

CRIMINALISATION OF MORAL HARASSMENT AT WORK SOCIO-LEGAL STUDY



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Abstract:

The subject of the present study is moral harassment in administrative organizations as a negative phenomenon and deviation in behavior from sociological, criminal, and legal perspectives. The study examines, simultaneously, the issue of criminalizing this phenomenon in Algerian labor law in comparison with most European countries that have already implemented texts that criminalize it. The study examines various texts from different European countries' legislations that prove the elements of moral harassment as a crime, in order to alert the Algerian legislator and responsible, relevant bodies to take action and criminalize the phenomenon, which has become a living nightmare to the Algerian employee in the workplace. This phenomenon has proven to affect the performance of the employees, threaten their psychological and mental health, and deteriorate public services, which in turn has become the object of protest by citizens.

keywords: moral harassment; mobbing; aggression; work; crime; organizations.

Introduction:

Moral harassment is a phenomenon as old as corporations, as it was initially associated with the emergence of factories in western societies with the shift from peasant to industrial activities. The rapid development of the industrialization movement led to the exploitation of the working class by various methods that guarantee larger production and benefits and ignore workers' human and social factors.

This neglect resulted in many problems, such as labor strikes and the surge of some negative behavioral phenomena such as violence. This situation was

strengthened with the emergence of Taylor Labor Laws that lead to the scientific organization of labor (LOWITE, 1971, p. 146). These laws, however, were not able to reach stability in organizations due to their principles at work, such as rigor in applying laws and fixed tasks, all of which was in light of family and social obligations that have greatly evolved in the European Factor.

As the major industrial poles emerged alongside wide labor gatherings, Georges Friedmann and Pierre Naville confirm that labor gatherings created many forms of violence, aggression, and many other negative behaviors due to workers' problems. This has led to the call for improving work conditions in the early sixties and paying more attention to the workers' human and behavioral aspect. This call was embodied in the enactment of legislation to provide workers with protection (LOWITE, 1971, p. 158) and psychological and social assistance to join their work and hold social responsibilities. However, working conditions did not improve. In fact, they became more complicated with the appearance of the bureaucratic model that brought rationality in management, efficient tasks distribution, and hierarchy. Therefore, bureaucracy increased the complexity of organizations' status and the severity of behavioral issues because of the escalating pressure on these organizations driving them towards the character of service.

The colonial phase in Algeria witnessed a spread of moral harassment in organizations. More Accurately, harassment was the most important and defining characteristic in management within the framework of the colonial system exploitation. In this regard, researcher and Professor Nasser Djabi (LOWITE, *Traite des sociologie primitive*, 1978, p. 58) corroborates that colonial administrations carried out various abusive practices against Algerian employees in an attempt to make them submit, exploit them, and deprive them from their simplest rights. People's attempts to face the colonial administrations to liberate themselves from the harassment and demand their rights through union activities were shut down. As for the post-independence era, the Algerian administration ended up dismantled and lacking resources and competencies. This led to the progression of the colonial mentality in management due to some groups' control by force over the organizations; thus, regional problems, favoritism, mediation, and abuse of power remained.

THE FIRST TOPIC:

Moral Harassment: Term evolution

First requirement: Definitions and Concept:

This section attempts to briefly review the course of development of the term "moral harassment" in research in Europe (Rassy, 2002, p. 13), Canada, and America, in order to present an idea that can help us learn more about the phenomenon.

In the anglophone literature, the term “workplace aggression” was coined to express the system of management over workers modeled to take away their rights when industrial societies emerged. The term was used in particular by trade unions and then by sociologists. Afterwards came the term “workplace terrorism” to express aggression, moral and physical violence that is mostly present in major factories in America and Europe. This aggression was the result of the meeting of multiple cultures of factory workers. (Drida, Engel, & Litzenberg, 1999, p. 88)

Sociologists in Canada used the term “violence in workplace,” whereas psychologists used the term “psychological harassment” in scientific studies to suggest oppression and distress in the workplace.

Afterwards, psychologists used the phrase “workplace bullying” to describe mental harassment in schools, which applies the principles of aggression, attacks, and physical threat. (Rassy, 2002, p. 35)

In 1993, in Germany and Italy, and notably Sweden, the term “Mobbing” was coined for the first time by the Swedish researcher Hans Lehmann. This term expresses psychological terror and ongoing oppression and suffering. (Dejours, 2001, p. 146) When tracing the origins of this term, we are led to the German verb “mobbed” which directly translates to harassment or ongoing aggression. This verb originates from the English language; the verb “to mob” is defined as “to attack” or “to confront”.

In 1996, the term “moral harassment” made appearance in the books of Marie-France Hirigoyen and assumed its final form. Ever since 1996, the term was widely used in all academic studies in psychology and sociology. In our study, we will also be using the said term. (Hirigoyen, 1999, p. 89)

This historical overview serves to highlight the difficulty of identifying a term. It is a complex phenomenon that assumes many shapes and forms as will be demonstrated later on.

First section: Definition of Moral Harassment

Defining the term “moral harassment” in the organization is a difficult task to perform considering its nature, characteristics, and its various forms. (Hirigoyen, 1999, p. 92) Moreover, the research and study on this phenomenon is rather new; that is, in addition to the lack of reference studies to rely upon. While most of the studies differed in setting a definition to the phenomenon, all studies agreed on its forms, techniques, and most important characteristics, especially with the presence of academic, political, and legal studies. Besides studies in the academic field, there are also field studies for organizations, international bodies as well as legal institutions.

Hence, the study presents all available definitions so far, whether those present in academic research or in field studies in the different organizations and

international bodies as well as the legal definition. It has thus been classified as follows:

- Definitions of moral harassment as given by experts (academic definitions).
- Definitions as given by international bodies and organizations.
- Legal definitions.

Definitions of moral harassment as given by experts:

Heins Leyman, an expert on the topic of “moral harassment” and a sociology professor in Stockholm university, published his book entitled “Mobbing” in 1993, which was later on translated to French in 1996. He explains the use of the term “mobbing” to define the state of moral harassment, which he believes is a “dangerous working state that threatens individuals and undermines their pride in addition to affecting their physical and psychological health.” (Leyman & Mobbing, 1996, p. 25)

The term “mobbing” is understood to express a devastating position characterized by hostile and repetitive behavior that lasts, according to Leyman, for at least six months. Leyman uses the term to denote the relationship between the victim and the harasser.

Marie-France Hirigoyen, a psychiatrist and specialist in workplace stress generated by mobbing behavior, released a book in 1996 entitled “Moral Harassment: The Perverse Violence of Daily Life” in which she states that “moral harassment is the set of behaviors that appear in the form of aggression, words, gestures, writings and targets the character and dignity of the worker as well as their physical-moral integration in the workspace. It will eventually create a division in the general work atmosphere.” (Hirigoyen, 1999, p. 32)

Michelle Drida, President of the Association “Mots pour Maux” (words for pain), founded in 1997 in Strasbourg, suggests another definition: “Harassment is suffering inflicted in the workplace in a lasting, repetitive and/or systematic manner by one or more persons on another person, by any way or means available and relating to the organization, or the workplace.”

Christophe Dejourn, psychiatrist, psychoanalyst, professor in Brussels University, and expert in Moral harassment, defines it from a pathological point of view. He states that harassment “is the result of a strategy of isolation and dissociation of management techniques aiming at destroying the solidarity and unity of individuals in the vicinity and work group.” (Dejourn, 2001, p. 22)

Through the definitions presented by the experts, it is safe to say that most definitions focus on the characteristics of moral harassment as follows:

- Organized, repetitive and lasting.

- Quick and efficient.
- Affects the individual's dignity and character.
- Destructive to work conditions.

Second section: French Economic, Social and Environmental Council (ESEC):

In a field study on the phenomenon, the council's experts defined moral harassment as follows: "Moral harassment includes all abrupt and frequent behaviors that aim to corrupt the human, relational or material conditions of work for one individual or many. This would offend their rights and dignity and harm their mental and physical health, in addition to their career path and future." (Balicco, 2001, p. 32)

Health, Safety and Work Conditions Commission (C.S.S.C.T):

The Swedish National Council for Safety and Health at Work defines moral harassment using the term persecution which means suffering, oppression, and constant provocation. Moral harassment is described as "a state of persecution and constant suffering that appears in forms of provocations and hateful (unwanted) behaviors meant for workers in a bad (hurtful) way that can influence a group of workers or exclude them from their work environment." (Balicco, 2001, p. 35)

International Labor Organization (ILO):

The International Labor Organization defines moral harassment through its major field investigations as follows: "a person who behaves in a demeaning and hurtful way towards others using hateful and spiteful ways through which an individual or a group of people are humiliated by provoking, insulting, mocking, or negatively and constantly criticizing them." (Balicco, 2001, p. 37)

Second requirement: The crime of moral harassment in European legislation

First section: Moral Harassment in European Law:

The purpose of demonstrating the legal position of moral harassment in European countries is to identify the stages of criminalizing the phenomenon and highlight the deficiencies contained in legal articles, in order to address the phenomenon in the Algerian legislation and discuss the problem of establishing a legal framework for moral harassment in Algerian labor law.

1- Belgium

Act 10 of Belgium Royal Decree, Mai 13, 1999, intended for Belgium employees stipulates: "An employee must be treated with dignity and kindness by high-ranked people." The law prevents any verbal or non-verbal action that could undermine others.

In Belgium, the second paragraph of Article Two of the Law on Protection Against Violence and Moral and Sexual Harassment at Work, in August 2002, defines moral harassment as “abusive and repetitive behavior, no matter the source - whether inside or outside of the company - which appear in the form of behavior, speech, intimidation, actions, gestures or writings aimed at harming the employee’s person, dignity, financial and moral safety, or to undermine another person who is subject to this law during their practice in the workplace, or those acts that seek to jeopardize their work, or to create a scary environment, or a state of hatred, degradation and humiliation.” The decree applied in Belgium of the Criminal Code to criminalize harassment, (Hirigoyen, 1999, p. 102), is insufficient in terms of general protection against moral harassment due to the absence of the employer’s responsibility, which allows the latter to be an actor of moral harassment. This is a weakness point for this law, whereas the obligation to protect the dignity of the employee by the employer can be considered a positive point in this law.

2- Denmark:

In Denmark, the seventh paragraph of “Bekendtgørelse Om ArbejdetsUdførelse” (Executive Order on the Execution of Work) (A call to action) – based on: “Loi sur l'Environnement de Travail”, “Law Om Arbejdsmiljø” – Law on working environment – was to be implemented in such a way as not to harm the mental health of the employees, considering within its folds the individual or collective character. (Salah-Eddine, 2015, p. 89)

§4 of this call to action is relative to the implementation of the work and imposes general order, the work itself, and its effects on the environment, which must all be organized in a way that does not affect the employees’ health. Non-respect or failure to implement such laws obliges a fine or two years imprisonment, as is the case in §34 that calls for the implementation of the call of action, and §84 that also affirms the work environment law. (Salah-Eddine, 2015, p. 111)

3- Germany:

Pursuant to the §75 of “Betriebsverfassungsgesetz”, “Loi Régissant Certains Aspects Organisations Internes des Entreprises” 10 (Law Governing Certain Internal Organizational Aspects of Companies) the user and, where appropriate, the administrative association must follow up and monitor the best treatment for workers. The §84 of this law corresponds to employees’ right to file a complaint with the organization's appointed personnel in case the employees believe they are treated unjustly whether by the employer or their colleagues. (Hornstein, 1996, p. 89) This paragraph clarifies that the application of this right cannot give any harm to the person who complained. However, the persons who occupy the position of the directorate in the organization as employees or the true meaning of *Betriebsverfassungsgesetz* protection for these provisions do not apply to them.

§3 of the Law on the Protection of Working Conditions obliges the user/employer to take the necessary measures to ensure the safety and health of

their employees in this regard. §4 states ideal criteria relative to the employee's organization, social relations, or the various conditions of work. In the event that the employee does not respect these instructions, the worker has the right to file a complaint, and in the absence of the necessary action on the part of the employee, they are to report to the competent authorities. (Brouillaud & Bertrand, 2000, p. 111)

Here, too, the application of this right does not give place to any harm with the person claiming the law at the expense of the employees; it is only applied in the case of sexual harassment. Finally, there are clear agreements at the level of institutions regarding moral harassment. For example, an agreement was reached with the employees on collective behavior at work. This agreement prohibits every employee from exercising any form of sexual harassment or moral harassment at work. The employees also agree to the law and file a complaint, and the organization is required to act in response to the necessary measures.

4- France:

In France, the Labor Law clarifies in its Resolution 230-2 that the employer is obligated to take all necessary measures to ensure the safety of employees and protect their health. Many decisions of justice are based on this decision and General Decision 120-2. (Salah-Eddine, 2015, p. 233)

Through time, legislative incidents emerged aiming to support the right of employee protection from moral harassment by working with a protection system. Penalties have been set in this way. This would be achieved with the help of a number of special decrees that were incorporated at the same time in the Criminal Law and Labor Law which has brought a notable change of work conditions. Moreover, employers can become bound by their responsibility for every case of moral harassment going on in their organization. Employees' representatives take advantage of the right of notice in order to be able to name the cases of moral harassment in the company. (Salah-Eddine, 2015, p. 243). Every dismissal process that results from moral harassment may be canceled, and in the event that the employer does not meet the criteria for taking back their job, they shall be financially compensated. In addition, and according to this proposal of law, the employee who testifies to the existence of a case of moral harassment at work, or whoever notifies the responsible authorities, is neither fired nor insulted and all his rights must be preserved.

The subject matter of the law clarifies that the harasser, whether previously sentenced of up to two years in prison or a fine exceeding that of no more than 76,000 euros, undergoes the possibilities of punishment on the basis of the rules in the criminal law. (Hirigoyen, 1999, p. 111).

5- Switzerland:

The Penal Code, amended in 2010 in Article 2-33-222, defined moral harassment as “an act of harassment of the other through repetitive behavior aimed at deteriorating work conditions, harming job rights or employee dignity, or endangering his physical or mental health, or exposing his future career to danger”. It is noted that this definition matches the definition offered by the French law, which in turn does not provide a specific definition of moral harassment in the field of employment, but rather a general definition of harassment. Through this definition we can extract the components of moral harassment in accordance with Article 12 223-3, which describes harassment as follows: The act of harassing the other person through repeated behavior aimed at deteriorating the conditions of work by harming them, (Brouillaud & Bertrand, 2000, p. 220) (their rights, their dignity, their physical or mental health, or endangering their professional career.) What is to be noted in this text is that it is a general statement, which means it can include elements of moral harassment which are (repetitive acts, deterioration, protecting the dignity, etc). It is worth mentioning that Swiss Professor, Pledran Marie Deveaud, argues that the lack of specificity fails, above all, to place the definition of moral harassment in a narrow frame, which hinders its proof on the pretext that its elements are not stipulated in the body of the law. However, we believe that the lack of specificity leads, on the other hand, to resorting to jurisprudence to carry out its tasks in defining moral harassment. Therefore, it is better for the French legislator to initiate the development of a specific definition of moral harassment to confirm the principle of legality, which is the basis of the penal law.

6- Italy:

Up to now, two propositions exist, which affect the improvement of protection against emotional harassment at work “La Disposizioni e tuteladei la voratoridellaviolenza e dellapersecuzionipsiologia” (Draft Law on the Protection of Workers against Violence and Psychological Harassment)

The first article states: "The aim of the law is to protect employees against acts of violence and psychological harassment committed by the same employee (or the employer) or colleagues at the level of the occupational ladder of higher or equal level (the same level)."

Article 2 states: "The victim agrees to the right of requesting the cessation of any act that includes violence or psychological harassment."

According to article 3, of the subject matter of the law: “General obligation to adopt all necessary measures to prevent moral harassment and violence, will be imposed on all employees/employers, as well as heads of union. These persons will then be compelled to share the information that demonstrate to employees how to act amongst each other, who will then share them as well. In the event that a case of violence or moral harassment at work is reported, the employee is obligated to

search the acts -if necessary- and take the necessary measures to put an end to it". (Crassito, 2003)

Article 5 states: "Not only harassed employees agree on judicial prosecutions, but also the heads of the union. In addition, they have the authority to pursue the perpetrator of harassment by showing all the psychological damage they suffered".

Finally, article 6 states: "The justice system is allowed to decide, in the case of moral harassment, to go in accordance with and publicize the judgment in the workplace, so that all the employees would be informed on the matter."

The subject of the law on the protection of persons against moral violence and moral harassment in Italy is intended for employees (Crassito, 2003). The seriousness of the act to which the victim is exposed is made clear to every person, as the punishment is set from one year of imprisonment to five years, and the defendant is disqualified from public office, or is subject to a fine ranging between 500 and 200 million pounds, equivalent to 2,500 - 100,000 euros. (Hirigoyen, 1999, p. 38)

THE SECOND TOPIC:

Reality and Possibility of Criminalization

First requirement: Elements of mental harassment as a crime

Through the comparison of moral harassment status in various European legislations, we are now acquainted with the punitive texts about the crime, which took different paths in criminalizing it and setting penalties for it. Thus, this study attempts to address the pillars of harassment, as a crime, through which it can be criminalized. Many texts attempted to criminalize or impose penalties from multiple points of view. Proving the elements (or pillars) of moral harassment, like any crime, enables us to facilitate the criminalization process, and in the field of work, the availability of these elements becomes evidence of the occurrence of the crime of moral harassment. (Ddebout, 2001, p. 145).

First section: The material element of the crime of moral harassment:

The material element of a crime means the physical act of the crime, where the perpetrator, by an executive decree in the law, is considered a criminal at the time of the crime and is punishable by the law when committing the crime. The act cannot be considered material in a previous outlaw act, the penalty of which had been redeemed or canceled by a subsequent law. The crime of moral harassment does not deviate from this context, as the laws stipulate basic elements composing the material element of the act of moral harassment, namely: (Salah-Eddine, 2015, p. 145).

Repetition factor:

The element of repetition is an essential element in the act of harassment to differentiate it from various other acts that may appear as individual, exceptional, coincidental, or natural resulting from other behavioral reactions related to the conflict, such as a relationship with the struggle of power between the superior and the subordinate, or administrative control by the boss towards the subordinate. The repetition of the act of moral harassment takes it out of its nature and makes it a hostile and offensive act targeting the victim. In this case, legal texts do not enumerate the number of repetitions through which the act of harassment can be proven and hence enable us to refer to the content and nature of the acts that are repeated. By referring to the actions that we have mentioned, we can extrapolate the state of moral harassment without specifying the times of repetition of the acts, so that we can classify them in the category of aggressive and offensive acts towards the victim, whether they target the victim's work, personal or professional career. However, the element of repetition is emphasized in general, which was confirmed by some courts in handling some cases of moral harassment in France.

Time factor:

The element of time is essential to form the act of moral harassment in the workplace. Some laws referred to the time factor based on some studies on harassment, which set a period of six months. However, the French Court of Cassation in 2010, through its handling of harassment cases, confirmed that there is no requirement for the period of time for an act of harassment. In this context, we recall the opinions of psychological harassment experts such as Hans Lehmann, France Marie Hirigoyen and others who emphasize the length of the period from three to six months, which is sufficient to prove the act and status of moral harassment. (Ddebout, 2001, p. 152).

Second requirement: Damage and the nature of the perpetrator and victim

First section: Quality of the perpetrator and the victim

The texts that deal with harassment agree that the harasser or the person harassed be an employee or a person entrusted with a public service. However, the texts do not specify a specific quality, meaning the harassment can emanate from a boss towards an employee or from colleague to colleague, or any person who can inflict harm to the victim. Henceforth, the legislative and judicial authority, who tried to criminalize moral harassment, left some flexibility in the texts regarding the quality of the perpetrator and the time period, in order to facilitate proving the crime and to expand the criminalization circle to achieve tangible effectiveness in addressing the phenomenon. The latter was the case of French Court of Cassation in a judgment issued on 06.09.2011 related to an employee's complaint against his manager at work. The court went on to expand the definition of the perpetrator of

moral harassment, which must be subject to the broad meaning to include a superior, subordinate, colleague or an employee.

In this context, criminal legislators in France, Switzerland, and Belgium have set somewhat close penalties. Article 442 of the Belgian Penal Code stipulates that imprisonment ranges from 15 days to two years and a fine of 50 to 3000 euros, and in France, the punishment is quite similar. (Ddebout, 2001, p. 152)

The will to harm does not amount to being a direct cause of admission of moral harassment. Rather, it can be proven by the repetitive acts of a perpetrator in a limited amount of time, which can then endanger the conditions of work, jeopardize the victim's career, or threaten their rights, on top of which is dignity. This has been confirmed by a set of French courts in their treatment of moral harassment cases.

Second section: The moral element of the crime of moral harassment:

The moral element is necessary for the premeditated action that guided the offender's behavior in violating the law, as well as for the establishment of criminal responsibility for whoever commits an act punishable by the penal code. Unlawful premeditated action is the link between the crime as a material occurrence that has an external entity and the person who issued it, whom the law thus considers responsible and can be characterized as a perpetrator. As a result, the crime of moral harassment at work is considered an intentional crime in which the moral element is formed of criminal intent. (moreau, 1999)

Criminal intent is a general intention consisting of awareness of the perpetrator's act and criminal behavior, the knowledge that what they are doing opposes the objectives of the company and the regulations that organize it – regulations that necessitate creating favorable positive conditions at work to increase performance – and the will to inflict psychological harm to the victim. If the superior's action was the result of a failure to perform tasks on the part of the subordinate or an inefficiency in dealing with subordinates in a manner consistent with the work environment, without intending harm against the subordinates, the crime cannot be realized.

Conclusion:

As previously discussed, European legislation, based on studies conducted on the phenomenon, was able to reach a legal framework. Thus, we raise the question: are there legal texts that deal with the phenomenon of moral harassment in the legislation of workplaces in Algerian law?

No legal text, in Algerian legislation, has dealt with the phenomenon, with the exception of laws and other countries' regulations that clearly criminalized the act in punitive texts. Despite its spread in public administrations, and the General report of the National Committee for the Reform of State Bodies, these practices remain strong nonetheless in administrative organizations. Many officials deviate

and use the authority delegated to them by the state to serve the public interest to offend the dignity of subordinates, using arbitrary methods and means to drive subordinates to error or inflict a sense of a humiliating submission.

The psychological pressure of repetitive moral harassment could result in unlimited consequences on both the victim and the official. The daily factor is intensively affected by this pressure, which appears during the performance of provided services by the victim. Thus, the productivity of the employee is affected as the working environment produces a state of hate and distress in the workplace. In many cases, the victim is held accountable and punished. Thus, harassers reach their goal and apply the punishment on the victim, who in turn displays a reckless and violent response. This is in addition to cases where people escape confrontation, and physical diseases inflicted on them are worsened due to the increasing pressure. This issue is evident through the repeated sick leaves of victims of harassment that have exhausted the state treasury through the Social Security Fund. In addition, there is a decrease in motivation towards work and a decrease in professional activity as the employee leave their position which results in them becoming ignorant of work updates. With reference to the Algerian labor law in force, Law 90-11 in Chapter Two related to the implications of the work contract and within the framework of the right to dignity, a legal text titled "Professional Protection" is mentioned. It states:

“The establishment of the work relationship leads to professional protection for the employee in the institution; where the worker receives, as is the case in the public office, security, entertainment, and vocational training. The employee carries out their duties far from causes of violations of security, all forms of indignity, threat, and pressure, while ensuring compensation for the material and moral damages they suffered”. (Official Gazette, 1990)

This legal text - which was presented with the aim of protection and the right to dignity - addresses the implications of the work relationship, as it recognizes the right to security and protection from all forms of insult, threat, and pressure. However, it does not highlight the forms of insults, threats, and pressure, nor does it specify the extent of the damage that might result from said actions.

Referring to the legal definition of moral harassment enables us to analyze and highlight how far this text is in defining moral harassment, as it does not mention forms of insult, pressure, or threat. Moreover, it does not highlight the factors of repetition and time in these cases, and thus leads to an understanding that these behaviors may be isolated and not repeated. In addition, it does not necessarily express the act of moral harassment, nor does it mention the punishment inflicted on the perpetrator or the compensation that the victim receives as a result of moral and material damages. Also, the combination of material and moral damages asserts that the Algerian legislator has not yet comprehended the crime of moral harassment. This legal text does not explicitly refer to the act of harassment or the nature of acts that fall under it, such as

targeting dignity, career, relationships and work conditions. Furthermore, it fails to differentiate between material damage and moral damage, which is considered the most important characteristic of the crime of moral harassment.

Therefore, the legislator did not put in place adequate legal protection for the working environment, nor did they set a legal framework for the relationship between the superior and subordinates. This indicates that the Algerian legislator is not aware of the crime of moral harassment compared to the European legislator, by restricting it to abusive behaviors in the form of insults or pressures that take an exceptional character most of the time.

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