

A Legal Definition for Honour Crimes

Deborshi Barat*

M.A. in Law and Diplomacy, LL.M, The Fletcher School, Tufts University, Dual Degree Program, USA

Introduction

Since 'honour' is frequently used as a defence (or a mitigating factor) for serious crimes in different jurisdictions across the world, it might be useful to adopt a precise definition for it. What constitutes honour?

A watertight provision, clearly embodied in a criminal statute with certain objective ingredients, would help prevent further dilution of the concept of honour crimes. A number of alleged perpetrators use this defence, abusing the inherent ambiguity of it, to secure reduced sentences or even acquittals in respect of their crimes [1]. What is proposed, therefore, is a compromise: admitting the insuperable weight of patriarchy, especially in certain tribal societies and community-based dispute resolution mechanisms, the notion of 'honour' should be definitively laid down along with appurtenant penal provisions. Depending upon the relative success or failure of this enterprise, in terms of securing justice for victims under this framework, the proposed 'pilot' definition could be phased out later, once the surrounding legal system matures.

It is not the responsibility of a criminal statute to define culture. In that sense, a penal code has no business defining. Nor can a law, however succinctly drafted, ever hope to re-create historically prevalent ideas of masculinity, especially when certain acts are believed to be permissible and sacrosanct [2]. However, if 'honour' is used in a court to establish diminished responsibility or justify loss of control, the statute itself should specify what the scope of such defence is. It can be merely a legal definition, enshrined in statutory law, for the purposes of sentence reduction alone. Effective legislation can precede custom and become instruments of change where the prevalent morality offers a skewed system of justice. For example, for an honour killing to be characterized as such, where the charge of murder is changed to manslaughter or culpable homicide not amounting to murder, it has to comply with certain prescribed criteria and fit the requirements of the defined defence. In the absence of such required conditions, the accused will not have recourse to 'honour' while defending his case.

Needless to say, this is not a back-handed attempt to destroy closely held values or traditions. However, the project seeks to check random acts of murder propitiated by human emotions, especially when the victims are vulnerable. To that extent, it is necessary to improve the economics of gender in paternalistic societies and create deterrence for the potential perpetrators.

The 'sudden and grave provocation' standard has found acceptance in many criminal law statutes. Honour is a socio-cultural construct. Since it is open to interpretation, depending upon the unique expectations of a region, it should not be applied as a mitigatory defence the same way as provocation under Common Law. Provocation typically requires a sudden and temporary absence of self-control in a reasonable man, brought about by an act of sufficient gravity to rationalize criminal conduct. It should occur in the heat of passion. 'Honour' has no such immediate or sudden manifestations to warrant a loss of self-control [3].

Even if it is argued that honour killings are occasioned by deep-

seated passions, an obvious nexus must be present between the victim and the perpetrator. Not only that; it also must be shown that the 'honour' of the accused was violated by the act(s) of the victim to such a degree, and in such an outrageous and inhumane manner, that the defendant could not prevent himself from acting like a criminal under such conditions.

The understanding is that a reasonable man becomes a different person, bereft of judgement or rationality, under the influence of certain circumstances which colour his mind. Intoxication, duress and insanity are thus construed as valid defences. For criminal law, especially for murder, arguably the most heinous crime in any municipal jurisdiction, such factor must have a higher threshold. The factor should be contributory, ideally a crime in itself (therefore aggravating) and present in such measure to justify a total loss of humanity [4]. Illustrative examples might be acts of extreme violence, profound cruelty and/or torture. In addition, the circumstances cannot co-exist with mensrea or criminal intent. The 'guilty mind' is an old nemesis of criminal law, and classical constructions of crime have faithfully required its presence. Therefore planned murders, even if influenced by revenge, retribution, or simple provocation ought not to be extended the opportunity of this defence. Reprisals and retaliations in widespread attacks, during riots or inter-group conflicts are similarly not immune from liability. Penal provisions apply equally to actors who commit crimes in response to other crimes [5]. The law does not create a hierarchy in respect of culpable motives, or the degree of participation in criminal conduct, purely on the basis of the sequence of human actions.

The requirement of 'suddenness' to qualify for a provocation in *sensu stricto* could be dispensable in some situations. In that sense, even if an honour killing occurs in response to an act removed in time, the commission of the offence could be viewed with some latitude if there is an adequately grave stimulus. But the response must be proportionate to, and a direct consequence of the preceding acts. Honour killings do not possess the element of self-defence and therefore may not be granted the benefit of "requirement". A person who commits an honour killing cannot argue that his crime was required for self-preservation. Nor can he argue that it was the only option left for him, considering all other circumstances [6].

In any case, the defence of provocation has come under criticism in recent times (it amounts to blaming the victim) and is being replaced by other standards. The U.K. abolished the old defence of provocation

*Corresponding author: Deborshi Barat, M.A. in Law and Diplomacy, LL.M, The Fletcher School, Tufts University, Dual Degree Program, USA, E-mail: deborshi.barat@gmail.com

Received June 26, 2015; Accepted July 02, 2015; Published July 11, 2015

Citation: Barat D (2015) A Legal Definition for Honour Crimes. J Civil Legal Sci 4: 147. doi:10.4172/2169-0170.1000147

Copyright: © 2015 Barat D. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

in Section 3 of the Homicide Act of 1957 and replaced it with a partial defence to murder. 'Loss of self-control' in the Coroners and Justice Act, 2009 was in part a response to growing concerns that the erstwhile defence was favourable to males who lost their temper and failed to address slow-burn victims (battered women, for example, with a long history of partner abuse). To that extent, there is now a palpable movement to make the defence more gender neutral [7].

Last year in New South Wales, a committee looked into the advisability of retaining the elements of provocation as a defence [8]. In particular, it assessed its adequacy for victims of prolonged domestic and sexual violence. Similarly, can honour be used as a defence by women for committing crimes upon men? Does the law recognize the honour of a woman equally? What are the chances of a woman committing a criminal act upon a person who abuses her dignity? Should the law take into account power imbalances between the sexes and accord special protection to women to repair such imbalance? In the very least, criminal justice must be objective enough to treat men and women the same way and thereby repeal laws which help men get away with murder. These are some of the considerations which need to be addressed in this definition, setting the limitations and ambit of 'honour'.

The law may be written down or evolve through precedents. To be a dynamic creature, ready to adapt itself in changing times, the law must be adequately supple to be amended and/or interpreted in such a way as to meet the ends of justice. Ultimately, judgements about culpability will depend upon the particular facts of the case and the reading of applicable law on a case-by-case basis. Therefore, the statute must contain bare legal provisions which provide a starting point for the application of law. The defences must be enshrined where the crimes are listed. In addition, laws may be interpreted differently by judges, depending upon the requirements of the case, but the ruling may not be contrary to the spirit of the law. If a section or article of the bare Act contains an exhaustive list of situations where the 'honour' defence may be used, it can prevent the courts from holding a 'not guilty' verdict where the defendant is unable to show a required situation. For example, if adultery is a listed 'honour' defence, it must be shown that the act of murder was committed by a legally wedded husband upon discovering his wife in the middle of sexual intercourse with another man. However, this list may be endless. It is not feasible to enumerate every eventuality in the statute itself. Reliance must be placed upon the wisdom of criminal courts to correctly interpret the legislative intent and the purpose. Moreover it is not advisable, as a general principle of law-making, to restrict the ability of judicial interpretation. What if an event emerges in the future which fails to meet the ingredients of the defence, yet justice and morality demands that the underlying offence be exonerated or treated differently from other crimes? Black-letter law might therefore be impotent in rigid legislative structures, or where a weak judiciary is unable to extend its powers and assert its jurisdiction into the realm of policy.

What, then, must be done? How can we define 'honour'? Should we identify certain exceptions and list them out or should we leave it open? What are the plausible human interactions where 'honour killings' are a valid defence? Can we trust judges to be fair and interpret the statute correctly; or instead, is it prudent to draft a tight definition so that a corrupt judge or a biased social group is not able to manipulate the law?

Let us assume that lawyering in itself demands a certain amount of manipulation in respect of legal texts. Hence, in conjunction with a symbolic (yet contested) notion of honour in a setting dominated by males, it is quite common for socially backed practices to extrapolate

the 'honour defence' when women and girls are killed for other reasons and use it to their advantage [9]. Also, even if killings are based on perceived violations of honour within the family, should we allow half-baked ideas of masculine pride to override the rights of vulnerable members? Neither criminal law nor morality/customs has the duty to protect the dominant interests of a hegemon especially when they conflict with modern constructions of liberties and freedom. The principle of the equality of law and autonomy of the individual should be accorded supreme importance.

A parliamentary committee of the Council of Europe, pursuant to a report on honour crimes in 2003, defined it as a crime justified, explained or mitigated by the perpetrator to defend the honour of the family [10]. Most of the reported cases within Europe were among migrant Muslim communities. The European Assembly noted the paradox that Islam itself does not support the death penalty for misconduct related to honour, and many of its leaders have condemned the practice on the grounds that it has no religious basis. Further to a recommendation in 2001, the Assembly stressed the importance (and urgency) of "making a distinction between the need to protect minority cultures and turning a blind eye to unacceptable customs that amount to torture and/or a breach of human rights" [11].

Just as there are bad laws, cultural practices may also be unjust. Traditions are sacrosanct to the extent of identity formation over many years, but when a group believes that a custom prevails over the rights of individuals; both law and culture need to be revisited. If women are viewed as resources embodying male honour, thus liable to inflicting 'shame' upon the wider community, we can either try to change this regressive thinking pattern or craft better laws in the short-term to protect them from being tortured and/or killed. As mentioned before, this opinion does not address the issue of cultural transformation nor does it accept harmful practices as inevitable nodes of society. The aspiration is simply to find a balance between culture and legal freedoms, and bridge the two in the interests of justice. Perhaps, a limited definition of 'honour' can help some sections of society until a better solution is found.

We can do this in either of two ways: (i) define 'honour' as a private construct of the individual, thus separating it from complications of the family and community (recognizing that law operates principally upon each separate person, not on groups as a whole, and hence the defence of criminal acts should be based on the individual alone); or (ii) define 'honour killings' as a separate offence with its own prescribed penalty, thus disincentivizing the honour defence and recognizing it as a heinous crime, even if distinct from plain vanilla murder.

The second is a matter of State policy which requires not just an amendment, but an introduction of a new offence within the accepted range of criminal jurisprudence. For the time being, let us satisfy ourselves with exploring a legal definition of 'honour'. If nothing else, it might be a simpler exercise in terms of overcoming legislative inertia. Incremental changes are easier to adopt and will be more acceptable to the stakeholders of the process. Since honour killings already have various manifestations in society, the law will simply crystallize a custom into the statute. But as an intermediate step to recording the social contract into a criminal code, only the most obvious and gravest breaches of personal honour should be culled out and placed in the statute. Here is a model:

i. Section X. Culpable Homicide

[Defined]

ii. Section Y. Murder

[Defined]

Except in the following cases, culpable homicide amounts to murder if [List out ingredients].

Exceptions (when culpable homicide does not amount to murder)

i. (xy) Honour killing

The above exception is subject to the following conditions.

Firstly, Honour is the exercise of either Self-defence or Defence of another person

i. The offender's act or omission has to result from an actual or perceived threat to the dignity of his/her own person, where such threat is accompanied by physical hurt as a condition precedent or by the reasonable expectation of such hurt in the future; or

ii. In the case of another's defence, it must be directed to prevent bodily harm, injury or death of such other person.

(a) The defence of another person must be a reasonable attempt to prevent an imminent threat; and

(b) When there is no imminent threat to the safety, bodily integrity or life of the other person, it must be shown that such attempted defence of another is the only option left and necessary under the circumstances to preserve such safety, bodily integrity or life of the other person.

Secondly

The actor acts in response to or in anticipation of which the right of Honour is exercised must be all of the following

(i) Grave.

(ii) A penal offence within the Act/Statute/Code, as amended from time to time.

(iii) A prohibited act with a minimum prescribed sentence of [insert term, as appropriate].

Thirdly

The exercise of Honour must be a direct consequence of the act (as described above) of the victim, and must be proportionate to the threat, whether actual or perceived, as a reasonable man or woman would consider under the circumstances.

In the model law above, the defence of provocation has been deliberately avoided. Sudden and/or grave provocation leading to a loss of self-control is a separate standard, which may or may not be included in a criminal statute as an independent and distinct provision, subject to other policy considerations of a State. In any case, honour killings are typically committed without either of sudden or grave provocative elements; hence the standard is best kept separate from the exception proposed above.

Also, it is a conscious effort to disentangle the alleged violation of 'honour' from a provocation as such (whether sudden and/or grave). A separate 'loss of self-control' test may be applied to a defence for

other kinds of homicide, but 'honour' (or the perceived breach thereof) should be kept away from the conveniences of 'loss of control', thus arresting the mischief that creative murderers and lawyers can wreak upon the justice system.

The intention is to make the law in respect of 'honour killings' apply equally among men and women. Particular emphasis has been placed on removing the obstacles that women might face to use the honour defence to save their own modesty. In addition, the concept of honour could include the actions of both men and women to preserve the dignity of other individuals in the face of an attack. Hopefully this construction of honour will make the defence more favourable for women whereupon they cease to be mere resources for men. As of now, they seem to be the upholders of family honour, bestowed with the negative power to inflict shame. Women are equal subjects under the law, independent from their affiliations with men. It's time that the law reflected this fact. What about jealous husbands and outraged brothers/fathers, etc.? Do they require the sympathy of law? What of jealous wives, in that case? Do they also get a defence? Can they kill men and get mitigated sentences when their husbands indulge in extra-marital intercourse? There's always provocation and loss of control. If required, it can be introduced into the statute books if it's not present already. But let us not confuse honour killings with provocation. Let us treat them separately.

References

1. Welchman L, Hossain S (2005) 'Honour': Crimes, paradigms and violence against women. North Melbourne Spinifex Press.
2. Mohamad M (2013) Family ambiguity and domestic violence in Asia: Concept, Law and Process, Sussex Academic Press.
3. Reed A, Bohlander M (2013) Loss of control and diminished responsibility: Domestic, Comparative and International Perspectives, Ashgate Publishing.
4. Claire de Than, Heaton R (2013) Criminal law, Oxford University Press.
5. Reed A, Bohlander M (2014) General defences in criminal law: Domestic and Comparative Perspectives, Ashgate Publishing.
6. Tyson D (2013) Sex, culpability, and the Defence of Provocation, Routledge.
7. Carline A, Eastal P (2014) Shades of grey-domestic and sexual violence against women: Law Reform and Society, Routledge.
8. Gibbon KF (2014) Homicide law reform, gender and the provocation defence: A comparative perspective, Palgrave Macmillan.
9. Aisha KG, Strange C, Roberts K (2014) 'Honour' Killing and violence: Theory, policy and practice, Palgrave Macmillan.
10. Council of Europe (2003) Parliamentary assembly, Documents: working papers, Ordinary session (second part) 4: 225.
11. Council of Europe (2003) Parliamentary assembly, Documents: working Papers, Ordinary Session (second Part) 3: 132-139.

Submit your next manuscript and get advantages of OMICS Group submissions

Unique features:

- User friendly/feasible website-translation of your paper to 50 world's leading languages
- Audio Version of published paper
- Digital articles to share and explore

Special features:

- 400 Open Access Journals
- 30,000 editorial team
- 21 days rapid review process
- Quality and quick editorial, review and publication processing
- Indexing at PubMed (partial), Scopus, EBSCO, Index Copernicus and Google Scholar etc
- Sharing Option: Social Networking Enabled
- Authors, Reviewers and Editors rewarded with online Scientific Credits
- Better discount for your subsequent articles

Submit your manuscript at: www.omicsonline.org/submission

Citation: Barat D (2015) A Legal Definition for Honour Crimes. J Civil Legal Sci 4: 147. doi:10.4172/2169-0170.1000147