

Extracted provisions from the penal codes of Arab states relevant to `crimes of honour`

Sources:

Penal codes of Arab states (translated by Lynn Welchman)

Lama Abu-Odeh, 'Crimes of Honour and the Construction of Gender in Arab Society,' pp.141-194 in Mai Yamani (ed.), *Feminism and Islam*, London 1996

Fadi Mughayzel and Miriyella 'Abd al-Sater, *Crimes of Honour: A Legal Study*, Beirut (Joseph and Laure Mughayzel Institute) 1999 (Arabic text only)

Sabah al-Mukhtar, 'Iraq', in *7 Yearbook of Islamic and Middle Eastern Law* 2000-2001.

Please note:

1) this resource document is not exhaustive – that is, these extracts do not represent all the penal provisions in all the penal codes that have relevance to 'crimes of honour' (or 'honour killings'); and 2) certain provisions (noted in the text) are in need of verification which we are currently seeking.

Any suggestions for additions, updates, amendments etc from those using this site, particularly those with original texts for inclusion, and having further or updated information would be gratefully received.

ANTECEDENTS:

FRANCE

Article 324 Penal Code 1810

(repealed by Article 17 law no.617/75 of 7/11/75)

He who catches his spouse, his female ascendant, female descendant or his sister in the act (en flagrant délit) of adultery or illegitimate sexual relations with a third party and commits unpremeditated homicide or wounding against the person of one or the other of them may be exempted from liability.*

He who commits murder or wounding may be liable to a lesser penalty [in view of extenuating circumstances] if he has surprised his spouse, female ascendant or descendant or sister with a third person in a suspicious situation.**

* une excuse absolutoire quiconque

** une attitude equivoque.

(Source: Abu Odeh (in French). **To be verified:** regarding whether by 1975 the reduction in penalty remained but the absolute excuse had been removed.)

OTTOMAN:

Article 188 Penal Code 1858

He who has seen his wife or any of his female *mahrms** with another in a state of disgraceful adultery and has beaten, injured, or killed one or both of them will be exempted [from liability] (*ma`fu*). He who has seen his wife or one of his female *mahrms* with another in an unlawful bed and has beaten, injured or killed one or both of them will benefit from an excuse (*ma`dhur*).

**mahram*: relative within the prohibited degrees of relationship (i.e. the woman cannot marry the subject)

ALGERIA

Article 279 Penal Code 1991

Murder, wounding and beating shall be subject to excuse if committed by one spouse against the other spouse or against his/her partner at the moment of surprising them [*in flagrante delicto*] in the act of adultery.

EGYPT

Article 237 Penal Code (no.58 1937):

He who surprises his wife committing adultery [*in flagrante delicto*] and immediately kills her and the person committing adultery with her, shall be liable to a prison sentence instead of the penalties provided for in Articles 234, 236.

Article 17:

In crimes requiring the sympathy of the court, the judge can reduce the penalty in the following way: in place of capital punishment, permanent or temporary hard labour [...]

(See Abu-Odeh p.162 on ‘extenuating circumstances’ under this article)

IRAQ

Article 409 Penal Code 1966

Whosoever surprises his wife or one of his [female] *mahrims* in the act of adultery [*in flagrante delicto*] or finds her in one bed with her partner and kills them immediately or kills one of them, or attacks both or one of them in an assault that leads to death or permanent disability, shall be punished by prison for a period not exceeding three years.*

Use of the lawful right of defence is not permitted against whoever benefits from this excuse and the rules of aggravating circumstances shall not be applied against him.

(*another source reads: shall benefit from a reduction in penalty: **to be verified**)

RCC Resolution No.49 of 2001 “absolutely absolves from liability a man who kills or attempts to kill another who has raped or forced a blood relative of the killer to have sexual intercourse with him. Further and by way of protection to the killer, should he become the victim of revenge, such revenge will be deemed an aggravating circumstance.”

RCC Resolution No.6 of 2001 “provides that when a man kills his wife or a blood relative by reason of a crime of honour and then kills another person who taunts the killer and imputes dishonour then the second crime will be deemed to be subject to an extenuating circumstance. Any one who kills the said killer will be subject to a death sentence.”

(Source: Sabah al-Mukhtar p.222).

JORDAN

Penal Code No.16 1960: Article 340:

Article 340 as amended by Temporary Law no. 86 of 2001: repeated in Temporary Law no. 12 2010 with minor edits:

1. There shall benefit from the mitigating excuse (*`udhr mukhaffaf*) whosoever surprises his wife or one of his ascendants or descendants in the crime of adultery or in an unlawful bed, and kills her immediately or kills the person fornicating with her or kills both of them or attacks her or both of them in an assault that leads to death or wounding or injury or permanent disability.
2. Shall benefit from the same excuse the wife who surprises her husband in the crime of adultery or in an unlawful bed in the marital home and kills him immediately or kills the woman with whom he is fornicating or kills both of them or attacks him or both of them in an assault that leads to death or wounding or injury or permanent disability.
3. The right of lawful defence shall not be permitted in regard to the person who benefits from this excuse nor shall the provisions of “aggravated circumstances” (*zuruf mushaddida*) apply.

[This text of article 340 was introduced by Temporary Law no. 86 of 2001: previously it read as follows:

- i) He who surprises his wife, or one of his [female] *mahrims* committing adultery with somebody [*in flagrante delicto*], and kills, wounds, or injures one or both of them, shall be exempt from liability.*
 - ii) He who surprises his wife, or one of his female ascendants or descendants or sisters with another in an unlawful bed, and he kills or wounds or injures one or both of them, shall be liable to a lesser penalty [in view of extenuating circumstances].**
- * *`udhr muhill*: “shall benefit from the exculpating excuse;”
** *`udhr mukhaffaf*: “shall benefit from the mitigating excuse”]

Article 98:

He who commits a crime in a state of great anger resulting from a wrongful* and dangerous act on the part of the victim shall be liable to a lesser penalty [in view of extenuating circumstances].

**ghayr muhiqq*

KUWAIT

Article 153 Penal Code

He who surprises his wife in the act of adultery (*in flagrante delicto*) or surprises his daughter, mother or sister in the act of sexual intercourse with a man, and immediately kills her or the man who is committing adultery or having sex with her or kills both of them shall be punished by prison for a period not more than 3 years and a fine of not more than 3000 dinars*) or by one of these two penalties.

*to be verified amount of fine

LEBANON

4 August 2011: Parliament votes to remove article 562 from the Penal Code.

Previous developments:

Article 562 Penal Code 1943 (as amended 1983, 1994, 1995, 1996 and 1999):

Whosoever surprises his spouse or one of his [female] ascendants or descendants or his sister in the crime of adultery (*in flagrante delicto*) or in a situation of unlawful sexual intercourse, and kills or wounds one of them unintentionally shall be liable to a lesser penalty [in view of extenuating circumstances].

This provision was amended on 10th February 1999; until then it had read as follows:

1. He who surprises his spouse or one of his [female] ascendants or descendants or his sister in the crime of adultery (*in flagrante delicto*) or in a situation of unlawful sexual intercourse and unintentionally kills or injures one of them shall benefit from exemption of penalty.
2. He who kills or injures if he surprises his spouse or one of his [female] ascendants or descendants or his sister in a suspicious situation with another shall benefit from a reduction in penalty.

Article 252:

Whosoever commits the crime in an outburst of extreme anger resulting from a grave and unlawful action of the victim shall be liable to a lesser penalty.

Article 193:

If the judge establishes that the motive was honourable the following penalties shall apply: life imprisonment instead of capital punishment, etc. [.....]

The motive is honourable (*sharif*) if it is characterised by chivalry and decency and free of [the taint of] selfishness, personal considerations and material gain.*

*Final sentence added by decree 112/83: source Mughayzel and Abd al-Satar

Article 253:

If there are mitigating circumstances in the case, the court shall rule as follows: instead of the death penalty, heavy labour for life or for a period of 7-20 years; instead of life imprisonment, prison for not less than 5 years; and the court may reduce every other penalty in the case of a felony to three years if its minimum penalty is more [than 3 years], and may reduce the penalty by half if the minimum penalty is not more than three years, or may with a reasoned decision give a sentence of at least one year, unless it is a repeated offence.

LIBYA

Penal Code Article 375

Whosoever surprises his wife, daughter, sister or mother in the act of adultery (*in flagrante delicto*) or in illegitimate sexual intercourse and immediately kills her or her partner or both in response to the assault that has affected his honour (*sharaf*) or the honour of his family, shall be punished by a prison sentence. If the act leads to grave or serious injury of the said persons in these circumstances, the penalty shall be prison for not more than two years. Mere beating or light injury in such circumstances shall not be penalised.

MOROCCO

Penal code 1963 as amended: Article 418:

Lesser penalties [in light of extenuating circumstances] shall be applied to crimes of murder, wounding or beating, when committed by a husband against his wife and her partner when he surprises them in the act of adultery (*in flagrante delicto*)

Article 420:

Lesser penalties [in light of extenuating circumstances] shall apply to crimes of wounding and beating without intent to kill, even if death does [in fact] result, if committed by the head of a family against persons whom he has surprised in his house in a situation of unlawful sexual intercourse.

Article 422:

No reduction in penalty may be applied in the crime of murder of ascendants.

Article 423:

When the legal excuse [of extenuating circumstances] is established the penalties shall be reduced to:

1. prison from one to five years in the case of felonies (*jinaya*) punishable in law by capital punishment or life imprisonment;
2. prison for 6 months to 2 years for all other felonies;
3. prison for one to three months in cases of misdemeanors (*junha*)

OMAN

Penal Code Article 252:

He who surprises his wife committing adultery (*in flagrante delicto*) or surprises his mother or his sister or his daughter in an unlawful bed, and immediately kills or injures her or kills or injures the person committing adultery with her or in the bed with her, or kills or injures both of them, may be exempted from liability or be liable to a reduced penalty according to the provisions of article 109 of this law.

Article 109:

In the case of exemption liability there shall be no penalty, while in the case of liability to a lesser penalty [in view of extenuating circumstances] the penalty shall be reduced as follows:

1. if the action is a felony giving rise to the capital punishment or life imprisonment it shall be reduced to prison for at least one year;
2. if the action is another felony it shall be reduced to prison for six months to one year.....[..]

PALESTINE

Decision on Law no.71 of 2011 regarding the amendment of the Criminal Code in force in the Northern Governorates and the Criminal Code in force in the Southern Governorates (*Official Gazette* no.91 of 10 October 2011) (signed by President Mahmoud Abbas 5 May 2011):

Article 1: repeals article 340 from the 1960 (Jordanian) Penal Code that was till then in force in the West Bank;

Article 2: amends article 18 of the (British Mandate-issued) Criminal Code in force in the Gaza Strip (by adding “and this does not include crimes of killing women against the background of ‘family honour’” at the end of Article 18 which allows the court to “accept the excuse” made on grounds of self defence or defence of one’s own honour or that of other persons etc);

Article 3: repeals “anything which contradicts this Decision in the law”

SYRIA

Article 548 Penal Code 1949 (as amended 1953):

1. He who surprises his spouse or one of his ascendants or descendants or his sister committing adultery or illegitimate sexual acts with another person and he unintentionally kills or injures one or both of them benefits from an exemption of penalty.
2. The perpetrator of the murder or injury shall benefit from a reduction in penalty if he surprises his spouse or one of his ascendants, descendants or sister in a “suspicious” situation with another.*

* *hala muraiba*

Article 242:

He who commits a crime in a state of great anger resulting from a wrongful and dangerous act on the part of the victim shall be liable to a lesser penalty.

Article 192:

If the judge establishes that the motive [for the crime] was honourable, he will apply the following penalties: in place of the death penalty, life imprisonment; in place of hard labour for life, life imprisonment or for 15 years....

(see Abu Odeh 164-6)

TUNISIA

Article 207 of Penal Code 1991 (repealed)

Murder by a husband of his wife or her accomplice at the moment that he catches them in the act of adultery (*in flagrante delicto*) is punished by five years in prison.

Exception abrogated by law 72-93; man who murders wife now liable to death penalty.

UAE

Article 334 of law no.3/1978

He who sees his wife, daughter or sister committing adultery (*in flagrante delicto*) and kills her immediately or kills the person committing adultery with her or kills both of them, shall be punished with a prison sentence; and if he attacks her or them in an attack that leads to death or disability he shall go to prison.

If a wife surprises her husband in the crime of adultery in the marital home and kills him immediately or kills the woman with whom he is committing adultery or kills both of them, she shall be punished with a prison sentence; and she shall go to prison if she attacks him or them in an attack that leads to death or disability.

The exercise of the right of lawful defence shall not be used against a person benefiting from this excuse.

YEMEN

Article 232 of law no.12/1994

If a husband kills his wife and whoever is fornicating with her at the moment of their adultery (*in flagrante delicto*), or if he attacks them in a manner that leads to death or disability, no option of *qisas** arises; the husband shall be penalised by imprisonment for a period of not more than one year or by a fine. This ruling applies also to a person who surprises one of his ascendants, descendants or sisters in the act of illicit fornication (*zina*).

**qisas*: "talion" - physical retaliation for wounds inflicted or in the case of an intentional murder, the putting to death of the murderer.