

Crimes of Honor: Crimes of Horror

By Fadi Moghaizel, Ph.D in Law

By way of introduction, I would like to quote the Vienna Declaration adopted by the World Conference on Human Rights on 25 June 1993:

The human rights of women [...] are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community'.

This principle confirms that calls for equal treatment of women stem directly from the principle of equal rights for all persons. It does not have its source in an antagonizing view between two genders with conflicting interests, but rather in the principle of equality in enjoying human rights and fundamental freedoms without discrimination on the basis of race, color, sex, language, religion, political or other opinions, national or social origin, poverty, birth or other status, as stated in article 2 of the Universal Declaration of Human Rights and article 2 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights.

From this introductory statement, I would like to turn to another issue that is more specific to Lebanon. It concerns the dilemma as to whether changes in society can be activated and brought about by amendments in the law, or whether they can only be effected through awareness actions and cultural changes. The defenders of this latter point of view sustain that changes must not be imposed by texts of law; they should rather come as a natural consequence of understanding and appreciation.

It is true that legal provisions that clash with deeply rooted traditions are implemented with great difficulty. But on the other hand, the law should not be a mere reflection of society's practices and customs, in particular when such practices are in violation of human rights instruments, notably, for what concerns our topic, the Convention on the Elimination of All Forms of Discrimination Against Women adopted at the United Nations in 1979. The so called "crimes of honor" are a clear example of the need for change in the law to curb and hopefully bring an end to a deadly practice.

"Crimes of honor" are so called because they are committed by a person who slays or causes bodily injury to a female member of his family on the grounds that the victim has stained the honor of the family by having unauthorized sexual relations.

Such crimes are acknowledged by Article 562 of the Lebanese Criminal Code that was amended in February 1999. Article 562 of the Lebanese Criminal Code was "inherited" from the Ottoman Criminal Code of 1840 (Article 188) which itself was taken from the French Criminal Code of 1810 (Article 324). The French Criminal Code provided for an extenuating excuse (not acquittal) for the husband who surprises his spouse committing adultery at the marital home. Such provisions were removed in 1975 in the context of a global reform of French family law (pursuant to this reform, adultery no longer constitutes a criminal offence).

Prior to its recent amendment, Article 562 of the Lebanese Criminal Code stated the following:

A person who surprises his spouse, or any of his relatives in the ascending or descending lines or his sister committing adultery, or having unlawful intercourse and kills, or causes injury to any of them without premeditation, is acquitted.

The killer or person who caused injury is granted an extenuating excuse when he surprises his spouse or any of his relatives in the ascending or descending lines or his sister in a questionable attitude with another person.

Paying tribute to the memory of Laure Moghaizel on the first anniversary of her death in 1998, the Minister of Justice at that time, Dr. Bahige Tabbarah, proposed a significant amendment to Article 562. The proposed amendment became law (Law no. 7 dated 20 February 1999) and article 562 now reads as follows:

A person who surprises his spouse, any of his relatives in the ascending or descending lines or his sister committing adultery, or having unlawful intercourse, and kills or causes injury to any of them without premeditation, is granted an extenuating excuse.

This amendment is a first step in the right direction, by removing the murderers' acquittal and the reduction of his sentence



in the event of what is called questionable attitude. However, the ultimate goal remains the cancellation of Article 562 altogether.

Provisions similar to article 562 of the Lebanese Criminal Code are found in most Arab countries legislations. Some of them provide for lighter sentences, some for acquittal.

Jordan: Article 340 of the Jordanian Criminal Code provides for acquittal for males who kill their female relatives for being involved in illicit sexual relationships. Reduction of penalties is also granted in case of adulterous situation. Article 340 covers the killing and injuring of the killer's or aggressor's wife or female relatives ("maharem") and their partners. Jordan witnesses the highest number of the so called crimes of honor. Jordanian human rights activists have recently launched a nationwide campaign for the abolition of Article 340 and the reconsideration of Article 98 of the Jordanian Criminal Code providing for a reduction of penalty for a person who commits a crime in a fit of fury caused by an unlawful or dangerous act on the part of the victim. In certain cases of so-called crimes of honor, Article 98 is applied to grant the killer a lenient sentence. In July 1999, a special committee at the Ministry of Justice decided to cancel Article 340, but I understand that the decision still needs the endorsement of the Upper and Lower Houses followed by a Royal Decree.

Syria: Article 548 of the Syrian Criminal Code provides for acquittal. It covers the killing of the killer's wife, his female relatives in the ascending and descending lines, his sister and the partner.

Oman: Article 252 of the Omani Criminal Code provides for acquittal or reduction of sentence. It benefits the man who kills or injures his wife, sister, daughter or mother and the partner.

Kuwait: Article 153 of the Kuwaiti Criminal Code covers the killing of the wife, daughter, mother or sister and the partner. The penalty is reduced and cannot exceed three years of imprisonment and/or a fine.

Egypt: Article 237 of the Egyptian Criminal Code provides for a reduced sentence for the killing of the wife and her partner. In comparison with other similar provisions in the Arab countries, the Egyptian text is more advanced in that it restricts the benefit of lower sentences to the victim's husband only.

United Arab Emirates: Article 334 of the Federal Law no. 3 of 1978 (Criminal Code) covers the killing of the wife, daughter or sister (not the mother) of the killer and the partner. It is worth noting that Article 334 secures a sort of equality in granting the wife too the benefit of a lighter sentence for the killing of her husband who commits adultery at home (and the killing of the husband's partner).

Iraq: Article 409 of the Iraqi Criminal Code provides for a reduced sentence for the killing of the killers's wife or any of his female relatives, ('maharem') and the partner.

Morocco: The reduced sentence benefits the husband who kills, injures or beats his wife and her partner (article 418 of

the Moroccan Criminal Code). In addition, pursuant to Article 420 of the Moroccan Criminal Code, the head of the family who surprises persons involved in illicit sexual relationships in his home, benefits from a reduced sentence if he injures or beats any such persons.

Tunisia: The reduced sentence for the husband provided for in Section 207 of the Criminal Code has been abolished by Law no. 72 of 13 July 1993.

Turning back to Article 562 of the Lebanese Criminal Code, I would like to say a few words on the conditions of its application.

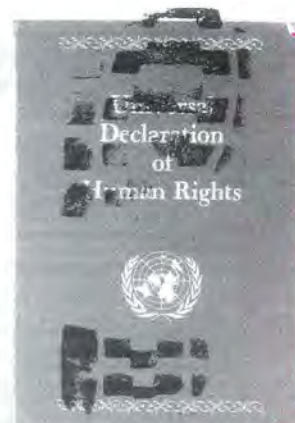
Those who benefit from the excuse of Article 562 are the victim's spouse, relatives in the descending line (son, grandson, grand grandson, etc.) and ascending line (father, grandfather, grand grandfather, etc), and brother. Because of the use of the word spouse (and not husband) in Article 562, there is a discussion as to whether the wife also benefits from the excuse if she kills or assaults her adulterous husband. This is very unlikely because the Ottoman and French original text benefited only the husband. In addition, the deadly tradition that the text aimed to cover involved a benefit to the husband only. It can thus be assumed that the intent of the legislator was that only the husband can benefit from the excuse.

It should be noted that the extenuating excuse is significantly more favorable to the killer or aggressor than the generally known extenuating circumstances, since the former allows a greater reduction of penalty. For instance, if the crime committed is normally sanctioned by the death penalty, the penalty is reduced to a minimum of one year imprisonment as a result of the extenuating excuse, while extenuating circumstances would reduce the penalty to hard labor for life or for seven to twenty years (Article 253 of the Criminal Code).

To benefit from the extenuating excuse of Article 562, the killer or aggressor must have been surprised by the illegal act. If he knew that a relationship existed between the victim and her partner, he does not benefit from the excuse.

In addition, the victim must have been caught "flagrante delicto" i.e., in the very act. This condition does not mean that the killer or aggressor must have witnessed the actual act. It is sufficient that he possesses evidence establishing with certainty that the act has been committed.

In view of the fact that the excuse is granted on the ground that the killer or aggressor acts in a sudden state of fury as a result of the surprise, the benefit of the excuse is granted only if the killing or assault occurs immediately when the act is discovered.



Source: Index on Censorship 3/1998

When the above conditions are met, it is assumed by law that the killer's or aggressor's will is neutralized and therefore his sentence should be reduced. It is as if he did not know what he was doing. In such a case, the court is bound to grant the benefit of the excuse; it has no discretionary power in this regard.

The reasons justifying the cancellation of Article 562 are numerous. I will briefly touch on some of them.

- Article 562 of the Criminal Code constitutes a gross violation of basic principles of equality, justice, dignity and personal freedom embodied not only in the Convention on the Elimination of All Forms of Discrimination Against Women, but in other international instruments such as the International Declaration of Human Rights and the Covenant on Civil and Political Rights as well as the Lebanese Constitution.

- In addition, by authorizing private justice, Article 562 circumvents the authority of the judiciary and encourages killing and assaults. While criminal laws aim at curbing criminal activities and deterring people from crime, Article 562 fosters them.

- Moreover, this article is often the cause of abuse by people who think that they can benefit from it. We witnessed several such cases in Lebanon during the last few years. Generally, the court disqualifies the crime by holding that it does not fall within the scope of Article 562 (for instance because there was no "flagrante delicto"). However, the mere existence of Article 562 creates confusion and leads to abuse.

- It should also be said that people who commit crimes in a fit of fury because of the victim's seriously wrongful act can benefit from an extenuating excuse pursuant to Article 252 of the Criminal Code. This confirms the redundancy of Article 562.

- The review of court decisions during the last few years confirms that Article 562 is generally no longer applied. When the killer claims that he should benefit from the excuses of Article 562, courts seldom concur with such a claim.

- Article 562 still encourages a tribal mentality which no longer fits into the much needed social and intellectual evolution on the eve of the twenty first century.

- By joining the Convention on the Elimination of all Forms of Discrimination Against Women, Lebanon has agreed to remove all discriminatory provisions from its Criminal Code (Article 2 of the Convention). Therefore, maintaining Article 562 constitutes a failure for Lebanon to abide by its international commitments.

The recent amendment of Article 562 of the Criminal Code in February 1999 is an important step forward, but comes short of the ultimate goal of human rights activists i.e. the cancellation of Article 562 altogether so that any person committing so-called 'crimes of honor' faces punishment like any other killer.

Also, the solution is not to secure equal rights to women by extending the extenuating excuses to them too, since this would promote private justice and encourage more violent

acts. It is time that crimes of honor be recognized as crimes of horror.

Other laws that are discriminatory against women still need to be amended or cancelled, notably the provisions of the Lebanese nationality law whereby men pass on their Lebanese nationality to their children, while women do not, save in exceptional cases, in addition to laws governing social benefits and allowances, freedom of employment, and the remaining discriminatory provisions of the Penal Code, notably those concerning adultery.

In this latter respect, there is a blatant discrimination against women. Men are guilty of adultery provided they commit the adulterous act at the family home, while women are guilty notwithstanding the place where the adulterous act is committed.

Moreover, the sanctions applicable to adultery are stricter for women than for men (three months to two years imprisonment for women and one month to one year for men). There is also a difference in the elements of proof whereby it is much easier to establish women's adultery.

I will now conclude by mentioning, very briefly, other measures that should be taken to contribute towards the elimination of gender discrimination in the laws:

- Waiving all the reservations made by Lebanon regarding the Convention on the Elimination of All Forms of Discrimination Against Women, notably in relation to Article 9 on equality with respect to nationality laws; Article 16 on equality in family law; and Article 29 regarding the submission of disputes on the interpretation or application of the Convention and their submission to the International Court of Justice.

- Working toward bringing local laws in compliance and conformity with ratified international instruments and implementing the rule of predominance of international conventions over domestic legislation.

- Ratifying all international agreements related to human rights.

- Enacting laws that provide protection to women from violence both at home and at the work place.

- Enacting special laws to speed up gender equality, promotion of women's conditions and full participation in public life. Legal provisions expressly prohibiting discrimination must be laid down with strict sanctions.

- Separating women from children in relation to protective measures in labor law. Women are not minors.

- Preventing the enactment of new discriminatory laws.

- Eradicating legal illiteracy and disseminating information in relation to legal issues and provisions affecting women.

In closing, I would like to point out that we should not expect changes in the law to be initiated by the government. They will only come about as a result of the unrelenting efforts of non-governmental organizations and human rights activists.