

Women's Crimes and the Criminalization of Sex

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The penal or criminal codes of the Middle East and the Islamic world essentially treat women as reproductive beings whose sexuality must be constrained by men, the family and the state. Those interested in the evolution of laws should take into account the incomplete Islamization of customary or tribal law (*`urf*, but as this is not monolithic, *`a`raf* is more accurate) followed by legal codification in most countries that introduced principles of pre-modern Western laws. These codifications transferred authority over women (and their bodies) from their extended families to their husbands, or governments serving as the guardians of public order. Consequently, different legal and cultural principles co-exist. A few years ago, I analyzed laws affecting the following issues in the region: rape, adultery, honor killings, wife-beating, murder of, or by women, abortion, infanticide, sex trafficking, sex work, sexual abuse, female genital mutilation (FGM), incest, homosexuality and transsexuality, and new reproductive technologies.² A few of these issues are considered here.

Adultery

Many assume that adultery is not criminalized in modern or Western legal codes as it is in *shari`ah*. This was not the case in the past. Guardianship of a woman shifted over to

her husband, from her own clan, and he could defend his honor under the European legal codes. These codes provided the model for legal reform in the Middle East and North Africa. Hence, the exemption or reduction of penalty in the event he or another male family member murdered or injured the female adulterer, or “offender.” The modern codes of Syria, Lebanon, Egypt and Iraq all resemble Article 188 of the Ottoman 1858 Penal Code, as well as Article 324 of the 1810 French (or Napoleonic) penal code.³

Under *shari`ah*, as in *`urf*, (customary or tribal laws) adultery and fornication, or *zina*, is one of the seven most serious crimes. Sexual activity for women is only licit within a legal, or legitimately contracted marriage. Men should also be punished for sexual activity outside of licit relationships, but they could contract marriages with as many as four women, and have sexual relations with their slaves or concubines in the past, and Shi`i men could additionally contract temporary marriages. It must also be said that the historic attitude toward honor – that a woman’s sexual honor must be defended and maintained by her male relatives – as reflected in customary laws obviously influenced extra-judicial treatment of adultery, and its subsequent treatment in Muslim societies and under more modern penal codes.

In shari'ah, these most serious crimes could warrant the most serious penalties, the *hadd* category. These include lashings, stoning to death, and other forms of death sentences now strongly criticized by the international community. Some experts explain that we should understand that centuries ago, imprisonment or enforced labor would have been more cruel; and a main aim of severe punishments was to deter crime. Under the second category of crimes (*qisas*) retaliatory punishments (to the same degree of injury or payment) served to contain spiraling clan warfare, but were themselves derived from tribal law. Those accused of *hadd* crimes were supposed to admit they had committed them willfully, and judges had a wide range of extenuating circumstances to consider and had the right to reduce penalties to lesser categories of punishment.

Some Muslim thinkers have challenged the stringent *hadd* penalties like stoning for a married adulterer,⁴ while others argue for their reformation, or observance even where other civil penalties have replaced them. The penalties for false testimony in such a case are severe, so four witnesses of impeccable character should be required in order to pursue such cases. In countries which have or had re-adopted the *hadd* punishments based on Quranic verses,⁵ (Libya, the Sudan, Iran, Afghanistan under the Taliban, the northwest province of Nigeria, Saudi Arabia, and others), such penalties severely compromised women's rights. Conservatives respond that Islam's deep concern for society and the family is at stake here, and that Western laws fail to penalize immorality, drunkenness and atheism, or even treat them as "social graces."⁶

In the Iranian Penal Code, there are several points of interest. First by virtue of the ranking of crimes, adultery is a more severe offense than murder, or manslaughter, and has taken on its more modern meaning of an offense to public order, as well the classical implication that a woman has misused her husband's property (her body). And certain evidentiary rules are discriminatory, even though they have been modernized. In older sources on shari'ah, women were not allowed to testify in *hadd* cases at all. In Iranian post-revolutionary law, women's testimony submitted without that of two men will not only be rejected as proof, but may also serve to invalidate the adultery case. Yet, women may testify. These articles illustrate these ideas:

Article 74. Adultery, whether punishable by flogging or stoning, may be proven by the testimony of four just men or that of three just men and two just women.

Article 75. If adultery is punishable only by flogging it can be proven by the testimony of two just men and four just women.

Article 76. The testimony of women alone or in conjunction with the testimony of only one just man shall not prove adultery but it shall constitute false accusation which is a punishable act.

The punishments for *zina* are described in detail in the Iranian penal code. International outcry has continued over such punishments and executions.

Article 100. The flogging of an adulterer shall be carried out while he is standing upright and his body bared except for his genitals. The lashes shall strike all parts of his body - except his face, head and genitals - with full force. The adulteress shall be flogged while she is seated and her clothing tightly bound to her body.

Article 102. The stoning of an adulterer or adulteress shall be carried out while each is placed in a hole and covered with soil, he up to his waist and she up to a line above her breasts.

Theoretically, if the person who is being stoned manages to escape, then he or she should be allowed to go free. However, in such cases, the crowd has often intervened.

For Muslim conservatives, these punishments are part of the sacred law, so their conversion to matters of lesser importance in modern legal codes is part of a moral argument. Muslim moderates may point to the fact that various rules pertaining to slaves are also part of shari'ah, but a shift in international laws has altered the situation. One response – that one should employ *ijtihad* (a method of achieving legal decisions through independent interpretation of the sources of Islamic law) to reform conditions no longer appropriate to the era, is contested by those who view the shari'ah as an immutable body of law.

Those who defend Islamic legal theory and argue the difficulty of proving adultery when four witnesses are required do a disservice to our understanding here. First of all, when such witnesses are lacking, the system of oath-swearing in shari'ah allows these cases to proceed. Secondly, as was mentioned in some schools of law, for instance the Maliki, *madhhab*, pregnancy is taken as evidence of *zina*. This was seen when Nigerian teenager Bariya Ibrahim Magazu, was publicly whipped for *zina* after being raped or sexually used by several men, and in the case of Amina Lawal, when a similar sentence was handed down and revoked, or in that of Safiya Hussein, sentenced to death by stoning in October 2002 but who won an appeal.⁷ Many such accusations used the charge of "seduction" which carried a lesser penalty, usually a fine. The seduction of a virgin was considered more serious, and the fine went to her father rather than her husband.⁸

In the Bariya Ibrahim Magazu case, one observer noted that a defense constructed within the rationale of Islamic law could have been argued on the following points:

1. Bariya claimed that she was compelled to have sex with these three men as payment for her father's debt. Thus her *zina* crime was coerced. *Zina* is defined as willful, not coerced sex.

2. The Maliki *madhhab*, or school of jurisprudence allows for circumstantial evidence in *hadd* cases. It was inappropriate to allow one kind of circumstantial evidence (her pregnancy) but not another, her testimony or others' regarding evidence of physical resistance, or her assertions soon after the crime.

The Maliki school is the minority opinion, while the "majority" (other schools) do not allow pregnancy to serve as proof of *zina* without witness testimony. So, the Nigerian court should defer to majority opinion.⁹ However, this particular argument flies in the face of local tradition. To this, we could add that

3. *Shubha* (doubt) should have been registered given the circumstances. The presence of doubt has historically mitigated a judgment of criminality or sentencing in this type of case.¹⁰

The sentence was carried out on Bariya extra-judicially and without proper notice to the girl's attorneys. She was left to crawl back to her village after her whipping. It was reported that the Governor of Zamfara was infuriated by the many letters received regarding this case from Western and non-Nigerian protesters.

Adultery is differentiated from rape because it is assumed to be consensual. When rapists claim that their victims consented to sex, then the penalties for adultery may be invoked against the victim. This has occurred in Pakistan and led to reform initiatives that address the treatment of *zina* under the *Hudud* ordinances. The witness system can be misinterpreted as well, as has occurred in rape cases in Pakistan where women were told they must provide the four witnesses to their rape, otherwise they might be charged and punished for *qadhf*, false witness.

Adultery is sometimes treated as a crime when women commit it, but not when men do so, and in some countries, it is no longer a crime. For instance, in Tunisia, only women could be punished for adultery prior to 1968, but now the law has been equalized.¹¹ In Turkey, the crime of adultery by women (Article 440) and adultery by men (Article 441) were annulled from the penal code. However, proof of adultery can still serve as grounds for divorce.¹²

In some cases, the laws pertaining to adultery discriminate against women, because the penalties are more stringent for women, and the offense is defined differ-

ently for men as compared to women. Article 274 of the Egyptian Penal Code specified a sentence of not more than two years for a married woman who commits adultery, yet a sentence for a man's act of adultery should not exceed six months.¹³ According to article 277 of the Egyptian Penal Code a man's adulterous act is considered as such only if it takes place in the marital home, and he could face a sentence of six months in prison, but a woman would receive a two year imprisonment.¹⁴ If he were to find his wife at home during an act of adultery and to kill her, his sentence could be reduced, but if she were to murder him in the same situation, she would be sentenced to fifteen years with hard labor. The Egyptian legal and human rights community has actively pursued reforms of these laws,¹⁵ however social attitudes towards men's adultery as compared to women's are still distinct, and the judiciary also reflect these social attitudes.

Besides the severity of punishment for the actual crime of adultery, the use of such accusations to intimidate victims of sexual crimes reinforces women's lack of access to adequate legal status and protection. In addition to the unfortunate connection of adultery with rape, penalties for crimes of passion resulting from adultery provide legal exemption for those who commit honor killings.

According to Article 630 of the Iranian Penal Code, if a man witnesses his wife committing fornication (*zina*) with a stranger and knows that she is a willing participant he may kill both parties. However if she has been coerced, he may kill the man. The Syrian Penal Code (Article 548.1 pertains to an exemption of penalty which 548.2 outlines a reduction of penalty) extends his privilege to other female relatives caught in a "suspicious state" and Article 18 of the Moroccan Penal Code, offers similar considerations as 548.1 above, but only to a wronged man, not to a wife, or woman. Similar discrimination exists in the parallel law in Egypt with further elaborations. Under Article 237 of the Egyptian Penal Code, if a man surprised his wife in an adulterous act and killed her, he will be imprisoned for 3 to 7 years, rather than receiving a life sentence, but women cannot qualify for the commuted punishment. As mentioned above, in the Egyptian Penal Code, a man's act of adultery is adulterous only in the marital home (Article 277) but a wife is adulterous outside, or inside the marital home, and need not be found *en flagrante delicto* for the husband to benefit from the defense of inflamed emotions.

When activists took an appeal addressing these laws to Egypt's Supreme Constitutional Court, Awad El Morr, the former head of the Constitutional Court strongly opposed any reform, saying, "We have to allow for the individualisation of punishment and we have to take into consideration the emotional state of the perpetrator

when he committed the crime. This prerogative is given to judges in the West as well."¹⁶ Other commentary on honor crimes has been discussed elsewhere in this issue, but it is important to remember that these may or may not involve any actual act of adultery, sometimes merely suspicion or gossip is the cause.

In Najaf, Iraq, it has been reported that a shari'ah court detains women for the charge of adultery. They are given two chances and must swear not to commit adultery again, then on the third offense, they are caned.¹⁷ Iraqis may also go to a civil court, so questions should be asked about the efficacy of civil law when a population prefers to obtain a shari'ah ruling.

A woman's adultery may also impact family law, for instance to establish *nasab*, or paternity claim, and possibly, adoption. Lynn Welchmann explains that nearly 12,000 cases of denial of paternity are processed annually in Egypt. For married couples the claims are routinely rejected; the child is considered to belong to the marriage (and to its father) whether or not adultery (the woman's) was committed. Some of these cases might emerge from *li'an* procedure (which predated and was incorporated into shari'ah) when a man suspects his wife of adultery, divorces her and then wants to deny her child's paternity.¹⁸

Abortion

In recent years, many Muslim scholars have issued prescriptions on abortion, one of the many bodily rights now legislated by modern states. Islamic law usually accords fetal rights equal to the mother's after four months. This point in time (120 days) is the crucial event for jurists, at which point the fetus is "ensouled." Historically, various attitudes and opinions on abortion coexisted, with Hanafi scholars permitting abortion up to that date, allowing women to abort even without their husbands' permission.²⁰ Most Maliki opinions prohibited abortion, but a smaller number allowed it up to 40 days, while Hanbali and Shafa'i jurists allowed abortion up until differing dates, and Zaydi jurists permitted it "unconditionally" until ensoulment.²¹

Muslim women and men in earlier eras resorted to various forms of birth control, including abortion. Basim Musallam points out that some jurists strengthened their arguments supporting withdrawal, for instance, by arguing that it was preferable to abortion, but also that the arguments which supported contraception could strengthen those defending abortion.²² With a lengthy history of these practices, it is startling to read in the media, or in mosque-produced literature that abortion is absolutely forbidden in Islam. Perhaps it is the politically-charged nature of the issue that has caused conservative Muslims to align with Catholics and

other Christian opponents of abortion, as when the Saudi Minister of Education, Muhammad al-Rasheed described abortion as "premeditated murder."²³

Despite the differing views on abortion and the fact that some Muslim jurists have considered it lawful, it is criminalized in the penal laws of most Muslim/MENA countries, although Tunisia as part of its active family planning campaign liberalized and then made abortion available in 1973. In Turkey, abortion has been available since 1983, but spousal and parental approval (if the girl child is younger than 18) were required as of 1999. Soviet-influenced countries, in order to enhance production, generally permitted abortion, as in Armenia, Azerbaijan, Georgia, Kazakhstan, the Krygyz Republic, Tajikistan, Turkmenistan, and Uzbekistan, abortion was available without restrictions.

Lebanon is considered by many in the Arab world to be "permissive," but this is a misconceived equation of modernity with the social and legal treatment of women, probably deriving from the country's reputed tradition of free publication, and the mixing of the sexes in some areas of the capital as compared to more sex-segregated Arab societies. In Lebanon, abortion and birth control are anathema to several religious communities. Under Articles 539 to 546 of the March 1, 1943 Penal Code (1983 version) abortion was completely illegal, carrying a sentence of 6 months to 3 years in prison for a self-induced abortion and 1 to 3 years in prison for anyone else performing an abortion, with five years of forced labor if the woman's consent was not given, and health professionals could be barred from practicing. Presidential Decree No. 13187 (October 20, 1969) permitted abortion if a woman's life is in great danger.²⁴

In Jordan, abortion is criminalized under Law No. 16 from the year 1960. However, as in Lebanon, abortion may be resorted to in order to save the mother's life or her health under Public Health Law No. 20 of 1971 (section 62 a).

The philosophies inherent in the modern laws do not represent a simple division into two groups, either Western or shari'ah inspired. For instance, Mauritania, a former French colony, has now incorporated many provisions from shari'ah into the laws dealing with women. However, the relevant sections of the 1983 Mauritanian Penal Code dealing with abortion actually come from the Napoleonic Code of 1810, which was followed by the 1939 penal code. In line with the thought of the time, and France's Catholic majority, that code and its Mauritanian expression made abortion illegal, penalizing practitioners (1 to 5 years in prison and a fine of 10,000-2000,000 U.M. (*ouguiyas*), a lengthier sentence for habitual or regular abortionists, and 6 months to two years for a self-induced abortion plus a fine of 5,000-6,000 U.M.²⁵

Abortion laws in Iran reflected a movement toward and then, away from Western models to an even stricter interpretation of shari'ah than previously existed. Under the reign of Shah Muhammad Reza Pahlavi, abortion was illegal prior to 1973 except to save the life of the mother. Article 182 of the penal code called for a sentence of up to 3 years in prison for the use of any medication or substance causing abortion, unless the woman's husband had ordered the operation, then he was punished in the woman's place. Under Article 183, medical practitioners could receive 3 to 10 years of forced labor if they performed an abortion.

By 1976, physicians could perform abortions if the woman was less than 12 weeks pregnant, permission of parents was provided, and the couple provided social or medical grounds for the procedure under an amendment of the Penal Code. If the woman was married, or suing for divorce, her husband's consent was necessary.

Following the Islamic Revolution in Iran, the Penal Code of 1991 classifies abortion as a *qisas* crime which requires *dhiyah* to be paid on behalf of the fetus to the relatives. The amount of the blood money (*dhiyah*) increases according to criteria of the development of the fetus from 20 dinars up to a full *dhiyah* of 1,000 gold dinars, or 10,000 dirhams, or specified numbers of animals if the fetus is "ensouled." These developmental stages are based firstly on Quranic passages XXII:4 and XXIII:12-14 which describe the formation of *nutfa*, *'alaqa*, and *mudgha* (semen, a bloody clot, and a lump of flesh) and then, in the hadith, these stages were divided into periods of 40 days.²⁶ The *dhiyah* can only be paid to a woman who has been forcibly aborted, or injured so as to abort, and its original purpose was to compensate the patrilineal family, i.e. her husband's family for the loss of the new family member. However, very recently, on July 20, 2004, the Iranian Parliament has approved a draft bill, permitting abortion up to four months if the mother's life is in danger or if the fetus is malformed. Iran, like other MENA countries has acknowledged a population growth problem and though abortion is punished as compensation to the head of the family, family planning, including male sterilization is strongly promoted. Families with more than three children are discouraged through elimination of various state benefits.²⁷

Other MENA/Muslim countries include one, or more grounds under which abortion can be permitted.²⁸ Egypt, Syria, Lebanon, Indonesia, Brunei, Yemen and Libya criminalize abortion except to save the mother's life. In Morocco, Algeria, Pakistan, Malaysia and Saudi Arabia abortion can only be permitted to save the mother's life, or to preserve the woman's physical or mental health. The Sudan, Iraq and Israel also allow abortion in

cases of rape and incest, and Qatar permits it to save the mother's life, or health, in case of rape and fetal impairment.

In recent years as the majority of the Republican Party in the United States has promoted an anti-abortion, and pro-virginity (rather than sex-education) platform, we have seen ominous alliances between the US administration, the Vatican, and the governments of Iran, the Sudan, and others in the large international meetings that consider women's rights to their own bodily integrity. It is certainly not a given that women will win rights to control their own reproductive life and sexual behavior, nor that the "West" (if that means the United States) will support them in doing so, rather they will have to fight for these rights.

Homosexuality / Transsexuality

Under shari'ah, the crime of *zina* included homosexual acts. Nevertheless, the historical record suggests that homosexuality was often ignored, or tolerated, with periodic crackdowns. Quranic verses condemning sex between men are found in *Surah* VII:80-1, XXVI:165-166 and IV:16, and imply the natural condition of heterosexuality, but there are no specific punishments mentioned.²⁹ Various hadith refer to the Prophet's abhorrence of homosexual acts. In *adab* literature, Jawami' wrote about the whore of Mecca who researched other women's lesbian preferences. The women she interviewed stated their reasons for their preferences to be mainly "out of fear of pregnancy" and men's desire to avoid the responsibilities as parents were echoed in other belles lettres of that era.³⁰ Yet, forms of birth control were known and employed,³¹ and any preference for the same sex could not have been entirely due to this rationale.

Modern legal codes treat homosexuality both as an offence against society, public order and morality and as a crime with a fine or prison sentence. In the Islamic Republic of Iran, sodomy has been classified as a *qisas* crime, punishable by death, or if confessed less than four times, by flogging. Lesbianism is punishable by 100 lashes under Article 129 of the Iranian Penal Code (Articles 127 - 134) unless the lesbian repents, and Article 134 defines a lesbian act as two unrelated women who "stand naked under one cover without necessity."³²

In Turkey, homosexuality is no longer criminalized, but homosexuals and transsexuals may be charged with "indecent and offenses against public morality" covered by Articles 419, 547 and 576. In Iraq, under Saddam, homosexuality between consenting adults was not penalized, but the 1969 Penal Code assigns a 7 year sentence for sodomy with a minor ages 15 to 18, and 10 years for a minor under

14. In Syria, a one year prison sentence according to Article 520 of the penal code of 1949 could punish homosexuality.

In Morocco, the Penal Code section 489 (November 26, 1962) punishes same sex "lewd or unnatural acts" with a prison sentence of 6 months to 3 years and an additional fine. In Algeria, the 1984 family code, rather than the penal code prescribes a 2 month to a 2 year sentence for homosexual acts (any) under Article 338 (June 19, 1984) and a fine, with additional prison time and fines if one partner is under 18. However, a different law (82.04) refers to an outrage to public decency which can result in a lengthier prison sentence of 6 months to 3 years.

Bahrain's Penal Code Article 377 punished sodomy with deportation for 20 years, imprisonment for 10 years or a fine. In 1956, the new penal code called these acts, "unnatural sexual offences" which might involve corporal punishment and imprisonment of no longer than 10 years.

In Egypt, in 2001, 52 men were arrested, held and put on trial on charges of "obscene behavior" with "contempt for religion" by the Emergency State Security Court for Misdemeanors. The charge of obscene behavior within Law No. 10 of 1961 on the Combat of Prostitution allows for a sentence from 3 months to 3 years, while "contempt for religion" falls under Article 98(f) of the Penal Code and carries a prison sentence from 6 months to 5 years. Only two of the defendants in this case were faced with the second crime, and a number of the cases were dropped, but 23 were sentenced, and this particular court does not permit an appeal. It is possible that increased gay internet activities (monitored by state security) and the Islamist impact on public attitudes concerning homosexuality and Western influence led to this incident. Egyptian authorities rebuffed communications from international organizations on behalf of the plaintiffs.

Saudi Arabia treats homosexuality as "carnal knowledge against nature" and it may be punished as a crime of fornication according to the local interpretations of shari'ah. The Judicial Board there, has referred in the past to the works of Hanbali jurist Mar'i ibn Yusuf al-Karmi al-Maqdisi (d. 1033/1624) who wrote that sodomy must be punished as fornication. There are numerous reports of beheadings, including those of 3 Yemeni men found guilty of engaging in homosexual acts and molesting young boys and put to death in Jizan in July of 2000 and Saudi men executed in Abha in the same month. Some observers argue that there is a tolerance of homosexuality, but that certain severe or serious cases are pursued.

The Taliban punished homosexuals by toppling a wall onto them to cause death. Yet, homosexuality was not unknown or infrequent in the *madrasas* (religious schools) of Pakistan from which the Taliban emerged, or in the Afghani refugee camps.

In general, lesbians are subject to honor killings and beatings by family members (their own or their lovers) and lack legal protection from such assaults, which may take place overseas as well as in their birthplaces.³³

One might surmise from all of this that women are strictly faithful, rarely resort to abortion, and that there would be nothing like "gay culture" in the region. Just as the first two assumptions would be incorrect, so is the third. An argot or slang specific to homosexuals can be heard in Egypt, it is derivative of the entertainers' *sim* (argot) dating back into the nineteenth century.³⁴

However, possibly because of the social construction of gender, bisexuality is likely more common than homosexuality.

Transsexuals

There are several traditions of transgender and transvestism in the Middle East. Religious objections include the following hadith, "Cursed are those men who wear women's clothing and those women who wear men's clothing."

Unni Wikan wrote about the *xanith* of Oman, a third sex who can socialize or sing with women, yet may one day "become a man" and give up his lifestyle for marriage and children.³⁴ Sigrid Westphal-Hellbusch has written about the *mustergil*, a female-to-male transvestite tradition in Southern Iraq.³⁶ Other literary references to "warrior-women" who served in disguise exist. An earlier twentieth century tradition of photographing young in boy's dress³⁷ may simply have been a fad, as with certain portraits of adult women in men's clothing from 1930s Lebanon.

Ottoman-era rules like those issued by Muhammad Ali Pasha in Egypt forbade female performers in public space. A resulting tradition of transvestism in entertainment influenced Turkish music and television, featuring certain popular and dynamic performers like the late Zeki Muren or Bulent Ersoy.³⁸ Also, *khawal* performances were seen earlier, in 19th century Egypt, in dramatic troupes where boys played women's parts, and in some modern cinema.³⁹

Discussions about homosexuality and sex-changes involve debates tinged with Islamist discourse and dichotomously conceived categories of gender. The new 2002 Turkish Civil Code requires an individual to be 18, unmarried, to

establish their “transsexual nature,” chronic infertility and the necessity of the operation to their mental health on the basis of official medical reports, in order to receive official permission to change their sex.⁴⁰ Although the process is regulated, transsexuals are frequently mistreated by the police (as are homosexuals).

Certain Muslim spokespersons equate homosexuality with feminism, and see any vestiges of either as part of a Western conspiracy to attack the family system and strength of the *ummah*.⁴¹ Often, the West is gravely criticized for decriminalizing homosexuality and the effects of such attitudes probably do more to repress alternative sexual identities than the penal codes.

Sex-work / Trafficking in Women

The laws on prostitutes, or sex-workers, and trafficking in women should be brought into alignment with CEDAW and the Convention on the Rights of the Child. MENA countries are again, quite different in their legal approaches to regulating prostitution. Moreover, activists are quite divided on the issue. Do women have a right to choose prostitution, and how should one treat those who do not feel victimized, or even prefer this trade? Legalization may benefit prostitutes, yet put women as a group, and certainly minors at risk, by perpetuating sex for financial exchange.

Three categories of persons are affected - adult nationals, child nationals, and foreign nationals or refugees, and laws treat each differently. The latter category may include non-Muslims, particularly women from the former Soviet Union, Africans - in Egypt, Sudanese, Ethiopians, Eritreans, and Nigerians and in the Gulf, Lebanon, Jordan (and in Israel as well) Filipinas and Sri Lankans. Within this group, women may fall victim to sex crimes because they are working under contract, legally or illegally (with regard to immigration and employment restrictions) as servants or nannies. They may be abused by their employers but have no legal recourse. Others, including a large number of Russian and former Russian citizens choose or end up in sex-work, or are even smuggled into countries for that specific purpose.

Poverty and tourism have impacted the sex industry and exploitation of adults and children in Algeria, Morocco and Egypt. In many areas, older men fill the role of “sugar daddies” who “give girls tuition fees, clothes and pre-

sents in exchange for sex.”⁴² Legal loopholes and the lingering traditions of early marriage serve to decriminalize such practices. For instance in Egypt, Arab tourists essentially buy young girls, providing a *mahr*, and then abandon them.

The Permanent Committee for Scholarly Research and the Issuing of *Fatwa* (CRLO) issued a *fatwa* that permits a man to marry with the intent to divorce, while traveling or studying abroad so long as his intention remains “concealed between him and his Lord” or in other words, is not specified in the marriage contract so that the woman is apprised as in *mut'a*, the Shi'a temporary marriage.⁴³ This practice, like the “traveling marriage” licenses sex for sale, and can leave women or resulting children in a vulnerable position. In Iran, *sigheh* (the equivalent of *mut'a*) has also served as a legitimizing cover for sex-workers, and women's need for income.⁴⁴ Finally, *urfi* marriage, which has existed for some time in Egypt and North Africa, has become extraordinarily prevalent in recent years in Egypt due to the rising costs of marriage, may also serve the same purpose. *Urf* refers to custom or tribal practice and law, and here to marriages that are not contracted in accordance with the “normal” type of marriage, *nikah*, under Islamic law. These unions required a contract, but not necessarily the provision of a domicile, household goods and a public celebration. Clerics disapproved because couples could use such a marriage simply to legitimize sexual activity, and women did not obtain rights to support, or inheritance equal to *nikah* marriage.

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In Iran, Saudi Arabia, Mauritania, Libya and Pakistan the penalties for *zina* are the primary legal vehicle used to control prostitution. So in Libya, Law Number 70 of 1973 describes a punishment of 100 lashes for prostitution. Trafficking is also a crime, and also deriving from the shari'ah approach is the idea that one who holds public office may be removed if he has committed *zina*. This could apply to prostitution (but is also the theory behind the arrests in Malaysia of prominent public figures charged with sodomy). Under family law, not penal codes, a sex-worker will lose custody of her children as is specified in Article 314 of the Mauritanian Criminal Law.⁴⁵

In several other countries, sex work, or prostitution, is punishable by a fine or a prison sentence, and in some, sex work is legal so long as no coercion or trafficking is involved. So, for example, prostitution is illegal in Egypt,

but prostitutes must be caught “red-handed” meaning that the trade may be tolerated. Various other regulations, for instance women’s entry into nightclubs, the conduct of club employees and walking alone or with an unrelated male companion in the streets are intended to limit sex work, but can effectively limit the movement of all women. In many countries, laws against cohabitation by non-married individuals, can serve as a means of pursuing prostitutes. A variety of interesting commercial ordinances enacted in the Nasser years in Egypt were intended to prevent or inhibit prostitution in the entertainment industry, which had flourished because club-owners required performers to engage in *fath*, drinking or socializing with the customer.⁴⁶

Rape laws are intended to protect children in Algeria with imprisonment for 10 to 20 years, but the legal defense and services provided to children, particularly street children is inadequate. Anyone profiting from sex work, or serving as an intermediary for someone under the age of 19 years, is subject to prosecution in Algeria for 5 to 10 years with a fine. There are prohibitions on those who advertise for sex tours,⁴⁷ which is an issue that has also affected Morocco.

Turkey, Lebanon, Bangladesh, Djibouti and Indonesia have essentially legalized sex work but coercion or enforced sex work is not legal which is in accordance with the trend in Western and former colonies or protectorates, and the UN convention of 1949. In Lebanon, sex workers may be licensed so long as they are 21 and not virgins. A woman may own a brothel if she is over 25 years old. Monthly medical examinations are conducted by the government, a policy dating back to the Mandate period, intended to accommodate foreign soldiers and prevent the spread of venereal disease, and this also applied in Syria.⁴⁸ However sections 526 and 527 of the Lebanese Penal Code prohibit pimping, coercion of sex work and living on the earnings of a sex worker.⁴⁹

Licensed sex workers in Turkey who work in brothels are covered by the social security system under the Annexed Article 13 of the Social Security Law and are also regulated by the Public Health Law under Articles 128 and 129. Coercion of women carries sentences under Articles 435 and 436 of the Turkish Penal Code and a previous reduction in sentencing for rape if the victim was a sex-worker in Article 438 was cancelled in 1990.⁵⁰

There are various reports that young Algerian girls are sent to Italy and other European countries and forced to marry, or forced into prostitution. There is also a significant voluntary migration of women for marriage. Pressures on young Palestinian and Lebanese women to marry relatives from the West are linked to dower payments. While this is not sex work in its crudest form, it nevertheless involves the

exchange of women and their sexual functions for money. While not necessarily falling into the classic definition of this crime, nearly 100 women were murdered during the “first” intifadah in the Occupied Territories and labeled “collaborators” and moral offenders. Palestinian organizations acted here as the “morality” police for society, in the place of women’s family members, and while some women were accused of prostitution, the dangerous connection between the national cause and women’s sexual or moral behavior was re-emphasized.¹⁹ This kind of vigilante approach to women could be seen in Algeria as well, and in state-sanctioned policies in Iran, Afghanistan, and in the Sudan, soon after Islamic governments arose.

Foreign women have been forced or bought into sex-work in the region, and there are problems with enforcement and violence in some cases. These may involve Russian-speakers in Turkey and in Israel where there are laws against pimping and regulation of prostitution but no specific laws that deal with trafficking.

Hundreds of sex workers work in the Tel Aviv area, and relatively few traffickers are prosecuted. *Ha’aretz* reported that out of 1,100 cases of trafficking in women, only 136 actually went to trial over a three year period. When the Tropicana, a long-time bordello closed due to the worsening economic situation since October of 2000, including the absence of its Arab clients (at about 30%), its owner, Iranian-Israeli Jackie Yazdi defended his trade, saying that he provides employment to needy Russian immigrants,⁵¹ more than a million of whom have emigrated to Israel from 1990 to 2000. Yazdi pointed to an increase in the riskier street prostitution with the closure of the more expensive bordellos. Some of these women travel freely, or are forced to travel to Arab countries as well, as occurs in the Sinai touristic recreation areas. In 1997, 675 women from the former Soviet Union were arrested for sex work in the United Arab Emirates.

There was also trafficking case of a large number (475) of Bangladeshi women to Kuwait and neighboring countries during the Desert Storm campaign. In Iraq, sex work is reportedly a strategy of the desperate. Recently, there are reports of kidnapped Iraqi women and girls being sold within Iraq, or smuggled to the Gulf. The CEDAW has explicitly stated a concern with trafficking in women that should be addressed by the MENA/Muslim countries.⁵²

Where children are involved, experts have recommended awareness campaigns. These are problematic when it is argued that local poverty is embarrassing to the national image, but some efforts were made along these lines in Morocco (referring to young domestic servants) and Yemen.⁵³

Endnotes

1. The views expressed here are the author's and do not necessarily reflect the official policy of the Department of the Army, the Department of Defense, or the U.S. government. This material was adapted from Sherifa Zuhur Gender, Sexuality and the Criminal Laws in the Middle East and North Africa: A Comparative Study (Istanbul: Women for Women's Human Rights (WWHR), 2005) available at http://www.wwhr.org/id_918 and cited with permission. That study was previously cleared for public release.
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5. See Surah 24:2-4 and 4:15
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19. The Israeli Information Center for Human Rights in the Occupied Territories, "Morality, Family Honour and Collaboration," In *Collaborators in the Occupied Territories: Human Rights Abuses and Violations*, (Jerusalem: B'Tselem, January 1994) 89-99.
20. Musallam, *Sex and Society in Islam*, 57.
21. Ibid, 57-58.
22. Ibid, 58. See also Donna Lee Bowen, "Abortion, Islam, and the 1994 Cairo Population Conference." *International Journal of Middle East Studies*. Vol. 29, No. 2 (May 1997).
23. Education Minister, Dr. Muhammad Al-Rasheed, Address to the United Nations Special Session on Children, 10 May 2002.
24. "Lebanon," *The Population Policy Data Bank*, Population Division of the Department for Economic and Social Affairs. United Nations, 81-82.
25. "Mauritania," *The Population Policy Data Bank*, Population Division of the Department for Economic and Social Affairs, United Nations, 130-132.
26. Musallam, *Sex and Society*, 53-54.
27. "Iran." *The Population Policy Data Bank*, 62-64. To understand the interesting ways in which the state promotes family planning; see Homa Hoodfar, "Devices and Desires: Population Policy and Gender Roles in the Islamic Republic," *MERIP* (Middle East Research & Information Project) No. 190, Vol. 24, No. 5 (September-October 1994) 11-17.
28. See table
29. "And Lot! (Remember) when he said unto his folk: "Will ye commit lewdness such as no creature ever did before you? Lo! Ye come with lust unto men instead of women. Nay, but ye are wanton folk." Surah VII: 80-81 (trans. Pickthall) (Dawood translates: Truly, you are a degenerate people" and 'Abd al-Khallaq Himmat Abu Shabanah as "a people given to excess and perversion.")
- "Of all creatures in the world, will ye approach males. And leave those whom Allah (God) has created for you to be your mates? Nay, ye are people transgressing all limits?" *Surah* XXVI: 165-166. The Meaning of the Holy Qur'an. Trans. by. 'Abdullah Yusuf 'Ali (Beltsville, Maryland: Amana Publications, 1989 [1408 h.]).
- "If two men among you commit indecency, punish them both. If they repent and mend their ways, let them be. Allah is ever Relenting, Merciful." Surah IV: 16. The Koran. Trans. N. J. Dawood. (London: Penguin Books, 1990, fifth revised edition).
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31. Ibid.
32. Vahme-Sabz, "Violence against Lesbians in Iran." In *Nihar*

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41. For instance, "Feminism and Islam." Audiotope issued by the Islamic Center of Los Angeles. Circa 1989.

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Era in Egypt and Echoes in the United States," Prepared for the World Middle East Congress, University of Mainz, Germany, 9/8/02.

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51. Uriya Shavit, "Full Disclosure," *Ha'aretz* (Saturday, 3 November 2001).

52. Mattar, "Commercial Sexual Exploitation of Women."

53. M'jid, "Sexual Exploitation of Children."

Country	To save Or preserve woman's life	To preserve physical health	To preserve mental health	Rape incest	Foetal impairment	Economic or social reasons	On request
Algeria	x	x	x	-	-	-	-
Brunei	x						
Egypt	x	-	-	-	-	-	-
Jordan	x	x					
Iraq	x	x	x	x			
Lebanon	x						
Libyan Arab	x	-	-	-	-	-	-
Jamahiriya							
Malaysia	x	x	x				
Mauritania	x						
Morocco (5)	x	x	x	-	-	-	-
Pakistan	x	x	x				
Saudi Arabia	x	x	x				
Sudan	x	-	-	x	-	-	-
Tunisia	x	x	x	x	x	x	x
Syria	x	-	-	-	-	-	-
Turkey	x	x	x*	x*	x*	x	x*
Yemen	x						

*up to 10 weeks of pregnancy

Source: Population Division of the United Nations Secretariat World Abortion Policies 1999; WWHR-New Ways, *The New Legal Status of Women in Turkey*, and the Population Data Bank.