

**The Arab And Mediterranean World:
Legislation Towards Crimes of Honor
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From Empowerment and the Law**

The paper of Laure Moghaizel examines a number of legislative measures dealing with crimes of honor in the Arab World namely Egypt, Iraq, Jordan, Kuwait, Lebanon, Lybia, Syria and Tunisia; and in five Mediterranean countries like Spain, Italy, France, Portugal and Turkey.

Thus, while the penal code condemns the perpetrator of intentional homicide to punishment as serious as execution, the provision concerning crimes of honor may permit a full or partial excuse, thereby reducing the penalty or exempting the perpetrator from any punishment altogether. A full excuse exempts the culprit from any punishment altogether. A partial excuse does not prohibit punishment, but rather it lessens the sentence established by law. A partial excuse reduces the sentence to a greater degree than does any circumstantial evidence. Factual justification eliminates the infraction entirely; excuses do not.

With the exception of the Jordanian, Lebanese and Syrian penal codes; the other Arab legislative measures under study do not grant full excuses, only partial ones. The circumstances and conditions necessary for the application of the excuses are as follows: The perpetrator surprised his victim (s); the victim was caught "flagrante delicto" i.e. in an adulterous act; for the case of a full excuse, the perpetrator committed his act during the initial period of anger. Only momentary anger sparked by witnessing the offense is excused. Thus, the law establishes a presumption that the liberty of the perpetrator is in abolition at the moment.

In simpler terms, if a brother proves that he has surprised his sister "flagrante delicto" and committed his act at that very moment, he is not responsible to prove that he acted in a moment of unreflected anger or that his feeling of infuriation abolished or diminished his liberty. Moreover, the public defender is not permitted to admit evidence that the accused did not act on a sudden impulse. Subsequently, the person is absolved of the penalty of his actions.

Likewise, the law established a presumption of reduced liberty of the person who surprises his victim in "questionable attitude"; his punishment is subject to

mitigation. The "questionable attitude" of the victim is left to the discretion of the judge and can be interpreted in a narrow or broad sense. This concept which is determined by the judge is unique to Lebanese and Syrian law. The other relevant Arab jurisdictions do not provide for the questionable attitude. They are more precise, they require the act flagrante delicto.

The notion of "questionable attitude" has been greatly abused. For instance, a brother sees his sister with a teacher on the street. He kills her and claims the protection of a partial excuse on the grounds of a questionable attitude on the part of his sister. This questionable attitude should be interpreted in a restricted sense. Only an attitude that creates doubt about the occurrence of adultery or sexual relations, or more precisely, an attitude which indicates a sexual act has occurred or is about to occur, should be called questionable attitude.

A Comparative Analysis of Crimes of Honor

The Spanish penal code provides for a partial excuse for a husband who surprises his wife in an adulterous situation and kills her or causes serious injuries. In the case of less significant injury, he is totally exempted from punishment. These rules also apply to parents of women less than 23 years of age who live in the family household.

The Portuguese penal code reduces the punishment of the husband if he kills his wife or inflicts a degree of bodily harm covered by Portuguese statutes. He is, however, absolved of all punishment if these physical attacks are not serious in nature. These also apply to the parents of women less than 21 years of age and are still under parental supervision.

The Turkish penal law lessens the punishment of the husband, wife, son, daughter, grandmother, or grandfather for violations of the law under any circumstances.

The Italian penal code provided for partial excuse for the male member of the family in cases of homicide or personal injury for motives of honor. These measures, however, were struck down in 1979.

The French penal code provided an excuse for a husband, who murdered his wife or her lover at the moment he surprised them "flagrante delicto" in the family household. This measure was struck down in 1975 by the divorce reform laws.

The Excuse Discriminates Against Women

Who profits from the granting of an excuse? In reality, any direct male relative fulfills the legal requirements. The victim is always a female. In regard to a spouse, only a husband benefits from the possibility of an excuse. The term husband is used expressly in all legislation except the Lebanese and Syrian penal codes, which use the term spouse. But the intent of Syrian and Lebanese laws is that only the husband can benefit from the excuse.

Strategies and Legal Measures to Abrogate the Excuse of Crimes of Honor

In Lebanon, a committee of male and female jurists has been appointed to work towards abrogating the measures on crimes of honor. This committee made the necessary studies, conducted a large information program, proposed new laws, and presented their recommendations to the parliament and the government. The newly proposed legislation was adopted by a member of parliament, who passed it on to the Commission for Administration and Justice. The Commission held two hearings to which the committee was invited. However, efforts have been paralyzed by many events, notably the political and security situation in Lebanon. The abrogation of the legal text regarding crimes of honor is part of a larger understanding, started some time ago, to align national legislation with international standards, and the due protection of human rights.

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