguard the will prior to contract formation, then “subsequent protection” represents the remedial framework established by Islamic jurisprudence to address the cognitive and technical imbalance that emerges after contract performance. This stage is founded upon the philosophy of “removing hardship” and “eliminating latent uncertainty,” whereby the authority of jurisprudence extends to remediating what the consumer was unable to physically perceive regarding the contractual subject matter, transforming “traditional guarantees” into rigorous instruments of oversight over the quality of the supplier’s digital performance.

### **First Branch: Jurisprudential Capacity to Remedy Deficiencies in Practical Inspection (Options of Inspection and Description)**

#### **1. Application of the “Option of Inspection” in Virtual Sales as a Guarantee against Uncertainty:**

The option of inspection (*khiyār al-ru’yah*) constitutes one of the strongest jurisprudential rules granting the consumer “contractual sovereignty.” Islamic jurisprudence establishes that viewing a digital model through screens does not extinguish the consumer’s right to physical inspection upon delivery. Applying this principle to the reality of electronic commerce, the contract remains in a state of “non-binding effect” from the consumer’s perspective until the physical reality corresponds with the virtual description<sup>20</sup>.

This jurisprudential extension breaks the “dominance of the image,” which the supplier may use to mislead the consumer. Digital inspection remains, from a Sharia perspective, an incomplete inspection, since it does not entirely eliminate uncertainty. Consequently, the consumer retains an absolute right to rescind the contract immediately upon delivery if the actual item does not correspond to what was envisioned through the description. This represents the highest degree of protection in a contractual environment founded upon probability rather than certainty.

#### **2. The Option for Defect and Confronting Hidden “Software-Based Deception”:**

Islamic jurisprudence transcends the concept of a visible material defect to encompass the “intangible defect” that diminishes value or frustrates the consumer’s intended purpose. Within complex digital systems, the “software defect” or hidden technical deficiency in coding emerges as a modern form requiring the activation of legal guarantee mechanisms<sup>21</sup>. If the supplier deliberately conceals shortcomings in product performance through techniques of filtering or digital modification, jurisprudence characterizes such conduct as “deception,” thereby immediately establishing the consumer’s right of option<sup>22</sup>.

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<sup>20</sup> Al-Kasani (Ala’ al-Din), *Bada’i al-Sana’i fi Tartib al-Shara’i*, Dar Al-Kutub Al-‘Ilmiyyah, Beirut, 2nd ed., 1986, Vol. 5, p. 293.

<sup>21</sup> Ibn Qudamah al-Maqdisi (Muwaffaq al-Din), *Al-Mughni*, edited by Abdullah Al-Turki and Abdel Fattah Al-Hilu, Dar Alam Al-Kutub, Riyadh, 3rd ed., 1997, Vol. 6, p. 225.

<sup>22</sup> Al-Sarakhsi (Muhammad ibn Ahmad), *Al-Mabsut*, Dar Al-Ma’rifa, Beirut, 1993, Vol. 13, p. 8.

The expanded concept of defect here extends to include the “absence of the promised technical specification” that the supplier represented on the platform, transforming the duty of description into an “obligation to achieve a result,” while granting the judge authority to assess harm on the basis of technical standards rather than mere material appearances.

## **Second Branch: Balancing Power through the “Option of Deliberation” and the Protection of the Technically Trusting Consumer**

### **1. The Jurisprudential Characterization of the “Right of Withdrawal” (*Khiyār al-Sharf*) as a Mechanism for Breaking Technological Fascination:**

The “right of withdrawal” in positive legal systems represents a contemporary reflection of the “option of stipulation” (*khiyār al-sharf*) in Islamic jurisprudence, whereby the consumer is granted a defined period of time, a deliberation period, for reconsideration away from the pressures of digital marketing<sup>23</sup>.

The jurisprudential wisdom underlying the extension of this option lies in granting the “weaker party” an opportunity to restore psychological and rational equilibrium after the process of “technological inducement” and the attractive algorithmic mechanisms that digital platforms may employ. In Islamic jurisprudence, the contract is not merely a “programmed code” to be clicked upon; rather, it is a manifestation of conscious will that deserves a period of reconsideration after the influence of the digital intermediary has dissipated. This ensures that consent is genuine, stable, and reflective, rather than the product of a fleeting moment of fascination.

## **Protection of the “Trusting Consumer” and the Prevention of Gross Unfairness in Cyber Transactions:**

Jurists define the *mustarsil* (the trusting consumer) as a person who lacks knowledge of the value of goods and places trust in the seller’s integrity<sup>24</sup>. In most cases, the electronic consumer is a “technically trusting consumer,” placing absolute confidence in the supplier’s software interface. Accordingly, Islamic jurisprudence surrounds such a consumer with exceptional protection by prohibiting gross unfairness (*ghabn fāhish*) arising from informational disparity<sup>25</sup>.

Criminalizing the exploitation of the consumer’s ignorance of market prices or actual technical specifications constitutes a powerful remedial mechanism. Whenever it is established that the supplier exploited the consumer’s “informational blindness” to impose an excessive price or inferior specifications behind the veil of technology, the consumer acquires the right to invalidate the contract on the basis of the legal maxim “No harm and no reciprocating harm.” This embodies the highest conception of contractual justice within the jurisprudential framework.

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<sup>23</sup> Ibn Juzayy al-Gharnati, *Al-Qawanin al-Fiqhiyyah*, Dar Ibn Hazm, Beirut, p. 171.

<sup>24</sup> Ibn Qayyim al-Jawziyyah, *I’lam al-Muwaqqi’in ‘an Rabb al-‘Alamin*, edited by Muhammad Abdel Salam Shahin, Dar Al-Kutub Al-‘Ilmiyyah, Beirut, Vol. 3, p. 154.

<sup>25</sup> Ibn Nujaym al-Misri, *Al-Bahr al-Ra’iq Sharh Kanz al-Daqa’iq*, Dar Al-Kitab Al-Islami, 2nd ed., Vol. 6, p. 118.

Following an examination of the mechanisms of criminal protection under Algerian legislation and their comparison with the established principles of Islamic jurisprudence, a set of synthesized conclusions emerges, reflecting the “integrative” nature of the relationship between the two systems in protecting the electronic consumer, as structured through the following axes:

### **First: Areas of Convergence and Functional Integration**

There exists a profound substantive convergence between the philosophy of “removing harm” in Islamic jurisprudence and the “protective orientation” of Algerian law, manifested through the following dimensions:

#### **1. Restoration of the Subjugated Will:**

The legal concept of the “electronic contract of adhesion” corresponds to the jurisprudential concept of the “sale involving the trusting consumer” (*bay' al-mustarsil*), as both systems recognize that the consumer has become a technologically subordinated party lacking practical freedom to negotiate. Here, contractual justice transcends rigid formalism, as jurisprudence and law converge within a shared protective orientation to ensure that the digital contract does not become an instrument of software-based servitude that strips the consumer of his will and contractual sovereignty.

#### **2. Preventive Combat against Deception:**

The criminalization of “advertising deception” in law converges with the prohibition of *najash* in jurisprudence; both reject the creation of false impressions through attraction-driven algorithms that direct the will toward a contract that would not otherwise have been genuinely intended. This convergence protects collective awareness against “systematic deception” practiced by suppliers through the manipulation of evaluations and fabricated views designed to entrap the consumer in contractual error.

#### **3. Recognition of the Deliberation Period:**

The “right of withdrawal” in electronic commerce law aligns with the “option of stipulation” in Islamic jurisprudence, and both function as a “rational restraint” upon impulsive consent. This grants the consumer an opportunity to reclaim sovereignty over his decision-making process, away from the pressures of “technological fascination” and the seductive flashes of advertising employed by digital platforms to exploit financial decision-making.

### **Second: Areas of Distinction and Methodological Divergence**

Despite the unity of objective, methodological gaps emerge due to differences in foundational reference and legal philosophy:

#### **1. Scope of the Protective Standard:**

Algerian legislation limits its protection through a “technical and purposive” criterion, whereas jurisprudence extends its protection on the basis of “cognitive incapacity,” namely ignorance and gross unfairness. Jurisprudential protection follows the consumer wherever imbalance in power exists, whereas legal protection remains confined within narrower “virtual” or “consumer-specific” frameworks. This renders jurisprudence more flexible in accommodating evolving forms of exploitation.

## **2. Mechanism of Deterrence (Punishment versus Remedy):**

Algerian criminal policy tends toward “external punishment,” namely imprisonment and fines, whereas jurisprudence emphasizes “civil remedy imbued with moral-religious significance” through rescission or compensation. This divergence reflects the comprehensiveness of the broader vision: while law establishes punitive boundaries for conduct, jurisprudence cultivates internal moral restraint. Between the two, a dual protective framework is achieved—one that legally deters the supplier while ethically and religiously regulating his conduct.

### **The Architecture of the Contractual Session:**

Law treats the digital contractual session as a procedural matter for determining temporal and territorial jurisdiction, whereas jurisprudence regards it as a “conceptual unity” intended to preserve the continuity of Sharia-based contractual options. This does not constitute a contradiction, but rather reflects a difference in perspective. Law protects the judicial process, while jurisprudence protects the substantive essence of the right, ensuring that consumer rights do not lapse merely because rigid legal deadlines have expired without explicit and informed consent.

## **Third: Analytical Findings Derived from the Study**

### **1. The Integration of “Shield and Spirit”:**

The study concludes that criminal protection under Algerian law constitutes the material “shield” that protects the consumer from the supplier’s direct technological overreach, while jurisprudential guarantees represent the “spirit” that infuses digital transactions with ethical and normative substance, transforming them from mere technical exchanges into equitable civilizational practices.

### **2. The Decline of the Sovereignty of Will:**

Digital reality has demonstrated that “free will” has become a relative concept under the dominance of algorithms. Accordingly, the intervention of both law and jurisprudence constitutes a technological and ethical necessity to prevent the virtual marketplace from becoming an informational jungle in which the technologically powerful devour the cognitively vulnerable.

### **3. The Flexibility of Digital Jurisprudence:**

The capacity of Islamic jurisprudence to accommodate concepts such as “digital najash” and “electronic signature forgery” confirms that Sharia possesses flexible ethical protocols capable of regulating the conduct of “algorithms” through guarantees that precede and reinforce statutory law. This opens meaningful prospects for the development of positive legal systems through inspiration drawn from the higher objectives of Sharia.

## **Conclusion:**

At the conclusion of this study, through which the mechanisms of legal and Sharia-based protection within the digital sphere were examined, it becomes abundantly clear that consumer security in virtual space is no longer merely a legal luxury; rather, it has become an existential necessity for the stability of transactions in the age of “digital liquidity.” The study has revealed that the transition from the “material” to the “digital” has created a profound rupture in

traditional concepts of contractual justice. It is no longer sufficient to protect the consumer through rigid statutory provisions alone; instead, the consumer must be surrounded by a flexible protective framework capable of tracing fraud within its software-based and algorithmic hiding places.

The synthesis that this research sought to demonstrate between the “scalpel” of Algerian criminal law and the “spirit” of jurisprudential guarantees has revealed a fundamental methodological reality: punitive deterrence alone may not be sufficient to restore impaired consent, and Sharia-based contractual options are not merely a historical legacy, but rather living and dynamic instruments capable of addressing “digital adhesion” and restoring the position of the “trusting” consumer in the face of informational domination. Based on the analysis and comparative examination developed throughout the sections of this study, the most significant findings and recommendations may be summarized as follows:

### **First: Findings Derived from the Study**

#### **1. The Necessity of Hybrid Protection:**

The study demonstrates that consumer security in digital space cannot be achieved through rigid legal provisions alone, but rather through their integration with jurisprudential guarantees. While the law provides criminal “deterrence” as a coercive instrument of public authority, jurisprudence provides “contractual justice” and the ethical restraint that precedes the offence and remedies its consequences through civil mechanisms.

#### **2. The Evolution of the Concept of Digital Infringement:**

Fraud in the virtual environment has moved beyond traditional forms into complex “software-based” manifestations, such as digital najash through fabricated evaluations and the falsification of electronic signatures. This renders Algerian criminal protection in constant need of grounding in the universal principles of Islamic jurisprudence, which prohibit all forms of uncertainty, deception, and fraudulent inducement, regardless of the means through which they are carried out.

#### **3. The Priority of the Digital “Trusting Consumer”:**

It has become evident that the electronic consumer represents the contemporary *mustarsil*—the trusting party who lacks understanding of the inner workings of algorithms and the complexities of digital platforms. This makes the framework of “Sharia-based contractual options” (*khiyār al-ru’yah*, *khiyār al-shart*, and *khiyār al-‘ayb*) the most effective instrument for repairing impaired consent and granting the consumer a second opportunity for reflection after the “glare” of digital advertising has subsided.

#### **4. The Effectiveness of the Algerian Legislative Approach:**

Through Laws 09-03 and 18-05, the Algerian legislator has demonstrated a meaningful response to the risks of “technical dependency.” However, the effectiveness of this response remains contingent upon the ability of judges and investigators to comprehend the technical specificity of digital violations and to characterize them in a manner that fulfills both the spirit of the law and the higher objectives of Sharia.

## **Second: Recommendations and Proposals**

Based on the findings reached by the study, the following recommendations are proposed:

### **1. At the Legislative Level:**

The Algerian legislator should update Law 18-05 relating to electronic commerce by incorporating explicit provisions governing “algorithmic deception” and criminalizing practices of “digital najash,” while establishing the “right of withdrawal” (the option of deliberation) as a matter of public order from which no contractual derogation should be permitted.

### **2. At the Jurisprudential and Judicial Level:**

There is a pressing need to activate specialized judicial mechanisms through the training of judges with expertise in digital financial transactions and artificial intelligence technologies, in order to ensure accurate jurisprudential characterization of newly emerging disputes prior to their legal adjudication.

### **3. At the Technical and Ethical Level:**

Electronic suppliers should be bound by the principle of “algorithmic transparency,” through the disclosure of the criteria governing product display and ranking, in order to protect the consumer from “exploitative unfairness” resulting from the concealment of technical information.

### **4. At the Awareness and Educational Level:**

Supervisory bodies and consumer protection associations should be encouraged to promote awareness of the Sharia-based and legal regulations governing digital transactions, with the aim of strengthening “contractual security” for the digitally trusting consumer.

## **Final Reflection:**

Consumer security in virtual space will remain an “open and evolving workshop” requiring the convergence of sustained efforts. Technology develops at a remarkable pace, and the consumer has no genuine safeguard within this turbulent environment except through a legal system that combines the “scalpel” of the jurist in deterring wrongdoing with the “heart” of the scholar in remedying harm and restoring the balance of justice.

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