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## Honor Crimes in Jordan: Their Treatment under Islamic and Jordanian Criminal Laws

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## Articles

# Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Laws

Ferris K. Nesheiwat\*

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## I. Introduction

No two elements are more important to the establishment of a civilized and open society than society's respect for individual human rights and respect for and submission to the rule of law.<sup>1</sup> These two elements, however, are not always compatible. When society adopts laws that undermine the basic rights of a class of citizens, a tension is created between an individual's responsibility to respect society's laws, and that same individual's right to be protected and treated equitably by his or her society. This scenario occurs when society adopts laws, which selectively provide under-protection to a class of citizens because of an immutable characteristic such as race, religion, or gender instead of providing equal protection to all.

The same tension exists when the state silently condones actions that deprive some citizens of their basic rights, thus relegating them to a second-class citizenship.<sup>2</sup> Such silent acceptance of discriminatory behavior usually exists in a closed or partially open normative systems, where society rejects's the adoption or enforcement of certain universal principles like gender equality.<sup>3</sup> In either system, an inequity befalls a sector of society for no other reason than having the wrong color of skin, religion, or sex.

Totalitarian states, which by definition are closed normative societies, might condone such behavior under the guise of the protection

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1. See *Arab Human Development Report 2002 (2002)*, available at <http://www.undp.org/rbas/ahdr/> (last visited November 5, 2004). According to the United Nation's Development Program (UNDP), the rule of law is one of the characteristics of good governance, and it means that legal frameworks should be fair and enforced impartially, particularly the laws on human rights. The report further defines good governance as, "[A] set of societal institutions that fully represent the people, interlinked by a solid network of institutional regulation and accountability (with ultimate accountability to the people), whose purpose is to achieve the welfare of all members of society."

2. See THOMAS E. HILL, JR., *RESPECT, PLURALISM, AND JUSTICE* 59-60 (2000) [hereinafter HILL].

3. See JOSEPH RAZ, *PRACTICAL REASON AND NORMS* 152-153 (1999). A normative system is an open system to the extent that it contains norms the purpose of which is to give binding force within the system to norms that do not belong to it. Societies that adopt alien norms are considered more open.

of the collective welfare; indeed Nazi Germany and Apartheid South Africa offer recent examples.<sup>4</sup> In other relatively more open societies, such aberrant behavior can emanate from outdated yet still practiced traditions and customs that are contrary to society's written codes. In either case, the threat to the values of civil society is just as serious. Indeed, in the later case of a relatively open society, the threat to equality is greater because the existence of written codes advocating gender equality belies the daily and systematic discrimination that result from ignoring these same codes.

Honor Crimes represent a prime example of a situation where the rights of females are trampled either through the explicit language of the legal code or by the tacit approval of the State.

#### A. *Honor Crimes Defined*

The most powerful deterrent against extramarital sexual relations devised by pre-modernist conservative cultures such as the one existing in most Arab societies, is the association of family honor with the sexual conduct of females.<sup>5</sup> Thus, sexual indiscretion by a female dishonors her siblings and parents and tarnishes the family's honor. Honor can only be restored by punishing the guilty woman, which in conservative circles means putting the woman to death.<sup>6</sup> This punishment is known as an Honor Crime.

Honor Crimes are acts of violence committed against a female by one or more of her family members mainly because of her alleged

4. See H.L.A. HART, *THE CONCEPT OF LAW* 200 (1997) ("It is plain that neither law nor accepted morality of societies need extend their minimal protections and benefits to all within their scope, and often they have not done so.")

5. See RAPHAEL PATAI, *THE ARAB MIND* 120 (Charles Scribner 1973) [hereinafter *THE ARAB MIND*]. "Pre-modernist conservative cultures" use tangible entities like land, or a female's body to define honor, and react with often condoned physical violence against individuals infringing on such symbols of honor. Whereas "modernist conservative cultures," have the same previously described association between honor and tangible objects but its infringement does not result in physical violence against the infringer, and if it does it is not condoned by the State. Generally, societies evolve from the former to the latter.

6. See *id.* at page 120-121. "That the sexual conduct of women is an area sharply differentiated from other areas of the honor-shame syndrome is reflected in the [Arabic] language. While honor in its non-sexual, general connotation is termed *sharaf* the specific kind of honor that is connected with women and depends on their proper conduct is called *ird*. *Sharaf* is something flexible . . . [which] can acquire, augment, diminish, lose, regain, and so on. In contrast *ird* is a rigid concept . . . it is something absolute, [and it is the woman's duty to preserve it]. Both virginity and *ird* are intrinsically parts of the female person; they cannot be augmented, they can only be lost, and their loss is irreparable. . . . [T]he *sharaf* of the men depends almost entirely on the *ird* of the women of their family. . . . [T]he core of the *sharaf* is clearly the protection of one's family relatives *ird*." *Id.*

participation in unacceptable sexual behavior that results in the loss of the female's virginity, pregnancy or her participation in unacceptable social behavior such as socializing with males outside her immediate family.<sup>7</sup> The condoned violence that exists under the Honor Crime umbrella includes murder, attempted murder, acid attacks, and female infanticides.<sup>8</sup> These crimes take place because the perpetrators believe that their honor has been tainted by the female's acts and cannot be cleansed except by the shedding of the victim's blood. Islamic and Middle Eastern societies are not unique with their focus on family values, but they are with regards to their emphasis on a woman's actions and the impact these actions have on the family honor.<sup>9</sup>

In Islamic and Middle Eastern societies a distinct honor-shame culture exists wherein individuals derive their identity from their social group, especially their family and kinship network. The individual's success is gauged by fulfillment of that social group's expectations.<sup>10</sup> Honor Crimes, naturally, thrive in cultures where there is little or no room for tolerance of acts perceived by the culture as sexually shameful, such as dating, adultery or fornication. Individuals who commit such acts are excluded from the social group. Females in particular are more prone to such exclusions because sexual indiscretions are easily proven through the loss of virginity or pregnancy. This exclusion is usually followed by an act of physical coercion or violence against the female by an unofficial agent, most likely a family member.

Since these acts are an exercise of condoned violence by someone other than a socially authorized agent, *i.e.* an agent of the state, they represent a collapse of the rule-of-law concept.<sup>11</sup> With the death of the female as the ultimate outcome, Honor Crimes are the ultimate form of gender discrimination.

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7. See C. Bruch, *Religious Law, Secular Practices, and Children's Human Rights in Child Abduction Cases under the Hague Child Abduction Convention*, 33 N.Y.U. J. INT'L L. & POL. 49, 57 (2000) [hereinafter Bruch] (describing how in traditional societies males are thought to belong to the public world and females to the private world, with each having tasks that oriented them to their respective worlds; the two genders should be separate and not mix or overlap). See also JEROME H. NEYREY, HONOR AND SHAME IN THE GOSPEL OF MATTHEW 29 (Westminster John Knox Press 1998) [hereinafter HONOR AND SHAME]; JOHN GULICK, THE MIDDLE EAST AN ANTHROPOLOGICAL PERSPECTIVE 43 (University Press of America 1983).

8. See K. Arnold, *Are the Perpetrators of Honor<sup>v</sup> Crimes Getting Away with Murder*, 16 AM. U. INT'L L. REV. 1343, 1346 (2001) [hereinafter Arnold].

9. See EVERYDAY LIFE IN THE MUSLIM MIDDLE EAST 13, 16 (Donna Lee Bowen and Evelyn A. Early eds., Indiana University Press 1993) [hereinafter EVERYDAY LIFE].

10. HONOR AND SHAME, *supra* note 7, at 27.

11. See E. ADAMSON HOEBEL, THE LAW OF PRIMITIVE MAN 26 (1954).

### B. Scope of this Paper

This article will study and analyze the Honor Crime phenomenon in Jordan from a social, legal and historical point of view. Honor Crimes in Jordan are the result of two factors. The first factor is the Jordanian society's willful ignorance of Islamic penal law and the directives of the Jordanian Penal Code ("JPC"). This paper will argue that by doing so, Jordanian society has demonstrated willful ignorance of the true principles that govern crime and punishment under Islamic law.<sup>12</sup> This is in effect a form of a *Jahiliyyah* mentality.<sup>13</sup>

The second factor perpetuating honor killing is the Jordanian legal establishment, especially, the appellate courts' failure to apply the law to curtail extra-judicial killings.<sup>14</sup> The Jordanian courts have misinterpreted the Criminal Code to expand the scope of defenses awarded to the male perpetrators of Honor Crimes. In doing so, the courts have disregarded the original intention of the legislature and have eroded the peoples trust in the law's ability to provide protection to injured females. I submit that such misapplication of the legislative intent stems from the cultural acceptance of social violence against women and the belief that such violence will go either lightly punished or unpunished at all.

Honor Crimes in Jordan represent an area where state regulation (the written law) and judicial practices (the applied law) intersect but run in opposite directions. The plain language of the written code attempts to minimize social violence against women by raising the bar for the possible mitigation of that violence. The judiciary, however, through its

12. This is a good explanation of Honor Crimes in almost all Islamic societies, and is not only limited to Jordan. Subsequently the following discussion on the treatment of sexual crimes under Islamic law (section II, *infra*) is useful for the examination and scrutiny of all other Penal Codes that purport to be based on Islamic or quasi-Islamic principles.

13. See CYRIL GLASSE, THE CONCISE ENCYCLOPEDIA OF ISLAM 204 (1989) [hereinafter GLASSE.]. *Jahiliyyah* refers to "the time of ignorance or Arab paganism preceding the revelation of Islam, during which the society suffered from oppressive paganism, and general decadence."

The Jordanian society and all other Islamic societies experience a form of *Jahiliyyah* mentality, which fosters discrimination against females and upholds their treatment as second class citizens lacking the temperament and the intellect to be treated as social and legal equals. The idea that some concepts of *Jahiliyyah* still pervade Islamic societies was argued by several Islamic writers, most notably by Sayyed Qutub. However, they used the concept to describe the Westernization and adoption of foreign concepts by Islamic societies. I use the concept to describe outdated and ultra-traditional social norms that were meant to be abolished by, and are inconsistent with, Islamic law, but have crept back into the social main stream through centuries of cultural stagnation, the hallmark of which was isolation from outside civilizations, diminishing role of independent legal thinking (*Jithad*), and the marginalization of civil society institutions, such as courts and parliaments.

14. Jordan's civil and penal codes are based on the Napoleonic code.

interpretation of the written laws has created new defenses, which were never intended by the legislature, as this paper will show.

Honor Crimes represent a sociological and cultural problem where the codified laws and norms of the society remain at odds with the observed laws. Section I.C of this paper will outline the scope of the Honor Crime phenomenon in Jordan by citing specific statistics showing the extent of the problem. Part II of the paper will present a framework for the treatment of Honor Crimes under Islamic law. The stereotypical view of Islamic law is that it lacks a systematic and fair approach to criminal responsibility. Sections II.B and C rebut this view by outlining Islam's approach to crime, criminal responsibility, the theory, and requirements for proof in Islamic law. This analysis is capped by examining the punishment for sexual crimes (adultery and fornication<sup>15</sup>) under Islamic law. If true principles of Islamic penal law were followed, not a single woman would lose her life because of fornication and no woman would be extra-judicially killed. It will become apparent that the concepts of Islamic law do not justify or condone Honor Crimes.

Part III of this paper traces the evolution of post-colonial Penal Code in Jordan. Specifically, Sections III.A and B examine the evolution of the JPC and its classification of the various degrees of murder. Section III.C addresses the mitigating factors provided for Honor Crimes under Article 340 of the JPC. The general notion is that the mitigating factors in Article 340 provide the perpetrators of Honor Crimes with reduced penalties. By outlining the high threshold the statute requires in order for the mitigating factors to be considered under Article 340, section III.C disproves that notion. Section III.D will then analyze the judiciary's misapplication of mitigating factors by allowing the mitigating factors in Article 98 to be used by defendants in Honor Crimes. Section II.D explores the misguided and inappropriate application of Article 98 by the judiciary, which creates a legal environment that tolerates Honor Crimes and lightly punishes offenders.

Part IV concludes that the current treatment of Honor Crimes in Jordan constitutes a misapplication of the tenants of Islamic criminal law and the JPC.

### *C. Honor Crimes in Jordan—the Scope of the Problem*

It is important to note that Honor Crimes are not an exclusive Islamic, Arabic, or Jordanian phenomenon.<sup>16</sup> Indeed, Honor Crimes

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15 In this paper, the term "adultery" is used to refer to sexual relations between two married individuals who are not married to each other. The term "fornication" is used to describe sexual relations between unmarried individuals.

16. See EVERYDAY LIFE, *supra* note 9, at 79 (Indeed most of the local social

have existed for centuries. From the dawn of biblical times, a family's reputation was based upon the degree its members were living according to acceptable social behavior.<sup>17</sup> Consequently, all the members of the family shared in its reputation, with honor being symbolized along blood lines.<sup>18</sup> Roman law allowed a husband to kill his wife and her lover, and a father to kill his daughter and her paramour.<sup>19</sup> This tradition was carried into French law, which originally allowed a husband to kill his wife if he caught her committing adultery in the marital home.<sup>20</sup> In patriarchal societies, family honor is associated with a woman's body, and controlling it has been justified as a way of protecting that honor.<sup>21</sup> In countries like Brazil, Pakistan, Turkey, Egypt, and Lebanon, the roots of such traditions often lie in old cultural and societal norms as well as in the misuse and misinterpretation of religion. Such traditions provide for the social acceptance of violent behavior against women.<sup>22</sup>

In the traditional setting, honor is a male prerogative and a woman may be killed to avenge a scandal that tarnishes that honor. The general perception in patriarchal environments is that a woman's moral indiscretion soils the family's honor and can only be rectified by shedding the woman's blood.<sup>23</sup>

In Jordan, a nation of five million people, thirteen Honor Crimes were reported in 2000, constituting 16% of all murders during that year.<sup>24</sup>

restrictions on Middle Eastern women find their roots in cultural traditions that preceded Islam.)

17. See HONOR AND SHAME, *supra* note 7, at 21.

18. *Id.*

19. See PERCY ELLWOOD CORBETT, THE ROMAN LAW OF MARRIAGE 127-129 (1930). See also R. Lehnardt-Lehr, *Treat Your Women Well: Comparison and Lessons from an Imperfect Example Across the Waters*, 26 S. ILL. U. L.J. 403, 419 (2002) [hereinafter Lehnardt-Lehr] (providing a good review of the treatment of fit-of-fury crimes under the Penal Codes of many states in the United States of America).

20. See Lehnardt-Lehr, *supra* note 19, at 419.

21. See EVERYDAY LIFE, *supra* note 9, at 78; see also R. Ruane, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT'L L. REV. 1523, 1532 (2000) [hereinafter Ruane].

22. See Ruane, *supra* note 21, at 1532 and 1541. Formerly secular Penal Codes were re-conceptualized in Islamic terms to the effect that the state lost its power to initiate prosecution if the victim does not report the crime or chooses not to prosecute it. This is possible under Islamic law because all crimes (including murder), except *hadd* crimes (which include sexual crimes) are essentially non-prosecutable if not reported. This point is analyzed further in section II *infra*.

23. Ruane, *supra* note 21, at 1532.

24. Press Release, Jordanian Police Department: The Annual Criminal Statistical Report (2000) (in Arabic, on file with author). This report was published by the Jordanian police department. To my knowledge it is not reviewed by an independent third party and it represents the only source of data on crime in Jordan. The actual number of Honor Crimes is probably higher than the numbers mentioned in the report because there is no way of ascertaining that all Honor Crimes are actually reported, or that the cause of some murders is not poorly labeled.



The number of Honor Crimes during 1996, 1997, 1998 and 1999 were nineteen, twenty, sixteen, and seventeen, respectively.<sup>25</sup> Between 1990 and 1995, 105 murders out of total 503 murders committed in Jordan were Honor Crimes.<sup>26</sup> In all of these crimes the predominant motive is related to the vindication of the family's honor. A male member of the family typically commits the crime against the female family member who has been accused of actions that have violated her family's moral guidelines.

The following table represents a breakdown of the relationship between the perpetrators and the victims of Honor Crimes for 1995:<sup>27</sup>

Relation to victim	Percentage (%)
Brother	75
Husband	12.5
Cousin	6.25
Father	6.25

The next table represents a statistical breakdown of the age groups of the perpetrators and their victims between 1997-1999:<sup>28</sup>

	35 Honor Crime murders (1997-1999)	11 attempted Honor Crime murders (1997-1999)
<b>Perpetrators between 18-27 years of age</b>	44%	47%
<b>Victims between 18-27 years of age</b>	40%	_____
<b>Victims under 18</b>	31%	_____

25. See Amjad Al-Abbadi, *Honor Crimes in Jordan*, The Royal Jordanian Police Academy, 24-26 (in Arabic, on file with author.) [hereinafter *Honor Crimes*]

26. *Id.* at 25.

27. See Dr. M. Hadidi and Dr. H. Jahshan, *The Role of Forensic Medicine in Society Protection—Realities and Numbers*, Remarks at Honor Crimes Workshop at 4-7 (March 25-26, 1998) (in Arabic, unpublished, on file with author). Of the women killed in 1995, 37.5% were between 17 and 20 years old, 18.75% were between 21 and 25, 12.5% were between 26 and 30, 25% were between 31 and 40, and 6.25% were over 40 years old. *Id.* at 5. Of the women victims 56% were married, 38% were single, and 6% were divorcees. *Id.* at 6. Of the women killed 62% were killed by gunfire, 19% were stabbed or had their throats slit, and 13% were choked to death. *Id.* at 7. As for the perpetrators, 19% were between 15 and 20 years of age, 31% were between 21 and 25 years of age, 7% were between 26-30 years of age, 19% were between 36 and 40 years of age, and 25% were between 41 and 65 of age. *Id.* at 6.

28. *Honor Crimes*, *supra* note 25, at 3.

years of age		
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These statistics represent reported and documented cases only and are not inclusive of unreported killings or cases that have not officially been documented as honor killings. Furthermore, the above statistics are not inclusive of the unnamed individuals who may have been involved in the commission of the crime. For example, a male family member may coerce female family members into taking part in the crime. The female family member, a mother or a sister for example, are encouraged to convince the daughter or sister to return to the family home with assurances that they will not be harmed. The perpetrator of the crime is often an under-age male, who is more likely to benefit from the mitigating factors usually afforded to a minor.

Victims of Honor Crimes who survive are incarcerated to protect them from reprisals. The imprisoned victims are collectively called administrative prisoners. These incarcerations are allowed pursuant to the regional governors' administrative directives. The imprisonment of these women is justified by the lack of any administrative means of protecting them. Recent statistics indicate that of the 220 women in prison in Jordan, 112 are incarcerated for their own protection and not as a result of any criminal offense. Their plight speaks volumes of the rule of law in Jordanian society. In order to be released the law requires these women to obtain permission from a legal guardian, usually the same family member whom the woman is seeking protection from.

The statistical findings clearly show the Honor Crime phenomenon in Jordan is a serious and continuing problem, which requires comprehensive and swift remedy.

#### *D. Cultural Roots of Honor Crimes*

The roots of Honor Crimes lie in two cultural relics. The first is the males' dominance over female family members who are viewed as dependents. The male regards himself as a guardian of the females in his familial domain; mother, sisters, daughters, and wives all fulfill such a definition. As such, the male is expected to discipline the female relatives for renegade and socially unacceptable behavior. Honor Crimes are also based on the concept of honor being synonymous with the chastity and the sanctity of a woman's body and sexuality. The family honor is tarnished if a woman is not completely chaste before her marriage. A chaste woman represents the epitome of honor. She should avoid social behavior that would raise questions as to her character, such as establishing mixed-gender relationships outside her immediate

family.<sup>29</sup>

Unfortunately, females in such societies are not given the respect they deserve as an adult and an equal in order to be raised to know and understand the acceptable cultural norms of their environment. Additionally, within these same settings, the male is raised expecting to think of and act toward females in his familial domain in a patriarchal and authoritarian fashion.<sup>30</sup> Older family members often convince the under-age males, who are about to commit the crime against the intransigent female, that by restoring the family honor he is exhibiting a sure sign of manhood.

Such paternalism and gender discrimination is reflected in the language of Article 340 of the JPC. It allows only men to benefit from a reduction of and exemption from penalty for an Honor Crime if they catch one of their ascendants or descendants committing adultery, or other wrongful acts impinging on the family's honor. Specifically, Article 340 reads:

1. He who surprises his wife, or one of his female relatives committing adultery with somebody and kills, wounds, or injures one or both of them shall be exempt from penalty.

2. He who surprises his wife, or one of his female ascendants or descendants or sisters with another man in an unlawful bed, and he kills, wounds or injures one or both of them, shall be eligible for a reduction in penalty.<sup>31</sup>

Article 98 of the JPC provides the same discriminatory treatment. It reads:

He who commits a crime in a fit of fury resulting from a wrongful and dangerous act on the part of the victim shall benefit from a reduced penalty.<sup>32</sup>

This discriminatory treatment, however, is not general to all statutes in Islamic/Arabic countries. For example, the United Arab Emirates penal code provides legal equality to both genders.<sup>33</sup> It is about time the Jordanian legislature recognizes the gap in gender equality and take action to remediate it.

Next, Part II will show the disconnection between the teachings of

29. HONOR AND SHAME, *supra* note 7, at 32.

30. See Ruane, *supra* note 21, at 1532.

31. JPC no.16, Article 340 (1960) (in Arabic).

32. JPC no.16, Article 98 (1960) (in Arabic).

33. See Dr. M. Hadidi and Dr. H. Jahshan, *supra* note 27, at 8 (citing Article 334 of the United Arab Emirates Penal Code, which expressly avails mitigating factors in crimes of passion and fury to both the male and the female.).

Islamic law and the Honor Crime phenomenon, and will clearly show that the extra-judicial killings of females has no basis or support in Islamic law.

## II. The Treatment of Sexual Crimes Under Islamic Law

### A. *The Sources of Islamic Jurisprudence*

In Islam, jurisprudence (*fiqh*) deals with the study of the laws of God, the observance of rituals, the principles of social legislation and the Five Pillars of Islam (Prayer, Pilgrimage to Mecca, Giving of Alms, Fasting, and the *Shahadah*, which is the declaration that there is no deity but God and that Muhammad is his Prophet). *Fiqh* is used to derive classifications of all human actions as obligatory, forbidden, recommendable, disliked, or permissible.<sup>34</sup> Such laws are essentially derived from the *Quran*,<sup>35</sup> and the prophetic traditions and acts known as *Sunnah*.<sup>36</sup> The collective body evolving from these sources constitutes Islamic jurisprudence and law.

Early Muslims derived their law from the *Quran* and the oral evidence presented in the body of prophetic tradition. This practice continued until more people became literate in Arabic, the language of the *Quran*. This was followed by the development of a body of jurisprudence, as the scholarly readers of the *Quran* evolved to be called jurists (*fuqaha*) and religious scholars (*ulama*).<sup>37</sup> In the beginning both groups, the *fuqaha* and the *ulama*, were organized into schools of higher study (*madrassa*) which were supported by a religious endowment called a *waqf*. Initially, these religious schools differed in their interpretation and application of the body of law upon which they instructed, but gradually the differences were resolved forming four major schools of

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34. See F. E. PETERS, A READER ON CLASSICAL ISLAM 239-240 (1994) [hereinafter PETERS]. See also GLASSE, *supra* note 13, at 126.

35. See GLASSE, *supra* note 13, at 228. *Quran* (Arabic for reading or recitation) is the Holy book of Islam, commonly also called the *mushaf* (Arabic for the collection of pages of a textbook), and *al-furqan* (Arabic for discrimination between the truth and falsehood). The *Quran* was revealed in Arabic, and its language became the basis of formal or classical Arabic, but while unquestionably the standard, its style is nevertheless inimitable. *Id.*

36. See GLASSE, *supra* note 13, at 380. *Sunnah* (Arabic for "custom" or "usage") is the spoken and acted example of the Prophet Muhammad, including what he approved, allowed, or condoned when, under prevailing circumstances, he might well have taken issue with others action, decisions or practices; and what he himself refrained from and rejected. The significance of the *Sunnah* arises from the function of the Prophet as the founder of Islam, and the *Quran*'s injunction to pattern oneself after the Prophet Muhammad. *Id.*

37. See PETERS, *supra* note 34, at 241.

law (*madhabs*) of *Sunni* Islam namely: Hanafi, Maliki, Shafii, and Hanbali.<sup>38</sup>

The Hanafi School was established by Abu Hanifa (702-767 AD), who strongly advocated consultation (*shura*) and consensus building before reaching an opinion.<sup>39</sup> The Maliki School was established by Malik Ibn Anas (717-801 AD), which gave considerable weight in interpreting the law to the customary and traditional practices of the people of Medina, a city located in modern day Saudi Arabia, and the location of Islam's first state.<sup>40</sup> The Shafii School was established by Muhammad Idris al-Shafii (769-820 AD), who is credited with being the first to systemize the principles of Islamic jurisprudence (*fiqh*).<sup>41</sup> The fourth school of jurisprudence is the Hanbali School, named after Ahmed Ibn Hanbal (778-855 AD), who studied under Imam Shafii and who strongly opposed the concept of *taqlid*,<sup>42</sup> which is the blind imitation of customary traditions.<sup>43</sup> Jordan falls within the *Sunni* jurisdiction of the Hanafi School of Islamic law.

Within the *Sunni* schools, jurists applied two different approaches to jurisprudence. One was the use of analogy and reasoning (*ray*<sup>44</sup>), and the other was the almost exclusive use of traditions sources (*taqlid*). The schools differ in their resolution of the tension between the two approaches. This ongoing tension between embracing *ray*, which considers Western values and traditions versus *taqlid*, which always rejects them, has been the most pronounced intellectual struggle in the

38. See GLASSE, *supra* note 13, at 228. *Shi'i* Islam is the other major branch of Islam with its own schools of law. *Shi'a* (Arabic for "party" or "faction") refers to those who supported the claim to the Caliphate (successorship of the Prophet Muhammad) of Imam Ali bin Abi Talib, the cousin of Prophet Muhammad. *Shi'a* allege that Imam Ali and his progeny have a divine right to the Caliphate. The *Shi'a* members of Islam deny the temporal and religious authority of the first three Caliphs, as well as their succession. *Shi'a* await the coming of the *Mahdi* (a Messiah-like figure) who will rid the world of evil and restore power to the descendants of Imam Ali. For an excellent introduction to *Sh'i* law see SAYYID TABATBA'I, *SHI'ITE ISLAM* (Seyyed Hossein Nasr trans., SUNY 1977). For an introduction in the cultural identity of *Sh'i* Muslims, see generally G. FULLER AND R. FRANCKE, *THE ARAB SHI'A, THE FORGOTTEN MUSLIMS* (Palgrave 1999).

39. See NEAL ROBINSON, *ISLAM: A CONCISE INTRODUCTION* 151 (1999) [hereinafter ROBINSON].

40. *Id.* at 153.

41. *Id.* at 154.

42. See GLASSE, *supra* note 13, at 397. *Taqlid* (Arabic for "tradition" or "imitation") is the reliance upon the decisions and precedents set in the past, and is the opposite of *Ijtihad*, which is the pursuit of original solutions to questions.

43. See ROBINSON, *supra* note 39, at 155. For a comparative study of the schools of Islamic jurisprudence see C. G. WEERAMANTRY, *ISLAMIC JURISPRUDENCE* 46-58 (1988).

44. See GLASSE, *supra* note 13, at 23. *Ray* (Arabic for "opinion") stands for the legal opinion of the jurist, which is the last resort after the *Quran*, *Sunnah*, and precedents have been exhausted in resolving the legal issue.

Islamic world in the Twentieth and Twenty-First Centuries.<sup>45</sup>

Islamic fundamentalists reject the notion of social evolution and portray the West as having an aggressive political system and a decadent culture.<sup>46</sup> Instead of modernizing Islam, they attempt to Islamize all social institutions. All the while, rejecting separation of religion from politics and defending Islamic political hierarchy in society, male domination and polygamy in the family.<sup>47</sup> They perceive independent judgment as an unacceptable departure from exclusive reliance on traditional sources.<sup>48</sup> This line of reasoning held by Islamic fundamentalists is crucial to the understanding of the Islamic world in general and the development of its legal thought in particular.

Although very few Islamic countries apply pure Islamic law,<sup>49</sup> Islamic jurisprudence is still a main component of all the legal systems in all Islamic and Arab countries. In these legal systems, Islamic law is amalgamated with Anglo or Franco laws inherited from past colonial masters. Yet, this confluence of Islamic law and Anglo and Franco laws

45. See generally M. MOADDEL AND K. TALATTOF, *CONTEMPORARY DEBATES IN ISLAM* (2000) [hereinafter MOADDEL & TALATTOF]. This book provides a good source of the writings of the major Islamic intellectuals of the Nineteenth and Twentieth Centuries, from Jamal al-Din al-Afghani to Imam Khomeini, and valuable insights into their thinking, as well as the major intellectual trends in Islamic thought.

46. *Id.* at 4.

47. *Id.*

48. See *id.* at 14.

As Islam enters the 21<sup>st</sup> Century the position arguing for independent reasoning as a tool for resolving legal and moral issues in Islam has become a fringe movement, often causing its advocates to be branded as “Westernized.” The calls for an Islamic renaissance in the early 20<sup>th</sup> century, modeled after the adoption of useful western cultural, legal, and political values, advocated by the likes of Muhammad Abduh, and Jamal al-Din Al-Afghani, was later replaced by the rejection of all that is non-traditional.. This trend can be traced to the rise of Islamic fundamentalism from as early as the 1940’s, when the Islamic brotherhood movement was established in Egypt. See generally, EDMUND BURKE, *ISLAM, POLITICS, AND SOCIAL MOVEMENTS* (1988); see also, L. BINDER, *ISLAMIC LIBERALISM—A CRITIQUE OF DEVELOPMENT IDEOLOGIES* (1988). (“What is the reason for such vacillation between the Arabic renaissance movement of the early twentieth century and the current cultural, political, and juridical state of affairs? Consider the following: It is true that the first Islamic thinkers of the *Nahda* (renaissance) had the merit of paying particular attention to the political and juridical systems of Europe. They were attracted to the notion of individual rights and liberties. Nevertheless one essential escaped the earliest thinkers [e.g. Abduh and Al-Afghani] as it does most of their present day successors: these basic ideas, whose qualities were so admired, were not the results of some recent miracle, but the end-product of an exceptional historical process . . . and could not be transplanted into our world without displacing and marginalizing the traditional values to which we were so attached, and which occupied every corner of our public space.” *Id.*). See DARYUSH SHAYEGAN, *CULTURAL SCHIZOPHRENIA—ISLAMIC SOCIETIES CONFRONTING THE WEST 4* (Syracuse University Press 2002).

49. Saudi Arabia, Iran, and Sudan.

did not progress into a rational and useful development of legal code.<sup>50</sup> Framers of all these laws sought with varying success to reproduce tradition as the centerpiece of the new legal system, with the ultimate goal of striking a balance between tradition and "modernity."<sup>51</sup>

### B. *Islamic Jurisprudences Approach to Crime and Criminal Responsibility*

Islamic law is known as *Sharia*.<sup>52</sup> *Sharia* teaches respect for human life and human dignity.<sup>53</sup> It encourages Muslims not to interfere with other people's lives, nor to spy or to speculate about other people's personal affairs.<sup>54</sup> For example, the Prophet Muhammad is reported to have said: "if you follow the shortcomings of people you would eventually cause them to sin and be corrupted."<sup>55</sup> Furthermore, Islam is very critical of falsely charging others of crimes they did not commit. Islam calls such a behavior *Al-Kadf*, which literally means to throw something at someone. With respect to Honor Crimes, the *Quran* specifically states those who make such false charges against chaste women and fail to bring forth witnesses to prove the allegations, shall be lashed 80 times and their testimony shall never be accepted again, unless they repent and admit their wrong doing.<sup>56</sup>

Criminal punishment under Islamic law is divided into the following three categories:<sup>57</sup> first, *Hudud*, which are offenses against

50. See DAVID RENE AND JOHN BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* 475 (1985).

51. See Lama Abu-Odeh, *Crimes of Honour and the Construction of Gender in Arab Societies*, in *FEMINISM & ISLAM: LEGAL AND LITERARY PERSPECTIVES* 141, 157 (Mai Yamani ed., 1996) [hereinafter Abu-Odeh in *FEMINISM & ISLAM*].

52. See GLASSE, *supra* note 13, at 361. *Sharia* (Arabic for the way) is the canonical law of Islam as put forth in the *Quran* and the *Sunnah* and elaborated by the analytical principles of the four schools of jurisprudence, the Shafii, Hanbali, Maliki, and Hanafi.

53. *Quran* 5:32. "[I]f anyone slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if someone saved a life it will be as if he saved the life of the whole people." *Id*; See also *Quran* 17:30 "Verily thy Lord does provide sustenance in abundance for whom he pleases, and He provides in a just measure, for He does know and regard all His servants." *Id*.

54. *Quran* 49:12. "O ye believers! Avoid suspicion as much (as possible): for suspicion in some cases is a sin; and spy not on each other, nor speak ill of each other behind their backs. Would any of you like to eat the flesh of his dead brother? Nay, you would abhor it, but fear Allah for Allah is oft-returning most merciful." *Id*.

55. See *The Book of Al-Sunnah*, SUNAN ABU-DAWUD 1290, 1362, Volume III Chapter 1752 (Ahmad Hasan trans., Kitab Bahavan 1993) [hereinafter ABU-DAWUD].

56. See *Quran* 24:4-5. "And those who launch a charge against chaste women, and produce not four witnesses (to support their allegations) flog them with eighty stripes; and reject their evidence even after: for such men are wicked transgressors. Unless they repent thereafter and mend (their conduct) for Allah is oft-forgiving most merciful."

57. See M. LIPPMAN ET AL., *ISLAMIC CRIMINAL LAW AND PROCEDURE* 38 (1988) [hereinafter LIPPMAN].

God, whose punishment is specified in the *Quran* and *Sunnah*,<sup>58</sup> second, *Qisas*,<sup>59</sup> which are crimes of physical assault and murder punishable by retaliation,<sup>60</sup> third, *Tazir*, which are penalties for offenses whose punishment is not fixed by the *Quran* or *Sunnah*.<sup>61</sup>

The specific punishments *Hudud* are specified in the *Quran*. *Hudud* (plural of *hadd*), literally mean "the limits" and consist of the following seven crimes: adultery and fornication (*zina*<sup>62</sup>), defamation (*kadf*), drinking intoxicating fluids (*shurb al-khamr*), theft (*sarika*), highway robbery (*kat al-tariq*), transgression (*baghi*), and apostasy (*ridda*<sup>63</sup>).<sup>64</sup> They are considered by Muslims to be God's restrictive ordinances. In Islam *al-hudud* are absolute and often specified numerically. Consequently, they are set and cannot be changed or altered if the crime is proven because they are considered a right or claim of God. A proven *hadd* crime is not open for pardon or amicable settlement.<sup>65</sup>

Sexual crimes (adultery and fornication) are prohibited in Islam and the *Sharia* demands specific conditions and proof in order to validate a

58. See GLASSE, *supra* note 13, at 141. *Al-Hadd* (Arabic for limit, borderline, or ordinance) is a legal term for the specific offenses and punishments that are defined in the *Quran* and *Sunnah*.

59. See *id.* at 325. *Qisas* is the principle of retaliation for harm inflicted. "Where a life is lost and the victim and perpetrator are of equal status, the death of the perpetrator is an expiation for the death of the victim. In harm short of the taking of life, a similar harm to the perpetrator is an expiation." *Id.*

60. See M. ABU-HASSAN, *AHKAM AL JARIMAH WAL OQUBAH FEL SHARIA AL-ISLAMIAH* [CRIME AND PUNISHMENT IN ISLAMIC JURISPRUDENCE] 474, 487 (in Arabic, Al-Manar Press, Amman-Jordan 1987) [hereinafter ABU-HASSAN] In the case of murder the *qisas* is a life in return for life, unless the family of the deceased agree to take blood money. *Id.*

61. See GLASSE, *supra* note 13, at 40. *Tazir* is a punishment or sanction for offenses at the discretion of the judge, ranging from admonishment to public shaming or whipping. *Id.*

62. See *id.* at 433. *Zina* or unlawful sexual intercourse is a grave sin for which the *Quran* mentions different degrees of punishment, from mild to severe. A conviction requires four eye witnesses, who themselves can be liable for punishment for false accusation, and a confession must be made four separate times, and can be retracted. *Id.*

63. See *id.* at 335. *Ridda* is the apostasy from Islam. An apostate is called a *murtadd*. *Id.*

64. See N. SANAD, *THE THEORY OF CRIME AND CRIMINAL RESPONSIBILITY IN ISLAMIC LAW* 50 (1991) [hereinafter SANAD].

65. See Volume VIII, *The Book of Al-Hudud*, in SAHIH AL-BOUKHARI 259, 263 (Dar Al-Fikr 1993) [hereinafter *Al-Boukhari*]. The Prophet Muhammad is reported to have asked, when people interceded with him for a noble woman who was caught stealing and was faced with having her hand cut off: Do you intercede with me to violate one of the legal punishments of God? Then he addressed the people saying: O people! The nations before you went astray because if a noble person committed theft, they used to leave him, but if a weak person among them committed theft, they used to inflict the legal punishment on him. By God, if Fatima, the daughter of Muhammad committed theft, Muhammad will cut her hand off. *Id.*



suspected case of a sexual crime.<sup>66</sup> Citizens are not given the right to create their own form of punishment. Both the standard of proof and the punishment for a *hadd* crime under *Sharia* is clear, precise, and unambiguous as will be discussed in section D below. Once a sexual crime is established, judges are appointed to apply the law. Individuals are never permitted to take the law into their own hands. Additionally, only a person appointed by the state can execute punishment.

Islamic law has a different approach to non-*hadd* crimes (*qisas and tazir* offenses), which are referred to collectively as ordinary crimes (*jenayat*), such as homicide, bodily harm, and damage to property. Non-*hadd* crimes are prosecuted civilly and any liability incurred, whether blood money or damage, is subject to private claim. There is no prosecution or execution *ex officio*.<sup>67</sup> Pardon and amicable settlements for non-*hadd* crimes are acceptable and even encouraged. Honor Crimes are usually homicides committed by a family member. Since homicide is a non-*hadd* crime, the family can drop its private claim and settle the case with blood money or other settlements. This means that the State's motive to prosecute the crime is greatly diminished.

### C. Proof and Evidence Under the Sharia

Criminal responsibility under Islamic law is based on three general principles: individual responsibility, presumption of innocence, and nullification of penalty by doubt.<sup>68</sup> Individual responsibility means a person cannot be held responsible for the acts of other people. This principle is articulated in the Prophetic *Sunnah* and in the *Quran* with such verses as "Each soul is rewarded on its own account,"<sup>69</sup> and "No burdened soul can bear another's burden."<sup>70</sup>

The presumption of innocence places the burden of proof squarely on the accuser and assures the accused that the certainty of conviction can only be attained by evidence of a high degree of reliability.<sup>71</sup>

Islamic law grants every accused the right to a trial before a judicial body with the specific intent of providing the accused with a fair trial.<sup>72</sup> Thus, extra-judicial behavior is prohibited. Only the sovereign or some representative of the people is allowed to inflict punishment on the

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66. *Quran* 17:32. "Nor come nigh to fornication for it is shameful deed and an evil, opening the road to other evils." See also *Quran* 24:4-5, *supra* note 56.

67. See J. SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 177 (1964) [hereinafter SCHACHT].

68. See SANAD, *supra* note 64, at 71-74.

69. *Quran* 6:164.

70. *Quran* 35:18.

71. See LIPPMAN, *supra* note 57, at 68.

72. See *id.* at 66; see also SANAD, *supra* note 64, at 82.

transgressor. The accused is subject to punishment only after the crime is proven and guilt established. Islamic law also establishes a burden of proof, which varies by the crime. Crimes related to sexual behavior and moral turpitude have a very high burden of proof requiring four witnesses or a direct confession by the adulterer.<sup>73</sup>

Nullification of penalty by doubt is specifically applied to *hadd* crimes, like sexual crimes. When doubt exists with respect to a sexual crime there must be an acquittal of the accused and nullification of any punishment.<sup>74</sup> Yet, a judge has the discretion to impose a lesser punishment usually called *tazir*,<sup>75</sup> when the *hadd* is not fully incurred.<sup>76</sup> It is intended to be a form of chastisement, which could range from a reprimand to lashings to monetary fines.<sup>77</sup>

Failure to meet the burden of proof can bring punishment to the accuser. This is intended to prevent the tarnishing of peoples' reputations by falsely accusing them of serious crimes.

Islamic law shares the common law principle that it is preferable for a guilty person to go unpunished than for an innocent person to be convicted. As such, Islamic law provides for only three forms of criminal evidence: testimony (*shahada*), religious oath (*al-yamen*), and confession (*iqrar*).<sup>78</sup> The Hanbali, Hanafi, and Shafii Schools of law adopted this approach and disclaimed any other form of evidence, such as prior personal knowledge.<sup>79</sup>

Under *Sharia* sexual crimes are proven only by two ways, voluntary confession or the testimony of four honest male witnesses who saw the act with their own eyes and have substantially similar if not identical descriptions of the act and surrounding circumstances.<sup>80</sup> During trial four male witnesses must give testimonial evidence of the actual incident or commission of the sexual crime. Generally, the testimony of female witnesses is not accepted<sup>81</sup>. However, if the act was witnessed by

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73. See LIPPMAN, *supra* note 57, at 42; see also Volume II ODEH, *infra* note 74, at 395.

74. See S. WADI'I, ATHAR AL SHUBUHAT FE DAR' AL HUDUD [THE EFFECT OF DOUBT ON THE NULLIFICATION OF HUDUD CRIMES] 42 (Tauba Press, Al-Riyadh-Saudi Arabia 1998) [hereinafter WADI'I]; see also, Volume II ABDUL KADER ODEH, AL TASHRI' AL JENA'I AL ISLAMI [ISLAMIC CRIMINAL LAW] 359 (Al-Resalah Publishers, 6th edition 1985) [hereinafter ODEH].

75. See WADI'I, *supra* note 74, at 8; see also SANAD, *supra* note 64, at 73.

76. See SCHACHT, *supra* note 67, at 173.

77. See *id.*

78. See ABU-HASSAN, *supra* note 60, at 252-253. See also LIPPMAN, *supra* note 57, at 68; SANAD, *supra* note 64, at 99.

79. See SANAD, *supra* note 64 at 99.

80. *Quran* 24:4. See *supra* notes 54 and 56.

81. See Volume II ODEH, *supra* note 74, at 410. All the witnesses must have observed the offense and concur in the description, time, place, and circumstances, and

females and less than four males; the testimony of two females can substitute for that of a single male.<sup>82</sup> Thus, the testimony can be accepted if it was from three men and two women, two men and four women, and so forth.<sup>83</sup> If the number of witnesses is less than four, then the witnesses are liable for defamation (*kadf*), and the subsequent punishment for defamation will be implemented on them.<sup>84</sup>

There are certain requirements a witness must satisfy before his testimony is accepted such as being a mature male (a minor's testimony is not admissible), good memory, sanity, visual and aural perception (testimony of the blind or deaf is not admissible), good character, authenticity (no exceptions for hearsay because of the element of doubt it generates), and practicing Islam (testimony of non-Muslims is inadmissible for or against Muslims).<sup>85</sup>

Confession is the second type of evidence accepted by Muslim jurists in a sexual crime. Similar to testimony, a confession must meet certain requirements before it is admissible. The confessor must be an adult and sane. The confession must be explicit, clear, and leave no doubt in the mind of the fact finder. The confession must be made without coercion.<sup>86</sup> In the Hanafi School, an extra judicial confession is inadmissible whereas, the Maliki, Shafii, and Hanbali Schools admit such a confession if it is witnessed by two people. Confession in a sexual crime must be repeated four times. In all other *hadd* crimes it need be said only once.

#### D. *Punishment for Sexual Crimes Under the Sharia*

Under *Sharia* the punishment for sexual crimes varies according to the marital status of the parties. Male and female fornicators are lashed 100 times.<sup>87</sup> Adulterers are stoned to death.<sup>88</sup> Although stoning is not

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they are not subject to cross-examination on the facts.). See also LIPPMAN, *supra* note 57, at 70.

82. See Volume II ODEH, *supra* note 74, at 411.

83. See *id.*

84. See *id.* at 410-418. See also SANAD, *supra* note 64, at 100.

85. See *id.* at 399. "Non-Muslims (*dhimmis*) receive the full protection of the criminal law but, as nonbelievers, are not subject to the *hadd* punishments for drinking, fornication or defamation. Non-Muslims may testify against other non-Muslims, but they cannot testify against a Muslim. (Some Jurists permit a non-Muslim to testify against a Muslim in a non-Muslim country and in noncriminal cases involving money or property.); see LIPPMAN, *supra* note 57, at 60.

86. See *id.* at 396-430. See also LIPPMAN, *supra* note 57, at 69-70; ABU-HASSAN, *supra* note 60, at 249-250; SANAD, *supra* note 64, at 102-104.

87. *Quran* 24:2. "The woman and the man guilty of adultery or fornication flog them with hundred stripes; let not compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the last day, and let a party of the believers witness their punishment." *Id.*

specified in the *Quran*, it was ordered by the Prophet Muhammad and enforced by him against Muslims and Jews. It has been followed ever since.<sup>89</sup> In addition to stoning of the adulterer, the Prophet Muhammad is reported to have ordered banishment of the male fornicator.<sup>90</sup> The application and interpretation of banishment varies by each school of Islamic jurisprudence.<sup>91</sup> Since sexual crimes are *hadd* crimes their punishment once proven, cannot be reduced or changed and no mitigating factors can be considered.<sup>92</sup>

The Hanafi School does not mandate banishment but it is within the judge's discretion at the time of punishment to combine both lashing and banishment. Under the Hanafi School, banishment is not a *hadd* but rather a *tazer*, meaning it is not a punishment by God but deterrence from similar bad behavior in the future,<sup>93</sup> falling within the province of the temporal authority. The Maliki, Shafii, and Hanbali Schools all mandate banishment, which they consider a *hadd* punishment similar to lashing.<sup>94</sup>

Jurists differ as to the meaning of banishment. Both Maliki and Hanafi Schools interpret it to mean imprisonment in a town or city other than where the crime was committed.<sup>95</sup> On the other hand, the Shafii and Hanbali Schools interpret it to mean literal banishment to another country or part of the Islamic domain without being imprisoned in that particular destination.<sup>96</sup>

The punishment, however, cannot be exercised unless the crime has been proven in a court of law. As explained earlier this can be established by either voluntary admission or the testimony of four honest

88. See ABU-DAWUD, *supra* note 55 at 1230 (Chapter 1626) (The Prophet is reported to have said, "Take it from me! God has appointed a way for the women [convicted of a sexual crime]: if the parties are married, they shall receive a hundred lashes and be stoned to death. If the parties are not married, they shall receive a hundred lashes and be banished for a year." *Id*; see also *id.* at 1232 (Chapter 1627) [Stoning of Maiz bin Malik (a married adult who confessed the act four times was ordered stoned by Muhammad)]).

The case of the Nigerian woman, Amina Lawal convicted of adultery and condemned to death by stoning is an example of the tensions application of *Sharia* creates relative to a country's civil or common laws. See Somini Sengupta, *As Stoning Case Proceeds, Nigeria Stands Trial*, N.Y. TIMES, January, 26, 2003, at 3. On September 25, 2003 Amina Lawal was cleared by a panel of Muslim judges. See Somini Sengupta, *Facing Death for Adultery, Nigerian Woman Is Acquitted*, N.Y. TIMES, September 26, 2003, at 3.

89. See PETERS, *supra* note 34, 246-248 (The Prophetic tradition ordering stoning, although not mentioned in the *Quran*, can be interpreted as an example of the Prophetic tradition abrogating the text of the *Quran*. Some sources, however, submit that the text requiring stoning was revealed and recited but never recorded.)

90. See Volume II ODEH, *supra* note 74, at 380-383.

91. See *id.*

92. See *Al-Boukhari*, *supra* note 65.

93. See Volume II ODEH, *supra* note 74, at 380.

94. See *id.*

95. See *id.* at 381.

96. See *id.* at 382.

males. In a sexual crime, the witness' testimony must be identical as to time, place, individuals involved, and the nature of the crime. Each witness must be asked separately as to each of these elements. If their testimony is not identical, then the burden of proof has not been met under the *Sharia*. As to the voluntary confession of an adulterer or fornicator must be repeated four times as required by the four schools of Islamic jurisprudence.

If there is no confession and there are no witnesses, the law calls for *Lian* (imprecation), which is an uncommon form of divorce based on the husband accusing his wife of infidelity.<sup>97</sup> Under *Lian*, the husband swears four times that he is speaking the truth about his wife's infidelity and a fifth time calling a curse on himself if he is lying. If the wife does not swear five similar oaths, she is guilty of adultery. Whereas, if she swears the oaths the marriage is effectively dissolved.<sup>98</sup> *Lian* is rooted in Islam's belief that the punishment in the after life is more severe than anything humans can inflict. Therefore, Islamic law is willing to dissolve a marriage with the knowledge that one of the parties escaped punishment, but not forever. Under the *Sharia*, this is more acceptable than punishing someone for a crime for which there is no sufficient proof.

Under *Sharia*, if a woman kills in a fit of fury an adulterer who would otherwise have been stoned to death, there is no punishment for her act. This equality, as stated earlier, is missing from the language of Articles 340 and 98 of JPC.

Thus, it is evident that Islamic law provides for a fairly sophisticated system of evidence, trial, and conviction without gender discrimination. It is a far cry from the alleged application of its tenets, which are often cited to justify Honor Crimes, where the victim is denied the opportunity to mount a defense and the accuser is spared the burden of proving guilt. To claim the behavior of the perpetrator committing these crimes is in line with Islamic law is both simplistic and wrong. It is clear that death is not even a penalty for fornication under Islamic law.

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97. See GLASSE, *supra* note 13, at 244.

98. *Quran* 24:6-7. "And for those who launch a charge against their spouses and have no evidence but their own word, their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth. And the fifth (oath) that they solemnly invoke the curse of Allah on themselves if they are telling a lie." See also LIPPMAN, *supra* note 57, at 71; GLASSE, *supra* note 13, at 244.

### III. The Treatment of Honor Crimes Under the Jordanian Penal Code

#### A. *Historic Roots of the Jordanian Penal Code*

From the Fourteenth Century until the end of the First World War, greater Syria, which consists of present-day Jordan, Lebanon, Syria, Palestine, and Israel, was under the rule of the Ottoman Empire.<sup>99</sup> After the end of the First World War, the Ottoman Empire lost its political control over the region, partly because of a revolution led by Hussein bin Ali, the Sharif of Mecca.<sup>100</sup> The revolution was supported by Britain to undermine the Ottoman Empire's rule in Hijaz, the western part of modern day Saudi Arabia.<sup>101</sup> In return the Sharif asked the British for a pledge of financial and political support for his movement with the ultimate goal of establishing an independent Arab government in the Arabian Peninsula and most parts of greater Syria.<sup>102</sup>

The revolt never fulfilled its ultimate goal of an Arabic state headed by Sharif Hussein. While Great Britain was promising the Sharif independence should he continue to press his revolt against the Turks, Great Britain and France entered into the 1916 Sykes-Picot agreement, dividing the region into artificial political bodies representing their respective spheres of influence.<sup>103</sup> Hence, the Ottoman Empire's control of the region was assumed by Great Britain and France. The current geopolitical map of the Middle East was drawn as a result of this process, and it has remained practically unchanged ever since.

In 1917, Great Britain issued the Balfour Declaration, stipulating

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99. See W. CLEVELAND, *A HISTORY OF THE MODERN MIDDLE EAST 141-160* (1994) [hereinafter CLEVELAND]. "For the Arab people who have lived within the [Ottoman's] domains, the dismemberment of the Ottoman Empire marked more than just the end of a particular state; it also marked the end of a political, social, and religious order that had shaped their patterns of public behavior for 400 years. Ottoman rule had applied with differing degrees of intensity in various regions of the Arab provinces. That kind of adaptability was the very essence of the Ottoman system: It governed directly the areas that could be efficiently controlled and allowed a certain degree of latitude to chieftains and feudal amirs in more remote locations." *Id.* at 157-58.

100. See *id.* at 148. The Sharif of Mecca, was an honorary title granted by the Ottoman Caliph to his representative in Arabia. Usually it was awarded to the head of a family that claims to be a direct descendant of the Prophet Muhammad.

101. See A. GOLDSCHMIDT, *A CONCISE HISTORY OF THE MIDDLE EAST 187* (1991) [hereinafter GOLDSCHMIDT].

102. See *id.* at 187. The roots for these conditions are in the controversial McMahon-McMahon letters, exchanged between the Hussein and the British high commissioner of Egypt and Sudan in 1915-1916. *Id.*; see also CONGRESSIONAL QUARTERLY INC., *THE MIDDLE EAST 19* (C.Q. Press 2000) [hereinafter THE MIDDLE EAST]; CLEVELAND, *supra* note 99, at 149.

103. See THE MIDDLE EAST, *supra* note 102, at 381. See also *Sykes-Picot Agreement*, Avalon Project, available at <http://www.yale.edu/lawweb/avalon/mideast/sykes.htm> (last visited November 5, 2004).

that "it views with favor the establishment in Palestine of a national home for the Jewish people, and will use [its] best endeavors to facilitate the achievement of this objective."<sup>104</sup> In 1921, Abdullah, the son of Sharif Hussein met with the British colonial secretary Winston Churchill. Abdullah realized that Great Britain was not going to fulfill its promise to make his father the "King of the Arabs." Therefore, he convinced Churchill to exclude the territory east of the Jordan River, historically part of Palestine, from the Balfour Declaration. Abdullah headed this newly created political entity called Trans-Jordan.<sup>105</sup> Trans-Jordan proclaimed its independence from the British Crown on May 25, 1948, and was re-named the Hashemite Kingdom of Jordan.<sup>106</sup>

All this political and military activity upon the region had cultural, legal, and social ramifications in addition to its political impact. A modernization movement was created in the Nineteenth Century due in greater degree to the contact between the Islamic world and the West.<sup>107</sup> Such movement was initiated by the Ottoman government's adoption of the French Commercial and Penal Code along with the establishment of a system of secular courts.<sup>108</sup> The *Majalla*, a publication issued between 1869 and 1876, encompassed the newly created Ottoman civil law, which was an amalgam of French and the Hanafi School of law.<sup>109</sup>

The historical roots for crimes of passion, where the male kills or severely injures a spouse or female relative because she committed a sexual crime, lie in Article 188 of the 1858 Ottoman criminal code, which states:

He who has seen his wife or any of his female unlawfully with another in a state of ugly adultery and then beat, injured, or killed one or both of them will be exempt from penalty. And he who has seen his wife or one of his female unlawfully with another in an unlawful bed and

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104. Letter from Arthur James Lord Balfour, of the British Foreign Office, to Lord Rothschild, dated November 2, 1917; see CLEVELAND, *supra* note 99, at 227. See also *Balfour Declaration*, Avalon Project, available at <http://www.yale.edu/lawweb/avalon/mideast/balfour.htm> (last visited November 5, 2004).

105. See GOLDSCHMIDT, *supra* note 101, at 193-194; see also CLEVELAND, *supra* note 99, at 157.

106. See *id.* at 194. "No one expected this Emirate of Trans-Jordan to last long, but it did. While the rest of [greater Syria] was seething with Jewish-Arab strife, Trans-Jordan became an oasis of tranquil politics and economic development." *Id.*

107. See LIPPMAN, *supra* note 57, at 100. "The first sectors affected by the modernization movement were criminal and civil justice, the economy, and the military. In these fields the deficiencies of traditional Islam were most apparent to modernists. The gap between new conditions and traditional law was unbridgeable, and thus the rulers opted for the Western approach." *Id.*

108. See *id.* at 101.

109. See N.J. COULSON, A HISTORY OF ISLAMIC LAW 151-152 (1964).

then beat, injured or killed one or both of them, will be excused.<sup>110</sup>

This article was taken verbatim from Article 324 of the French Criminal Code of 1810, which stated:

Pourra bénéficier d'une excuse absolutoire quiconque, ayant surpris son conjoint, son ascendant, sa descendante ou sa soeur en flagrant delit d'adultere ou de rapports sexuels illegitimes avec un tiers se sera rendu coupable sur la personne de l'un ou l'autre de ces derniers, d'homicide ou de lesion non premedites.

L'auteur de l'homicide ou de la lesion pourra bénéficier d'une excuse attenuante s'il a surpris son conjoint, son ascendant, sa descendante ou sa soeur avec un tiers dans une attitude equivoue.<sup>111</sup>

As such the French Article is also the historical legal source for the treatment of Honor Crimes in the Lebanese and Syrian Penal Codes, which were drafted after the fall of the Ottoman Empire. Article 548 of the Syrian Penal Code, which is an almost word for word adaptation of Article 562 of the Lebanese Penal Code, reads:

1. He who catches his wife or one of his ascendants, descendants or sister committing adultery or illegitimate sexual acts with another and he killed or injured one or both of them benefits from an exemption of penalty.

2. He who catches his wife or one of his ascendants or sister in a suspicious state with another benefits from a reduction of penalty.<sup>112</sup>

The current JPC progressed from a fusion between the Ottoman Code of 1858 and the French Code of 1810. More specifically, Article 340 of the JPC has its most recent origins in Articles 562 and 548 of the Lebanese and Syrian Penal Codes, respectively. Article 340's current language was continuously adopted from 1936 until the current criminal code number 16 was issued in 1960. Specifically Article 340 states:

1. He who surprises his wife, or one of his female relatives committing adultery with somebody and kills, wounds, or injures one or both of them shall be exempt from penalty.

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110. See Abu-Odeh in *FEMINISM & ISLAM*, *supra* note 51, at 144.

111. See *id.* at 143-144. Article 324 in the French Penal Code was abolished by Article 17, Law no. 617/75 issued on 7 November 1975. *Id.* at 143. (The article gives the defendant an exemption from penalty for the killing of his wife, sister, ascendant, or descendant if he catches them in an act of flagrant adultery, and it offers a reduction in penalty if the injury happens because of catching them in a suspicious state.)

112. See *id.* at 144.



2. He who surprises his wife, or one of his female ascendants or descendants or sisters with another man in an unlawful bed, and he kills, wounds or injures one or both of them, shall be eligible for a reduction in penalty.<sup>113</sup>

The 1960 JPC derived most of its language from the Syrian and Lebanese Penal Codes. The language of the current JPC provides identical mitigating factors as those in the Syrian and Lebanese Penal Codes. One should not be misled, however, to believe that the adoption or enactment of legislation in an Arabic or Islamic country is done without an emphasis on the compatibility of such legislation with Islamic law. Such a requirement is implicit in the language of most Arab and Islamic constitutions including the Jordanian Constitution, which states: "Islam is the religion of the State."<sup>114</sup>

### *B. Treatment of Murder in the Jordanian Penal Code*

The current JPC follows the three-tier classification for murder of first degree, second degree, and manslaughter similar to the United States system.

Under the JPC, Articles 326 through 329 codify first-degree murder, which is defined as the intentional killing of another.<sup>115</sup> The punishment for first-degree murder is 15 years imprisonment with hard labor.<sup>116</sup> Article 327 enumerates certain circumstances under which intentional killings are punishable by life imprisonment with hard labor.<sup>117</sup> Such circumstances include committing the crime of murder to facilitate or in preparation of a felony, against a government official, on more than one person, or for torturing and killing the victim. Article 328 states instances where the intentional killing of another is punishable by death such as if the killing was planned, done to facilitate a felony, or committed against the perpetrator's ascendants.<sup>118</sup>

Article 330 defines second-degree murder to include the commission of an act of violence, like hitting or attacking someone or giving them poisonous materials with no intention of actually causing the death of that individual, yet death does occur. Second degree murder is punishable by a minimum of five years of imprisonment with hard labor.<sup>119</sup>

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113. See JPC no.16, Article 340 (1960) (in Arabic).

114. See Jordanian. Const. art. 2.

115. See JPC no.16, Article 326 (1960) (in Arabic).

116. See *id.*

117. See *id.*

118. See JPC no.16, Article 328 (1960) (in Arabic).

119. See JPC no.16, Article 330 (1960) (in Arabic).

Article 343 codifies manslaughter. It states that one who causes the death of another as a result of their negligence or for failure to follow the proper rules and regulations is punishable by imprisonment from six months to three years.<sup>120</sup>

Generally, Honor Crimes should be prosecuted as first degree murders since they are typically premeditated and committed with the assistance, collaboration, and planning of several family members. Even an act of violence against a female that unintentionally kills her is considered second degree murder, punishable by a minimum of five years.

*C. Article 340: The Near Impossibility of Proving Mitigating Factors*

Article 340 of the JPC specifically addresses mitigating factors in the case of a husband catching his wife in an adulterous or unlawful act. The Article provides for exemption from punishment or a reduction of penalty, if the husband kills, wounds, or injures a female relative caught in the adulterous act.

The language of Article 340 is not gender neutral and a Jordanian woman committing a similar act cannot invoke either the exemption from, or the reduction of penalty, awarded to Jordanian males. This general distinction poses potential constitutional issues. Article 6 of the Jordanian constitution states that Jordanians are equal under the law with equal rights and obligations. The plain language of Article 6 evidences the intent of the framers of the Jordanian Constitution that all laws and regulations should assure the equality of all Jordanians. Therefore, existing gender discrimination set forth in Article 340 is potentially unconstitutional. Furthermore, the appellate court's application of Article 340 and other similar criminal discrimination in law articles is potentially unconstitutional as well.

Article 340, however, is rarely used as a defense for premeditated Honor Crimes because it requires the husband to be surprised, in order to take advantage of the reduction in punishment. Other requirements curtail the use of Article 340 by male perpetrators of pre-meditated Honor Crimes, including the following requirements: that the husband must catch the victim in the act, commit the crime immediately after the discovery, and the perpetrator must be related to the victim. These requirements are very similar to many other Penal Codes, both in the Middle East as well as in the West, which mitigate the severity of the crime committed by husbands under the influence of rage and surprise from witnessing their wives in the adulterous act.

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120. See JPC no.16, Article 343 (1960) (in Arabic).

By way of comparison, other Islamic countries have codified legislation similar to Article 340 in varying degrees. For example, the modernized Lebanese and the United Arab Emirates Penal Codes are gender neutral allowing both the wife and the husband to equally benefit from the mitigating factors.<sup>121</sup> On the other hand, Tunisian and Moroccan statutes provide no mitigating factors for crimes of passion and impose the death penalty on a husband who kills his wife after catching her in an adulterous act.<sup>122</sup> Under Tunisian and Moroccan law, mitigating factors are only available to acts resulting in an injury upon the *wife* or the *husband* by the respective spouse and does not cover criminal acts against other female or male relatives.<sup>123</sup>

*D. The Alternate Standard for Crimes of Passion under Article 98 of JPC*

As stated earlier, Article 340 is very specific and requires several elements, such as the elements of surprise and immediacy of the act before the perpetrator is allowed to take advantage of a reduction in punishment. The provision most commonly used by male perpetrators of Honor Crimes, however, is Article 98. Article 98 is part of the general provisions of JPC (as opposed to the particular ones which deal with specific crimes such as murder) and it states:<sup>124</sup>

He who commits a crime in a fit of fury resulting from a wrongful and dangerous act on the part of the victim shall benefit from a reduced penalty.

Prior to 1964, the Jordanian Court of Cassation (JCC) held that nothing less than a minor case of self-defense could be construed as “wrongful and dangerous act” on the part of the victim to justify the application of Article 98.<sup>125</sup> Historically, the court held a woman’s dishonorable action, or even her illegitimate pregnancy did not amount to a case of wrongful and dangerous act against the male.<sup>126</sup> In 1964, however, the JCC reversed its position and held the applicability of

121. See *Asma Khader, Esq., AL-QANON KA AHAD AL-AWAMEL ALMOATHERA ALA GARAIM AL-SHARAF (LAW AS ONE OF THE FACTORS INFLUENCING HONOR CRIMES)*, Sisterhood-is-Global Institute, at 17-18 (in Arabic, on file with Author, Amman June 1-2, 1999) [refers to Lebanese Penal Code, Article 562, and United Arab Emirates Penal Code, Article 334.].

122. See *id.* at 18, 20 (refers to Tunisian Law Number 72, dated July 12, 1993, and Moroccan Penal Code, Article 422).

123. See *id.*

124. See Abu-Odeh in *FEMINISM & ISLAM*, *supra* note 51, at 157-158.

125. See *id.* at 159; see also Ruane, *supra* note 21, at 1554.

126. See Abu-Odeh in *FEMINISM & ISLAM*, *supra* note 51, at 158 (citing Cassation Criminal Court 53/53, p.578, 1953).

Article 98 to Honor Crimes, arguing it complements Article 340. The JCC held that if the high standard required by Article 340 is not established the court can look to Article 98 for mitigating factors and reduction of punishment.<sup>127</sup>

The post-1964 decision allowed the interpretation of Article 98 to include the application of mitigating factors to crimes of passion committed under fury resulting from wrongful and dangerous acts. Under the post-1964 standard, such acts consist of anything from the victim's illegitimate pregnancy to walking alone at night, which could be regarded as an unjust aggression on the family's honor. Therefore, according to the JCC the defendant benefits from a reduction of penalty if he kills a female family member in a fit of fury resulting from acts that can be interpreted as wrongful and dangerous under Article 98.

The JCC and lower courts subsequently produced opinions allowing a defendant who did not meet the requirements of Article 340 to still benefit from a reduction of punishment under Article 98. Since, many Honor Crimes are committed on mere suspicion, the male relative often could not fulfill the requirements of Article 340, and therefore mounted a defense based on Article 98, making it the lynchpin for justifying shorter sentences for Honor Crimes.<sup>128</sup>

The interpretation of Article 98 has varied by the courts, resulting in its continued misapplication and prompting one commentator to state that there is "no pattern in [the court's] decisions, which can provide a clear sense of the boundaries between what is and what is not tolerated."<sup>129</sup> The ambiguity is often utilized by the offender to change the crime description from intentional first-degree murder to a lesser degree murder. The end result has been confusion among practitioners due to varying application of the article's scope and limitations. Presently in Jordan, there is no uniformly applied standard in Honor Crime cases.

The JCC, for example, assumed a man who killed his sister two days after he learned she had been caught committing adultery had done so in a fit of fury.<sup>130</sup> Similarly, in another case, the JCC held one day was not enough for the defendant to regain his sensibilities and applied

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127. *See id.*

128. *See* Lehnardt-Lehr, *supra* note 19, at 421-422; *see also* Abu-Odeh in FEMINISM & ISLAM, *supra* note 51, at 157.

129. *See* Abu-Odeh in FEMINISM & ISLAM, *supra* note 51, at 161.

130. *See Ghoson Rahal, AL-ATHAR AL-MOHELLA WA AL-ALATHAR AL-MOKAFEFA FE QANON AL-OQOBAT AL-ORDONI WA ESTE'RAD AL-TATBIQAT AL-QANONIAH (ABSOLVING AND MITIGATING FACTORS IN THE JORDANIAN PENAL CODE AND A SURVEY OF THEIR JUDICIAL APPLICATION)*, Sisterhood is Global Institute, at 4 (in Arabic, on file with Author, December 12, 1996) (summarizing Jordanian Cassation Court, decision 112/66, 1967).

Article 98 to acquit a man who had killed his sister a day after he became certain the rumors about her illegitimate pregnancy were true.<sup>131</sup>

The JCC in another case held a killing was not done in a fit of fury when the perpetrator murdered his sister as she left the courthouse after being arraigned for charges involving indecent public acts.<sup>132</sup> Similarly, the courts have held the following crime scenarios did not to meet the "wrongful and dangerous act" under Article 98: crime committed upon seeing the parents distraught by the daughters commission of fornication, crime committed not shortly after knowing about a sister's adulterous affair,<sup>133</sup> crime based on unproven rumors,<sup>134</sup> and a crime committed based on verbal altercations during which the female disrespected the male, abused him verbally, and disobeyed his requests,<sup>135</sup>. Therefore, there is no discernable pattern for the limits and boundaries as to what the court will consider tolerable social behavior.

In addition to the language of Articles 98 and 340 the Jordanian courts consider a variety of subjective sentence-reducing factors. These considerations are solely within the discretion of the court. Examples of such factors previously considered by the courts include the following:

1. The criminal's early age or the fact that he supports a family<sup>136</sup>;
2. Presenting a reconciliation document between the families of the victim and the perpetrator;
3. The family of the victim withdrawing their prosecution against the perpetrator; and
4. The victim's own behavior and the extent it was considered to have been lewd or dishonorable to her family.

The courts' expansion of the scope of Article 98, to include premeditated Honor Crimes, is a usurpation of the legislature's intent that such crimes to be treated under Article 340. The result is an expansive attitude towards what is considered an Honor Crime and the misapplication of Article 98. The courts' misapplication disregards the Article 98's plain meaning. Article 98 should not be applied when the

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131. *See id.* at 5 [summarizing Jordanian Cassation Court decision 47/73, 1973.] The dissent argued that Article 98 should not apply, rather, the surrounding circumstances should be considered as mitigating factors for intentional first degree murder.

132. *See id.* at 5 [summarizing Jordanian Cassation Court decision 18/69, 1969].

133. *See id.* at 6 [summarizing Jordanian Cassation Court decision 168/79, 1980].

134. *See id.* at 6 [summarizing Jordanian Cassation Court decision 221/89, 1991].

135. *See id.* at 6 [summarizing Jordanian Cassation Court decision 171/89, 1991].

136 This one of the main reasons for the utilization of minors to commit Honor Crimes.

element of uncontrollable rage is missing.

#### IV. Conclusion

Extra judicial killings committed in the name of Honor Crimes are in direct violation of the basic tenants of Islamic law. Islamic law provides a legal framework, which sets forth a high burden of proof before punishment can be imposed for a crime. It discourages any infringement on the privacy of the individual and pre-judgment of an innocent. As set forth above, the legal framework provided by Islamic law showed capital punishment to be an acceptable punishment for adulterers only. Capital punishment, however, is an end result to an elaborate judicial process that provides the accused with the chance to provide a defense and requires the accuser to meet the very high standard of proof required to support the charge.

Failure to prove an allegation is punishable for tarnishing a person's reputation (*Kadf*). Islamic law affords both men and woman equal treatment under the law when it pertains to proving the crime. Punishment is imposed equally, regardless of sex.

The JPC, which draws heavily from Islamic law, has yet to properly provide a unified and standardized treatment of Honor Crimes similar to that provided under Islamic law. Article 340 provides a reduced punishment when the Honor Crime meets the elements of surprise and immediacy. Generally, Honor Crimes are the result of premeditation and careful planning and do not fall under Article 340.

Article 98 of the JPC provides mitigating factors for crimes committed in a fit of fury as a result of a wrongful and dangerous act on the part of the victim. Since 1964, the Jordanian courts' interpretation of what constitutes "wrongful and dangerous" includes pregnancy, loss of virginity, extra-marital relationships, dating, and many other social and personal activities. The courts' holdings under Article 98 are influenced by the traditional understanding of honor and its relationship to the female's body rather than by what should be legally considered "wrongful and dangerous" acts. Currently, the spectrum of "wrongful and dangerous" acts under Article 98 is too wide and varied. Legislation is presently needed in Jordan to provide uniformity as to what constitutes "wrongful and dangerous" acts. Such legislation must set forth the original intent of Article 98's application to crimes of passion and not premeditated murder.

Furthermore, both Article 340 and 98 and not gender neutral. Both provide mitigating factors and reduction of penalty for a male only. Such gender discrimination raises issues of basic inequality as well as issues of unconstitutionality of such disparate treatment. Women are equally

capable of exhibiting anger and surprise.

The Jordanian legislature must institute a more equitable punishment for murders committed in the context of Honor Crimes. The current system, which allows the state to elude prosecution of a crime once the aggrieved party presses no charges, is a definite obstacle. Honor Crimes are a fertile ground for such abuse because the perpetrator is almost always a family member committing the crime against another female family member. The state must rise up as the protector and grantor of the rule of law. Such a duty should not be abdicated nor mitigated.

Judges should not haphazardly interpret the legal code and their role should be the administration of equal justice, rather than focusing on curbing the rise of certain western-style sexual norms.

The punishment for sexual crimes should also be adjusted to reflect the seriousness of the crime. By imposing stricter punishment on an adulterer or a fornicator, society will be more willing to allow the adulterer or fornicator to go to jail versus dying at the hands of a family member. It will also send a very strong message that the fight against extra-judicial killings is not an attempt to plunge the society into moral decadence, or to loosen the social fiber of the Jordanian society. Instead, the message will be that Honor Crimes do not belong in a society based upon laws and civil institutions, where each citizen is afforded due process irrespective of his or her sex, religion or any other immutable characteristic.

Finally, one must acknowledge, and indeed accept that societies differ in their social and moral standards of what is or is not acceptable personal behavior. Attempting to negate these variations between cultures and civilizations generates ill-will and resentment. Imposing the values of one culture on another is never the answer, and history is filled with many examples to that effect. The current tension and extreme sensitivity between the West and Islam is indeed at a new zenith and should underscore the importance of providing solutions to problems from within the cultural domain that carries the problem, and not to import solutions that do not take into consideration the unique nature of each cultural environment.

This article shows that an answer-from-within to the tragedy of Honor Crimes does exist. Creative answers and new approaches based on sound legal and jurisprudential arguments are possible.

Ultimately, the answer may not be to the satisfaction of everyone, but if it brings about the fair treatment of the accused and the assurance of procedural due process, it will be a major step forward. Utilizing the mechanisms of crime and criminal justice in Islamic law and rectifying the irregular interpretation and misapplication of articles of the JPC can

accomplish such a goal.

As an old proverb states, it is better to light a candle than to curse the darkness.



