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The American University in Cairo

School of Global Affairs and Public Policy

THE LENIENT TREATMENT OF HONOR CRIMES IN EGYPT

A Thesis Submitted to the

Department of Law

In partial fulfillment of the requirements for

The LL.M. Degree in International and Comparative Law

By

Mohamed D. Zaid

December 2015

The American University in Cairo
School of Global Affairs and Public Policy

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A Thesis Submitted by

Mohamed Diao El-Din Abdel-Aziz El-Sayed Zaid

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Professor Jason Beckett _____
Thesis Supervisor
American University in Cairo
Date: _____

Professor Jasmine Moussa _____
Thesis First Reader
American University in Cairo
Date: _____

Professor Hani Sayed _____
Thesis Second Reader
American University in Cairo
Date _____

Professor Hani Sayed _____
Law Department Chair
American University in Cairo
Date _____

Ambassador Nabil Fahmy _____
Dean of GAPP
Date _____

The American University in Cairo
School of Global Affairs and Public Policy
Department of Law

THE LENIENT TREATMENT OF HONOR CRIMES IN EGYPT

Student's name

Supervised by Professor Jason Beckett

ABSTRACT

Scholars often assume that Arab legislation including Egypt accommodates honor crimes. Two pieces of Egyptian legislation that receive attention are Article 237 which reduce the sanction to the husband who kills his adulterous wife upon committing adultery, and Article 17 which empowers courts in felonies to give leniency whenever they see appropriate. They believe that Article 237 of the Egyptian penal code limits the reduction in sanctions to the husbands while excluding other male paternal relatives. To accommodate this exclusion, they assume that Article 17 of the penal code indirectly entrenches the scope of protection to cover other male relatives and not only husbands. In their minds, this guarantees the perpetrators of honor crimes lenient punishment constituting a safe escape from serious prosecution. An examination of approximately 1,550 appeals submitted before the Egyptian Court of Cassation from 1934 to 2014 that involve the application of Article 17 of the penal code challenges these assumptions. It shows that the leniency of courts is not necessarily applied every time a crime of honor is brought before them. The examination of the appeals submitted before the Egyptian Court of Cassation assumes that honor crimes are not necessarily the most common crimes to which the leniency of the judiciary is applied. Leniency is assumed to be applied to other crimes including murders not involving honor, illicit possession of drugs and weapons, bribery and several others. This research concludes that leniency is assumed to be often given to a wide range of crimes including crimes involving honor.

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I. Introduction

Honor crimes have been defined as longstanding and ancient practices in which male family members kill women for bringing dishonor to the family.¹ Women are presumed to disgrace their families by carrying out sexual acts outside marriage.² Sometimes such crimes are committed on the mere suspicion of women being engaged in sexual affairs beyond the scope of legitimate marriage.

In Egypt, honor crimes are not spelled out within its legislation. In spite of this absence, however, some scholars assume that Egypt fully accommodates honor crimes in the penal code through both Article 17, which empowers courts to give leniency to whatever felonies they deem appropriate based on the circumstances at hand, and Article 237 which gives a reduction in sanction to the husband who kills his adulterous wife.³ Scholars believe that Article 17 of the penal code guarantees the perpetrators of honor crimes, who do not fall under the scope of reduction in sanction embodied in Article 237 of the code, less serious prosecutions. They propose that it is not only husbands who often benefit from a reduction similar to the one stipulated in Article 237 of the penal code but male paternal relatives as well. They see that Article 17 of the penal code indirectly entrenches the scope of protection to cover other male relatives not only husbands.

This paper argues that such an assumption is challenged in light of the examination of the appeals submitted before the Egyptian Court of Cassation involving the application of Article 17 of the penal code. The examination this thesis reveals to a considerable extent an approximate image to the actual extent of the application of leniency by courts. In actuality, the analysis suggested assumes that leniency of courts is applied in a broad manner often well beyond the crimes of honor. Court leniency is extended to a wide range of additional crimes including murder for reasons apart from honor, illicit possession of drugs, bribery and several others. The leniency in Article 17 is not necessarily a complementary article to Article 237 of the penal code which guarantees the perpetrators of honor of crimes less serious prosecution. Leniency is also not necessarily applied every single time it is brought before the courts.

¹ Yadav, Supriya, *For the sake of honor: but whose honor? Honor crimes against women*, 5 Asia-Pac. J. on Hum. Rts. & L. 64-65 (2004).

² John A. Cohan, *Honor Killings And The Cultural Defense*, 40 Cal. W. Int'l L.J. 191 (2009-2010).

³ See Lama Abu-Odeh, *Comparatively Speaking: Honor Of The East And Passion Of The West*, 1997 Utah L. Rev. 290 (1997); Lama Abu-Odeh, *Honor Killings And The Construction Of Gender In Arab Societies*, 58 Am. J. Comp. L. 928, 931 (2010); LYNN WELCHMAN & SARA HOSSAIN, 'HONOUR': CRIMES, PARADIGMS & VIOLENCE AGAINST WOMEN 143-144 Chapter 6 (Zed Books 2005) (2008); Fatma Khafagy, *Honour Killing in Egypt*, 8-9 (May 2005) http://www.un.org/womenwatch/daw/egm/vaw-gp2005/docs/experts/khafagy_honorcrimes.pdf.

The first chapter of this paper presents the definition, roots, and justification for honor killing, with a focus on Egypt's position on honor crimes. The second chapter analyzes the literature on honor crimes in Egypt and the Middle East written in both Arabic and English. The third chapter elucidates the concept of leniency adopted under Article 17 of the Egyptian penal code, its scope of application and regulation. The authority of the court of cassation upon the application of Article 17 of the penal code is also discussed. The final chapter analyzes the appeals submitted before the Egyptian Court of Cassation relating to the application of Article 17 of the penal code.

Chapter I

II. Honor Crimes under Egyptian Legislation

A. The definition of honor crimes:

The longstanding and ancient practice of Honor crimes often takes place when male family members kill women for bringing dishonor to the family.⁴ The latter have a burden not to disgrace their families by carrying out sexual acts outside marriage.⁵ These crimes may be committed on the mere suspicion of women being engaged in sexual affairs beyond the scope of legitimate marriage.

Having a closer look on the term honor under Arabic language, it is defined under few Arabic wordings. These wordings generally pour in the same frame of the concept of honor. They form altogether the concept of honor under Arabic language. The meaning of the word honor meets the following Arabic terms '*ird*, *sharaf* and *karama*. The first refers to honor, good repute and dignity, while the second refers to nobility, high rank, eminence, distinction, honor and glory and finally the last means nobility, honor and respect.⁶

In Middle East, the concept of honor has been closely attached to the woman's virginity/chastity. Women living in the region of the Middle East are expected to preserve their chastity. Such chastity can be represented in an unmarried women's will to keep their virginity till they reach the age of marriage. Chastity would last even after marriage as women have to preserve the honor of their marriage. Chastity of women is meant to preserve the honor of their families and husbands and that the former do not bring disgrace on their families by departing from honor's code of conduct, within a certain society. The honor code may include the way women should be dressed, talk and live within the accepted norms set by such society.

Women's failure to stick to the code of honor may result into aggressive reactions emanating from the male family members towards these women. The aggressiveness of such reactions may mount to honor killings. Honor related killings exist whenever women are believed to be disgracing their families. Women who cannot preserve their chastity are considered as failing

⁴ Yadav, *Supra* note 1, at 64-65.

⁵ Cohan, *Supra* note 2, at 191.

⁶ Beth Baron, *Women, Honour and the State: Evidence from Egypt*, 42 *Midd. East. Studies J.* 1 (2006).

to preserve the honor of their families and would consequently face the severe consequences to such failure.

B. Responsibility for honor:

Honor in many countries especially in the Middle East region has been considered as the responsibility of husbands and other paternal relatives. Accordingly the perpetrators of most of the crimes involving honor are male family members. The problem which most of the literature available on honor crimes point out is that some Arab criminal codes provide for a special treatment for male family members who perpetrate such type of crime. They propose that such special treatment can be witnessed in the reduction in or even the exemption from sanction granted by some of these criminal codes to the male family members who commit crimes of honor.

The special treatment, which the literature available highlights, varies depending on the ideology adopted within the legislation of different countries. They claim that most of the Arab legislations provide for partial or total exemption from sanction to perpetrators of honor killings. The exemption from sanction differs in terms of the scope of application, the kind of act committed to which the exemption applies and who should benefit from such exemption.⁷

As for the scope of application, it varies by whether it grants a full exemption from punishment or a reduction in sanction to the perpetrators of honor crimes. The Jordanian code for instance, grant a full exemption from punishment to the husband who catches his wife committing adultery,⁸ while in the same case the Egyptian would grant a partial exemption from punishment to husbands and not a whole exemption as the former code does.⁹

As for the kind of act committed to which the exemption applies, it varies according to the act itself. For example, the Egyptian code limits the acts to which such partial exemption applies to the act of adultery while the Jordanian code expands the exemption to include situations other than situation of adultery or equivocal attitudes.¹⁰ Accordingly, the exemption is sometimes extended to include more situations than the situation of adultery.

⁷ Abu-Odeh, *Supra* note 3, at 294.

⁸ Law No. 16 of 1960 (Criminal Code of 1960, reformed in 2011), *Al-Jarida Al-Rasmiyya* 1 Jan. 1960, Article 340 (Jordan)

⁹ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 237 (Egypt)

¹⁰ Abu-Odeh, *Supra* note 3, at 294.

While as for the ones who benefit from the exemption, the codes differ in terms of whom they count as beneficiaries of the exemption. Under Egyptian code it is limited to the husbands excluding all other paternal relatives, while under the Jordanian code the umbrella is expanded to include all the female's male family members, not only husbands so that it encompasses whomever cannot marry the female caught in the sexual act for blood, nursing and marriage reasons.

C. Roots of honor killings:

Examinations of the roots of honor crimes in the Middle East usually incorporate the relationship between Islamic Sharia and honor related violence. The debate on the relationship between Islamic Sharia and honor crimes is recognized but beyond the scope of this paper. Nevertheless, it is notable that many acknowledge that honor crimes pre-date most religions including Islam.¹¹ Many propose that honor crimes roots are found in ancient Bedouin and desert tribal traditions and mentalities.¹²

It is believed that honor killings existed among ancient tribal communities living in the desert before the existence of modern religious.¹³ Such practice is assumed to exist before Quran. A Muslim tribe leader once stated that "[m]en's honor comes before the Book".¹⁴ The practice is not based on Quran or any other Islamic teaching.¹⁵

Centuries ago, the custom of protection of honor by male members of the family evolved within tribal communities in the desert.¹⁶ And it has been believed that the protection of honor is a male duty to kill any female member who get engaged in an inappropriate sexual act.¹⁷ The custom embodying the practice has developed and continued to exist even within some of the modern pieces of legislation and different cultures.¹⁸ The adoption of such practice can be also present even there stands a law which does not allow for such practice

¹¹ See Johanna Bond, *Honor As A Property*, 23 Colum. J. Gender & L. 216 (2012); Catherine Warrick, *The Vanishing Victim: Criminal Law And Gender In Jordan*, 39 Law & Soc'y Rev. 324 (2005); John A. Cohan, *Honor Killings And The Cultural Defense*, 40 Cal. W. Int'l L.J. 196 (2009-2010); Christina A. Maddek, *Killing Dishonor: Effective Eradication Of Honor Killing*, 29 Suffolk Transnat'l L. Rev. 54 (2005-2006); Rachel A. Ruane, *Murder In The Name Of Honor: Violence Against Women In Jordan And Pakistan*, 14 Emory Int'l L. Rev. 1530 (2000).

¹² *Id.*

¹³ Cohan, *Supra* note 2, at 196.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Christina A. Maddek, *Killing Dishonor: Effective Eradication Of Honor Killing*, 29 Suffolk Transnat'l L. Rev. 54 (2005-2006)

¹⁷ *Id.* at 54-55.

¹⁸ Rachel A. Ruane, *Murder In The Name Of Honor: Violence Against Women In Jordan And Pakistan*, 14 Emory Int'l L. Rev. 1549 (2000).

within Arab tribal law, as administered by tribe leaders in the absence of a strong state to enforce such prohibition.¹⁹

In modern history, some argue that Egypt, as well as other Arab countries, has borrowed what serves the concept of honor from western legislation as the French laws.²⁰ In this regard, one main legal source most Arab countries relied on was the French Penal Code of 1810.²¹ The French code embodied articles which helped the concept of protection of honor by male family members to exist. For instance, the Jordanian, Syrian and Lebanese penal codes borrowed the terms female-ascendants and descendants from the French code, thus extending the benefit to husbands, fathers, sons and brothers.²² The Egyptian, Tunisian and Kuwaiti codes limited the benefit from such acts to the husbands.²³

In light of the existence of penal codes as such, transgressors of the code of honor often face violent reaction from the guardians of the code; male members of the family.²⁴ Violence may be represented in beating, stabbing and in many instances killing the woman to regain the honor of the family. Several communities believe that honor related crimes are tools to remove the stains of dishonor where perpetrators of such crimes are believed by these communities to be idols for preserving the honor of their families.²⁵ Some believe that the sole escape from honor disgrace is blood; they assume that blood cleanses honor.²⁶

Honor killing still stands as a problematic issue in the Middle East. According to United Nations for Population Activities, a report in the year 2000 states that 5,000 women and girls were killed by the members of their families for the failure of preserving their chastity and the honor of their families.²⁷

D. Justification for honor killing:

¹⁹ Baron, *Supra* note 6, at 3.

²⁰ See Catherine Warrick, *The Vanishing Victim: Criminal Law And Gender In Jordan*, 39 Law & Soc'y Rev. 334 (2005); Melissa Spatz, *A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives*, 24 Colum. J.L. & Soc. Probs. 601 (1991); Lama Abu-Odeh, *Comparatively Speaking: Honor Of The East And Passion Of The West*, 1997 Utah L. Rev. 295 (1997).

²¹ Abu-Odeh, *Supra* note 3, at 295.

²² *Id.* at 294.

²³ *Id.*

²⁴ WELCHMAN, *Supra* note 3, at 42-63.

²⁵ Yadav, *Supra* note 1, at 65.

²⁶ Ruane, *Supra* note 18, at 1523.

²⁷ UNFPA, *Lives Together, Worlds Apart: Men and Women in a Time of Change*, 5 (2000) <http://www.unfpa.org/publications/state-world-population-2000#sthash.ewRDmld1.dpuf>.

It is believed that most Arab legislation accommodates crimes involving honor. Such accommodation may be in the form of exemption from or reduction in sanction for the perpetrators of such crimes. The exemption or reduction in sanction for the perpetrators of honor crimes is justified on various bases. One, is that the male family members are deemed as the guardians of the family honor. Second, is the provocation state under which the male member of the family gets influenced and perpetrate his crime.

The first justification stems from the roots of honor killing. It is assumed that the male members of the family are the ones responsible for the preserving its honor. Women themselves are also expected to carry the burden preserving their honor and the honor of their families. The latter are expected to do so by sticking to the code of honor adopted within the society they live in. It is believed that if women preserve their honor and do not surpass the limits set by the societies they are living within, accordingly, they are preserving the honor of their families. On the one hand man's honor is crucially built on his ability to guard and control his womenfolk's behavior, especially their sexual behavior.²⁸ While on the other hand, women are expected not to disgrace or dishonor their family.²⁹ In Arab societies, men are obliged to determine acceptable patterns of behavior for their women and the latter must stick to the patterns set by the former.³⁰ The basic elements of honor can be summed up in the control over women behavior, threat to the honor of the family and the societal involvement.³¹ In situations where a woman surpasses the limits accepted within the society she lives in by engaging in inappropriate sexual acts or catching a bad reputation may face serious troubles which may mount to getting killed in the name of honor by the guardians of the family honor; male family members.

Another primary justification for honor crimes is believed to be provocation in situations of adultery.³² A provoked male family member who kills his female relative for finding the latter engaged in a wrongful sexual act may benefit from an exemption or reduction in sanction.

²⁸ DANIEL G. BATES & AMAL RASSAM, PEOPLES AND CULTURES OF THE MIDDLE EAST 211-239 (Prentice-Hall, Inc., 1983) (1983).

²⁹ Abu-Odeh, *Supra* note 3, at 916-19.

³⁰ TAHIRE KOCTURK, A MATTER OF HONOUR: EXPERIENCES OF TURKISH WOMEN IMMIGRANTS 33-58 (London; Atlantic Highlands, N.J.: Zed Books, 1992) (1992).

³¹ NANCY V. BAKER, ET AL, FAMILY KILLING FIELDS: HONOUR RATIONALES IN THE MURDER OF WOMEN, VIOLENCE AGAINST WOMEN 164-184 (February 1999) (1999).

³² Donna K. Coker, *Heat Of Passion And Wife Killing: Men Who Batter/Men Who Kill*, 2 S. Cal. Rev. L. & Women's Stud. 80 (1992-93).

On the one hand, jurists under English and American systems usually refer to adultery as the ideal example of adequate provocation for honor killing.³³ Sexual provocation upon the sight of a wife's adultery is recognized as an adequate provocation to decrease the severity of the murder crime.³⁴ Under many jurisdictions, sexual provocation is used as a cultural self-defense.³⁵ Abusive men's primary excuse for their violence is being "out of control" induced from the victim's provocation which led them to lose control.³⁶

Provocation is considered justifiable within certain limits. Such limits differ according to the competent legal system. Under common law, the four elements which govern voluntary manslaughter doctrine are:

- a. A provocation reached by a reasonable man to the heat of passion,
- b. The provocation is a result of heat of passion,
- c. There was no time for a reasonable man to cool off,
- d. The perpetrator did not cool off till the time he committed his crime.³⁷

Common law jurisdictions adopt the concept of provocation as long as it falls within the category of adequate provocation. The construction of such adequacy, often named as common law categories of adequate provocation, are specific and can be framed in the presence of serious battery, aggravated assault, the commission of the crime against a close relative and the witnessing of the wife committing adultery by a husband.³⁸

The main question in regards to crimes of honor committed under the American system rests in whether the perpetrator was provoked by the deceased and that he acted rashly and under the spell of hot blood and passion leading him to act without judgment. The answer to that question lies in whether the criteria of adequacy are met or not. Accordingly the questions would be formulated as whether the provocation was adequate to create the heat of passion, whether there was enough time for the accused to cool off and whether the accused

³³ *Id.*, at 72.

³⁴ *Id.*

³⁵ See John A. Cohan, *Honor Killings And The Cultural Defense*, 40 Cal. W. Int'l L.J. 196 (2009-2010); Christina A. Maddek, *Killing Dishonor: Effective Eradication Of Honor Killing*, 29 Suffolk Transnat'l L. Rev. 64 (2005-2006).

³⁶ Coker, *Supra* note 32, at 75.

³⁷ Coker, *Supra* note 32, at 79 (1992-93), Dolores A. Donovan, Stephanie M. Wildman, *Is The Reasonable Man Obsolete? A Critical Perspective On Selfdefense And Provocation*, 14 Loy. L. A. L. Rev. 448 (1980-1981).

³⁸ Abu-Odeh, *Supra* note 3, at 296.

committed his crime as a result of the heat of passion produced on seeing the deceased committing adultery.³⁹ Under all scenarios such adequacy is left to the courts to determine.⁴⁰

On the other hand, Arab legislations also recognize the provocation as a justification for honor crimes. They, however, differ in the expansion of the concept of provocation in terms of who should benefit from acting under such concept. In general, Arab legislation tends to adopt the concept of honor rather than passion.⁴¹ Their codes are more accommodating in extending the concept of provocation to the perpetrators of honor crimes. They extend the concept to include the paternal relatives not only to the husband but also the father, brother and son.

Abu-Odeh portrays the status of Arab legislation towards honor crimes.⁴² She elucidates that Arab legislations differ in this regard on two main issues. The first issue rests on limiting the defense of provocation to incidents of adultery and providing a reduction and not an exemption in penalty. This can be best exemplified under the Egyptian, Tunisian, Libyan and Kuwaiti penal codes.⁴³ While other codes expand provocation to wider range of incidents which includes unlawful bed that stretches to include all other sexual practices short to adultery like under the Jordanian penal code.

The second Arab legislation issue relates to who should benefit from the justification of honor crimes. Since Syrian and Lebanese penal codes have adopted French terminology female ascendants and descendants; accordingly the ones who benefit from the justification are the fathers, brothers and sons of the deceased.⁴⁴ The Jordanian penal code even extends the scope of application of the excuse to include other sexual acts short to adultery.⁴⁵

Article 340 of the Jordanian code portrays the construction of such an extended application. The article stipulates the following:

He who catches his wife, or one of his (female) un-lawfuls committing adultery with another, and he kills, wounds, or injures one or both of them, is exempt from any penalty. He who catches his wife, or one of his (female) ascendants, descendants or sisters with another in an

³⁹ M. D. G., *Manslaughter And The Adequacy Of Provocation: The Reasonableness Of The Reasonable Man*, 106 U. Pa. L. Rev. 1022 (1957-1958).

⁴⁰ Abu-Odeh, *Supra* note 3, at 296.

⁴¹ See Abu-Odeh, *Supra* note 3, at 287-307.

⁴² *Id.*, at 911-52.

⁴³ *Id.*, at 915.

⁴⁴ *Id.*

⁴⁵ Female unlawful is a male who cannot marry the woman for blood, nursing or marriage in law reasons.

unlawful bed, and he kills or wounds or injures one or both of them, benefits from a reduction of penalty.

Article 340 of the Jordanian penal code grants the provoked husband who catches his wife committing adultery a full exemption from penalty. It also provides for a reduction in penalty for those who injure, wound or kill their female ascendants and descendants for being in unlawful bed with another. The Jordanian code is clearly more accommodating towards honor rather than passion.⁴⁶

Dishonoring under Jordanian penal code is a collective injury to the father, brother, son and any other male relative. It is not individualistic in being limited only to males who could be sexually connected to the female, primarily husbands.⁴⁷ The idea of collectivism of honor also applies to both Syrian and Lebanese penal codes since they adopt the same concept of female ascendants and descendants.⁴⁸

A contrary scenario to the extension of excuse, as under the Jordanian, is found in the Algerian penal code. The Algerian penal code provides for both the husband and the wife to benefit from a reduction in sanction if s/he who catches her/his partner committing adultery.⁴⁹ By granting – equally - both husband and wife the right to benefit from such reduction in penalty reflects the fact that the Algerian code is more accommodating to the concept of passion rather than the concept of honor while most of the other Arab codes excludes female family members from the beneficiaries.

E. Where Egypt stands from honor killings:

In Egypt, honor killings are regulated in the penal code under the section of indecent assaults and corruption of morals. The Egyptian penal code does not recognize provocation in criminal matters unless in situations of adultery. However, Article 237 of the Egyptian penal code stipulates that a husband who kills his wife in situation of adultery benefits from a reduction in sanction. The justification behind such reduction in sanction is that the husband gets provoked by the sight of his wife in bed with another man thus he kills his wife and

⁴⁶ Abu-Odeh, *Supra* note 3, at 296.

⁴⁷ *Id.*, at 293.

⁴⁸ *Id.*, at 294.

⁴⁹ Law No. 66 of 1966 (Criminal Code of 1966, reformed in 2006), *Al-Jarida Al-Rasmiyya* 8 Jun. 1966, Article 279 (Algeria)

partner in adultery.⁵⁰ The reduction in sanction it provides for is to the husband who kills his wife by surprise upon catching them committing adultery.⁵¹

Article 237 of Egyptian penal code grants a reduction of penalty for the provoked husband who kills his wife on the spot catching her red-handed committing adultery.⁵² The article stipulates that a husband who catches his wife committing the crime of adultery with another and kills her or her partner immediately shall be punished with imprisonment instead of the sanctions stipulated in articles 234 and 236.⁵³ This means that the husband who kills his wife under such a condition, instead of being tried as a perpetrator of a felony is charged with a misdemeanor.

Unlike the Algerian penal code, the Egyptian penal code does not grant such a right to both husbands and wives. Under the latter women are not entitled to a reduction in sanction. Accordingly, if a woman surprises her husband while committing adultery with another and she kills him, she is punished for intentional killing under article 234 – a felony – as the reduction in sanction is exclusively stipulated as being for men alone.

The Egyptian legislator sets down three conditions for the provoked husband to benefit from the reduction in penalty stipulated under article 237 of the Egyptian penal code. In regards to the adultery of the wife, the conditions set for the proper application of the article are almost similar to the conditions set for the adequate provocation under the American system.⁵⁴ The conditions stipulated are the following:

1. The identity of the perpetrator
2. Provocation upon surprise
3. The immediate killing⁵⁵

⁵⁰ AHMED F. SROUR, PRIVATE SECTION-PENAL CODE, CRIMES PREJUDICIAL TO THE PUBLIC INTEREST – CRIMES OF INDIVIDUALS – FUNDS CRIMES, 734 (*Dar Al-Nahda Al-Arabiyya* 2013) (2013).

⁵¹ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 237 (Egypt)

⁵² Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 237 (Egypt).

⁵³ The legislator in the case of a husband who surprises his wife committing adultery and kills her on the spot with her partner benefits from a reduction in sanction and should not be punished neither with the sanctions stipulated for the intentional killing without persistence or premeditation stipulated under article 234, nor with the sanctions stipulated under article 236 for the crime of beating leading to death. Accordingly the husband in that case would be facing a punishment of imprisonment of three years maximum.

⁵⁴ Abu-Odeh, *Supra* note 3, at 288.

⁵⁵ SROUR, *Supra* note 50, at 732-35.

As for the first condition, the perpetrator has to be the husband of the female who was caught red-handed committing adultery. Only he is entitled to such a reduction in penalty, and not any other paternal relative.⁵⁶ He has to be the lawful husband according to the Egyptian code of personal status matters.

The second condition requires that the provoked husband, in order to be protected by article 237, surprises his wife immediately on committing adultery.⁵⁷ A husband should be provoked by virtue of surprise in seeing his wife committing the crime of adultery, thus raising the heat of passion leading to the rash killing of her or her partner.

The last condition is related to the absence of a cooling off period where the husband kills his wife on the spot upon being surprised by seeing her committing adultery with another. No cooling-off period may intervene between the husband's shock at seeing his wife committing adultery and the actual act of killing if it does, the husband is deprived of such protection.⁵⁸

The legal effect of such reduction is that if the three conditions are met the nature of the crime changes from being a felony to being a misdemeanor. The husband who kills his wife would be sentenced to three years of imprisonment instead of facing capital punishment or to a labor punishment of twenty five years. Added to that, since the reduction in sanction applies to an act of murder then it also extends to the less violent acts. The reduction extends to cases other than killing such as when the husband attempts to murder his wife but he fails leaving her with permanent disability. In a felony lessened to a misdemeanor sanctioned by imprisonment,⁵⁹ thus the competent court is the first instance court – the court competent for hearing cases of misdemeanors – to decide the case.⁶⁰

In general, Arab legislation lies between two poles; the first is represented by the Algerian code while the Jordanian code represents the other. The former, by granting spouses the same right to reduction in penalty, is a clear reflection of the concept of passion, while the latter by granting exemption from penalty to men who catch their wives committing adultery, and reduction in penalty of men who catch their female family members in bed with another committing adultery responds to the concept of honor.⁶¹

⁵⁶ *Id.* at 733; see also HESHAM A. AL-JEMEELY, EXPLANATION OF PENAL CODE, 449 (2013).

⁵⁷ *Id.* at 733-34.

⁵⁸ *Id.* at 734.

⁵⁹ *Id.* at 735.

⁶⁰ AL-JEMEELY, *Supra* note 56, at 453.

⁶¹ Abu-Odeh, *Supra* note 3, at 915-16 (2010); see also Abu-Odeh, *Supra* note 3, at 295.

Egypt's positive position regarding honor crimes is be midway between the two poles. The Egyptian penal code under Article 237 provides for a reduction in sanction as an exclusive excuse for the husband and not the wife. Both Egyptian and Algerian codes exclude males who cannot be sexually connected to females via the extension of application of reduction in punishment.⁶²

Although Egypt limits the reduction in sanction stipulated under Article 247 of the penal code to the husband, nevertheless, most of the literature available on honor crimes in Egypt assume that Egyptian judiciary extends the same benefit stipulated for the husband under the penal code. They claim that Egyptian judiciary circumvents the limitation stipulated under Article 237 of the penal code and extend the same treatment to paternal relatives other than the husband by applying Article 17 of the Egyptian penal codes to the perpetrators of honor crimes.

Article 17 of the Egyptian penal code entitles judges, in felonies, to use their leniency on crimes wherever they see necessary.⁶³ Leniency of judiciary rests in their discretionary power to reduce punishment whenever necessary according to the circumstances of the crime or the act committed. A judge may replace the sanction of capital punishment by the penalty of life hard labor, permanent hard labor penalty by temporary hard labor or imprisonment, temporary hard labor with imprisonment or confinement not less than six months and finally an imprisonment sentence may be replaced with a confinement penalty of not less than three months.

F. Leniency under Egyptian Penal Code:

It is believed that the Egyptian penal code limits the reduction in sanction under Article 237 of the penal code to husbands and excludes other paternal relatives. Nevertheless, the literature available on honor crimes in Egypt argues that Egyptian judiciary implicitly tends to recognize crimes of honor.

Legal scholars assume that crimes of honor are compromised through the use of Article 17 of the penal code by judges.⁶⁴ Some contend that Article 17 of the penal code is frequently used

⁶² Abu-Odeh, *Supra* note 3, at 922.

⁶³ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 237 (Egypt)

⁶⁴ See Baron, *Supra* note 6, at 1-20.

by judges in cases where crimes of honor are involved.⁶⁵ Judges are believed to be sending an implicit message that they will not tolerate illegitimate sexual practices by finding an escape through the leniency entitled to them.⁶⁶ They note the fact that judges can apply Article 17 of the penal code based on their sole discretion. They believe that judges in Egypt resort to available alternative concepts such as the concept of leniency to provide the male family members who commit honor crimes an escape from punishment.⁶⁷

Some believe that courts under the concept of leniency secure successful prosecution for difficult cases involving crimes of honor.⁶⁸ They note that judges, who are males, are sympathetic towards the honor which has been injured by the illicit act of females while being unsympathetic to 'loose' women.⁶⁹ They believe that the presence of such measures represented in provisions stipulating the exemption or reduction of sanctions violate international laws and norms and must be abolished. The codes should be globally consistent with international instruments such as the Convention on the Elimination of all Forms of Discrimination Against Women,⁷⁰ which preserve the rights of women.⁷¹

On the one hand, it is evident that the literature review available regarding crimes of honor in Egypt propose that Article 17 of the penal code is used by the Egyptian judiciary as a complementary article with Article 237 of the penal code. They contend that former article entitles judges to apply leniency to the male family members other than the husband who commit honor crimes. Accordingly, although the reduction under the latter article is limited to the husband, nevertheless, the former article if applied by the judiciary leads to a lenient sanction to the male family members who commit honor crimes and even for husbands who fail to get tried under the latter Article. While on the other hand, the literature available fails to provide for a considerable case analysis, however instead, they provide for very few case analysis involving honor crimes to which Article 17 of the Egyptian penal code is applied to.

⁶⁵ WELCHMAN & HOSSAIN, *Supra* note 3, at 143-144; see also Melissa Spatz, *A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives*, 24 Colum. J.L. & Soc. Probs. 597 (1991); and Warrick, *Supra* note 11, at 323-34; Khafagy, *Supra* note 3, at 4-9.

⁶⁶ Abu-Odeh, *Supra* note 3, at 931-34.

⁶⁷ Abu-Odeh, *Supra* note 3, at 290.

⁶⁸ Cohan, *Supra* note 2, at 206.

⁶⁹ Baron, *Supra* note 6, at 13.

⁷⁰ U.N. Doc. CEDAW/C/34/D/8/2005 (2005), at <http://www.un.org/womenwatch/daw/cedaw/>; The Convention to Eliminate all forms of Discrimination Against Women is adopted globally and ratified by most Arab countries.

⁷¹ See LAURE MOGHAIZEL, 'THE ARAB AND MEDITERRANEAN WORLD: LEGISLATION TOWARDS CRIMES OF HONOR', *EMPOWERMENT AND THE LAW: STRATEGIES OF THIRD WORLD WOMEN* 75-78 (in Schuler, M. ed., Washington DC: OEF International, 1986) (1986); Maddek, *Supra* note 16, at 53-4.

Chapter II

III. The Common Assumption on Leniency granted to Egyptian Courts:

Some scholars and law practitioners believe that the Egyptian Penal code is one of the codes that provides a secure escape from prosecution for the perpetrators of honor crimes. They propose that although the honor crimes are not spelled out under Egyptian penal code, nonetheless, Article 17 of the penal code is often used a complementary article with Article 237 of the same code.⁷² They argue that the latter Article provides a favorable treatment to husbands who kill their adulterous wives when catching them in the act of adultery. Moreover, they assume that the former article indirectly entrenches the scope of protection to cover other male relatives not only husbands although the reduction in sanction is only limited to husbands under the former Article.

To a large extent these scholars and law practitioners who believe that Article 17 provide a secure escape from prosecution to the perpetrators of honor crimes who do not fall under Article 237 have a good point to make. Most of the literature available on honor crimes in Egypt base their assumption on judgments rendered in cases involving honor crimes where first or second instance courts give leniency to the perpetrators whether husbands or other male relatives like fathers, brothers or sons. However, I argue that none of these judgements provides a considerable analysis of judgments rendered from these courts which reflect a comprehensive image on the use of leniency by judges granted to them by virtue of the law. In light of the absence of such analysis, I believe that the assumptions they adopt is not based on concrete evidence that courts are always lenient towards the perpetrators of such types of crimes. The evidence which this literature often rely on is the narration of few judgments on cases of honor crimes to which the leniency of judges is applied while they disregard the cases to which leniency is not applied. It is because of this the literature available on honor crimes in Egypt should be carefully examined.

This chapter provides for an analysis of the literature available on honor crimes in Egypt and the Middle East written in both Arabic and English. The first section of this chapter elucidates the ideology of both sets of literature in regards to honor crimes, while the second

⁷² See Abu-Odeh, *Supra* note 3, at 290; Abu-Odeh, *Supra* note 3, at 928, 931; WELCHMAN & HOSSAIN, *Supra* note 3, at 143-144; Khafagy, *Supra* note 3, at 8-9.

section of the chapter analyzes the subtext of the available literature with an examination of what underlies both.

A. English literature on honor crimes:

The bulk of the literature available written in English on the issue of honor crimes in Egypt can be divided into firstly, literature which generally embodies an explanation for the favorable treatment granted to the perpetrators of honor crimes under Arab Penal codes with a reference to Egyptian code.⁷³ Secondly, literature with a focus on the application of Article 17 of the penal code without narration of cases involving honor crimes or analysis of those types of cases.⁷⁴ Thirdly, literature with a focus on the extension of leniency by courts to the perpetrators of honor crimes with a brief presentation of these cases as evidence of the existence of such lenient treatment towards offenders of honor crimes.⁷⁵

The first group of literature presents the issue of favorable/special treatment of offenders of honor crimes granted generally by most of the Arab codes. This group believes that the laws of Arab countries, including Egypt, embody discriminatory legal provisions within their national legislatures. They generally refer to the discrimination found within the codes of these countries. Such discrimination rests in the legal provisions which provide for more favorable treatment of male-perpetrators of honor crimes. They believe that the latter enjoy biased prosecutions before courts. These legal provisions range from reduction to elimination of sanctions depending on each system. These scholars contend that the existence of this type of provision constitutes a violation of women's rights as they grant the male-perpetrators of honor crimes a guaranteed escape from harsh sanctions to reduced or eliminated sanctions, thus helping honor crimes to continue to survive.

Some literature further stress on the fact that the presence of such provisions within many of these Arab codes, including Egypt, supports the contention that women are dealt with as male properties:

⁷³ See Bond, *Supra* note 11, at 202-56; Warrick, *Supra* note 11, at 315-48; Cohan, *Supra* note 11, at 177-252; Maddek, *Supra* note 16, at 53-77; MOGHAIZEL, *Supra* note 71, at 75-78; Spatz, *Supra* note 65, at 597-638; Baron, *Supra* note 6, at 1-20.

⁷⁴ Abu-Odeh, *Supra* note 3, at 287-307; Abu-Odeh, *Supra* note 3, at 911-52; PINAR ILKKARACAN & SHERIFA ZUHUR, DECONSTRUCTING SEXUALITY IN THE MIDDLE EAST : CHALLENGES AND DISCOURSES, CHAPTER TWO, CRIMINAL LAW, WOMEN AND SEXUALITY IN THE MIDDLE EAST 17-41(Ashgate Publishing Group 2008) (2008); Lindsey N. Devers, Sarah Bacon, *Interpreting Honor Crimes: The Institutional Disregard Towards Female Victims of Family Violence in the Middle East*, 3 Int'l J. of Criminology & Sociological Theory 359-71 (2010).

⁷⁵ WELCHMAN & HOSSAIN, *Supra* note 3, at 137-159; Khafagy, *Supra* note 3, at 8-9.

[T]he law in many countries has implicitly treated honor as a form of property and has made legal and social allowances for men who seek to reclaim honor property through violence.⁷⁶

Being property, women are expected to preserve the honor code and ethics of the family within the society they live. Men are the ones responsible for monitoring and controlling women's behavior within the society. Furthermore, they argue that some countries accommodate a comprehensible understanding of honor related crimes by reducing penalties for the perpetrators of honor crimes:

Because the value of honor property fluctuates based on women's behavior, other family members, often males, seek to aggressively monitor and control the behavior of the women in the family. In its most extreme form, control over women's behavior manifests in honor-related violence, including murder. In some countries, the law perpetuates this implicit understanding of honor as property by reducing penalties for those who commit crimes in an effort to reclaim honor.⁷⁷

Others emphasize on the fact that penal codes in Egypt as well as in many Arab countries encompass codes which provide for reduction in sanction for the perpetrators of honor killings:

The Jordanian, Egyptian, Syrian, and Lebanese penal codes provide reductions or elimination of penalty for murders committed for reasons of honor. The statutes generally specify that the victim is female, that the perpetrator is a male relative of a certain degree (usually brother, father, or husband), and the circumstances of the victim's behavior that justify the crime (catching a wife in the act of adultery, for example).⁷⁸

They claim that countries which designed laws as such try to balance between claims of cultural authenticity and claims to maintain democracy and human rights through preserving law. "One arm of the state seeks to preserve the law for the former purpose, while another seeks to change it for the latter."⁷⁹ They propose that these laws should depart from applying these provisions as they favor the wrong individuals; the perpetrators of honor crimes.⁸⁰ They believe that these laws should be amended in order to embody more appropriate penalties which are consistent with the magnitude of the acts of honor killings.

⁷⁶ Bond, *Supra* note 11, at 203.

⁷⁷ *Id.*, at 204.

⁷⁸ Warrick, *Supra* note 11, at 326.

⁷⁹ *Id.*, at 345-6.

⁸⁰ *Id.*, at 319.

Some further propose that these discriminative legal provisions serve as a safe escape for the perpetrators of honor crimes from fair prosecution carrying harsh penalties. They argue that these laws, in some instances, provide for full exemption of the perpetrators from such types of crimes.⁸¹ “Some countries have given these values the force of law by acquitting men who kill female relatives who have violated the family honor ... In extreme cases, men who murder adulterous wives receive no punishment at all”.⁸² They believe that domestic laws as such should be amended to embody sanctions which proportionate to the gravity of the crimes of the honor crime committed.⁸³

Furthermore, some urge these countries to abolish laws which provide for the reduction or abolition of sanctions to be consistent with the international norms and conventions signed and ratified by most of these countries.⁸⁴ They regard these laws as impeding upon the consistency of domestic laws with international conventions.

The second group of scholars present a closer examination of the nature of the legal provisions embodied within Egyptian legislation as well as other Arab systems. For instance, they focus on the application of Article 17 of the Egyptian penal code and similar articles under other Arab legislative systems while the first group does not mention Article 17 per se. It generally shares the assumption regarding the favorable treatment granted to the perpetrators of honor crimes. The second group of scholars mainly focuses on how Egyptian competent courts, sometimes resort to the use of Article 17 as an alternative under the Egyptian penal code.

This group refers to the favorable treatment the offenders of honor crimes – male perpetrators – receive on prosecution. The group claims that such favorable treatment is divided into two major distinctions in the way in which these codes regulate honor crimes. The first codes limit honor crimes to situations of adultery and provide for a reduction in sanction and not an exemption from sanction:

[S]ome Codes (Egypt, Tunisia, Libya, and Kuwait) limit the defense to situations of adultery, and they provide for a reduction of, not exemption from, punishment. Other Codes expand the defense to situations of the "un-lawful bed" (Jordan) or "attitude equivoque"

⁸¹ Spatz, *Supra* note 65, at 597.

⁸² *Id.*, at 600.

⁸³ *Id.*, at 597-638; Baron, *Supra* note 6, at 1-20.

⁸⁴ MOGHAIZEL, *supra* note 71, at 75-78.

(Syria, Lebanon) which receive a reduced sentence, while limiting the excuse of exemption to cases of adultery.⁸⁵

Other codes may vary in terms of who benefits from such reduction or elimination of sanction.⁸⁶ Codes may expand the range of the beneficiaries of the excuse to include, not only the husbands but also, female unlawful males – ones who cannot marry women for nursing, blood or marriage reasons:

The Syrian and Lebanese Codes adopt the French terminology (wife, female ascendants, descendants and sister) so that the husband, the son, the father and the brother benefit. The Jordanian Code grants these relatives a reduced sentence in the case of the unlawful bed, while providing exemption for a bigger list of beneficiaries through its use of the Ottoman expression, wife or female un-lawfuls in the case of "committing adultery."⁸⁷

As noted Egypt falls within the range of the first distinction along with the codes of Libya, Kuwait and Tunisia provide favorable treatment to offenders of honor crimes for reasons of adultery. They do so by providing for a reduction in sanction and not an elimination of sanction.

Other codes like the Jordanian penal code provide full elimination of the sanction for husbands who kill their wives for committing adultery. Article 340 of the Jordanian Penal Code provides for the following: "He who catches his wife, or one of his female un-lawfuls committing adultery with another, and he kills, wounds, or injures one or both of them, is excused and benefits from an exemption from penalty."⁸⁸

The second distinction relates to who benefits from the reduction or the elimination of the sanction. The Egyptian code limits the benefit from its reduction in sanction to the husband while no other male relatives can benefit from such a reduction. Only husbands who kill, wound or injure their wives committing adultery benefit from a reduction in sanction.⁸⁹ According to the Egyptian penal code, husbands who kill their wives on the spot while committing adultery are sanctioned for committing a misdemeanor and not a felony. Article 237 of the Egyptian Penal Code stipulates the following:

⁸⁵ Abu-Odeh, *Supra* note 3, at 915.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Law No. 16 of 1960 (Criminal Code of 1960, reformed in 2011), *Al-Jarida Al-Rasmiyya* 1 Jan. 1960 (Jordan).

⁸⁹ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937 (Egypt).

“Whoever surprises his wife in the act of adultery and kills her on the spot together with her adulterer-partner shall be punished with prison [*habs*] instead of the penalties prescribed in Articles 234 and 236.”

Under the Jordanian code the beneficiaries from the elimination of sanction extends beyond the husband to include all female-unlawful males as paternal male relatives, even the female’s brother in law may benefit from the elimination of sanction if the conditions stipulated within the law are met: “He who catches his wife, or one of his female ascendants or descendants or sisters with another in an un-lawful bed, and he kills or wounds or injures one or both of them, benefits from a reduction of penalty.”⁹⁰

Arab codes either explicitly stipulate a reduction or elimination of sanction for the perpetrators of such crimes, or embrace special legal provisions which empowers judges to extend the use of their leniency to perpetrators of such type crimes.⁹¹ The Egyptian penal code under Article 237, though, limits explicitly the reduction in sanction to husbands killing their wives committing adultery. This group contends that the Egyptian judiciary often resorts to other available legal provisions in order to extend the application of their leniency to other males other than the husband.

A remarkable effort to highlight is in this creative use of the law by Lama Abu-Odeh’s work.⁹² Generally, Lama Abu-Odeh proposes that the Arab judiciary usually resort to alternative available concepts circumventing, in instances like honor crimes, the will of the legislator.⁹³ More specifically, she states that judiciaries adopting such codes usually resort to the application of alternative concepts to ensure the extension of the beneficiaries of the excuse. Such alternative concepts are represented in the application of leniency granted to the judiciary by virtue of law to which they commonly resort upon examining cases involving honor crimes. She gives for the Jordanian and the Egyptian judiciary as examples. In Jordan this can be seen in Article 98 of the penal code which stipulates the following: “He who commits a crime in a fit of fury caused by an un-rightful and dangerous act on the part of the victim, benefits from a reduction of penalty.”⁹⁴

She and several others especially among the third group note that leniency endowed to the judiciary by Article 17 of the Egyptian penal code stand as the alternative available concept

⁹⁰ Law No. 16 of 1960 (Criminal Code of 1960, reformed in 2011), *Al-Jarida Al-Rasmiyya* 1 Jan. 1960 (Jordan).

⁹¹ Abu-Odeh, *Supra* note 3, at 915.

⁹² *Id.*, at 911-52; Abu-Odeh, *Supra* note 3, at 287-307.

⁹³ *Id.*, at 290.

⁹⁴ Law No. 16 of 1960 (Criminal Code of 1960, reformed in 2011), *Al-Jarida Al-Rasmiyya* 1 Jan. 1960 (Jordan).

by which judiciary applies leniency at their own discretion to a massive number of felonies in general and to a wide range of male perpetrators of honor crimes. Article 17 of the penal code stipulates that:

In felony counts [*Jinayat*], if the conditions of the crime for which the popular action is brought necessitate the judge's lenity, the penalty may be changed as follows:

Capital punishment penalty may be replaced by a life hard labor or temporary hard labor penalty.

A permanent hard labor penalty may be replaced by a temporary hard labor penalty or by imprisonment.

A temporary hard labor penalty may be replaced by imprisonment or confinement penalty that may not be less than six months.

An imprisonment sentence may be replaced by confinement penalty which may not be less than three months.⁹⁵

They argue that the reduction in sanction under Article 237 of the penal code is limited to the husband. However, nothing impairs the discretionary power of courts examining the subject matter to exercise leniency entitled to them by virtue of Article 17 of the penal code to other paternal male relatives like fathers, brothers and sons. Abu-Odeh contends that the application of leniency rests at the sole discretion of the Egyptian judiciary, forming a sort of extension to the protection male perpetrators of such type of crimes generally enjoy.⁹⁶

She notes that the Arab legislation ranges between two ends: honor crimes on the one end and passion crimes on the other. She believes that since Egypt limits the reduction in sanctions stipulated under Article 237 to husbands, it should be close to the passion crimes end. However, in light of the discretionary power the Egyptian judiciary enjoys in applying leniency to felonies, other male relatives other than the husband may be granted a reduction in sanction thus placing Egypt midway between the two ends of passion and honor.⁹⁷

This group of scholars stress that in light of Article 17 not only paternal male relatives who commit such type of crimes benefit from a sanction reduction but also husbands who fail to meet the conditions set forth under Article 237 of the penal code. For instance, Abu-Odeh believes that the use by judges of this article for crimes of honor serves as a message to society. She states that judges by applying this article to offenders involved in such type of crimes implicitly reintroduce a message to society that some sexual practices are not tolerated by courts.⁹⁸ She contends that judges are often lenient to the perpetrators of such type of

⁹⁵ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, (Egypt).

⁹⁶ Abu-Odeh, *Supra* note 3, at 289-9.

⁹⁷ Abu-Odeh, *Supra* note 3, at 916.

⁹⁸ *Id.*, at 934.; ILKKARACAN & ZUHUR, *Supra* note 74, at 21.

crimes as they do not accept the existence of illegitimate sexual affairs among the surrounding society. And she refers to the high stakes a society bears in light of the existence of such articles within Arab legislation:⁹⁹ “The judges consciously [reject] the reinstatement of traditional society but they [send] cultural messages that subversive sexual practices [are] not to be tolerated.”¹⁰⁰

This group of scholars who gives no detailed narration or analysis to cases to which Article 17 has been applied. Abu-Odeh acknowledges that it would always be hard to test the tendency of Egyptian judiciary in regards to the application of leniency as the rulings of lower courts remain unpublished.¹⁰¹ She believes that a case analysis would be hard to build in light of such difficulty.

The third group also refer to the application of courts to Article 17 of the Egyptian penal code as the second group of scholars do. However, they go a bit further as they provide a few cases where courts applied Article 17 to the perpetrators of honor crimes. It refers to such cases as evidence of the use by courts of leniency towards male offenders committing this type of crime. Such literature is limited.¹⁰² The authors in this group claim that courts apply leniency endowed to them by virtue of Article 17 of the penal code to the perpetrators of this crime with no higher supervision from higher courts such as the court of cassation:

The issue of extenuating circumstances is one that is left totally to the discretion of the court of fact, and it is up to this court to take it into account for the benefit of the accused even if he didn't plead for it ... and the Court of Cassation has no jurisdiction over the matter so that an appeal for considering the extenuating circumstances cannot be a cause for action before the Court of Cassation.¹⁰³

They argue that the courts of first or second instance tend to use the discretionary power endowed to them by virtue of Article 17 in applying leniency to the paternal relatives accused of committing honor crimes. They argue that Article 17 with its wide range of discretionary power granted to the competent courts provide the perpetrators of such types of crimes

⁹⁹ See Lama Abu-Odeh, *Egyptian Feminism: Trapped in the Identity Debate*, 16 Yale J.L. & Feminism 145-91 (2004).

¹⁰⁰ Abu-Odeh, *Supra* note 3, at 934.

¹⁰¹ *Id.*, at 929.

¹⁰² WELCHMAN & HOSSAIN, *Supra* note 3, at 137-159; Khafagy, *Supra* note 3.

¹⁰³ WELCHMAN & HOSSAIN, *Supra* note 3, at 144.

lenient treatment which they believe that it should not be imposed upon the perpetrators of these crimes.

This group believes that though honor crimes are not spelled out explicitly in the Egyptian penal code, however, they claim that courts commonly use Article 17 to waive or reduce sanctions against male offenders who commit crimes involving honor:¹⁰⁴ “[honor] killings that cannot be accommodated within the strict sphere of application of Article 237 are being relegated to the discretion of the lower courts of fact as cases requiring the sympathy of the judge under Article 17”¹⁰⁵

The reduction in sanction under Article 237 is limited to husbands and no other male relatives. And Article 17 grants wide discretionary power to the competent courts to apply leniency on the perpetrators of felonies. Thus, they consider Article 17 of the code as it stands as forming a sort of protection to other paternal relatives like fathers, brothers or sons who perpetrate an honor crime.

The supporters of this opinion believe that the Egyptian penal code is gender biased.¹⁰⁶ They claim that according to the cases they have examined, it is obvious that courts are biased towards male perpetrators. They believe that the Egyptian penal code includes gender biased articles which favor male perpetrators of such crimes. One in particular, is Article 17 of the Egyptian penal code which, at the will of judges, extends favorable treatment to male offenders who commit honor crimes and allow them to benefit from a reduction in sanction almost on the same footing as the husbands do under Article 237.

This group argues that some of that judges of legal systems embracing reductions or elimination of sanctions believe that perpetrators of honor crimes are not criminals in the eye of the judiciary.¹⁰⁷ They believe that offenders of honor crimes were socially compelled to commit their crimes. They claim that judges always take into consideration the pressure that society exerts upon the perpetrators of such type of crimes. Honor killings within the societies embracing articles providing reduction and exemption from sanctions are believed to serve as a means of cleansing for the stained honor. Males, as the guardians of the family’s honor, must make sure that female family members are abiding by the code of honor adopted

¹⁰⁴ *Id.*, at 137-159; Khafagy, *Supra* note 3.

¹⁰⁵ *Id.*, at 144.

¹⁰⁶ *Id.*, at 137-159; Khafagy, *Supra* note 3.

¹⁰⁷ Devers, Bacon, *Supra* note 74, at 361.

within the society. Reducing or elimination sanctions allows a re-establishment of the wronged family's honor.

B. Arabic literature written on honor crimes:

The published Egyptian literature written in Arabic discussing the issue of implementation of article 17 to crimes involving honor and to the perpetrators of such type of crimes is rare to find. Of that which exists, the literature can be divided into three main groups. The first group generally elucidates the legal provisions of the Egyptian penal code. They make no connection between honor crimes and the leniency endowed to the judiciary under Article 17 of the penal code.¹⁰⁸ The second group also explains legal provisions of the Egyptian penal code. It differs from the first group in that it further refers, within the general context, to the possibility of the judiciary applying leniency to the perpetrators of honor crimes where they seem appropriate.¹⁰⁹ The last group goes further than the other two groups by expressing their own views on the rationale behind the limitation of reduction of penalty to the husband stipulated under Article 237 of the penal code.¹¹⁰

The first group explains the legal provisions of the penal code, presenting all the rationale behind each article. For instance they elucidate the limitation stipulated under Article 237 of the penal code to the husband rather than any male relative. This group also explains the conditions and limitations of the implementation of Article 17 of the penal code which is examined closely in the upcoming chapter. They do not state any personal views regarding these two legal provisions.

As for the second group of scholars, it goes one step further than the first group. It refers to the fact that the judiciary may resort, under some instances, to the application of Article 17 of the penal code to some of the honor crimes.

¹⁰⁸ See, for instance, SROUR, *Supra* note 50, at 733; see also AL-JEMEELY, *Supra* note 56, at 449.

¹⁰⁹ EHAB ABDUL-MUTELEB, EXPLANATION OF PENAL CODE, 410 (2011); MAHMOUD N. HOSNY, PRIVATE SECTION-PENAL CODE, 452 (*Dar Al-Nahda Al-Arabiyya* 2013) (2013).

¹¹⁰ KAMEL AL-SA'EEED, CRIMES RELATING TO MORALS AND PUBLIC MANNERS - AL-JARAYEM AL-WAQE'A 'ALA AL-AKHLAQ WA AL-ADAB AL'AMA (1995); AHMED M. KHALIL, THE CRIME OF ADULTERY - JAREMET AL-ZENA, 3-13, 92-109 (1982); HASSANEEN AL-MUHAMMEDI, ADULTERY KILLING - AL-QATL BESABAB ALZENA (2007); HESHAM A. AL-JEMEELY, EXPLANATION OF PENAL CODE (2013); MAHMOUD N. HOSNY, THE RIGHT OF PROTECTION OF HONOR - AL-HAQ FY SEYANET AL-IRD 11-28, 73-83 (1984).

The last group includes the views of some Egyptian legal scholars from Cairo University.¹¹¹ They explicitly state that limiting the application of Article 237 of the Egyptian Penal Code to men rather than women and the deprivation of the latter from the reduction stipulated under Article 237 of the penal code should be considered as fair discrimination.¹¹² They see that although the adultery of the husband is equal to the adultery of the wife from the moral perspective, the adultery of the latter is deemed more dangerous than the former's from the social perspective as it may lead to more serious consequences than the adultery of the husband like the confusion of lineages.¹¹³ While others relate such discrimination to the assumption that the wife, being the nucleus of the family,¹¹⁴ should be the guardian of her husband's honor "Ird" and such crime would not take place unless the wife completely surrenders her husband and children to her accomplice in adultery.¹¹⁵ They believe that the female members involved in adultery situations results in social immorality.

C. Alternative analysis:

Unlike the literature available in English on honor crimes, most of the Egyptian literature written in Arabic does not recognize the existence of Articles 17 and 237 of the penal code as being problematic. This is based on the following reasons. First, in regards to Article 237 of the penal code, they believe that a husband who kills his wife immediately upon surprising her committing adultery is not a dangerous person in the first place. They believe that a husband who commit this act – killing the wife – is result of provocation.¹¹⁶ They see the perpetrator, in such instance, as not reflecting a high level of criminality. Second, in regards to the implementation of Article 17 of the penal code, they often see that this assumption is originally based on the inherent right of the judiciary. It sees appropriate for any felony to resort to the application of general provisions stipulated in the penal code and Article 17 of the penal code stands as such.¹¹⁷

The literature written in English on honor crimes shares a general assumption that the presence of legal provisions embodied generally within Arab legislation and specifically

¹¹¹ Cairo Law University is deemed as one of the top Universities in Egypt and has a great influence in the field of law study in Egypt as well as in the Middle East.

¹¹² AL-SA'EED, *supra* note 110.

¹¹³ KHALIL, *supra* note 110.

¹¹⁴ See KHALIL, *supra* note 110; AL-MUHAMMEDI, *supra* note 110; AL-JEMEELY, *supra* note 56.

¹¹⁵ HOSNY, *supra* note 110, at 11-28, 73-83.

¹¹⁶ ABDUL-MUTELEB, *supra* note 109; HOSNY, *supra* note 109.

¹¹⁷ ABDUL-MUTELEB, *supra* note 109, at 411; MOSTAFA M. HARAGA, COMMENTARY ON PENAL CODE, 401 (2010).

within the Egyptian legislation as Articles 17 and 237 of the Egyptian penal code clearly provide for the safe prosecutions of the perpetrators of honor crimes.

They claim that judges by virtue of the power endowed to them under Article 17 circumvent the will of the legislator stipulated under Article 237 of the penal code. The legislator, in the latter article, has limited the reduction of sanctions to husbands killing their wives for committing adultery. It is believed that judges usually use the former article, as an alternative concept available under the same code, to entrench the scope of the favorable treatment to other male relatives. Furthermore, judges may, on their own, give leniency to husbands who fail to meet the conditions stipulated under the Article 237 of the penal code. They argue that such discretionary power constitutes a major obstacle towards the erosion of honor crimes in Egypt. They claim that Article 17 of the penal code acts as a complementary article to Article 237 of the penal code. With the wide discretionary power it puts at the sole discretion of the judges, it enables the latter to give leniency wherever they deem necessary. They claim that judges favor honor crime perpetrators as they widely give leniency to honor crimes. In looking at the published literature in both Arabic and English, I believe that none of the literature available on honor crimes critically analyzes actual rulings on cases involving honor crimes which may stand as concrete evidence of their claim. The published literature found citing cases involving honor crimes are very few. Moreover, they did not analyze wide range of cases out of which one may assume the tendency of the judges, in regards of giving leniency to perpetrators of honor crimes.

The English literature can be divided into two main streams; the first believes that it is hard to provide for a proper honor crimes case analysis, especially in light of the non-availability of court rulings due to the non-publication of these rulings. While the second often disregard that problem and directly assume that the leniency of judges always provides a secure escape for the perpetrators of honor crimes under Article 17 of the Egyptian penal code. Both streams carry the same assumption: that the discretionary power awarded to judges is wrongfully used in favor of perpetrators of honor crimes, whether for husbands who fail to fall under the application of Article 237 of the Egyptian penal code or for the paternal relatives who often perpetrate honor crimes for the sake of preserving honor.

I, nevertheless, argue that there exists an alternative type of analysis which the available literature fails to provide. Such analysis presupposes an alternative view of the application of leniency by courts in honor related crimes. An analysis of the appeals reviewed and submitted before the Egyptian Court of Cassation relating to the application of Article 17 of

the penal code out of which one may assume whether does the judiciary adopt a specific tendency of giving leniency to the perpetrators of honor crimes or not.

Such analysis illuminates the practice of judges in relation to the application of leniency. It reflects to a considerable extent how in practice judges apply their leniency in terms of what type of crimes leniency is most often employed, what type of perpetrators benefit the most from the leniency, and whether judges do, in fact, give leniency to the perpetrators of honor crimes or not.

Before presenting the analysis, the next chapter provides a brief background on the conditions, regulations and the scope of application of Article 17 as stipulated in the Egyptian penal code. Furthermore, an explanation of the authority of the Egyptian Court of Cassation over the use of leniency by lower courts is explained for the sake of the later analysis.

Chapter III

IV. The Concept of Leniency under Egyptian Penal Code: definition, regulation and scope of application

Scholars argue that from the power endowed to them by virtue of Article 17 of the penal code they often lean towards giving leniency to the perpetrators of honor crimes. Thus they descend with the penalty stipulated for murder to less harsh penalties. For the sake of the counter argument this paper provides for an explanation of the nature of the discretionary power stipulated in the Egyptian penal code has to be elucidated. The legislator is the one responsible for setting the conditions, regulations and the scope of application of legal provisions as stipulated under any legal *corpus*. This chapter provides a brief explanation of the classification of crimes under the Egyptian penal code. Furthermore, it elucidates the concept of leniency adopted under Article 17 of the Egyptian penal code, its scope of application and regulation. And finally the authority of the court of cassation upon the application of Article 17 of the penal code is discussed.

A. Classification of crimes under Egyptian penal code:

Crimes are classified as per Article 9 of the Egyptian penal code into three types: felonies, misdemeanors and contraventions. The classification of crimes is based on the harshness of punishment according to the magnitude of the act committed. Accordingly, felonies are crimes punished by life execution, life imprisonment, aggravated imprisonment and imprisonment.¹¹⁸ And misdemeanors are crimes punished by detention of no less than twenty four hours and no more than three years and/or fines exceeding one hundred Egyptian pounds.¹¹⁹ Contraventions are acts punished by fines less than one hundred Egyptian pounds.¹²⁰

B. The nature of leniency granted to the Egyptian judiciary:

¹¹⁸ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 10 (Egypt).

¹¹⁹ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 11 (Egypt).

¹²⁰ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 12 (Egypt).

The Egyptian penal code recognizes the concept of leniency in criminal matters. Article 17 of the Egyptian penal code grants courts wide discretionary power in regards to criminal matters brought before them. Courts are allowed to use leniency when they believe necessary based on the circumstances of the crime examined. Such leniency granted to judges by virtue of that article empowers them to reduce penalties stipulated for felonies. The reduction of penalty is done through the replacement of the penalty stipulated for felonies by another more lenient penalty. The judge may replace the penalty stipulated with a more lenient punishment on the condition that the penalty replaced is no lower than one or two instances in punishment.

C. Regulations and Scope of application:

The application of Article 17 of the penal code is not absolute. It is regulated in the manner stipulated by the law. The conditions set for the application of Article 17 of the penal code are that it applies:

- a. To felonies;
- b. Within the limits stipulated by law;
- c. At the discretion of the judge.¹²¹

One of the general rules pertaining to the application of Article 17 of the Egyptian penal code is that it is limited to felonies.¹²² It cannot be applied to misdemeanors and contraventions as in light of the minimum punishments stipulated for them under the law there would be no space to apply Article 17.

The application of Article 17 of the penal code on felonies is not absolute. It cannot be applied to all felonies. This is due to the fact that some law provisions may stipulate the ban or limit the application of that Article. The legislator has introduced some special legal provisions which the general rules adopted within the penal codes cannot be applied to. Accordingly the application of Article 17 as a general rule under the penal code should be regarded in light of these special provisions. These special legal provisions are exceptional provisions to which Article 17 as a general rule do not apply. The non-application of Article 17 can be wholly or partially. A public official who seeks or communicates with a foreign country in a way that bounds to prejudice Egypt's warlike, diplomatic, political, or economic

¹²¹ see ABDUL-MUTELEB, *supra* note 109, at 195-6.

¹²² Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937, Article 17 (Egypt); see ABDUL-MUTELEB, *supra* note 109, at 195-6.

situation is deprived by virtue of law from the application of leniency in Article 17 of the penal code.¹²³ Special laws, as the law on combating drugs trafficking, may limit the application of Article 17 of the penal code. Some articles of the code in combating drugs trafficking stipulates that the courts may give their leniency to the perpetrators of the crimes, however, they may not lessen their sanctions to less than six years of imprisonment.¹²⁴

The second condition is that the application of article 17 of the penal code has to be within the limit stipulated under the law. The legislator has conditioned the application of leniency of judges within a certain range. Such range is framed by the law in granting the power to judges to lessen the penalty stipulated for a certain felony one or two instances down. According to the Article 17 of the penal code, the judges may replace a harsh felony penalty with another more lenient penalty; in doing so, judges are obliged to stick to the range stipulated under Article 17. Accordingly, judges, when they believe necessary, are entitled to replace the penalty of execution with one instance less penalty like life imprisonment, or two instances less penalty like temporal aggravated imprisonment.

The third condition is for the implementation of leniency which lies at the complete discretion of judges. In terms of the reduction of sanctions, the legislator differentiates between legal excuses and lenient judicial circumstances. The first, as in the case of an adolescent accused under the age of 18, is named exclusively under the law, however, the second, as in a case where the accused has exceeded the age of 18,¹²⁵ are left to the discretion of the judge to decide what circumstances he considers as lenient judicial circumstances. Accordingly, judges may not use analogy or exceed the legal excuses stipulated under the law. Reduction of sanction, where stipulated, is placed on a judge to abide by and apply to the case at hand.¹²⁶

Unlike lenient judicial circumstances, judges at their discretion may reduce penalties. It is believed that the legislator left lenient judicial circumstances without stipulation, as in legal excuses, so judges apply leniency where they see necessary in all cases brought before them,

¹²³ Article 77 (d) of the Egyptian penal code stipulates that a public official under any case shall not benefit from the leniency stipulated in Article 17 of the penal code.

¹²⁴ Law No. 182 of 1960 (Act of Drugs Combating of 1960, reformed in 1981), *Al-Jarida Al-Rasmiyya* 13 Jun. 1960, Article 36 (Egypt).

¹²⁵ Under law no. 12 for the year of 2006, as amended by law no. 126 for the year of 2008, on the law of child, whoever is less than 18 years old is a juvenile under the Egyptian Child Law and shall receive a special treatment and considered as a legal excuse under the Egyptian law. Whoever is 18 years old are no more subject to such special treatment provided under the latter code, however, he/she would still benefit from a court's leniency based on its discretionary power of applying the lenient judicial circumstances entitled to them by virtue of Article 17 of the Egyptian penal code.

¹²⁶ ABDUL-MUTELEB, *supra* note 109, 196.

especially unusual cases.¹²⁷ It should be noted that legal excuses may change the nature of the crime or the act committed according to the penalty applied; if detention is the penalty applied thus it would be considered as misdemeanor and not felony. Nevertheless, when lenient judicial treatment is applied, the nature of the crime is not changed according to the penalty applied. Thus the crime would be still classified as a felony even though the penalty applied is within the scope of penalties stipulated for misdemeanors.¹²⁸

D. Additional conditions for the application of leniency:

Additional conditions for the application of a court's leniency rests in the circumstances related to the criminal him/herself. These condition are believed to be obvious conditions. The first condition relates to the criminal record of the criminal. A criminal who deserves the court's leniency, from the point of view of the latter, has to be clean in terms of his criminal record. A criminal whose criminal record reflects a criminal tendency should not benefit from the leniency of judges. The competent court, when deciding on a case, needs to check the criminal record of the perpetrator. If the latter's criminal record reflects the commission of other felonies of the same nature or magnitude. Thus, leniency should not be applied. A criminal with a criminal record reflecting a serious criminal tendency should not benefit from leniency. The logic is based on the fact that criminals with clean criminal records who perpetrate a crime under the conditions judges deem entailing their leniency are assumed to have perpetrated their crime with the contribution of such conditions, thus they apply their leniency to this type of criminal with the hope that they may achieve the utmost purpose of the legislator who seeks the punishment of perpetrators for the criminal act besides realizing the policy of correction and reform. The policy implies punishing criminals for their criminal act while at the same time aiming at the correction and the rehabilitation of such criminal.

Another condition which is classified under the judicial circumstances is provocation. The Egyptian code does not recognize provocation as an exemption or an excuse which entails the implementation of court's leniency except in the case of a husband who surprises his wife committing adultery with another stipulated under Article 237 of the penal code. Nevertheless, provocation in some instances may be deemed as a factor for the reduction of sanction. The competent court on their own may consider provocation as a lenient judicial circumstance to which their leniency can be exercised.

¹²⁷ HARAGA, *supra* note 117, at 209.

¹²⁸ ABDUL-MUTELEB, *supra* note 109, at 196.

E. Authority of the Egyptian Court of Cassation:

Authority of the Egyptian Court of Cassation on the implementation of Article 17 of the Egyptian penal code is limited. The rationale for that is based on several factors. The main factors relates to the nature of function of the court of cassation. The legislative formula of Article 17 of the penal code, per se, gives discretion to the competent court to apply leniency when they see necessary. The first factor relates to the function of the court of cassation. The Egyptian Criminal Procedures Code organizing the functions of the court of cassation under Article 30 stipulates the following:

“Public prosecution, defendant or the responsible for the civil rights have the right to appeal the final ruling in a felony or a misdemeanor rendered before the court of cassation in the following instances:

1. If the appealed ruling is based on contravention or misapplication or interpretation of law,
2. If an annulment hits the ruling,
3. If any of the procedures were wrongfully carried affecting the ruling.”¹²⁹

According to the law, the functions of the court of cassation is limited to these stipulated within the law of criminal procedures. Technically the court of cassation reviews the application of laws ensuring that the laws and the procedures have been implemented in the correct manner. In all cases, a court may not exceed or bypass these functions. One of the direct consequences in relation to the application of Article 17 of the penal code, is that a plea to apply the leniency of the judge cannot be brought, the first time, before the court of cassation. Accordingly, the acceptance, by the court of cassation, to an appeal demanding for the first time the application of Article 17 of the penal code exceeds the scope of functions entitled to the court.¹³⁰ Such a plea may be only submitted for the first time before the court competent in examining the subject matter.

The second factor relates to the legislation empowering judges to use leniency when they see necessary. The legislation formula under which Article 17 exists under the Egyptian penal code forms a semi-umbrella which encompasses wide discretionary power granted at the hand of the judge examining the subject matter. Such wide discretionary power can be tested in several manners. One is that *the circumstances of the crime is left to judges* examining the subject matter of the case in order to evaluate whether such circumstances entail the implementation of their leniency or not. Being the competent court, it can freely decide what

¹²⁹ Law No. 150 of 1950 (Criminal Procedure Code of 1950, reformed in 2008), *Al-Jarida Al-Rasmiyya* 22 May 1950, Article 30 (Egypt).

¹³⁰ Appeal No. 1968/Judicial Year 48/Court of Cassation 29 Mar. 1979 (Egypt).

to consider as lenient judicial circumstances without being obliged to state in their reasoning the nature of these circumstances or their influence on the crime or the act committed.

For instance, practically speaking, judges are not required to record in the court reasoning the exact circumstances upon which they have based their leniency upon. The court of cassation in its rulings recognizes that the reason behind the lenient judicial circumstances is left to the internal feeling of the judge which cannot be explicitly expressed in his ruling reasoning unlike other legal issues.¹³¹ A judge deciding on any felony, while rendering his judgment, is not committed to listing all the circumstances he has relied on or what he sees as entailing the application of his leniency. Thus he is not obliged to state in the court's reasoning that he has taken into consideration the difficult life and the abject poverty which a perpetrator may have been suffering from by the time of committing his crime or even to state his belief that if such circumstances were not present the latter would have not committed his crime, and that the perpetrator has committed his crime out of dire need and poverty.

The issue of what the judge can consider as lenient judicial circumstances to which he applies leniency reflects a very wide discretionary power. The court of cassation ruled that such lenient judicial circumstances are not limited to the circumstances of the accused but also includes the circumstances of the entire criminal incident encompassing all the factors related to the rationale of the criminal act, the circumstances of the victim as well as the perpetrator.¹³² This widens the scope of choice for judges to consider whatever circumstances they see necessary to exercise their leniency.

Another which is closely related to the non-obligation of judges to state the circumstances they relied upon while applying their leniency is that they only need to *point out* in their reasoning that they applied Article 17 of the penal code. But once a judge has pointed out the application of judgment he is compelled to lessen the verdict one or two instances in the manner prescribed under the law. Accordingly, a judge who states in his reasoning that leniency is applied but renders his judgment with the minimum penalty already stipulated for the felony at hand, subjects his judgment to the court of cassation's refutation on the basis of misapplication of law. An example of misapplication of law is when a judge applies leniency to a felony, and renders his verdict within the range of the minimum penalty stipulated for such felony in the penal code.¹³³

¹³¹ Appeal No. 191/Judicial Year 4/Court of Cassation 8 Jan. 1933 (Egypt); Appeal No. 1186/Judicial Year 36/Court of Cassation 4 Oct. 1966 (Egypt).

¹³² Appeal No. 191/Judicial Year 4/Court of Cassation 8 Jan. 1933 (Egypt).

¹³³ Appeal No. 257/Judicial Year 34/Court of Cassation 1954 (Egypt).

Moreover, a judge who fails to state within his reasoning that he applied leniency to the case at hand, though it can be assumed from the nature of the penalty rendered that leniency was exercised, it would not be considered as misapplication of law by the court of cassation. Multiple rulings of the latter stress that in case the competent court while rendering its judgment, did not point out that it applied its leniency to the case at hand, and it is apparent from the ruling that leniency was being implemented should not be grounds for an appeal before the court of cassation. The decisive element in this case would be whether the competent court rendered its reduced penalty within the limits stipulated under Article 17 of the penal code or not. Therefore, a ruling as such would not be considered to be misapplication of the law as long as it is rendered within the range of leniency stipulated under the penal code.¹³⁴

Added to the wide discretionary power of judges, in the case of multi-perpetrators, judges can choose to apply their leniency to one or more of the perpetrators while depriving the others from such leniency. Limiting the application of leniency to one accused among several others is at the judge's discretion. The reason for this is that circumstances differ from one crime to another as well as from one accused to another. The status and circumstances of the perpetrators are not the same and the judge is free to decide under which circumstances leniency would be exercised and which not.¹³⁵ Thus, the circumstances of one accused may qualify for leniency in the judge's opinion while the circumstances of the other accused do not. Accordingly the former would benefit from the judge's leniency while the latter is denied such leniency.

It is obvious that the competent court enjoys wide discretionary power in regards to the application of leniency to felonies. The court at its will, is free to apply leniency to whatever felonies they consider appropriate and whomever committed such a criminal act. The main constraint on such will is that the former has to abide within the range of punishments stipulated under the law. Otherwise it is subject to the review of the court of cassation who would refute the judgment based on the misapplication of law.

¹³⁴ See Appeal No. 574/Judicial Year 25/Court of Cassation 3 Jul. 1955 (Egypt); Appeal No. 555/Judicial Year 47/Court of Cassation 10 Oct. 1977 (Egypt); Appeal No. 248/Judicial Year 50/Court of Cassation 28 May 1980 (Egypt).

¹³⁵ ABDUL-MUTELEB, *supra* note 109, at 196.

Chapter IV

V. Examination of the appeals submitted before the court of cassation involving the application of leniency

The literature available on the crimes of honor, as shown, assumes that the judiciary in Egypt often adopts a certain tendency towards honor crimes forming a sort of protection from prosecution for the perpetrators of honor crimes. The safe escape it provides lies in the resorting of the judiciary to leniency. They believe that the judicial rulings usually resort to leniency on cases of honor crimes for the perpetrators of the crime. This often takes place when the perpetrators of the crimes are the victim's paternal relatives. Furthermore leniency may extend to perpetrators who do not fall within the prescribed reduction in sanction granted under Article 237 of the penal code. If a husband fails to meet the conditions stipulated under the latter article, the judiciary can still sentence him to a more lenient verdict. Lenient sanctions mount to the same level sanction adopted under Article 237 of the penal code.

The literature suggests that leniency of the judiciary towards the perpetrators of honor crimes is widely used. Scholars believe that whenever a crime of honor is brought before the judiciary, the latter often applies leniency empowered to them by virtue of law. As explained in chapter two, the bulk of the literature on honor crimes written in English share this common assumption. The literature available ranges from admitting the difficulty of providing an analysis due to the non-publication or non-availability of such cases at one end to directly assuming that the leniency of judges provides a secure escape for the perpetrators of honor crimes on the other end. Both points of views do not provide concrete analysis. They mainly base their assumption on prior analysis of very few cases involving honor with a direct focus to the use of leniency of judges in these cases. None of which give a wider focus to the application of Article 17 of the penal code in general. The analysis this chapter attempts to reflect a considerable extent in regards to the crimes that Egyptian judiciary tend to apply leniency upon including honor crimes.

Some scholars acknowledge the problematic issue that the rulings of Egyptian courts deciding on the subject matter remain unpublished.¹³⁶ They continue to base their assumption on the analysis of very few case rulings involving honor and develop their common assumption and directly assume that the perpetrators of such type of crimes are granted an

¹³⁶ See Abu-Odeh, *supra* note 3, at 929.

escape from the punishment which suits the severity of the crimes they commit. An attempt which this chapter tends to overcome is the problem of unpublished court rulings rendered from the courts deciding on the subject matter through an analysis of the appeals submitted before the court of cassation involving the application of Article 17 of the penal code. In contrary to the court rulings of the courts deciding on the subject matter, the appeals submitted before the Egyptian Court of Cassation are often published and further used as reference by legal scholars and practitioners. This paper acknowledges the fact that the analysis of appeals submitted before the court of cassation are provisional, drawn from a small number of appeals and does not provide a conclusive image for how Egyptian judiciary treats honor crimes. However, one must not undermine the outcome of the analysis of these appeals. Although the outcome of such analysis is provisional, nonetheless, it reflects to a considerable extent of the realities of trial court practices by highlighting courts' reasoning on the cases appealed and involve the application of Article 17 of the penal code.

Accordingly, this chapter analyzes the actual appeals submitted before the Egyptian Court of Cassation relating to the application of Article 17 of the penal code. The analysis, this chapter presents, reveals to a considerable extent the way judges apply leniency to the crimes they are ruling on. It reflects, in practice, how and when judges apply their leniency, what types of crimes leniency is most applied to, what type of perpetrators benefit the most from the leniency and whether judges necessarily apply their leniency to the perpetrators of honor crimes at all.

The study provides an approximate view on which crimes the judiciary seems to be most lenient towards. The need of framing such a picture is that most of the literature available assumes the frequent leniency of judiciary towards the perpetrators of crimes involving honor. It is obvious that the literature available on honor crimes as discussed previously in details share the common ideology about the leniency empowered to the judiciary that whenever crimes of honor are brought before the judiciary, the latter rules leniently to the perpetrators of such type of crimes securing them an escape from the adequate punishment. The literature available assumes the presence of a certain tendency of the judiciary to apply their leniency to the perpetrators of crimes of honor.

This study is based on the compilation of number of appeals collected which were submitted before the Egyptian Court of Cassation that dates from 1934 till 2014. The study examines the court rulings relating to the application of Article 17 of the penal code that were reviewed before the Egyptian Court of Cassation. The rulings examined under the study are the rulings

from judicial year 4, 1934 to the judicial year 83, 2014. The examination deals with all the cases in relation to the application of Article 17 which were submitted before the court of cassation during that time. The rulings encompassed a wide range of crimes. The crimes differed in nature, type and magnitude. They range among crimes relating to state, individuals, public health, public officials and others.

An analysis based on the suggested study will focus on the appeals brought before the court of cassation and involving the application of Article 17 of the penal code. From the examination of such appeals, a statistical inference can be deduced by which one may draw a considerable image to the realities of court trials and how judges tend to apply their leniency to perpetrators of crimes. The analysis shows that there is a wide application of leniency made by the Egyptian judiciary to various crimes brought before them. The first part of this chapter presents the statistics regarding to the appeals submitted by the court of cassation involving the application of leniency. The second part of the chapter takes a closer look at cases involving honor to Article 17 of the penal code was whether invoked or applied.

Conclusion drawn from the rulings examined during these years show that honor crimes are not decisively the most common crimes to which the leniency of the judiciary is applied. The study compiles a huge number of crimes to which Article 17 is applied or has been invoked and which were later appealed before the court of cassation. The classification of crimes is based on the type of the wrongful act committed whether a misdemeanor or a felony. The study classified crimes as ones relating to the state, occurring to individuals, occurring/relating to the public officials, crimes relating to public wealth and other miscellaneous crimes.

A. Statistical inference:

The table below reflects the outcome of the study on the crimes which were appealed under or involving the application of Article 17 of the penal code before the court of cassation.

Table 1: statistics of the appeals examined:

Crime	Number
Crimes relating to State	
Drugs	414
Forgery	152
Illegal possession of weapons	54
Forgery and merchandizing of currency	12
Trafficking of monuments	4
Joining a terrorist group	4
Damaging Communication lines	2
Building without a license	1
Voluntary waste of official documents	1
Importing waste products	1
Total	645
Crimes occurring to individuals	
Murder	256
Battery leading to permanent disability	79
Theft/robbery	62
Sexual laceration	48
Attempted Murder	39
Battery leading to death	34
Kidnapping	21
Honor Killings	9
Arson	10
Coerced signature	5
Attempted rape [statutory rape]	4
Coerced Abortion	4
Involuntary killing	1
Total	572
Crimes on Public Wealth	
Embezzlement	110
Bribery	106
Seizure of state money	59
Tax evasion	16
voluntary undermining of state funds	5
Unjust earning	4
Breach of contract to which a state is a party	4
Transgression on state property	3
Illicit gain	2
Total	309
Crimes occurring/relating to Public Officials	
Assaulting a public official	11
Torturing inmates	5
Arbitrary Arrest	4
Resisting authorities	1
Total	21
Others	
Slaughtering female stock	2
Cheque without provision cover	1
Slaughtering outside slaughter house	1

Total	4
Sub Total	1551

The above statistics on the appeals examined which were appealed under or involving the application of Article 17 before the court of cassation, during the specified time, show that leniency of judiciary is widely applied. Such leniency is applied to various type of crimes. Crimes varied between crimes occurring to State, public officials, individuals, public wealth and other miscellaneous crimes as classified under the table above.

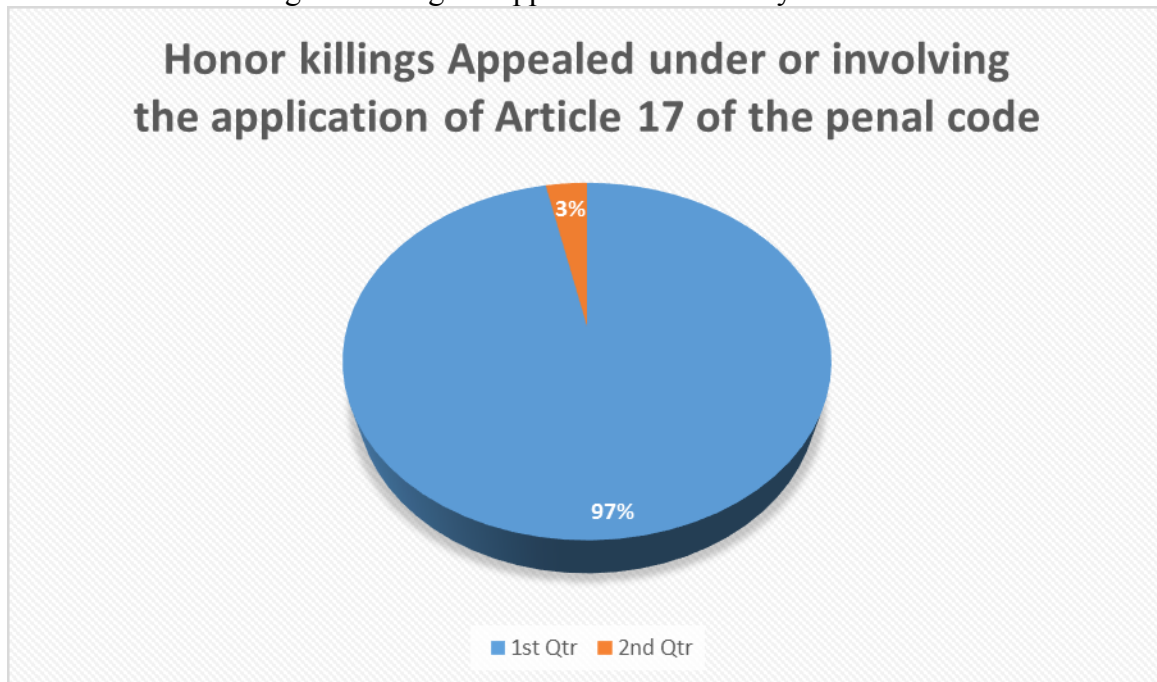
Crimes occurring to state, the examined rulings before the court of cassation shows that drugs related crimes are the most common crimes to which Article 17 is applied. Drugs related crimes vary between the illicit possession, smuggling and addiction of drugs. The judiciary seems to be lenient towards such type of crimes according to that study. Following drugs, forgery and illegal possession of weapons are also treated in a lenient manner. The leniency of judiciary is also applied widely to include crimes related to forgery, illegal possession of weapons, forgery and merchandizing of currency, trafficking of monuments, etc. These crimes seem to take part of the judiciary's leniency as well at the latter's discretion.

Crimes occurring to individuals come in the second place in the lenient treatment of judiciary following crimes to the state. Competent courts often resort to the application of leniency to crimes occurring to individuals. Murder crimes come on top of the crimes occurring to individuals which leniency applies to. Article 17 of the penal code is widely applied to murder crimes by the competent courts. The high number of murder crimes to which leniency is applied may reflect a general tendency by the judiciary to be lenient to murder crimes as with any other crime.

In applying their leniency to murder crimes the judiciary varies according to the circumstances of each crime. Sometimes leniency is applied to reduce sanctions one degree in some of these crimes and two degrees in others. In some murder crimes, capital punishment was replaced with the penalty of life imprisonment while in others capital punishment was replaced to an aggravated imprisonment.

B. Honor Killing and Killings not involving honor:

Table 2: Honor Killings involving the application of leniency:



The examination shows that around 265 murder crimes involved the application of Article 17 before the court of cassation. The diagram shows that out of 265 murder crimes to which leniency was appealed or applied, only 9 murders were honor killings while the other 256 murders did not involve honorary issues. In terms of percentage the study shows that only 3 % of the murder crimes which were appealed under or involving the application of Article 17 are honor related crimes, while the other 97 % are the usual murder crimes which vary according to each crime. Based on these statistics, the judiciary seems to be lenient in general to most of the crimes brought before them regardless of whether they relate or involve honor as shown on the diagram above.

Regarding public wealth crimes, the examination shows that leniency is applied to a large number of this type of crimes. The crimes which are the most common are embezzlement, bribery, seizure of state money and tax evasion.

The leniency of the judiciary is also present in the crimes occurring or relating to public officials. Crimes occurring/relating to the public officials to which leniency is applied the most often are assaulting a public official, torturing inmates and arbitrary arrest.

Leniency can be also found under the appeals of other miscellaneous crimes as shown in the table. The miscellaneous crimes to which leniency is applied has no specific norm. They can encompass crimes as slaughtering female stock or passing cheques with no sufficient funds.

C. A closer look to the honor killings reviewed before the court of cassation:

Having a closer look at the crimes involving honor submitted before the court of cassation under appeal or involving the application of leniency, one may find appeals which assumes that the leniency of the judiciary is not necessarily applied to crimes involving honor whenever they are brought before the latter courts. The reasoning of the court of cassation on the appeals of these cases makes it somehow clear that to a considerable extent to how the application of leniency is implemented in realities of court trials.

Case # 1:

An appeal examined before the court of cassation on December 21, 1948 in which a husband killed his wife for getting pregnant from incest.¹³⁷

The court of the subject matter applied leniency to the accused.¹³⁸ The latter appealed the sentence rendered before the court of cassation on the ground of misapplication of law and pleaded the application of Article 237 of the penal code.

The court of cassation rejected the appeal reasoning its rejection on the fact the defendant killed his wife after he knew that she got pregnant from incest. The court stated that analogy cannot be made to legal exceptions as the one stipulated under Article 237 of the penal code, thus the defendant cannot benefit from the application of such article.

Case # 2:

The appeal examined dates to April 20, 1954 where a man who deliberately killed his female family member in the governorate of Qena, Upper Egypt Region.¹³⁹ He admitted killing her as he knew that she had gotten pregnant through incest. The man accompanied the victim to a remote area where he beats her to death with a heavy stick. The man admitted committing this crime as citing defending the honor of the family. He was prosecuted under Article 234/1

¹³⁷ Appeal No. 2131/Judicial Year 18/Court of Cassation (Egypt).

¹³⁸ The appeal examined is very ancient which dates back to 1948 and only the information summarized above which could be rendered out of the copy of the appeal.

¹³⁹ Appeal No. 257/Judicial Year 24/Court of Cassation (Egypt).

of the penal code which stipulates that whoever intentionally kills a person without premeditation shall be sanctioned with life or hard labor imprisonment.¹⁴⁰ The pregnancy of the victim was confirmed by the forensic medical report.

The court examining the subject matter sentenced the man to ten years of hard labor imprisonment. The latter appealed to the court of cassation on the basis of bad reasoning and the request of application of Article 17 of the penal code. The court of cassation rejected the accused's appeal. It based its refusal on the fact that intent could be deduced from the numerous severe hits which the accused directed to the victim's head and body causing her death. This was according to the autopsy's report carried out by the forensic examiners. The court also rejected the accused's appeal based on the lack of response of the subject matter court to the accused's request to have applied Article 17 of the penal code. The competent court is not obliged to reply to such requests. The appeal was considered by the court of cassation to be of no solid basis and thus rejected the content of the appeal.

Case # 3:

An appeal submitted before the Court of Cassation dating back to November 1, 1976 in which a defendant, in Upper Egypt, deliberately killed both his wife and mother in law for their bad reputation and sexual misconduct.¹⁴¹ The defendant confessed before the prosecution that after he returned from his travel he heard of his wife's bad reputation and sexual misconduct. He admitted killing both his wife and mother in law as after a fight they had about this issue. He got prosecuted under Article 234 of the penal code.

The court deciding on the subject matter sentenced the accused to 7 years of an aggravated prison. The court applied Article 17 of the penal code to the accused. The accused appealed the sentence on the ground of misapplication of law and bad reasoning. The appellant stated that the confession before the court was not detailed and is not sufficient to sentence him to the rendered punishment. He pleaded the application of Article 237 of the penal code instead of Article 234.

The court of cassation rejected the appeal reasoning its rejection on the fact that the defendant admitted before both the prosecution and the court that he intentionally killed both his wife and mother in law as they informed him that they are free to do whatever they want which got

¹⁴⁰ Law No. 58 of 1937 (Criminal Code of 1937, reformed in 1952), *Al-Waqi'a al-Misriyah* 5 Aug. 1937 (Egypt).

¹⁴¹ Appeal No. 615/Judicial Year 46/Court of Cassation (Egypt).

him provoked and thus killing them. The court stated that Article 237 of the penal code was inapplicable to the case of the appellant.

Case # 4:

An appeal was examined before Cairo Court of Cassation on February 14, 1977 in which the defendant deliberately killed the deceased for the sake of honor.¹⁴² The first defendant killed the deceased using a chopper and threw his victim in the river with the aid of the other defendant. The other defendant only aided the other defendant in throwing away the body of the deceased. The prosecution prosecuted both defendants under Article 234 of the penal code.

The court of the subject matter sentenced the first defendant to 7 years of an aggravated prison while the other defendant was sentenced to 1 year of imprisonment. The court applied Article 17 to both defendants. The first defendant appealed the rendered sentence on the ground of nullity of procedures. The defendant appealed that before the first court both defendants had the same lawyer which constituted a conflict of interest as the first defended was accused of intended murder while the other was accused of hiding the body of the deceased.

The court of cassation considered the appeal admissible based on the conflict of interest existed before the court of the subject matter that both defendants had the same lawyer. The court appealed the sentence and returned it to a different court to re-examine the case.¹⁴³

Case # 5:

An appeal examined before the court of cassation on March 13, 1977, in which a husband deliberately killed his wife after becoming suspicious about her sexual conduct.¹⁴⁴ The man was prosecuted for intentionally killing the victim with a knife. He got her alone in their bedroom and stabbed her several stabs intending to kill her. The autopsy report emphasized that these stabs was the direct cause of her death. The prosecution prosecuted the accused under Article 234/1 of the penal code.

¹⁴² Appeal No. 1021/Judicial Year 46/Court of Cassation (Egypt).

¹⁴³ The re-examined case could not be traced and was not found on the database of the Egyptian Court of Cassation.

¹⁴⁴ Appeal No. 1213/Judicial Year 46/Court of Cassation (Egypt).

The Giza Felonies Court deciding on the subject matter sentenced the accused to 15 years of an aggravated imprisonment according to the penalty empowered to it under Article 234/1 of the penal code. The accused appealed the court's ruling before the court of cassation based on several grounds. Mainly poor reasoning and misapplication of law. Firstly, he questioned the former court's decision regarding premeditation. The appellant argued that the court was not determined whether the killing was intentional or not. Secondly, he pleaded that the court deciding on the subject matter tackled the motivation or the reason behind the commitment of the crime while the motivation of the crime is not an element of the crime. Thirdly, the court reasoned the presence of intent because the accused used a sharp instrument in his crime and stabbed the victim several times causing her death. In reality, the accused should be tried for battery leading to death and had to be tried according to Article 237 of the penal code. Fourthly, the defense pleaded that sanctioning the accused left his children with no one to depend and entailed the competent court's leniency and its application of Article 17 of the penal code.

The court of cassation responded to the defense's first appeal. The court stated that there was no hesitation at the competent court's side about whether the crime was premeditated or not. The court of cassation reasoned the non-existence of such premeditation as the appellant had ongoing disputes with the victim, and in their last dispute she was killed. The court also acknowledged that the appellant did not specially prepare the knife used for his crime as it was already there in their domicile's kitchen. As for the second pleading that the competent court considered the motivation and the reason behind the crime while they do not constitute an element of the crime, the court of cassation replied that the court of the subject matter did tackle the motivation and the reasons behind the crime committed, but did not rely on them in their rulings. While the court found the intent of killing ambiguous, they believed that the presence of such intent is based on the fact that the weapon used was a lethal weapon; knife. Moreover the severity of the stabs which the appellant directed to his victim till the latter passed away makes the presence of the intent of killing undebatable. Added to that, the court of cassation's response to the request for the court's leniency, is at the court's sole discretion with no review of the reasons behind applying such leniency is necessary.

Case # 6:

The case dates back to March 4, 1987. The case is of a husband who deliberately killed his wife for her bad sexual reputation and misconduct.¹⁴⁵ He admitted before the prosecution that they fought over her sexual misconduct and bad reputation. He stabbed her several times using a penknife immediately when she confessed the name of her lover and he did not stop till she has fallen dead on the ground. The prosecution prosecuted the accused under Article 234/1.

The Cairo Felonies Court deciding on the subject matter sentenced the accused to ten years of prison. The court applied Article 17 of the penal code to the accused. The accused appealed the court's ruling before the court of cassation based on several grounds. He appealed based on poor reasoning, misapplication of law and prejudice to the right of defense. He pleaded his loss of awareness as he was treated of severe depression by the time he committed his crime. He followed that it was clear to the court deciding on the subject matter when it asked the accused about the crime, the latter cried and muttered incomprehensible words. Thus the court should have resorted to expertise to decide on his mental awareness. He also pleaded the absence of the intent of killing as it is obvious that a fight has taken place between him and the victim right before the crime.

The court of cassation rejected the defendant's appeal and reasoned its rejection on several grounds. First, the accused admitted his crime in details before the prosecution as he confessed killing his wife as they fought about her sexual misconduct and bad reputation on the spot she uttered the name of her lover. The court emphasized on the presence of the intent of killing as the accused stabbed his victim using the penknife several times and did not stop till she was completely dead leaving her on the ground. The appeal was considered by the court of cassation to be of no solid basis and thus rejected the content of the appeal.

Case # 7:

The case dates back to March 10, 1997 as a husband suffering from impotence deliberately killed his wife for being suspicious about her sexual conduct.¹⁴⁶ He admitted before the prosecution that he killed his wife as he doubted that she is engaged in a sexual affair. The accused confessed that he fought with the victim and choked her to death using a piece of

¹⁴⁵ Appeal No. 6243/Judicial Year 56/Court of Cassation (Egypt).

¹⁴⁶ Appeal No. 24855/Judicial Year 64/Court of Cassation (Egypt).

cloth. He admitted that the victim used to mention his sexual disability whenever they fight but he could not bear the insult on their last fight and he killed her. The accused further admitted that he killed his daughter as he doubted her blood relationship. The prosecution got him prosecuted under Article 234 of the penal code.

The court deciding on the subject matter sentenced the accused to life time imprisonment. The court applied replaced the capital punishment by the sentence rendered by applying Article 17 of the penal code to the accused. The accused appealed the sentence based on the grounds of misapplication of law and bad reasoning. He pleaded the misapplication of law on the basis that the court should have applied Article 237 of the penal code instead of Article 234. He emphasized that he killed his wife as she was in a state of adultery.

The court of cassation rejected the appeal. The court reasoned that it was not proved that the wife was caught committing adultery as the perpetrator confessed before the prosecution in details that he killed his victim as the latter mentioned his sexual disability during their last fight, thus, he brought a piece of cloth and choked her to death. The accused admitted that he also killed his daughter as he doubted her blood bond. The court further reasoned that the accused came back home and doubted the presence of a stranger in house and as he faced the deceased with his doubts, she mocked his sexual disability which got him provoked and killed her on the spot without being certain of the presence of someone or even without tracing any. The court of cassation rejected the appeal as it is of no solid ground and the non-applicability of Article 237 of the penal code.

Case # 8:

An Appeal dating to October 21, 1997 in which two brothers deliberately killed the wife of their third brother.¹⁴⁷ The defendants admitted before the court that they killed the deceased for her bad sexual conduct and reputation. They entered the deceased's house after the departure of the latter's husband. They threw her on the ground and choked her to death, then they burnt her after making sure she was no longer breathing. They confessed that their crime was meant to clean their honor from the disgrace the deceased brought to their family. The prosecution prosecuted the defendants under Articles 230, 231 and 234 of the penal code.¹⁴⁸

¹⁴⁷ Appeal No. 16231/Judicial Year 65/Court of Cassation (Egypt).

¹⁴⁸ Articles 230 and 231 of the penal code stipulated that whoever premeditatedly murders another person faces the capital punishment.

The court examining the subject matter sentenced the defendants to life imprisonment. The court replaced the capital punishment with the rendered punishment by applying Article 17 of the penal code. The defendants appealed the ruling based on the ground of bad reasoning. They appealed that their confession was rendered under duress. They emphasized that their confession before the court was not in details.

The court of cassation reasoned its rejection to the appeal of the defendants based on that although their confession before the court was not in details, however, they admitted and simulated their crime before the prosecution. The court of cassation rejected the appeal as it is of no solid ground.

Case # 9:

An appeal examined before the court of cassation on March 11, 2001 in which a brother deliberately killed his sister for getting pregnant from incest.¹⁴⁹ The accused drugged the deceased by convincing the latter that those medical tablets helps her to get rid of the fetus. After she lost conscious he choked her to death with a wet piece of cloth. The prosecution prosecuted the accused under Articles 230 and 231 of the penal code.

The court deciding on the subject matter sentenced the accused to ten years of an aggravated prison. The court replaced the sentence of capital punishment by the rendered sentence by applying Article 17 of the penal code. The defendant appealed the sentence based on the ground of bad reasoning. He appealed that the autopsy report did not state explicitly that the assault of the defendant is the direct cause of death.

The court of cassation rejected the defendant's appeal. It based its reasoning on the fact that the defendant intentionally provided the deceased with some medical tablets and he waited till she fainted and then he choked her to death. The court stated that the autopsy report stated that the deceased's stomach contained drugs. The court cleared that it has no doubt that the assault on the deceased by the defendant was the cause of the former's death, in addition to the defendant's confession before the prosecution.

From both the cases summarized above, one may not draw a decisive conclusion on whether the tendency of judges has changed over time towards honor crimes or not. First, it should be noted that none of the appeals summarized indicated that the application of leniency to the

¹⁴⁹ Appeal No. 18095/Judicial Year 68/Court of Cassation (Egypt).

perpetrators was based on the fact that these cases involved honorary issues. One can only recognize that these appeals involve honor from the facts of each case. The reason behind this is that nothing obliges courts deciding on the subject matter to state the reasoning upon which they implemented Article 17 of the penal code. The only thing which matters is that judges merely refer to the fact that they applied leniency to the perpetrators of the crime.¹⁵⁰ Second, from the analysis of the appeals examined, one may find that judiciary has widely applied Article 17 of the penal code not only murder cases but also to illegal possession of drugs, illicit weapons and several other crimes. In addition to that, among the appeals examined which involve honor there was found couple of cases to which the leniency was not applied to the perpetrators of such type of crimes may be taken as an assumption that some crimes involving honor do not enjoy leniency of judges. Accordingly, one may not conclusively assert that the judiciary adopts a certain lenient tendency towards crimes involving honor in specific.

Leniency is applied in a broad manner when the judiciary sees fit regardless of the type of crime brought before it. The assumption adopted by most of the literature supposes that the Egyptian judiciary are necessarily lenient to these types of crimes. However, in light of the analysis conducted another assumption may rise which tells that the courts often applies to a wide range of crimes they believe in entailing the application of the leniency in Article 17 of the penal code according to the circumstances of each crime.

¹⁵⁰ The regulations and the conditions of the application of Article 17 of the penal code is covered under chapter 3.

VI. Conclusion:

Most scholars assume that Egypt fully accommodates honor crimes in the penal code through both Articles 17 and 237. Scholars presupposes that Article 17 of the penal code guarantees the perpetrators of honor crimes, who do not fall under the scope of reduction in sanction embodied in Article 237 of the code, less serious prosecutions. They propose that it is not only husbands who benefit from the reduction in sanction stipulated under Article 237 but male paternal relatives often benefit from a reduction similar as well. The examination of the appeals involving the application of Article 17 of the penal code which are submitted before the Egyptian Court of Cassation presupposes that another assumption which provisionally reflects an image to the extent of the application of leniency by courts is too wide by which it would be hard to conclusively assume that the Egyptian judiciary adopts a lenient tendency towards honor crimes. The realities of court trials revealed by the analysis provided assumes that leniency of courts is applied in a broad manner often well beyond the crimes of honor. Courts gives leniency to a wide range of crimes which often includes murders for reasons apart from honor, illicit possession of drugs, bribery and several others. The leniency in Article 17 of the penal code is not necessarily a complementary article to Article 237 of the penal code which guarantees the perpetrators of honor of crimes less serious prosecution.



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