

Honour killings in Turkey: culture, subjectivism, and provocation



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ABSTRACT

Keywords: honour killings, defendants, revenge killings, cultural defence, law of provocation

Honour killing is qualitatively different from other kinds of murders. It is governed by a particular cultural understanding of honour and shame, which can leave little freedom of choice for defendants. However, the voice of the defendant who has committed honour killing has rarely been heard. This thesis makes a start in supplying this missing focus, by exploring in detail what was felt, lived or experienced by the defendants in such cases.

One of the claims of this thesis, based on its original field work, is that the conventional image of honour killings and the defendants who killed for honour is a flawed view. The real picture is much more complex. It is simply wrong to categorise all honour killing cases as revenge killings. In the trial of honour killings, the only realistic defence strategy is the partial defence of provocation, or loss of control. However, there is judicial reluctance to accept a cultural defence, or to allow provocation based on a different cultural understanding of honour and shame, specifically in honour killing cases. This approach is against the concept of human frailty, which is the underlying rationale of the defence of provocation, and puts defendants in certain honour killing cases in a disadvantaged position, by leaving them almost no defence to argue. It overlooks the possibility of causing injustice in honour killing cases where the mental or emotional condition of the defendant is likely to fall short of diminished responsibility but where there is evidence to show that the partial defence of loss of control or provocation might well otherwise apply.

To provide a fair trial and equal treatment in honour killing cases the ordinary person test should be reformulated, and cultural evidence provided by expert witnesses to explain the nature of the defendant's act, and psychiatric evidence to explain the defendant's state of mind should be admitted for the consideration of jury.

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INTRODUCTION

Honour killing is the product of social interactions among members of society; and it is qualitatively different from other kinds of murders. It is governed by ‘the specific logic of an honour culture’ (Kurkiala, 2003:6), and a particular cultural understanding of honour and shame, which is likely to be alien and inexplicable to both the jury and the trial judge in England. The concept of honour, here, has a different meaning than reputation or prestige. In this context, a person’s honour is believed to be a sacred value and something more precious to him than even his life. It is an essential element of life. The loss of honour is equal to loss of life; and an ideal man lives for his honour. Therefore, a person may go to extremes in defence of this sacred honour by violating other sacred values and committing a grave sin, such as is killing.

Despite these complexities and powerful motivations, the voice of the defendant who has committed honour killing has rarely been heard. The views of defendants, and their perspectives on the crimes committed, have been overlooked. By ignoring these accounts it is perhaps inevitable that a very negative stereotype has been created for such defendants, in which they are assumed to have been content with what they did, and where they are assumed to have committed such crimes in cold blood and without hesitation. Needless to say, the limited data and unconvincing research evidence available to date has created a general assumption in law that in honour killing cases the defendant must have acted in a considered desire for revenge. The author intends in this thesis to make a start in supplying this missing focus, by exploring in detail what was felt, lived or experienced by the defendants in such cases. In order to meet these goals and purposes, permission was requested from the Turkish Ministry of Justice to conduct semi-structured qualitative interviews with prisoners who have been found guilty of murder committed in the name of honour. Permission was obtained to visit 66 prisons in Turkey. At the end of the field work, the author interviewed 61 defendants

but, for various reasons that will be explained later, he was compelled to base his findings by analysing 39 cases, 34 male and five female.

In the trial of honour killings, one of the possible defence strategies, or perhaps the only realistic defence strategy, is the partial defence of provocation or, in terms of the Coroners and Justice Act 2009, the partial defence of 'loss of control'. However, in the name of applying an objective standard English courts are reluctant to give due weight to the personal circumstances of each individual defendant when they judge whether the defendant's loss of self-control is 'partially excusable' or in more neutral terms whether the defendant could have done more in his or her circumstances. In principle, the defendant's culture, ethnicity, and the social conditions and environment in which s/he grew up are regarded as irrelevant characteristics affecting the defendant's response to the provocation. There is judicial reluctance to accept a cultural defence, or to allow provocation based on a different cultural understanding of honour and shame, specifically in honour killing cases. This approach is against the concept of human frailty, which is the underlying rationale of the defence of provocation, and overlooks the possibility of causing injustice in a multi - faith and multi - cultural society such as the UK.

Indeed, it causes injustice specially in some honour killing cases, where the situation of defendants having a different cultural background and suffering from social, emotional, physical and psychological problems may not meet the requirements for diminished responsibility but their circumstances may constitute a characteristic making the defendant more sensitive to accusation of dishonour and more vulnerable to provocation when he is dishonoured. Therefore, this thesis argues that the defence of provocation should be applied consistently by seeking a proper reconciliation between the principle of the sanctity of human life and the effect of provocation on human frailty, in order to prevent injustice. Otherwise,

defendants in certain honour killing cases are placed in a disadvantaged position, by leaving them almost no defence to argue.

One of the claims of this thesis based on its original field work is that the conventional image of honour killings and the defendants who killed for honour is a flawed view. The real picture is much more complex. It is simply wrong to categorise all honour killing cases as revenge killings. In some honour killing cases the defendant is in an acute dilemma, having to choose whether to kill and receive the punishment imposed by the law, or not to kill and receive punishment from his community or extended family members in forms of insult, humiliation, exclusion and condemnation. In such cases, where there is no support from the community, a combination of anger, fear, frustration and a sense of desperation builds up in the defendant, and makes him like a cornered animal ready to attack. In such honour killing cases, the defendants may have been unwilling to do the act regarded by their community as necessary to restore honour, or perhaps have tried their best to prevent the killing but were ultimately unable to resist the pressure. The only workable strategy, which the defence might have in such cases is to show that the extraordinary nature of the defendant's circumstances did cause the defendant to lose self-control and 'any one of us might have reacted in the same way if we had been in the defendant's shoes' (*Smith*, per Lord Millett at p.344, Dressler, 1988:476). In such a case, the defendant should be given the opportunity to properly argue his case, by calling evidence, whether cultural or non cultural, from expert witnesses to enable the jury to make an informed decision about the reasons behind the defendant's loss of self-control, to decide whether it could reasonably be expected from the defendant to do more than what he did, and to help them understand the defendant's state of mind at the time of the killing. Unfortunately, legal principles laid down in *Camplin*, and especially in *Turner*, regard such evidence as inadmissible.

Therefore, the main aim of this thesis is to gain a better understanding of the context of cases in which killings in the name of honour occur, and a separate aspect of the thesis is to consider the idea of a 'cultural defence' in criminal law. It is designed to establish whether there is a need to reformulate the English law of provocation, to enable the jury to discuss and assess all the relevant evidence, whether cultural or non-cultural, whenever a provocation partial defence is based on different cultural dimensions, or on the defendant's different cultural understandings of honour and shame. This thesis will also seek to establish whether or not it is better to allow the trial judge to instruct and direct the jury on the possible influence of the ethnicity and the culture of the defendant as characteristics affecting the gravity of the provocation, and the defendant's response to provocation, by permitting evidence to be heard on these matters from 'expert witnesses'. Therefore, by investigating what was felt, lived or experienced by such defendants, this thesis will examine whether there is a need to reformulate the English law of provocation along these lines and, if there is, how it can best be done.

For this separate aspect of the thesis, the focus will be on honour killing cases where there was no premeditation and the provocation is the result of a combination of the deceased's conduct, the defendant's emotional stress, and in many cases explicit or implicit pressure from the community or extended family members over a long period of time which caused the defendant to reach the point where s/he decides that s/he can take no more and kills the deceased, with or without a final triggering event.

During the time of writing this thesis, the law on provocation and diminished responsibility in England and Wales was substantially reshaped by the Coroners and Justice Act 2009, which will come into force on 4th October 2010 (S.I. No 816 of 2010). This made it necessary to analyse the issue in the light of both the 1957 and 2009 Acts. Consideration

had to be given to the provisions of both Acts, to discuss whether they can provide a fair and just treatment for the defendants in honour killing cases.

Therefore, by discussing these issues in the light of both Acts, this thesis makes an original contribution to the literature on honour killings and the English law of provocation in two ways. First, through reflecting the voice of defendants, which has rarely been heard, and establishing the social dynamics behind a sample of honour killings, it reinterprets the concept of honour killings from the perspective of defendants serving their sentences in Turkish prisons. Then, in the light of its field work, it revisits the English law of provocation, which is conducive to cause injustice in some honour killing cases. By interrogating the question of what would be the response of the English law, if such cases were committed in England under similar circumstances by defendants with similar cultural understanding of honour and shame, it establishes that there is a need to reformulate the English law of provocation in order to make it fairer to the UK's citizens from a different ethnic and cultural background.

Chapter 1

LITERATURE REVIEW AND METHODOLOGY

1. 1 Current literature and general outlines of the research

‘Violence against women is either attributable to discrimination between the sexes, or to customs, traditions, social values, the physical weakness of women and to alienation from Islam’ (Faqr, 2001:72). In this context, honour killings constitute one of the worst forms of violence against women and must be addressed by considering all aspects of this brutal practice.

There are three different interpretations of honour killings: notably, the particularistic or individualistic interpretation, the universal interpretation - a specifically feminist argument with the emphasis on patriarchy, (Sev’er and Yurdakul, 1999; Kordvani, 2002:2; Hoyek et al 2005:111; Begikhani, 2005:219; Pimentel et al, 2005:260) and the cultural interpretation (Kurkiala, 2003; Kressel, 1981; Eduards, 2002:5). In the particularistic or individualistic interpretation, there is a reluctance to explain the concept of honour killings in terms of cultural dimensions. Protagonists of the particularistic interpretation contend that killings have nothing to do with the culture within which they take place, but should rather be explained in psychological terms such as ‘*temporary insanity*’, or the ‘murderer was crazy’ (Kurkiala, 2003:6), or the killing was committed under the ‘heat of passion’ (Kevorkian, 2003:585). This view is often echoed by community leaders, as happened in the case of Fadime Sahindal, a 26 year old Kurdish- Swedish woman shot dead by her father in order to restore family honour (Kurkiala, 2003:6) and in the recent case of Mr. Arash Ghorbani Zarin, an Iranian student at Oxford Brookes University, who was stabbed by Ms. Manna Begum’s two brothers because he had been dating her against the wishes of her Bangladeshi- born father, who wanted an arranged marriage and ordered his two sons to kill Mr.Arash (*The Guardian*, November 5, 2005:4). In this case, Jomsed Ali, 60, a member of Oxford’s

Bangladeshi community, said the actions of the father and his two sons should be condemned. He commented that, 'What he did is very bad, for his family and for his community. This is the first time I have ever seen this. I have never known it in Bangladesh either' (*The Guardian*, November 5, 2005:4).

Under the universal interpretation, honour killing is regarded as a form of 'masculine homicide' (Kordvani, 2002:8) or 'patriarchal killing' (Sev'er and Yurdakul, 1999:964, 989) that 'has its sources in the willingness of male members of the family to lay down challenges to their masculine position both within the family and society' (Kordvani, 2002:8). In this context it is argued that there is 'a hidden machinery of oppression' (Kevorkian, 2003:582) against women in which women are regarded as subordinate to men, and female relatives either by blood or by marriage are regarded as the personal property of the males. Females, therefore, should obey the males and the males should have the right to make them obedient. In order to make the females obedient, men should persistently supervise their female relatives and take all necessary measures to restrict their mobility. A mere suspicion that any female relative has defied the accepted social norms, by being disobedient and behaving improperly, will provide strong grounds for punishing, or even killing, them.

In the cultural interpretation, the concept of honour killing is explained in terms of cultural dimensions (Safilios-Rothschild, 1969; Kressel, 1981; Kurkiala, 2003) and it is argued that the concept of honour killing is qualitatively different from other kinds of murders, because it is governed by 'the specific logic of an honour culture' (Kurkiala, 2003:6) and different cultural understandings of honour and shame (Kressel 1981:142, 144; Safilios-Rothschild, 1969:205; Peristiany (ed.), 1966) which is likely to be alien and inexplicable to both the jury and the trial judge in England.

According to this logic:

'if a woman refused to comply with the rules set down by her cultural community, her 'immoral behaviour' contaminated the whole family. If other strategies to make the women comply failed, the

only remedy was for her male relatives to kill her in order to protect the family honour. Thus, the murders were culturally sanctioned and designed to uphold a specific moral order.’ (Kurkiala, 2003:7).

There is, however, judicial reluctance to explain honour killings in terms of cultural dimensions. This reluctance denies the importance of culture, and brings about a particularistic interpretation (Kurkiala, 2003) by giving the impression that the problem is random and sporadic, rather than explicable in the context in which it arises.

In the context of honour killings, one of the possible defence strategies, or perhaps, the only defence strategy is the partial defence of provocation which, if run successfully in a murder case, will reduce the crime of conviction to manslaughter. In other words, defences articulated around ‘cultural’ arguments or ‘provocation pleas based on intensely held religious beliefs about pre-marital and adulterous sex, or cultural understanding of honour and shame’ (Phillips, 2003:527) might arguably have an impact on honour killing cases, as providing grounds for classifying an intentional killing as manslaughter rather than murder. The defendant could, in principle, rely on his cultural background as the basis for a partial defence if there is something in his cultural background ‘that changes the meaning or moral status of the [*murder*] offence’ (Phillips, 2003:512). There is a real problem in the law as to how far the individual offender's beliefs and cultural background should be regarded as relevant when deciding if he should be guilty of murder or manslaughter.

In current English law, whenever the defence of provocation arises, the jury needs to evaluate and test whether things said or done by the deceased to the defendant are provocative or not, and whether the defendant’s response to that provocation makes it appropriate to regard the killing as manslaughter rather than murder. In order to do that the jury is required by section 3 of the Homicide Act 1957, [as of 4 October 2010 by sections 54 and 55 of the Coroners and Justice Act 2009] and the associated case law to consider the effect of the provocation on a reasonable person who has the same age and gender as the defendant. In principle, the defendant’s culture, ethnicity, and the social conditions and

environment in which they grew up are regarded as irrelevant characteristics affecting the gravity of the provocation and the defendant's response to it.

Further, Yeo has argued that a jury's assessment of whether some act, or series of acts, done by the deceased to the defendant, which are purportedly provocative, violating honour and bringing shame, justify a finding of manslaughter rather than murder is deeply influenced by 'cultural, moral and gender-specific norms' (Yeo, 1996:307) of the society in which the jury's members grow up. Only those response patterns of the defendant which are regarded as morally acceptable, reasonable and normal by the jury will be taken to deserve mitigation. In some honour killing cases, the defendant may have been unwilling to do the act regarded by their community as necessary to restore honour, or they may have been subjected to explicit or implicit pressure from the community or extended family members to restore family honour, or perhaps have tried their best to prevent the killings but were ultimately unable to resist the pressure.

Therefore, the main aim of this thesis is to gain a better understanding of the context of cases in which killings in the name of honour occur, and a separate aspect of the thesis is to consider the idea of a 'cultural defence' in criminal law.

There is judicial reluctance to accept a cultural defence, or to allow provocation based on different cultural understanding of honour and shame, specifically in honour killing cases. However, this reluctance might restrict the presentation of available evidence that might help to explain the gravity of the provocation to the particular defendant, and the defendant's response to it, matters which the jury is required to assess under the current law on provocation in section 3 of the Homicide Act 1957, or under the defence of loss of control in sections 54 and 55 of the Coroners and Justice Act 2009.

It seems that if we are prevented from explaining the concept of honour killing by taking into account the defendant's cultural background and ethnicity, we are compelled to

explain it in simplistic psychological terms, such as '*temporary insanity*' or that the 'murderer was crazy' (Kurkiala, 2003:6). This situation puts such defendants at an unfair disadvantage and in an incorrect category by giving the impression that all the defendants committing such crimes are mentally disordered.

This thesis, therefore, will aim to establish whether there is a need to reformulate the English law of provocation, to enable the jury to discuss and assess all the relevant evidence, whether cultural or non-cultural, whenever a provocation partial defence is based on different cultural dimensions, or on the defendant's different cultural understandings of honour and shame. This study will also seek to establish whether or not it is better to allow the trial judge to properly instruct and direct the jury on the possible influence of the ethnicity and the culture of the defendant as characteristics affecting the gravity of the provocation, and the defendant's response to provocation, by permitting evidence to be heard on these matters from 'expert witnesses'. Therefore, by investigating what was felt, lived or experienced by such defendants, this thesis will examine whether there is a need to reformulate the English law of provocation along these lines and, if there is, how it can best be done.

1. 2 Limitations of existing data

In the study of honour killings much of the available data is newspaper based reports of cases and reported incidents (Kressel, 1981; Safilios-Rothschild, 1969; Khafagy, 2005; Sliman, 2005; Hussein, 2009). For instance, Kressel reports 63 cases which occurred between May 1973 and December 1978 within the borders of Israel proper and Israel-administrated territories; apart from three incidents that were brought to his attention by other means, the cases were collected from the daily Israeli press (Kressel, 1981:144). Safilios-Rothschild reports that 197 cases occurred in Greece between 1 May 1960 and 30 October 1963, derived from an Athenian newspaper *The Kathimerini* (Safilios-Rothschild, 1969:207). Similarly,

Khafagy (2005) reflects upon and analyses 125 cases based on news reports and articles written on honour crimes in the Egyptian press during the period between 1998 and 2001.

Another source has been personal accounts, from those who are likely victims of honour killing, or who somehow have managed to save themselves from becoming a victim of honour killing, or from those who are close relatives or friends of a victim of an honour killing. (KA-MER, 2004; Kevorkian, 2003; Begikhani, 2005:214-222)

Some data can also be collected from persons involved in the issue of honour killings in a professional capacity, such as lawyers, local administrators, psychiatrists, police officers, prosecutors etc. (UNDP and UNFPA, 2005; Kevorkian, 2005; Begikhani, 2005:211; Jafri, 2008: 49, 50). Finally, some data has been collected from court rulings and police records (Belge, 2006; Pervizat, 2005; Yirmibesoglu, 2007; Hoyek et al, 2005; Sliman, 2005; CEWLA, 2005; Begikhani, 2005; Pimentel et al, 2005:255; Van Eck, 2003).

The voice of the defendant has rarely been heard.¹ The views of defendants, and their perspectives on the crimes committed, have been overlooked. By ignoring these accounts it is perhaps inevitable that a very negative stereotype has been created for such defendants, in

¹ Apart from an interview conducted by Hussein (Hussein, 2009: 8-18), up to now the author has seen two TV programmes and one book where the voice of the defendants was reflected. In the first example, on 22 June 2005 a Turkish TV channel Star TV reflected the voice of a defendant in a documentary named '*Z Raporu*' (Z report) by interviewing him in prison. In the documentary the name of the defendant was not revealed. But the prisoner said "in my society, people live for their honour. I killed my sister and her husband because he was pimping my sister to other men. She never told me about it. If she had told me this before, I would have tried to figure out a way to settle this event peacefully. I have never ever done any harm to anybody in my life. However, I had no choice." (*Z Raporu*, [Z Report] 2005, [Turkish TV Programme], Star TV, 22 June 2005.) Later, in 2008, the co-producer of this documentary, Ayse Onal, published a book bearing the title of '*Honour Killing, Stories of Men who Killed*'. In this book, she recounts 10 stories, five of which were based on interviews and conducted with prisoners in different prisons. (Onal, 2008)

In the second example, on 4 December 2007, in BBC 3 programme 'Honour Kills' Rahan Arshad, who killed his wife Uzma and three children, at their home in Cheadle Hulme, Greater Manchester was arrested on 28 July 2006 in the airport. As soon as he was arrested, he said in front of the film crew and police officers 'I confess killing my wife and three children' when he cried. When he was asked whether he wanted a lawyer he made a hand gesture to imply that he did not need one. According to a police officer who escorted the defendant and took him from the airport to police station the defendant said 'I do not regret killing this fucking bitch but my kids, my beautiful kids' but this incident was not captured by the film crew. Later, after consulting with his lawyer, the defendant changed his mind and withdrew his confession ('Honour Kills', 2007, [TV documentary] BBC, BBC3, 4 December 2007).

which they are assumed to have been content with what they did, and where they are assumed to have committed such crimes in cold blood and without hesitation. The author intends in this thesis to make a start in supplying this missing focus, by exploring in as much detail as possible what was felt, lived or experienced by the defendants in such cases. For these purposes, it is designed to:

- reflect the voice of defendants
- gain a better understanding of the different cultural perspectives of honour and shame, from the point of view of the defendants
- establish the social dynamics behind a sample of honour killings
- evaluate whether it is possible to find common ground in the accounts of defendants, in terms of their understanding of actions as honourable or dishonourable
- assess whether defendants tend to have similar perceptions about the concept of honour, and similar views as to the appropriate ‘punishment’ to be applied to the same dishonourable act
- understand better their attitude towards their victim, and to their offence
- examine their attitude to the culturally imposed obligation and duty which may have been part of the context of the murder
- inquire into the context of pressure from the community or extended family members to restore family honour

and finally question the issue of whether the prisoners would consider killing again, if they met the same situation after their release.

In order to reach the goals and possible outcomes mentioned above, qualitative interviewing was chosen as the most appropriate methodology to collect data for the purposes of the research.

1. 3 Reasons for choosing qualitative interviewing as a research methodology

In accordance with the limitations of existing data and other issues outlined above, qualitative interviewing was chosen as the most appropriate methodology to collect data for the purposes of the research. Qualitative interviewing is an interview technique that does not provide pre-coded or closed questions, and enables the author to find out what the interviewees actually think. The author can give a number of reasons for this choice.

First of all, as Bryman stated:

‘If a researcher is interested in a topic on which no or virtually no research has been done in the past, the quantitative strategy may be difficult to employ because there is little prior literature from which to draw leads. A more explanatory stance may be preferable and, in this connection, qualitative [*interview method*] may serve the researcher’s needs better since it is typically associated with the generation rather than testing of theory’ (Bryman, 2001:24).

Of course, people should be able to agree on how old they are, or give straightforward answers about their income and education but they may have different conceptions about culturally defined matters such as the concept of honour, justice, family values, provocation, community sentiment or personal accountability. These more complicated, culturally defined, concepts have distinct meanings in different arenas; trying to impose one definition across cultural arenas by deploying strictly structured questionnaires will probably be misleading or confusing (Rubin and Rubin, 1995:33).

Secondly, in order to analyse in depth the meaning of culturally defined concepts of honour and shame, which can not be simply explained by rates, variables or numeric data (Van den Hoonaard, 1997:57, 62), and perceptions of these among the individuals, the author chose to conduct qualitative interviews and to use the findings as evidence to formulate, or reformulate, theoretical insights into these social phenomena and relevant legal regulations. In qualitative interviewing it is emphasized that one person’s experiences are not intrinsically

more true than another's. There can be many versions and interpretations of the same event that all may be true (Rubin and Rubin, 1995).

So far, in the context of honour killing, the literature has mainly focussed on the reporting of victims' history reflecting the accounts of those who somehow have managed to save themselves from becoming a victim of honour killing, or those who are close relatives or friends of a victim of an honour killing (Farac, 2006a; Farac, 2007; Sev'er and Yurdakul, 1999, UNDP and UNFPA, 2005). However, a researcher using such techniques must be aware of the methodological problems, and the fact that such literature will be inadequate for construction of reality as long as it fails to reflect the other side of the story, which is the account of defendant. Therefore, by deploying probing and prompting techniques, and by asking different questions about the events in qualitative interview, the author has tried to reflect the other side of the story in order to construct reality more fully.

Thirdly, the qualitative interview method is the most valuable research tool to explore the voices and experiences of people who have been ignored, misrepresented or suppressed in the past (Silverman, 2006:114). Thus, for this reason the qualitative interview method is a necessary research tool for the purpose of this thesis, since the author will engage with a group of prisoners who are apparently put in a disadvantaged position by otherwise being denied an opportunity to speak for themselves and to be 'the speaker of the text' (Harding and Norberg, 2005:2011). By creating an environment for a face to face encounter between the researcher and the researched, it may be possible to gain the confidence of the subject who has committed a murder and who may have been portrayed by a highly negative stereotype. Additionally, the information gathered by qualitative interview may provide a fuller and fairer reflection than information gathered by using other techniques such as survey and questionnaire. In deploying a qualitative interview, it is possible to further explore and verify answers by explaining the questions to the interviewees, to avoid misinterpretation.

Fourthly, qualitative interviewing is a valuable research tool for such a topic as ‘honour killing’, that requires in depth-understanding gained through detailed examples and rich narratives. Qualitative interviewing is useful when it is necessary to bring some new light on puzzling questions. It is also appropriate when the purpose of the research is to explain complicated relationships and evolving events, or when the researcher wants to learn how present situations resulted from past decisions or incidents (Rubin and Rubin, 1995: 51).

Additionally, qualitative interviewing is the best method to investigate whether there is a distorted or ‘taken-for-granted assumption’ (Fonow and Cook, 2005:2218) in the academic literature or whether there is a ‘missing element’ (Mcquail, 2000:325) that has not been taken into account in the academic conceptualization of the phenomenon. In qualitative interviewing, rather than testing existing theory researchers try to develop their own theory (Rubin and Rubin, 1995:56). So, rather than testing existing theory, the author is going to conduct a qualitative interview method, and use its findings to formulate or reformulate the theoretical insights of the concept of honour killings. However, there are also some structured questions in the interview which aim to address factual socio-demographic matters or characteristics related to the defendant, victim, crime and the concept of honour. These questions, to a certain extent, are designed to test the findings reflected in current literature.

Finally, qualitative interviewing helps to explain how and why culture is created, evolves, and is maintained. It engages with why and how ‘the specific logic of an honour culture’ (Kurkiala, 2003:6) and different cultural understandings of honour and shame can pressurise men to commit murder. What motives and triggers may cause a man to lose his self-control and, for the moment, not to be ‘master of his mind’? (*Duffy*, at p.932, per Lord Goddard) Such crucial questions are at the heart of this thesis and can best be answered by deploying a qualitative interview method.

1. 4 Preliminary issues, research site and participants

In order to meet the above outlined goals and purposes, permission was requested from the Turkish Ministry of Justice to conduct interviews with prisoners who have committed and have been found guilty of murder committed in the name of honour. Permission was obtained to visit 66 prisons in Turkey during a six-month period starting in May 2008, on the condition that the voices and images of the prisoners will not be recorded during the interview, and that all the interviews will be conducted personally by the author. Due to the limitations on budget allocated for this study, the author could manage to visit 61 prisons during the field work and had to drop the remaining five prisons.

In order not to jeopardise any ongoing trials, any prisoner whose trial was pending or who was arrested because of their alleged involvement in honour killing but not convicted were left outside the scope of the research. Additionally, defendants found guilty of attempted honour killings are not included in the research. Given that they might regard themselves as having failed to carry out the duty imposed on them; it was assumed that the defendants found guilty of attempted murder might tend to focus on the reasons behind their failure rather than providing a full account of all the circumstances.

The empirical research in this part of the PhD is mainly concerned with male offenders and female victims. This is because the available published data² and cases reported in newspapers and collected by the author during two years (2006-2007) showed that the victims of honour killings were generally female. Indeed, among eleven honour killing cases reported by Turkish media³ during two years (2006-2007), only in two cases the victim was a

² The available data shows that men are also subjected to honour killings (Warraich 2005:80, 99; Begikhani 2005:210,222; Siddiqui, 2005:264; Hussein, 2009:136,166; Van Eck, 2003:43,259). For example in the province of Sindh in 1998, the Human Rights Commission of Pakistan analysed the deaths of 97 men as well as 158 women in *karo-kari* 'honour killings' (Amnesty International, 1999:6).

³ The cases collected from daily Turkish newspapers where the victim was a female are as follows:

- 1- The case of *Hatun Sürücü*, 2006, April 15, *Hürriyet*, p.22.
- 2- The case of *Meryem Sezgen*, 2006, July 6, *Milliyet*, p.4; 2006, July 5, *Hürriyet* [internet]; 2006, July 6, *Radikal*, p.1.

male⁴. However, in order to gain a better understanding of the concept of honour, to compare similarities or discrepancies between female and male prisoners about their perceptions of honour and dishonour, the author decided to at least reflect the account of some female prisoners convicted of honour killing, if any female participant was found during the field work. It was at least worth trying to find female prisoners in order to compare and contrast any different perceptions about the concept of honour and dishonour among female and male prisoners. Fortunately, the author was able to reach and approach 10 female prisoners during the field work and seven of them agreed to participate in the research. However, the author had to leave the accounts of two female interviewees out of the analysis. In the first case the female interviewee, who was found guilty of committing infanticide in the name of family honour, continued to claim her innocence by asserting the view that it was an accident. Similarly, after conducting the interview, the account of the second interviewee, who killed her father, established that her motive was not honour at all. The main motive behind the murder was the systematic violence used by her father against her.

A pilot study carried out by the author in Ankara/Turkey during August 2007 showed that it was potentially possible to reach approximately 150 cases in Turkey. However, as participation in the interview would be voluntary, the likely number of the actual interviewees was estimated at between 30 and 50. At the end of the field work, the author

3- The case of *Yasemin Çetin*, 2006, June 8, *Sabah*, p.1; 2006, 12 June, *Posta*, p.5; 2006, June 12, *Star*, p.3; 2006, 12 June, *Hürriyet*, p.5.

4- The case of *Huri Akça*, 2006, July 24, *Sabah*, p.18.

5- The case of *Azime Tas*, 2006, July 28, *Posta*, p.5.

6- The case of *Gülistan Gümüş*, 2006, July 26, *Sabah*, p.6.

7- The case of *Naile Erdaş*, 2006, October 24, *Posta*, p.12; 2006, October 24, *Radikal*, p.1; 2006, October 24, *Radikal*, p.7; 2006, October 25, *Posta*, p.9; 2006, October 25, *Radikal*, p.5.

8- The case of *Sevinç Özacar*, 2006, December 17, *Hürriyet*, p.27.

9- The case of *Esra*, 2006, December 27, *Radikal*, p.4.

10-

⁴ The cases collected from daily Turkish newspapers where the victim was a male are as follows:

1- The case of *Ali Can Yılmaz*, *Ali Can Yılmaz* was killed, as he did not kill his sister and did not carry out the cultural duty imposed on him (2007 March 2, *Hürriyet* [internet]).

2- The case of *İsmet Özaltın*, a 41 years old married truck driver, was killed by Ural Family, as he had an affair with their daughter *Ülfet* (21) (2006, October 31, *Posta*, p.5).

interviewed 61 defendants and, for various reasons that will be discussed in detail later, he was compelled to base his findings by analysing 39 cases. The 61 prisons which were visited during the research were in 37 different cities and 11 different towns, inhabited by people coming from a variety of ethnic, cultural and religious backgrounds. Therefore, the field work covered sufficient participants coming from a variety of ethnic, cultural and religious backgrounds, and provided sufficient data that enabled the author to make a generalization or to draw a conclusion.

1. 5 The structure and characteristics of the interview

Before finalising the structure of the interview two independent peer reviews were carried out on the proposed interview questions by two independent reviewers who were experienced in designing and conducting qualitative interviewing. The author is grateful to them for their comment and assistance in finalising the structure of the interview.

After peer review, the interview was divided into three parts: (i) questions related to personal information, (ii) questions related to the offence and (iii) questions related to the concept of honour.

The interview was designed to be semi-structured (see Appendix 1). The early questions such as the questions related to the age, educational and marital status of the defendant and those related to the commission of the crime mainly aim to address socio-demographic factors and the circumstances of the defendant and the crime. These questions were also used as icebreakers at the beginning of an interview which obviously required asking some difficult and upsetting questions and required participants to recall their grief or what they had experienced. Some of these questions were also used to test the credibility of the information given by the defendant. For instance, the author knew in advance whether the defendant who participated in the interview, had a previous criminal record before committing the murder, as he had read the prison file and court ruling before the interview.

Therefore, any defendant who gave inaccurate information to such questions was treated more cautiously.

In accordance with the first reviewer's suggestion, part two of the interview began with the question 'Can you tell me the story of the crime for which you are serving this prison sentence?' and then continued with another two open ended questions which give more freedom to the defendant to talk about the attitude of people toward the defendant and the defendant's own feelings. As the interview was designed to be semi-structured, more detailed questions about the crime, and questions related to the identity, age, educational and marital status of the victim and relationship with the victim in the period which led up to the killing were held back, and used by the author only as prompts where necessary to help to understand the story of the defendant. The author would not use these prompts if the person had explained his story fully in his own words (see Appendix 1).

The third and final part of the interview again began with open questions seeking out the personal views of the defendant concerning the concept of honour, and characteristics of an honourable/dishonourable man and woman. Later, the interview was concluded with questionnaire style questions to interrogate whether defendants tend to have similar perceptions about the concept of honour, and similar views as to the appropriate 'punishment' to be applied to the same dishonourable act. In order to do that, the prisoners were asked to comment about some acts which were known to have been claimed to be dishonourable, and used as an excuse by the defendants, in honour killing cases reported in Turkish media, and also to comment about possible punishments that might be applied to the dishonourable acts.

Questions relating to the form of punishment thought by the offender to be appropriate to a range of conduct perceived to be dishonourable, and questions about who holds the 'right' to punish in these cases allowed for a more rounded investigation into the

defendant's understanding of honour, and the extent to which this differed according to the gender of the person whose behaviour is under scrutiny.

The interviews took place in Turkey from 18 June 2008 to November 2008 (see Appendix 2 for the list of prisons visited and the date of visits). Given that the author was not granted permission to record either the voice or image of the defendant, the author took detailed notes during the interview. Therefore, normally only one interview was undertaken each day (see Appendix 3 for three samples of the translated and transcribed interviews which help to show how the interviews were conducted by the author).

Each prisoner met the author in advance of the interview, and had ample opportunity to have explained to them the nature of the interview process. At each prison the author tried to ensure that the prisoner would have access after the interview, if they required, to a sympathetic person who could debrief them.

1. 6 Ethical issues and the Ethics Committee

The project, bearing the title of 'The background, experience and story of men who have committed murder, and who are currently serving their sentences in Turkish Jails' was submitted to the Ethics Committee of the Faculty of the Humanities and Social Sciences with associated documentation. The committee on 3 April 2008 approved the project subject to a satisfactory response to some remaining issues. In order to respond to issues raised by the Committee, two further meetings were held. On 25 April 2008, the author and his supervisor met the designated member of the Committee to discuss necessary adjustment to meet the request of the Committee. Later, on 5 June 2008, the author and his supervisor met the whole Committee to discuss issues raised by the members of the Committee and further discussed concerns that they might have. After these two meetings, and by doing necessary adjustment and responding to issues raised by the Ethics Committee, all requests of the Committee were met and the Committee approved the research project on 11 June 2008 by giving its final

approval. The author is grateful to members of the Committee for their help in overseeing this project.

The 'participant information sheet' and 'informed consent form' for participation in the research that explains fully the rights of the prisoner, informs the prisoner about the concept and aim of the research, and seeks his consent for participation were designed (see Appendix 4 for the participant information sheet and informed consent form). These documents were designed, after seeking advice, to deal with the ethical research issues.

In the participant information sheet, the prisoners were informed that the aim of the research was to establish the background and social circumstances which lay behind and led up to the commission of murder, and reflect the voice of the defendants, and allow them to put forward what was lived, felt, and experienced by them. Before the interview the participant was informed that he had been invited to take part in the research because his personal file in the prison had a reference which showed that he committed a murder in the name of honour. Therefore, the author would like to hear his story, and what may have influenced him and led him into committing a murder. The author would like to learn as much detail as possible what was felt, lived or experienced by him before and after the murder.

Participants were informed that it may take two hours or slightly longer to complete the whole interview. It was also explained that if the prisoner took part in this research, he will be interviewed and asked some questions about his background, personal circumstances, the crime he committed, and the victim. He will also be asked some questions about what was felt, lived, and experienced by him before and after the murder and what he thinks about the concept of honour.

Before the interview, in the information sheet and consent form, the prisoner is assured that participation in the interview is not compulsory, and if he participates his identity

will be concealed. In the participant information sheet, assurance was given that the prisoner's decision to participate, or not to participate, would not affect the standard of treatment that he received in the prison.

The prisoner was reminded that if he took part in this research and interview, he may find some questions difficult and upsetting. So, he does not have to answer such questions. Indeed, he can decline to answer any questions, without giving a reason. It was also stressed that the prisoner can withdraw from the interview whenever he wants without giving any reason and, if he takes part, he will have the right to take a break at any time during the interview.

As far as confidentiality is concerned, the participants in the study were not and will not be identified in the research by name, by where they live, or by any other identifiable feature. These were assured by the participant information sheet and consent form. The participant was informed that information that he gives to the researcher is confidential, and will be treated as confidential. The only exception is where that information discloses a serious risk to others or to him, in which case the researcher may share that information with relevant authorities.

The participant was informed and assured that his identity will be concealed and information given by him to the researcher can only be shared with a third party for research or scientific purpose and be used by the researcher for further research without any further notification to him, and at the end of the research the research findings may be published.

Before participation and signing the consent form, the participant was given the opportunity to consider the information provided and to take time to decide whether to participate or not, and ask further questions and get satisfactory response about his questions. In the information sheet, the author provided his contact information for the participants and

asked them to feel free to contact him before and after the interview via email or phone or mail.

After describing the study and going through the information sheet, the participants were asked to sign the consent form if they agreed to take part in the research. Before signing the consent form, the participants were reminded one more time that it was up to them to decide and they were free to withdraw from the interview at any time, without giving any reason. 61 prisoners 54 male and seven female, took part in the research at this stage by signing the consent form.

1. 7 The selection process

The author tried to avoid any approach which would allow any personal opinion of his or any prior knowledge about honour killing to influence the selection of cases. In order to do that nothing was assumed or taken for granted by the author in his attempt to interrogate and question the issue of honour killings and the dynamics behind these killings. By doing this, the author attempted to achieve perspective and not to be influenced by the ambivalent use of language to explain such murders and definitions given for such crimes.

Up to now, in the literature different definitions have been given to describe the concept of honour killings; and each definition reflects its own perspective and bears different emphasis. Thus, with the emphasis on patriarchy and violence against women, the concept of honour killings has been identified as ‘masculine homicide’ (Kordvani, 2002:8) ‘patriarchal killings’ (Sev’er and Yurdakul, 1999:964, 989), ‘murder in the name of the honour’ (Bettencourt, 2000:4) or ‘killings in the name of honour’ (KA-MER, 2004).

With the emphasis on the cultural norms of the society and the conceptualisation of women’s sexuality, the definitions given for the concept of honour killings are ‘crimes of honour’ (Kevorkian, 2003:587) and ‘intrafamily femicide in defence of honour’ (Faqr, 2001). Finally, with the emphasis on different cultural understanding of honour and shame, it

has been identified as ‘homicide for family honour’ (Kressel, 1981) and ‘honour crimes’ (Safilios-Rothschild, 1969:208).

Participants were selected because their personal file in the prison had a reference which showed that he had committed a murder in the name of honour. In order to do that, the author first went through all murder cases in each visited prison and thoroughly read all court rulings and personal records in all murder files. This allowed capture of cases in which the defendant had identified the motive of honour as lying behind the murder, or where he made reference to honour in his defence or, finally, whether the court itself established that honour was the main motive behind the murder. In this context, words or expression used either in the defence such as ‘I did it for my honour’ or ‘I could not live with this shame’, ‘she stained my family honour’, ‘I could not walk with my head held high among people’ and ‘I could not look at the face of the people’ or in court rulings such as ‘the defendant claimed that he was provoked by the deceased’s behaviour which he believed to have brought a shame on his honour’ were regarded as key indicators for the selection process. So, the final arbiter about the selection process was the defendant’s description about the motive behind the murder rather than personal opinion or knowledge of the author.

In spite of the author’s cautious approach, in some cases, which in the first instance appeared as murder cases committed in the name of honour, after conducting interviews in depth the author found that some participants taking part in the research did not commit a murder in the name of honour, and honour was not their motive at all. It was jealousy, pride, domestic and financial conflicts and disagreements between the deceased and the defendant, or the suspicions of the defendants which were the main reasons behind the murder. So, as will be explained later when the author discusses the outcome of his field work, such cases were left out of the analysis.

However, before analysing the outcome of the field work, in order to fully understand all parameters behind the issue of honour killings, we need to analyse and identify the motives behind the defendant's behaviour and the social determinants of the cultural community where honour killings tend to occur. Many defendants in their interviews with the author made oblique reference to such social determinants by using expressions such as 'I had no choice', 'it was not in my hands', 'there was no other remedy' and 'this problem could only be solved like that'. By using these words in their stories, on the one hand they tried to reflect the pressure that they had experienced, and on the other hand they neutralized the killing that they have committed by appealing to higher loyalties (Sykes and Matza, 1957:669) which were their cultural norms. In the interviews the defendants did not reject legal and religious norms which establish that killing is wrong. Indeed, they accepted that killing was wrong, and a sin, but, they asserted strongly that the killing was the only option in their circumstances. By putting themselves in a position to say that what they did was the right thing to do in their circumstances, they tried to cope with the possible condemnation. This also enabled them to feel good about themselves, when somebody asked them to define their actions in moral terms or when somebody defined their actions for them in such terms. But they still could not find peace. They almost beg for someone credible to say 'You are right, you had to kill her' (Onal, 2008: 236,237).

However, in the opinion of this author, it is the nature of these circumstances that make the defendant's act, to some extent, understandable or explainable, but not desirable or justifiable. The sociological structures of certain communities have provided an environment conducive for the occurrence of honour killings. Therefore, it is necessary to analyse the characteristics of the communities where honour killings tend to occur, and to assess whether religious differentiations, or the different cultural understanding of honour and shame, might have any impact on the occurrence of these killings.

Therefore, in the next chapter, the author will discuss the characteristics of the communities where honour killing tends to occur, Islam, the social status of women, and women's sexuality and, in a later chapter, the author will discuss the different cultural understandings of honour and shame.



Chapter 2

SOCIOLOGICAL AND RELIGIOUS ANALYSIS OF THE CONCEPT OF HONOUR KILLING

2. 1 Characteristics of the communities where honour killings tend to occur

Honour killing is the product of social interactions or social relations among members of society. Britain is now a multi-faith and multi-cultural society. One of the recent reports published by the Institute for Public Policy Research shows that there are at least 25 different groups of people living in the UK who were born outside the UK (IPPR, 2007:4). The report also shows that the population born abroad ('foreign-born') has steadily risen from 2.1 million (4.2 per cent of the population) in 1951 to 4.9 million (8.3 per cent) in 2001 (IPPR, 2007:9, 10). This report, however, looks solely at immigrants defined as people living in the UK who were born outside the UK. It is therefore important to note that its analysis only looks at 'immigrants themselves (that is people who moved to the UK). Second, third and subsequent generations (that is, people of immigrant descent who were born in the UK) are not considered' (IPPR, 2007:4), and they are outside the scope of the report.

The most up-to-date figure for the size of the UK's foreign-born population can be estimated using the Labour Force Survey. This reports that 10.1 per cent of the total population in 2006 was foreign-born (IPPR, 2007:10). A rough interpretation of these statistics would suggest that one in ten people living in the UK has a mainly or totally different cultural background from the rest of the people living in the same society, and in this society each cultural community has its own *social determinants* shaping and affecting social interactions, or determining the form of social relationships. The main distinguishing characteristics of these determinants are that they precede each member of the community, that they are out of the personal sphere or influence of each individual and finally that their life is longer than the life of each individual. It is these determinants that have a tremendous

impact on human behaviour and help us to fully understand the motives behind human behaviour in social interactions.

By virtue of these social determinants, such as customs and mores, each member of the community comes into possession of definite patterns of behaviour. These determinants are a strong influence on the life of each individual and they play an important role in controlling their behaviour (Sharma, 1968:43,179).

Therefore, in order to fully understand all parameters behind the issue of honour killings, we need to analyse and identify the motives behind the defendant's behaviour and the social determinants of the cultural community where honour killings tend to occur.

In many cases, the defendants unconsciously mention the social determinants. The expressions used in the statements of the defendants such as 'I had no choice' (Sliman, 2005:193; Jafri, 2008:85; Hussein, 2009:14, 132), 'it was not in my hands' or 'it is hard to fight a whole society when they all think that killing is the best method of dealing with such cases.' (Kevorkian, 2003: 595) perfectly reflect the main characteristics of these determinants. Although they are not happy at all with what they did, the defendants strongly believe that they acted in accordance with these determinants and they carried out the duty imposed on their shoulders by the community.

Despite the fact that there are inevitable cross-cultural social interactions, communications and exchanges among people in multi-cultural societies, why have these social determinants remained intact? Why do these people have intensely held beliefs or completely different perceptions about the understanding of honour and shame? Does the British law not address their needs? Why do they feel that they have to act in accordance with their cultural norms rather than legal norms? If British society is going to be a multi - faith and multi - cultural society, will or should the current British legal system be modified in

order to meet the needs of these people? Is it possible for these people to change or is there no hope of changing at all?

These are the questions repeatedly asked whenever the newspapers reflect a new honour killing case. As explained, however, in order to respond to these questions properly, the social determinants and characteristics of the cultural communities where honour killings tend to occur should be understood. Although it would be implausible to claim that all cultural communities where honour killings tend to occur have the same characteristics, we can make some general claims, with the caveat that a cultural community that has all the characteristics discussed below is not necessarily bound to practise honour killings and any cultural community that practises honour killings is not bound to have all the characteristics.

Therefore, the characteristics that will be discussed here should not be interpreted as a complete definitive picture of the socio-demographic characteristics of the UK communities where honour killings tend to occur. Secondly the characteristics should not be taken to reflect only the characteristics of Muslim communities. Home Office statistics suggest that each year 12 honour killing cases occur across several different UK communities, including Sikh⁵, Christian and Muslim (OCCRI, 2005; Craig, 2007; Conservative Women's Organization, 2007; Siddiqui, 2005:277).

The 2002 and 2003 Reports of the United Nations Special Rapporteur on violence against women, and other available data shows that honour killing is not restricted to the Muslim communities⁶. For instance, CEWLA (2005) found in Upper Egypt that Coptic

⁵ In the case of Surjit Athwal, 27, a Sikh British woman who went missing in 1998 on a visit to her in laws in India, was found to have been murdered in the name of honour. On 19 September 2007, Bachan Athwal, 70, Surjit Athwal's mother -in- law and Sukhdave Athwal, 43, Surjit's husband were jailed for life for ordering the murder of Surjit Athwal, who they claimed had disgraced their traditional Sikh family by having an affair (*Timesonline*, September 20, 2007).

⁶ Honour killings take place in countries including Brazil, Denmark, Egypt, Iraq, Israel and the occupied territories, Jordan, Kuwait, Lebanon, Morocco, the Netherlands, Pakistan, Qatar, Sweden, Syria, Turkey and Yemen. (Report of the United Nations Special Rapporteur on violence against women (2002), Report of the

families (Egyptian Christian) were statistically as likely as Muslim families to commit such crimes (CEWLA, 2005: 155,159). Chakravarti reports that in India ‘a Hindu woman who had a relationship with a Muslim man, was dragged out of her house, stripped and killed, and then left on the street as an example to all other women of the punishment to be inflicted on women who transgressed the boundaries of communities.’(Chakravarti, 2005:311) Therefore, the characteristics that will be discussed here are in no way intended to interpret, encourage or support the assumption that honour killing is a “Muslim phenomenon”. As the next subchapter will illustrate, however, Muslim communities are more likely to exhibit the typical characteristics of honour killings, because of distorted and conservative interpretation of *Qur’anic* verses.

In the cultural communities of the United Kingdom where honour killings tend to occur, there are adaptations to wider society so obvious that even a lay person who does not have any expertise in sociology or anthropology can see it. People have started to wear shirts, trousers and jackets rather than their traditional outer garments. They send their daughters and sons to school. The women and girls stop using their head scarves as they used to before, and they have started to take part in business activities as well. The whole community is constantly engaging in activities and showing behaviour patterns that are completely different from their ancestors’.

However, all of these changes are social, not cultural. As Sharma mentions:

‘[T]he term ‘social change’ is used to describe variations of any aspect of social processes, social patterns, social interactions, or social organisation. It includes alterations in the structure and functions of society and can be observed in every society. Whenever one finds that a large number of persons engaged in activities that differ from those which immediate forefathers were engaged in sometime before, one finds a social change’ (Sharma, 1968:134).

United Nations Special Rapporteur on violence against women (2003); Hussein, 2009). According to Bettiga-Boukerbout honour killing also took place in Italy (Bettiga-Boukerbout, 2005:235).

In this context, culture gives speed and direction to social change and determines the limits beyond which social changes cannot occur. In other words, the field of social change is limited by the field of cultural change (Sharma, 1968:135). As far as the concept of honour killing is concerned, we encounter communities that have a tendency to change only as far as their culture permits. Therefore, when it comes to the concept of pre-marital and adulterous sex, marriage, family values, or women's sexuality, these communities can change, but only if the change can be accommodated and internalised with their cultural norms.

In sociological terms, a human being is truly an individual actor to the extent that he is not the hostage of his cultural norms. In other words, the concept of individuality is not dependent on how different a person looks, but on whether or not a person is free or unrestricted when he interacts with others (Donmezer, 1968:62). As the members of such communities are unable to free themselves from their cultural norms determining the concept of honour and shame, they may not think individually and their personal opinions indeed may have no value at all. No matter how different or modernised they look, they may remain the hostage of their cultural norms. Their cultural norms provide them with clear guidance about every aspect of the life, which may require an unquestioning or blind obedience. Thus, when conflict arises, or the member of the community struggles to find an answer to whether an act or behaviour is dishonourable, the collective conscience generally prevails over the individual conscience or initiative.

These cultural norms generate certain characteristics for the communities where honour killings tend to occur. First of all, in such communities, the pattern of so-called *negative reference society* is generally used. In this context, British society, or other societies that have different cultural understanding of honour and shame, are referred to and regarded as negative societies, or simply '*others*'. People refer to these societies when they wish to praise their own community for not being like them, or wish to express how proud they are

not to have same cultural norms (Donmezer, 1968:90, 91; Begikhani, 2005:218). By using this negative reference, or, *we vs. they* argument, they maintain cultural differences between them and others.

In such communities, *ascribed positions* have a much more prestigious meaning than achieved positions have (Donmezer, 1968:92). No matter how successful you are in business or education, positions given by birth as being a daughter, son, wife, husband, mother, or father always prevail and maintain their priority. Whenever, there is a conflict between tasks or duties arising out of these two types of social positions, the member of the community must follow his ascribed position, and act in accordance with it. Needless to say, ascribed positions are shaped in accordance with cultural norms. Hence, the question of what the member of the community has to do when he witnesses a dishonourable or shameful act will be determined in accordance with his ascribed position, not his achieved position. Therefore, education does not always have an affirmative impact on preventing honour killings, despite the fact that it has a great impact on improving human behaviour in other aspects of life. As happens to an extent in all communities, there is a naturally evolving *community sentiment* which is very strong in the communities where honour killings tend to occur. No individual can live unaffected by this sentiment, although its intensity varies in different communities and in different members of the same community. Community sentiment evinces three constituents: *We - feeling, role feeling and the sense of dependence* (Donmezer, 1968:128; Sharma, 1968:53, 54).

‘The most important element in community sentiment is the ‘We feeling’. As a result of it an individual, instead of regarding himself as separate from others, believes himself to be identified with them...The fundamental cause of this feeling is a similarity of interest of the people who live in the same place’ (Sharma, 1968: 54).

The role feeling means that in the community, each individual has his own status and he feels that he should make his own contribution towards the working of the community in

accordance with this status. Finally, the sense of dependence means that an individual believes himself to be dependent upon his community and denies his existence apart from community. Due to this feeling of dependence he does not object to any obligations which the community places upon him and he always tries to work in its favour (Sharma, 1968: 55).

As a result of community sentiment and these feelings, in some communities the concept of individuality hardly exists and each individual is largely the hostage of his cultural norms. Therefore, the members of such communities cannot free themselves from the cultural norms determining the concept of honour and shame, and their personal opinions indeed have little or no value at all. In other words, 'the individual exists only through the [community], the respect and the love of the [community].' (Bourdieu, 1966:220). The community always has control over the actions of its members, and an individual cannot behave just as he happens to wish, since he has to bear in mind the consequences of his action upon other people. The community's control brings its members into conformity with the approved pattern of behaviour. The behaviour of the community's members shows a high degree of similarity. The community's control over its members is carried out by means of cultural norms including mores, customs, traditions and also taboos. Whenever these norms are neglected or defied, the community specifies necessary sanctions or punishments against nonconforming behaviour.

Another effective control mechanism in the communities is *rumour and gossip* (Donmezer, 1968: 206; Faqir, 2001:70; Livaneli, 2006; Farac, 2006a:27,105; Sharma, 1968:222,223; CEWLA, 2005:141; Delaney, 1991:44; Sanghera, 2008; Hussein, 2009:102,150,190; Van Eck, 2003:26). Available data shows that in many honour killing cases the chain of events that led to murder started as a mere suspicion or a rumour that a female relative has defied the accepted cultural norms by being disobedient or behaving improperly (Faqir, 2001:70; Livaneli, 2006; Farac, 2006a:27,105; Hoyek et al; 2005: 131;

CEWLA, 2005:151; Hussein, 2009:150,153; Van Eck, 2003:116). In this context gossip or rumour is an important instigating event in the murder. As Faqir mentioned:

‘Reputation and rumour play an active role instigating honour crimes and killings, for to speak of a women’s reputation is to invoke her sexual behaviour. Therefore, language (or the discourse of female reputation in particular) acts as a material practice with its own determinate effects, acting as a form of control over their emotions and passions and steering girls into a subordinate relationship with men. The significance attached to sexual reputation is one method of policing women. Significantly women also police each other through the spreading of rumours.’ (Faqir, 2001:70).

The significance of rumour and gossip lies behind one of the characteristics of the community which is *close and continuous relationships* among its members. These close and continuous relationships emanate from the *joint family-structure* which is commonly seen in the communities where honour killings take place. Although this type of family structure provides an environment conducive for developing community sentiment and the community’s control over its members by bringing them into conformity to the approved pattern of behaviour, it also provides an environment that hinders the development of personality, and worsens women’s status in the community (Begikhani, 2005).

‘In the joint family, the head is the absolute ruler. He is usually the oldest member of the family who looks upon and treats men and women as children even when they attain adulthood. In this way, there is very little opportunity for the fostering of individual autonomy or self dependence... The bad condition of women is also a major defect of the joint family system and is at the same an important factor in its disintegration’ (Sharma, 1968:275).

In such an environment, it is very difficult to conceal any sexual affairs or improper behaviour. Expressions such as, ‘what will the neighbours or relatives say after hearing this?’, ‘how can I walk with my head held high among people?’ are used to portray the importance attached to rumours and gossip as a means of social control. By means of the rumour mill and whispering campaign, a story about the immoral behaviour or sexual reputation of a female can easily be passed from one person to another and finally is known by the whole

community. If the sexual reputation of a female is stained with rumours and gossip, in the eyes of the community she is not part of the community any more. The relatives of the female who is rumoured against have to prove that the rumour is not true, in a way that is accepted by the community.

Proving that the rumour is not true is an important task, and the historical evidence shows that the accepted ways to rebut an allegation differ from society to society. For instance in Babylon, the code of Hammurabi (c. 1780 BCE) article 132 ordains that:

‘If the ‘finger is pointed’ at a man's wife about another man [*if a women is accused of committing adultery*], but she is not caught sleeping with the other man, she shall jump into the river for her husband’ (Internet Ancient History Sourcebook; Can, 2002: 295, 296).

In this context, the holy river was regarded as an absolute arbiter for proving the rumour or allegation is not true. If the accused woman goes and leaps into the river and she is not drowned in the river, she proves her innocence. If she sinks, she is guilty and her punishment is actually given by the holy river.

In Islamic belief and *Shari’a Law*, in order to prove *Zina* (adultery or sex out of wedlock), the act of *Zina* must be witnessed by four rational adults. The Qur’anic verse 24:4 to 9 (*Surah Nur-Light*) ordains that:

‘Those that defame honourable women and cannot produce four witnesses shall be given eighty lashes. Do not accept their testimony ever after, for they are great transgressor – except those among them that afterwards repent and mend their ways. God is forgiving and merciful.

If a man accuses his wife but has no witnesses except himself, he shall swear four times by God that his charge is true, calling down upon himself the curse of God if he is lying. But if his wife swears four times by God that his charge is false and calls down His curse upon herself if it be true, she shall receive no punishment’ (Dawood, 2003:246).

So, there can be ways to prove that the rumour or allegation is not true. Relatives of the female who is rumoured to have had an affair, or to have behaved improperly have to prove that the rumour is not true, in a way that is accepted by the community. Otherwise, the family

and the community must save themselves from the immoral. If the family does not carry out their responsibility, they are alien to the community, too. The relationship between the family members and the community is broken and the community has absolutely no sympathy for them. In the eyes of the community, they become outsiders criticized for having a different cultural understanding of honour and shame.

In such circumstances, there is an explicit or implicit pressure from the community or extended family members to restore family honour (Kevorkian, 2003:595; Sev'er and Yurdakul, 1999:986; Abou-Zeid, 1966:253; Hoyek et al: 2005:131; Jafri, 2008: 78, 85; Husseini, 2009: 10, 16, 63; Van Eck, 2003:57, 189-191). Many expressions, words, and threats can be used to state that killing a woman is easy, and her death would be a good solution. In this context, it is believed that killing sets an example and teaches a lesson to others. By means of killing, the community aims to prevent others from being disobedient, behaving improperly and violating cultural norms. Killing is a metaphor designed and suggested as the best method of dealing such cases. In Sharma's words killing is an *auto-suggestion* of the community that has an important influence upon the mental and physical condition and conduct of its members (Sharma, 1968:388, 389). If the member of the community has previously been subjected to a powerful behaviour pattern and mindset suggesting how to act in specific situations, conditions or circumstances, they will act or think in accordance with this pattern in such situations without judging the propriety or justifiability of the suggestion. They will take it to be a form of truth. In terms of shameful or dishonourable acts, killing is an *auto-suggestion* of the community. Where shameful or dishonourable acts of females are concerned, males are always engrossed in the way of thinking that they are not a man unless they restore their honour and their manhood will be questioned until they restore their family honour by saving themselves from the immoral. The killing was traditionally designed by the community for such situations.

Given that, in the community, there is little opportunity for the fostering of individual autonomy or self dependence, the male relatives of any females who defy cultural norms are very prone to explicit or implicit pressure from the community, or extended family members, that support this suggestion. From the beginning, the environment in which they have been brought up has provided the necessary conditions for the applicability of this suggestion. 'People resist suggestion to a greater or lesser degree but if the suggestion carries much weight, then their resistance will inevitably crumble and they will accept it' (Sharma 1968:385). Moreover, if this suggestion is accepted and supported by a prestigious person, such as the oldest male member of the family, who ordains that killing is the best method to be applied for the dishonourable act, there is no way to oppose the suggestion and the absolute ruler.

Endogamy is also another characteristic of the communities where honour killings tend to occur (Begikhani, 2005:218; Chakravarti, 2005:310; Peristiany 1992:107; Di Bella, 1992:156; Abu-Lughod, 1988; Van Eck, 2003:27, 29). As a form of marriage, endogamy requires each male to get married and to seek a bride within his own community. Therefore, maintaining female relatives suitable for the marriage is an important task for the family. The suitability of any female for marriage is dependent on whether 'she has been "used" by another man before coming into the hands of the husband, as the only legitimate "owner" of a woman's sexuality. A non-virgin bride is regarded as "second-hand" and such some men avoid accepting them as their wife' (Kordvani, 2002:6). Given that virginity symbolises purity, innocence and chastity of the female, it is regarded as a source of pride and honour for achieving the task of maintaining the females suitable for marriage. The loss of virginity is a taboo created by the community.

Seen from this perspective, females have the potential to stain family honour until they get married, and, after their marriage, their husbands become mainly responsible for

their honour. Therefore, fathers who successfully maintain their daughters as virgins and suitable for marriage are socially and financially rewarded. They are socially rewarded by their community's approval and praise because they proved that they had enough control over their daughters and they brought up them in accordance with their cultural norms.

As endogamy necessitates each male to seek a female within his own community, the scope for the choice of the bride becomes very limited. This situation encourages dowry, or bride-price, that is an award for the father and needs to be paid to him for his effort to maintain his daughter as suitable and valuable for the marriage. As a daughter has the potential to ruin or stain family honour until she gets married, the family should marry her off as soon as possible. Otherwise, it not only jeopardises the main task of the family but also puts the family in a financially disadvantageous position by risking the right to ask and receive bride-price.

When considering the issue of marriage form in these communities and its impacts on the individual, Can (2002) and Lévi-Strauss (1949) explain the logic behind bride-price, parallel-cousin marriage, cross-cousin marriage and also arranged marriage. According to them, in these societies communications and exchanges take place in three different forms: the exchange of females, the exchange of goods and services, and finally the exchange of statements or declarations (Can, 2002:167). All of these exchanges are carried in accordance with the principle of reciprocity (Can, 2002:45; Lévi-Strauss, 1949:66; cited in Can, 2002:45).

The principle of reciprocity imposes mutual obligations on both sides. In addition to the principle of reciprocity, the exchange of females is also governed by the rule against incest (Can, 2002:50, 51; Lévi-Strauss, 1949:65, cited in Can, 2002:50). Given that the rule against incest prohibits the sexual act between the individual and his near kin, each individual has to seek a female out of his kin in order to get married. Moreover, as the exchange of

females is carried out in accordance with the principle of reciprocity, the individual can not take the permitted woman unless he gives one of his female relatives in exchange for that woman who is permitted to be taken. As a result, by giving the prohibited and taking the permitted one, the female exchange is carried out in accordance with both the principle of reciprocity and the rule against incest.

However, as it is not always possible for both sides to find and make present a suitable woman at the time of the exchange, the problem is solved by offering valuable goods, or promising to arrange a suitable woman in the near future, for the exchange of the available woman. The first solution causes the practice of so called dowry or bride price, and the second solution creates the arranged marriage, *parallel-cousin marriage*⁷ (Begikhani, 2005:218; Abu-Lughod,1988) *cross-cousin marriage* (Goldthorpe, 1974: 90, 91) and ‘*babyhood betrothal*’ (Kordvani, 2002:16) as forms of marriage. Notably, the arranged marriage and cross-cousin marriage are common marriage forms in the communities living in the United Kingdom which practise honour killings.

For the scope of this thesis the term ‘dowry’ or ‘bride-price’ is used to mean the price that needs to be paid to the father for his effort to maintain his daughter as suitable and valuable for the marriage. The received price will later be used by the father in order to arrange and finance his son’s marriage. As seen again in accordance with the principle of reciprocity, by using the bride price the father replaces his daughter with a bride for his son,

⁷ According to Begikhani, unlike cross-cousin marriage which is a common marriage form in many communities, parallel-cousin marriage is a common marriage form among the Kurds in Iraq. Traditionally, the Kurds have chosen their future wives from patrilineal kin; the father’s brother’s daughter (*amoza*) is the preferred choice. Among certain tribes, the first cousin has the obligation and the right to marry his paternal cousin, and if he does not intend to marry her, he has to make his position clear so that she can be given to another man (Begikhani, 2005:218-219). Similarly, Abu- Lughod (1988) states that patrilateral parallel-cousin marriage is a preferred marriage form among the Bedouins of Western Egypt. Finally, Delaney (1991) states that during her stay and field work lasting two years in a Turkish village between 1980 and 1982; with only one exception all marriages were endogamous. Villagers married either kin or other villagers whether they lived in the village, in a town, or the city of Ankara. And patrilateral parallel cousin marriage was a desire reflected by all villagers in order to keep their daughter in the village and group.(Delaney, 1991:100, 106)

and a woman is exchanged for another woman. Otherwise, by giving a daughter he receives just valuable goods, not a woman, and that is against the principle of reciprocity.

As stated above, the arranged marriage and cross-cousin marriage are common marriage forms in the communities living in the United Kingdom and practising honour killings. 'Home Office statistics show an influx of 15,000 prospective marriage partners (male and female) from the Indian sub-continent arriving in Britain in 2001 alone, the vast majority arranged by parents for their British-born children' (Werbner, 2005:31). It is reported that the Forced Marriage Unit, a joint unit launched by the Home Office and Foreign and Commonwealth Office on 26th of January 2005, deals with around 75 forced marriage events each year across the UK and gives practical advice to people at risk of being forced into marriage (The Forced Marriage Unit, 2005).

Although the concept of arranged marriage differs from the concept of forced marriage, by requiring a process of negotiation and consultation between the parents and their children before finalising the marriage act, many arranged marriages take place without seeking mutual, valid and informed consent of both bride and groom. In both types of marriage, 'marriages are often the result of a family reaction to what may be seen as inappropriate behaviour on the part of the child or an attempt to preserve their cultural identity in the face of perceived alien culture' (Werbner, 2005:30).

Therefore, in practice, many arranged marriages are carried out in a similar way to forced marriages, which 'involves coercion in the form of emotional blackmail, physical constraints, confinement, physical violence, abuse *[and]* abduction' (Kordvani, 2002:14). As these forms of marriage are built on the assumption that the parents know best for their children and 'what worked for the parents will also work for their children' (Werbner, 2005:30), they create an environment that not only legitimizes violence and oppression against women but also silences women from being able to discuss, seek support, or oppose

such an interfamilial agreement. (Bhardwaj, 2001:56; Sanghera, 2008) Any individual opposing this arrangement has to be brought into conformity with the interfamilial agreement by using every possible means. Otherwise, breaching the agreement or not fulfilling a pledge brings the family's control over their daughter into question, in direct contradiction with the concept of manhood and the concept of honour. If other strategies or remedies to make her comply have failed, 'the only remedy was for her male relatives to kill her in order to protect the family honour' (Kurkiala, 2003:7). Given that available options are very limited for any woman put in the position to choose between obeying the interfamilial agreement and being killed, in communities where honour killings tend to occur women are more vulnerable to suicide and self-harm than their counterparts (Bagli and Sever, 2003; Bhardwaj, 2001; Sanghera, 2008: 242, 257, 287; Hussein, 2009:125,175). Women who do not commit suicide, but unwillingly agree with their parents' choice, develop a coping mechanism by simply accepting that such a marriage was written in their fate or *kismet* (Siddiqui, 2003; Minai, 1981:52) which is not a good sign for their mental health.

In cross-cousin marriage, the marriage is performed between the children of siblings of opposite sex (Goldthorpe, 1974: 90). It is the main form of the endogamous marriage in which each male seeks a bride within his own community in order to save the community from *others* or from '*outsider blood*' (Kordvani, 2002:16 emphasis added) and maintain the family's property within the family. Using this type of marriage as the main form of marriage in the community also preserves the kinship among the generations by creating an environment, or ghetto, in which almost all residents are relatives of each other, and have close and continuous relationships with each other. It is this form of marriage that provides a natural habitat for an honour culture in which it is believed that "if a woman refused to comply with the rules set down by her cultural community, her 'immoral behaviour' contaminated the whole family." (Kurkiala, 2003:7). Needless to say, in such an environment

it is very difficult for any female to oppose such a marriage, because any opposition will be regarded as a dishonourable act and a defiance of cultural norms.

Finally *babyhood betrothal* is another form of marriage that can be seen in these communities. A babyhood betrothal actually is a tradition among tribal families. In this tradition, 'a baby girl becomes betrothed, normally by her father, to one of her relatives (usually her cousin) as soon as she is born' (Kordvani, 2002:16). If a girl is betrothed to somebody, she must marry that person as soon she attains the age of marriage. This practice is designed by endogamous tribes in situations where the number of suitable women to marry is limited and valuable goods or bride price for the exchange of females can not be offered. However, this practice, which was designed for tribes that regarded females as property or a commodity to exchange, still takes place in the settled communities, and breaching babyhood betrothal is still regarded as a dishonourable act. Thus, Begikhani (2005) reports that the practices, *jin ba jine* (the exchange of two sisters between two families) and *gawre ba bichuki* (the giving of a woman in exchange for a child) still applied and sustained among the Iraqi Kurds, in following the rule of endogamy, tend to encourage honour killing. For example,

'in the case of exchanging sisters, when one of the sisters gets divorced, the other one has to leave her husband even if there are no significant problems in her family. In the case of giving a woman in exchange for a baby girl, if she later refuses to marry the man she is promised to, she will be in danger, the settlement will collapse and 'honour violence' is likely to follow.' (Begikhani, 2005:228)

As explained above, because of powerful community sentiment, the behaviour of these communities' members shows a high degree of similarity. This similarity is also seen in the economic structure of the community. The economic structure of the community is based upon similar professions, activities and engagements, in which most individuals perform the same or similar tasks. Given that the scope for specialization is limited, people engage in activities which are simple, and conducive to self-employed work such as taxi driver, owner of small take away, clothing, or off-licence shop. Thus, the IPPR report shows that, for the

period 2005/2006, the self-employment rate among the economically-active working-age population born outside the UK but living in the UK was 35% for Turkish, 33% for Pakistani, 31% for Iranian and 21% for Bangladeshi workers (IPPR, 2007:19). In such an environment, the contribution of each individual to the community, his value and meaning for the community, are not regarded as different from the others. As individuals perform similar tasks, the existence or non existence of any one individual makes little difference, and nobody is dependent on the performance of the others. Therefore, if it is believed that an individual has behaved immorally or improperly, the community can easily dissociate itself from that individual by labelling her as an alien or immoral that has no place in the community. Seen from this perspective, the concept of individuality is a phenomenon that can be excluded or thrown away easily (Goldthorpe, 1974: 32,108; Can, 2002:143; Sanghera, 2008).

Up to this point in the discussion, by taking certain characteristics in to account, this subchapter has tried to show that in the cultural communities of the United Kingdom where honour killings tend to occur, mutual relationships between males and females including marriage, pre-marital and adulterous sex, are strictly controlled and regulated by institutions and associations in accordance with its cultural norms. It has also tried to show that the sociological structures and characteristics of these communities have provided an environment conducive for the maintenance of these cultural norms and for the occurrence of honour killings. In such communities, as explained earlier, there are superficial social changes rather than deeper cultural changes. These communities can change, but only if the change can be accommodated and internalised with their cultural norms. Therefore, the sociological structure of these communities is the main obstacle to internalise new cultural norms and cultural change. It should not be assumed that when people immigrate to the United Kingdom, they only bring their traditional clothes and foods with them; they also

bring their own values, traditions and culture. Characteristics of the communities, like endogamy, create an environment conducive to the transmission of the values and ideas from generation to generation. The received cultural norms govern the different understanding of honour and shame which inspires violence, equates loss of honour with loss of life, and sustains subcultures where honour killings tend to occur. The rules of this subculture are learned through association with others, and the subculture promotes a value system where violence is regarded as normal, and is expected of others in the case of dishonourable conduct. The normative principle that the right to claim honour requires killing or violence in return is reinforced and transmitted from generation to generation. These norms are backed up with social rewards and punishment. People who do not wish to follow the norms are criticized, ridiculed, condemned, or excluded by the community, and those who follow them are admired and respected. If these constraints and sanctions were not in place, the community or subculture would soon lose its separate identity. This to some extent explains why these communities fail to adopt different thoughts, perceptions or understandings about the concept of honour and shame.

2.2 Islam, the social status of women and women's sexuality

In the Islamic context, rules regulating the conceptualisation of women's sexuality and the proprieties of their behaviour, whether sexual or non-sexual, are deeply rooted in primary religious materials such as *Qur'an* -the word of God; *Hadith*-the traditions, sayings, and deeds of Prophet Muhammad; and *Tafsir*-exegesis of the *Qur'an*.

Though people who are not aware of the true principles and messages of the *Qur'an* may disagree, it is clear that, *Qur'anic* text was originally egalitarian (Minai, 1981:4; Ozturk, 2005; Ozturk, 2003; Mernissi, 1991:126,129,138). Islam is a religion that concerned itself heavily with women's rights. In Islam, a woman is to be educated and allowed to earn and manage her income. She will be recognized as a legal heir to her father's property, along with her brother, and she is entitled to sexual satisfaction as well as economic support (Minai, 1981:4).

'Islam declares men and women to be equal in the eyes of the Creator, and the *Qur'an* openly condemns ... [the way] of thinking, which does not accept women as active subjects of their own journey of existence ... [and mistakenly] perceives women as inferior to men, a second sex from birth' (The Republic of Turkey General Directorate for Religious Affairs, 2004; cited in KA-MER, 2004:106).

However, 'the Arabic text of *Qur'an* is 'full of subtleties' open to either liberal or conservative interpretations by *Ulama* (Islamic scholars)' (Minai, 1981:20). For instance, for the Arabic word, '*Jilbab*', used in *Qur'anic* verse 33:59 for a gown or a outer garment⁸, there are different interpretations of *Qur'anic* verse 33:59 (*Al-Ahzab-The Confederates*), and mixed opinions and practices in Islamic society about whether a Muslim woman must cover her face and hands, in addition to other parts of her body, in the presence of unrelated men.

⁸ The word '*Jilbab*' is translated in Dawood's translation of the Koran as a veil[s], (Dawood, 1959: 287), in Sale's translation as a outer garment[s] with an explanatory note: 'the large wrapper[s], usually of white linen, with which the women in the east cover themselves from head to foot when they go abroad', (Sale, 1901: 320), in Athar Husain's translation as a veil, (Husain, 1977: 209), and finally in Bell's translation as mantle[s] with the explanatory note: 'probably cover [their] face[s]', (Bell, 1939:418).

When it comes to the concept of honour killings, the proprieties of women's behaviour and their social status, some of the controversy stems from different interpretations of *Qur'anic* verses. Some commentators do not have regard to the true underlying principles, and neglect other related *Qur'anic* verses in a reluctance to apply a holistic approach. In terms of the different interpretation of *Qur'anic* verses, it can truly be said that the most cruel and devastating distortions of, and deviations from, Islam are those which have happened in the conceptualisation of women's sexuality, their rights and social status. By using the name of the Prophet, the explicit orders of *Qur'anic* verses are neglected, or simply disregarded, in the name of interpretation. Those who are unaware of the difference between ruling with the rules of God, and ruling on behalf of God, have betrayed God, and have dared to take a position that has yielded 'culturally modified' (Ozturk 2003:711) and 'fundamentally different Islams' especially for women (Syed and Ali, 2005:9). Instead of following the true and egalitarian principles of Islam, societal cultural norms which are, to some extent, in contradiction of these true principles have been persistently followed under the guise of following some *Hadiths* whose authenticity is open to dispute. These problematic and disputable *Hadiths* have often been used to determine the rules of the faith and worship. When this problematic practice is combined with *Ulama* (Islamic scholars)'s reluctance to apply a holistic approach, the most cruel and devastating distortions of, and deviations from, Islam have happened.

First of all, as it is described by itself, the *Qur'an* is not an invented tale, but it is an explanation of all things and a guide for true believers (*Surah Yusuf-Joseph, Chapter 12, Verse 111*) it is beyond all doubt (*Surah As-Sajdah-Adoration or The Prostration, Chapter 32, Verse 1-2, Surah Al-Baqarah-The Cow, Chapter 2, Verse 2*). Bearing in mind the fact that the best interpretation of the *Qur'an* only belongs to God (Allah Almighty), and only God (Allah Almighty) knows best about the meaning and true intention behind his words, the author will now move on to discuss the different interpretation of some *Qur'anic* verses which

are conducive to worsen the social status of women, to misperceive and to misidentify women and their sexuality. Additionally, the author will show how the true principles of Islam have been culturally modified under the guise of following some *Hadiths* the authenticity of which has been open to dispute, and which are to some extent in contradiction of explicit *Qur'anic* texts.

2.2a That women are inferior to men, a second sex, and are sinners from birth

Despite the fact that there are explicit *Qur'anic* verses to the contrary, there is a common, but mistaken, belief in the Muslim world that women are inferior to men, a second sex, and are sinners from birth (Abu-Lughod, 1988:124-134; Delaney, 1991:286-290; Van Eck, 2003:51).

According to Dawood's translation, as to the creation of the first man and woman, *Qur'anic* verse 4:1 (*Surah An- Nisa-Women*) explicitly ordains that:

'YOU PEOPLE! Have fear of your Lord, who created you from a single soul. From that soul He created its spouse and through them He bestrewed the earth with countless men and women.' (Dawood, 2003:60),

and as to how the first sin was committed *Qur'anic* verse 7:20-22 (*Surah Al- A'raf-The Heights*) ordains that:

'But Satan tempted them...He said: 'Your Lord has forbidden you to approach this tree only to prevent you from becoming angels and immortals.' Then he swore to them that he would give them friendly counsel. Thus did he cunningly seduce them. And when they had eaten of the tree, their shame become visible to them ..." (Dawood, 2003:110)

Though *Qur'anic* verse 4:1 (*Surah An- Nisa-Women*) and *Qur'anic* verse 7:20-22 (*Surah Al-A'raf-The Heights*) are explicit about how human beings were created and how the first sin was committed, the story has often been used to portray women as inferior to men, a second sex and also sinners from birth. According to the version of the story in the Book of Genesis chapter 2 (Bible-knowledge), God first created the man, Adam, and by taking and using one of Adam's ribs, God created the first woman, Eve, and then ordered that there was

one thing that they could not do. He specifically told them that they could eat of every single tree that was in the garden - with the exception of one tree. This one tree was called the "tree of the knowledge of good and evil"(Bible-knowledge).

In addition to telling them not to eat any fruit from this one tree, God allowed one other thing to occur. He allowed Satan himself to be able to roam in the garden in the form of a serpent-knowing full well that Satan would try to tempt them to disobey his direct command to both of them was not to eat fruit from this forbidden tree. Satan first targets Eve, telling her that she will be like God if she eats the fruit from this one forbidden tree. He tells her that she will have God's knowledge of good and evil if she partakes of it. After Eve trespasses and eats some of the fruit from this forbidden tree, she then turns to Adam and convinces him to do the same thing. Adam then proceeds to eat some of the same fruit and both of them have eaten fruit from this tree - and hence the very first sin was committed (Bible-knowledge).

As can clearly be seen, this story is in direct contradiction to *Qur'anic* verse that explicitly states that the man and woman were created from the same soul, and not that the first woman was created from the rib of the first man. It is also in direct contradiction to *Qur'anic* verse that establishes that it was not the first woman who seduced the first man to disobey God's order. It was Satan who seduced both the first man and woman. However, some English translations of the *Qur'an* still repeat that the first woman was created from the rib of the first man, in the name of selections from *Qur'an* (Lane, 1843:123).

Thanks to this story⁹, whose history goes back to Pre-Islamic Arab culture and which has no base in the *Qur'an*, many people in the Muslim or non-Muslim world still believe that the women are inferior to men, and are a second sex from birth, because the woman is created from the man's rib. Secondly, it is believed that from birth women have a weakness that

⁹ Almost the same versions of this story which reflects the belief about women's interiority have still been told among the Bedouins of Western Egypt (Abu-Lughod, 1988:124-125), and among Turkish villagers.(Delaney, 1991:286-290)

potentially makes them prone to commit sin, and to be disobedient. Finally, it is believed that women have a character which influences men to commit sin.

This mistaken approach and belief has an impact on harmful traditional practices such as son preference which, though not as prevalent nowadays, still exists in some western and non-Muslim cultures (Winter et al, 2002:81) and female infanticide, which is one brutal consequence of the preference for boys over girls. Both son preference and female infanticide, which were common among Arabs before the Prophet Muhammad, are condemned by Qur'an in *Qur'anic* verses 16:58-59 (*Surah An-Nahl-The Bee*), 81: 8-9 (*Surah At-Takwir-The Folding Up or The Cessation*) and 43:17-18 (*Surah Az-Zakhruf - Ornaments of Gold*). For instance *Qur'anic* verses 16:58-59 (*Surah An-Nahl-The Bee*) ordains that:

‘When the birth of a girl is announced to any of them, his countenance darkens and he is filled with gloom. On account of the bad news he hides himself from men: should he put up with the shame or bury her in the earth? How ill they judge!’ (Dawood; 2003:191)

It is clear that the perception of women as inferior to men, a second sex and sinful from birth, can find no place in the true message of the *Qur'an* (Ozturk, 2003:106, 547; Ozturk, 2005: 334-336; The Republic of Turkey General Directorate for Religious Affairs 2004; Minai, 1981:13; Hoyek et al, 2005:113). Indeed, in the eyes of Islam, every child is born pure, and later each individual is held accountable for his / her own sin or transgression. No matter how guilty s/he is, no individual has a right to transfer his guilt to another or subsequent generations. If there is a sin committed by either Eve or Adam, they should be individually held accountable for that sin. Labelling and misidentifying all women as sinners from birth, because of what their ancestor may have done is against the principle of personal accountability that is clearly mentioned in *Qur'anic* verse 17:15 (*Surah Al-Isra-The Night Journey*) which states that:

‘Whosoever lets himself be guided does so to his own benefit, and whosoever goes astray, does so to his own hurt; no burden-bearer bears the burden of another;’ (Bell, 1937: 264).

2. 2b Women as a source of pollution and a pole of negative forces

The basis for regarding women as a source of pollution and a pole of negative forces is a *Hadith*. As it is claimed by some to have been said by Prophet Muhammad, it was cited and classified as authentic (*Sahih*) by *al-Bukhari*, one of the best-known scholars, who compiled and collected *Hadiths*. According to this *Hadith*, the Prophet said that ‘the dog, the ass, and woman interrupt prayer if they pass in front of the believer, interposing themselves between him and the ‘*qibla*’ (Mernissi, 1991:64). The *qibla* symbolises the direction of the sanctuary that is in Mecca and when a believer prays, s/he has to turn his face towards the ‘*qibla*’ or the direction of Mecca.

This *Hadith* was produced after the Prophet’s death, and it is reported that after hearing this, *Aisha*, the wife of the Prophet Muhammad, sharply criticised it (Ozturk, 2005:380,381; Mernissi, 1991:70) by saying that ‘You compare us now to asses and dogs. In the name of God, I have seen the Prophet saying his prayers while I was there, lying on the bed between him and *qibla*. And in order not to disturb him, I did not move’ (Mernissi, 1991:70). This approach shows that, soon after the Prophet’s death, Pre-Islamic Arab culture that regards women as inferior to men, a second sex and sinners from birth, and regards women’s sexuality ‘as a source of pollution’ and ‘a pole of negative forces’ (Mernissi 1991:73 emphasis added) still had an impact on the interpretation of Islam (Abu-Lughod, 1988:124-134; Delaney, 1991:41, 93; Jafri, 2008:61, 72).

This culture still has an impact on the interpretation of *Qur’anic* verse 2:222 (*Surah Al-Baqarah-The Cow*) which is related to menstrual periods and *Qur’anic* verse 12: 33-34 (*Surah Yusuf- Joseph*). *Qur’anic* verse 12:33-34 (*Surah Yusuf- Joseph*) reflects the story of Joseph, who was sold by the Egyptians as a slave, and later his master’s wife attempted to seduce him. Though the story only reflects the attempt of one woman, whose behaviour was reflected as implausible by *Qur’an*, it is regarded by some as a warning about women, in

which they are viewed as those who have wiles (Dawood, 2003:168), the ability to use tricks to persuade someone to do what they want, or having guile (Bell, 1937:220), the ability to use clever but dishonest methods to deceive and seduce men. However, this *Qur'anic* verse read in context neither has an intention to warn men about women's sexual wiles, nor to portray women as a pole of negative sources. In the view of this author, the verse simply praises Joseph's efforts to preserve his chastity.

When it comes to menstrual periods, according to Bell's translation, *Qur'anic* verse 2:222 (*Surah Al-Baqarah-The Cow*) ordains that:

‘They will ask thee about menstruation; say: “it is harmful; so withdraw from women in menstruation, and come not near them until they are clean; but when they have purified themselves, come to them...”’
(Bell, 1937:31)

According to this verse menstruation should be regarded as a harmful period or ‘an indisposition’ (Dawood, 2003:33) but the interpretation of this verse is not universally agreed. Though the Prophet clearly explained and ordered the male believers who had asked him questions on this subject ‘to eat with their wives, drink with them, share their bed, and do everything with them that they wanted except copulate.’ (Mernissi, 1991:74), menstruation is still regarded as ‘pollution’ in the translation and interpretation of *Qur'anic* texts. (Sale,1901:23). Given that it is a pollution, it is implausible for any female to pray, fast or even enter into a mosque during this time, which imposes an unfair restriction on the liberty of women and their right to worship. According to Atay and Ozturk, this time should be regarded as an indisposition or a slight illness, during which the women have the discretionary right not to worship, pray or fast. The leave not to worship, granted by God for people who are ill or receiving medical treatment, can be easily used by women during this time and what is forbidden during this time is just to have sexual intercourse. Therefore, labelling women as *a source of pollution*, because of their different biological structure, created by God, is against

God's will and is a deviation from Islam (Ozturk, 2005:369-375; Ozturk, 2003: 449-452; Atay, 1992:13-16; Delaney, 1991: 301-311).

As Ozturk stated, if a *Hadith* claimed to have been said by the Prophet Muhammad is transmitted only by one person or, in other words, the *Hadith* has only one transmitter as a source, its authenticity should be always doubted. It should not be regarded as a source or evidence in order to determine the rules of the faith and worship (Ozturk, 2005:327).

2. 2c Forbidden sexual acts, the status of women and permissible killings

When it comes to the concept of honour killings and the proprieties of women's behaviour, it is important to consider the different interpretations of *Qur'anic* verse 4:34 (*Surah An- Nisa- Women*) that has been used by *Shari'a* (Islamic Law) Courts as a ground for acquitting defendants, or classifying killings as manslaughter rather than murder.¹⁰

According to Athar Husain's translation, *Qur'anic* verse 4:34 ordains that:

'Men stand above women on account of qualities they have been gifted with and on account of what they spend over them from their substance. The virtuous women are dutiful carefully protecting in their husband's absence what God would have them protect. As for those women who seem to have gone refractory, first admonish them and then if necessary remove them to separate beds and (if this fails) give them a shaking. If they return to obedience seek not to harm them' (Husain, 1977:68 emphasis added).

The phrase 'men stand above women' in Husain's translation is variously translated as 'men shall have the pre-eminence above women' in Sale, (Sale 1901: 58), 'the men are overseers over the women' in Bell, (Bell, 1937:74), and 'men have authority over women' in Dawood, (Dawood 1959: 358). Further, the sentence of 'the virtuous women are dutiful' is variously

¹⁰ For instance, in Pakistan courts interpret *Qur'anic* verse 4:34 as 'men are *qawam* over women'. A *qawam* is 'a person who is responsible for running the affairs of a person or an institution or system in a correct manner, to safeguard and provide for the necessities of life.' (Warraich, 2005:91) Therefore, without discussing whether there is a sudden loss of self control or the issue of provocation in a way that it is understood in England, only with the emphasis on being responsible for protecting women, men as husbands or brothers have received mitigated sentences by Courts in Pakistan in such honour killing cases as *The State vs. Muhammad Hanif* 1992 SCMR 2047., *Ali Mohd vs. Ali Mohd*, PLD 1996 SC 274., *Muhammad Faisal vs. The State* 1997 MLD 2527. For different interpretations of *Qur'anic* verse 4.34 and its impact on court rulings in honour killing cases see Warraich (2005), Stowasser (1998) and Jafri (2008)).

translated as ‘the honest women are obedient’ in Sale, (Sale, 1901: 58), ‘good women are obedient’ in Dawood, (Dawood, 1959: 358) and ‘upright women are therefore submissive’ in Bell, (Bell, 1937:74). The word ‘refractory’ is translated as ‘perverseness’, ‘disobedience’ and ‘refractoriness’ in Sale (Sale, 1901), in Dawood (Dawood, 1959) and in Bell (Bell, 1937) respectively. The words, ‘give them a shaking’ is translated as ‘beat them’ in Dawood (Dawood, 1959) and Bell (Bell, 1937) and ‘chastise them’ in Sale (Sale, 1901).

The different interpretation of *Qur’anic* verses is not a new phenomenon in the Muslim World. However, as has happened in this interpretation, most of the different interpretations reflect the orthodox and conservative voice of male *Ulama* (Islamic scholars) who show reluctance to interpret the *Qur’anic* verses by taking its original egalitarian spirit into account. Consequently, the non-orthodox and liberal voices within Islamic society such as Hussain (1987) of Pakistan, who support liberal and contextual interpretations of *Qur’anic* verses, are quite unheard in many parts of contemporary Islamic society (Syed and Ali, 2005:8,9).

Thus, Ozturk, a Turkish scholar, who emphasizes the egalitarian spirit of the *Qur’an* and endeavours to reflect the true principles of Islam in accordance with *Qur’anic* verses, has shown methodologically and linguistically that the Arabic word ‘*fadribu*’, used in this verse and which is differently translated as beating, shaking or chastising, is in no way intended to have such meanings. According to him, this Arabic word is mentioned in more than fifty places in the *Qur’an* and when it is compared and interpreted with other contexts where it is used, the word ‘*fadribu*’ used in the context of the *Qur’anic* verse 4:34 has a different meaning than when used in other contexts. In this context, the word ‘*fadribu*’ or ‘*fadribuhunne*’ should be understood to mean ‘sending away’, ‘making a journey’ or ‘getting out of a place’ and therefore, if a woman behaves improperly or disobeys, she should be sent away to her father’s house or somewhere else. Otherwise, as will be discussed later in more

detail, by beating a disobedient woman we would place a disobedient woman unjustly in the same position as an adulteress, and would apply a punishment which would be unfair and against the explicit orders of the Qur'an (Ozturk, 2003:569-572; Ozturk, 2005:341-348).

Similarly, in accordance with the egalitarian spirit of the *Qur'an*, Hussain (1987) interprets, as mentioned above, the *Qur'anic* verse 4:34 as 'men are in charge of women' and opines that it only refers to man's position as head of the family consisting of wife and children, whom he is duty bound to maintain (Hussain, 1987: 9 cited in Syed and Ali, 2005:8).

As explained above, the non-orthodox and liberal voices are quite unheard in many parts of contemporary Islamic society and this creates an environment conducive for Muslim men culturally and traditionally to perceive that women are subordinate to men, and that female relatives, either by blood or by marriage, are the personal property of males. Females, therefore, should obey males, and males should have the right to make them obedient. This perception, combined with the cultural conceptualisation of honour, which is largely believed to depend on the proper behaviour of female relatives (Kevorkian, 2003:587; McTaggart: 7; Syed and Ali, 2005:4; Khafagy, 2005:3; CEWLA, 2005:140), reconstructs women's sexuality as a source of '*potential stress*' (McTaggart: 7 emphasis added) or '*potential threat*' (Kevorkian, 2003:587) to family honour.

Needless to say, the different interpretations of *Qur'anic* verses concerning the social status of women, and the cultural conceptualisation of honour, result in cultural norms requiring that, in order to maintain family honour, men should constantly supervise their female relatives and take all necessary measures to restrict their mobility. Every movement outside the house carries the possibility of a meeting or encounter with men, which in itself has the potential to create an environment conducive to improper behaviour of female relatives and, therefore, the potential threat of dishonour.

Therefore, the more that men restrict the mobility of their female relatives outside the house, the more they assure themselves that they will not face the potential threat of dishonour. A mere suspicion that a man's daughter, wife or sister has defied the accepted social norms by behaving improperly will form a clear basis for punishing, or even killing, that woman. This view is, however, in direct contradictions to the true principles of Islam, which is egalitarian, and which explicitly ordains what sort of punishment should be given against the most improper sexual behaviour, including pre-marital sexual relationship and adultery.

Both *Qur'anic* verse 24:2 and *Hadith* - the traditions, sayings, and deeds of Prophet Muhammad - is explicit about the penalty for adultery, and sex outside marriage. The penalty for such crimes is 100 'medium' lashes in public for the adulterer and the adulteress, and the sole aim of this punishment is to make them ashamed of their act. The evidence for such crimes can be gained through repeated confessions, the testimony of four rational adult eye-witnesses, or from pregnancy (Faqir, 2001:74; Kressel, 1981:142). *Qur'an* also rules severely against those who make false accusations. According to Dawood's translation, *Qur'anic* verse 24:4 ordains that false accusations require 80 lashes, and no testimony of those great transgressors who make false accusations will be admissible unless they repent and mend their ways (Dawood, 1959:208).

Qur'an is also explicit about permissible killings. In *Qur'anic* verse 5:32, (*Surah Al-Maida-The table*) killing as a form of punishment is permitted for murderers and for those who have committed wicked crimes (Dawood, 1959:378,) such as those who spread disorder (Husain, 1977:81) or cause corruption in the land (Bell, 1937:98). Therefore, those who kill their female relatives simply by following what their ancestors did, in order to conform to the cultural norms of society, without questioning whether their behaviour is in contradiction to the messages of the *Qur'an* which are explicit about permissible killing just repeatedly imitate

the traditions, and '*Taglid*' (imitation without questioning) (Syed and Ali, 2005:3) is not condoned by Islam under any circumstances.

Therefore, it is argued, killings committed against women based on the claim that the woman has brought shame on family honour, or because their behaviour has defied the widely accepted norms of a society which determines the boundaries of their sexuality, social status and the propriety of their behaviour, are culturally motivated. Similarly, those who regard these brutal killings as permissible or excusable, and also supposedly hold the view that their honour is to obey what their religion, particularly Islam, orders, evidently do not follow the orders of their true religion. Rather, they follow what they believe to be their religion which is greatly modified by their culture.

The aim of this subchapter has been to illustrate, by reference to different interpretations of *Qur'anic* verses, the most cruel and devastating distortions of, and deviations from, Islam which have happened in the conceptualisation of women's sexuality, their rights and social status. By using the name of the Prophet, the explicit orders of *Qur'anic* verses have simply been disregarded, or neglected in the name of interpretation. Those who are not even aware of the difference between ruling with the rules of God, and ruling on behalf of God, have betrayed God, and dared to take a position that yielded 'culturally modified' (Ozturk, 2003:711) and 'fundamentally different' Islams, especially for women (Syed and Ali, 2005:9). By culturally modifying and interpreting *Qur'anic* texts, they have neglected and disregarded the true principles of Islam and God's order, and they have ruled on behalf of God, which is not condoned by Islam under any circumstances.

As Islam does not have a central supreme authority that can give a final word on conflicting issues and interpretations, and because it requires literacy and a knowledge of the scriptures to be able to argue what the true principles of Islam forbid and demand, many people lack the intellectual capacity to judge the propriety or justifiability of their cruel

actions against women, which they believe to be acceptable under their interpretation of Islam.

These factors have made Muslim communities more vulnerable to misinterpretation and misunderstanding, and have contributed to the practice of honour killings. It is these factors that, to some extent, explain why Muslim communities tend to fail to adopt different ideas, perceptions or understandings of the concept of honour and shame and why their name has become associated with honour killings, despite the fact that honour killing is not solely a “Muslim phenomenon” at all.



Chapter 3

DIFFERENT CULTURAL UNDERSTANDINGS OF HONOUR AND SHAME

3. 1 Different concepts of honour

‘Honour and shame are two poles of an evaluation. They are the reflection of the social personality in the mirror of social ideas’ (Peristiany (ed.), 1966:9). All societies have their own forms of honour and shame; and they are used as ideal standards to evaluate conduct in each particular society and construct what it means to be an ideal man or an ideal woman. Whoever is found conformist by these standards is regarded to have a personality that represents and sets an example for a certain society. Whoever is not found conformist or wanting is regarded as a person who is deficient in representing and exemplifying a certain society. In this context, no person is acceptable, whatever his position and achievements, if he lacks the components of honour (Peristiany (ed.), 1966:10). The problem is not having moral standards that shape the concept of honour and shame. The problem lies in using these standards to evaluate and measure our conduct, or the conduct of any other individual, and what kind of sanctions are imposed on conduct which does not meet these standards.

It is clear that in the societies or communities where honour killings tend to occur, the individual constantly uses the concept of honour and shame in order to assess his own conduct and that of his fellows. The individual is always under pressure and constantly forced to prove his honour. In this context, ‘honour and shame are the constant preoccupation of individuals’ (Peristiany (ed.), 1966:11) and, as we have seen, face to face personal, as opposed to anonymous, relations are the main type of relationships among members of such a society, where ‘spheres of action are well defined, non-overlapping and non-competitive’ (Peristiany (ed.), 1966:11).

The word ‘honour’ - *honos, honoris* - has many meanings in classical Latin. But, none of them seems conducive to encourage or support the assumption that the right to claim

honour requires killing or violence in return, or that the sentiment of honour inspires violent conduct when the honour of the individual is in dispute or at stake.

According to Baroja, in classical Latin, the word 'honour'- *honos, honoris* – 'is associated with the ideas of respect, esteem and prestige, and connected with the existence of public dignities and offices, and with rewards, ornaments and clothes which elevate their bearer above the rest of the community.' (Baroja, 1966:83) Similarly, in the context of Spanish honour and shame, Baroja explains that the Spanish word '*honor*', which has the same meaning as the English word 'honour', is derived from the verb '*honrar*' and the noun form of this verb is '*honra*'. Therefore, the Spanish word '*honor*' means the same as '*honra*'

. '*Honra* means preferment as a mark of praise, which a man gains by reason of the position he holds, or by doing some great deed, or by the goodness that is in him...*Honra* is here founded on personal virtue, and is created by the actions of the individual, or of those who engendered him in one place in society and not in any other.' (Baroja, 1966:84)

Seen from this perspective, the word 'honour' has a gender neutral meaning that is to do with reputation or prestige, and is not compatible with violence or killing. However, the concept of honour which inspires violent conduct has a different meaning than that of reputation and prestige. Here, the concept of honour is not necessarily associated with rank or social status and it cannot be gained through personal action. It can only be maintained, or lost.¹¹

¹¹ The perfect example of this conceptualization can be seen in the repealed Articles 551 and 578 of the Italian Penal Code (the Rocco Code 1931) which were in force until 1978 and 1981 respectively and regulated the crimes of abortion and infanticide for cause of honour. According to repealed Article 551: if the crime of abortion is committed in order to save one's own honour or that of a close relative, the penalties provided by the articles regulating the crime of abortion shall be reduced to half or to two thirds. But Article 551 further required that the woman must have had 'honour' to protect and preserve. Therefore, it was not applicable to women already considered 'dishonoured', such as prostitutes or women generally known to conduct an 'immoral life' (Bettiga-Boukerbout, 2005:238). Similarly, the Italian Cassation Court established that Article 551 could not be applied in the case of women known to be 'loose' [Cassation Court, 18.03.40 (Pannain, 1957:583)] or in the case of women who had already had an illegitimate pregnancy and continued to conduct an 'immoral life' [Cassation Court, 16.05.38 (Pannain, 1957:583)] (Bettiga-Boukerbout, 2005:238, 244).

Again, in the case of Article 578 of the Rocco Code that regulated the crime of infanticide, cause of honour was not applicable in cases where the woman was 'sexually dishonoured' or when the infanticide occurred well after delivery, once society had already learned of the illegitimate filiation (Bettiga-Boukerbout, 2005:239). These regulations and associated Italian case law were based on the principle that one cannot gain

Furthermore, it ‘imposes duties rather than bestows privileges’ (Bourdieu, 1966:221). Thus, in order to emphasize and differentiate these two different concepts, two different words are used in many languages.¹²

In the context of honour which inspires violence, a person’s honour is believed to be a sacred value, and something more precious to him than even his life (Peristiany and Pitt-Rivers (eds.), 1992:2; Van Eck, 2003:25), and the loss of honour is equated with the loss of life.¹³ A person can go to extremes in defence of this sacred honour by violating other sacred values and committing a grave sin, such as is killing (Baroja, 1992:101). That is why if a man was accused of wrong-doing, death would be better for him than life. For the same reason, if a man is accused of wrong-doing without evidence, the accuser will be severely sentenced by cutting his tongue or even by killing. In other words, ‘*honra*’ (honour) finds its social expression in what is known as ‘fame’ which is equated with life, ‘*deshonra*’ (dishonour) finds its social expression in ‘infamy’, which is equated with death (Baroja, 1966:85).

sexual honour through personal actions and achievements. One is born with this quality. During the rest of life one has either this quality or not. If one loses it, s/he loses it and it can not be regained.

¹² For instance, in Turkish, ‘*onur*’, ‘*gurur*’, ‘*nam*’ and ‘*şan*’ are gender-neutral words used to refer to prestige and respect, while the word ‘*namus*’ is a gender specific term used to refer to certain different qualities and standards that an honourable woman or man should have. Similarly in Pakistan, the word ‘*ghairat*’ is used to mean ‘honour’ ‘jealousy’, ‘courage’, ‘modesty’ and ‘shame’ and the word ‘*izzat*’ is used to mean reputation and respect (Werbner, 2005: 27). For further discussion see Van Eck (2003) p.20, 21.

¹³ The expressions such as ‘I do not have such a son/ daughter, s/he is dead for me’ used by the parents who believe that the family’s honour is stained by the actions of their daughter or son are the perfect reflection of this understanding. This is a coping and neutralization mechanism for the families who kill the ‘*immoral*’ and also the families who do not kill the ‘*immoral*’. Because, the person who lost his/her own honour and also brought stain or shame on family honour is indeed worthless. S/he should be regarded as dead (Husseini, 2009:128, 129; Van Eck, 2003:161, 239) and by killing him/her, the family loses nothing. On the other hand, the family who does not kill or use violence at least should keep distance from the immoral, given that the family who does not kill or use violence against the immoral can not have the right to claim honour. So, rejecting his/her existence, to some extent, makes the family honourable and acceptable again in the eyes of the community or society. Otherwise, by claiming honour without saving the family from the immoral or without rejecting its existence, the family ridicules itself. See, Sanghera (2008) for different kinds of rejection that can be applied in a case of a woman objecting to an arranged marriage.

So, we have two different concepts of honour. The first is a less problematic and gender neutral concept that establishes certain standards which are common to both sexes, and rarely encourages or supports the assumption that the right to claim honour requires killing or violence in return. The second is a gender specific concept that establishes different standards and rules for the honour of a man, and that of a woman, and generally encourages or supports the assumption that the right to claim honour requires killing or violence in return.

3. 2 The honour phenomenon that inspires violence

Pitt-Rivers, who examined the concept of honour in Andalusian society, where he carried out intensive field work, defines honour as ‘the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgement of that claim, his excellence recognised by society, his *right* to pride’ (Pitt-Rivers, 1966:21, emphasis as in original).

It is clear from this that the concept of honour has two aspects: the individualistic and collective aspect. The concept of honour not only provides ideal standards for a particular society or culture, but also provides a means for the internalisation of these norms by individuals who may subconsciously accept and adopt them. Also, according to Pitt-Rivers, there is an intimate relationship between honour and the physical person. In this relationship, the existence of the individual or his individuality and his own worth is symbolised and expressed through an analogy with the head. (Pitt-Rivers, 1966:25) This explains why the ritual by which honour is formally bestowed¹⁴ or the rituals and expressions by which an affair of dishonour is settled¹⁵ commonly centre upon the head of the individual whose honour is in question, in dispute or at stake.

¹⁴ For instance, crowning of a monarch by placing a crown on the head of a new king or queen is an official part of this honourable ceremony (Pitt- Rivers, 1966:25).

¹⁵ For instance, when the concept of honour is equated with loyalty and when your loyalty is open to dispute, offering your head to a king or monarch is a sign of loyalty and honour. Similarly, a neo-Nazi group ‘Blood and

Giving your head for your fellows or country, by refusing to collaborate with the enemy, is regarded as honourable conduct. The defilement of the head (Campbell, 1992:132,134) and cutting of hair (Pitt- Rivers, 1992:240; Van Eck, 2003:171) are regarded as rituals by which an affair of dishonour is settled. In this context, your worth and honour is symbolised by the head, so, offering your head before your honour is questioned and your head is claimed establishes that you have already maintained and confirmed society's standards which identify the ideal types or models. Similarly, an old Turkish saying or proverb 'my neck/head is as thin as hair before you'¹⁶ is a commonly used phrase for a sign of respect towards the elderly, or a sign of acceptance of sanctions imposed by the group or community believed to have the authority to judge or question your worth, honour or competence in disputed matters.

In the light of these rituals and expressions, it would not be absurd to claim that, though the degree of application differs greatly from society to society, settling or redeeming an affair of dishonour through violence has a long tradition. The scene so often used to portray the response of a betrayed or dishonoured woman, in which she either slaps or throws a glass of water into the face of the betraying man, is a reflection of this tradition. Europe has long been familiar with this tradition, and duelling between men was regarded a noble and proper practice to protect a man's honour among the elites in Western civilisations (Sen, 2005:44; Siddiqui, 2005:264; Spierenburg (ed.), 1998). Therefore, it is not surprising to find a common history which establishes that affronts to honour can only be redeemed through

Honour/Combat 18', which is a anti-immigration group based in the UK and claims the history and title of National Socialism, is believed to have a 'code of honour' requiring that to live by honour means that one is prepared to die rather than be dishonoured (Sen, 2005:44,62).

¹⁶ Translated from an original Turkish saying '*Size karşı boynum kıldan incedir*' or '*Huzurunuzda boynum kıldan incedir*'.

violence, especially blood, since ‘the laundry of honour is only bleached with blood’¹⁷ (Pitt-Rivers, 1966:25, 74).

In this collective understanding, while certain standards are common to both sexes, the honour of a man, and that of a woman, require the acceptance and application of different rules. The honour of a man obliges a man to defend his honour and the honour of his family, and the honour of a woman obliges a woman to maintain and protect her purity.

It can be seen that the honour phenomenon that inspires violence has a collective aspect, which is shaped and constructed by a gender specific formula. In other words, the honour phenomenon which inspires violence is to a large extent shaped by the perception that a man’s honour is dependent on the proper behaviour of female relatives. So, the shameful or dishonourable actions that inspire violence and affect the collective honour are mainly the actions of women.

There are many actions of women that could be held to be dishonouring for a man. However, the duty of reclaiming or restoring honour is not generally imposed on women. It is again men’s duty to restore honour¹⁸ and retaliation against dishonourable conduct is the ideal and is a prerequisite for men. Because, for a man, the loss of honour is equal to loss of life; and the ideal man lives for his honour and recognises the duty of defending and restoring it.

Thus, according to Bourdieu, in Kabyle society a man’s honour is his own existence. ‘In him, existence and honour are one. He who has lost his honour no longer exists. He ceases to exist for other people, and at the same time he ceases to exist for himself’ (Bourdieu, 1966:212). Honour ‘*nif*’ is a certain public image of oneself and should be defended at all costs, because it is worth more than life itself (Bourdieu, 1966:201, 208).

¹⁷ Translated by Pitt- Rivers from an original proverb ‘*La lessive de l’honneur ne se coule qu’au sang*’.

¹⁸ Men’s duty to restore honour is not only common in Muslim, Eastern or Arabic culture; such duty is also common in West and non-Muslim culture. It is reported that such duty prevailed particularly in the south of Italy and it was seen as a duty of fathers and brothers first, and then husbands, to protect family honour and to restore honour. (Bettiga-Boukerbout, 2005:233)

Now, the collective and gender specific characteristics of the honour phenomenon that inspires violence need to be discussed in more detail.

3. 2a The honour phenomenon that inspires violence has a collective aspect

The concept of honour that inspires violence and raises the expectation of retaliation with violence mainly emanates from the assumption that the honour of the family or group is dependent on the conduct of its members. So, as long as the honour of the group or community is not affected by the shameful and dishonourable conduct, the community or group does not necessarily expect retaliation or require killing or violence in return.

Thus, Abou-Zeid, who discusses and analyses the concept of honour and shame among the Bedouins of the Western Desert of Egypt, emphasizes the difference between the individualistic and the collective perspective of honour and shame among Bedouins. Though Bedouins use the word '*sharaf*' (honour) to refer to the honour of both the individual and the group, they differentiate the honour of a woman ('*ird*') from that of a man, and differentiate the shameful acts of a woman that have an impact on the collective honour ('*ar*') from those of a woman that do not ('*aib*') (Abou-Zeid, 1966).

The term ('*ird*')¹⁹, is used to refer to the honour of a woman, and is used only in connection with female chastity, prudence and sexual restraint (Abou-Zeid, 1966:247). In this context, not all forms of misconduct by women bring the same degree of dishonour or stain on the collective honour of the group. The collective honour of the community or group is not affected by acts which are called ('*aib*')²⁰ (Abou-Zeid, 1966:246). For instance, wearing short

¹⁹ This is difficult to translate. Kressel, and Faqir, translate the word (*i' rid*) or ('*ird*') as the sex organs of the daughter (Kressel, 1981:142, Faqir, 2001:69).

²⁰ The Turkish word '*ayıp*' (shameful), which is pronounced almost the same as the word ('*aib*'), is used for the same situations and acts. The system of values that differentiates what is '*ayıp*' and what is not dominates all early education of Turkish girls. They are taught that their behaviour represents their family or group and education given to them. As mentioned by Kevorkian in the context of Arab honour and shame, if you wish to count what is ('*aib*') and what is not, the list would go on forever, and it seems that everything is ('*aib*') (shame or shameful) for girls (Kevorkian, 2003:588). The same is true for Turkish girls who are brought up in a family with

clothes might be regarded as shameful and (*'aib*), but the degree of shame brought by this action does not necessarily require severe intervention on the part of the society as a whole. The wrongdoer may be blamed, mocked or ridiculed (Abou-Zeid, 1966:247).

Shameful acts which do have an impact on the collective honour are called (*'ar*). The actions of (*'ar*) such as rape, or adultery, are treated differently because, they usually bring shame not only on the performer but also his kin, as well as on the victim and his kin. Therefore, the actions of (*'ar*) threaten social equilibrium (Abou-Zeid, 1966:247). Sexual offences, however slight they may appear to be, are against the honour of a woman, (*'ird*) and bring (*'ar*) which stains the collective honour of the group. So,

''ird is affected only by the conduct of the woman and in this respect it differs from the more general concept of *sharaf*. *'Ird* also differs from *sharaf* in that *sharaf* can be acquired and augmented through right behaviour and great achievements, whereas *'ird* can only be lost by the misconduct of the woman.

And once lost, it can not be regained.' (Abou -Zeid, 1966:256)

The collective concept of honour in Bedouins, which arises from misconduct of women, inspires violence and requires retaliation is *'ar*; and this should distinguished from the concept of *'aib* or the *sharaf* of the individual. In this collective concept, a girl with a bad reputation may disappear suddenly, or a girl may be killed if it is known that she had consensual sexual intercourse outside marriage. Sometimes the girl is killed even if she was raped; in such situations the rapist is also killed. If the family of the rapist then retaliates, it may cause an endless blood feud. The fear that the offended group will retaliate with violence if their collective honour *'ird* is violated brings the members of the community into conformity to the approved pattern of behaviour, and prevents them from violating the code of honour. (Abou-Zeid, 1966)

a strict moral code. Thus, Delaney (1991) provides examples which show how Turkish villagers differentiate what is *ayip* (shameful) and what is not, and how much importance they attach to this differentiation.

In all these offences inflicted against *'ird*, which is the honour of a woman and of her family and group, the responsibility for retaliation 'falls on the shoulder of the near kin of the woman and more particularly on her *ibn 'amm* (father's, brother's son) who stands in a unique position in relation to her, especially as far as her sexual life is concerned' (Abou-Zeid, 1966:257). Honour can be regained by washing away the shame which stained the honour of the family and group as a result of the woman's behaviour.

3. 2b The honour phenomenon that inspires violence has a gender specific aspect

Honour as a phenomenon which inspires violence is to a large extent shaped by the perception that a man's honour not only depends on his own conduct but is also dependent on the proper behaviour of female relatives. The purity and honour of the daughter reflects that of her mother and, thereby, the honour of the father (Pitt-Rivers, 1966: 53; Jafri 2008: 18, 20; Husseini, 2009:101). The honour of a man obliges a man to defend his honour and the honour of his family, and the honour of a woman obliges a woman to maintain and protect her purity. Therefore, a daughter, even if married, is always 'the daughter of her father' and as long as there is no kinship between the wife and husband 'the wife is always the wife of her husband even if she is separated'.²¹ In this context, actions and behaviours are characteristically described as masculine or feminine. Therefore, certain behaviour and attitudes are appropriate to a certain sex and should be shown only by that sex. As noted by Giovannini (1987), who conducted her fieldwork in the Sicilian village of Garre in 1974, 'boys and girls are encouraged to assume different roles from childhood: while female children are required to stay indoors and help with domestic chores, and are praised for a display of obedience and shyness, boys play outside with their friends and find adult approval in displaying an aggressive or dominant attitude.' (Giovannini 1987:61 cited in Bettiga-Boukerbout, 2005: 231)

²¹ However, as will be explained later, a general tradition which automatically accords the responsibility of the women to their husbands soon after the marriage is not consistent in the societies or communities where honour killings tend to occur.

This gender division is still found in many parts of the world and is particularly marked in the societies or communities where honour killings tend to occur. In such communities or societies, for example, smoking and drinking is characteristically regarded as masculine behaviour and it can not be associated with a woman and her femininity. It is against the nature of the woman and it corrupts and stains her femininity. Similarly, working and being a bread winner is traditionally a man's job, whereas house work is a woman's. In any situations where conduct does not conform to these norms and standards, this conduct is criticised by reminding and ridiculing the person who showed it. For instance, an unemployed man is criticised for his laziness by using the expression that 'he is sitting at home all day like a house wife', or a man who does not have physical strength is criticised for his weakness by using the expression that 'he is punching like a girl'. However, if a woman does extraordinary work, or has unusual success, of a kind normally associated with men, which would normally be praised if done by a man, the woman is also praised, but not because of her success or work. The woman is praised because of displaying a desirable masculine quality that does not stain her femininity. Thus, such expressions that can be translated as 'a woman as brave as a man' or 'a woman with testicles or balls' is still used in Turkey such as where a woman on her own takes care of children and also her husband's businesses when her husband is ill or away; or responds to any attack against her family or property.

According to Peristiany (1966), there is a sex-linked and gender specific basis for certain standards and rules for the honour of a man and that of a woman in Greek Cypriot villages. In the Greek Cypriot village Pitsilia where Peristiany made his observations in 1954, a woman by her dress, looks, attitude, speech and actions represents the family and mirrors the characteristics and value of the family. A woman's crucial duty is to safeguard herself against all critical allusions to her sexual modesty. A woman's honour can even be stained if

her name is constantly on the lips of men. A woman's dishonourable behaviour reflects directly on parents and brothers (Peristiany, 1966:182).

When it comes to honour of a man, the first qualification for a man of honour is to be honoured in his own family. Thus, certain forms of behaviour and attitudes should be shown by an unmarried son towards his father. The son should rise when his father enters the room, leave the coffee shop when his father enters it and stop playing card games when he notices his father's presence. The son should not smoke in his father's presence. Talking about even innocent, romantic relationship between the sexes, or expressing an opinion with which the father does not agree is reprehensible for a son. To show disrespect towards one's father by publicly provoking or deliberately disobeying his authority is said to be 'shameful' and the son himself is said to be 'shameless' (Peristiany, 1966:181). A man should possess masculinity and a woman should have a modest femininity. An unmanly man and an immodest woman betray their nature. A woman becomes dishonoured when she behaves like a man in enjoying freedom, especially sexual freedom. (Safilios-Rothschild, 1969:206; Peristiany, 1966:189)

As can be seen in this gender specific conceptualization of honour, men's honour is dependent on the proper behaviour of female relatives and, therefore, on the control of female sexuality. In other words, controlling female sexuality is a prerequisite for a man's honour. There seem to be four reasons to explain the importance given in these societies to controlling female sexuality. First of all, as mentioned by Delaney, a man's honour, power and authority derive from his ability to produce a child, preferably a son; and guaranteeing that this child is from his own seed. This can only be guaranteed by the cooperation of a woman, who has kept her virginity before marriage and fidelity after marriage. Every measure is taken to prevent and remove any threat that might cast a doubt over this guarantee. It is dependent on the

sexual purity of female relatives, and is symbolised and maintained by the proper behaviour of female relatives (Delaney, 1991:39, 40).

Secondly, as the former chapter explained, it is believed by some that, from birth, women have a weakness that makes them prone to commit sin. If female sexuality is not controlled, by committing a sin which may involve a sexual or non sexual act, they may bring shame on honour.

Thirdly, women's sexuality is potentially regarded '*as a source of pollution*' and '*a pole of negative forces*' (Mernissi, 1991:73 emphasis added). Women are said to have wiles, (the ability or tricks used to persuade someone to do what they want), or guile (the ability to use clever but dishonest methods to deceive and seduce men), and if not controlled, women can use these skills to seduce men and stain honour.

Finally, if women's sexuality is not controlled, it is believed that women acquire power over men. 'It is through sex that women acquire power over men, and women have naturally the ambition to attend command and liberty, and they wish to invert the order of nature, attempting to dominate men.' (Pitt- Rivers, 1966:68) By reasoning, therefore, for their own good, women should obey men, and men should have the right to make women obedient.

To sum up, honour as a phenomenon which inspires violence is to a large extent shaped by the perception which suggests that a man's honour is dependent on the proper behaviour of female relatives²² and which reconstructs women's sexuality as a source of

²² The detailed discussion of this perception can be seen in Kevorkian, 2003:587; McTaggart: 7, Syed and Ali, 2005:4; Khafagy, 2005:3; CEWLA, 2005:140; Di Bella 1992:152; Jamous, 1992:169; Delaney 1991:101.

“*potential stress*” (McTaggart: 7 emphasis added) or “potential threat”²³ (Kevorkian, 2003:587) to family honour.

This perception and conceptualisation of honour has resulted in such cultural norms for women as, confining women to the four walls of the house²⁴, a harem mentality which regulates social life in accordance with sexual segregation (Minai, 1981:129; Abu-Lughod, 1988:73,116; Van Eck, 2003:29) and the necessity for a woman to be escorted by a male or a menopausal female chaperon who has stopped menstruating (Minai, 1981:125; Abu- Lughod 1988:12; Delaney, 1991:44, 83). All these norms are based on the idea that in order to maintain family honour, men should constantly supervise their female relatives and take all necessary measures to restrict their mobility since every movement outside the house might risk a meeting with men, leading to improper behaviour of the female relative and, the potential threat of dishonour.

Therefore, the more the males restrict the mobility of their female relatives outside the house, the more they assure themselves that they will not face the potential threat of dishonour that might be brought by the improper behaviour of their female relatives outside the house. A mere suspicion that their daughters, wives or sisters have defied the accepted social norms by behaving improperly will provide strong grounds for punishing or even killing them.

²³ According to Kressel and Faqir, in Arab and Muslim culture the conceptualization of honour which inspire violence and killing is a direct consequence of the perception which reconstructs women’s sexuality as a potential threat (Kressel, 1981:142; Faqir, 2001:69).

²⁴ *Chardiwari*, (the four walls of the house) ‘confining women to the four walls of the house’, one of the practices applied in Pakistan is the reflection of the belief that the male should restrict the mobility of their female relatives outside the house in order to prevent the potential threat of dishonour (Syed and Ali, 2005:3, Bettencourt, 2000:3; Jafri, 2008:60). Similarly, ‘*La mujer honrada, la pierna quebrada y en casa*’ (the honourable woman: locked in the house with a broken leg) is an ancient and popular saying used in Spain especially in Andalusian society (Pitt-Rivers, 1966: 45).

3. 2c The honour phenomenon that inspires violence has a fragile quality and requires possessing the sense of shame

In accordance with its gender specific aspect and collective aspect, the honour of a man obliges a man to defend his honour and the honour of his family. As the responsibility of protecting the honour of females relative has been assumed by men, the men are in a difficult and fragile position.²⁵

The difficulty that men face in terms of protecting honour is reflected in the words of one of the Palestinian police officers in the study by Kevorkian (2005). In the context of honour and honour killing occurring in Palestine he said:

‘Men in the family are the main victims ... and any solution should take into consideration what men go through when their female relatives are sexually abused ... Men lose their sense of direction, and this is why they tend to kill the victim and resolve the problem. As the Arab proverb states “nothing can help you to accept something bitter except something even more bitter”... You agree with me that one can’t leave a wild animal inside his house or [to] play with his children ... and men turn into wild animals when their “honour” is hurt ...’(Kevorkian, 2005:173-174).

The men, therefore, feel that they need to supervise the conduct of their female relatives and remain vigilant at all times. Thus, J.K. Campbell’s study establishes that the concept of honour has a fragile quality that may easily be lost, and that places men in a position which requires them always to be strong and prepared to respond to any attack that violates family honour.

J.K. Campbell examined the aspects of honour in Sarakatsani, Greek shepherds. In the Sarakatsani community, there are different rules for the honour of a man and that of a woman.

²⁵ The Spanish proverb which says that ‘glass and a man’s honour shatter at the first blow’ (Baroja, 1966:96) reflects the difficulty that men face in terms of protecting the honour of female relatives. The difficulty that men face in terms of protecting honour is also reflected in the study of Abu-Lughod (1988). Lila Abu-Lughod was an anthropologist hosted by a Bedouin family during her field work in the desert of Western Egypt. As an unmarried woman who did not have any kinship to the family which was going to host her, the only way to stay in the house for Lila was to accept the role of an adoptive daughter. As soon as Lila accepted this role, the approach of household towards her changed. Though she was a guest in the household, the Haj, the head of household, and his relatives felt that during her stay in the household, it was their obligation to protect her, as Lila was an unmarried woman and now their daughter. In order to do that they put restrictions on her movement and forced her to inform the head of household in advance of her whereabouts. (Abu-Lughod, 1988:14-15)

The qualities that distinguish the ideal moral characters of men and women are ‘the manliness (*andrismos*) of men, and the sexual shame (*dropē*) of women which the majority of Sarakatsani are assumed to possess “by nature”’ (Campbell, 1966: 145).

‘In general, the qualities of manliness are obvious and familiar... A man [*physically must be strong*] and must be *varvatos* that is well endowed with testicles and the strength that is drawn from them.²⁶... The manliness that is related to honour requires this physical basis, yet it must discipline animal strength and passions to its own ideal ends. Virginity before marriage is the ideal’ (Campbell, 1966:145, 146).

So, a man should always be strong and prepared to respond to any attack that violates family honour (Abu-Lughod, 1988:88-90) for otherwise honour can be easily lost. The fragile quality that honour possesses is so great that a person can feel himself to be dishonoured even if the dishonourable act is not generally known. The reason behind feeling dishonoured rests upon the suspicion or fear that the community, sooner or later, is going to learn that he has been dishonoured and he will be forced to recognise that he has been dishonoured. So, if there is a way to escape from the publicity of dishonourable conduct, there may still be an alternative to restore honour without seeking violence. However, the concept of shame, that is closely associated with the concept of honour, and that makes a person ‘sensitive to the judgements of others’ (Campbell, 1992:131), does not always permit a person to restore

²⁶ Unsurprisingly, symbolising strength, courage, power and bravery by using the word ‘testicle’ or the words similar to ‘testicle’ is a common usage in many languages. Thus, the English word ‘balls’, an informal and impolite word used instead of ‘testicles’, is also used to mean ‘courage’ and ‘strength’. Similarly in Turkey the word ‘*taşak*’ that informally means testicles is used to symbolise strength, courage, power and bravery. Thus, the word ‘*taşaklı adam*’ which literally means that ‘the man with testicles or balls’ is used to describe and praise the conduct of a man that requires strength and courage. Even the conduct of a woman can be associated with the testicles. By using the word ‘*taşaklı kadın*’ that can be translated into English as ‘the woman with testicles or balls’ the conduct of a woman is associated with the testicles, if a woman does extraordinary work or has an unusual success that is characteristically associated with men and that would normally be praised if done by a man. Additionally, for the South of Turkey especially for the city of Adana, it is reported that the words ‘*billik*’ ‘*büllük*’ or ‘*billig*’ that are used to mean ‘penis’ especially ‘the penis of a child’ are also used to symbolise strength, courage and bravery. For instance if a politician is described as ‘*büllüksüz*’ that can be literally translated into English as ‘a man without a penis’, it means that he did not meet the expectation or standards that he was supposed to meet and his performance was weak in the situations that require strength and determination. (*Sabah/Pazar* [Turkish weekly magazine], 23 November 2008:9)

honour without seeking violence, even if the dishonourable act is not generally known, or is based on a mere suspicion.

According to Peristiany and Safilios-Rothschild, who examine the Greek concept of honour and shame, the Greek concept of *philótimo* determines whether any action must be taken against dishonourable conduct or whether dishonourable conduct must be responded to with violence in order to restore honour (Peristiany, 1966:179; Safilios-Rothschild 1969:205).

‘Etymologically *philótimo* means ‘love of honour’ and is used to identify the character of a Greek who is concerned with his honour and his good name above all and who is willing to safeguard it at any price. *Philótimo* acts as the sensitizing catalyst which makes the individual feel shame when one of his own or of his family’s dishonourable actions are exposed and which drives him (her) to the culturally appropriate action.’ (Safilios –Rothschild, 1969:205)

Therefore, any individual who possess *philótimo* must respond to dishonourable conduct with violence. The individual who does not possess *philótimo* lacks shame and, therefore, he is shameless and does not necessarily feel that he has to conform to traditional norms and respond to dishonourable conduct. The individual who does not possess *philótimo* is ‘*aphilótimo*’ (Safilios–Rothschild, 1969:205) and also ‘*adiantropos*’ (Peristiany, 1966:179). He has reached ‘the stage in which he has lost his self-respect and disregards his social evaluation by others. He puts himself outside moral order. He is a menace to the community as his actions are unpredictable’ (Peristiany, 1966:179). He does not care about what others say or think and does not feel that he is obliged to act to conform to the traditional norms.

When it comes to women, a woman must have shame, and must follow the codes of shame, if her men are not to be dishonoured. Even married women must remain virginal in thought and expression. But, no matter how cautious she is, the honour of a woman depends on the value that the community is willing to attribute to her, and honour is always something imputed by others (Campbell, 1966:146). So, for women, following the codes of shame is crucial in order to be regarded as not dishonourable and not to violate the honour of their men.

In this context, if a woman starts to behave like a man, or does not conform to ideal standards, it means that she has lost her internal ability to feel shame and she is shameless. The Turkish word 'yüzüstü' that can be literally translated into English as 'faceless' which 'makes a visual connotation to the absence of honour with the ability to feel shame' (Sev'er and Yurdakul, 1999:971) is used in such situations. In this context, the emphasis again is on the ideal moral character that every woman is assumed to possess 'by nature'. The word 'yüzüstü', which is materialised and visualised by the analogy of face, reflects this understanding.

Every woman by nature has a face, so by nature every woman has an internal ability to feel shame. Normally and ideally, this ability is not lost from birth. If a woman loses this ability, she should not have the face any more and it should be publicly made clear that the woman has lost her ability to feel shame. Almost with the same analogy, Peristiany mentions that in the Greek concept of honour and shame the word 'xetsipotē' can be translated into English as 'skinless'²⁷ and is used to refer to the situation where a woman has lost all feeling of shame (Peristiany 1966:182). It has been suggested that in the Southeast of Turkey, people still conform to these traditional perceptions which centre upon the face; and 'nose cutting' is a practice that is used to publicise the fact that the woman has lost her ability to feel shame (Van Eck, 2003:170, 238).²⁸

²⁷ The association between shame and skin is also present in Italy and Spain. For instance, 'to have *cara dura*' in Spanish means being insensitive to the sanction of shame which is not far from the notion of a thick skin in English (Peristiany and Pitt-Rivers (eds.), 1992:7).

²⁸ With respect to 'nose cutting' practice in the Southeast of Turkey, Farac (2007) reports three cases. The nose of *Güler Ayvaz* was cut off in *Siverek* and the nose of *Rojda Gezginci* and *Türkan Gezin* were cut off in *Diyarbakır* (Farac, 2007: 127). As to the case of *Rojda Gezginci*, the Turkish Daily newspaper '*Hürriyet*' by referring to the court ruling reported that in order to teach her a lesson and warn her, *Rojda*'s nose was cut off by her brothers-in-law as they believed that she hung around a lot and spent most of her time outside the house which made them suspect that she had an affair with someone else when her husband was in prison. (*Hürriyet* [internet], May 17, 2007)

In this perception, the nose is transformed into an organ that can sense the ‘smell’ of shame and detect shameful and dishonourable behaviour. So, a woman who has lost the ability to feel shame does not have a nose that functions to detect shameful behaviour, and physically having a nose which does not function should not be possessed any more. Cutting off a woman’s nose distinguishes an honourable woman who has the ability to feel shame from a dishonourable and ‘faceless- *yüzsüz*’ woman who does not have the ability to feel shame. It sets an example for other women; and can be used as a form of punishment against a dishonourable and shameful act of a woman.

In the study carried out by UNDP and UNFPA, one of the female participants explained the reason behind the ‘nose cutting’ practice in a dialogue as follows:

‘Why did they cut her nose?’

-To be an example for others. Since she degraded their honour, they would also belittle her in front of others.

Why is it the nose after all, not a finger or an arm?

-If it is a finger, then she can conceal it easily.

-So they cut the nose because they want it to be visible.

-Yes.’ (UNDP and UNFPA, 2005: 31)

Similarly, Bourdieu, who analysed the concept of honour in Kabyle society in Kabylie, a cultural region in the north of Algeria, between 1957 and 1961, reports that the word used to express honour in Kabyle society is ‘*nif*’. ‘*Nif*’ literally means the nose and also one’s point of honour *amour-propre* (Bourdieu, 1966:235). Despite the fact that those who live in the Southeast of Turkey and those who live in the north of Algeria are geographically far away from each other, the literal meaning of ‘*nif*’ explains the reason behind ‘nose cutting’ practice in a similar way to that described above. By cutting off the nose, which is the point of honour, those who practise it in the Southeast of Turkey wish to convey a message that the woman has lost her honour.

So, in this conceptualisation, honour is a quality with which each person is born; and it may easily be lost in certain situations that require killing or violence in return if the family’s

honour is to survive. As explained by Peristiany, this concept of honour, combined with the concept of shame, leaves very little freedom of choice for individuals in the situations which it regulates. (Peristiany, 1966:183) It is unthinkable to deal with the issue of dishonour in a way other than that suggested or designed by the society which requires violence in return.

3. 3 Concluding remarks

The concept of honour that inspires violence has a collective aspect, shaped and constructed by a gender specific formula. To a large extent it is shaped by the perception that a man's honour is dependent on the proper behaviour of female relatives. This perception is not only common in Muslim and Arab societies but is also found in Western societies such as Spain, Greece and Italy. To claim that 'honour is a personal and private attribute of one individual' (Pimentel et al, 2005:254) and that a man is not dishonoured because of immoral activity of his female relatives (Pimentel et al, 2005:259,260) is erroneous, and fails to grasp the concept of honour that inspires violence.

The concept of honour, combined with the concept of shame, makes a person 'sensitive to the judgements of others' (Campbell, 1992:131) and leaves very little freedom of choice for the situations which it regulates. Therefore, it is unthinkable to deal with the issue of dishonour in a way other than that suggested or designed by that society. As pointed out in the words of one Palestinian Judge, who was interviewed in the study by Kevorkian (2005):

'When a man kills another man in a war, you do not consider it a crime, but an act of heroism. When a woman violates the most sacred socio-cultural code, she puts herself in a state of war where there are no winners, and the actor *[in the eyes of the community]* can not be considered a criminal either' (Kevorkian 2005:175).

In this chapter, the author has tried to show that in cultural communities, where honour killings tend to occur, honour killing is governed by 'the specific logic of an honour culture' (Kurkiala, 2003:6), and by different cultural understandings of honour and shame which are likely to be alien and almost inexplicable to both the jury and the trial judge in England. There

is a conflict of value systems or 'normative conflict', (Vold and Bernard, 1986:212,213) between the dominant culture and a subculture, which means that different groups within society have very different norms about appropriate ways to behave in specific situations, and particularly in cases of dishonourable conduct. As explained earlier, the sociological structure and characteristics of these communities create an environment in which these subcultural norms survive and endure through generations. Despite the fact that there are cross-cultural social interactions, communications and exchanges among groups in a multi-cultural society, entrenched subcultures endure and preserve very different ideas about appropriate ways to behave in specific situations.

Subcultural theorists argue that, 'human beings act toward things on the basis of the meanings that the things have for them' (Vold and Bernard, 1986:211); and the meaning of any social phenomenon is derived from, or arises out of, the interactions that one has with one's fellows. The meaning of any act for an individual arises primarily from the meanings given to that act by other people with whom the individual primarily associates (Vold and Bernard, 1986:212). Apart from association, appropriate ways to behave in specific situations are learned through expectation and by watching what happens to other people (Vold and Bernard, 1986:207).

In communities where honour killings tend to occur, the concept of honour has a different and very powerful meaning, and there is a shared belief that honour is the most fundamental value in life. The system of values to differentiate what is honourable from what is not is part of the deep and long-held understanding of people in such communities. This understanding equates life with honour, and equates loss of honour with loss of life. So, the response of the community against a person who has caused loss of honour is no different from the community's response to someone who caused loss of the most precious or valuable property. In communities where honour killings tend to occur, people are surrounded by those

for whom the loss of honour requires killing or violence in return. As a result of interaction over time with these people, the individual, as argued by Sutherland (Sutherland, 1947:6, 7), depending on the frequency, duration, and intensity of his association with these views, comes to accept and to learn that killing, though itself criminal, is the correct response. Through associations in intimate personal groups, the drives and rationalizations which are necessary to behave in a certain way, are learned (Sutherland, 1947:6, 7). Over time, in the communities where honour killing tends to occur, individuals internalise the normative system and values of their community, and come to regard killing as an expected, normal and appropriate way to behave in case of dishonourable conduct. The normative principle that the right to claim honour requires killing or violence in return is reinforced and transmitted from generation to generation. These norms are reinforced by social rewards and punishment. People who do not wish to follow the norms are criticized, ridiculed, condemned, or excluded by the community, and those who follow them are admired and respected. If these constraints and sanctions were not in place, the community, or subculture, would soon lose its separate identity. Like gang subcultures, where violation of law is appropriate and required in certain situations, these cultural norms continue to survive in subcultures and communities, not least in the UK. The process of subculturalization or internalization of the normative system of a particular subculture (Cohen, 1969:114) starts at very early age. Cohen argued that in the subculture of gangs the initial subculturization occurs around the age of 14, and peak subculturization occurs around the ages of 16 and 17. (Cohen, 1969:136) As the internalization starts very early, the expectations of what the individual should do when he witnesses a dishonourable or shameful act are determined in accordance with cultural values shaped by subcultural norms rather than by legal norms of the dominant culture.

It seems that it is the power of the ideas themselves, rather than poverty or other particular social conditions, that leads to personal violence. Thus Wolfgang (1958), in his

famous study of homicide in Philadelphia, found that a significant number of homicides that occurred among lower-class people resulted from very trivial events that took on great importance because of mutually held expectations in the group about how people should behave. Thus, a male is expected to defend his honour, and his mother's honour, and a quick resort to physical combat, as a measure of daring and courage, is the proper cultural expression, especially for the lower socio-economic class. Here there is a clear conflict of value systems between the subculture and the dominant culture (Wolfgang, 1958:188,189).

Wolfgang and Ferracuti made similar observations and considered further that rules which determine what behaviour is expected, in response to apparently trivial events or remarks, were the precursor of many homicides. In their study, they described the underlying conflicts of values between the dominant culture and the subculture of violence. They pointed out that people in the subculture of violence tend to value honour much more highly and to value human life less highly than those in the dominant culture (Wolfgang and Ferracuti, 1981:141, 156). However, it is submitted that the concept of honour and the nature of the relationship between the defendants and the victims that led to killing in the context of these confrontational homicides are different from the concept of honour, the victim-defendant relationship and the dynamics behind the honour killing cases that this thesis reflects.

In the classic form of confrontational homicide, or the homicide which is described by Polk as an 'honour contest' (Polk, 1999), the killing mainly takes place between two males or a group of males who are strangers or acquaintances, in a public arena, in front of a social audience whose presence would be apparent to the defendant and the victim. The whole violent incident occurs within a matter of minutes and is one in which the combatants did not anticipate at the onset that a death would result. Their intent, as they enter into the exchange of word or insult, is to defend their honour by means of the fight (Polk, 1994a:60). Given that there is masculine willingness to lay down a challenge, and a readiness to engage in physical

violence in response to such challenge, what may appear to be a trivial challenge becomes a life threatening matter when the honour or reputation of male is challenged (Polk, 1994b: 169, 170). The use of alcohol is often a contributing factor in the aggression, and the mix of masculinity and alcohol is the combination that leads to murder (Polk, 1994a:68).

In these cases, as long as the defendant is not member of a gang or an identifiable group, the challenge is against the masculine honour of the defendant, which is a 'personal and private attribute of one individual' (Pimentel et al, 2005:254) quite different from the honour phenomenon that the author has discussed, which is sacred, and has a collective and gender specific aspect represented by the proper behaviour of female relatives. True, there is a resemblance in terms of the fragile quality of honour, which forces males to respond in a violent way. However, in Polk's analysis males react to challenge directed personally against them, rather than to conduct or a situation such as rape or infidelity, which necessarily involves the non-consensual or consensual involvement of a female relative.

Even in the cases described by Polk where the male responds to protect the honour of his female companion (Polk, 1994b: 173, 174), the masculine quality of honour has no sacred aspect at all, and has nothing to do with the honour of the group or the family, requiring the male to respond. The defendant does not experience any explicit or implicit pressure to kill, but he feels that violent retaliation is necessary. The violence described by Polk involved strangers, friends or acquaintances, rather than close blood relatives, such as father and daughter, husband and wife, or son and mother. Though in the confrontational homicide cases the saving or maintaining of 'face' or reputation is a central matter (Polk, 1994a:88), the sense of shame is nothing like as closely associated with the concept of honour as it is in honour killing cases.

It seems that masculinity and the lower social class position of the defendant tend to be the main reasons behind confrontational violence, suggesting that for men constrained by

the structures of power or labour, physical aggression and violence is an acceptable way of proving masculinity and maintaining reputation and honour (Gilmore, 1990). If this is correct, physical aggression is no longer necessary for the economically advantaged male to assure his reputation or honour (Polk, 1994b: 185-187). In contrast, honour killings can be found not only in defendants who have lower social class. The economically advantaged male may also commit honour killing, which strongly suggests that it is the power of the ideas themselves, rather than class, or poverty, that causes killing in honour killing cases.

Like Sutherland (1947), Wolfgang and Ferracuti found that the immediate causes of homicide are the values, norms and expectation of behaviour, rather than broader social conditions. Those ideas in the subculture may have arisen in the past for specific historical reasons, but they have been transmitted from generation to generation, even after those original social conditions had ameliorated or disappeared. This suggests that dealing with inequalities in social conditions may not help to prevent the subculture of violence. For so long as the norms endure, and, as long as the communities transmit the concept of honour, which inspires violence, from generation to generation, there will be a normative conflict, and honour killing will tend to occur, despite other cross-cultural social interactions, communications and exchanges among people in a multi - cultural society.²⁹

In the context of honour killing, the question should be asked whether the social conditions that generated those ideas in the past have really disappeared now, and why the honour culture that inspires violence grew up in the first place. If social conditions have been transformed, how do these values still find a way to be transmitted from generation to generation and remain intact? Little is known for sure how and why honour culture that inspires violence grew up in the first place. But, even though the social conditions that helped to frame those ideas in the past have totally disappeared, the ideas endure, with a new

²⁹ There are, however, other commentators like Curtis (1975), who have linked the subculture of violence more closely to the general social conditions that generate it, and have argued that social conditions are in part responsible for producing and maintaining the subculture of violence.

mentality or rationale, and are transmitted from generation to generation. For example, in the past, when a man sought a woman out of his kin in order to get married, he had to give one of his female relatives in exchange for that woman who will be his wife. If it was not possible for both sides to find and make present a suitable woman at the time of the exchange, the problem was solved by offering valuable goods, or by promising to arrange a suitable woman in the near future, for the exchange of the available woman. As was explained above, the first solution led to the practice of dowry or bride price, and the second solution led to arranged marriage, *parallel-cousin marriage* (Begikhani, 2005:218; Abu-Lughod,1988) *cross-cousin marriage* (Goldthorpe, 1974: 90, 91) and '*babyhood betrothal*' (Kordvani, 2002:16) as forms of marriage. Therefore, having a virgin female relative in the family and maintaining females suitable for exchange was a social necessity.

Now, when an individual seeks a female out of his kin in order to get married, he does not need to give one of his female relatives in exchange for the woman who is going to be his wife, nor does he need to pay bride-price for that woman. The social conditions that created these forms of marriage, and prompted honour killing in cases where there was no virgin relative, have disappeared, and having a virgin female relative for the exchange of females is not necessary any more. However, the practices of parallel-cousin marriage, cross-cousin marriage and babyhood betrothal do still exist, and the importance of having virgin and obedient female relatives in the family remains intact. In the past, the need to have a virgin female relative in the family resulted from the requirement to pay dowry or bride-price. Now, however, such practices are carried out for different reasons, such as saving the community from *others* or from '*outsider blood*' (Kordvani, 2002:16 emphasis added) and maintaining the family's property within the family. Though it is not as essential as in the past, having a virgin female relative in the family, and maintaining females suitable for such marriages,

continues to be an important task for the families in communities where honour killings tend to occur.

Although the conditions that gave rise to the importance of having and maintaining females suitable for exchange disappeared, the ideas remained intact but with a new rationale, and have been transmitted from generation to generation with their marriage practices. Certain characteristics of the communities, like endogamy, not only create the environment conducive for such conditions with a new rationale, but also involve the transmission of these values and ideas from generation to generation. The rules of this subculture are learned through association with others, and the subculture promotes value systems where violence is regarded as normal, and is expected in the case of dishonourable conduct. A defendant may, after committing a homicide, as Kornhauser (1978:242) and Sutherland (1947) have argued, tend to regard his criminal behaviour in much the same way as religious persons value their traditional and deeply held religious practices. Or, as Wolfgang and Ferracuti (1981) have argued, he may not necessarily champion his behaviour, but may well believe that he has done what was expected, or what he was supposed to do. The defendant experiences normative conflict, and he follows the rules of his culture rather than the rules of the dominant culture.

As explained earlier, in communities where honour killings tend to occur, the individual exists only through the community, and it is almost impossible to withdraw from that community. As the next chapter will show, many defendants interviewed by the author for the purpose of this thesis said that leaving their community or neighbourhood could have been one way to prevent the murder. They said that the murder could have been prevented if only they had been able to move to another place. This supports Sutherland's suggestion that a person commits crime through continuous interaction with people who are in favour of and encourage that violation of law. So, in the next chapter, in the light of findings of his field work and by reflecting what was felt, lived and experienced by these defendants, the author

will show how defendants came to their decision to kill, and the importance of their association with a group of people having a different and particular cultural understanding of honour and shame.



Chapter 4

INTERPRETING HONOUR KILLINGS AND THE CONCEPT OF HONOUR IN LIGHT OF THE FIELD WORK

Part 1

OVERVIEW, THE PROFILE OF THE DEFENDANT, VICTIM AND CRIME

4.1.1 Overview of the field work

Permission was obtained from the Turkish Ministry of Justice to visit 66 prisons in Turkey and to conduct interviews with prisoners who have committed and have been found guilty of murder committed in the name of honour. The interviews took place in Turkey from June 2008 to November 2008 (see Appendix 2 for the list of visited prisons and the date of visits; and see Appendix 3 for three examples of translated and transcribed interviews).

Turkey was chosen to conduct the field work because, like Britain, Turkey is a multi-faith and multi-cultural society. The rich diversity in the culture of Turkey is mostly owed to the multiethnic status of the Ottoman Empire. Today, the Republic of Turkey, which succeeded the Ottoman State and was formed in 1923, is a transcontinental country that spans Europe and Asia. As a secular State, the culture of Turkey combines clear efforts to be 'modern' and 'Western'; however, there is also a strong desire to maintain certain traditional, religious and historical values.

According to the Turkish Statistical Institute's official population census, on 31 December 2009, the population of Turkey is 72,561,312. While 50.3 per cent of the total population is male (36,462,470 persons), 49.7 per cent is female (36, 098, 842 persons). 75. 5 % of the total population (54,807,219 persons) lives in the province and district centres, and 24. 5 % lives in towns and villages (17,754,093 persons). Half the total population is below the age of 28. 8. The number of the people who live in Istanbul amounts to 17. 8 per cent of

the whole population (12,915,158 persons). (Turkish Statistical Institute- TurkStat (TUIK), 2010)

According to Article 66 of the Turkish Constitution, ‘everyone bound to the Turkish state through the bond of citizenship is a Turk’. Consequently, the word "Turkish" legally refers to all citizens of Turkey, though individual interpretation can be more limited. According to the constitution, therefore, there are no minority rights since all citizens are equal before the law.

Before the proclamation of the Republic of Turkey, the status of minorities in Turkey was established by the 1923 Treaty of Lausanne, which defines minorities on the basis of religion. The Treaty establishes the supremacy of its provisions in the Turkish legal system. It provides full citizenship rights for non-Muslims and lays on the Turkish government affirmative obligations (UNHCR, The UN Refugee Agency, Minority Rights Group International, 2007).

In spite of this definition based upon religion, Turkey's key minority groups include ethnic and linguistic as well as religious minorities. The number of people in each group is unknown since the state does not ask citizens to declare their ethnic, religious or other origin in censuses, and there is no reliable scientific research on minorities in Turkey. Therefore, the list that is provided here is non-exhaustive, and should be read with caution. It includes the main minority groups, irrespective of whether they self-identify as 'minorities', and non-conclusive information about each. Similarly, the groups that are listed should not be seen as a complete or definitive picture of the socio-demographic groups or communities living in Turkey.

The main ethnic groups which live in Turkey are Turks, Caucasians, Ezidis, Kurds, Laz, Arabs, Roma (otherwise known as Gypsies), Alevis, Armenians, Assyrians, Caferis, Greeks (Rum) and Jews. In these groups, Turkish (the only official language), Kirmanji and

Zaza Kurdish, Arabic and Laz are spoken as main languages. Following the June 2008 amendments to the relevant Law, TRT-the public service broadcaster - is allowed to broadcast nationally all day long in languages other than Turkish. Since 2004 this had only been possible for half a day (Commission of the European Communities, Turkey 2008 Progress Report, p.25). Children whose mother tongue is not Turkish cannot learn it in the Turkish public schooling system. Under current legislation such education can be provided only by private educational institutions (Commission of the European Communities, Turkey 2008, p.26). The main religions followed and practised in Turkey are Armenian, Assyrian and Greek Orthodox Christianity, (Sunni) Islam, Alevism and Judaism. However, 99 per cent of the whole population is thought to be Sunni Muslim.

Before giving details of the field work, there is a technical issue that needs to be clarified in terms of the definition given by English law for the difference between murder and manslaughter. The field work covers cases where the defendant had the intent to cause death for his honour and caused the death of the victim. But in some honour killing cases that are part of the field work, and were committed before 1st June 2005 in Turkey, the defendants argued and benefited from the provocation plea. However, in Turkey, provocation is a mitigating factor that is available for all crimes including murder. So, in all cases that are part of the field work, apart from the case of interviewee-35, who was found guilty of infanticide for cause of honour, the defendants were convicted of murder. But in some cases provocation was accepted and recognised as a mitigating factor. So, whenever the author uses the term 'murder' in relation to cases that are part of his field work, he refers to killings where the defendant had the intent to cause death for honour and caused the death of the victim, whether or not the provocation as a mitigating factor is recognised and accepted in his case.

Although permission was obtained from the Turkish Ministry of Justice to visit 66 prisons in Turkey, due to limits on the budget allocated for the study, the author could manage

to visit only 61 prisons during the field work and had to exclude the remaining five prisons. However, during the field work it was realised that some of the visited prisons had either open or agricultural divisions, that deployed different rehabilitation programmes for prisoners in its complexes, and that the permission covered these complexes as well. These divisions, in some prisons, had their own administration and were regarded as independent prisons in terms of administration, budget and all other relevant issues. Therefore, the actual number of the prisons that were visited during the field work is 65; and the semi-structured qualitative interviews were conducted with prisoners in 65 prisons.

In all visited prisons, the author was careful to avoid any approach which would allow his personal opinion or knowledge about honour killing to influence the selection of cases. By using the selection method explained in Chapter 1, the author found a total of 88 cases committed by a total of 97 prisoners, 86 male and 11 female. In six cases more than one perpetrator was involved in the murder; so the number of the perpetrators and potential interviewees was more than the number of the committed honour killing cases. The author invited a total of 92 available prisoners to take part in the research. Sixty-one prisoners, 54 male and seven female, took part in the research by signing the consent form, but 31 prisoners 28 male and three female declined to participate (see Appendix 2 for the list of participation and refusal).

According to the statistics of the Turkish Ministry of Justice³⁰, in Turkey, on 01 November 2008, there were 43,157 convicted prisoners serving their sentences in 384 Turkish prisons. Of these, 40,617 prisoners were convicted of a non-political crime and the remaining 2,540 were convicted of a political crime. These figures do not cover prisoners awaiting their trial, verdict or the outcome of appeal, and so are out of the scope of this study. However, the

³⁰ These statistics were retrieved from the official website of the Turkish Ministry of Justice www.cte.adalet.gov.tr at 15.12.2008. However, it is regrettable that the website does not reflect the capacity of each prison and the population and proportion of the prisoners in accordance with the different crimes in each specific prison.

figures cover one prison which is highly secure and where only one prisoner (who obviously did not commit an honour killing) serves his prison sentence, and five prisons in Istanbul allocated for prisoners committing crimes other than murder. When these six prisons are left aside, the maximum number of the prisons that could have been visited for the scope of this study is reduced from 384 to 378. In the first instance, the rough interpretation of these figures would suggest that the field work covers 17.2 per cent of all Turkish prisons that fall within the scope of this study. However, as there is no reliable data available about how many prisoners who have committed and have been found guilty of murder serve their prison sentences in the remaining 313 Turkish prisons that were not visited by author, it can not be simply claimed that the field work covers 17.2 per cent of potentially available research participants in Turkish prisons.

Bearing in mind the number of convicted prisoners serving their sentences in the visited prisons³¹, the population of the cities and towns³² for which the visited prisons provide prison and detention facilities, and finally the number and percentage of reported honour killing cases committed in the service area of the visited prisons, it is certainly possible that the field work reached almost one-quarter of all non-political convicted prisoners serving their sentence in Turkish prisons, and reached one-quarter of potentially available Turkish prisoners who have committed and have been found guilty of murder committed in the name of honour. In other words, as there is no reliable data available about how many prisoners who have committed and have been found guilty of murder have been serving their prison sentences in the remaining 313 Turkish prisons that were not visited by the author, it would

³¹ During the field work the author managed to obtain the number of convicted prisoners in 40 of the prisons that he visited. The total number of prisoners convicted of political and non-political crimes in these 40 prisons is 8,859. In the remaining 25 visited prisons though requested the number of convicted prisoners was not given by the Turkish Ministry of Justice. As seen, even with available statistics the field work reached the records and files of 20.5 per cent of all convicted prisoners in Turkey.

³² There are 81 cities in Turkey; and the 65 prisons visited during the research were in 37 different cities and 11 different towns inhabited by people coming from a variety of ethnic, cultural and religious backgrounds.

not be convincing to claim that more than three-quarters of prisoners who have committed and have been found guilty of murder and possibly have been found guilty of murder committed in the name of honour serve their sentence in the remaining prisons.

However, given that the analysis here is based on the accounts of 39 prisoners, 34 male and five female, it seems likely that the analysis here reflects the views and characteristics of more than 10 per cent of all potentially available prisoners who have committed and have been found guilty of murder in the name of honour and are serving their sentences in Turkish prisons. No matter which argument is accepted, it is suggested that the field work covers sufficient participants and data to use as a sample for a limited statistical analysis, to make general observations and to draw tentative conclusions.

When it comes to data analysis, although permission could not be obtained for recording for semi-structured interviews, some defendants were asked fewer and some defendants asked more questions but almost all defendants were asked the same standard questions. The author used NVivo 8 to assist him with the analysis and management of data. NVivo 8 is one of the leading software packages used by researchers to assist them with the analysis and management of qualitative databases. All figures, charts, and diagrams set out in the body of the text and in Appendix 5 are designed by using NVivo 8 (see further Appendix 5).

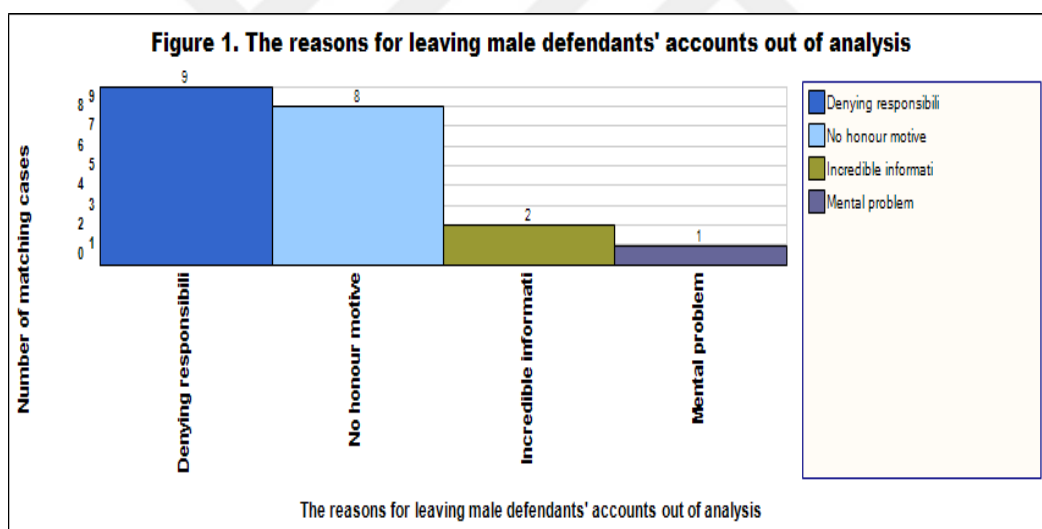
4.1.2 The cases left out of analysis

For various reasons that will now be discussed, the author was compelled to leave 22 interviews out of the analysis. Therefore, the findings of field work here reflect 39 different cases and the views of 39 prisoners, 34 male and five female (see, Appendix 2).

Two interviews of the 22 interviews left out of analysis were conducted with female prisoners, and 20 interviews were conducted with male prisoners. The author left the accounts of the two female interviewees out of the research because in the first case the female

interviewee who was found guilty of committing infanticide for cause of honour protested her innocence by saying that the killing was an accident, and in the second case the interviewee who killed her father claimed that her motive was not honour at all. The main motive behind the murder was, she said, systematic violence used by her father against her.

The author was also compelled to leave the accounts of 20 male interviewees out of the analysis after conducting interviews in depth. As Figure 1. shows, in one case the defendant had poor mental health, and it was very difficult to carry out a meaningful conversation with him. His version of the crime, and the story he told about why and how he committed the crime, was inconsistent; and his perception about time and places were weak. After the interview, the author was told that the participant was still on medication for his mental problem and therefore, the author left this case out of analysis.



In two cases the information provided by the defendants did not sound credible, as the information was totally different from the information in their files. As Figure 1. shows, in spite of the author's cautious approach, in eight cases which initially appeared to be honour killing cases requiring interviews in depth, the author found that these participants did not commit a murder in the name of honour, and honour was not their motive at all. Jealousy, pride, domestic and financial conflicts, and disagreements between the deceased and the defendant were the main reasons behind the murder.

Finally, as shown by Figure 1., when asked to tell the story of the crime for which they were serving their prison sentence, nine interviewees surprisingly claimed that they were innocent, by claiming that it was an accident, or they did not do it, or that the victim committed suicide.

When denying responsibility, in three cases defendants claimed that the deceased committed suicide, and they had argued this point during their trials as well. But the courts found them guilty. In the first case, the defendant killed his sister after learning that she had sexual intercourse with a distant relative who was married. He killed his sister with a hunting rifle, but claimed that his sister committed suicide. According to what the defendant told the author, his sister committed suicide after learning that he was going to tell the family that she had sexual intercourse. In the second case, the defendant killed his married sister by forcing her to drink a bottle of sulphuric acid because of her infidelity and adultery. But he claimed that his sister committed suicide as she realised that the family knew about her adultery and infidelity. The court found that the victim was killed by being forced to drink a bottle of sulphuric acid and being strangled by the defendant. In the third case, the defendant was found guilty of killing his four months pregnant daughter by putting a highly poisonous pesticide, known as *temik*, into her *pide*, a kind of Turkish pizza. But in the interview the defendant claimed that his daughter committed suicide. According to what the defendant told the author, one day after learning about the pregnancy, he decided to drive his daughter to her maternal aunt where she could give birth without being noticed. Then, during their journey they stopped to buy *pide*, and ate them. Soon afterwards his daughter complained that she felt pain in her stomach and started to vomit and then she said ‘I want to sleep’ and fell asleep. When he stopped again, the defendant realised that his daughter was dead and he found tiny particles of pesticide around the car. Again according to what he told the author, he understood that his daughter committed suicide as she had brought shame on the family

honour. He was scared and put his daughter's body on the side of the motorway in order to be seen by somebody else, and not to be eaten by wild animals. Then he went back to his home. One or one and half months after this incident he was arrested.

According to the court ruling and his file in prison, during the investigation, when arrested he first confessed that he killed his daughter by putting *temik*, into her *pide*. However, later in court he withdrew this confession. But, he was never able to explain either to the author or to the court why he did not take his daughter to the hospital despite the fact that there were hospitals on his way and why he did not take the dead body with him for a proper funeral if he did not kill his daughter. He was found guilty of killing his daughter and the conviction was upheld by the Appeal Court. Therefore, this case was left out of analysis.

In the fourth case, the defendant claimed that his sister died when he had a quarrel with her about her immoral and dishonourable behaviour, but that he did not deliberately kill her, it was an accident.

In the fifth case, the defendant who was convicted of killing his wife by strangling her with his hands because of her infidelity told the author that, when he came home, he found his wife unconscious and lying in the middle of the room. When he felt his wife's neck to see whether there was a pulse, he understood that she was dead. But, as he left his fingerprints on his wife's neck, the police arrested him and he appeared in court on a murder charge. However, the investigation showed and prosecution proved beyond reasonable doubt that he killed his wife. The author had to leave this case out of analysis as the prisoner claimed that he did not commit murder at all.

In the remaining four cases out of a total of nine, the defendants had accomplices and claimed that the murder was totally carried out by their accomplices and that they had nothing to do with it. So, these four cases were left out of analysis as well, as there was no point in investigating the details of the murder.

Denial of responsibility by convicted prisoners who killed in the name of honour is supposed to be very rare. Until now it has been reported that men who killed in the name of honour are highly regarded in prison (Husseini, 2009:14, 16), and ‘the level of respect shown to the killer is proportional to the brutality of the killing’ (Sev’er and Yurdakul, 1999: 984). Even a campaign group, which aims to stop honour killings in Turkey, reported that, as a sign of respect, the feet of men who killed because of honour are washed by fellow inmates (Campaign against honour killings in Turkey). So, if this is the case, any convicted prisoner who hesitates to accept responsibility for such a killing might be regarded as abnormal.

In the opinion of this author, the tendency shown by this group of prisoners can be explained in two different ways. Either the prisoners by denying responsibility wanted to prove a point, and persuade the author that they are not as bad as might have been thought, or they wanted to seek distance from their committed crime because of the brutality and the media and campaign groups reporting of these killings. However, nothing can be said for sure as to what was the main reason behind their denial, and what prompted them to deny responsibility for the murder.

4. 1.3 The defendants’ profiles

4. 1.3a The main issues and female defendants

As explained earlier, the empirical research in this part of the PhD is mainly concerned with male offenders and female victims; and cases involving a male defendant and a male victim are outside the scope of this study. Effort was also made during the fieldwork to find female offenders. But when compared with male offenders, it is not common for females to commit honour killings. In this study initially the author could only find 10 cases that seemed to be committed by women in the name of honour and, it turned out in the final analysis that only five cases out of a total of 39 were committed by a female offender.

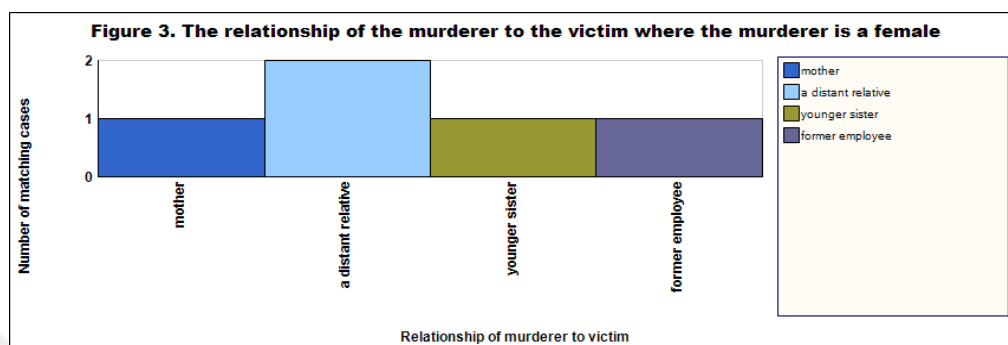
These results do not surprise the author because other commentators have found similar figures (Hoyek et al, 2005:123; CEWLA, 2005:153-154; Kevorkian, 2005:175; Sliman, 2005:185; Begikhani, 2005:210; Bettiga-Boukerbout, 2005:236; Siddiqui, 2005:263; Khafagy, 2005; Kressel, 1981:144-146). For instance, as to cases committed within the Palestinian community in Israel, Sliman reports 25 honour killing cases committed between 1984 and 2000 by 33 perpetrators. In these 25 cases, only three perpetrators out of 33 were female. All three female perpetrators had accomplices (Sliman, 2005:184-185).

As happened in the case of Rukhsana Naz, killed by her mother and brother in 1998 in Derby (Siddiqui, 2005:263), the published data shows that especially in cases involving pre-marital relations and resultant pregnancy, mothers (CEWLA, 2005:154; Hoyek et al, 2005:123; Khafagy, 2005:4, 5) and sisters (Kevorkian, 2005:175; Sliman, 2005:188), either on their own, or acting with extended family members, may become involved in killing their daughters or sisters. Additionally, in cases of young women who expect marriage and have been rejected by a former lover, they may punish (Safilios-Rothschild, 1969: 208-210) or kill the ex-lover (Bettiga-Boukerbout, 2005:236).

Finally, as happened in the case of Surjit Athwal, a Sikh British woman, a mother-in-law may take part in killing their daughter-in-law, if they feel that their family honour is stained by the immoral and dishonourable behaviour of their daughter-in-law (*Timesonline*, September 20, 2007). They feel that they are partially responsible for the dishonour brought on the family as they generally arrange the marriage and choose the wife for their son.

However, the author's findings relating to female defendants' profiles are somewhat different from what the published data suggests. First of all, as shown in Figure 3., in cases where a woman kills in the name of honour, the relationship of the murderer to the victim is not limited to mothers and sisters. It seems that women may kill their elder sisters, new born babies, distant relatives or former employers for their honour and the honour of the family.

Additionally, though the image of a seduced and rejected woman who kills her ex-lover has been reflected by movies³³ in Turkey, no case was found in the field work in which a woman killed or punished her ex-lover, because as a non-virgin woman, she has lost her prospect of marriage.



In this context, among the five cases, only the account of interviewee-37, which is translated and set out in Appendix 3, shows similarities with the published data. In that case, the female defendant was 16 years old at the time of the murder and, along with her mother, father and elder brother, she killed her elder sister, who was promiscuous and got pregnant out of wedlock. In that case, her mother and the defendant actively took part in killing the defendant's elder sister by strangling her, while the defendant's father and elder brother were waiting outside to bury the dead body as planned. However, they were found guilty of murder too, as they incited the murder.

When it comes to the other cases committed by female defendants, the author will summarise them in order to show the differences from the published data, and the reasons behind them.

³³ *Fırar* [escape] (1984) is a Turkish movie which describes a woman's escape story from a prison. In the movie *Ayşe Sarıca (Hülya Koçyiğit)* falls in love with a man and gets pregnant without knowing that he is actually married to his maternal cousin and has four daughters. *Ayşe*'s lover starts to spend less time with *Ayşe* than he used to; and whenever he visits *Ayşe* he rejects the idea of marriage. When *Ayşe* learns that he is actually married and has had a relationship with her as his wife can not give him a son, she realizes that her lover is soon going to reject her too. Her name is sullied by her lover and, as a non-virgin woman with two daughters, she does not have any prospect of marriage. So, she kills her lover and then tries to escape from the prison, as she can not cope with being away from her daughters.

The first case is that of interviewee-35 who killed her baby as soon as she gave birth and was found guilty of infanticide for cause of honour and received a three years and four months prison sentence in accordance with the Article 453 of Turkish Penal Code 765, which was later abolished on 1st June 2005.

In that case, the defendant was a twenty one-year old university student at the time of the offence. She got pregnant by her boy friend who was also a student at the same university. When the defendant realized her pregnancy, she was about four months pregnant, which was beyond the legal limit for an abortion. So, the defendant concealed her pregnancy by wearing loose clothes, and tried to find out whether her father would permit her to marry her boyfriend. When she told her Sunni father and mother that she had a boy friend from a different religious sect which is *Alevi*, and wanted to marry her, her father objected to it. As the defendant could not persuade her family about marriage, she could not find a way out of her problem and she decided to save herself from the baby one way or another. She gave birth in the bathroom and took the baby out and abandoned the baby in the bushes on a freezing day of January 2005. When she came back home, she suffered from pain and fainted. Her mother found her unconscious, lying in a pool of blood, and took her to the hospital. In the hospital she confessed that she gave birth and left the baby in the bushes. The baby died because of low body temperature and asphyxia.

In the interview she said:

‘...Only my boy friend knew that I was pregnant. My father objected to the idea of marriage without knowing that I was pregnant; and my boyfriend was reluctant to run away and take me to his family without a proper marriage and wedding. My boyfriend’s family did not want to come to arrange marriage for fear of being rejected and dishonoured by my family. They wanted to be sure that the marriage would go through. We were both students and did not have sufficient means to live without our families’ support. So, it was totally left to me to decide what to do with the baby...During my pregnancy, I always thought what the neighbours or relatives would say after hearing this, or what I would do if they realized that I was pregnant. Actually, I was planning to save myself from the baby,

the idea of killing was in my mind but I never planned how to kill.... I do not remember how it happened, and exactly what I told the police in the hospital. I only remember that I took the baby out. But, I can not remember the rest of it...' (Interviewee-35, female)

In another case which does not show similarity with the published data, interviewee-39, who was 42 years old at the time of the murder, killed one of her distant relatives who had raped her. She did this for her honour and the honour of her husband.

In the interview she said:

'...By using a knife, he raped me and he kept insisting on me running away with him. After the rape, I did not think of anything. Everything was finished for me there. I neither thought of whether my husband would divorce me, or whether my three sons would believe that I was raped. I considered myself a dead person. It would have been better for me if he had killed me after the rape. When he kept insisting, I told him that I would run away with him, but he should let me change my clothes. He accepted. I went to my bedroom and took the pistol left by my grandfather that I always kept beneath our bed. I shot him four times. Then, I was going to commit suicide. But, there was no bullet in the pistol. So, I decided to commit suicide by taking some pain killers and aspirin. I took almost more than 20 tablets. But, it did not have any adverse affect on me. On the contrary, it made me calm. I put my sheep and cows out to pasture. Half an hour later my daughter - in- law and my husband came. We called the police and they took me to the station.'

When she said that what kept her alive in prison was her husband's love and support, the author questioned her further on this issue in the following terms and, at the end, the defendant burst into tears.

'A- You said 'your husband always trusted and loved you'. So, after the rape and even running away with that man you could easily have convinced your husband that you did not have any affair with that man and that he raped you. Why did you put yourself in trouble? Police could have arrested him.

I- You think that everything will be the same after this incident don't you? Look master, if a glass is broken, it can not be full again. After this incident I feel that some part of my body is missing. I am not the same person. After this, how can I look again at the faces of my sons and daughter- in- law? It is not easy. It would have been better for me, if he had killed me. I wish he had killed me ...' (Interviewee-39, female)

In the case of interviewee-36, the female defendant, who was 20 years old at the time of the murder, killed one of her distant relatives who had raped her and continued to sexually harass her when her husband was in prison. When he attempted to harass her in a crowded market street of the city, the defendant killed him by shooting him in front of her three-year old child and, according to the court ruling, she shouted: 'I cleansed my honour'. Police immediately arrested her.

In the interview she said:

'As he continued to sexually harass me, people started to treat me differently and they started to treat me as if I was a tart and infidel to my husband; and that it was me who should be blamed for what had happened. People did not believe that I was raped. I felt as if I was excluded... OK, they used to talk with me but, when I turned my back they used to gossip behind me about my infidelity. Many people started to believe that I betrayed my husband when he was in prison...One day, he threatened me and said 'there is nobody left to protect you, be my woman, eventually I will have you'. So, I started to shoot him with the gun that I used to carry to protect myself. I shot randomly. I just shot. One bullet hit his chest and he died. We were in the market and police were around and they took me to the station.'

(Interviewee-36, female)

Finally in the case of interviewee-38, the defendant was a 38-year old farm worker at the time of the murder and, along with her husband, she killed her former employer, as he always harassed her by explicitly saying 'You will be my woman; I will take you from your husband'. She killed her former employer by hitting him with an iron water pipe when her husband was struggling to kill him with a knife.

In the interview she said:

'My husband was an irresponsible person. He was a sort of alcoholic and not brave at all. He did not have any strength, and he would not react as a man must react. I had to deal with that man all on my own for a long time. We even thought to move from our town, because of that man. But, there was no way to save ourselves from people's gossip that I had an affair with him... After killing we changed our clothes and went to the police station to turn ourselves in to the police.' (Interviewee-38, female)

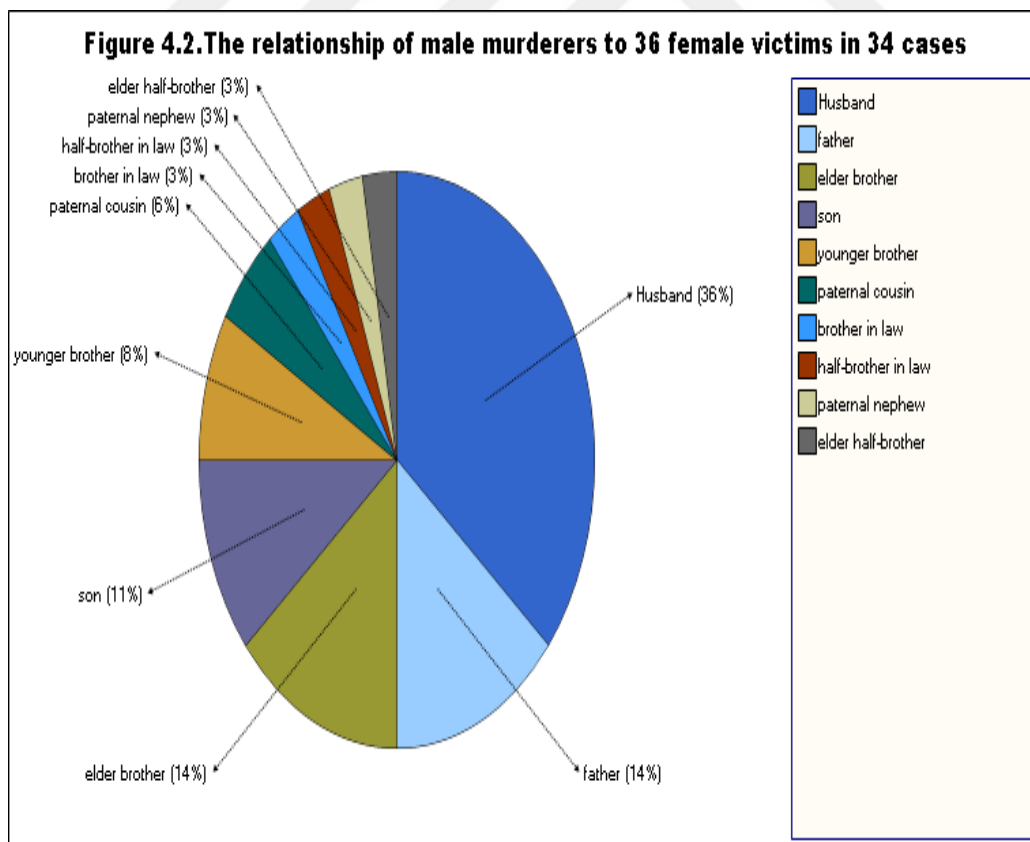
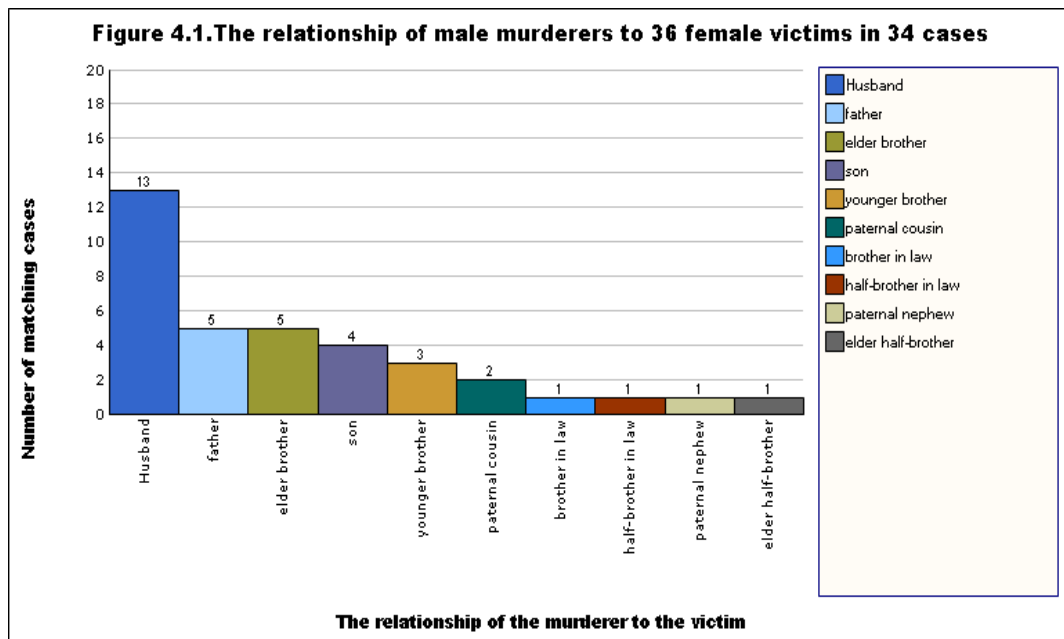
As we can see, in contrast to Sev'er and Yurdakul, who argue that 'if ... women partake in these tragedies at all, they are there for tertiary purposes such as providing distraction, creating a false sense of hope or safety for the victim, or serving as deceitful witnesses to the crime' (Sev'er and Yurdakul, 1999: 982-983), the author's findings show that, if the special circumstances of female interviewee-37 set out fully in Appendix 3 is left aside, in the remaining four cases the female defendants were actively involved and took part in the honour killings.

Having summarised the main issues related to the field work and female defendants' profiles that killed for their honour, the author now turns to discuss the male defendants' profiles and their relationships to their victims.

4.1.3b Male defendants and their relationships to their victims

With respect to male defendants' relationships to their female victims, as Figures 4.1. and 4.2. show, in a total of 34 cases, where 36 female victims were killed by 34 male participants, the most frequent perpetrators of honour killings were husbands with 36 per cent, fathers with 14 per cent and elder brothers with 14 per cent, younger brothers and paternal cousins following. There was no case committed by a hired assassin.³⁴ In the opinion of this author, this is the result of the understanding and general tradition in Turkey which generally accords the responsibility of women to their husbands after marriage. Therefore, the field work suggests that in cases of dishonourable conduct of wives, it falls to the husband to restore his honour, and the husband bears the right and responsibility for retaliation against the dishonourable conduct of his wife.

³⁴ Though, the tradition demands that a family cleanse its honour and hiring someone to do job is inappropriate, there are reported cases committed by hit men as happened in the case of Banaz Mahmod (Husseini, 2009:163), or a hired assassin (Van Eck, 2003:91).



So, unlike the aforementioned south Italian cases (see footnote 18) and contrary to the Palestinian and Israeli cases reported by Sliman (2005)³⁵ and Kressel (1981)³⁶, as far as cases committed in Turkey³⁷ are concerned, the duty of restoring family honour in the case of dishonourable conduct of wives does not generally lie with the woman's birth family. After marriage, the responsibility for retaliation against the dishonourable conduct of a wife is generally seen to be the duty of the husband. The husband may fail to carry out this duty. If he explicitly or implicitly rejects the task, then the woman's birth family has the right to retaliate against the dishonourable conduct in a way that is required by cultural norms.³⁸

However, as can be seen in Figure 5.1. and 5.2., where 47% of the female victims were officially married and 8% of them were *unofficially married*³⁹, in some cases husbands for some reason did not retaliate against the dishonourable conduct of their wives. Indeed, in nine cases where the spouses were not separated or divorced, and a wife was killed, the execution was not carried out by the husband. In three cases elder brothers, in two cases paternal cousins, in one case an elder half-brother, in one case a brother-in-law, in one case a son and finally in one case a father, was the murderer.

³⁵ Sliman (2005) reported 25 cases committed by 33 perpetrators. Thirteen perpetrators were the victim's brother, five perpetrators were the victim's father and three perpetrators were the victim's husband (Sliman, 2005:184-185).

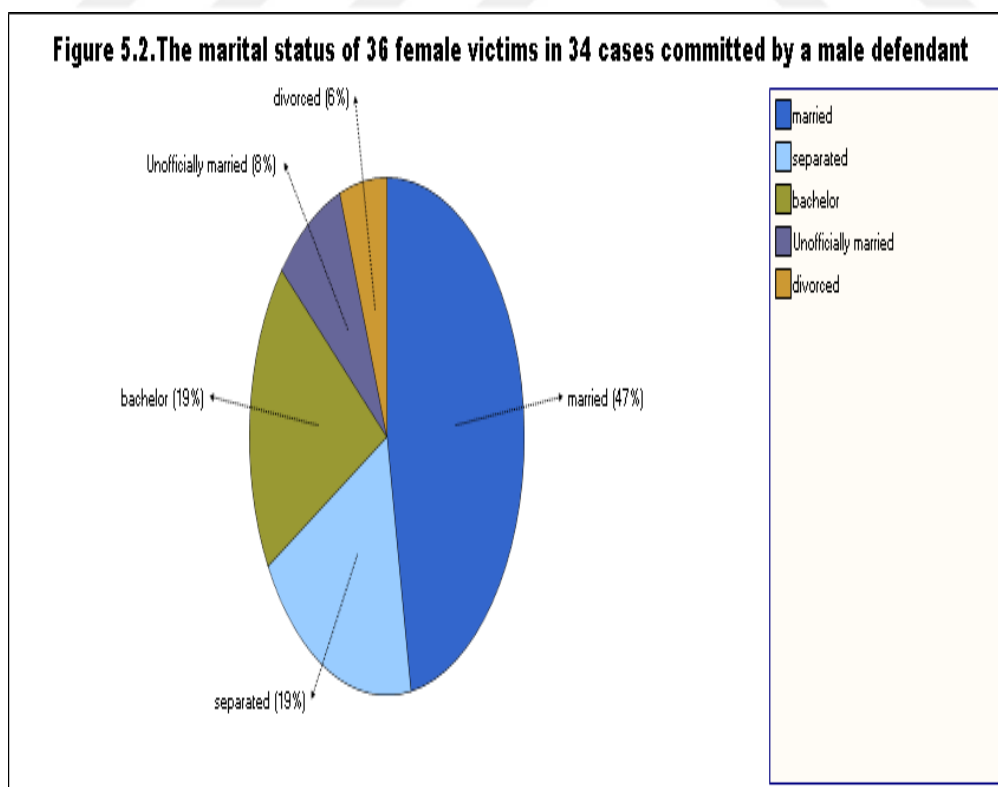
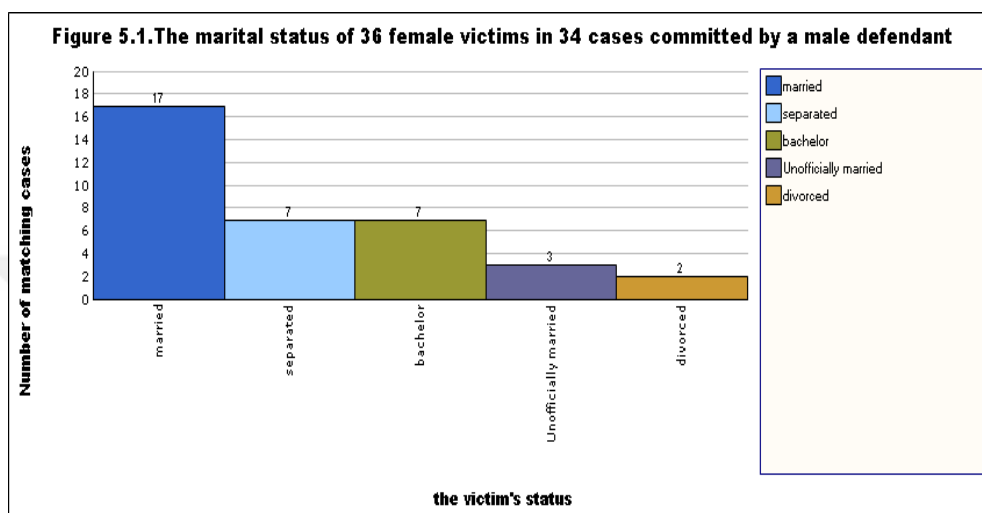
³⁶ Kressel (1981) reported 63 incidents carried out by 121 attackers among them 112 male and nine females resulting in murder or attempted murder of 72 victims, 56 female and 16 male. Though 25 of a total of 56 female victims were married, the number of the husbands taking part in these 63 incidents was only four, while the number of brothers taking part in these attacks was 35 (Kressel, 1981:144-146).

³⁷ The author declines to use the term 'Turkish cases'. Given that in Turkey honour killings have been committed by defendants coming from a wide range of different cultural and ethnic backgrounds including Kurdish, Arabic and Rom-Gypsy, using the term 'Turkish cases' would be inappropriate.

³⁸ For the same conclusion see Van Eck (2003).

³⁹ Though the number has been decreasing, the practice of so called *hoca* or *imam nikahı*, which is a religious marriage act conducted before an imam with witnesses, still exists in Turkey. The *imam nikahı* does not count as a legal marriage, and any person who conducts such a ceremony without seeing an official marriage document commits an offence punishable with up to six months' imprisonment. Therefore, in this study the word 'unofficially married' is used to refer to those people who do not have a legal marriage but regard themselves as married since a religious marriage ceremony has been conducted by an imam.

In two out of these nine cases a man and a woman ran away and got married against the wishes of the woman's family. Since the marriage was not conducted in a way required by cultural norms and bride price was not paid, the woman was killed, in one case by a father, and in the other case by an elder brother. In these two cases, husbands were neither involved nor supported the killing.





In two cases, the murderer was an elder brother, and they killed their sister where their father was deceased. In these cases, interviewees-13 and 19 asserted that the name of their sisters was constantly on the lips of men, and they were the talk of their neighbourhood. In each case they described the husband as a ‘cuckold and tramp’ by implying that he had lack of honour and manliness.

In two cases, the husbands were not aware of the dishonourable conduct of their wives. So, in the first case, the son (interviewee-3) was a murderer and killed his mother, as his blind father did not know anything about his wife’s infidelity. In the second case, the husband was a lorry driver, and his wife was betraying him when he was away from home, and his younger brother was aware of what had happened. So, the wife was killed by her brother-in-law (interviewee-27).

In one case, the victim was the second wife of her husband and there was no official marriage between the victim and her husband. There was gossip that the victim was hanging about with some women allegedly involved in prostitution. The husband was aware of the gossip, and he left the victim and went back to his first wife. When he left he said ‘I have nothing to do with her any more’, which implies that she is not his responsibility any more

and that her birth family is responsible for her. So, she was killed by her elder half-brother (interviewee-4), as he believed that she brought shame and stain on his family by being left by her husband and being rumoured to be involved in prostitution.

In the remaining two cases a wife was killed by a paternal cousin. In the first case, the victim was unofficially married, but her husband was her third partner and her other two husbands had left her. In the interview the defendant, who was a paternal cousin to the victim, told the author that having more than one partner in a very short time cast a shadow on their family honour, and his uncle had died as he suffered from the shame and pain brought by his daughter. Though his uncle was against the idea of killing, he changed his opinion in his last days. So, soon after his uncle's death, the defendant (interviewee-29) killed his paternal cousin, who was seven months pregnant, and wounded her partner. In the second case, again an unofficially married wife was killed by a paternal cousin. But in that case, though she was a paternal cousin, the victim was like a sister to the defendant, and he used to call her sister. Therefore, in the neighbourhood, everybody believed that the victim was the defendant's sister. In the interview he said:

'If you do not eat garlic, your mouth does not smell of garlic. There were rumours about her. In spite of rumours she did not sit at her home, and her husband, excuse my language, was a sort of cuckold. One day I was sitting in front of my butcher's shop and two men were talking with each other and suddenly they stared at me. I overheard them saying 'this butcher is the brother of that tart '. I had enough and it was the last straw.' (Interviewee-33, male)

As can be seen, though the defendant's relationship to the victim is crucial to identify who holds the right to kill a dishonourable woman, there are other factors that should be taken into account. For instance interviewee-7 mentioned social and economic factors in the interview. He said:

'There were rumours about my mother. Everybody was telling me different things about my mother. One of my cousins told me that one day he saw shoes in front of our house and, after peeping through keyhole, he saw my mother having sex with one of my distant relatives. I asked 'if you are as

honourable as you claimed why have not you acted after seeing this? Because, though, she is my mother, she is also your aunt.’ He said ‘I am the only breadwinner in my family; I have kids and mouths to feed. Even if I did, it would cause a blood feud, and her birth family could have retaliated against me. But you are her son and part of her birth family.’ (Interviewee-7, male)

Having summarised the main issues related to female and male defendants’ profiles that killed for their honour, and noting some differences from the published data, the author now turns to discuss other issues related to the defendants’ profiles.

4.1.3c The age of defendants at the time of the murder and their ethnic origin

Despite the fact that there is no sufficient data about the occurrence of honour killings in Turkey, journalists, academics, and even the U.N’s Special Rapporteur on violence against women, all claim that, as far as cases committed in Turkey are concerned, a young man or boy within the family⁴⁰ or the youngest⁴¹ male member of the family is often chosen or assigned to commit the murder. In the absence of reliable and available data, such claims about the age of the defendants can have a misleading impact on regulations aiming to combat these killings and also on investigators struggling to prove their occurrence.

Though they did not define what they meant when they used the word ‘young’, it seems that academics like Sev’er and Yurdakul (1999) based their conclusions about the age of the defendants committing honour killing on Farac’s book ‘*Töre Kısılcacında Kadın*’, [The woman in the trap of mores] first published in 1998. The author has used the fourth edition, published in 2006. Though his book is now in its fourth edition, Farac has maintained his views throughout about the characteristics of honour killings committed in Turkey.

⁴⁰ Bilefsky, (*The New York Times*, July 16, 2006); An-Na’im, 2005:67; Hussein, 2009: 145, 146; Report of Special Rapporteur on violence against women (2006), its causes and consequences, Yakin Erturk. Addendum: Mission to Turkey (A/HRC/4/34/Add.2), par.32; Maris and Saharso, 2004: 106.

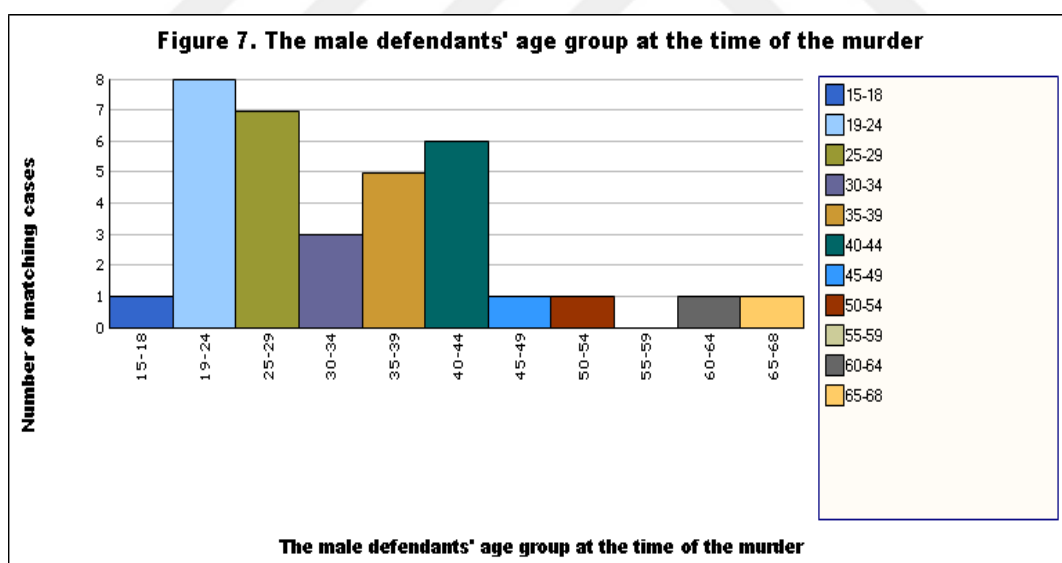
⁴¹ Sev’er and Yurdakul, 1999:982.

According to Farac, in honour killing cases a family council, which may include extended members of the family, first comes together and decides the fate of the immoral that is believed to have brought dishonour and stained the family honour. The youngest male member of the family who is under the age of 18 is often chosen to commit the crime, as he will receive a lenient sentence, and the execution is carried out in day light so that everyone can witness the killing (Farac, 2006a). At the time of writing his book and making his research Farac was a local journalist; and in his book he reflected only five murder cases and one attempted murder case committed between 1994 and 1998 in his home city *Şanlıurfa* where he worked. However, in only three out of the six cases, was the killer under the age of 18. In Hatice's case the killer was 17, Sevda's killer was 14 and, finally, Hacer's killer was 15 years old. In five out of the six cases he suggested that the family gathered, and the decision to kill was collectively taken by the family, despite the fact this issue was only proved in three cases in court, and in the remaining two cases nobody was found guilty of incitement to murder. In only four out of the six cases, was the execution carried out publicly (Farac, 2006a).

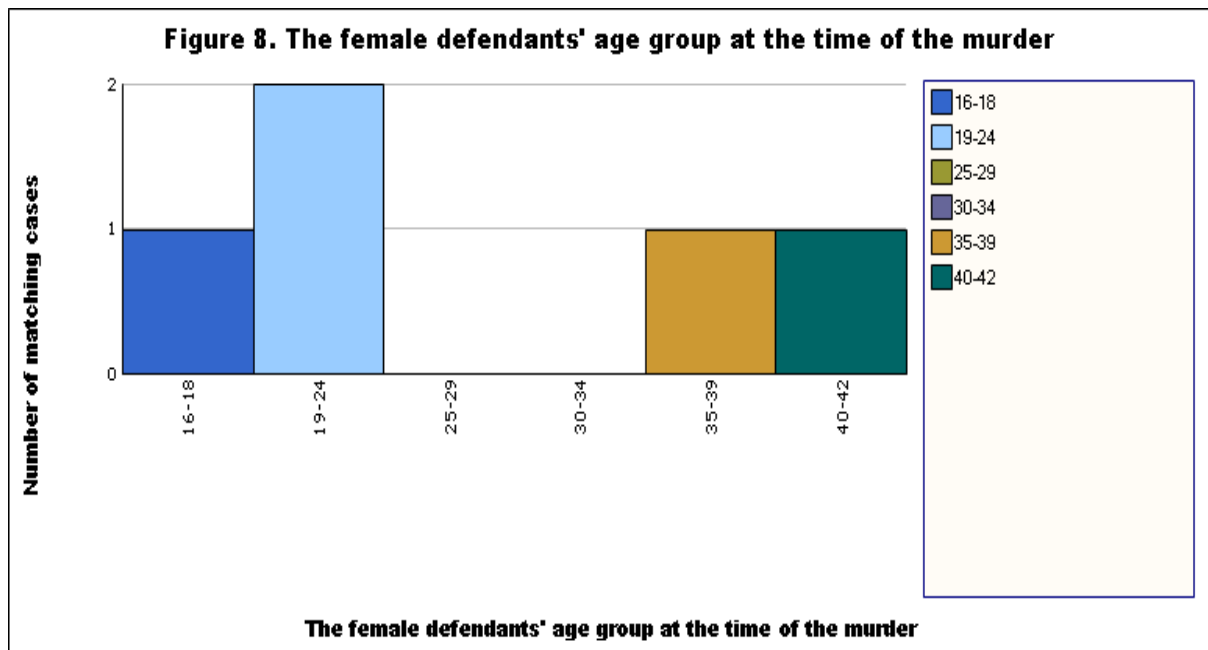
So, one may conclude from what the author has outlined above about Farac's work that he had insufficient data to make a generalization or to reach a conclusion about the occurrence and characteristics of honour killings in Turkey. Even his own data was inconsistent to support his conclusion. However, his book created a myth about the characteristics of honour killings by creating a scene in the minds of many people of a 14 years old boy, in the name of honour, cutting a very young girl's throat with a knife like a chicken, in the middle of a city centre square, in front of passers-by and in day light.

So, if what the published data say is true, a significant number of honour killing cases committed in Turkey are committed by killers under the age of 18. However, as Figures 6., 7., and 8. show, in only two out of a total of 39 cases was the killer was under the age of 18 at the

time of the murder, which suggests that only 5 % of all cases were committed by minor defendants.⁴² The youngest male defendant was 15 years old at the time of the murder, and the oldest male defendant was 68 years old at the time of the murder. The youngest female defendant was 16 years old at the time of the murder, and the oldest one was 42.



⁴² Even if those cases, one who refused to participate but committed honour killing when he was under the age of 18, and another who was the brother of interviewee-23 committed murder when he was 16 and was released before the author's field work are added to a total, the number of the cases committed by minors reaches four and total percentage reaches 10 percent that is not close to what has been suggested by the literature outlined above. Moreover as Appendix 2 shows, the author specifically visited Ankara Young Offender Institution which is on the 8th row of the visited prison list. But, there was no minor defendant serving a prison sentence for a murder committed in the name of honour.



As can be seen, contrary to earlier opinion, defendants whether male or female, in the age group 19-24 seem the most prevalent group committing such crimes.

Apart from the age of the defendant at the time of the murder, another popular belief about the characteristics of honour killings committed in Turkey is that honour killing is more prevalent in Kurdish communities of Turkey and it is unknown in the *Alevis*⁴³ community. This view is reflected in the fact-finding mission report of the Country of Origin Information (COI) Service of the UK Border Agency⁴⁴ (COI, 2008, para.1.30). This view is also supported by the Confederal Group of the European United Left - Nordic Green Left (GUE/NGL) which is a group in the European Parliament at present made up of forty-one MEPs. By reflecting

⁴³ *Alevi* is a different religious sect based in Turkey. *Alevis* share the same etymology, and may share a common origin with the *Alawī*, in English known as *Alawites* which is a sect of Shī'ah Islam. For honour killings committed by *Alevis* (*Alawites*) in Turkey see also Van Eck, 2003, p.258.

⁴⁴ The Country of Origin Information (COI) Service of the UK Border Agency published a report on 23 July 2008 with the title 'Report of Fact Finding Mission Turkey, 11-20 February 2008'. Country of Origin Information (COI) Service of the UK Border Agency produces information about conditions in countries which generate asylum seekers to the UK, for use by officials involved in the asylum / human rights determination process.

the view of, and statistics provided by, Feleknas Uca, a Kurdish member of the European Parliament, they suggest in their website that:

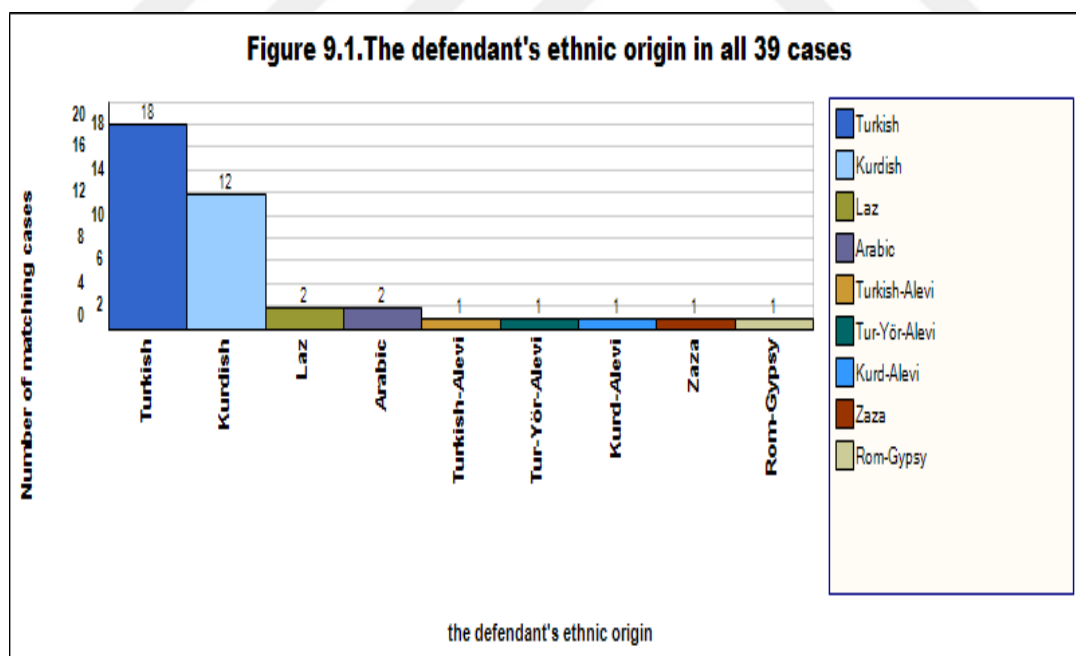
‘[P]olice statistics indicate [honour] killings are largely a Kurdish phenomenon... 43 percent of the crimes police classified as honour killings from 2000-2005 occurred in the east or southeast of the country, where Kurds are predominant. Of the remaining honour killings committed in the west, 45 percent were committed by people who were originally from the east or southeast.’ (GUE/NGL, Brussels, 23 October, 2006)

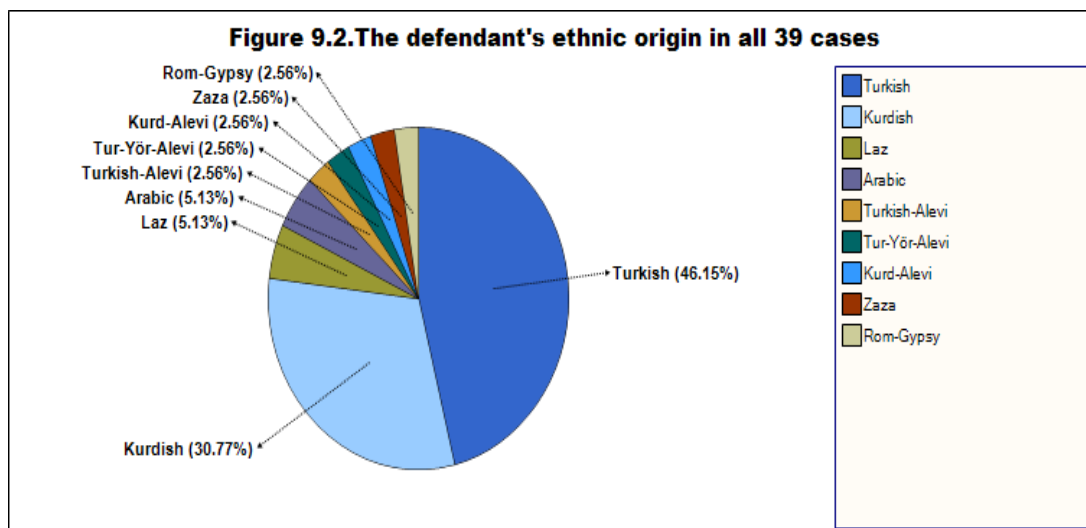
However, the author’s finding about the defendants’ ethnic origin is in no way close to what GUE/NGL or the Country of Origin Information (COI) Service has been suggesting. When this issue was investigated during the field work, the author was very careful to ensure that the participants understood that this issue was not about their citizenship but was to learn how they identified themselves in their ordinary life, in terms of their culture, ethnicity, language and religion.

As Figures 9.1. and 9.2. show, 46% of the defendants taking part in this research described themselves and their ethnic origins as Turkish, and 31% of the participants described themselves as Kurdish. Contrary to what is suggested by the Country of Origin Information (COI) Service of the UK Border Agency (COI, 2008, para.1.30), it seems that honour killing is known and practised by *Alevi*, which is a different religious sect based in Turkey. As shown in Figure 9.1., during the field work three male defendants, interviewees-14, 24 and 30, described themselves as *Turkish-Alevi*, *Turkish-Yörük Alevi* and *Kurdish-Alevi* respectively. The male defendants in two cases described themselves as *Laz*, which is an ethnic group living primarily on the Black Sea coastal regions of Turkey, in two cases as Arabic and in one case as *Zaza*, which is an ethnic group primarily living in the eastern Anatolia. Three female defendants out of a total of five cases described themselves as Turkish, one female defendant as Kurdish and one as Rom-Gypsy.

What these figures show is that the number of honour killing cases committed by minors is not as significant as suggested by the literature; and the issue of honour killing can not be confined to a particular ethnic or religious group. These crimes have been committed by defendants coming from a wide range of different cultural and ethnic backgrounds. There are similarities with reported cases in the UK, which suggest that honour killing cases occur across several different UK communities, including Sikh, Christian and Muslim (OCCRI, 2005; Craig, 2007; Conservative Women's Organization, 2007; Siddiqui, 2005:277).

Having discussed the issues related to defendants' age and ethnic origin and noting some differences from the published data, the author now turns to discuss other issues related to the defendants' profiles, such as their income, occupation, education and whether they had any previous convictions before the murder.





4. 1.3d Education, occupation, income, previous convictions

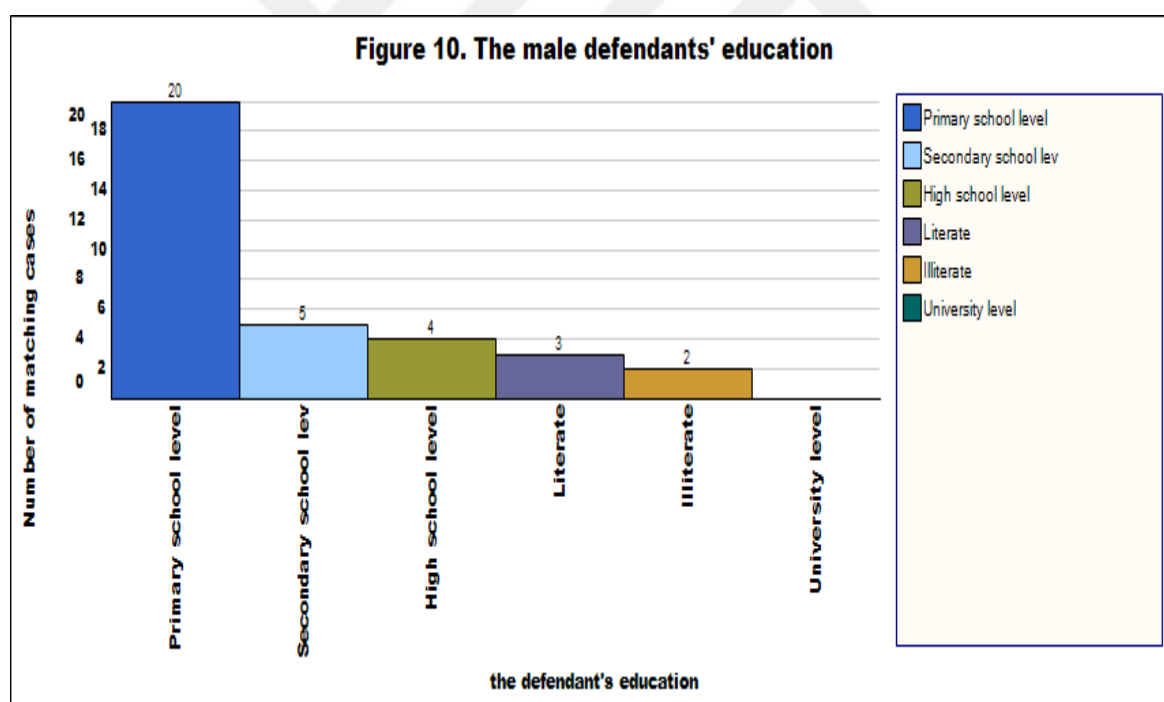
The majority of the male defendants, amounting to 59 % with 20 cases, had no formal education beyond a primary school, and three male defendants did not have any formal education but had somehow learnt how to read and write (Figure 10.). Two male and two female defendants did not even know how to read and write (Figure 10. and 11.). None of the male or female defendants had a university degree at the time of the murder (Figure 10. and 11.), but at the time of the murder one female defendant was a student at the university and one male defendant had left the university without completing his education.⁴⁵ As shown by Figure 12. and perhaps in accordance with their level of education, the majority of the murders, where the murderer was a male, were committed by those having skilled (27 per cent), or semi-skilled (24 per cent) occupations, or by farmers (18 per cent). The majority of the murders, 69 per cent, were committed by male defendants who worked in jobs requiring physical labour, such as a concrete or construction worker (12%) a farmer or agricultural labourer (18%) a furniture maker or painter (6 %). None of a total of 39 cases was committed by a professional or high administrator⁴⁶ which is a similar finding to the Greek cases

⁴⁵ One male defendant passed the central university examination when he was serving his prison sentence, and at the time of the interview, he was a student at Open University.

⁴⁶ Note that one male prisoner, who refused to take part in research, had a university degree and used to work as a civil servant at the time of the murder. There are some reported cases committed by a high administrator, civil

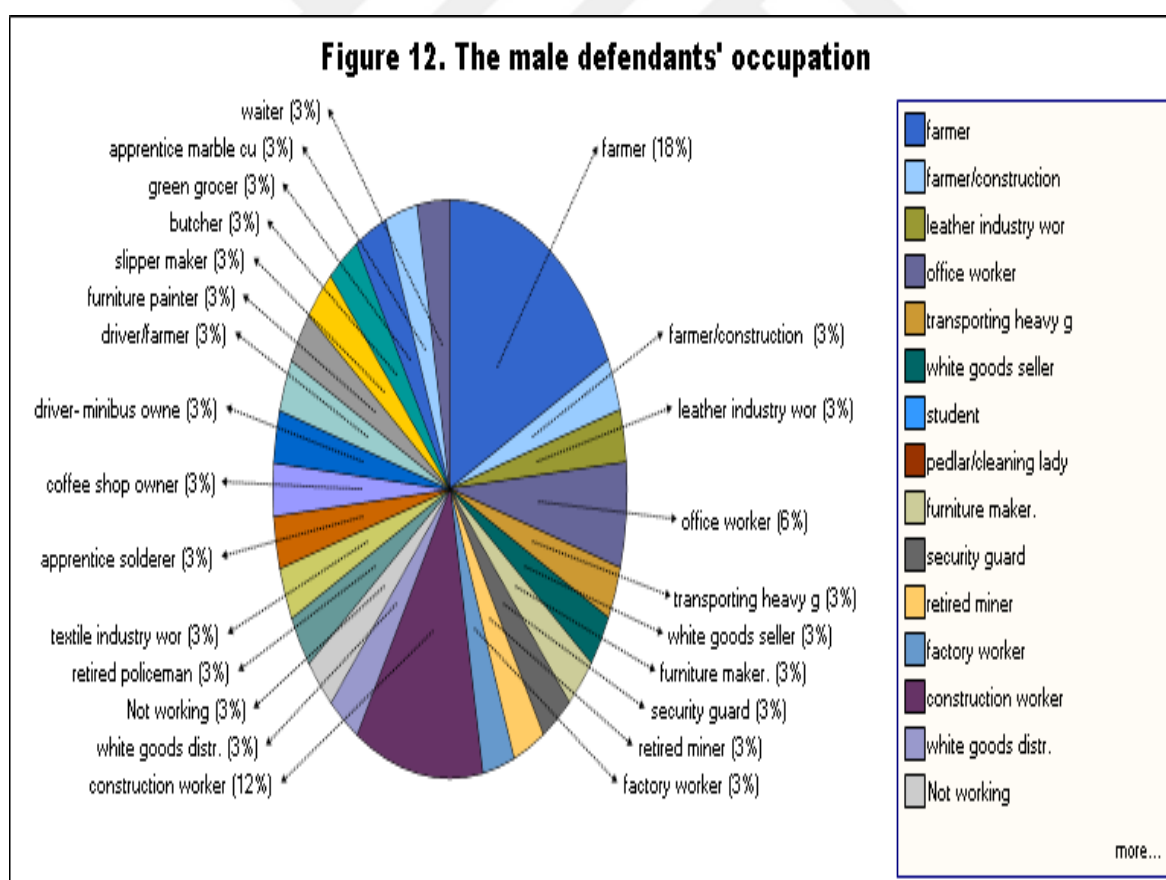
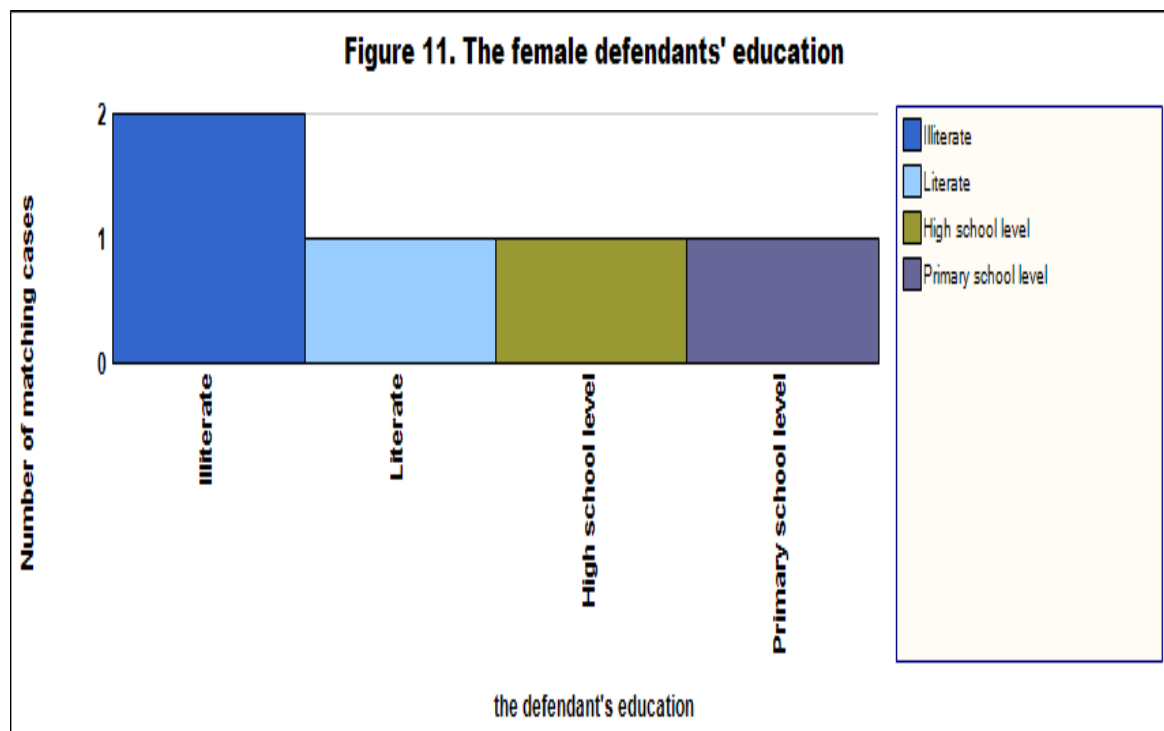
(Safilios-Rothschild, 1969:209), Lebanese cases (Hoyek, et al, 2005) and Turkish cases committed in the Netherlands (Van Eck, 2003:199,212).

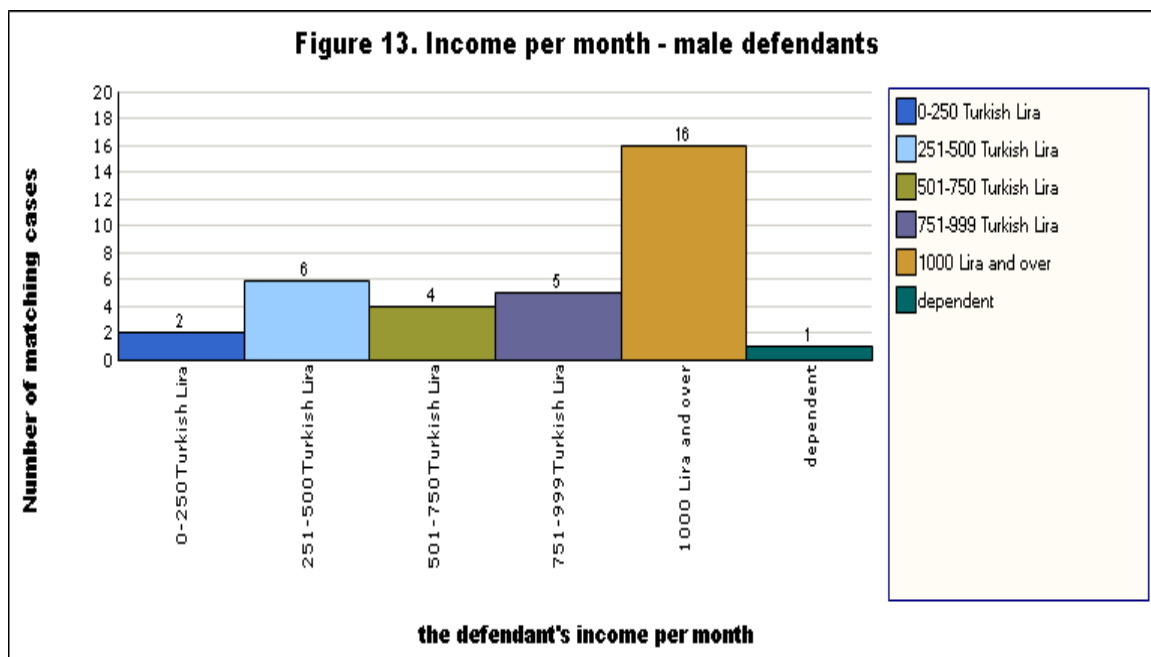
By having the above mentioned occupations, 47 per cent of male defendants used to earn 1000 Turkish Lira and more per month (Figure 13.). In seven cases, where the defendant used to work as a policeman, a miner, or in a European factory abroad, or was a white goods distributor, white goods seller, coffee shop owner or driver/minibus owner before the murder, the defendants earned enough money to make them a middle class man, in financial terms in Turkey.⁴⁷ Only two female defendants had employed work, the first one as a pedlar and cleaning lady and the second one as a farm worker, that used to bring them 0-250 Turkish Lira and 251-500 Turkish Lira per month respectively.



servant or a businessman (Husseini, 2009: 108, 143, 155). For instance, in the case of *Nanavati v State* the defendant, Kawas Maneckshaw Nanavati, was a Commander in the Indian Navy.

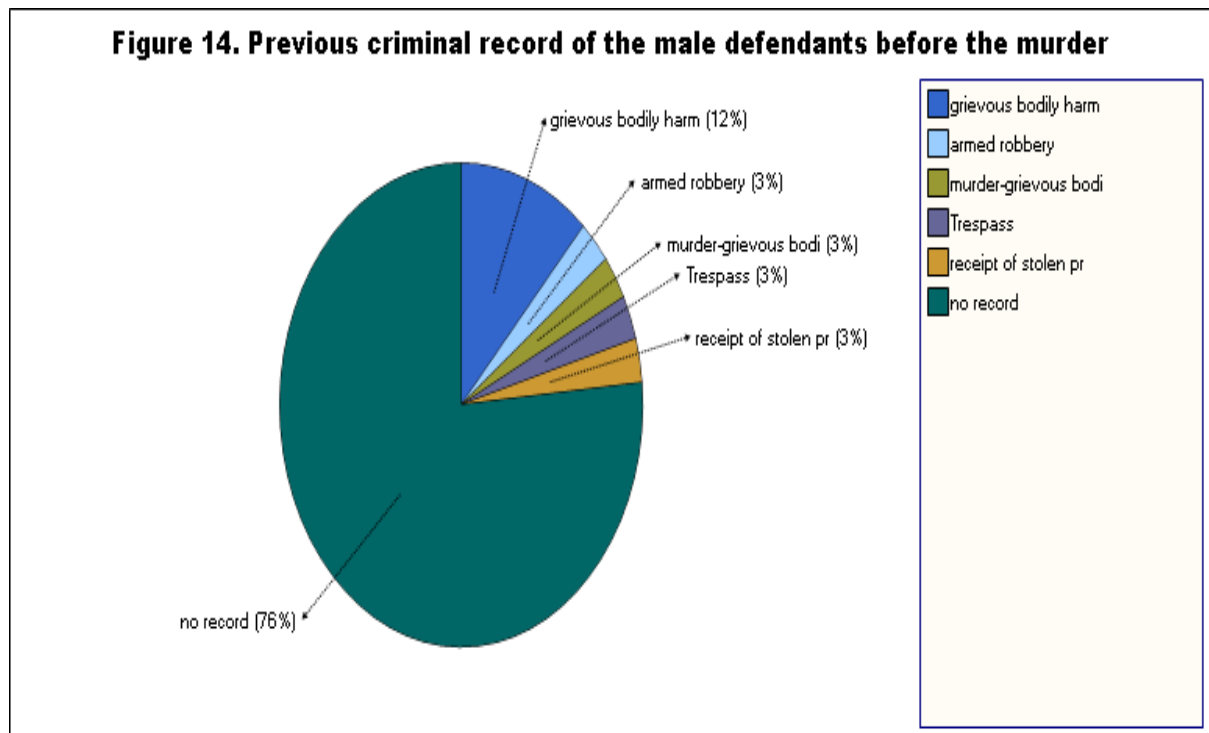
⁴⁷ Note that during the field work and at the time of writing this chapter 1GBP was equal to 2.3 or 2.4 Turkish Lira and the minimum salary in Turkey was approximately 250 GBP per month. Therefore, in this study the defendants who can be classified as middle class men used to earn more than 1000 GBP per month. It should be noted that the defendants who used to work as a white goods distributor, and retired miner described themselves as high class men in terms of their income, which is more than 1500 GBP per month.





None of the female defendants had a previous criminal record. The majority of the male defendants (26 defendants amounting to 76 per cent) did not have any previous criminal record before the murder.⁴⁸ As Figure 14. indicates, before the murder in one case, the defendant was found guilty of trespassing, in one case guilty of receipt of stolen property, in one case guilty of armed robbery and, finally, in one case guilty of murder and grievous bodily harm. In four cases (12 per cent) the defendant had a criminal record for grievous bodily harm, mainly a result of a fight. In two out of the four cases where the defendant had a criminal record for grievous bodily harm before committing the murder, the defendants (interviewees-28 and 29) described themselves as having a violent character with a tendency to use violence. So, as far as previous criminal record is concerned, the field work shows that the majority of the defendants did not have a violent character, or a history of violence, before the murder.

⁴⁸ For honour killing cases committed in the Netherlands by Turks, Van Eck also reports that almost without exception, the honour killers had no previous convictions (Van Eck, 2003:202).



Although not further considered here, Appendix 5 provides more information relating to the number of the defendant's children (Figure 15.1.) where the defendant lived at the time of the murder, (Figure 15.2.) and the age group of the defendant at the time of the interview (Figure 16.).

4. 1.4 The victims' profiles

As explained above, the empirical research in this part of the PhD is mainly concerned with male offenders and female victims, and therefore cases committed by a male offender against a male victim are outside the scope of this study. The field work covers 39 incidents, committed by 34 male and five female defendants. It should be noted that in the case of interviewee-23 (male) and interviewee-37 (female) (see Appendix 3) there was more than one defendant. In the case of interviewee-23 the defendant committed the murder along with his younger brother, and in the case of interviewee-37 the defendant committed the murder along with her father, mother, and elder brother. In neither case did the accomplices take part in the research.

These 39 incidents caused the death of 41 victims, three male, 37 female, and one infant, whose sex is regrettably not known by the author. There were 37 female victims, in 35 honour killings committed by one female and 34 male defendants. As there was more than one victim in the cases of male interviewees-23 and 30, the number of victims is greater than the number of the incidents and of the participants.

Figure 17. shows that among 37 female victims in 35 honour killings committed by 34 male and one female defendants, five victims (13 per cent) were under the age of 18 at the time of the offence. One was aged 14, one 15, one 16 and two victims were 17 years old at the time of the offence. The youngest victim was 14 years old, and the oldest victim was 49 years old at the time of the offence. Despite the fact that she was 21 years old at the time of the offence, one female victim did not have a birth certificate, and was not registered since she was born (the victim in the case of interviewee-22).

In the light of published data the author found cases where the ages of the victims went as young as three (Kevorkian, 2003:596)⁴⁹ and 10 ½, (Hoyek et al, 2005: 126) and one case where the victim was 60 years of age (Hadidi et al, 2001:358). If the cases of infanticide for cause of honour, in which an infant was killed either by its mother or by its mother along with other female members of the family in order to conceal an affair and wash away shame are left aside⁵⁰, it seems from Figure 17. that women's vulnerability to be victims of honour killings starts when they begin to menstruate, and continues for as long as they menstruate, which reflects their ability to produce a child. Similarly, in the case of Hatice (a case from Turkey) Hatice was 12 years old when she was killed (Sev'er and Yurdakul, 1999: 979, 982)

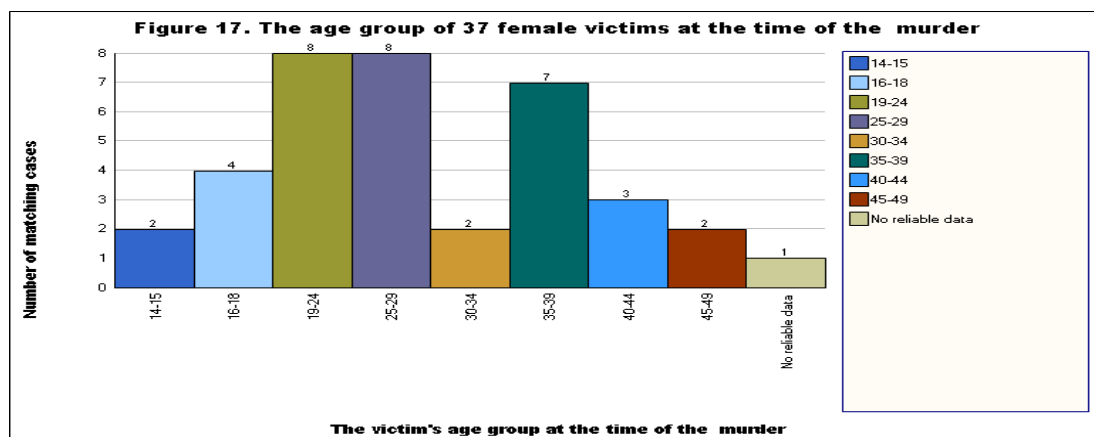
⁴⁹ Kevorkian reports that in one case, the father of a three-year-old girl, raped by a relative, ordered the mother to kill the girl in order to conceal the social shame and avoid the ridicule that might confront him. (Kevorkian, 2003:596)

⁵⁰ Note that there is no provision in the current Turkish Penal Code regulating the crime of infanticide for cause of honour. The provision of the former Turkish Penal Code (765), which was abolished on 1st June 2005 and regulated the crime and defence of infanticide for cause of honour, was only available for the mother not other members of the family.

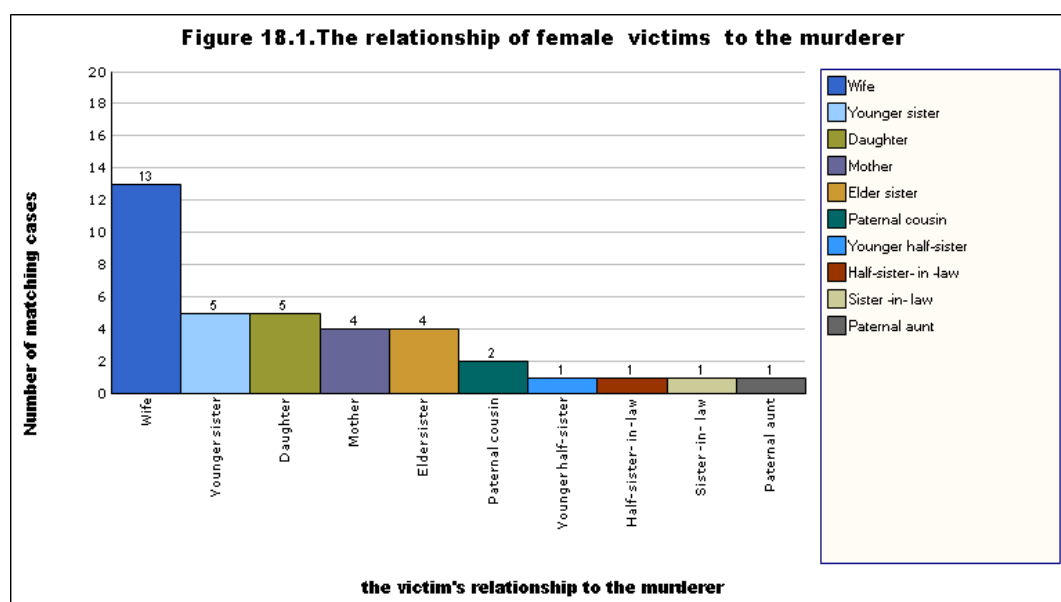
and in the case of Salwa Kamel (a case from Israel) Salwa was 13 years old at the time of killing (Kressel, 1981:145, 147).

So, it is very rare to encounter any female victim who had not started menstruating, which roughly means victims below the age of 12, or any female victim who had stopped menstruating which roughly means victims above the age of 50. This confirms what the author has discussed in relation to Delaney (1991) who argues that a man's honour is dependent on a woman keeping her virginity before marriage and her fidelity after marriage, so she can guarantee that a child who will be born in the marriage is from the seed of the husband who was approved and chosen by the woman's family.

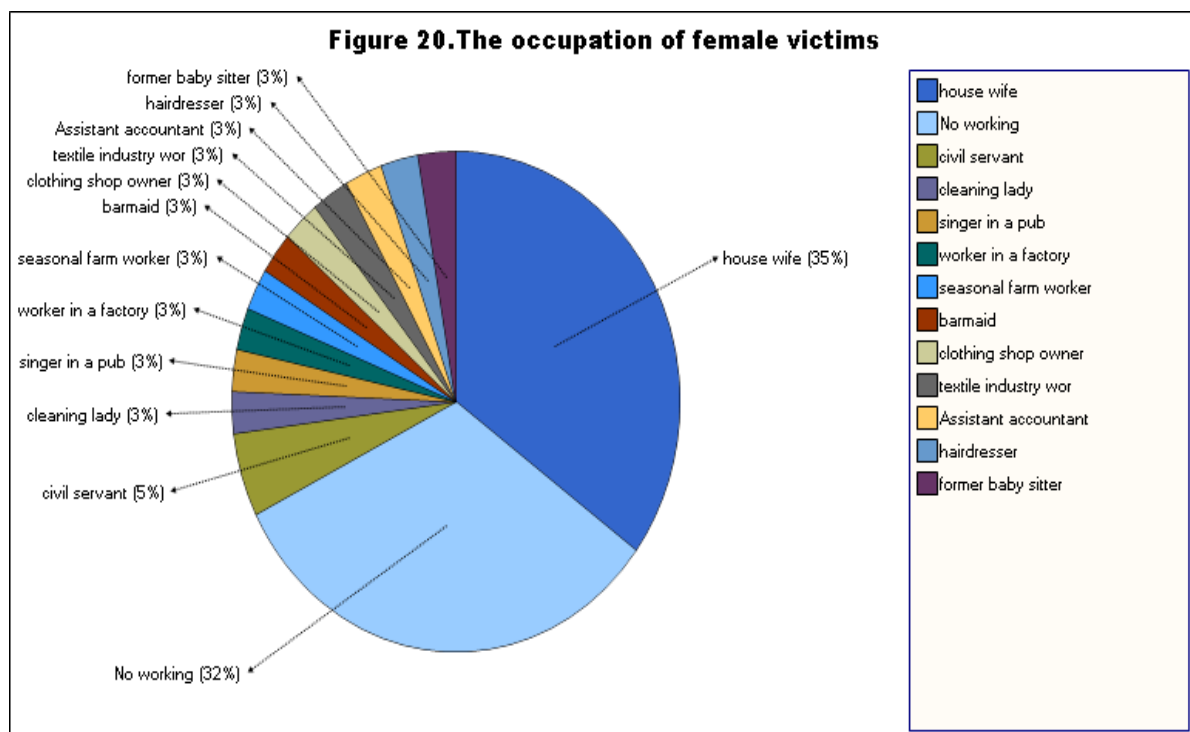
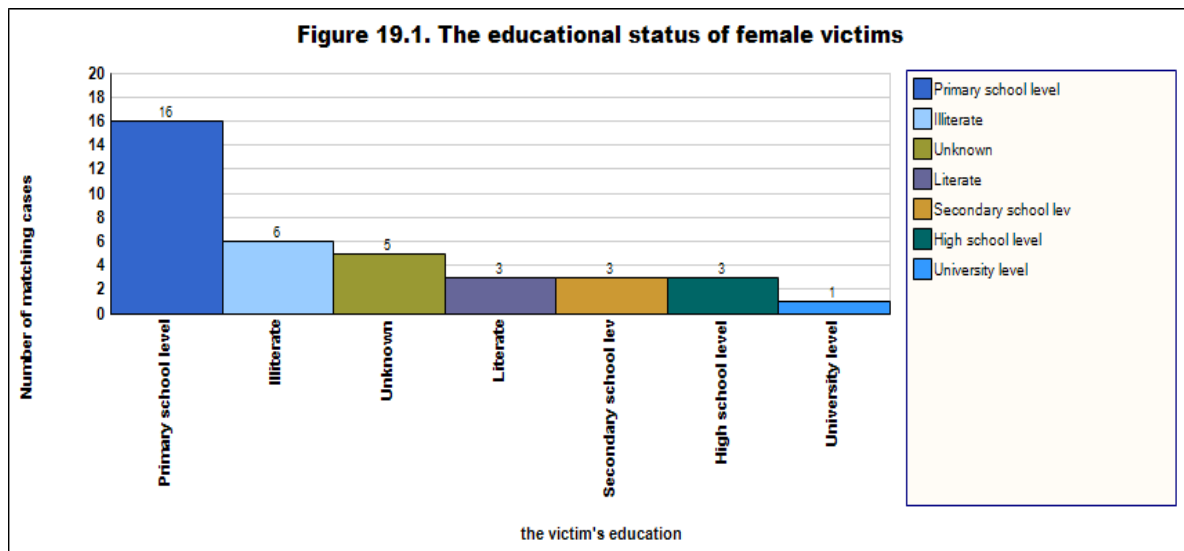
However, as Figure 17. shows, women in the age group 19-24 and 25-29 (each with 22 per cent) seem the most vulnerable and prevalent group to be the victim of an honour killing. This should be compared with Figure 6. Which showed that males and females in the age group 19-24 seem to be the most prevalent to commit honour killings. Similar figures were found in a study in Lebanon where vulnerability of women in the age group 19-29 to be a victim of honour killing was shown. Hoyek et al (2005) described 25 cases committed in Lebanon in which women in the age group 20-24 (with 44 per cent and 12 cases) were the most vulnerable group to be a victim of honour killings, with women in the age group 25-29 (3 cases) and women in the age group 15-19 (4 cases) the next most frequent (Hoyek et al, 2005:130).



In accordance with what the author has shown in Figure 4.1. and 4.2. concerning male defendants' relationships to their female victims, Figure 18.1. indicates that in a total of 37 victims, the wife (with 35 per cent), the younger sister (with 14 per cent), and the daughter (14 per cent), were the most frequent victims of honour killings with mothers, elder sisters and paternal cousins following. These figures are similar to figures from Egypt by Khafagy, which showed that wives (with 41 %) are the most prevalent victims of honour killings in Egypt (Khafagy, 2005:4).



The field work suggests that the victims of honour killings are more educated than their killers (Figure 19.1. below and 19.2. in Appendix 5). Unlike their murderers, one victim had a university degree at the time of the murder (Figure 19.1.); and some female victims were employed in jobs requiring academic qualification. Though the majority of female victims held such jobs as cleaning lady, baby sitter or factory worker, some of the victims worked in jobs requiring a degree, or skills or formal training (Figure 20.). Thus, in the case of interviewee-5, the victim had expertise in tax law, and was a civil servant in Turkey; and in the case of interviewee-11, the victim was a civil servant and holding a junior post in a European country. Finally in the case of interviewee-27, the victim used to work as an assistant accountant.



Four out of a total of 37 female victims were pregnant at the time of the murder (in the cases of interviewees 26, 29, 30 and female interviewee-37). In three cases the illegitimate pregnancy was regarded as a shame on family honour, and washing away the shame brought by the pregnancy was the main reason behind the murder. In the case of interviewee-29, mentioned above, the victim was unofficially married and her pregnancy therefore was not illegitimate as it was not out of wedlock. The victim was killed by her paternal cousin. In the interview the defendant said that having more than one partner in a very short time cast a

shadow on their family honour. So, the defendant killed his paternal cousin, who was seven months pregnant, and wounded her partner.

Before concluding the analysis of the victims' profiles one point should be emphasized. Though male victims killed by male defendants are outside the scope of this study, the field work found that in 10 cases (29 %) out of a total of 34 honour killing incidents committed by 34 male defendants, the male defendant not only retaliated against his female relative, but also against the male involved in the dishonourable conduct, as the lover of his wife, sister or mother. Additionally, many male defendants who killed their female relatives and did not, or could not, retaliate against the other male person involved in the dishonourable conduct, expressed their desire about killing the lovers or partners of their female relatives. (Interviewees-2, 5, 7, 8, 16, 17, 34)

In this context, in four cases out of a total of 13 where the victim was a wife and was killed by the husband, the husband also killed his wife's lover; and in two cases a husband attempted to kill his wife's lover.

Similarly, where the victim was a sister, in one case the defendant first killed the man who got his sister pregnant, and killed his pregnant sister later. In another case the defendant killed his sister and at the same time attempted to murder his sister's lover. In another case, a paternal cousin killed his paternal cousin who was seven months pregnant, and wounded her partner. Finally in one case where the victim was a mother, the defendant killed his mother and also killed his half- brother, who had an affair with his mother. It can be said that when they acted, the male defendants were crueller to the male who had been involved in the dishonourable conduct; and left nothing to chance. For instance, interviewee-26 killed the man that got his sister pregnant by shooting him eight times with an automatic rifle which was normally used for killing wild pigs. But he fired his gun only once at his sister. Similarly, interviewee-21 hid in the bushes until his wife and her lover met in front of the stable. He first

killed the man, who was a village guard, with his hunting rifle, but he did not stop there. After taking the guard's Kalashnikov, he continued firing on him by using the Kalashnikov. Then he killed his wife by using again his hunting rifle.

However, the cruellest aspect of the commission of the crime was that children witnessed their mother's death in five cases. Though there was no premeditation when interviewee-4 killed his half-sister, and interviewee-15 killed his wife, a child aged three in the first case, and children aged two and five in the second case, were present at the time of the murder. In three other cases (interviewees-27, 32 and 33), there was premeditation but the defendants did not care about whether the children were present at the time of murder. However, interviewee-4 expressed his sorrow for this, and interviewee-27, who killed his sister-in-law for being unfaithful to his brother, mentioned his regret for the murder that he committed nine years ago in front of his nephew. He said:

'At the time of the crime, my nephew was 12 years old. He witnessed the murder because he was at home. I still feel sad when I look at his face. He still visits me. But, I think that he still hates his mother for what she did to his father.' (Interviewee-27, male)

4.1.5 The profiles of the crime

Apart from the case of interviewee-28, all murders were committed in Turkey. In the case of interviewee-28, the defendant committed murder by killing his mother and half-brother in a European country where the Turkish immigrant population is high. After his trial and once he had started to serve his prison sentence, the defendant was transferred to Turkey to serve the rest of his prison term in accordance with a treaty between the two countries.

As shown by Figures 21.1., 21.2., and 21.3. shooting is the most prevalent method used for the commission of honour killings by male and female defendants which is a similar finding to the Turkish cases committed in the Netherlands (Van Eck, 2003:75, 266). It can be said that these figures are the result of the general situation in Turkey where the rules to own a licensed gun, especially a hunting rifle, are flexible; and there is a market to buy an

unlicensed gun. Ten out of a total of 36 victims that were killed by a male defendant were killed by stabbing, in nine incidents. In six of these nine stabbing incidents the defendants caused at least ten wounds in each case. This reflects the degree of brutality and anger shown by the defendants, or perhaps the gravity of what had been done or said by the deceased might have caused a complete loss of self control. Thus, interviewee-15 stabbed his wife ten times, interviewee-3 stabbed his mother fifty-five times, interviewee-25 stabbed his elder sister twenty-six times, and finally interviewee-7 stabbed his mother twenty-five times. However, in the interview, except for interviewee-23, interviewees who brutally killed their victims by stabbing said that they only remembered two or three stabs that they had made. Though it has been suggested that decapitation (Kressel, 1981:147), acid throwing (Safilios- Rothschild, 1969:208; Country Report-Pakistan:133; BRIDGE Development-Gender, 1993:5), stoning (Husseini 2009:84,132; *The Sunday Times*, November 4, 2007, p.25; Van Eck, 2003: 38, 128, 258), cutting off the penis (Stophonourkillings.com; Van Eck 2003:77, 225) and burning (Kevorkian, 2003: 596; Kressel,1981:147; Husseini, 2009:122; Honour kills, 2007, [TV documentary] , BBC 3) can be used as methods for the commission of honour killings and honour crimes, the author did not find any case committed by using such methods.

However, as mentioned above, during the field work the author found murder cases committed under the guise of an accident, or a suicide, and defendants therefore denied responsibility for the murder during the trial, and in the interview. In such situations, insecticide, a bottle of bleach, or poison mixed with food was generally used. Similarly, the literature also reflects honour killing cases committed under the guise of suicide, in which the defendant pushed the victim off a balcony (Hoyek et al, 2005:126), or the victim was forced to drink sulphuric acid from a beaker, or to take poison (CEWLA, 2005:153, 154), or the victim was forced to hang herself (Yirmibesoglu, 2007: 173). Some murderers attempted to conceal their murder by staging a tractor accident (Farac, 2006a: 53-138), or a car accident

(Husseini, 2009:82) or by staging an accidental fire (Belge, 2006: 43; Husseini, 2009: 127; Country Report- Pakistan: 133; BRIDGE Development-Gender, 1993:5).

As far as the analysed cases are concerned, the methods used for the commission of the murder are dictated by the defendants' personal situation, desire for the concealment of the murder, and the conditions and environment in which the murder takes place. Therefore, contrary to what is suggested by a campaign group (Campaign against honour killings in Turkey); the author found no relationship between the choice of weapon and the economic status of the defendant (Figure 21.4.). Moreover, contrary to what is suggested by Kressel, the author found no evidence which can support the view that there are more and less honourable ways of committing an honour killing. According to Kressel, shooting is the most honourable way to commit an honour killing and strangling is the least honourable. Therefore, women tend to be killed in less honourable ways. (Kressel, 1981:147) However, the author's findings show that the method chosen to commit an honour killing does not make it more or less honourable.

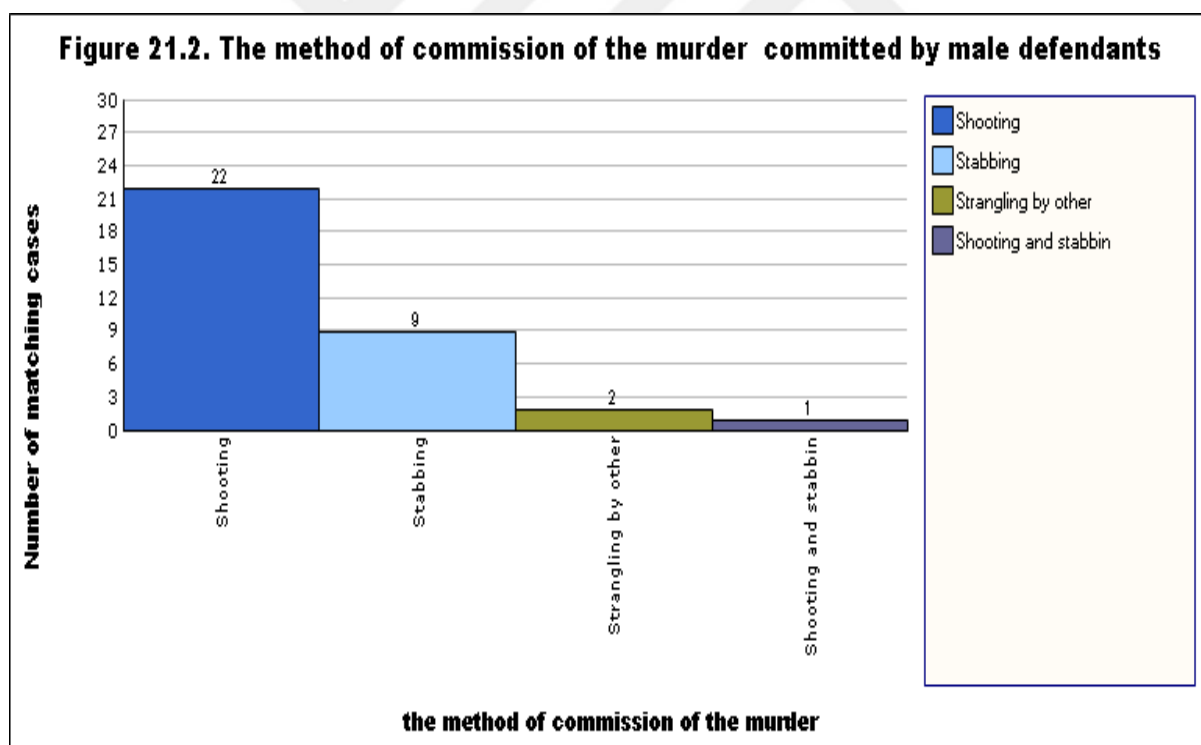
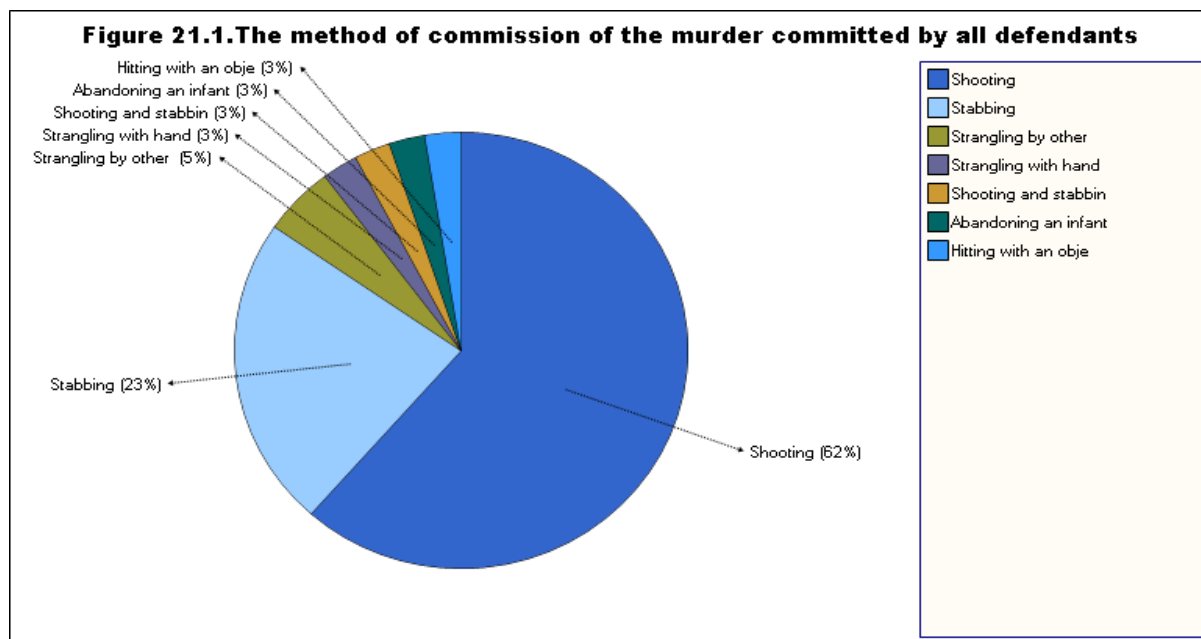
In this context, if the murder is the result of a sudden loss of self control, the murder is committed by using the first possible means which comes to hand. For instance, in the cases of interviewee-16 and 30, the murder was the result of a sudden loss of self control. So, in the case of interviewee-16, the defendant killed his daughter when he was packing their clothes and other items for moving, and at the same time trying to convince his daughter to move with him to another town. In this case, the defendant's daughter had a history of running away from home, and hanging around with boys who allegedly had sex with her. Therefore, she was regarded as a tart, and the defendant was pressurised, and questioned by the community about whether he pimped his daughter. So, the defendant thought that moving to another town might solve his problem. However, when he was packing, his daughter objected to the idea of moving by saying that 'I will do it my own way. I chose my path and I am happy with

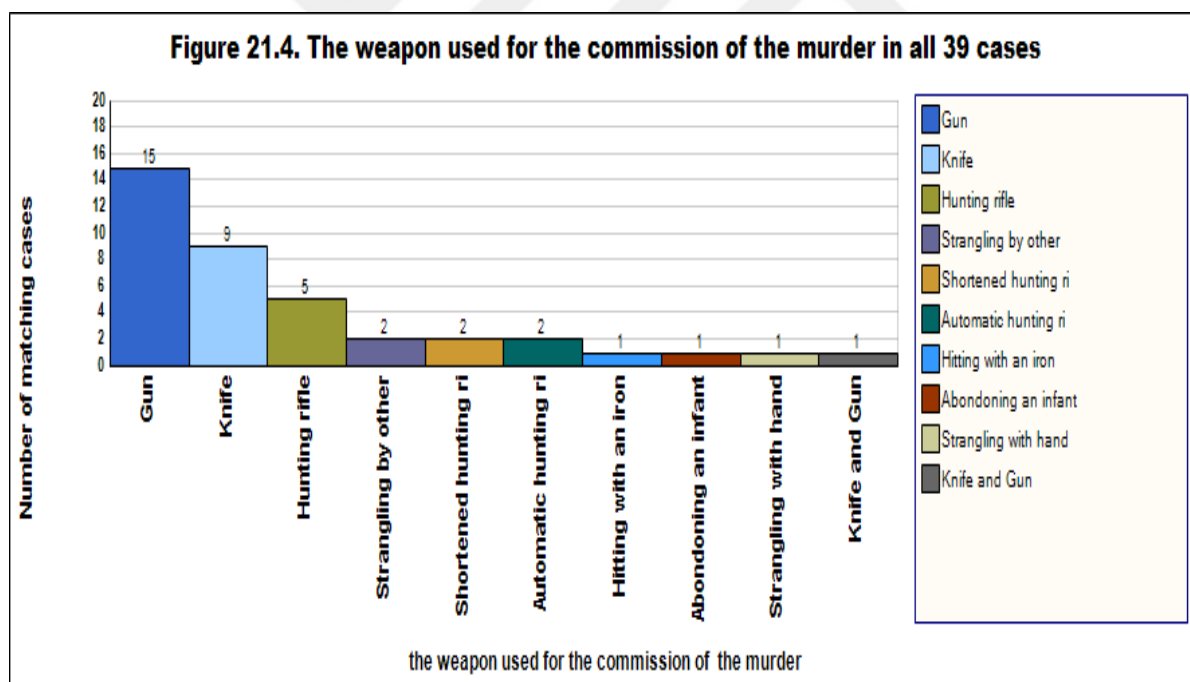
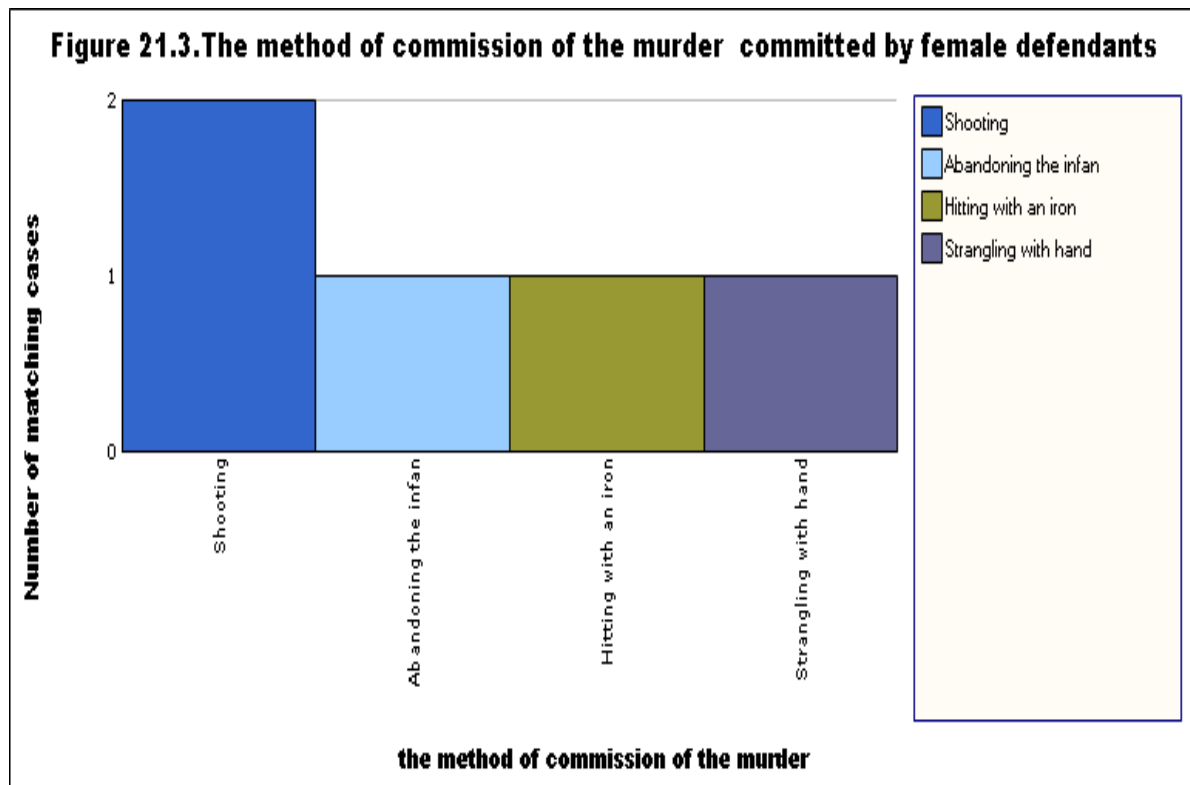
it' and the defendant killed his daughter by using a rope that he was using for packing. Similarly in the case of interviewee-30, whose account is fully provided in Appendix 3, the defendant killed his daughter by using a tie, and killed his wife by using a headscarf that she wore. In both cases, due to the conditions and environment in which the killing took place, the method of attack was not deliberately chosen by the defendants. The decision how to commit the murder was a result of perhaps a reflexive and instant behaviour.

The methods used for the commission of the murder are also affected by the defendant's personal situation. For instance, interviewee-17, who was 15 years old at the time of the murder and scared to use a gun, decided to commit the murder by using a knife. But, as his older sister struggled after first stab, and other family members heard noises, he got nervous and stopped stabbing and started to shoot. Similarly, interviewee-28, who killed his mother and half-brother, decided that both his mother and half-brother should die together. Therefore he used a gun. In the interview he said:

'I said to myself "if I am going to do it, I need to make it sure that they both will die. So, I should kill the boy first." I did it in the same way as I thought. First, I needed a gun, I found the gun and shot the boy first, two bullets to the head, and then she came from the kitchen shouted "what did you do!" I shot the woman too, two bullets to head.' (Interviewee-28, male)

Finally, the decision of how to commit the murder can be affected by a desire to conceal it. Thus, in the case of female interviewee-35, who abandoned her new born baby, she chose to hide the body in the bushes.





It has been suggested that in relation to honour killings the time of attack is selected ‘in consideration of conflicting demands: restoration of honour and prevention of involvement by a representative of the law. The former dictates that the deed be made public and the latter that it be kept quiet’ (Kressel, 1981:147). However, some caution is required. The field work suggests that cases committed after midnight or before dawn are not planned and the time of

attack is not specifically chosen to conceal the murder. Similarly, in murder cases committed in the day time, the time of attack is not always specifically chosen to make the execution publicly; and if killing is not planned, the time of attack is not chosen at all. Thus, though interviewee-7 committed the murder before dawn by stabbing his mother 25 times, he did not feel that he needed to conceal the murder. Indeed, he carried the corpse from the house to the street; and in order to make everyone know that honour was restored he shouted:

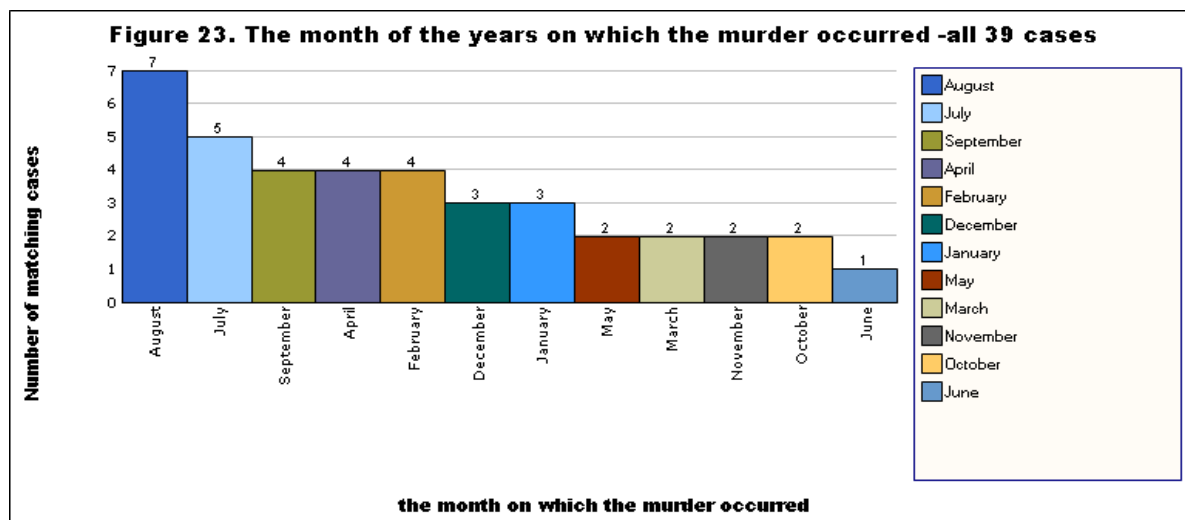
‘You rumoured that this woman is dishonourable. Look! I did. I killed her. You, all of you are dishonourable too. I will kill all of you.’ (Interviewee-7, male)

Similarly, as shown by Figure 22., in four cases the murder was committed after midnight but only two of these murders were planned. In the two remaining cases, interviewees-15 and 16 committed a murder after a quarrel and loss of self control. Finally, of 12 cases committed in the morning only interviewee-25 felt that he had to make everybody know that the execution was carried out and honour was restored. Therefore, he shouted ‘I cleansed my honour, leave me alone’.



Though there is no season for homicide or honour killing, honour killing cases are slightly more common in summer, or in those months of the year where the weather is relatively warmer, than in other months of the year. Figure 23 shows that among 39 cases

committed between 1989 and 2007, the months of August and July are significantly more likely to be among the months in which honour killing is high for any given year, but the number of cases during those months may not be significantly higher than in other months.

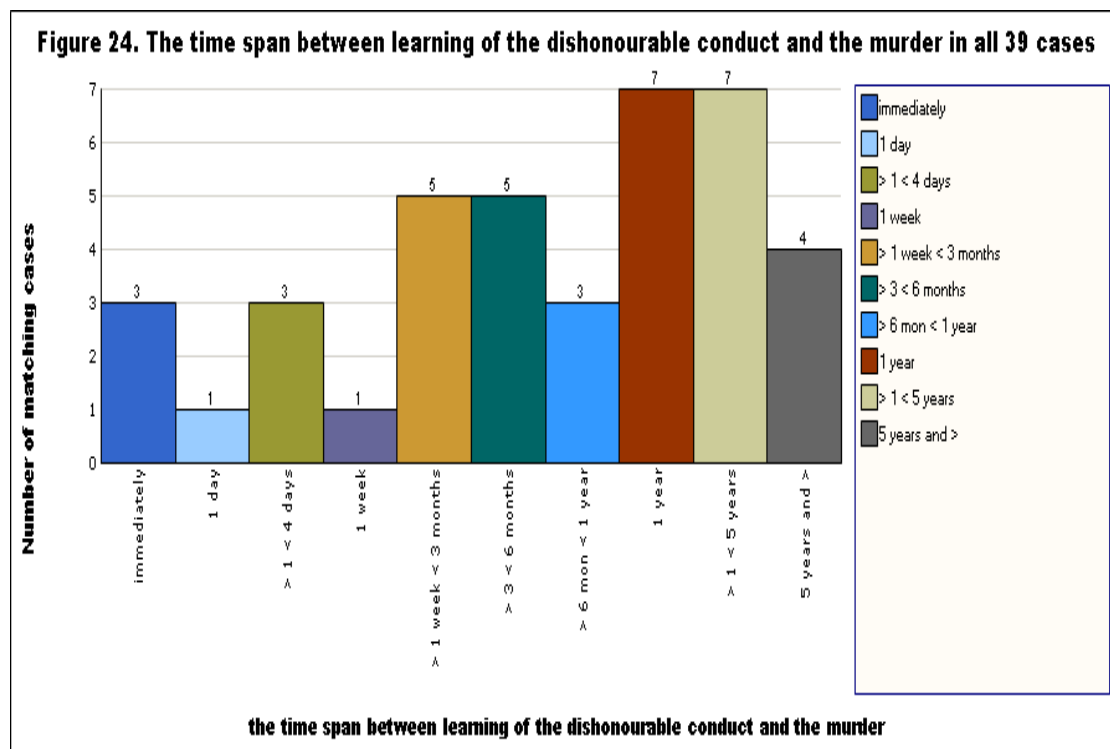


Indeed, apart from the field work, eleven honour killing cases reported by Turkish media during two years (2006-2007), and collected by the author showed that four cases were committed in July, two cases in October, two cases in December and one case in February, March and June. However, in the opinion of this author, these figures can not simply be explained by the idea that heat causes murder.⁵¹ As suggested by Cheatwood (1988), it is the length of day and increased human interactions, rather than heat or weather, that may explain the higher rate of homicide cases in the months of July and August (Cheatwood, 1988:302).

Another complication is that in some honour killing cases the defendant acts immediately as soon as s/he learns of the dishonourable conduct, which occurred during in August or July. However, it seems from Figure 24. that there are cases where the dishonourable conduct occurred in August or July but, for some reason, retaliation came later, in other months of the year. Therefore, the author's sample cases provide no support either way, or to explain why honour killing cases show a somewhat higher frequency in the months

⁵¹ Thus, Anderson reports that there are laboratory studies which show inconsistent evidence concerning the existence of direct effects of temperature on aggression (Anderson, 1989:93). For these laboratory studies and the alternative explanations why homicide cases occur more frequently in the warmer months of the year see Anderson (1989).

of August and July. The more important question of why the defendants did not immediately retaliate against dishonourable conduct, and what took place during the time span between learning of the dishonourable conduct, and the murder will be discussed below.



The author will conclude his analysis of the characteristics of these crimes by discussing whether there were any rituals carried out by the defendant before, during, or after the offence that differentiate these killings from other murders.

There is a popular belief in Turkey that in honour killing cases defendants get their victims to wear special garments before the murder. For instance, in the case of *Yasemin Kınık* where the victim had married a man against her father's wish, the Turkish Dailies reported that, in order to show that the murder was committed for honour, the defendant got his daughter to wear black and dark clothes before he killed her (*Milliyet*, 2007, July 5; *Radikal* 2007, July 6; *Hürriyet*, 2007, July 5). Similarly a Turkish soap opera '*Yersiz yurtsuz*' first broadcast on 29 March 2007, contained a scene in its first episode where a father, *Emrullah* (*Ferdi Tayfur*) was pressurised by his brothers to kill his daughter who was pregnant out of wedlock. After getting his daughter to wear special clothes that had been prepared for her

wedding, *Emrullah* took his daughter to a river on a raft and forced her to commit suicide. (*Yersiz Yurtsuz* 2007, [Turkish soap opera], atv, 29 March 2007).

In order to understand whether such popular belief has any foundation the author asked in interview whether any rituals were performed by the defendant before, during or after the offence. The author especially asked those defendants who did not volunteer information about whether they got the victim to wear special garments before the murder, or whether they repeated or asked the victim to repeat the word of shahadah [which is the expression of faith: *La ilaha illa Allah. Muhammadun rasulullah*. ("There is no god but Allah. Muhammad is the messenger of Allah.")], or make a preparation for the prayer and ablutions. Some defendants found such questions strange and the author replied 'I just wanted to be sure whether you did or not, as it is a detail perhaps you might have forgotten when you told your story.' Interviewee-7, who stabbed his mother twenty five times, said:

'This is what you do when you slaughter a chicken. I was not slaughtering a chicken. Why should I repeat the word of shahadah?' (Interviewee-7, male)

So, in neither the accounts of the defendants, nor in the court rulings, did the author find reference to any ritual that was carried out before or during the murder to differentiate these killings from other kinds of killings.⁵² When it comes to rituals after the murder, though it has been suggested that, in order to announce that the family honour is restored, a painted black stone is erected on the victim's grave (*Cumhuriyet Dergi* 2003, June 16; Onal, 2008:163) or that the walls of the victim's house are whitewashed (*Cumhuriyet Dergi* 2003, June 16; Onal, 2008:162), or a white flag is flown on the roof of the victim's house (*Cumhuriyet Dergi* ,2003, June 16) to symbolise purification and innocence, none of the defendants gave such an account.

⁵² However, Van Eck (2003) reports that in one case committed in Turkey, the female members of the honour killer's family go to the bathhouse after the honour killing and put henna in their hair because their honour is purified. In another case, the killers fired their guns into the air as they would at a wedding. She also reports that in Jordan in order to show that the family's honour has been cleaned, a white ribbon is stretched along the four edges of the flat roof of the house and a fire is lit on the roof (Van Eck, 2003:77).

Only interviewee-34 mentioned a ritual that might convey a message, but which cannot be regarded as marking out honour killing cases. He said:

‘I decided to shoot my sisters and their husbands... I found the house of one of my sisters. I knocked at the door, she opened it and I shot. I shot eight times, four to head four to chest and finished all bullets in the magazine. I took one bullet from my pocket and threw it on the corpse. I just wanted to leave a message that I did not close the book on this matter and I had a spare bullet and this bullet eventually will find my sister’s husband.’ (Interviewee-34, male)

This is the only ritual related by the participants, and it cannot be regarded as a characteristic for honour killing cases. It could be seen in any murder or revenge killing case where the killer wanted to leave a message that there will be more victims.

In honour killing cases, it is said that there is a tendency among the defendants, and the victim’s family, not to accept the responsibility of the victim’s funeral and, as a proof of disgrace, to disown her dead body (Onal, 2008: 95 200, 249; *Cumhuriyet Dergi*, 2003, June 16; Campaign against honour killings in Turkey; Chakravarti, 2005:311; Warraich, 2005:96; Jafri, 2008:62, 63; Hussein, 2009:107; Van Eck, 2003:64-66). Sometimes the defendant, or the eldest member of the family, may ask the family not to mourn, or not to accept condolences. In these circumstances the municipalities and local authorities accept the responsibility of the funeral, and victims may be buried in a part of the cemetery that is allocated for disowned bodies, orphans, and the homeless.

As explained by Campbell, since Ancient Greece the denial of a proper burial has been seen as a mark of dishonour, which implies the extinction of the victim’s name in the memory of this world and, in the world of the dead, a sentence of exile for the soul of the dead person. It was regarded as a terrifying fate for the Homeric warriors (Campbell 1992:132). A dead person’s fame can be preserved and remembered by conducting a proper funeral, praying and reciting their name. Preventing a person from having a proper funeral and burial matters, because ‘honour, like ritual, is principally a problem of external form and effect, not of

intentions' (Campbell, 1992:132). By disowning a dead body and denying a proper funeral in honour killing cases, the community, defendants and families set an example to all other women by implying that the victim can not be treated like an honourable person whose fame can be preserved after her death by reciting her name and visiting her grave. For them, the victim of an honour killing does not deserve this. As a dishonourable person she has no fame to be remembered after death, and her soul should not rest in peace.

The field work shows that in one case the defendant specifically asked his family to disown his sister's body, not to accept the responsibility of a funeral, and not to mourn or accept condolences. He said:

'I wanted it to set an example to all others. The municipality accepted the responsibility of funeral and buried her. She was buried in a different cemetery not in a cemetery where our family members were buried.'(Interviewee-13, male)

In two cases (interviewees-8 and 18) where the defendant killed his wife, the families of the victim and the defendant, without being instructed by the defendant, both disowned the victim's dead body. The victim was buried by the municipality and denied having a proper funeral. Similarly, in the case of interviewee-23, who killed his mother, both the victim's birth family and the family of her ex-husband, disowned the dead body and the municipality buried the victim.

In the case of interviewee-29, who killed his paternal cousin, two elder member of the community accepted the body and took on the responsibility of funeral. Neither the victim's nor the defendant's family members attended the funeral.

In three cases there was a reluctance among the victim's family to attend the funeral. In the case of interviewee-11, who killed his daughter, his eldest son did not want to attend the funeral. In this case, the defendant said 'But, I managed to convince him to attend the funeral and she was buried properly by all the family in a cemetery where our family members were buried.' Similarly, in the case of interviewee-7, who killed his mother, only his

maternal aunt tried to organise a proper funeral and burial. Apart from her, nobody accepted the responsibility of the funeral, and even the victim's mother was prevented from attending the funeral by the victim's brothers. Finally in the case of interviewee-1, who killed his wife, one of the victim's brothers did not attend the funeral as a sign of supporting the defendant's behaviour.

Again, in the case of female interviewee-38, people showed reluctance to attend the funeral of the man who was killed, in order to mark that the man was involved in dishonourable conduct. She said:

'People first heard that the victim was killed in a car accident. But, then when they came to the mosque for the funeral and burial, they learnt that he was killed by me and my husband for honour. So, they started to leave the mosque without attending prayer and funeral. That was told to me by the imam who conducted the funeral when he came to visit me in the prison.' (Interviewee-38, female)

In the case of interviewees-6 and 9, interviewee-6 said 'my family did not attend my wife's funeral as they believed that what had happened was her fault' and interviewee-9 said 'for fear of being killed by my wife's family, my family did not attend the funeral or send their condolences and there is still hostility between two families.' The author believes that the fear of retaliation should not be underestimated when one considers the reasons behind the reluctance of anybody to attend or accept the responsibility of the funeral.

In three cases (the cases of male interviewee-12 and female interviewees-35 and 37), because the victim was killed in secret and the victim's identity was at first unknown, judicial authorities buried the victim after an autopsy. In the remaining cases, the victim was buried properly and there was no discrimination against the victim.

In this part of the research, the author has discussed the profiles of defendants, victims and crimes in honour killing cases by comparing his findings with the previously available data and reflecting upon the differences found. In the next part, the author will analyse what was felt or experienced by the defendants, before and after the killing, in accordance with

their own words. Then the author will discuss the defendants' perception of honour, in accordance with their words and their answers to questions designed to test whether defendants tend to have similar perceptions about the concept of honour.



Part 2

THE DYNAMICS OF HONOUR KILLINGS AND THE DEFENDANTS'

EXPERIENCE

4.2.1 Rumour, suspicion, alienation, and instigating events

Published data suggests that, in many honour killing cases, the chain of events that culminated in the murder began with a mere suspicion or a rumour that a female relative has defied accepted cultural norms by being disobedient or behaving improperly (Faqr, 2001:70; Livaneli, 2006; Farac, 2006a:27,105; Hoyek et al; 2005: 131; CEWLA, 2005:151). If we leave aside the cases where the defendant himself learnt of the dishonourable conduct (interviewees-2, 3, 15), or due to nature of the event, the dishonourable conduct was suddenly revealed, such as learning of the pregnancy of a sister (interviewee-26) or daughter (interviewee-30), or learning that a sister (interviewee-34) or a daughter (interviewee-10) has run away from home to a lover, or hearing a confession of involvement in prostitution (interviewee-23), in the remaining cases the field work supports the published data and shows that the events that led to the murder were generally instigated or fuelled by a rumour that a female relative had defied accepted cultural norms by being disobedient or behaving improperly.

The ways in which defendants heard the rumours or gossip varies. Sometimes defendants heard the rumours themselves. Sometimes their friends or neighbours might tell them, as happened in the case of interviewees-6 and 28, and sometimes they might overhear people's conversation about rumours (interviewees-27 and 31). Rumours might give the defendant all explanation or proof that he has been looking for. The defendant may have noticed that the female relative has been behaving differently, and the rumour makes the defendant more suspicious and vigilant and fuels his concern that the female relative is involved in a dishonourable conduct.

For instance, interviewee-13 and 33 said:

‘I heard rumours that *my sister was on the bad way*.’⁵³ As of hearing that, I started to live like a dead person. My concern was whether other people knew about the rumours... The people she used to hang around with were known as tarts... This went on almost a year. One day, I saw her in front of a bakery. She used to wear a head scarf. But, I saw that she got her hair colour changed, wore a coloured contact lens, make-up and no head scarf. Seeing such changes for a woman who used to wear a head scarf made me sure that the rumours were true’. (Interviewee-13, male)

‘If you do not eat garlic, your mouth does not smell of garlic. There were rumours about her. In spite of rumours, she did not sit at her home, and her husband excuse my language was a sort of cuckold. One day, I was sitting in front of my butcher shop and two men were talking with each other and suddenly they stared at me. I overheard them saying “this butcher is the brother of that tart”. I had enough and it was the last straw.’ (Interviewee-33, male)

Interviewee-5, who killed his daughter, said:

‘It was one and a half year before the crime. My younger daughter and my wife started to distance themselves from my eldest daughter. Though my two daughters were working in the same building, they were not seeing each other even in the same building. The talk of my neighbours and their behaviour gave me the impression that there was a problem. In the beginning, I did not know why they behaved in such a way... My eldest daughter went to holiday with her husband and two sons aged 17 and 18. But, she came back alone in the middle of the holiday. Then, I saw her in a car. I followed them, she entered into a hotel. On the same day, I talked with her. She told me that she would get a divorce and she has actually seen three different men up to now. So, I learnt what was going on. But, I could not understand how my daughter changed from being a shy girl to being such a social character.’ (Interviewee-5, male)

⁵³ The original Turkish saying ‘*kötü yolda olmak, kötü yola düşmek*’ is translated as ‘someone is on the bad way’. But, it literally means that someone is either promiscuous or possibly involved in prostitution.

Interviewee-21, who killed his wife, said:

‘During a year before the murder, she started not to listen to me and not to take care of the kids.... There were phone calls. Whenever I asked who it was she used to say ‘it is my brother.’ Then, she became reluctant to have sex with me. I became vigilant and I followed her. When I was sure, I did it. I did it for my honour.’ (Interviewee-21, male)

Similarly, interviewee-23, whose account is fully provided in Appendix 3 said:

‘When we first saw our mum, her head was covered and she was wearing a scarf. Then, her clothes and appearance were changed. We even saw that she wore décolleté clothes on her body or clothes through which you can see her body. We were surprised. This sort of wearing started to disturb and upset us. When she talked on the phone, she used to call men “sweetheart or darling” .When she did these, she would generally use other room. There were disturbing and embarrassing conversations between her and men. First my brother and I thought to ourselves and said “maybe they are friends, yes they can be friends.” But, on the other hand, it gave us the hump and we became uneasy and suspicious’ (Interviewee-23, male).

These cases suggest that, when the defendants learned of the dishonourable behaviour, the defendants felt alienated from the victim, or the victim became increasingly alien to them. The author identifies this process as ‘alienation’. Among the defendants two distinct tendencies emerge. In the first, what was done by the victim is so unacceptable, unpredictable and shameful to the defendant that, even after the killing, being associated with the victim brings an unbearable burden for the defendant. Therefore, the defendant tends to disassociate himself from his victim by denying their very existence, or putting himself in a position to say that he never experienced or lived what he experienced, or that what he did was the right thing to do. This is a sort of neutralization technique, used by the defendants to cope with the possible condemnation. As explained by Sykes and Matza in the context of juvenile delinquency, denying the existence of the victim by transforming him into a person deserving injury is an example of this phenomenon (Sykes and Matza, 1957:668). So, by denying the existence of the victim or by transforming her into a wrong-doer, the defendant neutralises

and justifies his conduct. Additionally, by denying association and kinship with the victim, as if she is an alien and not part of his own flesh and blood, the defendant also manages the pain caused by killing a victim who is his own flesh and blood.

In the author's sample cases, a common way of neutralizing the killing, apart from denying the existence of victim, was an appeal to higher loyalties which refers to the defendant's cultural norms. As the defendant was in an acute dilemma, he resolved this dilemma by following his cultural norms and by violating the law. His cultural norms were higher authorities to follow. In the context of appealing to higher loyalties to neutralize a deviant act, the important point is that 'deviation from certain norms may occur not because the norms are rejected but because other norms, held to be more pressing or involving a higher loyalty, are accorded precedence' (Sykes and Matza, 1957:669). Interviewees reflected this point in their interviews by saying that:

I sacrificed myself for my family, and I would do it again if I met the same situation.' (Interviewee-13, male)

But for me, even if I go to the USA and have a master's degree, my view does not change. You cannot live without honour. So, if I met the same situation again, I would kill again.' (Interviewee-22, male)

If I met the same situation again I would kill again, because this is a shame of blood that always follows you.' (Interviewee-28, male)

Another technique of neutralizing the killing in the author's sample of cases appeared to involve 'a condemnation of the condemners' or, 'a rejection of the rejectors' (Sykes and Matza, 1957:668) where the defendant shifts the focus of attention from his own deviant acts to the motives and behaviour of those who disapprove of his violations. Rejectors may be described as lacking in honour or manliness, or dismissed as 'pimp' (interviewee- 11, 23), or 'cuckold and tramp' (interviewee- 13 and 19).

For instance, when the author continued to question female interviewee-39, and asked her why she did not go to the police instead of killing her rapist, she emphasized the feeling of

shame that she experienced, and she clearly rejected the author's implication that this matter could have been solved by going to the police. She said:

'You think that everything will be the same after this incident don't you? After this, how can I look again at the faces of my sons and daughter-in-law? It is not easy. It would have been better for me, if he had killed me. I wish he had killed me ...' (Interviewee-39, female).

Similarly, when the author persistently asked why the interviewee did not try harder to divorce, or at least to be a little more patient, interviewee-1 who killed his wife because of infidelity, explicitly rejected the author's suggestion, and condemned him, saying that he did not understand the concept of honour. He said:

'what would you do if you were in my position. This is honour that we are talking about, nothing else.

The murder I committed is not the same as other murders. It is different.' (Interviewee-1 male)

The neutralization techniques described here which must be set against the relationship between the defendant and the victim that led to the killing, are culturally shaped, and therefore different from the neutralization techniques described in recent criminological literature on violent men. This important issue is discussed further next.

First of all, though perspectives such as the 'interpretive psychoanalytic approach' (Gadd, 2000, 2002, 2003) have been deployed to explain men's violence towards women, as Gadd (2000) has argued, two theories have become particularly influential. Messerschmidt's 'structured action theory' (Messerschmidt, 1999) argues that men choose violence against women as 'a means of achieving masculine identity', while Hearn's 'discourses of violence' approach (Hearn, 1998) 'conceptualizes men's violence to women as a largely instrumental strategy of control' (Gadd, 2000:430). Therefore, when the issue of neutralization is discussed in homicide cases committed in the context of sexual intimacy involving women as victims and men as offender, either because of masculine identity or with the aim of controlling women's behaviour, it is reported that the single most important motive for murder is the inability of the male offender to accept the termination of a relationship. The separation, or

the threat of separation, and the feelings of jealousy and rivalry aroused by such a separation, prompt the violence and killing. So, a man claiming exclusive rights over his intimate partner was the defining characteristic of these cases (Polk, 1994a:28; Daly and Wilson, 1988:200; Hearn, 1998).

Polk reflects upon homicide cases committed in Victoria, Australia, between 1985 and 1989. In the narratives of the defendants when interrogated by the police soon after the murder, he found that the defendants expressed a sense of relief rather than remorse about what had happened. There was also an identified technique of neutralization in the narratives. In one case, the defendant who had history of violence with previous girlfriends, convinced himself, without foundation, that his girlfriend was sleeping with someone else. He killed her when she attempted to withdraw from the relationship. When asked by the police about what happened, he stated: 'I strangled the bitch, that is all.' When told she was dead, he stated further: 'Fucking good, the bitch deserved it...I wasn't going to let her hurt anyone again. I knew I had to do it... I just lost it, she wasn't going to hurt me or anyone else again.' (Polk, 1994a:33) For this defendant, and for many others in Polk's study, the victim was the wrong-doer, and her fate was a justifiable one. In these cases, despite some similarities with the author's findings, such as a tendency to put the victim in the position of wrong-doer, and the defendant having a sense of relief rather than remorse soon after the murder, the dynamics behind these killings, and the nature of the relationship between the defendant and the victim that led up to killing, were not shaped by the specific logic of honour culture which is sacred, and which equates the concept of life with the concept of honour. Secondly, in the cases analysed by Polk, in the context of sexual intimacy (Polk, 1994a:27-57), there was no reference in the narratives to suggest that the defendant himself felt shame, due to the conduct of his partner. In the majority of Polk's cases, there was careful planning, considerable violence prior to the homicide, and tracking of the movements of the victim which all suggest

that the defendant tried to determine where and when the victim will be vulnerable to attack (Polk, 1994a:30). This was not the case in the majority of the author's samples. Most importantly, the defendants did not deny the association and kinship that they had with the victim.

In other studies such as those by Hearn (1998), and Gadd (2003), when men talk about their violence against women, men typically minimize, excuse, deny, or justify the use of violence. They may also seek to exclude certain behaviour from the definition of violence. In this context, men mainly seek to neutralize their violence by minimising its effect and degree, saying 'it was only a little bit of bruise' (Gadd, 2003:347), 'I just hit her' or 'it was only a slap', or by removing their violent self and violent intention, suggesting that acting violently should be seen as out of character, and exceptional as a one-off event (Hearn, 1998). This is done literally by saying that 'I am not a violent person' or 'I am not a violent type' (Hearn, 1998: 110, 111). Men also seek to place responsibility elsewhere by claiming to have been sexually abused, in school or by parents (Hearn, 1998:122). When they use justification in terms of their violent act, men's justifications are constructed mainly as a response to something which has not been done by the woman, such as house work, child care, or not maintaining her appearance. Justification is not used as a response to something which has been done by the woman, such as 'nagging' (Hearn, 1998:126). However, apart from four cases these research studies were not based on men who had committed murder, but men who were repeatedly violent to their partners. When a degree of shame or embarrassment was expressed by these defendants in their stories, they said they felt ashamed of doing violence to women (Hearn, 1998:138; Gadd, 2003:349). This is quite different from honour killing defendants, where the defendant felt ashamed at the conduct of the female relative. In the research studies, men's violence to women is mainly conceptualized as an instrumental strategy of control, or as a means of reinforcing masculine identity. This stands in contrast

with the author's main arguments for at least some specific honour killing cases. As will be explained later in detail, in some honour killing cases the defendant's response emanates from his reduced, or partially undermined, choice-capabilities (Dressler, 1982: 461, 464, 467) rather than his desire to control the activity of women. Interviewees expressed this in different ways, but made it clear that their ability to make the right choice was undermined as a result of a chain of events that brought them to a point at which they could not take it any more, and killed. They might have done their best to prevent it, but they were ultimately unable to resist the pressure.

All this suggests strongly that the cases of defendants who are violent towards their female partners are generally prompted by different motives and dynamics than the concept of honour that the author has discussed. Though men indeed may choose violence against women as a means of reinforcing their masculine identity (Messerschmidt, 1999), or to control female behaviour (Hearn, 1998) these explanations provide only a very partial fit to the honour phenomenon that inspires honour killing. These accounts fail to accord with all the aspects of honour phenomenon that inspires honour killing which the author has discussed in Chapter 3. The author now turns to discuss the issue of alienation which he referred to briefly above.

The pattern of behaviour, in which the defendants felt alienated from the victim or the victim became increasingly alien to them, can be seen either implicitly or explicitly in the words of the defendants⁵⁴. For instance, as Appendix 3 shows, during the interview interviewee-23, who killed his mother and sister after hearing that they were involved in prostitution, used the word 'this' or 'that' many times when he referred to his mother, and when he referred to both his sister and mother together, he used the word 'these' or 'these two'. Moreover, in the interview he said:

⁵⁴ See also Hussein (2009) for the explicit sign of this pattern of behaviour reflected in the words of a defendant (Hussein, 2009:128, 129).

‘Now, I remember my mother in a bad way. I mean she reminds me of bad things... She was happy with her life, her life style and what she was doing... I do not call them mother and sister any more. I do not accept them that way any more. I do not even want to remember them. I presume that this event never took place, never happened. I presume that I never experienced or lived it. So, as soon as I am released, I am going to get her name erased from my birth certificate and identity card. I do not even want to deal with her maiden name or name in any procedure.’ (Interviewee-23, male)

Similarly, interviewee-28 also displayed features of alienation. For this defendant, it seems that for him to accept that his mother and his- half brother were having an affair was an unbearable burden. Therefore, during the interview he avoided using the word ‘mother’ or ‘brother’. During the interview, whenever he referred to his mother he preferred to use the word ‘this’ or ‘woman’, and whenever he referred to his half-brother he used the word ‘boy’. When he referred to both he used the word ‘these’. He described the affair between his mother and half-brother as ‘a shame of blood that always follows you’. He also said:

‘I used to say and think that this woman can not be my mother I still think the same. After experiencing this I do not call her mother’

Another example is provided by interviewee-30, who killed his wife and pregnant daughter (see Appendix 3). It seems that he did not experience the same degree of alienation as the interviewees-23 and 28 experienced, and in the interview, he continued to describe his victims as wife and daughter. But, he said:

‘Actually, because of what they did, I do not recall them as my wife and daughter. I do not accept them that way any more. I do not even want to remember them. Now, what they remind me of is bad things, bad things that they did.’ (Interviewee-30, male)

Extreme examples of the tendency for defendants not to want to be associated with their victim/s any more have also been seen in honour killings in the United Kingdom. However, in these cases, rather than verbally denying the existence of the association with *the immoral victim*, the defendants have preferred physically to destroy all close ties and association that they had with the person who was dishonourable and immoral. Thus, on 1 November 2006, in

Lancashire, Mohammad Riaz killed himself, his wife and four daughters by throwing petrol over them when they slept in their home. He was found by fire fighters in the bathroom. In hospital two days after the fire, he died of 65 per cent burns and smoke inhalation. The Westernised lifestyle of the victims, was regarded as dishonourable by Mohammad Riaz, was reported as the main reason behind this murder ('Honour kills', 2007, [TV documentary] BBC, BBC3, 4 December 2007). Similarly, Rahan Arshad killed his wife Uzma and three children at their home in Cheadle Hulme, Greater Manchester, as he suspected that his wife was having an affair. It was apparent that he was experiencing what the author has described as 'alienation syndrome' as well. For him, 'it wasn't right for a mother, and someone who came from Pakistan, to change the way she dressed all of a sudden' (Onal, 2008:13). He put himself in a position which allowed him to believe that what he did was the right thing to do, and that the victim was the wrong-doer. Therefore, he expressed no remorse for killing his wife. He said 'I do not regret killing this fucking bitch but my kids, my beautiful kids' ('Honour kills', 2007, [TV documentary] BBC, BBC3, 4 December 2007).

In a second distinct tendency of alienation, the defendant does not deny the existence of the victim and his relationship to the victim. After killing he still accepts that the victim is his daughter, mother, sister, and so on. But, as the change in the appearance and behaviour of his victim has been so great he finds it hard to believe that it is the same person that he has loved and known for so long. Such tendency is seen in the above mentioned case of interviewees-5, 13, and 21, and also in the case of interviewees- 7, 32 and 34.

In this context interviewee-32, who killed his paternal aunt, explained what he experienced as follows:

'After the offence, I thought about it. But I could not even understand how I did such a thing against a person that I grew up with. At the time of the offence, it did not seem to me that she was one of my relatives. I think as my uncle and I talked about her and her behaviour so long one day before the offence and my uncle's incitement about murder made me to think like that.' (Interviewee-32, male)

Alienation as experienced by the defendants in honour killing cases is also mentioned by Onal (2008). Onal analyses the stories of five prisoners, which are based on interviews conducted in different prisons. In her study, one of the defendants who killed his mother avoided calling his victim 'mother'; he did so only twice during the whole interview. This defendant also, whenever he talked about his mother's adultery, never used the word 'adultery' but he chose the word 'error' instead (Onal, 2008:70). Similarly, another defendant, who killed his sister, avoided calling his victim 'sister'; instead he called her 'this girl I killed' (Onal, 2008:237).

Whether the defendants experience alienation or not, in the end, the combination of suspicion, rumours and the victim's change in behaviour instigates a chain of events that ends with the murder. The author explained, above, that before killing, the defendants try to be sure that the rumours are true. This is the first factor which explains the length of time between learning of the dishonourable conduct and the murder.

This point is well illustrated by interviewee-23 who said:

'For 15 or 20 days during which our suspicions started and our uneasiness went on, we did not make any plan. But the idea of killing was always in our mind. I mean, if our suspicions were proved right and when we were sure about our suspicions, we were going to respond in the way that we responded. So, as long as our suspicions were proved right, our response was going to be the same and would not be changed. It was just a matter of time.'

In the cases of interviewees-20 and 31, the defendants could not confirm that the suspicions and rumours that they heard were right. But, their suspicions that their honour was stained by their unfaithful wives led them to kill their wives. Similarly, interviewees-13 and 33, just convinced themselves that the rumours were true, as explaining the changes in behaviour and appearance.

The author will now discuss other factors that have an impact on the chain of events, and the length of time between dishonour and the murder.

4. 2.2 Time span between the dishonour and the murder

As Figure 24 shows, there is a variable time span between the defendant's first learning the possibility of shame occasioned by the dishonourable conduct, and the murder. This time span varies from one day to seven years. The length of this time is dependent on the defendant's perception of honour, the point at which the defendant becomes sure about his suspicion, whether he will try to find other remedies and, finally, whether there is explicit or implicit pressure from the community, or extended family members, to restore family honour.⁵⁵

Logically, the more the defendants try to find other remedies, the longer the time until the murder, and visa versa. The research confirms that those defendants who have been most willing to try other remedies short of killing are those where the time between dishonour and murder is the longest. Thus, interviewees-8 and 22 tried other remedies, and waited for seven years, interviewee-19 tried to find other remedies during five years and female interviewee-38 tried to find other remedies for six years. For example interviewee-8 said:

'I was married. I had a car accident in 1993 and hospitalized for six months. After the accident I was having difficulty to move and I had an implant put into my leg. We were living in a village, and my wife was insisting on moving to the town. I was always refusing her. Because, the only thing I knew was farming; I could not do any job in the town. I always heard rumours that she had a lover. But I did not take the rumours seriously. This went on for a long time. At the end of year 2000, she ran away to her lover who was originally from our village but living in the town. I decided to divorce her and started the divorce process. But before divorce, she, along with her lover, came back to the village. Their house was opposite to mine. I was seeing what they were doing there.... Villagers used to come and say 'when are you going to solve this? What sort of a man are you? How do you accept this?' ...I used to not take them seriously. Some villagers used to congratulate my wife's lover and say 'Well done you got what you have always wanted.' Then, one day when her lover was present my wife said 'I am going to take everything from you. Look, this is my new man, come and take me from him if you can.' I took my rifle and started to shoot. She died and her lover was wounded.'

⁵⁵ The relevance of all these factors and time period in the defence of provocation will be discussed later when the author discusses the elements of the concept of provocation.

In another case, interviewee-22 said:

‘I shot my sister and her boy friend, who was actually my brother-in-law. I knew that they have been having sexual intercourse for the last seven years and my sister was not a virgin any more. But, he was refusing to marry my sister. This situation worsened my relationship with my wife. I said to my wife ‘tell your brother marry her. If he does not want to organise a wedding, it is ok. They might run away for a while and then get married. Tell him just marry.’ But, he did not take me seriously. I always hoped that they would get married. One day I saw him holding and kissing my sister in front of a stable. I lost my self control and shot them. My sister died and he was wounded.’

Though the research confirms that, as the time span extends, it is more usual to see a defendant who has been trying to resist pressure and find other remedies apart from killing; the research does not show that as the time span declines, it is usual to see a defendant who has been reluctant to pursue other remedies. Thus, in the cases of interviewees-26 and 30, the time span between the dishonour and the murder varies from two days to four days, but these defendants were not reluctant to find other remedies. Indeed, in their opinion, they tried other remedies but those remedies were limited in their cases. For instance, in the case of interviewee-26 who killed the man who got his sister pregnant and who later killed his pregnant sister said:

‘One day, my sister felt pain in her belly. We took her to the hospital. The doctor told my mother that she was pregnant and abortion was not an option. I could not believe what I heard; she was only 14 years old. She did not know anything about sex. After hearing this, I forced my sister to tell us what had happened. She confessed that she was raped by one of our distant relatives who was actually married and had three kids. All my life was destroyed there. A person lives for his honour. So, you might commit suicide or move. Either you give the girl to the man or you kill both. If the man is single, you can arrange a proper wedding and marriage. You can set up a business for him after marriage; you can do everything to save your honour. But, he was not single, and in our community there is no tradition of having more than one wife. My father, mother and I talked about this issue, but we could not reach an agreement on what to do. So, I decided to shoot both of them. It happened two days after learning that my sister was pregnant.’

Similarly, it appears from the account of interviewee-30 that he tried his best to prevent the killing by asking the police and prosecution services to find the man who raped his daughter. He even attempted suicide and was hospitalized. But, he was ultimately unable to resist the shame brought by his daughter's pregnancy, and could not find a way to leave the environment where the villagers distanced themselves from him and his family.

It seems that, in cases where the length of time between the dishonour and the murder is less than a month, the defendants' perception of the meaning of honour has affected his decision on how to act, and what his options are, and has therefore affected the length of time between learning of the possible dishonourable conduct and the murder. Thus, in four cases out of a total of nine (the cases of interviewees-9,10,14,21,23,26,27,30,33) where the length of time between learning of the dishonour, and the murder is a month or less, the defendants spoke in their interviews about honour by emphasizing that honour is something sacred, and more precious to them than even their life.

For instance, in the cases of interviewees-26 and 30, the defendants voiced their opinion about the concept of honour as follows:

'A person lives for his honour and his dignity. Honour is something that holds the family and people together. It enables people to have a decent life and you live for your honour.' (Interviewee-26, male)

'People live for their honour. Your honour is your pride, your glory and praise. You can be without water or food. You can live on without water or food but you can not live on without honour.' (Interviewee-30, male)

Similarly, in other cases defendants said:

'Honour is the most precious thing in this world and in the eyes of God. It is priceless. The reward of maintaining honour is also given by God.' (Interviewee-14, male)

'Honour is a person's pride and praise. It means everything for a person. Without it nothing can happen, nothing has a meaning. It would be better for a person to die rather than being dishonoured. Without honour death would be better than life. Other people may think differently. But, this is what I think about honour.' (Interviewee-21, male)

In other cases, where the length of time between the dishonour and the murder was less than a month, defendants reflected upon their perception of honour and its importance for them as follows:

‘After hearing this, I just thought ‘I could not live with this shame.’ (Interviewee-9, male)

‘After learning that my daughter ran away, I wandered aimlessly and walked like a wild goose during five days. Neither my wife nor I could sleep. It sounded as if I was having a heart attack.’ (Interviewee-10, male)

‘After hearing what my sister-in-law did to my brother, I did it. If I did not do it, maybe my brother would do it. I did not think too much about it. I just thought, ‘my family could not live with this shame’. If I did not do it, I could not walk with my head held high among people... We were living very close to my sister-in-law. So, it would be impossible to save or distance ourselves from her. If I did not do it, the birth family of my sister-in-law would say, “They could not protect their honour.”’ (Interviewee-27, male)

Up to now the author has explained three factors that might have an impact on the length of time between the dishonour and the murder and what took place during this time span. The fourth factor that has an impact on the length of time between the dishonour and the murder is whether there is an explicit or implicit pressure from the community or extended family members to restore family honour. Logically, the more the defendants are pressurised, the shorter the likely time span between the dishonour and the murder. However, this is not always true. In seven cases out of a total of nine where the length of time between the dishonour and the murder is a month or less, interviewees-9, 10, 14, 21, 23, 26, 27 committed murder despite the fact that there was no explicit or implicit pressure from the community or extended family members to restore family honour. In these cases, it was the defendant’s perception of honour, and the proving of their suspicion, which mainly affected their decision about how to act and when to act. Despite the fact that there was no pressure, the reasons behind the defendant’s retaliation rested upon the suspicion or fear that the public or

community sooner or later is going to learn that he has been dishonoured and eventually he is going to be forced to recognise that he has been dishonoured.

The final factor that might have an impact on the length of time between learning of the dishonour and the murder is where the defendants live at the time of the murder. In cases where the length of time between the dishonour and the murder is a month or less, five cases out of a total of nine were committed by those who were living in a village at the time of the murder. However, though they are villagers, interviewees-18 and 22 waited for seven years, interviewee-15 waited for one and a half years and finally interviewee-8 waited for two months before acting against the dishonourable conduct. Additionally interviewee-22 mentioned that he also had a house in a city and therefore, he was not permanently living in his village. Given that the total number of the defendants who were living in a village at the time of the murder was nine (see Figures 15.2a., and 15.2c. in Appendix 5), it seems that defendants who live in a village show a tendency to act against dishonourable conduct more quickly than other defendants who live in a town or a city.

The author turns now to discuss whether the defendants experienced implicit or explicit pressure to restore honour before they committed the offence and what they said concerning the availability of other remedies, apart from killing, in their cases.

4.2.3 Pressure, the role of the intermediary and the attitude after the offence

In honour killing cases there might be an explicit or implicit pressure on the defendant from the community, or extended family members, to restore family honour (Kevorkian, 2003:595; Sev'er and Yurdakul, 1999:986; Abou-Zeid, 1966:253; Hoyek et al: 2005:131; Yirmibesoglu, 2007: 57, 124; Onal, 2008; Jafri, 2008: 78, 85; Husseini, 2009: 10, 14, 16, 151; Van Eck 2003:185). A range of expressions, words, and threats can be used to say that killing a woman is easy and that her death would be a good solution. Indeed, as happened in the case of *Alican*

*Yılmaz*⁵⁶, the degree of pressure and threat might amount to a form of duress, in which the defendant has to make a choice- either he kills the female relative to restore honour, or he is killed.

The field work shows that, in 16 cases out of a total of 39, defendants mentioned that they had experienced explicit or implicit pressure from the community or extended family members to restore the family honour. In the remaining cases, in 11 the defendants did not experience any pressure and the defendant's own perception of honour and the need to prove their suspicion mainly affected their decision about how to act and when to act. In four cases there was a quarrel between the victim and the defendant before the killing, which was described as 'push comes to shove', and in six cases there was a particular triggering event, such as seeing a text message (interviewee-11), seeing the victim kissing her boy friend in front of a stable (interviewee-22), over hearing a phone call from a boy friend (interviewee-1), witnessing his child being maltreated and abused (interviewee-15), hearing from the mother a confession of involvement in prostitution (interviewee-23), or witnessing that the mother had sexual intercourse with a man and later hearing compliments and kind words from the mother about the same man and expressing a desire to return to village where the man lives (interviewee-3). Finally, in two cases, female interviewee-35, who committed infanticide for cause of honour, and interviewee-28, who killed his mother and half-brother because they had an affair, committed murder because they believed that killing was the only way to solve their problem.

Without in any way seeking to justify what they did, the author will now summarise what the defendants told him of their experience before the offence, and will reflect on their narratives in accordance with their own words.

⁵⁶ *Ali Can Yılmaz* was killed by the family of his sister's husband, because he did not kill his sister and did not carry out the cultural duty imposed on him. '*Aile kızlarını töreye kurban vermeyince abisini vurdular*' [As the family did not kill their daughter for honour, they killed their son instead], (2007, March 2), *Hürriyet* [internet].

‘My father-in-law asked me to bring his daughter, that was my wife’s half-sister, to where we lived. This was because her husband asked my father-in-law to take her back and said ‘she is on the bad way and immoral’.... After taking my half -sister-in-law to my house, as none of her relatives in her birth family accepted her, everybody started to say ‘If I were you, I would not accept her, she is immoral.’ (Interviewee-15, male)

‘After my sister ran away, my father could not go out. He even could not go to his own brother’s house. If you are involved in something dishonourable, in my community people stare at you in anger. Once, I even heard that without mentioning my name, but by implying me, they said ‘There are so many dishonourable people live in this world. Could you imagine? Their girl runs away to a man, involves in a dishonourable conduct and when she comes back, they do not do anything for this bitch.’ (Interviewee-17, male)

‘My daughter used to run away. I used to spend most of my time to look for my daughter and bring her back. I used to go to the train station at night, where youngsters hung around, to look for my daughter. But many people, including my own brothers, did not believe me. They were accusing me of forcing my daughters into prostitution. They used to say ‘You found a way to earn easy money, soon you will be a patron’. When my daughter was at home early this time they would say ‘Today, shift is over early. If it goes like that you will set up your own business.’ At nights, even after midnight, they would shout ‘You are running a house, you are doing this business; you are dishonourable. Your daughter is a slut.’ (Interviewee-16, male)

‘After my wife came back to the village with her lover, villagers used to come and say ‘when are you going to solve this? What sort of a man are you? How do you accept this?’ (Interviewee-18, male)

‘Rumours that my sister was hanging around with men increased. My friends started to raise this issue and mentioned her behaviour. When they mentioned it, sometimes I argued with them; sometimes I left.’ (Interviewee-19, male)

‘My father was a key figure in my neighbourhood and community. He was better known than my uncle. So, the name of my cousin was always associated with us rather than with her birth family. Whenever

people mentioned her name, she was mentioned as the cousin of this, not the daughter of that, so rumours and talk about her always had an adverse impact on us... I felt that people's attitude and thought about me and my family changed. At the beginning, my uncle, as a devout Muslim and *hacı*⁵⁷, was against the idea of killing. He had cancer and he shifted his opinion in his last days. He told me how much he suffered from what his daughter did.' (Interviewee-29, male)

'After hearing rumours about my wife's infidelity, even my best friends did not want to be seen together with me. My friends that I used to play card games with used to leave the coffee shop when I entered. Except for my father and mother, people used to describe my wife as dirt and dirty.' (Interviewee-2, male)

'In my village there were sixty houses and after my unsuccessful attempt to commit suicide, only two individuals came to my home to check on me. One of them was my neighbour who took me to the hospital and the other one was his uncle. But they kept their visit short. They kept their visit so short that they did not even drink a cup of tea. In such situation as an illness or an operation, villagers usually visit each other and check on those who are ill or do not feel well. But, as the villagers knew what was going on in my home, they did not visit me. Actually I could not have conversation with any villager apart from those who visited me. Even my wife kept telling me that we did not have any right to go out and look at people's faces.' (Interviewee-30, male)

'My father used to wear a hat. After rumours about my sister, somebody from our neighbourhood told my father that he could not wear a hat any more, and his hat was bent as his head could not carry it. This is because, in my neighbourhood, you can wear a hat as long as you have a good family. So, if you do not have a good family, you can not wear a hat. I remember on one occasion I tried to help a boy who fell over after a driver hit and ran. He said 'do not touch me, you are dishonourable, your sister is dishonourable too.' For six or seven years, my family and I suffered from her faults and we had to deal with insults and mistreatment coming from people. Even my girl friends stopped talking with me, they did not talk with me as they used to. When I tried to talk with them, they insisted that we should not be seen together. If we are seen together people will call them dishonourable too. They said 'your sister is

⁵⁷ '*Hacı*' is a Turkish word and title used for English title of hajji that is used for a Muslim who has made a hajj.

involved in dishonourable conduct and she is dishonourable. Our family get angry, if they see us together.’ (Interviewee-37, female)

‘As he continued to sexually harass me, people started to treat me differently and they started to treat me as if I was a tart and infidel to my husband; and it was me who should be blamed for what had happened. People did not believe that I was raped. I felt as if I was excluded...’ (Interviewee-36, female)

‘When my two paternal aunts started to live together after leaving their husbands, my paternal uncles living in our home town started to send us messages and question the situation. They started to ask ‘what are you doing there?’ ‘What are you waiting for, if you can not finish this, we will come and do it?’ After hearing this, my youngest uncle said ‘let’s clean this up and solve the problem. Because of them, our family members are fighting with each other. Then, we can walk with our heads held high among people.’ (Interviewee-32, male)

‘My husband was an irresponsible person. He was a sort of alcoholic and not brave at all...My former employer was always after me... I had to deal with that man all on my own for a long time. We even thought to move from our town, because of that man. But there was no way to save ourselves from people’s gossip that I had an affair with him... Because of his continuous harassment, my mother-in-law sometimes was staying with me to protect me. I could not sleep during a year before killing him. I always prayed to God either to kill me, or him, that would save me and I always kept a box of rat poison at my home. If he touched me, I was going to commit suicide.’ (Interviewee-38, female)

‘I was a green grocer... So, many people knew me... When my sister started to hang around with people who were known as tarts, rumours went round that my sister was a tart too. They started to treat me and stare at me as if I was encouraging her to be a tart. They began to stop greeting me. Because of rumours, we moved. Then, her husband left her and went back to his first wife. I hoped that she would change her behaviour but, she did not.’ (Interviewee-4, male)

In the opinion of the author, apart from interviewees-30 and 37, whose accounts were fully provided in Appendix 3, interviewees-34 and 7 seem to be those who felt pressure the most.

For instance interviewee-34 said:

‘Ten months passed between my sisters’ running away and the killing. During this period, many things happened to me and my family. First of all, because of the shame brought by my sisters, my father sold his house in the city and moved to a town. We spent most of our savings to find my sisters. This worsened the situation. Everybody started to accuse each other of what had happened. The relationship between my father and my mother worsened. My father accused my mother of not being a mother, and not taking care of my sisters, and my mother started to accuse my father of not being a father. After such quarrels, my father sent my mother to her father’s house. They were about to divorce. After seeing my mother in her father house, the brother of my mother, who is also my father-in-law, took my wife from me. But I took her back, she ran back to me...People began to stop greeting me. Then, I started to go out secretly. I used to check the corner of every street whether there was anybody that I knew. What I felt most was shame. I still feel shame... On one occasion, I remember there was a fight between me and one of my cousins in a construction side where we worked. After the fight I was told that he said ‘he can not dare to use his strength against his sisters, but he is using it against me.’ If he had said such words at my face during our fight, I would have killed him there. People here do not pay attention to what they say, especially during a fight. If they feel that they can question your honour, or your honour is in question, they try to take advantage of this point to find support among people. They say ‘Look! He did not do anything to his sisters and he thinks that he is a man! No way. Go save your honour first.’

Similarly interviewee-7 reflected upon what he felt and experienced as follows:

‘There were rumours about my mother. Everybody was telling me different things about my mother. I was told that my mother was wearing short clothes and no longer any head scarf; she was seen with somebody who was a pimp; my mother was on the game; she left the village again and so on...Especially my cousins and half-brothers were doing that. I talked them and said ‘what is going on? People began to stop greeting me, people who used to talk with me stopped talking; they are making excuses for not being seen together with me. I want to walk with my head held high among people. You are always calling me. What do you want me to do? Do you want me to kill her or kill myself?’ This time they said ‘no, just ask your father to divorce her’. But, then they said ‘those days were in the past. You can not find any more such brave men who kill their relatives if they behave like that.’...

One day I came back again from Istanbul to my village. My cousins were going to take me from the main road and give a lift into the village. They used to do that. The road from main road to the village takes two to three hours on foot. I got off the bus. But, nobody was waiting for me there. It was summer and I had a huge amount of luggage. My three cousins passed on the main road in their cars; but, they acted as if they did not see me. Other people from our village did not give me a lift either. Just because of my mother, they did not give me a lift. They used to give me a lift and they liked me. I walked the whole road on foot. On that road, I thought that I was the most dishonourable person around and I decided. I was going to do something. My thoughts were to kill myself, or kill my mother. Or kill one of my half-brothers, or cousins, who put me in this situation.'

In such an environment it is very difficult to resist this kind of pressure, and it is not as easy as many people think to say 'it is none of your business'. Reacting against such pressure depends on the defendant's social status and the status of people who are questioning the defendant's honour. As reflected by a father in Kevorkian's study:

'[I]t is hard to fight a whole society when they all think that killing is the best method of dealing with such cases... [I]f your people/your collective lose their sanity, your wisdom and reason won't do you any good.' (Kevorkian, 2003: 595)

One of the main reasons behind such pressure is the belief that killing sets an example and teaches a lesson to others. By means of killing, the defendants aim to prevent others from being disobedient, behaving improperly and violating cultural norms. This function of the killing was expressed by interviewee-13. He said:

'My sister stained our honour, and died. You need to apply this rule. Otherwise you encourage other females in your family to behave like that. Your behaviour should teach a lesson to your female relatives. Otherwise you can not prevent your other female relatives from behaving dishonourably. But, when you are in prison, believing that you have cleansed your honour, you might be dishonourable again when you are released. Your female relatives might involve in a dishonourable conduct therefore your honour might be stained again. There is no guarantee.' (Interviewee-13, male)

Moreover, in such an environment it is very difficult for anybody to act as an intermediary, and to intervene to prevent the commission of the offence. In some cases, the silence of the

community and people is so obvious that it is impossible not to notice. For instance, interviewee-30 was left alone and his fellow villagers disassociated themselves from him and his family. Interviewee-28 was first informed by Turkish community members about the affair between his mother and half-brother. Later, when he asked them to find a gun, nobody questioned what he was going to do with the gun. Interviewee-7 was pressurised by his cousins and half-brothers, and by almost all the village, and his sisters were bullied when they went out of the village to work as seasonal farm workers. Only one villager wisely advised him that he had to take his mother and leave the village. Otherwise, this would end up a tragic event that they witnessed before. After taking his wife's half-sister to his house, as nobody from her birth family would accept her, interviewee-12 was warned by his wife, as if she knew that inevitably he would have to take the responsibility of her half-sister, and be pressurised to kill her.

People in the community do not want to intervene or to break silence. They keep their nose out of the problem; as it is a family's business. The paradox here is that it is the same community that is, on the one hand, so willing to spread rumours about the next door's daughter but, on the other hand, so reluctant to intervene in what will eventually happen to the next door's daughter. The reason behind this paradox to some extent is explained by interviewees 22 and 23. Interviewee-23 said:

'Nobody wants to say anything about your honour to your face. Nobody wants to talk about dishonour. Even if he dares to talk, it is obvious and inevitable how it will end up. Nobody wants to talk about it, because nobody wants to be a cause of it. Everybody prefers that you learn about dishonour on your own. Suppose that he dared to talk about dishonourable conduct that a member of your family was involved in, what would happen if you do not believe him? This time, you will need to retaliate against him. So, you might have to kill him, as he puts his finger on your honour. People do not dare to talk just in case you might not believe what is going to be said, and you might retaliate against them. So, they watch their mouth.' (Interviewee-23, male)

The field work shows that in only thirteen cases the defendant mentioned that they dared to speak with somebody, or somebody dared to speak with them to ask them to stay away from the idea of killing, and to act wisely. Those wise people in seven cases were friends (interviewees-6,10,11,19,27,29,34), in one case an eldest daughter (interviewee-16), in two cases where the victim was a wife, the defendant's mother and father (interviewees-2 and 8), in one case the defendant's mother and sister (interviewee-13), in one case the defendant's mother (interviewee-15), and finally, in one case a villager (interviewee-7). In the remaining cases the defendants did not talk with anybody else, or nobody dared to talk with them about acting wisely.

When it comes to people's attitude towards the defendants in their community after the offence, in 16 cases the defendants mentioned in interview that they experienced an affirmative attitude from the community or extended family members, and their behaviour either in the form of words or actions, was supported by them after the offence.

In this context, interviewees-11, 14 18 and 25 said that, after the offence, people condoned the defendant's behaviour by saying 'you need to be so brave to act like that; not everybody can kill for his honour'. Some defendants said that people from their hometown or the community supported them in prison by sending money and visiting them, or asking how they are (interviewees-2, 7, 16 and 28). Some defendants said that their visitors mentioned that they had done what was required, and had cleansed their honour (interviewees-1, 12, 17, 22, 24, 26, 37). Finally, interviewee-23 said that after the offence he was treated well with privileges by inmates in prison. His inmates helped him a lot, and they offered him cigarettes, tea, etc. Interviewee-7 who killed his mother who was involved in prostitution said:

'Everybody in my village was expecting the murder; they knew that it was going to happen. After the offence, they started to write me letters and send money and visit me. Later, when I was granted permission to visit my village, even people that I do not know approached me and said 'well done,

you did right thing.’ But, two or three years later everything stopped. Everything was smooth, as if nothing had happened; now there is no talk about me or my mother.’

Similarly interviewee-28, who killed his mother and half-brother in a European country where Turkish immigrant population is high, said:

‘I have stayed in the prison of *that* country for five years. After the offence, they started to visit me and send me money. Families who used to say to their children, ‘keep away from him, he is a trouble maker’ started to suggest their children should follow my example. Why? Because, I cleansed my family honour. When they visited me, almost all my relatives and friends said ‘well done you did right thing, you cleansed your honour.’ Now, my father sends money, his friends send money, all my needs are immediately met. Here the inmates see me differently, and regard me as a real murderer, though they have committed more crime and murder than me. For instance, when they see a gun on TV they say ‘what do you think, mate, is it a good gun?’ I do not know anything about guns. Indeed, I am still having difficulty realising and understanding why I am in prison. So, for me all of these are very strange.’

In three cases, the defendants (interviewees-6, 27, 31) said that after the offence people did not approve of their behaviour and said that killing had not been the right thing to do. Finally, in three cases, the defendants (interviewees-19, 29, 34) said that people expressed mixed opinions, some of them supporting what the defendant did and some of them condemning it. In the remaining cases the participants said that they did not experience either affirmative or negative attitude from the community or extended family members after the offence.

The author has discussed what the defendants felt and experienced before the offence, and people’s attitude towards them in their community before and after the offence. We now examine what the defendants think about whether there were any remedies other than killing, and whether the killing could possibly have been prevented.

4.2.4 Other remedies

Was there an alternative to the killing? Alternative remedies vary, depending on the nature of the dishonour and what might be done to transform the situation from shameful and dishonourable to tolerable and acceptable. All possible remedies suggested by the defendants were either aimed to conceal what had happened, or to prevent other people from hearing what had happened, or giving the impression that the rumours were untrue. When asked in interview about hypothetical infanticide cases, where a woman became pregnant after being raped, or after having consensual sexual intercourse with a man who had promised to marry her but did not do so, or after having an incestuous relationship, where she later killed her own child for cause of honour, more than 80 per cent of the participants did not find these infanticides to be acceptable (see Figures from 65 to 70 in Appendix 5). There were alternatives suggested to killing in such cases designed to cover up what had happened, such as giving the baby to an orphanage, or for adoption, or leaving the baby on the doorstep of a mosque where it can be seen and taken care of by somebody after prayer.

Other writers have found a willingness to consider alternatives, such as having an abortion or giving the baby to an orphanage (Yirmibesoglu, 2007:106; Onal, 2008: 153-154; Husseini, 2009:1), moving away from the area (Onal, 2008:73,145; Husseini, 2009:189; Van Eck, 2003:173,239); or moving abroad where people do not know the family's secret, and where a groom might be found who would disregard what had happened (Yirmibesoglu, 2007:199), or committing suicide (Van Eck, 2003:163), seeking help from the authorities (Van Eck, 2003:173), arranging a marriage with the rapist (Onal, 2008:190; Husseini, 2009:47; Van Eck, 2003:158), arranging a marriage for a non-virgin with a much older man (Onal, 2008: 119; Van Eck, 2003:158), or a man willing to take her as a second wife (Van Eck, 2003:158), or asking for compensation or for a girl in exchange for the girl whose honour was sullied (Yirmibesoglu, 2007:126; Van Eck, 2003:171,172), or encouraging the

girl to commit suicide (Kevorkian, 2003:596) have all been identified as alternatives to committing murder but otherwise concealing the social shame.

The field work found several cases where the defendant killed his wife and the defendants said that everything would have been different if they had made more effort to divorce. Divorce, or separation, was the only other remedy in their case that could have possibly prevented the killing. They said:

‘If my wife had said ‘I do not want you any more’ I would have taken my kids and left her. But, she did not say this. I had kids and hoped that the situation would improve somehow. But it did not.’
(Interviewee-15, male)

‘I accepted to divorce and I wanted to do that. I even sent her to her father’s house for a while. But, her family asked us to try to keep our marriage. She continued to betray me and be unfaithful. So, it happened.’ (Interviewee-1, male)

‘Except divorce, I did not try anything that could have prevented the killing. I could not leave the place that I lived. My kids and my job were there. I could not think of anything else.’ (Interviewee-2, male)

In cases of pregnancy out of wedlock which was the result of a rape, the participants mentioned that an abortion, or arranging a marriage with the rapist, could have been a remedy. But, in their case either it was too late for an abortion, or the rapist was married. They said:

‘My sister was pregnant and abortion was not an option. All my life was destroyed there... A person lives for his honour. So, you might commit suicide, or move. Either you give the girl to the man, or you kill them both. If the man is single, you can arrange a proper wedding and marriage. You can set up a business for him after marriage; you can do everything to save your honour. But, he was not single, and in our community there is no tradition of having more than one wife.’ (Interviewee-26, male)

‘Despite the fact that my wife learnt about the pregnancy when my daughter was two months pregnant, she did not tell me anything about it. So, when my wife told me about the pregnancy, my daughter was

actually seven or eight months pregnant. If she had told me about the pregnancy earlier, I could have arranged an abortion for my daughter and closed this matter like that'. (Interviewee-30, male)

In one case of pregnancy out of wedlock which was the result of a consensual relationship, female interviewee-35 said that giving the baby to an orphanage soon after birth or arranging an adoption could have been a remedy in her case.

In those cases where the defendants killed a female relative other than their wife, moving to another place was mentioned as a remedy that could possibly have prevented the killing. There were also some husbands who killed their wives who mentioned that moving to another place could have possibly have prevented the killing. (Interviewees-9, 18, 21)

'My sister and mother acted as intermediaries and asked my elder sister to move. If she had moved, it could have saved everybody. But, she did not move. She did not take my warnings seriously. I did not talk with her husband because it was the family's business and I did not want him to know the family's secret.' (Interviewee-13, male)

'Then, I decided to move. I started to pack. But my daughter did not want to come with me. If I had killed myself, that would not have solved anything. My daughter would continue to hang around with those men and sleep with men.' (Interviewee-16, male)

'If my wife and her lover had not come back to the village, or I had left the village, it could have been prevented. But, I could not afford to move. The only thing I knew was farming; I could not do any job in the town.' (Interviewee-18, male)

'Now, the living conditions of my children are very bad. After seeing this, I wish I could leave the village by taking my kids.' (Interviewee-21, male)

'If we had not lived in the same city, with my cousin, I could have said "it is none of my business".' (Interviewee-29, male)

‘Here, if you met such a situation, either you would send the woman to her birth family or you would do what is required. If you can move, you can also prevent it. If you can not afford to move, it is a disaster.’ (Interviewee-33, male)

‘We tried to leave, and sell our land and house. But nobody bought it. We did not have relatives in any other places and we did not have sufficient income or means to live in other places. Many times my father said to my sister ‘I give you money go and find a shelter house, as long as you stay here we can not walk with our head held high among people and we can not look at face of the people’. But she did not listen to him and did not go.’ (Interviewee-37, female)

‘If you are living in a rural area or village, you have limited options. If you do not have kids from your marriage and if you can leave the village, you can save yourself and prevent it. Otherwise, if you continue to stay there, you can not resist.’ (Interviewee-9, male)

In cases where the victim was single, arranging a marriage with the rapist was mentioned as a remedy that could have prevented killing. As seen above, interviewee-26 said that if the rapist was a single man, they could have asked him to marry his sister and that could have solved the problem. Interviewee-22 also believed that if his brother-in-law, who had been having an affair with his sister for seven years, had married his sister, it could have solved the problem. Similarly, interviewee-17 and interviewee-12 mentioned that arranging a marriage for their non-virgin relatives, with a person who was willing to cover up and disregard what had happened, could have been a remedy. The possibility of marriage, and whether it could work as a remedy was viewed differently. For instance, interviewee-23, who killed his mother, said:

‘If your wife behaves dishonourably, you divorce her. Nevertheless, she is an alien. She is a daughter of somebody else. But, if it is your sister or mother doing this, there is nothing to do *[apart from killing]*. Because there is a blood tie; I mean, otherwise, I am going to be her son, and she is going to be my mother until the end of my life.’

However, interviewee-22 said:

‘If it is your wife who behaves dishonourably you kill. But, if it is your sister you may get her married or you might find different remedies.’

In two cases, interviewee-4 and 25 said that changing behaviour in a way that could enable the defendant to walk with his head held high among people could have changed everything.

In only one case, where the defendant's sisters ran away to two men and got married, the defendant said that there were a few culturally accepted rituals and responses in his case that could have solved the problem. He said:

'The family of the grooms should have paid compensation for the damage that they caused, by giving a pistol and money, and then organised a proper wedding, or they should have given two girls for the exchange of my sisters. These could have solved everything.' (Interviewee-34, male)

It can be seen from the accounts of the defendants that different remedies might have been found for different situations. However, as pointed out by Kevorkian, these are not really remedies at all. Her view is that, in situations where a woman is forced to live in exile away from her neighbourhood or move, or is forced to marry her rapist, or an old man, or is forced to be a second wife of someone willing to conceal that she is a non-virgin or that she was raped and so on, women are being put in a position where their options are as bad as death. Therefore, such options just create another form of 'femicide' instead of providing solutions (Kevorkian, 2003:584).

In all other cases in the sample defendants mentioned that the situation that they met did not leave them any choice apart from killing, or that choices were very limited. For instance, interviewee-23, who, along with his brother, killed his mother and sister after hearing that they were involved in prostitution, said:

'Ninety percent of people who grew up in my home town and my neighbourhood would do the same. Of course there are people who would not do what we did. But, they condemn or disapprove this behaviour; they would leave or move from where they live. If any person does these things, I do not blame him..I would say he is right. Otherwise, I call him pimp.'

Similarly interviewee-28, who killed his mother and half-brother who were having an affair, said:

‘Even if they had moved to somewhere else, I would have followed and found them. I would have done the same thing, because this is a shame of blood that always follows you. I used to say and think that this woman can not be my mother. I still think the same. After experiencing this I do not call her mother’

Interviewee-7, who killed his mother who was involved in prostitution said:

‘After a long conversation and hearing from her that she is happy with what she is doing and understanding that she will continue to do so, I erased all memories of my mother from my mind. But I always hesitated. First I thought, ‘I talked with her. But, she wants to do that, she wants to continue to behave like that so ‘what can I do any more?’ In the next breath I said ‘this is my mum, the person who brought me into this world, how can I do that?’

Finally, interviewee-30 said:

‘I did not try or think about moving. Even if I had moved to Istanbul, they would have eventually been killed. Because this matter can only be solved like that. Even if I had moved, this matter only can be solved like that. But I did not move.’

It can be seen from these accounts that many defendants are not happy at all with what they did, and indeed some defendants showed remorse immediately after committing the murder. The majority of defendants asserted strongly that they tried their best to prevent killing, or that they did not have a choice. So, they did what they had to do, and carried out the duty imposed on their shoulders by the community.

4. 2.5 Admitting the crime, behaviour patterns shown during and after the crime

As far as admitting the crime to the police is concerned, published data indicates that the usual behaviour pattern shown by the attacker soon after the incident is to accept full responsibility for the crime without hesitation. Thus, Van Eck (2003), Khafagy (2005) and Hussein (2009) all report that in many cases the murderer quickly admits the crime to the police (Van Eck, 2003: 76, 230; Khafagy, 2005:4; Hussein, 2009: 46, 68). Similarly, Kressel (1981) reports ‘in almost half the incidents the attackers turned themselves in to the police, or waited until the police arrived at the scene’ (Kressel, 1981:147).

Similarly, the author's field work shows that out of 39 cases, 12 defendants, ten male and two female, immediately turned themselves in to the police or gendarmerie by going to the station. The time span between the killing and turning themselves in to the authorities varied from 15 minutes to a couple of hours, the longer period being used to change clothes and walk to the station. In this context, it is widely understood that an honourable man should not seek to escape from reality, and should always speak the truth even if it leads to his death. Indeed, after committing a murder for honour, which has washed away the shame and left nothing to be ashamed of, it would be shameful not to speak the truth or try to escape from justice. The behaviour patterns exhibited here appear to be shaped by cultural norms.

The field work shows that if defendants could not find strength to turn themselves in to the authorities in person, they either asked for assistance from a trustworthy person to notify the police (interviewees-9, 10, 15, 19), or they called the police or gendarmerie to collect them from the crime scene or from a point where they were waiting (interviewees-21, 26, 27, 30). The field work also shows that interviewees-10, 19, 21 and 30 were distressed and crying when they were waiting for the police to arrive.

In four cases the defendants left the crime scene without notifying the police or asking somebody else to do so. But they were all arrested by the authorities soon after the crime. In the case of interviewee-18, the crime scene was very close to his home, and there were eyewitnesses. The defendant left the crime scene and went home. When the gendarmerie came and arrested him, he was drinking a cup of tea. Interviewee-25 killed his sister at their house and went out of the house shouting 'I cleansed my honour'. People gathered, and police arrested him in front of the house. In the case of interviewee-7, the defendant killed his mother before dawn and carried the corpse out from the house into the middle of the street, and passers-by notified the gendarmerie. Finally, in the case of interviewee-8, the neighbours

of the victim notified the police after the defendant had left the crime scene. He was arrested at his own house.

In three cases the defendants turned themselves in to the police sometime later after killing. For instance, as Appendix 3 shows, interviewee-23, along with his younger brother, killed his mother and sister and then travelled from Istanbul to their hometown to tell their father about what had happened and three days after the killing the father handed him over to the police. In another case, interviewee-22 killed his sister and, at the same time, attempted to murder his sister's boy friend, who was actually his brother-in-law, and who had sexual intercourse with his virgin sister. In that case, the defendant did not turn himself in to the gendarmerie immediately after the killing. He said:

‘After the killing I hid during a week. During this time sometimes I thought ‘I could not kill him and complete the job’ and sometimes I thought ‘I could not make enough effort to arrange the marriage that could have solved everything’. There were times during which I cried. Now, I do not want to remember my sister and I curse that bloody day on which I knew him first’

In nine cases, the defendants did not admit the crime to the police, or turn themselves in to the authorities. In five out of the nine cases there was premeditation and in the remaining four cases there was not. When giving their reasons why they did not admit the crime to the police immediately, interviewee-2 and interviewee-5 explained their action by saying that they had reasons not to do that, but that they had nothing to be ashamed of. For instance, interviewee-5 said:

‘I decided to visit my daughter's grave before the police found me. I visited my daughter's grave and then the police found me. I am an old person. Perhaps I will not be able to find another opportunity to visit her grave again. Now I think the best thing I did was visiting my daughter's grave.’(Interviewee-5, male)

When it comes to other response patterns and behaviour shown by defendants before and soon after the incident, these are varied and it can not be said that they are shaped by cultural norms.

First of all, no defendants stated that before killing they did anything specifically in order to calm themselves down, or psyche themselves up, such as smoking a cigarette, drinking tea or coffee, or using drugs or alcohol. Interviewee-4 stated that he drank alcohol before the killing, but there was no premeditation in this case and he was not drunk at the time of killing. Interviewee-27 said that a couple of hours before killing he drank a bottle of beer with one of his mates. But he did not do it either to calm himself down or to psyche himself up, it was a coincidence. Only interviewee-6 mentioned that, after killing, he ran away and smoked a cigarette containing cannabis to relax himself. The defendants who used to smoke mentioned that they smoked cigarettes after the offence (interviewees-2, 7, 11, 12, 32, 37).

Many of the defendants mentioned that soon after the killing they felt relieved, because the burden was lifted from their shoulders (interviewees-8, 13, 23, 25, 28, 29).

‘I put my pistol on her cheek and said ‘stop playing games’. She said ‘I did nothing’. I fired my pistol. I felt relieved. The burden was lifted. But, soon after the shooting I wished she would not die. I hired a cab and sent her to the hospital.’ (Interviewee-13, male)

‘Soon after the murder, I experienced sorrow and anger together. I felt sorrow and anger at the same time. I also felt relieved because the burden was lifted from my shoulders and nobody was going to regard me as dishonourable and accuse me of being dishonourable. But I felt deep sorrow for them and cried. Soon after the murder neither the thought of prison nor the question of what would happen to me went through my mind. What I felt most was my sorrow for them.’ (Interviewee-23, male)

‘After the crime, I felt relieved and light, because the burden was lifted from me. Nobody was going to talk about this matter any more. During my time in prison, I was twice granted permission to visit my family. I did not feel shame as I used to feel before. I was relaxed. I talked and mingled with people.’ (Interviewee-29, male)

‘I felt relieved; I saved myself from all the problems and hardship. My psychology improved and my sleeping problem disappeared. Then, I continued to relax during the next five days, later I was caught.’ (Interviewee-28, male)

Some of the defendants said that after the killing they felt nothing (interviewees-6, 9, 30) and some said that they felt the need to leave the crime scene immediately (interviewees-3, 11, 27). For instance, interviewee-11 killed his daughter because he thought that she was not a virgin any more. In that case, after seeing a text on her mobile phone which said 'I missed your scent', the interviewee shouted 'look what this man is saying, when did he smell you? How can he know your scent? When did it happen? You are putting me in the position of a pimp.' His daughter replied, 'We had a religious marriage ceremony conducted between us. You got used to being away from me. So, you can get used to this situation too.' After hearing this, the defendant killed his daughter. In the interview he said:

'After shooting, I felt the need to get away from there. I sat and started to smoke. I thought about why I could not bear to accept that my daughter had a boyfriend. Even the family of a prostitute finds a way to cope with, and bear with the situation. I thought about why I could not bear it.' (Interviewee-11, male)

Some of the behaviour shown by defendants soon after the killing might be regarded as a sign of poor mental health, or the behaviour pattern of a person who is not master of his mind or in control of his behaviour. This may reflect what the defendants have experienced and lived through until the time of killing. Such behaviour might indicate that the defendant had a disturbed mind at the time of killing, even if not to such a degree to describe him as insane, mentally disordered, or suffering from an abnormality of mental functioning which substantially impaired his ability to understand the nature of his conduct, and therefore enable him to benefit from the defence of diminished responsibility.

For instance, after killing his wife and her lover, interviewee-9 said that he walked at least 100 metres with his gun in his hand before he realised it and put it under his shirt. He got in his car and went to his house. He said:

'I felt nothing; there was no panic, anxiety or fear until I arrived at my house. I told my father what had happened. He said 'what was your problem, what is going to happen to your kids now?' At that time, I lost my control and said 'if you think that they are a problem for you I can kill them too.'

Interviewee-1 stabbed his wife, and despite the fact that his trousers and clothes were stained with blood, he walked 500 metres to his house. When his children said ‘you killed our mum’ he said ‘no I only stabbed her’ and he then went back to the place where he had stabbed his wife and took her to hospital where she later died. Interviewee-18, after killing his wife and wounding her new partner, went to his house and drank a cup of tea instead of escaping or turning himself in to the authorities.

Interviewee-21, who killed his wife and her lover together, with a hunting rifle and Kalashnikov in front of a stable said:

‘The village was buried under snow and the weather was freezing. I waited around the corpses until morning. I did not want them to be eaten by wolves and I cried. You just feel pain and sorrow in such situation.’ Apparently, interviewee-21 could not think of carrying the corpses inside the stable and waiting there. Instead, he waited outside until morning when the gendarmerie arrived. After her unsuccessful attempts to commit suicide, female interviewee-39 put her sheep and cows out to pasture as if nothing had happened, until her daughter - in- law and her husband came. She too could not think of asking somebody to go to the police, or phoning the police. Finally in the case of interviewee-16, the defendant killed her daughter by using a rope that he was using for packing their clothes and other items to move. But, soon after the killing, the behaviour that he recounted in his story suggests that he was not master of his mind or in control of his behaviour. He said:

‘My daughter used to run away...As I spent most of my time looking for her, I was having difficulty to find a permanent job as a concrete worker. So, I had to sell my hunting rifle. But, before completing the paper work I received my money and I was still technically the licence holder... After killing my daughter, it was 2.30 a.m. and I wanted to kill the people who had sex with my daughter. I went to the man’s house who bought my rifle. I said ‘I killed my daughter, give my rifle back. I am still the licence holder. There is no problem. I can pay your money back. I have to take my daughter’s revenge on those who had sex with her’. He did not give me my rifle back. Then I said ‘everything happened because of my brothers’ and I decided to harm them. I bought gasoline from a petrol station and put it in a white

plastic container to burn their house. I could not do it when I thought of my nephew and niece. Then, I decided to burn their car. I could not do this either. I started to walk with the gasoline container in my hand. I do not know what happened to that container and how long I walked. I saw a police car and went to the police and told them what had happened.’ (Interviewee-16, male)

As happened in that case, waking up a person that is not a close friend at 2.30 a.m. and then wandering aimlessly for more than an hour is behaviour not to be expected from one who is aware of what he is doing and who is in control of his behaviour.

In some cases the defendants experienced a significant gap in their memory or perhaps temporary unconsciousness. Despite the fact their files show that they shouted ‘I cleansed my honour’ in front of other people, male interviewee-25 and female interviewee-36 said ‘I may have said this by shouting. But, I do not remember it’. Female interviewee-35, who killed her baby as soon as she gave birth, and was found guilty of infanticide for cause of honour, said that she did not remember exactly what had happened after giving birth and taking the baby out. Whether the baby cried, or whether she strangled it or did anything to the baby was not clear in her mind.

The most striking account of memory lapse and then flash back of what was experienced was provided by the interviewee-7, who was 19 years old when he killed his mother by stabbing her twenty five times. After killing, this defendant carried the corpse out from the house into the middle of the street, and in order to make everyone know that honour was restored he shouted:

‘You rumoured that this woman is dishonourable. Look! I killed her. You, all of you, are dishonourable too. I will kill all of you.’

Then, he did not let anybody touch him or the dead body of his mother. He threatened to kill them, with the knife in his hand. He smoked cigarettes; people gathered and tried to convince him to drop the knife and to let them take the body. He did not let them. Instead, he continued stabbing the body despite the fact she was dead, and he smoked cigarettes. After realizing that

his mother's dead body was lying half naked, he brought a blanket from inside and covered her. But, in the interview he said:

'When I was put in prison I first thought that she was wounded and in the hospital. I only remembered one or two stabs that I made. When my visitors came to the prison I asked 'how is mum, is she alive?' They said 'are you crazy? You waited for two hours in front of her corpse. She is dead.' At that moment I remembered everything. How I carried the dead body from the house to the middle of the street, how I shouted and swore at people, my quarrel with the gendarmerie and everything.' (Interviewee-7, male)

As to other behaviour patterns shown by the defendants, 24 defendants mentioned that they cried during, or soon after, the crime, or they cried in the police station or in the prison. Apart from the aforementioned case of female interviewee-39, two male defendants (interviewees-5 and 10) tried to commit suicide after the murder but they were prevented; and as Appendix 3 shows interviewee-30 tried to commit suicide before the murder. Some defendants showed signs of remorse immediately after the murder by giving water to the victim (interviewee-15), by hiring a cab and sending the victim to hospital (interviewee-13), by taking the victim to hospital (interviewee-1) or by asking passers-by to take the victim to the hospital (interviewee-31) and, finally, by changing the position of the victim's neck to make her breathe more comfortably (interviewee-9).

So, the author will now consider whether the defendants regretted committing the offence.

4.2.6 Regret

First of all, none of the male or female defendants used any derogatory words about their victims. Perhaps, even if they might have wanted to use such words to express their feelings, they may not have done so either because of the formal environment in which the interview was conducted, or because of a general belief in Turkey that it is not acceptable to use derogatory words about a dead person, the defendants declined to do so. However, interviewees-13 and 19, who killed their sisters, and interviewee-33 who killed his paternal

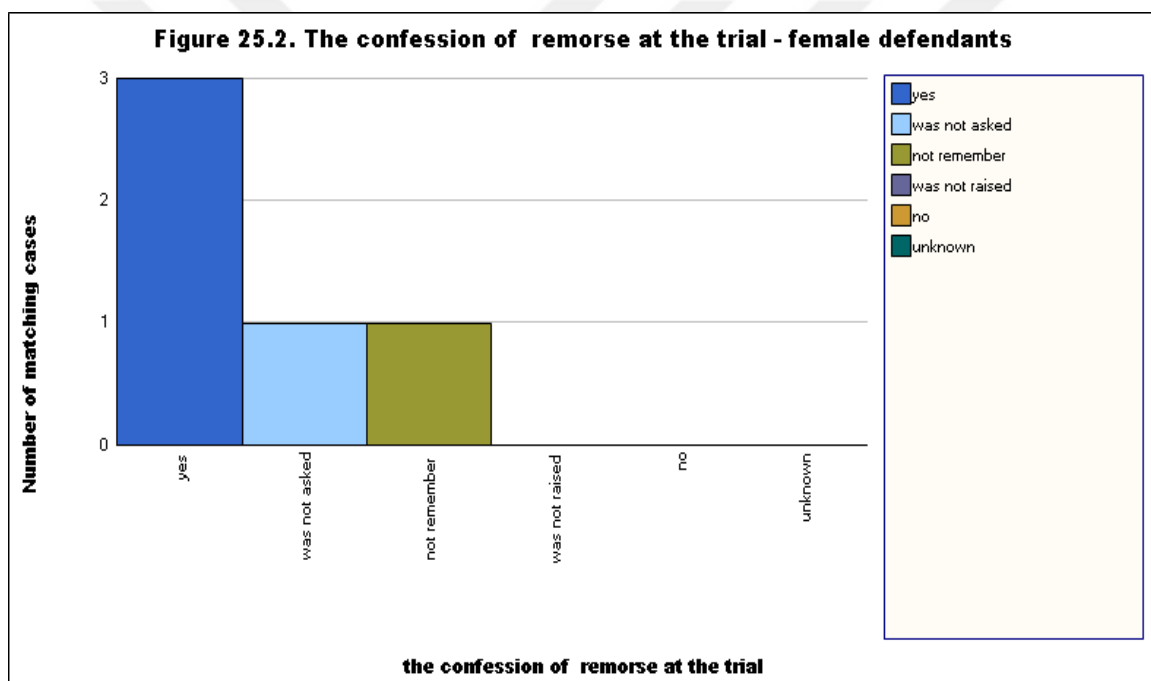
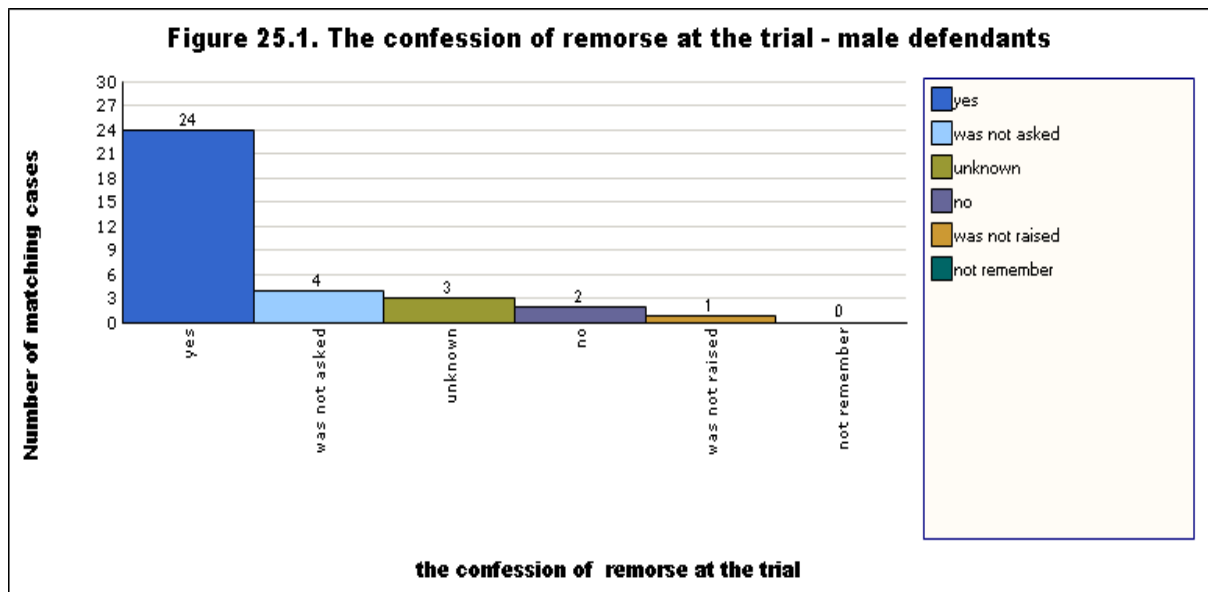
cousin, described the husbands of their victims as ‘cuckold and tramp’ by implying that they had lack of honour and manliness. Similarly, interviewee-4, who killed his half-sister, described the people that his sister used to hang around with as ‘evil’.

Secondly, the majority of the male defendants described their female victims’ personalities as gentle, well mannered, tender hearted, or ordinary. In six cases (interviewees-2, 12, 17, 19, 20, 29) the defendants described their victims’ personality as nonconformist, disobedient, bad mannered, or disrespectful to her parents. Interviewee-7 described his mother and interviewee-2 described his wife, as a person who was interested in sexual relationships between men and women, interviewee-26 described his sister as having been a little stubborn, interviewee-32 described one of his aunts that was killed as a little adventurous, and interviewee-28 described his mother as a person who was keen on flaunting and showing off her money, beauty etc, so that other people notice. Not surprisingly, the majority of the defendants described their relationship with their victims, until a certain period of time before the offence, as good. Interviewees-17, 18, 19, 22, 23, and 24 described their relationship with the victim before murder as ‘not bad’ and interviewee-14 said ‘despite the fact that we had minor disagreements and arguments I had a good and close relationship with my wife’. Only interviewee-29 said he ‘did not have a close relationship with his cousin for a long time.’

When it comes to whether the defendants had regrets about what they did, the author asked all defendants three questions in order to investigate this issue. In the first part of the interview, all defendants were asked whether s/he confessed at the trial that s/he regretted what s/he did. Secondly, they were asked whether s/he now regrets committing the offence, and finally they were asked whether they would consider killing again after their release if they met the same or a similar situation. In this context, the research yielded interesting results.

First, as Figures 25.1 and 25.2 show, only in two cases did the defendant (interviewees-28 and 30) say 'I do not regret committing the offence', at the trial. Therefore 71 per cent of male defendants (24 cases) and 60 per cent of female defendants (3 cases) confessed at their trial that they regretted what they did. In the remaining ten cases, this issue was not raised at trial, or the defendant was not asked whether s/he had regret, or the defendant did not remember what s/he said at the trial and neither their file in the prison nor the court ruling had any reference to this issue. Later, however, defendants may show a different response pattern from what they said or felt at their trial. When they were asked whether they would consider killing again after their release if they met the same situation, this time only 15 male defendants (44 per cent) and three female defendants (60 per cent) said that they 'would not consider killing again'. Likewise, 13 male defendants (38 per cent) and two female defendants (interviewees-38 and 39) (40 per cent) said that they 'would consider killing again after their release if they met the same situation'. Only five male defendants (interviewees-7, 11, 21, 33, 34) said that they 'can not say anything for sure about what they would do if they met the same situation again.' Finally, interviewee-26, who killed the man who made his sister pregnant and then later killed his pregnant sister, said that if after his release, he met the same situation, he would only retaliate against the man and would not retaliate against his sister.

It can be seen from these accounts that there is an obvious incentive on the defendant to claim remorse at the trial in order to get a shorter sentence. Thus, eight male and one female defendant, who confessed at their trial that they regretted what they did, later somehow shifted their opinion and told the author that they would consider killing again if they met the same or a similar situation.



When conducting the interviews and analysing interviews, the author realised that when the defendants answered the question of whether they had any regrets about committing the offence they took into account many different factors, such as their situation in prison, the situation and condition of their children and what happened to the children during the prison term, being regarded as a murderer of their mother in the eyes of their children, and a sinner in the eyes of God, and so on. However, when they answered the question of whether they would consider killing again, they only took into account the question whether what they did

was right or wrong. That is why their responses differ on whether they have any regrets about committing the offence as compared to whether they would consider killing again if they met the same or a similar situation.

For instance interviewee-11 said that he had regret about losing his daughter, but he was not sure whether he would consider killing again. Interviewee-12, who expressed his regret at the trial, said that he regretted killing his wife's half-sister, but he would kill again after his release if his wife behaved dishonourably. Interviewee-13 said:

'I can not forget the scene where my sister fell over in front of me after firing my pistol. But I sacrificed myself for my family, and I would do it again if I met the same situation.' (Interviewee-13, male)

Similarly, male interviewees-1, 2, 9, 21 and female interviewees 36 and 39 said that they regretted seeing what had happened to their family and children after the offence. Interviewee-1, who killed his wife, said 'my son and one of my daughters do not accept me as their father any more'. Interviewee-2 said that one of his daughters committed suicide after the offence, and that his other children hated him for killing their mother. However, male interviewees-1 and 21, and female interviewee-39, said that they would consider killing again if they met the same situation. Female interviewee-39, who at the trial expressed her regret, said:

'I was happy with my husband. I have lost this happiness now. But, if I met the same situation again that I met before, if somebody raped me after my release I would kill again.' (Interviewee-39 female)

Four male (interviewees-6, 18, 29, 33) and one female (interviewee-36) defendants said that they regretted committing the offence. Because it is a sin to kill somebody, so, by killing the victim they committed a sin. However, interviewees-6 and 29, who also expressed their remorse at the trial, told the author that if they met the same situation again they would consider killing again. For instance, interviewee-29 said:

'I regret committing the offence and committing a sin in the eyes of God. But, after my release, if I met the same situation, I would consider killing again.'

Finally interviewees 19 and 27 said that they felt regret now through being in prison, and female interviewee-37, who took part in killing her elder sister (see Appendix 3), said that she regretted losing her sister. Although finding it difficult to talk, and crying, she managed to express her feelings as follows:

‘There is a saying which says that your sister means the half of your mother. It is right. Whenever I remember her, I remember her in a way that reminds me of our good and happy days together. No matter what she did, she is still the most precious thing for me. Sometimes, I see her in my dreams and when I wake up and understand that it was a dream, my dream turns into a nightmare and I have a nervous twitch. In these times, I just wish I could stop time, go backwards and past and bring our happy days back. So, it is right, people only understand the real value of their loved one when they lost them.’
(Interviewee-37, female)

From these accounts, it seems that defendants who hold the belief that they tried everything that they could before killing, or they had no choice, now tend to believe that what they did was acceptable. Though they have regret about committing the offence for various reasons, whether they would do it or not if they met the same or similar situation again is a separate issue. For instance interviewee-22, who killed his sister and attempted to murder his sister’s boy friend (who was actually his brother-in-law), said:

‘After killing I hid for a week... There were times during which I cried. Now, I do not want to remember my sister...But for me, even if I go to the USA and have a master’s degree, my view does not change. You can not live without honour. So, if I met the same situation again, I would kill again.’
(Interviewee-22, male)

Similarly, interviewee-23 who, along with his brother, killed his mother and sister after hearing them admit that they were involved in prostitution said:

‘After my release, if I met the same situation that I met before, I would kill again. After release on parole, I will be placed on a fifteen year probation period. So, even if I met the same situation during my probation period, I would kill again. I would violate the terms of my parole, I would serve another fifteen years in the prison and I would serve the sentence that will be passed for the new crime, but I would kill again. I mean, I would give up this world; I would work and pray for the world after my

death. I would continue to live in the prison. But, I would do that.... Of course I said to myself 'I wish it had not happened to me' and cried for days. Because, nevertheless, one of the people that we killed is our mother and the other one is our sister. You should lose your being for not being sorry or not feeling sorrow for them. But, I mean, we went there, we went there to support them. If they gave up this job, we would look after them.' (Interviewee-23, male)

Interviewee-28, who killed his mother and half-brother because they had an affair, said:

'Of course I said 'I wish it had not happened to me, I wish I could have found another way'. I am still young. I want to be out and spend time out, instead of being in the prison. But if I met the same situation again I would kill again, because this is a shame of blood that always follows you.'

(Interviewee-28, male)

Finally, interviewee-7 who killed his mother, said:

'For me after killing the word 'regret' does not have any meaning at all. Because it happened, being regretful does not bring her back or change anything. If I did not do it, somebody from my family would definitely do it. Killing is the last resort. If I met the same situation again I would do my best not to kill if I believe that she will change her behaviour and repents.' (Interviewee-7, male)

Before concluding the analysis about the issue of regret it should be said that as far as the current research is concerned, the time spent in the prison does not always change the defendants' views about how to act if they met the same or similar situation after their release. Thus two male prisoners (interviewees-28 and 30), who said 'I do not regret committing the offence' at the trial, still hold the same belief and told the author that if they met the same or similar situation after their release, they would consider killing again. Even in cases where the defendants were going to be released on parole soon, some defendants would retain an unaltered view. Thus, in three cases (interviewees, 12, 18, 34) where the prisoners were about to be released on parole in three months' time or less after the interview, only one (interviewee-18) said that he would not consider killing again after his release. Interviewee-12 said 'I would consider killing again', and interviewee-34 said 'I can not say anything for sure what I would do'. In three cases (interviewees-9, 22 and female interviewee-35) where the prisoners were going to be released on parole between six months' and 12 months' time

after the interview, one prisoner (interviewee-22) said ‘I would consider killing again’, and two prisoners one male (interviewee-9) and one female (interviewee-35) said ‘I would not consider killing again.’

As we have seen, though the defendants know that killing is not right and, for some, it is a sin, they believe that what they did was acceptable in their case by asserting that ‘there was no choice’, ‘it was not in their hands’, ‘they did their best’ or ‘they could not take it any more’. Their underlying assumption seems to be that killing was almost inevitable and was the only solution for their problem; and anybody who met the same or similar circumstances that they met would do what they did. For these reasons it is clear that none of the defendants was insane at the time of the offence. In England and Wales, the classic formulation of the test for insanity in a criminal trial is based on the *M’Naghten* Rules which were laid down following *M’Naghten’s* case (1843), whose provenance is shortly described by Lord Diplock in *Sullivan* at p.170C-H. These rules comprise a series of answers given by judges of the Queen’s Bench in 1843 to questions put by members of the House of Lords. The occasion was prompted by the public protest which followed the acquittal, on grounds of insanity, of Daniel M’Naghten, who had killed Sir Edmund Drummond, Prime Minister’s Secretary, in an attempt to murder Sir Robert Peel, the Prime Minister. In the *M’Naghten* Rules, the test given for the defence of insanity was as follows:

‘the jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, *as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.*’ (*M’Naghten’s* case (1843) 10 Cl. & Fin. 200 at 210 emphasis added).

As none of the defendants could fall within the scope of this test, none of the defendants who took part in this research was insane. Some of the behaviour shown by defendants soon after the killing may be regarded as a sign of poor mental health or as the behaviour of a person who is not master of his mind or in control of his behaviour. However, this only indicates that the defendant was in a highly disturbed state of mind at the time of killing and could not amount to insanity or an abnormality of mental functioning which substantially impaired his ability to understand the nature of his conduct or to form a rational judgment or to exercise self-control, thereby also ruling out the defence of diminished responsibility provided by section 52 of the Coroners and Justice Act 2009. As will be discussed later, though the reference is now to 'abnormality of mental functioning' rather than 'abnormality of mind', which substantially impaired the defendant's mental responsibility for his acts, mentioned in section 2 of the Homicide Act 1957, the defence of diminished responsibility is restricted to 'an abnormality of mental functioning' which substantially impaired the defendant's ability to do one or more of the things mentioned above and it does not cover the whole field of significant mental attributes, or homicide cases committed under the influence of extreme mental or emotional disturbance.

However, as pointed out by Onal (2008), even though the defendants believed that what they did was right, they still could not find peace. They almost beg for someone credible to say 'You are right, you had to kill her' (Onal 2008: 236,237).

Part 3

THE CONCEPT OF HONOUR AND THE CHARACTERISTICS OF AN HONOURABLE MAN AND WOMAN

4.3.1 The concept of honour

As to the concept of honour, five different groups of responses emerged from the interviews with the defendants, apart from three defendants (interviewees-23, 34 and 3) who did not comment on this issue. In the first group, when asked ‘what does the concept of honour mean to you?’, some defendants (interviewees-6, 10, 27, 35 38, 39) could not see this question as separate from their own personal case. They used this question as an opportunity to review their own cases, and then to justify their action. It seems as if they thought their response had to be consistent with the conduct that they had regarded as dishonourable and which led them to kill. So, interviewee-27, who had regarded his sister-in-law’s infidelity as a betrayal of his brother, said ‘honour means not betraying other people’. Similarly, interviewee-6, who killed his wife, said ‘honour means your wife’s fidelity and loyalty to you and your family.’ Again, three female defendants responded to this question by showing consistency with their own actions and personal situations. For example, interviewee-35, who became pregnant out of wedlock and killed her own child for honour, said ‘honour means not having sexual intercourse out of wedlock and keeping virginity before marriage’. So, by this answer it seems that she had reviewed her own case, found that her behaviour had been dishonourable, and that the child who was the product of this dishonourable conduct was dishonourable, too. By killing the child she believed that she had washed away the shame, and this was how she justified her action. Similarly, female interviewee-38, who killed her former employer in order to save herself from his harassment, and the rumours that she was an adulteress, said ‘honour means not being an adulteress’. Finally, female interviewee-39, who killed her rapist for her honour and the honour of her husband, said ‘honour means love and loving your

spouse'. These responses were clearly given by the defendants in order to be consistent with themselves and their own actions. When asked 'what would you say are the characteristics of an honourable man or woman?' the same defendants still felt the need to review their personal situation and so gave responses which they thought consistent with what they had done.

In other groups, however, defendants gave more general responses, not tied to their personal situations. Thus in the second group, defendants made their responses about the concept of honour in accordance with ideal standards which they thought essential for an honourable man and woman. In this context, being fair and leading a honest life, (interviewees-11, 20), protecting yourself, your family and property against every threat (interviewees-2, 24), not stealing, telling the truth and not unjustly interfering in somebody else's business or using deceitful methods (interviewees-31, 32), being responsible for the women (interviewee-33), knowing how to behave in public (interviewee-5), and not committing rape (interviewee-18) were among the general responses given by the defendants to describe the concept of honour.

In the third, fourth and fifth groups, defendants described some of the main characteristics of honour that were discussed in Chapter 3. In the third (and largest) group, the defendants emphasised those characteristics of honour which can inspire violence, that the author discussed in Chapter 3. In this group, the defendants said that honour is something sacred, and more precious to them than even their life. It is an essential element of life. For them, the loss of honour is equal to loss of life; and an ideal man lives for his honour. For instance, interviewees-26 and 30 voiced their opinions about the concept of honour as follows:

'A person lives for his honour and his dignity. Honour is something that holds the family and people together. It enables people to have a decent life and you live for your honour.' (Interviewee-26, male)

‘People live for their honour. Your honour is your pride, your glory and praise. You can be without water or food. You can live on without water or food but you can not live on without honour.’
(Interviewee-30, male)

Similarly, in other cases defendants said:

‘Honour is the most precious thing in this world and in the eyes of God. It is priceless. The reward of maintaining honour is also given by God.’ (Interviewee-14, male)

‘Honour is a person’s pride and praise. It means everything for a person. Without it nothing can happen, nothing has a meaning. It would be better for a person to die rather than being dishonoured. Without honour death would be better than life. Other people may think differently. But this is what I think about honour.’ (Interviewee-21, male)

‘Honour is a source of life for a family and it is an essential responsibility for a family.’ (Interviewee-28, male)

Interviewees- 8, 13, 15, 16, 19, 25, and female interviewees-36 and 37 also said that ‘people live for honour’. This equates life with honour, and equates loss of honour with loss of life.

Female interviewee-39, who was raped, said:

‘After the rape, I did not think of anything. Everything was finished for me there. I neither thought of whether my husband would divorce me or whether my three sons would believe that I was raped. I considered myself a dead person. It would have been better for me, if he had killed me after the rape.’

The belief that honour is the most fundamental value in life, and the system of values to differentiate what is honourable from what is not is a deep and long-held understanding of these defendants. For instance, interviewee-19 said:

‘For me, honour is above all things. That is what I have been taught since my childhood. My family used to say ‘if you are not involved in any conduct that makes others point a finger at your honour that is enough to have a decent life’ So, I was brought up like that.’

Similarly, interviewee-13 said:

‘In my childhood, I grew up with the idea of honour, respect and reputation. My family used to say ‘if somebody tries to steal your bread, or points a finger at your honour, kill him’. I was brought up like

that. Therefore, for me, suffering from a wound caused by being labelled as dishonourable is more painful than a gunshot wound.'

As explained above, it is this group of defendants who tended to act immediately against the dishonourable conduct, and their perception of honour greatly affected their decision how to act and what their options were. It is this same group of defendants who hold the belief that they had tried everything, and there was no other choice, or that choices were very limited.

In the fourth group the defendants emphasized both the fragile quality of honour and the heavy burden and duties imposed by it. As discussed in Chapter 3, the honour of a man obliges him to defend his honour and the honour of his family. As the responsibility of protecting the honour of female relatives has been delegated to men, and female relatives remain the men's own responsibility, men are in a difficult and fragile position. This characteristic of honour was voiced by interviewees-12 and 29. They said:

'Honour is not something light and easy. It is like a heavy burden. It is too heavy to carry. But, it has to be carried.' (Interviewee-12, male)

'Dishonour is a great stain for anybody to live with. In order to describe anybody as dishonourable, s/he must have made a big mistake. So you can not describe anybody as dishonourable easily.' (Interviewee-29, male)

Finally, in the fifth group, defendants explained honour differently, by emphasizing its gender neutral meaning, saying that it is equal to reputation, respect or prestige and that it is generally not compatible with violence or killing. They said:

'Honour is reputation and pride of people, their family, their personality.' (Interviewee-17, male)

'Honour is glory of a family and a man. It is your reputation, respect, and personality.' (Interviewee-4, male)

'It is the most fundamental and essential value for a human being; it is a person's reputation and prestige.' (Interviewee-22, male)

‘Honour means being respected by others, knowing how to behave and speak in public, taking care of your children and your family.’ (Interviewee-7, male)

‘Honour means being trusted by people. It is not only related to the women, it is your pride and reputation.’ (Interviewee-9, male)

4.3.2 The characteristics of an honourable man and woman

Concerning the characteristics of an honourable man, it appears that, as the majority of the defendants (62 per cent) were married, the participants gave their opinions by mainly thinking what should be characteristics of a married honourable man. The responses of the participants can be categorised in three groups.

In the first group, for 20 male and two female defendants, the ideal honourable man is a man who takes care of his children, wife and family by putting a roof over their heads, having the means and earning money in a way that is morally approved of. An honourable man minds his own business, and stays out of other people’s business. So, as long as a man meets the basic needs of his family, he meets the ideal standards. Therefore, he should be respected and obeyed by his wife and children. Any sign of disrespect, and disobedience against such a man is condemned and not approved. If a man does not meet his family’s needs by working, even though he is physically strong and there is work to do, he is undesirable (interviewees-4, 7, and 27).

For instance interviewee-4, who killed his half-sister because he believed that she brought shame and stain on his family by being abandoned by her husband and because of rumours about her involvement in prostitution said:

‘My sister was behaving in a way as if she was not married. She started to hang around with people who were known as tarts; rumours went round that my sister was a tart too. People started to treat and stare at me as if I was encouraging her to be a tart... Then her husband left her and went back to his first wife... I hoped that she would change her behaviour, but she did not. Her husband used to meet her

needs. She had a roof over her head, and she was not hungry. If he did not meet her needs, I would say 'she is right to behave like that'. But her husband met her needs.'(Interviewee-4, male)

Apart from taking care of his children and family by earning money, it is desirable for an honourable man to behave in a certain manner and to have certain characteristics. For instance, an honourable man does not gamble, spread rumours or drink heavily (interviewee-13). He tells the truth and always keeps his promises (interviewees-22, 32). He does not steal (female interviewee-39) or use deceitful methods; he does his job properly and does not overcharge (interviewee-24). An honourable man is not a snob; he is modest (interviewee-29) and never stabs anybody in the back (interviewee-31). He respects different values and ideas (interviewee-32). An honourable man should be always strong, and be prepared to respond to any attack or threats against his family and female relatives (interviewee-3). An honourable man is a strong and dignified man (female interviewee-37) and earns his wages in a way that is morally and religiously approved of (interviewee-6) and he knows how to behave and speak in public (interviewee-7).

In the second group, the defendants gave their definition of an ideal honourable man by saying that a man obeys ideal norms that regulate the relationship between men and women by controlling sexual desires which are not approved and which threaten social order. In this perception, an honourable man is good, honest, sexually modest and innocent, a man who does not look at somebody else's [*namus*] wife or daughter, a man who lowers his eyes, when he sees a woman. So, this perception reconstructs the concept of honour (*namus*) and reduces it to women, their bodies and sexuality, and women symbolise and represent honour. Any undesirable conduct against women who are wives, daughters or mothers of somebody, and therefore represent somebody else's honour (*namus*), is regarded as dishonourable. In this context, an honourable man does not wink at women (female interviewee-37); he does not betray his wife, and he is not an adulterer (female interviewees-36, 39, male interviewee-32). An honourable man is not chasing after women, and he does not cast covetous eyes on

somebody else's wife, mother or daughter (*namus*) (male interviewees-1, 9, 14, 18, 26, 32, 33, female interviewees, 36, 37, 38).

In the third group, the defendants gave some general characteristics in their definition of an honourable man without emphasis on earning wages in a way that is morally and religiously approved [*halal*], or obeying the norms that regulate sexuality and relationship with women. For this group, an honourable man is an honest and trustworthy man (interviewee-11). He prays five times in a day (interviewee-10), and pays his taxes (interviewee-5). He does not pimp (interviewee-12); he always support his wife and never leaves her (female interviewee-35).

From these explanations, it appears that, in the mind of the defendants, the concept of honour is mainly equated with two essential elements. The first is associated with the ideal women as daughter, wife and mother, and the second is earning money, in a way that is morally approved, to meet the basic needs of these women and to maintain and protect them. Earning money in a way that is morally approved, and the women, symbolise the concept of honour, which is equated with the concept of life, and an honourable man lives only for them which is actually above all his life and what he wants to maintain most. Therefore, any attack against these symbols, or any behaviour that might cast a shadow on the value of these symbols, or stain them, is retaliated with violence, strong condemnation or disapproval.

When it comes to the characteristics of an honourable woman, it appears that, as the majority of the defendants were married, the participants again gave their views by mainly thinking what should be characteristics of a married honourable woman. In this context, for the majority of male and female defendants, the ideal honourable woman is an obedient and loyal woman who takes care of her children. She is modest in her behaviour, and so she is not on the lips of men nor the talk of their neighbourhood.

Apart from taking care of her children and being modest in her behaviour, it is desirable for an honourable woman to behave in a certain manner and to have certain characteristics. An honourable woman says her prayers every day (interviewees-18, 28), she does not go out without permission from her husband, and she does not let unrelated people enter her house (interviewee-22), and she always keep her husband's head held high among people and relatives (interviewee-2). An honourable woman is modest in her dress (interviewee-31). She is not cheeky, or impertinent or flirtatious. She is an honest (interviewee-11, 26), respectful and dignified woman. A dignified woman is like a heavy stone so that nobody attempts to move it. It is heavy and strong so that makes people admire and respect her (female interviewee-37). She respects her husband and cooks for him (interviewee-12). She shares her problems with her husband and she is devoted to her children. She is a reasonable woman who accepts whatever her husband provides for her without any complaint (interviewee-4). For an unmarried honourable woman, the participants especially mentioned that being respectful, obedient, and modest in behaviour and keeping virginity before marriage is essential.

4.3.3 The characteristics of a dishonourable man and woman

The responses of the participants concerning the characteristics of a dishonourable man can again be categorised in three groups. In this context, the characteristics that the participants mentioned for a dishonourable man mirror the characteristics given for an honourable man. Thus, in the first group, for the majority of the participants a dishonourable man is a man who does not take care of his children, wife and family or places them in a needy situation by spending the housekeeping money on gambling and drinking (interviewees- 2,4,6, 8,9,10,13,15,17,22, 25,27,31,32).

In the second group, the male participants and a majority of the female participants said 'a dishonourable man is a man who is chasing after women and casts covetous eyes on

somebody else's wife, mother or daughter (*namus*) (male interviewees-1, 5, 9, 14, 20, 26, 33, female interviewees-35, 36, 37). In the third group, a dishonourable man is a man who pimps an unrelated or related woman (male interviewees-7, 12, 16, 17, 28, 30 and female interviewee-38).

Apart from the characteristics mentioned in these three main groups, for the participants a dishonourable man is a man who is dishonest and uses deceitful methods (interviewee-16). He rapes women (interviewee-18), tells lies (interviewee-21), steals (interviewees-20, 30) or gossips and spreads rumour (interviewee-29). A dishonourable man does not have a sense of pride and self-respect at all (interviewee-3). However, for interviewee-1, stealing has nothing to do with the concept of honour. It is a crime and dishonesty. For him, the concept of honour, and the characteristics of a dishonourable man, can only be explained by reference to sexuality. Therefore, for him, a dishonourable man is a man who casts covetous eyes on somebody else's wife, mother or daughter (*namus*). A man who tries to seduce a woman is also dishonourable.

When it comes to the characteristics of a dishonourable woman, the participants give their definition by assessing whether a woman conforms to cultural norms that determine the proprieties of women's sexual and non-sexual behaviour and their social status. For the participants who emphasized the importance of conforming to norms determining the proprieties of sexual behaviour, a sexually immodest, flirtatious, cheeky or impertinent woman is dishonourable. An adulterous woman is also dishonourable. For the participants who emphasized the importance of conforming to norms determining the proprieties of women's non-sexual behaviour and social status, the dishonourable woman is an unfaithful, disrespectful and disobedient woman who does not take care of her children and her husband, who leaves the house without permission (interviewees-4, 8) and tells a lie to her husband. However, the idea of the dishonourable woman was not consistent in the minds of all

defendants. For some participants, women who work in a brothel, or who prostitute themselves, are not dishonourable (interviewees-7, 13, 25, 29). This is because these defendants believe that those who work in a brothel, or prostitute themselves, are generally forced to do it. Therefore, as long as prostitution is not their informed choice, or they do not prostitute themselves voluntarily, they are not dishonourable. However, for other defendants, they are dishonourable women regardless of whether they do it voluntarily or not (interviewees 5, 16, 24, 31). Indeed, for some defendants, there are no dishonourable women, there are just dishonourable men who make women dishonourable (interviewees-3, 19, 34). For these defendants, the concept of dishonour can not be explained separately from women's sexuality, and dishonourable conduct mainly appears in forms of sexual intercourse or physical relationship short of sexual intercourse, which always requires involvement of a male as a partner or accomplice. So, the ideal and honourable man avoids becoming involved in such conduct. He thinks before he acts, takes the pride and honour of others seriously, and avoids staining or questioning it. On this view, if there is dishonourable conduct, there is always a male who takes part as a partner or accomplice and it is he who should be blamed. Nevertheless, this perception does not always prevent the family from retaliating against the woman. For instance interviewee-34 said:

'In my community you can not abduct a girl or run away with her. People here never let you take one of their belongings against their wishes not even a chicken from their coop. These two men came here and my sisters were fooled by their appearance and ran away with them.... This is not acceptable. This is not manliness. This is not what a man should do; a real man does not behave like that, because he knows the consequences of his action. A real man thinks before he acts, you have to think of the family of the girls. This is dishonourable. The retaliation against such behaviour is certain. These two men deserved to be killed, because they did not think how much the family could suffer from their action. So, I decided to shoot my sisters and their husbands.' (Interviewee-34, male)

Before concluding his analysis, the author will discuss what factors the defendants take into account and how they decide whether a woman's behaviour is honourable or

dishonourable. When asked, ‘what factors do you take into account, or how do you decide whether a woman’s behaviour is honourable or dishonourable?’ three participants (interviewees-10, 12 and 25) said ‘the words and thoughts of my parents and grandparents have an impact on my decision’. Four participants (interviewees-3, 7, 22 and 26) said ‘I take my religion into account’. Three participants (interviewees-1, 30 and female interviewee-35) said ‘my culture and mores has an impact on my decision’. However, the majority of the participants who responded (22 male and four female) explained that ‘first I need to be sure whether she did it or not. Then, I decide by taking my own conscience and values into account. I do not believe in anything that I did not see with my own eyes.’ This approach was consistent in the story of the defendants. As explained earlier, in the majority of cases the field work shows that a combination of suspicion, rumours and change in behaviour sets in motion a chain of events that ends up with murder. The length of this chain of events and whether it will result in murder is, first of all, dependent on the defendant’s perception of honour and whether the defendant can be sure about his suspicion. So, before killing, defendants try to be sure that rumours are true. This is the main factor which explains the passage of time between learning of the dishonourable conduct and the murder.

4.3.4 The defendants’ responses to questionnaire style questions

The interviews were concluded with questionnaire style questions that seek to discover whether defendants have similar perceptions about the concept of honour, and similar views as to the appropriate ‘punishment’ to be applied to the same dishonourable act. In order to do that, respondents were asked to comment about some acts which have been claimed to be dishonourable, and which have been used as an excuse by defendants in honour killing cases reported in the Turkish media. What follows is a summary of the defendants’ responses. Appendix 5 contains the full analysis of the material (see Figures 26 to 70 in Appendix 5).

Firstly, for the participants (regardless of whether it might involve having contact with a man), if the conduct suggested in the question is one that could be carried out by any reasonable woman without showing sexual intent, desire or intimacy, such conduct can not be regarded as dishonourable. However, the more that conduct is understood as an explicit or implicit way of revealing or sharing sexual desire for a male, the more likely it is that it will be regarded as dishonourable. None of the defendants thought that wearing blue jeans, or working in a work place, was dishonourable for a married or unmarried woman. (See Figures 27., 33.1. and 33.2. in Appendix 5) But, the blue jeans should not be tight so as to show body lines, and the work place should deliver a decent and proper service that is morally approved of. Indeed, though it is the main responsibility of men, earning wages in a way that is morally and religiously approved is a praiseworthy effort for any woman. However, when it comes to wearing a mini skirt, a mini skirt exposes the curves of a female body, reflects a woman's sexuality, and stains her modesty. Wearing a mini skirt might arouse men and make them sexually excited, as it might be interpreted that a woman wearing a mini skirt wants to have sexual intercourse. Therefore, as Figures 37.1. and 37.2. in Appendix 5 show, for one female and five male defendants, wearing a mini skirt is dishonourable for a woman. The appropriate punishment to be applied in that case is beating (three defendants), and for one defendant the appropriate punishment is killing. None of the participants said 'being infertile or being unable to have a baby is dishonourable for a married woman'. Being infertile has nothing to do with the woman or her sexuality, it is God's will (see Figure 44.).

Likewise, with the exception of interviewee-30, all participants said 'talking or texting on a mobile phone is not dishonourable for a woman'. Talking or texting on a mobile phone in itself has nothing to do with sexuality and it can be used by the reasonable woman to communicate with related men such as her husband, father or son. But, for interviewee-30, a mobile phone might be used for communicating with unrelated men, and consequently

brought dishonour. If women need to phone, they should use the phone at their home. Therefore, for him, having a mobile phone and talking and texting on it is a sign of having an affair. It requires killing, and the male relatives of the woman hold the right to kill (see Figure 26.) By following the same logic, for female interviewee-35, asking a radio station to play a song for a friend or herself was dishonourable for a woman, as this conduct could be a sign of having an affair. But it did not require any punishment. Apart from interviewee-35, for the majority of the participants, asking a radio station to play a song was not dishonourable for a woman. However, as Figures 28.1. and 28.2. show five male defendants neither agreed nor disagreed. The reason behind their hesitation was that the question did not say whether the person to whom a song was dedicated was male or female. If the person was male they would regard it as dishonourable, because if you do not feel any intimacy for a male you do not ask a radio station to play a song for him.

Again, the more the conduct is understood as an explicit or implicit way of revealing sexual desire for a male, the more likely it will be regarded as dishonourable. Thus, as Figure 35.1. and Figure 36.1. show, out of 39 participants only 16 said ‘waving to an unrelated man is not dishonourable for a woman’ and only 11 participants said ‘walking hand in hand with an unrelated man is not dishonourable for a woman’. In their mind, the question that should be answered first is why a woman walks hand in hand with an unrelated man, or waves to an unrelated man, if she is not having an affair. Indeed, before answering, respondents asked the author ‘why is she waving?’ or ‘why is she walking hand in hand?’ and when the author answered ‘let’s say we do not know, or she is just waving her hand’, this response did not satisfy them. Therefore, many of them neither agreed nor disagreed with the suggestion and for them the conduct was not simple and innocent behaviour (see Figures 35.1., 35.2., 36.1, 36.2.). If it was not dishonourable, such behaviour was at least shameful (*ayıp*) and undesirable (*hoş değil*).

Secondly, if the suggested action could be understood in a way that it had nothing or little to do with sexuality or sexual desire, and the action was acceptable for a woman in carrying out her daily activities and responsibilities, the action was not regarded as dishonourable. For instance, for the majority of the defendants (25 male and four female), having a male friend is not dishonourable for an unmarried woman as long as there is no affair, intimacy or romantic relationship. An unmarried woman can have a male friend from a school or work place. That is permissible, to carry out daily activities in the school and work place. But, having a romantic relationship with a boy friend is not permissible and it is dishonourable. As will be seen later, it is obvious that having a boy friend that an unmarried woman has a romantic relationship with is not permissible and the defendants found it dishonourable for an unmarried woman having sexual intercourse out of wedlock.

With similar explanations, as Figure 29. shows, for the majority of defendants going to a movie in day time is not dishonourable for a woman. However, going to a movie in night time was not treated with the same degree of acceptance. (See Figures 29. and 30.) The ideal woman should stay at her home after dark and, even if she goes to a movie in good faith, men who are drunk or who target women with or without a chaperone may stain the honour of a woman by raping her or behaving inappropriately. For these reasons, one female and five male defendants said 'going to a movie in night time is dishonourable for a woman'. However, only two male defendants said 'this conduct requires punishment'. Interviewee-25 said 'the appropriate punishment is killing, and the male relatives of the dishonourable woman hold the right to kill', and interviewee-30 said 'the appropriate punishment is beating'.

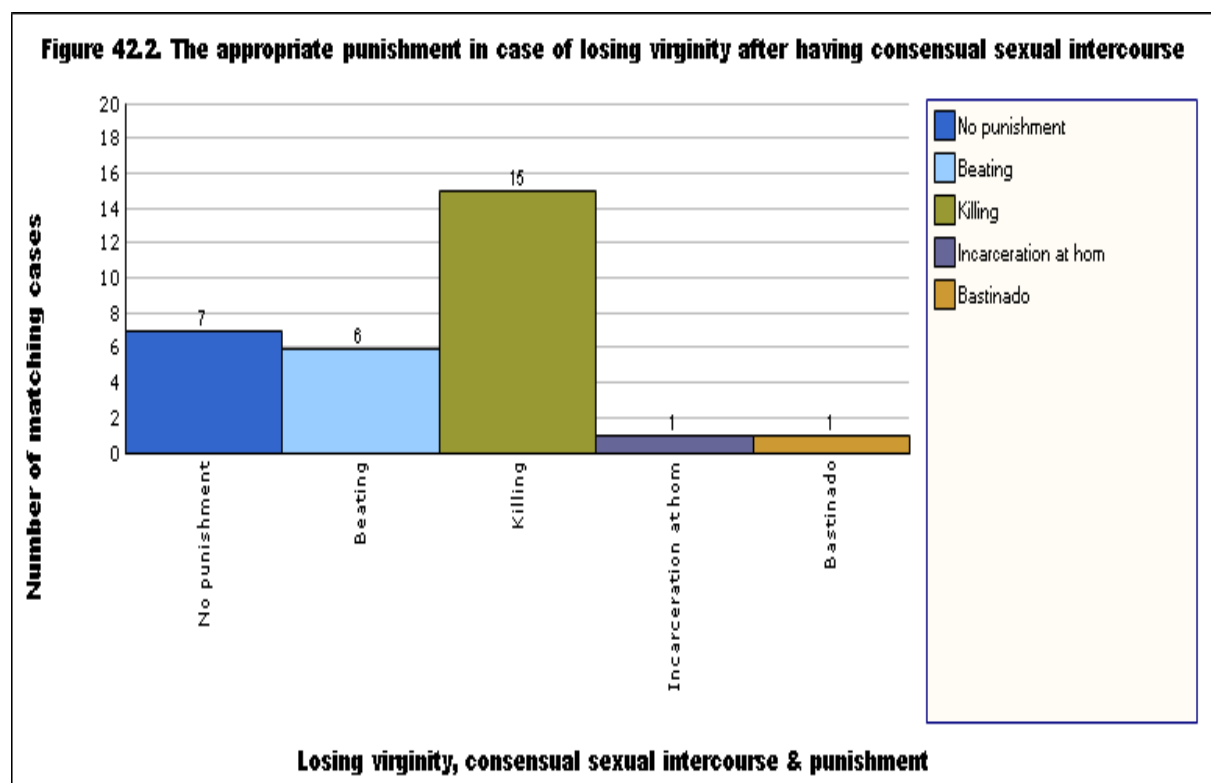
As long as there is a reasonable explanation to persuade the defendant that the woman does not have an affair or show sexual desire, going out without permission and coming home late, or talking with an unrelated man, is not regarded as dishonourable for a woman (see Figures 31.1. and 32.1). It is regarded a part of her daily activities and responsibilities. For

instance, interviewee-12 said 'she may need to buy something from a male pedlar, or do shopping in the market where salesmen sale vegetable, fruit etc. So, she needs to talk to the men to tell what she wants'.

Thirdly, if the suggested action involved sexuality or sexual activity, but the woman in question did not have any intention, or explicit or implicit desire, the action was again not regarded as dishonourable by the majority of defendants. Thus, apart from interviewees-25 and 30, all defendants said 'being raped and losing virginity because of that rape is not dishonourable for an unmarried woman', as the unmarried woman did not consent to have sexual intercourse (see Figure 41.1.). Interviewee-25 said 'She should have stayed at her home. If she is out, of course she can be raped and it is also her fault.' Therefore, for him, even she was raped she implicitly was involved in the conduct simply by going out. For interviewee-30, who killed his daughter who became pregnant after being raped, the question of whether being raped is dishonourable for an unmarried virgin was dependent on one condition. In the name of being consistent with his personal situation, he said 'an unmarried woman should immediately tell her father that she was raped'. So, without any publicity, and without it being noticed that she was raped, her family could retaliate against the rapist and restore honour. Otherwise if she chose to conceal it or reveals it later, this damages her credibility as an innocent girl in the eyes of her family and the community and she deserves to be killed.

Needless to say, in case of an unmarried woman losing her virginity after having consensual sexual intercourse, the majority of defendants showed no acceptance of this conduct. As Figure 42.1. shows 30 defendants, (28 male and two female) agreed that it was dishonourable for an unmarried woman to lose her virginity by having consensual sexual intercourse. Four defendants, (two male and two female) neither agreed nor disagreed. Four defendants (three male and one female) disagreed and one male defendant strongly disagreed

with the suggestion. Though two female defendants agreed with the suggestion, none of the female defendants said that losing virginity by having consensual sexual intercourse requires punishment. However, as below Figure 42.2. shows, 15 male defendants said that this behaviour requires killing, and the male relatives of the woman hold the right to kill.

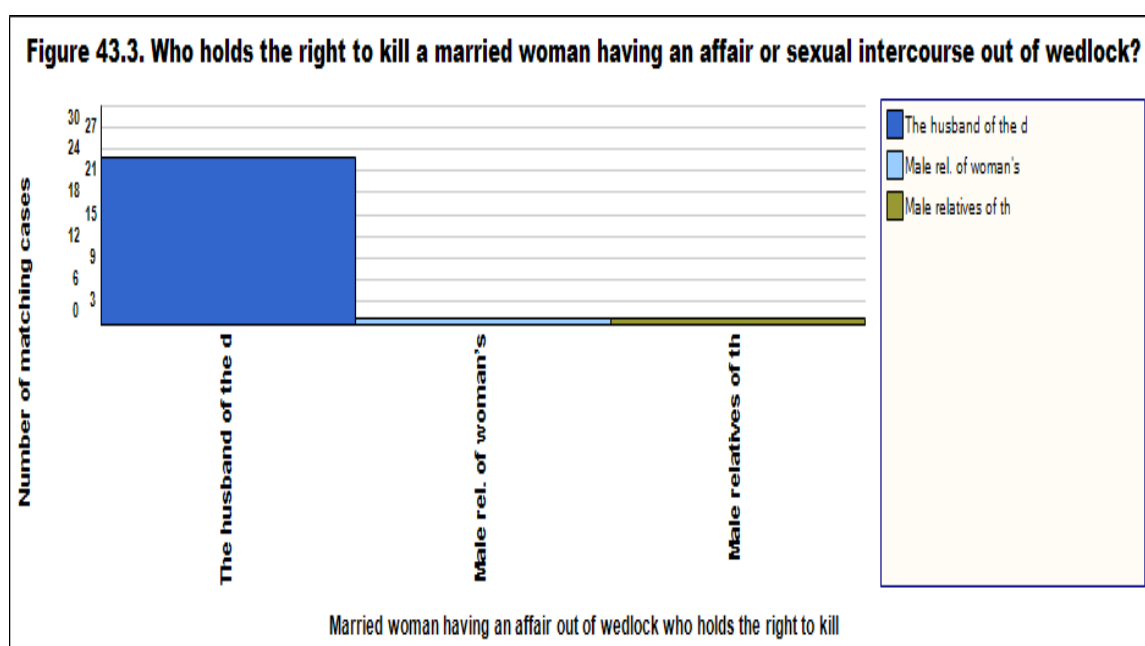
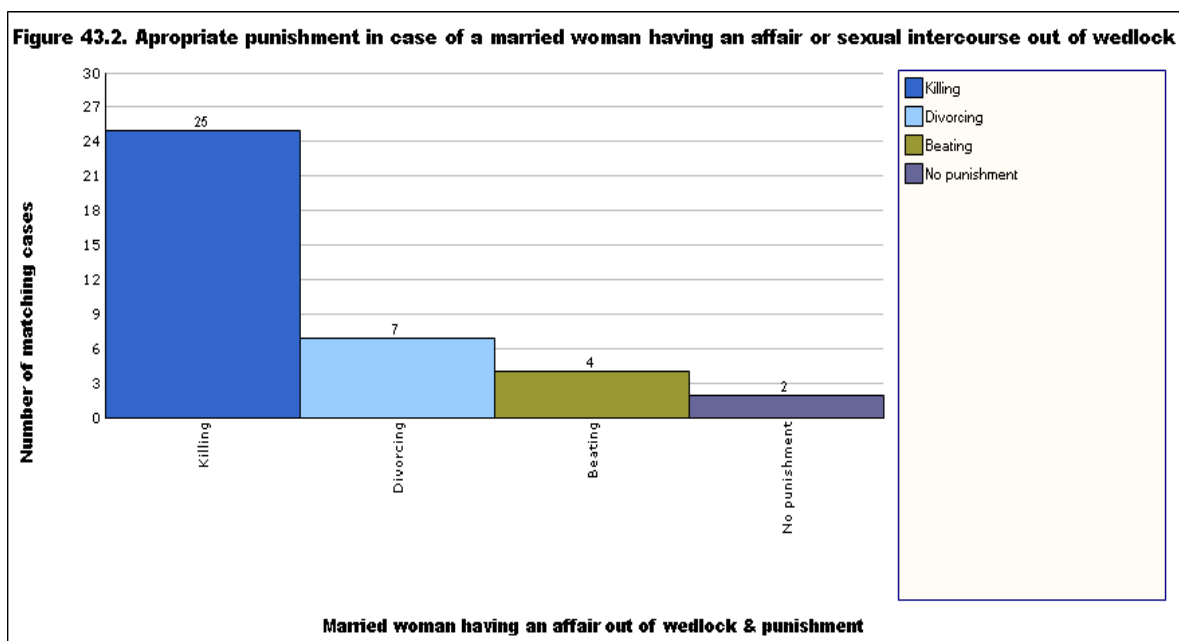


Fourthly, if there are ways to reinterpret the situation from shameful and dishonourable, to tolerable and acceptable in the eyes of the community, this conduct again is not dishonourable. For instance, when asked ‘is running away from home to a lover and then getting married, dishonourable for an unmarried woman?’ only two male interviewees said ‘it is dishonourable’ (see Figures 39.1. and 39.2.). Running away from home to a lover in order to get married may be an acceptable way of getting married as long as the unmarried woman is not forced to run away or is kidnapped. In the end, by one means or another, two families will agree with each other, the intermediaries will set the terms of peace, and a proper wedding can be conducted. If the woman and man get married lawfully, it is better for the woman’s family to arrange the wedding as soon as possible, before everybody starts to gossip about what has happened. In this context, organising a proper wedding transforms the situation from shameful and dishonourable to tolerable and acceptable, although it is not totally honourable.

When it comes to the case of an unmarried woman running away from home to a lover, and then not getting married, 56 per cent of the defendants (two female and 20 male) described the conduct of an unmarried woman as dishonourable (see Figures 40.1. 40.2., 40.3.). For six male defendants this behaviour requires killing the woman, and the male relatives of the woman hold the right to kill.

As a result of these four approaches, the harshest approach was taken in a hypothetical case where a married woman is having an affair or sexual intercourse out of wedlock. Indeed, apart from male interviewee-19, all male and female interviewees said ‘being an adulteress or having an affair or sexual intercourse out of wedlock is dishonourable for a married woman’. As Figure 43.2. shows, 25 participants (24 male and one female) said ‘the appropriate punishment that should be applied in this case is killing.’, while seven (five male and two female) said ‘the appropriate punishment is divorcing’, four (two male and two female) said

‘the appropriate punishment is beating’, and two male defendants said ‘it is dishonourable but it does not require any punishment’. As Figure 43.3. shows, for the majority of the participants (22 male and one female) ‘the husband of the dishonourable woman holds the right to kill.’ In the remaining cases, one defendant said ‘the male relatives of the dishonourable woman’s husband hold that right’, and one defendant said ‘the male relatives of the dishonourable woman’ hold the right to kill the woman who is an adulteress.



These figures confirm the author's understanding that, as far as honour killing cases committed in Turkey is concerned, the duty of restoring family honour in the cases of dishonourable conduct of wives does not generally rest on the women's birth family. After marriage, the responsibility for retaliation against the dishonourable conduct of wives is generally seen to be the duty of the husband. For some defendants the responsibility of ex-husband towards his ex-wife continues for a period of time despite the fact that they are now divorced. Therefore, as Figures 46.1. 46.2. 46.3. show, 41 per cent of the participants (16 cases) agreed that starting to live together with a man soon after divorce was dishonourable for a divorced woman, and seven out of 16 participants said 'this behaviour requires killing'. In this context three male defendants said 'even if they are divorced, the ex-husband of the divorced woman holds the right to kill if she starts to live together with a man soon after divorce'.

When it comes to the defendants' responses about suggested conduct in the questions designed for a married and unmarried man, as the empirical research in this part of the PhD is mainly concerned with male offenders and female victims, the author here is not going to discuss their responses, and will leave it for future study. However, Appendix 5 contains all figures that are not analysed here. (See Figures 47 to 64 in Appendix 5)

Now, the author is going to conclude the analysis of his field work by discussing the connection between his findings and the English law of provocation.

4.3.5 Connecting the field work to the approach of English law

Honour killing is governed by 'the specific logic of an honour culture' (Kurkiala, 2003:6), and a particular cultural understanding of honour and shame, which is likely to be alien and inexplicable to both the jury and the trial judge in England. Though its nature is beyond the experience of ordinary men and women, and may require opinion evidence from experts, honour killing is explicable in the context in which it arises. As we have seen, a person's

honour is believed to be a sacred value and something more precious to him than even his life. It is an essential element of life. The loss of honour is equal to loss of life; and an ideal man lives for his honour. Therefore, a person may go to extremes in defence of this sacred honour, by violating other sacred values and committing a grave sin, such as is killing. For the defendants who killed for honour, honour ‘imposes duties rather than bestows privileges’ (Bourdieu, 1966:221). Honour is like a heavy burden that has to be carried, and suffering from a wound caused by being labelled as dishonourable is more painful than a gunshot wound.

In the trial of honour killings, one of the possible defence strategies, or perhaps the only defence strategy, is the partial defence of provocation. In the light of the field work, the author can give many reasons for this. First of all, as the field work shows, there are some honour killing cases where there is a sudden loss of self-control and no premeditation or plan to kill. These are cases where the defendant, often a first time offender, with no history of violence, manages to resist explicit pressure from his family and implicit pressure from the community, by exercising self-control right up until the last triggering incident occurs. In honour killing cases committed under these circumstances, the clear defence strategy for the defendant is the partial defence of provocation.

Secondly, though, the field work shows that there are cases where the defendant has a disturbed mind at the time of killing, but such mental condition of the defendant, as explained above, does not meet the requirements for a defence of insanity, or those of diminished responsibility as now set out in section 52 of the Coroners and Justice Act 2009. Some of the behaviour shown by defendants soon after the killing may be regarded as a sign of poor mental health, or as the behaviour of a person who is not master of his mind nor in control of his behaviour. It is clear, however, that such mental state could not amount to insanity nor an abnormality of mental functioning arising from a recognised medical condition, which

substantially impaired his ability to understand the nature of his conduct, or to form a rational judgment, or to exercise self-control. This rules out the defence of diminished responsibility. Though the reference is now to 'abnormality of mental functioning' rather than 'abnormality of mind', and the concept of diminished responsibility is now broad enough to cover cases which may not have fallen within the scope of the previous formulation of the defence set out in section 2 of the Homicide Act 1957, the defence does not purport to cover the whole field of significant mental attributes, such as extreme mental or emotional disturbance which may fall within provocation.

Thirdly, in borderline cases where the circumstances of the case may fall within the scope of both provocation and diminished responsibility, it is less attractive for the defence to run the defence of diminished responsibility due to the burden of proof. In diminished responsibility, the defendant bears the burden of proof which requires expert evidence to be given by the defence about the defendant's mental condition. As it is likely that there will sometimes be competing evidence about the defendant's mental condition, for the sake of not jeopardising the defendant's interest, the defence will generally prefer to run the defence of provocation where the defendant bears no burden of proof. Indeed, as happened in *Dryden*, *Jamal Karimi*, *Smith*, and in other unreported cases cited by Mackay (1988) where section 2 of the Homicide Act 1957 was applied, the medical evidence is not always unanimous. In the context of the Coroners and Justice Act 2009, it is likely that there will sometimes be competing evidence about the defendant's mental condition and whether it substantially impaired his ability to understand the nature of his conduct, or to form a rational judgment, or to exercise self-control (s.52 (1A)). The medical experts may have different opinions. In any case, as the defendant bears the burden of proof in diminished responsibility, it is very difficult for a defendant to prove that what he experienced caused an abnormality of mental functioning which substantially impaired his ability to do one or more of the three things

mentioned above. Defendants may be prone to depression; they may react to minor provocation unpredictably and they may fail to resist pressure. In the end, however, it is unlikely that the defendants could prove an abnormality of mental functioning which substantially impaired their ability to do one or more of the three things mentioned above. These are the main reasons that explain why the partial defence of provocation is the only realistic defence strategy in the trial of honour killings.

In the English case of *Jamal Karimi*, the medical experts opined that the special situation of defendants having a different cultural background and suffering from social, emotional, physical and psychological problems should not be overlooked. In such cases, the defendants may not meet the requirements for diminished responsibility but their circumstances may constitute a special characteristic making the defendant more sensitive to accusation of dishonour and more vulnerable to provocation when he is dishonoured (*Jamal Karimi*, para. 23). In *Jamal Karimi* the defendant was an Iraqi Kurdish freedom fighter, with a background of trauma. The defendant claimed that he killed the deceased when he had come at him with a knife and sworn a particularly insulting phrase '*Besharef*', meaning "You have no honour". Partly by taking expert opinion into account, the Court of Appeal ordered a retrial, and ruled that when making their judgment about the defence of provocation the jury is entitled to take into account any evidence of the defendant's characteristics that is relevant to that issue (*Jamal Karimi*, para.27, 32-35). It seems that the defendant could, in principle, rely on his cultural background as the basis for a partial defence if there is something in his cultural background 'that changes the meaning or moral status of the [*murder*] offence' (Philips, 2003:512).

This important decision stands in contrast with other authorities in England, which are reluctant to consider defendants' different cultural understanding of honour and shame, and the special nature of the environment in which they grow up and in which the provocative act

occurred. It seems that a very negative stereotype has developed for such defendants, in which they are assumed to have been content with what they did, and assumed to have had ‘a considered desire for revenge’ (The Law Commission, Report No.304, Murder, Manslaughter and Infanticide, [hereafter ‘the Murder Report’] 2006, para. 5.25; Summary of responses and Government position, [hereafter ‘Government Position’] 2009, para. 56) and to have committed such crimes in cold blood without hesitation. It has been shown, however, that the field work found that more than half of the participants did not fall into such a stereotype.

In honour killing cases where the defendant has a different cultural understanding of honour and shame, and where the provocation is a combination of human actions and emotional stress, caused by human beings and surrounding circumstances over a long period of time, it is necessary to consider the influence of the defendant’s culture and ethnicity on the gravity of the provocation to him, and the response of the defendant, in order to enable the jury to make an informed judgment about the reasons behind the defendant’s loss of self-control. It is also necessary to understand the chain of events which led to the murder, in the light of defendant’s culture and ethnicity.

As Yeo has argued, a jury’s assessment of whether some act, or series of acts, done by the deceased to the defendant, which are purportedly provocative, violating honour and bringing shame, justify a finding of manslaughter rather than murder, is deeply influenced by the ‘cultural, moral and gender-specific norms’ (Yeo, 1996:307) of the society in which the jury’s members grow up. Only those response patterns of the defendant which are regarded by the jury as morally acceptable, reasonable and normal will be taken to deserve mitigation. It might be necessary, then, for expert evidence to be given, and for the trial judge to direct the jury on the possible influence of the ethnicity and culture of the defendant as characteristics affecting the gravity of the provocation and the defendant’s response to provocation.

There should be room in the criminal trial for these issues to be aired, and for the jury to consider the paradox voiced by interviewee-23. He said:

‘After going through all this, and spending nine years in the prison, I thought about one thing that always seemed to me confusing. I could not solve it in my mind. It is society that creates the norm and also punishes you.

According to the norm, you are supposed to kill, but if you follow the norm and obey the rule you are punished and put into prison. If you do not follow or obey the rule you are punished again this time by exclusion and condemnation of the people. I mean when you do what you are supposed to do, you are punished you are in prison. When you do not do what you are supposed to do, you are condemned and therefore punished too. So, in both situations, there is a punishment, I could not understand’
(Interviewee-23, male)

Therefore, the next chapter will consider whether there is a need to reformulate the English law of provocation to allow the jury to assess all the relevant evidence, whether cultural or non-cultural, whenever a provocation partial defence is based on different cultural dimensions, or on the defendant’s different cultural understandings of honour and shame. It will assess whether evidence should be heard on these matters from ‘expert witnesses’. In this context, the focus of the next chapter will be on honour killing cases, where the provocation is the result of a combination of the deceased’s conduct, the defendant’s emotional stress, and in many cases explicit or implicit pressure from the community or extended family members over a long period of time which caused the defendant to reach the point where s/he decides that s/he can take no more and kills the deceased, with or without a final triggering event. In no case was there premeditation but in some cases the defendant had the idea of killing in his mind, then abandoned this intention, but was subsequently provoked to kill the deceased upon loss of control.

During the time of writing this thesis, the law on provocation and diminished responsibility in England and Wales was substantially reshaped by the Coroners and Justice Act 2009, which will come into force on 4th October 2010 (S.I. No 816 of 2010). This made it

necessary to analyse these issues in the light of both the 1957 and 2009 Acts. Consideration had to be given to the provisions of both Acts, to discuss whether they provided a fair and just treatment for the defendants in honour killing cases. Therefore, in the next chapter, the author will discuss this issue in the light of both Acts.



Chapter 5

THE ENGLISH LAW OF PROVOCATION IN THE CONTEXT OF HONOUR KILLINGS

Part 1

DEFINITION, RATIONALE, AND ELEMENTS OF THE DEFENCE

5.1.1 Preliminary issues and the definition

As a defence with roots in English common law, provocation is a partial defence to murder which, if run successfully, will reduce the crime of conviction to manslaughter; and the burden of disproving it, once raised, rests on the prosecution. A classic definition of provocation was provided by Devlin J. in *Duffy*. According to this definition:

‘Provocation is some act, or series of acts, done by the dead man to the accused, which would cause in any reasonable person and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind’ (*Duffy* at p.932, per Lord Goddard).

This definition was modified by section 3 of the Homicide Act 1957. It provides that:

‘Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.’

This partial defence of provocation has recently been abolished by section 56 (2) of the Coroners and Justice Act 2009 and replaced with a new partial defence of ‘loss of control’, which is set out in sections 54 and 55 of the Act. Section 54 sets out the criteria which need to be met in order for the new partial defence to be successful. It provides that:

(1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if—

(a) D’s acts and omissions in doing or being a party to the killing resulted from D’s loss of self-control,

(b) the loss of self-control had a qualifying trigger, and

(c) a person of D’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

(2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.

(3) In subsection (1)(c) the reference to “the circumstances of D” is a reference to all of D’s circumstances other than those whose only relevance to D’s conduct is that they bear on D’s general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

(8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

Under section 54 (1)(b) of the Act the loss of self-control must have a qualifying trigger in order for the partial defence to apply and section 55 defines the term “qualifying trigger” for purposes of section 54. It provides that:

(1) This section applies for the purposes of section 54.

(2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.

(3) This subsection applies if D’s loss of self-control was attributable to D’s fear of serious violence from V against D or another identified person.

(4) This subsection applies if D’s loss of self-control was attributable to a thing or things done or said (or both) which—

(a) constituted circumstances of an extremely grave character, and

(b) caused D to have a justifiable sense of being seriously wronged.

(5) This subsection applies if D’s loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).

(6) In determining whether a loss of self-control had a qualifying trigger—

(a) D’s fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(7) In this section references to “D” and “V” are to be construed in accordance with section 54.

As can be seen, the partial defence of loss of control has two limbs. The first is loss of control, attributable to the defendant’s fear of serious violence from the victim against the defendant or another identified person, and the second is loss of control, attributable to a thing or things done or said (or both) which constituted circumstances of an extremely grave character, and caused the defendant to have a justifiable sense of being seriously wronged. The second limb of the defence is narrower than the first, and it will only be applied in exceptional circumstances which constituted circumstances of an extremely grave character, and caused the defendant to have a justifiable sense of being seriously wronged. The defence also applies in cases where the defendant’s loss of control is attributable to a combination of the matters set out in both limbs. However, in either limb in accordance with sections 54 (1) (a) and (c), (2), (3) and (6) of the Act, there is a requirement of loss of self-control (which does not need to be sudden), and it is necessary to determine whether a person of ordinary tolerance and self restraint, and in the circumstances of the defendant, might have reacted in the same or a similar way to the defendant. In other words, the partial defence is grounded in a loss of self control that does not need to be sudden. But, the Act also introduces three safeguards. The first is that the new defence will not be applied in cases where the defendant has acted in a considered desire for revenge (s. 54 (4)). The second is that a thing done or said which constitutes sexual infidelity is to be disregarded and will be outside of the scope of the new defence (s.55 (6) (c)). Finally, the third safeguard is that the defendant’s fear of serious violence, or sense of being seriously wronged, will be disregarded if it was caused by a thing which the defendant himself incited for the purpose of providing an excuse to use violence (section 55 (6) (a), (b)).

Though the interpretations of the elements of the provocation defence and how to apply them have not been consistent in English courts, at least from the case of *R v Lesbini* [1914], the success of any provocation defence has been dependent on the application of a dual test. In the Homicide Act 1957 this dual test requires that the conduct of the deceased towards the defendant must be such as (1) might cause in any reasonable or ordinary person and (2) actually causes in the defendant loss of self-control as a result of which he commits the unlawful act that kills the deceased. Therefore, the provocation must not only have caused the defendant to lose his self-control but must also be such as might cause a reasonable man to react to it as the defendant did (*Bedder*, at p.1121; *Camplin*, at p.172, 173; *Newell*, at p.334; *Morhall* at p.334; *Smith* per Lord Hoffmann, at p.297, per Lord Hobhouse, at p.324, per Lord Millett at p.344; *Holley*, per Lord Nicholls, at p.588, 589; *Faqir Mohammed*, at para. 44).

The first part of the test is known as the subjective condition of the defence, while the second is the objective condition (Yeo, 1998:10; Smith and Hogan, 2008: 489; *Doughty* at p.324; *Smith* per Lord Hoffmann, at p.297; per Lord Millett at p.344). An alternative description is to call the first part of the test the factual question, and the second part of the test the question of opinion (*Newell*, at p.334) or the evaluative question (Williams, 1983:527; *Holley*, per Lord Nicholls at p.589). In the language of the 1957 Act the first part of the test requires the jury to consider whether the defendant was indeed provoked (whether by things done or by things said or by both together) to lose his self-control and the second part of the test requires the jury to consider whether the provocation was enough to make a reasonable man do what the real defendant did which is killing. The second part of the test only arises if it is decided that there is evidence on which the jury can find the defendant was in fact provoked to lose his self-control. Otherwise, if the jury are satisfied that the defendant did not actually lose his self-control, that is an end of the defence. The first part of the test bears its own difficulties in distinguishing a killing in cold blood from one done under provocation.

The second part of the test is, however, even more problematic as it is based on a hypothetical example of a reasonable or ordinary person.

When it comes to the application of the Coroners and Justice Act 2009, section 54 sets out the criteria which need to be met in order for the new partial defence to be successful. According to subsection (1), the defendant's conduct should result from a loss of self-control, the loss of self-control should have a qualifying trigger (which is defined in section 55), and a person of the defendant's sex and age with an ordinary level of tolerance and self-restraint, and in the circumstances of the defendant, might have reacted in the same or similar way to the defendant. Therefore, assuming that there is sufficient evidence for the defence to be left to the jury, the success of application of the new partial defence will also be dependent on the application of a dual test. For the first limb of the defence, first there will be a subjective test for the jury to determine whether the defendant lost self-control because of a genuine fear of serious violence, whether or not the fear was in fact reasonable. The fear of serious violence needs to be in respect of violence against the defendant or against another identified person. In the second part of this limb, there will be an objective test for the jury to determine whether a person of ordinary tolerance and self-restraint, in the defendant's circumstances, might have reacted in the same or a similar way to the defendant.

For the second limb of the defence, there will also be a dual test with objective and subjective questions for the jury. In this context, determining whether the defendant's loss of control is attributable to a thing or things done or said (or both) which constituted circumstances of an extremely grave character and caused the defendant to have a sense of being seriously wronged will be a subjective question for the jury. Then, whether a defendant's sense of being seriously wronged is justifiable will be an objective question for the jury. The jury will need to decide whether a person of ordinary tolerance and self-restraint,

in the defendant's circumstances, might have reacted in the same or a similar way to the defendant.

As far as this thesis and focus of this chapter are concerned, the majority of the honour killing cases fall within the scope of the second limb (s.55 (4)). However, the circumstances of some female defendants (interviewee-36, 38, and 39) fall within the scope of the first limb (s.55 (3)).

However, before discussing further the problematic concept of provocation in English law and its elements in detail in the light of both Acts, it is first necessary to consider the rationale of provocation and why provocation has been accepted as a partial defence to a charge of murder.

5.1.2 The rationale of provocation

5.1.2a The rationale of provocation until the Coroners and Justice Act 2009

In English law, as late as the sixteenth century, killing was presumed to proceed from malice aforethought which was attributed to the defendant's wickedness of mind and required sentence of death to be imposed on every defendant convicted of murder. So, the defence of provocation was developed by the judges to mitigate the harshness of the law, and evidence of provocation came to be accepted in rebuttal of this implication of malice (Ashworth, 1976:292; Allen, 2000:217; Dressler, 1982:422,425; The Law Commission, 2003, Consultation Paper, para. 1.24). At the beginning, the distinction between murder and manslaughter rested on a simple distinction between killing upon premeditation and killing upon sudden falling out. Later, this superficial view was gradually superseded by the broader and deeper view that the moral character of homicide must be judged by the full circumstances of the case (The Report of the Royal Commission on Capital Punishment (1949-1953), para.125, p.46; Dressler, 1982:426, 427; Nourse, 1997: 1404; The Law Commission, 2003, Consultation Paper, para. 3.9).

So, in the common law of England, it was subsequently accepted that there may be circumstances in which a defendant is clearly not justified in killing another but in which the culpability of the defendant is mitigated because he was provoked to kill. The defendant's understandable weakness of self-control might be the cause of the offence. The underlying reason is a concession to human infirmity and imperfection. In this context, the provocation defence is 'a compromise, neither conceding the propriety of the act nor exacting the full penalty for it' (Williams, 1954: 742). Therefore, the law on the one hand must respect the sanctity of human life, on the other hand has to recognise the effect of provocation on human frailty.⁵⁸

As explained by Coleridge J in *Kirkham*:

'The law requires from [*the defendant*] and will allow him to show that there were some mitigating circumstances, which alter the presumed character of the act, because it has at once a sacred regard for human life and also a respect for man's failings, and will not require more from an imperfect creature than he can perform' (*Kirkham*, at p.117).

Therefore, for so long as the defence of provocation remains and is recognised as a partial defence to a charge of murder, the balance between the principle of sanctity of human life and the effect of provocation on human frailty must be preserved. However, it seems that since *Holley*, English courts have again begun to show reluctance to follow this approach in the name of applying an objective standard when they judge whether the defendant's loss of self-control is 'partially excusable' (*Smith*, per Lord Hoffmann at p.308) or in more neutral terms whether the defendant could have done more in his or her circumstances. The Coroners

⁵⁸ *Hayward*, at p.159, per Tindal CJ; *Thomas*, at p.819, per Parke B; *Kirkham*, at p.117,119, per Coleridge J; *Holmes* at p.601, per Viscount Simon; *Camplin* at p.171 per Lord Diplock, at p.175,178 per Lord Morris, at p.180 per Lord Simon; *Baillie* at p.37, per Henry L.J.; *Luc Thiet Thuan* at p.152 per Lord Steyn; *Smith* at p.299, 300 per Lord Hoffmann, at p.344 per Lord Millett; *Holley* at p.598 per Lord Bingham and Lord Hoffmann; Allen, 2000:218.

and Justice Act 2009 has created a new partial defence of ‘loss of control’, which was formulated in accordance with the reasoning in *Holley* and the minority opinion in *Smith* (The Law Commission, Partial Defences to Murder, No.290 [hereafter ‘the Partial Defences Report’] 2004, para.3.110, the Murder Report, 2006, para 5.40, the Ministry of Justice, Consultation Paper, 2008, paras. 22, 39). The Government’s acceptance of the reasoning in *Holley*, to test whether the defendant’s loss of self-control is reasonable, or whether the defendant could have done more in his or her circumstances, may well mean that English courts will be reluctant to give the same amount of weight to the personal circumstances of each defendant as was the case before *Holley*. In order to show this, the author now turns to discuss the different interpretations of the rationale of provocation and the rationale of the new partial defence of ‘loss of control’.

5.1.2b The different interpretations of the rationale and the rationale of the partial defence of loss of control

As explained above, due to their reluctance, English courts have had a tendency to expect the defendant to cope with more than he can realistically manage. This approach runs against the concept of human frailty which, in the opinion of this author, is the underlying rationale of the defence of provocation. One of the main reasons behind this reluctance is the concern that without some degree of control over the jury, the jury might reach a verdict which goes beyond an allowance for human frailty and permits the defendant to rely simply on his exceptional excitability or pugnacity (*Lesbini*; *Bedder* at p.1122, 1123; *Mancini* at p.9; *Camplin* at p.182; *Holley* at p.589), or his ill-temper, or on his drunkenness (*Camplin*, at p.182) as an excuse for loss of self-control, which is against general public policy. It has been said that though the law of provocation involves a concession to human frailty, ‘[this] frailty [is] that of mankind at large, not the frailty of an individual defendant’ (The Law

Commission, 2003, Consultation Paper, para. 1.46). This, however, overlooks the possibility of causing injustice in a multi - faith and multi - cultural society such as the UK.

The defence of provocation should be applied consistently with a rationale of seeking reconciliation between the principle of the sanctity of human life and the effect of provocation on human frailty, in order to prevent injustice. Otherwise, this reluctance puts the defendants in certain honour killing cases in a disadvantaged position, by leaving them almost no defence to argue. My research establishes that in some honour killing cases the defendant is in an acute dilemma, having to choose whether to kill and receive the punishment imposed by the law, or not to kill and receive punishment from his community or extended family members in the form of insult, humiliation, exclusion and condemnation. In such cases, where there is no support from the community, a combination of anger, fear, frustration and a sense of desperation builds up in the defendant, and makes him like a cornered animal ready to attack. As has happened in reported cumulative provocation cases, (Wasik, 1982: 29), there may be no apparent final provoking event, (interviewee -30, female interviewees- 37 and 38) or such an event may be objectively quite trivial (interviewees-3, 15, 16, 22, female interviewee-36). In such situations, defendants should be given the opportunity to present argument by adducing evidence from expert witnesses to enable the jury to reach an informed view of the reasons behind the defendant's loss of self-control, and to decide whether the defendant could reasonably have been expected to do more than he did.

One problem here is that the rationale of provocation can be presented in terms of (partial) justification (McAuley, 1987) or (partial) excuse (Dressler, 1982; Dressler, 1988; Allen, 2000:223). There is an important distinction between justification and excuse. Justification is about balancing of harm, and a finding that the defendant's actions were right in law. When it comes to excuse, excuse concedes the wrongfulness of the defendant's actions but prays excuse because of impairment of control or understanding, or other form of lack of

culpability. In justification, the focus is on the defendant's act. In excuse, however, the focus is on the defendant and his circumstances, not on his act or his retaliation against the victim's conduct. The existence of harm is proven and the defendant admits his wrongdoing. However, he asserts that he should be punished less because he is less morally blameworthy for the harm (Dressler, 1982: 436,437). The author stresses that his arguments about concession to human frailty should not be understood as saying that the killing is at least partly the victim's fault, or that 'she asked for it'. That is one of the arguments provided in order to explain the rationale of provocation on the basis of partial justification (McAuley, 1987).

It is true that when we listen to the accounts of the defendants, they talk terms of self defence and justification when they say: 'I had no choice', or 'it was not in my hands'. In their words, their case seems to run close to self-defence, that requires full acquittal. By using such words in their stories, they are only trying to reflect the pressure that they have experienced. Seen from this perspective, their actions can become understandable, explainable, or perhaps partially excusable in all the circumstances, but clearly not as right, justifiable, or lawful. Therefore, in this thesis, the author does not have any intention to engage with the idea that in honour killing cases, the defendant is not a free agent and so not responsible for his act, since such persons should be acquitted. But it is unfair to find an individual fully responsible for his act in isolation from the social causes of that act, and the social repercussions which will occur if that act is not done. It is essential to understand the dynamics and motives behind these killings. Indeed, it is motive rather than intention (*mens rea*) which addresses 'why' questions and carries different moral values (Norrie, 2002:540) that need to be properly discussed in the defence of provocation. However, the Government's preferred moral basis for recognising a new partial defence of loss of control, which is attributable to a thing or things done or said (or both), places neither the defendant's motive, nor the question of whether the defendant could have done more in his or her circumstances,

at the heart of the defence. It ignores the concept of human frailty, the personal circumstances of the defendant and the question of ‘how emotions affect human behaviour’ (Mackay and Mitchell, 2005:44, 49).

The Law Commission explains the rationale of the new defence in its Partial Defences Report in following terms:

‘We favour as the moral basis for retaining a defence of provocation that the defendant had legitimate ground to feel seriously wronged by the person at whom his or her conduct was aimed, and that this lessened the moral culpability of the defendant reacting to that outrage in the way that he or she did. It is the justification of the sense of outrage which provides a *partial excuse* for their responsive conduct.’

(The Partial Defences Report, 2004, para 3.59, emphasis added)

This means that, no matter whether the defendant was caused to have extreme mental or emotional disturbance and to do the wrongful act, the defence will not be available and the blameworthiness of the homicide will not be affected in cases where there was no provocation in the sense suggested above (The Partial Defences Report, 2004, para. 3.64).

The Law Commission’s proposed definition of the rationale reflects the Law Commission’s attention to the arguments of Victoria Nourse (1997) in their effort to find a rationale for a new defence of loss of control (The Partial Defences Report, 2004, paras.3.52-3.56.). However, it seems that her explanation of the rationale of the defence is not properly reflected in the partial defence of loss of control. Nourse argues that, in liberal theories of the provocation defence, the defence is based on the assumption that emotion obscures reason. However, she says, the emotion is not the enemy of reason but, instead, its embodiment (Nourse, 1997: 1390). For her,

‘[t]o say that an act cannot be both justified and excused is to say something about acts, not emotions. It is perfectly consistent to say that one’s emotions are justified or warranted even when one’s acts are not. Indeed ... we may easily say that passionate killings are not justified even if we believe that the emotions causing some killings are, in some sense, the “right” emotion’ (Nourse, 1997: 1394).

She argues that the defence of provocation should be applied in cases where the defendant's sense of outrage is warranted, but not the manner or scale of reaction. The sense of outrage which is warranted should be excused and should amount to provocation. As can be seen, her argument focuses on the emotion that gave rise to the act, rather than the act itself, and her proposal does not depend upon the idea that the victim deserves to be punished. Instead, she proposes that the law should see the defendant's state of mind or his emotions as central to the assessment of his culpability (Nourse, 1997: 1395). Her approach allows the defence to retain many features associated with excuse. It continues to give due weight to the defendant's perception of the triggering act, and to take fully into account the defendant's characteristics when they are relevant to the defence (Nourse, 1997:1395).

Though the Law Commission's understanding of the new rationale also focuses on the belief of the defendant that he has been seriously wronged, and whether this belief is justifiable, it does not properly reflect the subtleties of Nourse's account. In which cultural, or social, context does this belief need to be justified or warranted? Is this a question of law or fact? It can be said that the Law Commission's rationale is that the sense of outrage must be warranted by society at large to be regarded as justifiable, since in the consultation paper, the Law Commission stated that the concept of human frailty in provocation '[is] that of mankind at large, not the frailty of an individual defendant' (The Law Commission, 2003, Consultation Paper, para. 1.46).

In the opinion of this author, the conclusion to be drawn from the above discussion is that though the wording of the 2009 Act and the formulation of the new defence⁵⁹ might bring the moral basis of the defence somewhat closer to the partial justification model, the moral

⁵⁹ Indeed, since only sex and age of the defendant will be taken into account as relevant characteristics in the application of new objective test, the new defence of loss of control will only be available in cases where the defendant's fear of serious violence emanates from the deceased, and the new partial defence will not be available in cases where the defendant kills the deceased in response to provocation from a third party, it appears that the defence has been brought to closer to the partial justification model.

basis of the new defence of 'loss of control' is still a partial excuse which can be applied in cases where the defendant has a justifiable sense of being seriously wronged or has a legitimate reason to feel seriously wronged. The word 'justifiable' only refers to and limits what is acceptable related to loss of control, and it is designed to exclude extreme cases. However, this point is not entirely clear. Neither, the Law Commission nor the Government took a clear position about this issue. Para 3.59 of the Partial Defences Report suggests that the defence is still a 'partial excuse'. However, there are some commentators who have expressed different opinions, such as Mackay and Michell (2005) and Norrie (2010). Mackay and Mitchell argue that the Law Commission's recommendation appears to treat provocation as a partial justification (Mackay and Mitchell, 2005:48). Norrie argues that the moral basis of the new defence is based on what he calls, '*imperfect justification*', which reflects an approach where the conduct is wrong, but, in the overall setting, invokes an element of justification (Norrie, 2010:277). Here, the defendant's conduct is imperfectly rightful, and therefore both condemned and partially vindicated. However, the moral basis of the defence in 1957 Act was based on '*compassionate excuse*' in which the law condemned the defendant's act both for the wrong done and the loss of control, but still extended a compassionate hand to the defendant. It involved a concession to human frailty, where the conduct was partially excused, both wrongful and partially condoned on ground of compassion (Norrie, 2010:279). In other words, under the moral basis of the new defence, the sympathy for human frailty is rejected in favour of a recognition of imperfectly justified reason for loss of self-control such as anger (Norrie, 2010:284).

No matter which approach is taken to the rationale of the new defence, it is clear that such a defence, the rationale of which largely ignores the personal circumstances of the defendant and his motives, and runs the potential risk of disadvantaging minorities by judging the justifiability of their belief with jury's value judgement, is not helpful in providing any

solution for honour killing cases committed under circumstances set out above. Therefore, this author's understanding of the rationale of provocation is based on the premise that in provocation, killing is attributable to the extraordinary nature of the defendant's circumstances and the appreciation that 'any one of us might have reacted in the same way if we had been in the defendant's shoes' (*Smith*, per Lord Millett at p.344, Dressler, 1988:476). In this context, provocation is a partial defence that 'palliate[s] or mitigate[s]' (Williams, 1954:750) the violence used in the defendant's circumstances, but which can never justify the act or violence used. It is these circumstances that make the nature of the defendant's act, to some extent, understandable, but not desirable or justifiable. In another words, the choices available for the defendant are all so bad that his 'choice-capabilities' (Dressler, 1982: 461, 467) are affected to an extent that even an ordinary person would have been reacted similarly under the same circumstances.

In fact, this argument does not require going so far as to direct jurors to put themselves into the defendant's shoes. This suggestion was objected to by the High Court of Australia in *Stingel* where it was said that this approach would lead to the removal of the objective standard entirely, and give undue weight to particular juror's subjective view of his or her personal power of self-control (*Stingel* at p.328). In the author's argument, the jurors are not going to be asked to put themselves into the defendant's shoes. Instead, by taking into account evidence put forward by expert witnesses about the defendant's cultural norms and values, the pressure he received, and his state of mind at the time of the murder, they are going to make an informed decision on whether the combination of all these circumstances might be regarded as a partial excuse to mitigate the defendant's crime from murder to manslaughter. In some honour killing cases the defendant himself/herself is in a dilemma, and under pressure, and is gradually driven into killing as a result of a chain of complex events. These events may cause a sudden outburst or a 'slow burning' reaction and drive the defendant into

killing. The defendant's response emanates from his reduced or partially undermined choice-capabilities (Dressler, 1982: 461, 464, 467). Though interviewees expressed this in different ways by saying that 'when push comes to shove you kill' or 'it was not in my hands any more' they make it clear that their capability of making the right choice was undermined as a result of a chain of events that brought them to a point at which they could not take it any more, and killed. They might have done their best to prevent it, but they were ultimately unable to resist the pressure. In such cases, the defendant's personal circumstances combined with the specific logic of an honour culture, and what was said or done, should provide facts to meet the requirements for a qualified defence of provocation. Insisting on law abiding behaviour from the defendant when its consequence is the defendant's loss of honour, which is equal to loss of life, would be demanding extraordinary qualities of the defendant and requesting extraordinary standards of self-restraint.

The author is aware of the fact that his explanation of these cases invokes some features of both the partial defences of provocation and diminished responsibility, and perhaps the doctrine of duress, although duress is not available in murder cases in English law. As long as the mandatory life sentence for murder cases is not abolished, there will be cases that do not clearly fall within either the defence of provocation or diminished responsibility, but the circumstances of the defendant deserve a degree of sympathy from the judge and jury. This situation might in practice lead to some relaxation of the rules governing either of the defences (The Partial Defences Report, 2004 paras. 2.74., 3.44., 3.45). As will be explained later, the Government appreciates this problem but it is reluctant to cover this possible 'gap' (Government Position, 2009 para. 86).

Part 2

THE FIRST PART OF THE TEST-FACTUAL ELEMENT

5.2.1 Whether there is evidence

5.2.1a The issue of evidence in the Homicide Act 1957

The first part of section 3 of the Homicide Act 1957 begins: ‘where on a charge of murder there is evidence on which the jury can find that the person charged was provoked... to lose his self-control’. So, there must be evidence. That is a question for the judge. Indeed the only power vested in the judge, once the defence of provocation is raised by the defendant, is to rule on whether there is any evidence at all of provocation. Once the judge has ruled that there is evidence upon which the jury can find that something caused the defendant to lose self-control, he is not entitled, as he was at common law, to withdraw the issue from the jury (*Doughty*, at p.324, *Ahluwalia*, at p.895; *Cambridge*, at p.764; *Thornton* (No.2), at p.113; *Smith*, per Lord Hoffmann at p.310, per Lord Clyde at p.314; *Humphreys*, at p.1015).

The power of the judge to rule whether there is any evidence on which the jury can find that the defendant was provoked remains intact even if this defence has not been specifically raised at the trial (*Thornton* (No.1) at p.312; *Thornton* (No.2) at p.113, 116; *Cambridge*, at p.765; *Stewart*, at p.1007; *Acott*, at p.102). Indeed, in *Porritt*, the Court of Appeal approved the following passage from the opinion of the Privy Council in *Bullard v The Queen* (1957) delivered by Lord Tucker, at p. 642:

‘It has long been settled law that if on the evidence, whether of the prosecution or of the defence, *there is any evidence of provocation fit to be left to a jury, and whether or not this issue has been specifically raised at the trial* by counsel for the defence and *whether or not the accused had said in terms that he was provoked*, it is the duty of the judge, after a proper direction, to leave it open to the jury to return a verdict of manslaughter if they are not satisfied beyond reasonable doubt that the killing was unprovoked.’ (emphasis added)

What kind of evidence is sufficient to satisfy the judge? In *Acott*, Lord Steyn observed that ‘a loss of self-control caused by fear, panic, sheer bad temper or extraneous circumstances (e.g. a slow down of traffic due to snow) would not be enough. There must be some evidence tending to show that the killing might have been an uncontrolled reaction to provoking conduct rather than an act of revenge’ (*Acott*, at p.102). In *Cambridge*, the Court of Appeal cited *Bullard v The Queen*, *Rossiter* and *Camplin* as authorities to clarify the issue of evidence. In *Bullard v The Queen* at p.642 Lord Tucker said ‘any evidence of provocation fit to be left to a jury’ should be left to the jury. In *Camplin* Lord Diplock said if there is any evidence ‘*however slight it might appear to the judge*’, (*Camplin* at p.173 emphasis added) he is bound to leave the question of provocation to the jury. Finally, in *Rossiter* at p. 758, Russell L.J. said: ‘wherever there is material which is capable of amounting to provocation, *however tenuous it may be*, the jury must be given the privilege of ruling upon it’ (emphasis added). So, as long as there is evidence that might establish that the defendant was provoked to lose his self-control and therefore killed, the judge should always leave the question of whether a reasonable man might have reacted to that provocation as the defendant did to the jury. Even if the judge himself believes the circumstances to be such that no reasonable man would have reacted as the defendant did, he is bound to do that.

5.2.1b The issue of evidence in the Coroners and Justice Act 2009

In the light of provisions set out section 54 (1), 54 (5) and 54 (6), of the Act, it is apparent that the issue of evidence in provocation was substantially toughened in the Coroners and Justice Act 2009. It provides that the judge should not be required to leave either limb of the defence to the jury unless there is evidence on which a reasonable jury, properly directed, could conclude that the defence might apply. Indeed, the Law Commission recommended that the defence of provocation be more tightly drawn so as to prevent it being advanced in certain cases where presently it is available. In the opinion of the Commission, due to the fact that

the issue has to be left to the jury whenever a very low evidential hurdle is surmounted, the defence has become far too loose. Therefore, an explicit power in the court to withdraw the issue of provocation from the jury was recommended by arguing that provocation should only arise where circumstances are sufficiently grave to justify it (The Partial Defences Report, 2004, paras. 2.2, 3.20, 3.25)). Similar criticism and recommendations were also made in the Law Commission's Murder Report. It was said that the current position does not serve the interests of justice because the need to put the defence to the jury in these circumstances increases the likelihood that an unmeritorious claim may succeed (The Murder Report, 2006, para 5.15). Therefore, under the 2009 Act the judge has power to withdraw the defence from the jury and has the task of filtering out whether the provocation claim is speculative or unmeritorious (The Murder Report, 2006, para. 5.16).

The question now is whether sufficient evidence is adduced to raise an issue of loss of control. The word '*adduced*', rather than '*given*', used in section (54) (5) and 54 (6), suggests that even if this defence has not been specifically raised at the trial, the trial judge can raise it and leave the issue of loss of control to the jury. However, when section 54 (5) is interpreted along with section 54 (6), it seems that there is a requirement that evidence should also show that the loss of control has a qualifying trigger and the circumstances are such that in the opinion of the trial judge, a jury properly directed could reasonably conclude that the defence might apply. It is submitted that only rarely will there be a case where the defence has not been raised but, in the opinion of the judge, there is sufficient evidence to leave the issue to the jury. The Government is of the same view, that such cases will be very rare (The Government Position, 2009, para. 80).

The formulation allows the judge to withdraw the defence if he believes there is insufficient evidence tending to show that a person of normal degree of tolerance and self-restraint and in the circumstances of the defendant, might have reacted in the same or in a

similar way to the defendant. This is very close to asking whether there is sufficient evidence to justify a verdict of manslaughter, rather than whether there is sufficient evidence to leave the issue of provocation to the jury, a point made many years ago by Glanville Williams (Williams, 1954:749). This approach might well lead to the withdrawal of the defence from the jury in some cases which deserve to be left for the consideration of jury.⁶⁰

On the other hand, when assessing or filtering out the seriousness of the provocation and whether the defendant showed a reasonable amount of self-control, it is possible that the formulation of section 54 (1), (5) and (6) will require the judge to look for some element of blame or wrongness on the part of the victim in order to justify the possible verdict of manslaughter, or limit the availability of the defence of loss of control to cases where there is some element of wrongness. If this is the case, as the wording suggests, this might be a welcome development for the reversal of such cases as *Doughty*. However, it could lead to an error in cases committed under the influence of extreme mental or emotional disturbance or in cases committed in a different social and cultural context such as honour killing cases. These cases should not be filtered out by the life experience of the trial judge without seeking an expert opinion. Indeed, making any judgement based on human experience really means a

⁶⁰ The Government insists that the section 54 only allows judges not to direct the jury on provocation where the evidence of the defence is very poor, and where no properly directed jury could reasonably conclude that the defence might apply (Government Position, 2009, para. 80). In this context, the Law Commission suggests that the possibility of injustice can be prevented by the creation of an interlocutory appeal against a judge's ruling that the defence should not be put to the jury (The Murder Report, 2006, para. 5.16). The Law Commission also suggests that the judge's power to withdraw the defence from the jury's consideration, coupled with the supervision of the appellate courts, 'will enable the law to set boundaries in a reasoned, sensitive and nuanced way, whereas an inflexible statutory formula would have no room for development' (The Partial Defences Report, 2004, para. 3.142). However, in the opinion of this author, the Law Commission's proposal contradicts itself and section 54 of the 2009 Act is in direct contradiction with this purpose. How can flexibility be achieved in the trial of provocation cases if the judge is required to filter out cultural evidence so that the jury cannot consider it? For further criticism of the Law Commission's suggestion of the creation of an interlocutory appeal see Power (2006) p.885.

judgement based on ‘the experience of myself and the very limited number of people with whom I usually associate’ (Brett, 1970:636). That is why, in such cases, the judge should not try to equate the facts of the offence with his own life experience, which is deeply influenced by his own culture. This is a path that may lead to error and injustice. An English judge in an honour killing case, after filtering the events through his own experience might say that ‘choosing who will be her future husband, or from whom and how she will get pregnant, are natural episodes or events occurring in the life of any young woman, so they can not constitute evidence of provocation.’ This reasoning would be valid only if we ignore the personal circumstances of the defendant and the pressure that he felt, and assume that such events or episodes are culture free, not shaped or influenced by social determinants, mores or rituals of the society. In honour killing cases, justice requires that the judge should avoid following such an erroneous path when he decides whether there is sufficient evidence related to loss of control. The field work shows that in some honour killing cases, the circumstances comprise a complex history, with several distinct and cumulative strands of potentially provocative conduct, which falls outside the ordinary experience of the judge, and of the jury.

The possibility of error arises not just from a failure by the judge to see and fully understand potential evidence that can explain why the defendant lost his self-control, but also from the adequacy of his guidance to the jury as to the complex history of the case. This is a requirement imposed on the trial judge, as laid down by the Court of Appeal. In *Stewart*, the Court of Appeal ruled that:

‘In our judgment, where the judge must, as a matter of law, leave the issue of provocation to the jury, he should indicate to them, unless it is obvious, what evidence might support the conclusion that the appellant lost his self-control’ (*Stewart*, at p.1007).

Even more clearly, in *Humphreys* it was ruled that:

‘In a case where the provocative circumstances comprised a complex history with several distinct and cumulative strands of potentially provocative conduct which had built up over time until the final

encounter, the judge ought to give guidance to the jury in the form of careful analysis of those strands so as to enable them to understand their potential significance.’ (*Humphreys*, at p.1009)

This is exactly the approach which is required and provides the best chance for justice to be done in the honour killing cases discussed in the field work.

After finding that there is sufficient evidence, the judge should leave the defence to the jury with full and proper guidance. The issue of how to direct and guide the jury when leaving the issue of loss of control for their consideration, and the admissibility of expert evidence is discussed further below.

5.2.2 Whether the defendant was provoked

It must be established that the defendant was provoked and that the provocation caused him to lose self-control. It is not enough to claim simply that the defendant has lost his self-control. The loss of self-control must occur as a result of the provocation. As stated by Lord Millett in *Smith* at p.344 the defendant’s ‘loss of self-control must be attributable to something which is external to himself.’

So, what can amount to provocation? It is apparent from Justice’s Devlin definition in *Duffy* that, at common law, provocation was restricted to acts done by the victim and that words alone could not amount to provocation. It is clear from section 3 of the 1957 Act that things said or done, or both together, could amount to provocation. However, it was not clear whether this included things said or done by a person/s other than the victim, or conduct directed against someone other than the defendant. These issues were clarified in *Davies* and *Pearson*. In *Pearson*, two brothers M (16) and W (17) killed their bullying and abusing father, as their father had bullied M over a period of eight years when the older boy, W, was absent from home. In that case, it was ruled that ill treatment shown towards M was not only relevant to M’s defence, but also W’s defence. So, acts done by the deceased (father) against a person other than the defendant could amount to provocation on the part of the defendant. When it comes to things said or done by a person/s other than the victim, in *Davies*, where a

defendant was provoked by the acts of his wife's lover and then killed his wife, it was ruled that:

‘whatever the position at common law, the situation since 1957 has been that acts or words otherwise to be treated as provocative for present purposes are not excluded from such consideration merely because they emanate from someone other than the victim.’ (*Davies*, at p.701)

Therefore, in the context of the Homicide Act 1957, acts and words which emanate from someone other than the victim can amount to provocation, and should not be excluded from the jury's consideration. The defence of provocation should be related to the defendant's state of mind, rather than to the source of that state of mind (*Davies*, at p.693). This issue can be crucial in honour killing cases, and will be discussed further below.

With respect to the issue of what can amount to provocation, the Coroners and Justice Act 2009 introduces a new partial defence of ‘loss of control’ and the Act includes three safeguards that exclude some behaviour from the scope of the defence. First of all, contrary to the law of provocation in other countries, such as Turkey and Canada, which provides that only a wrongful act or an insult can amount to provocation (The Turkish Penal Code (5237), Article 29, Canadian Criminal Code, s 232 (2)), both the 1957 Act and the 2009 Act are formulated such that a lawful act could amount to provocation. However, in the 2009 Act, the requirement that the defendant should have a justifiable sense of being seriously wronged will surely in future exclude cases like *Doughty*, where it was held that the crying of a 17-day old baby might be sufficient to amount to provocation.

Section 55 (3) and (4) of the Coroners and Justice Act 2009 does not require that the defendant is the target of the provocation. It allows the defence to be run where provocation emanates from the victim but is targeted at a person other than defendant. This is consistent with cases like *Pearson*. Indeed, the Law Commission stated that ‘we do not intend that the defence of provocation should be restricted to cases where the defendant is the sole or most immediate sufferer from the provocation’ (The Partial Defences Report, 2004, para. 3.73.)

However, the Act requires that, except for cases of accident or mistake, the provocation should emanate from the deceased. In this context the Law Commission's opinion is that no person of ordinary tolerance and self-restraint would deliberately respond to provocation from one person by using violence to another. In cases where the defendant kills the victim in response to provocation by a third party, the objective test would preclude this defence. Therefore, there is no need to stipulate that the provocation should come from the deceased (The Partial Defences Report, 2004, para. 3.72). This apparently reverses cases like *Davies*. This issue is crucial in many honour killing cases. The research shows that there can often be a build-up of pressure of successive events, which bring the defendant to a stage at which he is not master of his mind or where he decides that he cannot take any more, but these events do not only emanate from the deceased. They may also emanate from extended family members (interviewees-7, 16, 17, 32, 34), the sister's lover (interviewee-22), the mother's lover (interviewee-3), or the wife's lover, as well as the community at large (interviewee-18). Defendants commit honour killing under the influence of extreme mental or emotional disturbance, where the provocative conduct is the result of a combination of human action, explicit or implicit pressure, and emotional stress, which might emanate from the victim or from other people, as well as from surrounding circumstances.

By seeming to exclude cases where the defendant kills the deceased in response to provocation by a third party, the Coroners and Justice Act 2009 overlooks the central concept of human frailty, the defendant's state of mind, and the question of 'how emotions affect human behaviour' (Mackay and Mitchell, 2005:44, 49). In the opinion of this author, this is an undue restriction. Surely there are cases where the defendant's reaction against someone other than the immediate source of the provocation is understandable. Consider the following example. Suppose that a mentally disordered man (R), who is detained in an institution for a rape that he committed, is granted permission to spend Christmas with his family on condition

that during his stay R will be under the care and supervision of his father (V). After seeing R at home, D who is a neighbour and knows R's history goes to V's house and asks him to be very careful about his son's behaviour. After being told by V that he will always keep an eye on him, D goes back to his home. However, during his stay with V, R rapes D's daughter (G). Soon after learning of the rape, D goes to R's house and finds only V, as R has been transferred back to the institution. Instead of killing R, D kills V, who was responsible for R. In the opinion of this author, contrary to what was suggested by the Law Commission, the objective test does not solve the problem of complexity here, and it is wrong to suggest that the defendant does not have a justifiable sense of being seriously wronged just because the defendant retaliated against a third person other than the actual provoker.

An uncertain and perhaps undue restriction on the partial defence arises from section 55 (6) (c) of the 2009 Act which provides that a thing done or said which constitutes sexual infidelity will be outside the scope of loss of control. In the Government's opinion:

'It is quite unacceptable for a defendant who has killed an unfaithful partner to seek to blame the victim for what occurred... [S]exual infidelity on the part of the victim can never justify reducing a murder charge to manslaughter. This should be the case even if sexual infidelity is present in combination with a range of other trivial and commonplace factors' (The Ministry of Justice, Consultation Paper, 2008, para. 32).

Excluding the defence of provocation in such cases did not find full support among the public.⁶¹ Thus, Professor Barry Mitchell's research commissioned by the Law Commission to explore public perceptions of murder suggests that public opinion is in favour of leaving the

⁶¹ Indeed, the proposal to ensure that sexual infidelity on the part of the victim cannot be used as a basis for reducing murder to manslaughter attracted a great deal of concern, comment and criticism from several organisations (Government Position, 2009, paras. 47-53). There was a concern that exemption might exclude a woman who killed after years of abuse, in response to a final act of sexual infidelity (Government Position, 2009, para.49). It was also argued that the exemption could have the effect that an act, such as a partner raping a child, which should be capable of providing a basis for the defence might be excluded because it was also an act of sexual infidelity (Government Position, 2009, para.52).

defence of provocation to the jury in cases where provocative conduct is the result of a combination of sexual infidelity and other factors, such as being taunted about sexual inadequacy (The Partial Defences Report, 2004, paras. 2.23, 2.33; Appendix C of the Partial Defences Report 2004, paras. 61-63, and Annex III). Neither did the Law Commission propose such a restriction to the partial defence. There may be cases where one party, as well as admitting infidelity, torments another with remarks of an exceptionally personal or abusive kind, putting exceptional emotional pressure on the other. Such cases should surely be left for the consideration of the jury (The Partial Defences Report, 2004, para. 3.147).

Sexual infidelity means being unfaithful to a sexual partner in a continuing relationship, and of course this applies to heterosexual and same-sex relationships. It also includes spouses, co-habitants and lovers. The sexual infidelity exemption may prevent the loss of control defence being advanced in certain honour killing cases where, for example, the victim is the defendant's wife. However, cases where the defendant kills someone other than his wife, such as his daughter (interviewees-11, 16, and 30), his sister (interviewees- 17, 22 and 23), or his mother (interviewees-3, 7, and 23), to whom he does not have any obligation of sexual fidelity, or cases where the female victim's engagement in sexual conduct amounts to something other than sexual infidelity, such as prostitution, (interviewees- 7 and 23), or where the provocative conduct emanates only in part from sexual infidelity but more substantially from other factors (interviewee-18), such as taunts, emotional pressure, the surrounding circumstances and the defendant's state of mind, such honour killing cases should in principle fall within the scope of the defence. The only thing which then seems to stop the defence applying is the word 'justifiable' in section 55 (4) (b). However this provision is, in due course, interpreted by the appellate courts in England, the Government's opinion is that, even in exceptional situations, sexual infidelity should not be a relevant factor. It suggests that if sexual infidelity is present in combination with a range of other factors,

these factors will be assessed in isolation from sexual infidelity and if these factors are themselves grave or serious enough to constitute circumstances of an extremely grave character and they caused the defendant to have a justifiable sense of being seriously wronged, this time they can amount to provocation. Otherwise, the defence will fail (The Ministry of Justice, Consultation Paper, 2008, para. 33; Government Position, 2009, para. 55).

Isolating in this artificial way the element of sexual infidelity from all the circumstances which led to the defendant's loss of self-control will make it difficult to run the defence at all⁶² in certain honour killing cases. It may be difficult to meet the requirement that the rest of the circumstances caused the defendant to have a justifiable sense of being seriously wronged, while ignoring the infidelity. Thus, in the case of interviewee-18, though the main reason behind the defendant's crime appeared to be his wife's sexual infidelity, the defendant did not retaliate against his wife and her new partner even after she ran away to her lover and later came back together to the village where the defendant lived. The defendant acted only after he was taunted and belittled by the villagers that he had a lack of honour and manliness, and the 'last straw' was his wife's taunt to him about his lack of strength and manliness. Here, the sexual infidelity is inseparable from the rest of the circumstances.

5.2.3 Whether there is [sudden] loss of self-control

5.2.3a The concept of loss of control in the Homicide Act 1957

Though the word 'sudden' is not mentioned in section 3, the idea that loss of self-control must be sudden was declared in *Duffy* and accepted and reaffirmed in *Camplin*, and *Ibrams and Gregory*. However, as mentioned by Ashworth 'the idea that loss of self-control must be

⁶² When compared with the Government's own draft clause in Consultation Paper, 2008, which provides that 'an act of sexual infidelity is not, of itself, an exceptional happening' (The Ministry of Justice, Consultation Paper, 2008, Annex A, at p.33 para. 9) that phrasing is probably better than that contained in section 55 (6) (c) of the Coroners and Justice Act 2009.

‘sudden’ arrived in *Duffy* without support from the precedents, and has been presented as if it is the only way to avoid reducing all revenge killings to manslaughter’ (Ashworth, 2009:253). It seems that what was established in *Duffy* and in *Camplin* was that the loss of self-control must occur at or about the time of the provocation, and the defendant’s response to provocation must occur immediately or fairly quickly after the provocation has been received (Ashworth, 2009: 252; Simester and Sullivan, 2007: 355). In this formulation what can undermine the concept of loss of self control and the defence of provocation is any indication of a plan or design to kill, and a lapse of time between the last provocative incident and the defendant’s response to provocation. The defendant is unlikely to have lost his self-control by reason of provocation ‘if he has had time to allow temper to cool and ‘reason to resume [its] sway’’ (*Smith*, at p.350).

The requirement that the provocation should cause in the defendant a sudden and temporary loss of self-control creates difficulties in relation to certain types of killing, such as those committed by ‘battered women’, or by ‘abused and bullied children’, where the conduct of the deceased has had a long term cumulative effect eventually bringing the defendant to the point where s/he decides that s/he can take no more, and kills the deceased. Indeed, in the case of a battered woman, the woman ‘does not suddenly lose her self-control in the normal use of that term; she is driven in a controlled fashion to decide to kill.’ (*Smith*, at p.331) This problem has been discussed in a number of cases in the Court of Appeal, particularly in *Ahluwalia*, *Humphreys* and *Thornton*. In *Ahluwalia*, it was ruled that:

‘the subjective element in the defence of provocation would not as a matter of law be negated simply because of the delayed reaction in such cases, provided that there was at the time of the killing a “sudden and temporary loss of self-control” caused by the alleged provocation. However, the longer the delay and the stronger the evidence of deliberation on the part of the defendant, the more likely it will be that the prosecution will negative provocation.’ (*Ahluwalia*, at p.896)

So, in the light of this ruling, the defence of provocation was not ruled out either because the provocative conduct extended over a long period or because there was a delayed ‘slow burn’ reaction. Therefore, lapse of time should not by itself defeat or undermine the plea of provocation (Smith and Hogan, 2008: 494; Simester and Sullivan, 2007: 356). Similarly in *Pearson*, where an abusive and bullying father was killed by his two sons, though there was no final or triggering act, the jury was allowed to take into account everything which the abusive father had said and done ‘over the preceding years’, without any limitation of time, and the Court of Appeal allowed the qualified defence of provocation. However, as rightly assessed by Simester and Sullivan (2007), in such cases

‘juries may be placed in a considerable quandary. Their sympathies may well be engaged by the ordeal suffered by the defendant at the hands of the deceased. At the same time, they will face evidence of planning and deliberation which impedes the expression of their sentiment by way of a verdict in favour of the defendant. Such contradiction encourages a “sympathy lottery” rather than equal treatment of defendants, and underscores the need to resolve such cases in a manner more suitable than the current law allows.’ (Simester and Sullivan, 2007:356)

Indeed, the Court of Appeal’s decisions in *Thornton*, *Ahluwalia*, and *Pearson* show that there is sympathy for the defendants who suffered at the hands of the deceased.⁶³ In these cases the Court of Appeal has broadened and relaxed the concept of sudden loss of self-control and explained it with the ‘last straw’ argument. But the same degree of sympathy and generosity has not been shown in the non-domestic cases, such as *Ibrams and Gregory*.⁶⁴ In *Thornton*, the defendant declared her intention to kill her brutal husband. She went into another room to obtain a knife and sharpened it before returning and stabbing the victim. At her trial she relied

⁶³ Wasik (1982) also reflects upon unreported cumulative provocation cases where there was considerable sympathy to the defendant.

⁶⁴ In *Ibrams and Gregory*, the defendant and his girlfriend also suffered from ill-treatment and violence by the deceased for a considerable amount of time which had almost certainly impaired the judgment of the defendants. But the Court of Appeal ruled that the ‘impairment of judgement is not the same as loss of self-control’ (*Ibrams and Gregory* at p.160).

upon a defence of diminished responsibility. She did not raise a defence of provocation but the judge, though he found it difficult to describe the defendant's response as reasonable, considered that he had a duty to leave the issue of provocation for the jury's consideration and accordingly directed them that they should take into account 'the whole picture, the whole story' (*Thornton* (No.1) at p.312). The defendant was convicted of murder. On appeal, the Court of Appeal first found no error in the direction of the judge and the appeal was dismissed (*Thornton* (No.1) at p.314). Later, fresh evidence was raised about the appellant's personality disorder which suggested that she was suffering from 'battered woman syndrome' at the time of the murder - an issue not relied upon by the defence at the trial. In the light of this fresh evidence, the case was referred to the Court of Appeal by the Secretary of State. The Court of Appeal ruled that 'battered woman syndrome' has not only relevance to the defence of diminished responsibility, but also to the defence of provocation. However, a defendant, even if suffering from that syndrome, cannot succeed in relying on provocation unless the jury consider that she suffered or may have suffered 'a sudden and temporary loss of self-control at the time of the killing'. (*Thornton* (No.2) at p.115, 116) 'The severity of such a syndrome and the extent to which it may have affected a particular defendant will no doubt vary and is for the jury to consider.' (*Thornton* (No.2) at p.116) Therefore, the Court of Appeal ordered a retrial. It is reported that at the retrial, the defendant was convicted of manslaughter and sentenced to five years imprisonment on the basis that her responsibility for killing her husband was diminished by her abnormality of mind. The judge's sentence meant that Thornton could walk free as she had already served five and a half years of a life sentence imposed in 1990 when she was convicted at her first trial of murdering her husband (*The Independent*, May 31, 1996).

In *Thornton* (No. 2) the Court of Appeal cited *Ahluwalia* as an authority to clarify the issue of loss of control and 'battered woman syndrome'. In *Ahluwalia* the defendant waited

until her abusive husband was asleep, brought a can of petrol, poured it on the victim and his bed and then set a fire. In that case, the defendant's defence was that she had no intention either of killing her husband or of doing him really serious harm, only to inflict some pain on him. Provocation was a secondary line of defence. The defendant did not rely on the defence of diminished responsibility, and no medical evidence was adduced on her behalf to support it. In that case, despite the delay after the last provocative conduct by the deceased, and despite the defendant's deliberation in obtaining and lighting the petrol, the trial judge nevertheless left the issue of provocation to the jury (*Ahluwalia* at p.896). The defendant was convicted of murder. On the appeal the defendant sought to admit fresh medical evidence to support a plea of diminished responsibility on the basis that she was suffering from 'battered woman syndrome' at the time of the murder, which could also amount to a relevant characteristic that the trial judge should refer in his direction to the jury when leaving the defence of provocation to them. Having regard to the fresh medical evidence that at the time of the killing the defendant's mental responsibility for her actions was diminished as she suffered from a post-traumatic stress disorder and a battered woman syndrome, which could also amount to a relevant characteristic that the trial judge should refer and that could be put forward as an arguable defence at the trial, the Court of Appeal ordered a retrial, as the verdict of guilty of murder was unsafe and unsatisfactory. At the retrial, the Crown accepted the defendant's plea of diminished responsibility and she was sentenced to 30 months imprisonment, which allowed her immediate release. In *Pearson* the defendant, W, armed himself with a sledgehammer and told the other defendant, M, to switch on a light so that he could see the father [the deceased] better. W then struck two blows to the father's head and then dissolved in tears; M then picked up the sledgehammer and delivered further blows which killed the father. The Court of Appeal allowed the qualified defence of provocation, even though there were obvious features of planning and there was no final provocative act.

Finally in *Baillie*, the victim, M, was a drug dealer, who had been supplying drugs to the defendant's three teenage sons. M was killed by the defendant after hearing that M threatened his youngest son to increase his purchase of drugs. In that case, the defendant took a shotgun and cut-throat razor from his house. He drove to M's house and killed M by using those weapons. The trial judge ruled that there was no evidence capable of giving rise to a defence of provocation, because any sudden and temporary loss of control must have ceased by the time of the fatal act. However by allowing the appeal, quashing the conviction and ordering a retrial, the Court of Appeal ruled that the issue of provocation should have been left to the jury even though there were some qualities of the desire for revenge, such as lapse of time and planning which pointed against a sudden and temporary loss of control.

So, the question in honour killing cases is whether the same degree of sympathy and generosity will be shown to defendants by applying the principle of cumulative provocation which tempers or even circumvents the traditional requirement of sudden loss of self-control. There can be such honour killing cases. Take interviewee-23 (see Appendix 3), where the defendant (like the defendant in *Thornton*) admitted an earlier intention to kill but explained 'the idea of killing was in my mind. But neither my brother nor I made any plan. Killing occurred immediately after we heard a confession from our mother and sister that they were involved in prostitution'. Or take the cases of interviewees-7, 16, 18, 30 and 34 where the defendants all suffered ill treatment, and responded to pressure from family and extended family members to kill. Finally, in the case of female defendants, the defendant might be a victim of long term sexual harassment from one of her relatives (interviewee-36) or from her former employer (interviewee-38). In all these cases, the lapse of time between the last provocative act of the victim and the defendant's response can be long, but the provocative conduct may also have extended over a long period. The defendant may reach a stage at which s/he decides that s/he cannot take it any more, and kills the deceased with no apparent

final provoking act, (interviewee -30, female interviewees 37 and 38) or a relatively trivial triggering act (interviewees- 3, 15, 16, 22, female interviewee-36). As in the battered women cases committed after cumulative provocation, the defendant's reaction may arise from a combination of anger, fear, frustration and a sense of desperation that has gradually built up, rather than the prompt reaction to provocation which is equated with anger, rather than despair or frustration, and which requires a sudden loss of self-control and quick response to provocation.⁶⁵

5.2.3b The concept of loss of control in the Coroners and Justice Act 2009

According to the Law Commission the term loss of self-control is ambiguous and misleading (The Partial Defences Report, 2004, para. 3.28; The Law Commission, 2003, Consultation Paper, para. 4.27). It was argued that it privileges men's typical reactions to provocation over women's typical reactions and makes it difficult or impossible for women to satisfy the requirement, in so-called "slowburn" cases, where the defendant is acting out of fear rather than a considered desire for revenge (The Murder Report, 2006, para 5.18, The Partial Defences Report, 2004, para 3.136).

Therefore, the Law Commission proposed to abolish the requirement for a sudden loss of self-control completely in relation to both limbs of their proposed test (The Partial Defences Report, 2004, para. 3.15, 3.168, The Murder Report, 2006, para 5.11). However in order to ensure that unsympathetic cases like *Baillie* would remain outside the scope of the

⁶⁵ Though it occurred in the context of a same-sex couple relationship, it was judicially accepted that a male defendant's reaction to provocation can be different from men's typical reaction to provocation which requires a sudden loss of self-control and quick response to provocation. *The Queen v McEwen* is the first case in Australia where 'battered woman syndrome' was raised by a homosexual man. Robert McEwen was charged with the murder of his lover and partner. At his trial he was depicted as a "battered wife" after suffering emotional and social abuse, threats and intimidation and economic deprivation for fourteen years. He pleaded guilty to manslaughter on the basis of provocation, and had his sentence mitigated on the basis of 'battered woman syndrome' (*The Queen v McEwen* unreported cited in The Law Commission, Consultation Paper, 2003, para. 10.18, at p.187).

partial defence, the Law Commission proposed that the partial defence should not apply where the defendant acted in a pre-meditated desire for revenge. They emphasised that ‘a person should not be treated as having acted in a considered desire for revenge if he or she acted in fear of serious violence, merely because he or she was also angry towards the deceased for the conduct which engendered that fear’ (The Partial Defences Report, 2004, para. 3.137). Here, the Law Commission on the one hand has provided that unsympathetic and revenge killing cases will be outside the scope of the defence but on the other hand has tried to ensure that the slow burn reaction cases will not be excluded. Indeed, by explicitly referring to *Thornton* (No.1) and *Ahluwalia* they stated that ‘[s]uch cases clearly call for the jury’s consideration of a partial excuse, despite the element of premeditation’ (The Murder Report, 2006, para. 5.24). In its response the Government stated that ‘the right approach is to retain the requirement for control to have been lost but to remove the requirement for the loss to have been “sudden” to make plain that situations where the defendant’s reaction has been delayed or builds gradually are not excluded’ (Government Position, 2009, para. 66).

So, as long as the requirement of loss of control is met, the provisions of the Coroners and Justice Act 2009 should produce the same result in battered woman cases such as *Ahluwalia* and *Thornton* where there is a slow-burn reaction. However, cases like *Baillie* and *Ibrams and Gregory* are unlikely to succeed. Here, the defendants will be regarded as acting in a considered desire for revenge. A case like *Humphreys* may well provide an example where both “qualifying triggers” are present and the circumstances of the case fall within the scope of both limbs. In *Humphreys* the defendant believed that she was going to be gang raped by her boy friend and his friends, and the defendant’s boy friend, who was also pimping her, mocked her suicide attempt. In this case, the defendant must have had a fear of serious violence and the things said would constitute circumstances of an extremely grave character

and cause the defendant to have a justifiable sense of being seriously wronged. How will the new provisions apply to honour killing cases?

5.2.3c Honour killings, revenge killings and the loss of control requirement

As explained above, there is a general assumption that in honour killing cases the defendant must have acted in a considered desire for revenge (The Murder Report, 2006, para. 5.25; Government Position, 2009, para .56). ‘A revenge killing is typified as one in which the killer waits’ (O’Donovan, 1991:224). So, in honour killing cases where there is a significant lapse of time between the defendant’s learning of the dishonourable act and the defendant’s response, that lapse of time may go to refute any suggestion that the defendant was not master of his mind at the time of the killing and lost his self-control. Though the Coroners and Justice Act 2009 has abolished the requirement for sudden loss of self-control (s. 54 (2)), the Act is unlikely to give honour killing defendants an opportunity to argue their cases fully. Despite the abolition of the requirement for sudden loss of control, the prosecution may accept that what caused the defendant to kill may have been, in part, his religious and cultural beliefs and his circumstances, but these had nothing to do with things said or done by the deceased, which is supposed to be the cause of loss of self-control, and so the defendant must have acted in a considered desire for revenge. As happened in the case of *Faqir Mohammed*, who was suspicious about whether his daughter was having an affair, and used violence to find out the truth, and later killed his daughter when he caught her in her bedroom with her boyfriend, evidence of prior violence towards the victim and general evidence of the defendant’s violent temperament will be used to show that his violent character was the sole cause of his loss-of self-control, which could not amount to the defence.

Therefore, in honour killing cases where the lapse of time is considerable, it seems unlikely that the jury will interpret the concept of loss of self-control and the principle of cumulative provocation in favour of the defendant. What may not be fully understood, in

some honour killing cases, are power inequalities in the defendant's relationship with others. In the battered women syndrome cases such as *Ahluwalia* and *Thornton*, the main cause of the offence was the defendant's long experience of being the victim of violence from a partner who was physically and emotionally in a more powerful position than the abused woman. Similarly, in *Maw and Maw* (unreported, cited in Wasik, 1982:29) and in *Pearson*, what forced the two teenage defendants to kill their father was again their long experience of being victims of violence and abuse from their father who was physically and emotionally dominant.

In some honour killing cases as we have seen, what forced the defendants to kill, in the case of male defendants, was the escalating effect of continued insult, taunting, belittling, exclusion, and explicit and implicit family and social pressure. In the case of female defendants crucial factors were the escalating effect of continued insult, exclusion, pressure from the community and, sometimes, physical or sexual abuse by the deceased. In these cases it could be said that the community, and the abusing victim, were physically, socially and emotionally in a more powerful situation than the defendant, and that there was no available support in the community and nowhere else to turn.

If the personal circumstances of honour killing defendants are not assessed properly in their full context, the lapse of time will be understood as amounting to revenge since there was time to calm down. The defendant might be portrayed as a person who was simply looking for the best opportunity to kill during this time span, rather than a person who was looking for other remedies. This could lead to a mistaken and unjust approach. However, as far as the views of the Law Commission and the Government are concerned, it seems that there is a firm but ill-informed intention to follow this approach and to exclude honour killing cases from the scope of the defence.

The Law Commission said that though the defendant may not have acted in cold-blooded revenge, honour killing cases should nonetheless be ruled out as potential provocation cases. According to the Law Commission, in honour killing cases the defendant may say that:

'he (and it will normally be a 'he') planned the killing of the victim to uphold the honour of the family rather than to take revenge on the victim for something said or done.[However] there is likely to be a strong motive of revenge in such cases. The offender is seeking to make an example of the victim because she (and it normally will be a 'she') has defied tradition, custom or parental wishes in her choice of boyfriend, spouse or life-style.' (The Murder Report, 2006, para 5.25)

The Law Commission suggests that in such cases the proper course would be for the judge to withdraw the defence of loss of control from the jury (The Partial Defences Report, 2004, para 3.71).

The Government fully agreed with the Law Commission on this point and emphasized that honour killing cases will not satisfy the requirement that the circumstances were of an extremely grave character and caused a justifiable sense of being seriously wronged (Government Position, 2009, para.56). However, the author will show that this position is not based on adequate data. The references given by the Law Commission to justify their view were research findings of Salma Choudry (The Murder Report, 2006, para. 5.25) and a report of Prof. Barry Mitchell and Dr. Sally Cunningham submitted to the Law Commission and which summarised only three honour killing cases where the defence of provocation was raised (The Murder Report, 2006, para. 5.27 and Appendix C of the Report, para. C.9-14).

First of all, Choudry's research, where the experience of 14 Pakistani women living in Newham and suffering domestic violence was summarised, does not provide any clue about the defendant's motive in honour killing and is not helpful at all in exploring whether the defendant had a considered desire for revenge. Indeed, Choudry herself appreciates that the size and sample of her research makes it impossible to make generalisations (Choudry, 1996:1). The only

finding that can clearly be drawn from her work is that the honour of the family or group is dependent on the proper behaviour of female relatives, a point with which the author has expressed his agreement and discussed in Chapter 3. The report and findings of Prof. Barry Mitchell and Dr. Sally Cunningham briefly considered the defences run in 93 homicide cases. Only three honour killing cases were included. Two defendants killed their unfaithful wives and one defendant killed his unfaithful wife and their four children. In two of the cases, the defence of provocation was run, in the other both provocation and diminished responsibility were pleaded. When the defence of provocation was pleaded in these cases, the defendants argued that, according to their culture and religious beliefs, it was a significant disgrace for a woman to be unfaithful to her husband; therefore, it was provocative for them. Unfortunately, there is no further analysis of these cases, which might have given a clearer picture of the circumstances of the defendant and whether the defendants felt explicit or implicit pressure to kill. However, the conclusion of the Commission was that in the light of these cases, honour killings must simply be viewed as revenge killings (The Murder Report, 2006, Appendix C, para. C 12-14).

So, without producing any convincing and reliable evidence, it has been taken-for-granted by the Government that in honour killing cases the defendant has a considered desire for revenge and during any lapse of time has been looking for the best opportunity to kill. However, as the field work has established, in only 13 cases out of a total of 39, did the defendants display a desire for revenge, evidenced by planning their attack, following or chasing their victim (interviewees-6, 9, 12, 13, 14, 17, 21, 26, 27, 28, 29, 32, 34). In four out of these 13 cases, the defendant did not have a desire for revenge at the beginning; defendants (interviewees-12, 13, 26, 34) sought other remedies but, when other remedies failed, the desire for revenge grew, and then they planned their move. In four cases out of 39, the defendant displayed the element of revenge as there was evidence of premeditation (interviewees-8, 19, 33, and female interviewee-38). Even so, in the case of female interviewee-38, the defendant

and her husband invited the deceased, who was their former employer and who had been sexually harassing the female defendant, to talk out and settle the issue of harassment, there was evidence of revenge but strong evidence of loss of self-control as well. In another case (female interviewee-37, see Appendix 3), though there was premeditation, the defendant had been forced under duress to take part in the killing.

In the remaining 21 cases, there was no sign of revenge or premeditation at all. The honour killing was either the result of a constant build-up of pressure with no apparent final triggering act, such as interviewee-30, or there was a sudden loss of self-control as a result of a quarrel between the defendant and deceased. Though the author has accepted that there are honour killing cases that are carefully planned and even committed under the pretence of an accident or a suicide, there are also honour killing cases where the defendant himself might be seen, to some extent, as also the victim of circumstances and pressure. It will be recalled that provocation or 'loss of control' is only ever a 'partial excuse' in law, changing the name of the crime of conviction, but never exonerating the defendant. The Government's stance offers nothing for the bulk of these honour killing cases, and this is conducive to cause injustice.

If honour killings are committed for revenge, we might expect defendants to show no remorse. Though for the interviewed defendants, initially a feeling of relief, rather than remorse, is common at the start, later on at least 44 per cent of the male and 60 per cent of female defendants, showed signs of regret and remorse by saying to the author that they would not consider killing again after their release if they met the same or a similar situation. Moreover, three defendants (interviewees-5 and 10 and female interviewee-39) attempted to commit suicide soon after the murder, and one defendant (interviewee-30) attempted suicide before the murder. Some defendants showed signs of remorse immediately after the murder (interviewees-1, 9, 13, 15, 31). Therefore, the findings of my research suggest quite strongly that the conventional image of honour killings and the defendants who killed for honour is a

flawed view. The real picture is much more complex. It is simply wrong to categorise all honour killing cases as revenge killings. In these cases, the defendants feel pain, anger, desperation, shame and humiliation, or betrayal by relatives, but the desire for revenge is not the motive in the majority of cases.

In some of the cases where the defendant was interviewed by the author, there were mixed motives for killing. The Law Commission concedes that there may be cases involving mixed motives and these cases may or may not be ruled out just because the defendant has a considered desire for revenge. An example is *Baillie*, in which D's motives could be said to have been both the taking of revenge on a drug dealer, and the protection of his sons and the prevention of further crime by that drug dealer (The Murder Report, 2006, para 5.26). As happened in the cases of female interviewees-36, 38, and 39, cases in which the main motive of the defendant was to protect her honour, or the honour of her husband or family but where she was also in fear of serious violence from the victim, (further sexual harassment or rape), and the killing occurred when there was no immediate risk of violence, the defence should not be excluded from the consideration of the jury purely on the basis that one of the defendant's motives was to save her honour.

The statute should also not exclude the possibility accepted in *Fantle*, that the defence of provocation is available to a defendant who had an initial intention to kill, then abandoned this intention, but was subsequently provoked to kill the victim. By analogy, in honour killing cases where the defendant did not act in a considered desire for revenge, initially understood that he might have to kill the victim because of honour, then tried his best to prevent the killing, but, later killed the victim by losing self-control after a final provoking event, such a case should not be excluded from consideration by the jury. The field work uncovered similar cases committed under these circumstances which seem to deserve to be left to the jury, as the defendant was able to resist the pressure until the final triggering act.

For example, interviewee- 15 resisted the idea of killing his wife until witnessing his child being maltreated and abused by his wife, and interviewee-16 resisted family and social pressure and put aside the idea of killing until his daughter rejected the idea of moving together to another town to prevent the intolerable gossip and pressure. Interviewee-23 resisted the idea of killing his mother and sister until he lost his self-control after hearing them admit that they were both involved in prostitution. Interviewee-3, though he knew that his mother had had sexual intercourse with a man, did not act until rumours were rife that his mother was betraying his blind father. Later, he lost his self-control after hearing compliments and kind words from his mother about the same man, and her expressing a wish to move to the village where the man lived.

It is submitted that the context and full circumstances of what was experienced by interviewees, 3, 15, 16 and 23, should not be excluded from the jury's consideration. Except for interviewee-15, these cases do not fall within the scope of section 55 (6) (c) which provides that a thing said or done which constitutes sexual infidelity cannot amount to provocation. The defence under the 2009 Act may still fail in such cases if the jury finds that there was insufficient provocation to cause the defendant to have a justifiable sense of being seriously wronged or that a person of the defendant's age and sex with a normal degree of tolerance and self-restraint and in the circumstances of the defendant, might not have reacted in the same or in a similar way to the defendant. However, if the full circumstances of the defendant were discussed in the right context, and in the light of his culture and ethnicity, it is submitted that these cases could meet the requirements of a qualified defence of provocation or loss of self-control.

Part 3

THE SECOND PART OF THE TEST AND CULTURAL DIVERSITY

5.3.1 Background and the concept of the test

Despite all these difficulties and problems, if it is decided that there is evidence on which the jury can find the defendant was in fact provoked to lose his self-control, the second part of the test arises. Though the formulation of the test in the Coroners and Justice Act 2009 is different from the Homicide Act 1957, putting it in broad and simple terms, the second part of the test requires the jury to consider whether the defendant's reaction can be said to be reasonable. It asks whether the provocation was enough to make a reasonable or an ordinary man do what the real defendant did which is killing; and it contains two elements. The first is the assessment of the gravity of the provocation. The second is the assessment of how an ordinary man would react to provocation of that gravity which involves applying an external standard of self control (*Smith* at p.324, per Lord Hobhouse; *Holley*, at p. 589, per Lord Nicholls).

In this context, the 'reasonable man test' as a test of the appropriate response was created to judge whether the provocation was sufficient to cause loss of self-control and was used to define 'the required degree of seriousness' (Ashworth, 1976:298) in provocation. It first appeared in *Welsh*, in which Keating J said that provocation would be sufficient if it was 'something which might naturally cause an ordinary and reasonable-minded person to lose his self-control and commit such an act' (*Welsh*, at p.339).

The concept of the 'reasonable man' was built into the Homicide Act 1957. Using the expression "reasonable man" to create an objective standard was, for some, regrettable. Thus, in *Morhall*, Lord Goff said: 'the expression "reasonable man" or "reasonable person"... can lead to misunderstanding'. (*Morhall* at p.335) Similarly, in *Camplin*, Lord Diplock described it as an 'apparently inapt expression' (*Camplin*, at p.173). However, by referring to "the reasonable man", section 3 of the Homicide Act 1957 aimed to introduce, 'as a matter of

policy, a standard of self-control which has to be complied with if provocation is to be established in law' (*Morhall* at p.336 per Lord Goff). Without some degree of clarification and direction even the most conscientious jury may find it difficult to fully understand what they must take into consideration. In some cases, the jury has returned from their deliberations to ask the judge for more help (*Doughty* at p.326; *Jamal Karimi* at para.24). In the case of *Jamal Karimi* the question asked by the jury was 'if [the defendant] was provoked, but acted unreasonably, is this murder?' (*Jamal Karimi* at para.24). The complexity of the test also required judges to prepare a lengthy summing up and carefully worded direction to prevent misunderstanding (*Newell*; *Doughty*; *Faqir Mohammed*; *Jamal Karimi*).

For these reasons, the Coroners and Justice Act 2009 has replaced the reasonable man test with an 'ordinary' or 'normal' man test (s. 54 1 (c), s.54 (3)). The test now may be easier to understand. The underlying question here, however, is what characteristics of a defendant should be attributed by the jury to the notional reasonable or ordinary person, and how far the judge should go in assisting the jury to identify such characteristics. Since *Bedder*, the English courts have been struggling to find an answer to this problem.

5.3.2 Two different opinions about the test of reasonableness in the Homicide Act 1957

What should be understood from the concept of reasonable man as a test of the appropriate response in provocation? Two approaches emerge. The first is a strict objective approach that lays down a standard of self-control which everybody has to possess and exercise over his emotions. This approach gives little weight to the personal attributes and circumstances of the defendant. It regards the reasonable man 'as a mythical person seemingly not only detached from but also rather remote from the accused person and having certain attributes as laid down by the court and as the courts directed juries to accept' (*Camplin*, at p.176, per Lord Morris). Before the Homicide Act 1957 came into force, the most rigid application of this approach was seen in *Bedder*, where the concept of reasonable man was regarded as 'a wholly

impersonal fiction to which no special characteristic of the accused should be attributed' (*Smith*, at p.297, per Lord Hoffmann). In *Bedder*, a sexually impotent man killed a prostitute who taunted him for his impotence when he was trying to have sexual intercourse with her. In accordance with the strict formulation of a reasonable man, the House of Lords ruled that the defendant's sexual impotence was not a relevant factor that jury could take into account; the physical or mental infirmity of the defendant could not be taken into account when considering whether a reasonable man would have lost his self-control. In other words, the House of Lords ruled that the jury had to consider how a potent man would react to a taunt about being impotent, which was clearly an artificial and absurd standard to apply.

Such a rigid application of the objective test meant that the defendant may be convicted of murder even if the jury believed that he was clearly provoked to lose his self control. The *Bedder* approach had great potential to cause injustice. However, the objective test was defended on the basis that if the law starts to give importance to personal peculiarities of the defendant, he may rely on his exceptional excitability or pugnacity (*Lesbini*; *Bedder* at p.1122, 1123; *Mancini* at p.9; *Camplin* at p.182 *Holley* at p.589) or his ill-temper or his drunkenness (*Camplin*, at p.182) as an excuse for loss of self-control so leading to a conviction for manslaughter not murder. Additionally, if the rule is relaxed, there is no obvious way to draw a line between relevant and irrelevant characteristics for the jury to consider.

The second approach requires relaxation of this rigid objective test. It was first proposed in the Report of the Royal Commission on Capital Punishment, which advocated the complete abolition of the reasonable man test. It was argued that, in considering whether there is provocation, the sole test should be whether the defendant was in fact deprived of self-control and the jury should not also be required to consider whether a 'reasonable man' would

have been so deprived. (The Report of the Royal Commission on Capital Punishment, para.139. p.52) The advocates of abolition also stated that:

‘If the accused is mentally abnormal, or is of subnormal intelligence, or is a foreigner of more excitable temperament, or is for some other reason particularly susceptible to provocation, it is neither fair nor logical to judge him by the standard of the ordinary Englishman’ (The Report of the Royal Commission on Capital Punishment, para. 141, p.52).

The jury might think that there was some characteristic of the defendant affecting his degree of self-control which properly ought to be taken into account. In spite of the proposal for the abolition of the reasonable man test, the objective standard was carried forward into the wording of section 3 of the Homicide Act 1957.

After the Homicide Act, the first crucial move to softening the objective test came in *Camplin*, where Lord Morris said:

‘If a reasonable man is a man who normally acts reasonably, it becomes important to consider the mind of the accused person when considering his reactions to some provocation. To consider the mind of some different person, and to consider what his reactions would have been if comparably provoked, could involve an unreal test.’(*Camplin* at p.176)

In *Camplin* the House of Lords mitigated the harshness of its earlier decision in *Bedder* and held that the jury should be directed to consider how a reasonable person of the age and gender of the defendant would have reacted to the provocation in question. Though this ruling was in favour of relaxation of the rigid rule, not all the Lords in *Camplin* had the same approach. Lord Fraser and Lord Scarman agreed with Lord Diplock, but, Lord Morris and Lord Simon delivered dissenting judgments. When Lord Morris did not make a distinction between the defendant’s capacity for self control and the gravity of the provocation, he said that no court can give a definition of what constitutes a reasonable man, and that it must be left to the collective good sense of the jury (*Camplin*, at p.177) , Lord Diplock defined the reasonable man as a person having the power of self-control to be expected of an ordinary person of the sex and age of the accused, but in other respects sharing such of the accused's

characteristics as, in the opinion of the jury, would affect the gravity of the provocation to him. The question was not merely whether such a person would in like circumstances be provoked to lose his self-control, but also whether he would react to the provocation as the accused did (*Camplin*, at p.175). Moreover, Lord Diplock and Lord Simon emphasized the division between the gravity of the provocation, and the defendant's capacity of self-control, in terms of admissible evidence, and what characteristics of the defendant might have an impact on these two concepts which the jury may need to take into account (*Camplin*, at p.173, 175 per Lord Diplock; at p.182 183 per Lord Simon).

These different opinions were later interpreted in a way that when deciding whether the defendant has exercised a reasonable standard of self-control, his capacity for self-control should be judged against the capacity of an ordinary person who has the same sex and similar age of the defendant for the purposes of the reasonable person test. Other characteristics of the defendant are relevant only if they affect the gravity of the particular provocation to him. So, unless the defendant has been taunted about them, or provocation is directed at them, other personal circumstances, characteristics or mental and physical peculiarities of the defendant, such as being disabled or sexually impotent should be ignored. Such peculiarities of the defendant will clearly have an impact on how he assesses the gravity of the provocation in question, but not on his capacity for self-control (*Luc Thiet Thuan, Holley*). The standard of self-control to be expected of the reasonable man in section 3 was fixed and not variable. If that approach is relaxed the test will become subjective. If the jury place the hypothetical reasonable man fully in the circumstances in which the defendant was placed, by investing him with all the defendant's personal characteristics physical and mental, this would make nonsense of the objective test (*Bedder*, at p.1123). It would transform the reasonable man into a new form, who is a 'reincarnation of the defendant' (*R v Morhall CA*, at p.894) or a 'replica' of the defendant. Consequently, this would collapse the two-stage test into a one-

stage test which means that each defendant's response is to be judged in accordance with his own circumstances and standards by the jury in each case. Varying standards in this way from defendant to defendant is not what the statute says, and not what it was designed to achieve. (Heaton, 2001: 54, 56; *Holley* at p.593 para .22)

In the opinion of this author, for the purpose of section 3 of the Homicide Act reaching a conclusion that only age and gender may affect an ordinary person's capacity of self-control was not in the minds of all their Lordships in *Camplin*; at least not in the mind of Lord Morris. As pointed out by Lord Steyn at p.152 in *Luc Thiet Thuan* 'If their Lordships had in mind such a rigid and artificial *numerus clausus*, it would have been quite easy to say so.' The view in favour of a rigid distinction between factors affecting the gravity of the provocation and the ordinary person's capacity for self-control has prevailed in the end and is reflected into the Coroners and Justice Act 2009. However, the distinction between factors affecting the gravity of the provocation and the ordinary person's capacity for self-control requires further discussion of whether this *numerus clausus* distinction is really workable and practical, and one that can provide a fair outcome in every case.

5.3.3 The gravity of the provocation/ capacity for self-control distinction

When drawing a distinction between factors which affect the gravity of the provocation and those which impinge on the defendant's capacity for self-control, the English cases have clearly been influenced by the views of Professor Ashworth expressed in his influential article 'The Doctrine of Provocation' (Ashworth, 1976). According to Ashworth, in general a provocation can only be described as 'grave' in relation to persons of a particular class. To be meaningful, the gravity of the provocation must be expressed in relation to persons in a particular situation or group (Ashworth, 1976:300). Thus, for a person to see two persons indulging in sexual intercourse would hardly be described as a gravely provoking, unless he is married, engaged, or related to, one of the participants (Ashworth, 1976:300).

Different groups will be provoked by different events or words. ‘Dirty nigger’ would mean little if said to a white man or perhaps even if said by one black man to another; but it is gravely insulting when said by a white man to a black man. To say that serving pork at dinner is a grave provocation is incorrect as a general proposition, but it would be so to a Muslim. ‘Son of a bitch’ might mean little if said to a friend, or said by a drunk person to another, but it would be gravely provoking if said to someone who buried his mother yesterday, or who is Turkish⁶⁶ or Kurdish. The gravity of the provocation, and the effect of that particular provocation upon the individual might also be explained by way of his upbringing or the set of values that he has (Ashworth, 1976: 304). For these reasons, it is essential that the defendant’s personal characteristics should be taken into account when assessing the gravity of the provocation to him.

However, Ashworth argues that in order to properly apply the true function of the objective test, which is to apply a standard of reasonable self-control, it is vital to distinguish the element of self-control from other aspects of the defendant’s personality (Ashworth, 1976: 299-301). Therefore, when considering whether the defendant showed a reasonable amount of self-control:

‘The proper distinction.... is that individual peculiarities which bear on the gravity of the provocation should be taken into account, whereas individual peculiarities bearing on the accused’s level of self-control should not.’ (Ashworth, 1976:300)

Thus, where an individual who is congenitally incapable of exercising reasonable self-control is provoked by a petty affront, his loss of self-control must surely be ascribed to his own personality rather than to the provocation he received; and the defence of provocation is hardly an appropriate vehicle in such cases. The defence of provocation is for those who are

⁶⁶ Van Eck reports that calling a Turkish man a ‘bastard’ (*piç*) or ‘son of a whore’ (*orospu çocuğu*), that his mother is a ‘whore’, are deep sexual insults that may cause an honour killing (Van Eck, 2003:143).

‘in a broad sense mentally normal’. Those suffering from some form of mental abnormality should be brought within the defence of diminished responsibility (Ashworth, 1976: 312).

The distinction proposed by Ashworth works well in the case of a person who is congenitally incapable of attaining a reasonable level of self-control. There, what caused the loss of self-control was not provocation, but the peculiar characteristic of the defendant which made him respond to trivial provocation in a disproportionate way (Ashworth, 1976: 311,312). In such cases, where the defendant has some abnormality of mental functioning, there are strong reasons to maintain the objective test. Any potential injustice is remedied by the defence of diminished responsibility which provides a different route to reduce the crime from murder to manslaughter.

However, it is more difficult to hold the same distinction where the provocation is directed at some peculiar characteristic of the defendant, such as being addicted to glue sniffing, or being disabled, or being a member of a specific religion, race, culture or class. The logic then surely dictates that the peculiarity of the defendant not only has an impact on how he assesses the gravity of the provocation but also impacts on his capacity for self-control and the way in which he responds. The defendant finds the provocation grave, as he is disabled or is a member of a specific class or religion, and accordingly he loses his self-control. There is no other reason, or abnormality, that causes his loss of self-control apart from this peculiarity that has impact on his assessment of the provocation. In such cases, there is considerable overlap between Ashworth’s two concepts. Thus, in *Morhall*, where the defendant was addicted to glue-sniffing and was taunted about his addiction, it was accepted that the defendant’s addiction to glue sniffing might have an impact on how he assessed the gravity of the taunt that he received, but it was not accepted that it might also have an impact on his capacity of self-control because of the instability and mental fragile condition induced by his addiction. However, in *Roberts*, where the defendant was deaf and had frequently been

taunted by his father about it, and he killed his father, a report obtained by the defence from a psychiatrist with experience of the problems of deafness stated that irrational violence was to be expected from some immature prelingually deaf persons when emotionally disturbed. It is submitted that these cases show that the peculiarity of the defendant, whether his addiction, or his deafness, should not only be relevant to the gravity of the provocation but also relevant to the question of self-control to be expected from the defendant. For the law to find otherwise is unfair on the defendant. Therefore, 'in practice, [Ashworth's] conceptual framework may give rise to an unwelcome degree of artificiality.' (Simester and Sullivan, 2007: 361).⁶⁷

Ashworth himself appreciates the difficulty of making such a distinction in some cases when he said:

'[T]he distinction between factors explaining the gravity of the provocation and factors affecting the accused's level of self-control was perhaps difficult to make in *Bedder*, since there was evidence of emotional immaturity and instability related to the impotence. *Bedder* was, then, a hard case. (Ashworth, 1976:301)'

Though there is nothing directly to show that the House of Lords in *Camplin* was referred to the article of Professor Ashworth, the decision in that case adopts a similar approach to that recommended by him. In *Camplin*, however, it was ruled that when assessing whether the defendant exercised a reasonable amount of self-control, evidence tendered to show for example how a pregnant woman, or a 15- year- old boy, or a hunchback, would react in the same circumstances, would be inadmissible (*Camplin* at p.173, 175 per Lord Diplock, at p.182, 183 per Lord Simon). Whether the defendant exercised reasonable self-control in the totality of his or her circumstances is a matter for consideration by the jury without consideration of further evidence (*Camplin* at p.182, 183 per Lord Simon).

Surely there are cases where the mental condition or personal peculiarity of the defendant falls short of diminished responsibility but might have an impact on his capacity for

⁶⁷ The difficulty about the practical application of this distinction in the law of provocation was also discussed by Lord Hoffmann in *Smith* at p. 307, by giving an example of an unreported New Zealand case *R v Rongonui*.

self-control. That should be relevant to the defence of provocation. Professor Ashworth was cautious as to whether his proposed distinction would work in all cases when he said '[p]erhaps it is difficult to shed all one's misgivings as to whether the law actually operates in this way' (Ashworth, 1976:314). It is submitted that excluding from the jury evidence tending to show the impact of the defendant's peculiarity or condition on his capacity of self-control might cause serious injustice where the defence of diminished responsibility is not available but the subjective condition of the provocation test is satisfied. This risk of injustice was what was objected to by Lord Steyn in his dissenting opinion in *Luc Thiet Thuan* (*Luc Thiet Thuan* at p.149, 150 per Lord Steyn) and has been picked up by other senior judges (in *Smith* at p. 307 per Lord Hoffmann, at p. 316, per Lord Clyde; in *Holley* at p.612, per Lord Carswell). In *Luc Thiet Thuan* Lord Steyn gave three examples of women who suffer from (i) postnatal depression, (ii) 'battered woman syndrome' and (iii) a personality disorder, each of which rendered the woman more prone to loss of self-control. During a quarrel she stabs and kills her husband. In all three cases, the particular characteristic of the defendant should be relevant he said, both to her degree of self-control and to her capacity for self-control (*Luc Thiet Thuan*, at p.149 per Lord Steyn).

In all three cases evidence of the woman's condition may be placed before the jury when assessing the subjective question of whether the woman had in fact lost her self-control. To the extent that the particular condition falls beyond the experience of ordinary men and women the evidence may include expert opinion. Whatever the strength of that evidence, the judge is obliged to direct the jury that they must consider the effect of these varying conditions when assessing the gravity of the provocation and whether the woman was provoked. However, they must ignore the evidence of postnatal depression, battered woman syndrome, and personality disorder when they consider the objective question of the defendant's capacity for self control and how a reasonable woman would react to such

provocation (*Luc Thiet Thuan* at p.150, per Lord Steyn). Such an artificial and complex direction will surely puzzle the jury, and may lead to injustice in provocation cases. When applying the objective and subjective test in provocation, having regard to a defendant's peculiarity or characteristic for one purpose of the law of provocation but not another requires the jury to do 'mental gymnastics' (*Smith*, at p.307 per Lord Hoffmann). The author will touch upon this issue again when he discusses the admissibility of expert evidence in provocation cases.

5.3.4 A summary of the reasonable man test in English courts

Over the years since the landmark decision in *Camplin* there has been a series of cases which have considered whether, apart from his gender and age, there may be other relevant characteristics of the defendant, whether physical or mental, which may affect the degree of self-control which society could reasonably expect of him and whether it would be unjust not to take such characteristics into account.

In *Newell*, without giving a clear ruling on whether chronic alcoholism is a relevant characteristic for the purposes of provocation, it was held that the appellant's condition of chronic alcoholism was very different from his voluntary alcohol consumption or simply being drunk. In that case, the defendant, who was a chronic alcoholic, lived for some time with a young woman. After she left him, he was distressed and attempted to commit suicide. A few days later the defendant was drinking heavily with a friend, who made disparaging remarks about the young woman, and suggested that he forget her and come to bed with him. Thereupon the defendant picked up a heavy ashtray and struck the friend over the head with it some twenty times, and caused his death. The Court of Appeal referred to the New Zealand case of *McGregor* which ruled that provocative words or acts should be directed towards the particular peculiarity that the defendant possessed - in this case chronic alcoholism. Therefore, the appeal in *Newell* was dismissed, because there was no direct connection

between the derogatory words and the defendant's alcoholism. The defendant had been taunted about his sex life and not about his alcoholism (*Newell*, at p.340).

McGregor was referred to in Lord Simon's judgment in *Camplin* (at p.182), and was taken into account in *Newell* and later cases seeking to apply the rationale of *Camplin*. In *McGregor*, the New Zealand Court of Appeal discussed how the concept of a 'relevant characteristic' in the reasonable man test may affect an ordinary person's capacity of self control. North J, delivering the judgement of the court said at p.1081 and 1082:

'It is not every trait or disposition of the offender that can be invoked to modify the concept of the ordinary man. The characteristic must be something definite and of sufficient significance to make the offender a different person from the ordinary run of mankind, and have also a sufficient degree of permanence to warrant its being regarded as something constituting part of the individual's character or personality. A disposition to be unduly suspicious or to lose one's temper readily will not suffice, nor will a temporary or transitory state of mind such as a mood of depression, excitability or irascibility...The word 'characteristics' in the context of this section is wide enough to apply not only to physical qualities but also to mental qualities and such more indeterminate attributes as colour, race and creed. It is to be emphasised that of whatever nature the characteristic may be, it must be such that it can fairly be said that the offender is thereby marked off or distinguished from the ordinary man of the community. Moreover, it is to be equally emphasised that there must be some real connection between the nature of the provocation and the particular characteristic of the offender by which it is sought to modify the ordinary man test. The words or conduct must have been exclusively or particularly provocative to the individual because, and only because, of the characteristic...' ⁶⁸

In *Luc Thiet Thuan*, a decision of the Privy Council, brain damage suffered by the defendant that made him prone to respond to minor provocation by losing his self control and acting explosively was found not to be a characteristic that could be attributed to the

⁶⁸ This definition of characteristic was modified in *Luc Thiet Thuan* and *Morhall*. In *Luc Thiet Thuan*, it was ruled that the provocation does not always need to be directed at the defendant's characteristic which is relevant to the gravity of the provocation to him (*Luc Thiet Thuan* at p.148). In *Morhall*, it was also ruled that the characteristic does not need to be permanent. Some physical conditions such as eczema may be transitory in nature and yet can surely be taken into account if the subject of taunts (*Morhall* at p.337).

reasonable man for the purposes of the objective test. The Judicial Committee of Privy Council (Lord Steyn dissenting) said that over-reliance on *McGregor*, a case decided in the context of section 169 of the (New Zealand) Crimes Act 1961, was a mistake (*Luc Thiet Thuan* at p.141,142). *McGregor* was a decision from a different jurisdiction. Although Lord Simon had expressed the opinion in *Camplin* at p.182 that the English law of provocation was substantially the same as that in New Zealand, in the opinion of the majority in *Luc Thiet Thuan*, he did not mean to suggest that precise guidance as to the Homicide Act 1957, section 3 could be derived from *McGregor* (*Luc Thiet Thuan* at p.142). So, the decision of the House of Lords in *Morhall*, the decision of Court of Appeal in *Newell* and subsequent decisions of the Court of Appeal such as *Ahluwalia*, *Dryden* and *Humphreys*, in which reliance had been placed on *Newell* had adopted a wrong approach (*Luc Thiet Thuan* at p.144). The defence of diminished responsibility was not available in the law of murder in New Zealand; and the absence of that defence should be regarded crucial to the rationale in *McGregor*. Moreover, *McGregor* had been criticised and disapproved by the New Zealand Court of Appeal in *McCarthy*, and so *McGregor* could no longer provide safe guidance for English courts. It was necessary to return to *Camplin* for the interpretation of section 3; and in order properly to apply the rationale in *Camplin*, the mental infirmity, mental state or personality of the defendant should not be taken into account and attributed to the reasonable man. Any other interpretation would be inconsistent with the concept of the reasonable man, which was described in *Camplin* as a person having the power of self-control to be expected of an ordinary person. If the defendant suffered from a mental abnormality it meant that he has lower self-control than other people and, in that case, he should rely on the defence of diminished responsibility. For this reason, the case of *Raven*, where a defendant was 22 years old but had a mental age of about nine years, was tried for murder, and the judge ruled that the jury should be directed to consider the reasonable man as having lived the same type of life as

the accused for 22 years but with the retarded development and mental age of the accused, was also wrongly decided. It was a case for diminished responsibility (*Luc Thiet Thuan* at p.144, 145). However, if the mental infirmity of the defendant is itself the subject of the taunts by the deceased, that infirmity can properly be taken into account as going to the gravity of the provocation as applied to the defendant. This is correct, and consistent with the reasoning in *Camplin* (*Luc Thiet Thuan* at p.146).

In spite of the persuasive authority of this decision, in *Campbell* (*Colin*) and in *Parker* the Court of Appeal did not follow the majority opinion expressed in *Luc Thiet Thuan*. In *Campbell* (*Colin*) the Court of Appeal noted that if the concept of the reasonable man in section 3 were accepted without any qualification, successful pleas of provocation would be rare indeed. It is in appropriate recognition of human frailty that the scope of the defence of provocation has, to a limited extent, been relaxed. In *Campbell* the court said that previous decisions of the Court of Appeal and the House of Lords in *Morhall* were binding, and unless the previous decisions were overruled by the House of Lords, the Court of Appeal will continue to follow its earlier decisions and the minority opinion of Lord Steyn (*Campbell* (*Colin*) at p.207).

In *Smith*, the House of Lords, in an attempt to re-establish order and to prevent confusion, reaffirmed its previous position taken in *Morhall* and ruled that the majority view in *Luc Thiet Thuan* should not be followed. However, *Luc Thiet Thuan* had already found support from the judiciary, and in any event the decision in *Smith* was not unanimous; Lord Hobhouse and Lord Millett dissented from the majority. In that case, the judge told the jury that the defendant's depressive illness was a characteristic to be taken into account when dealing with the gravity of the provocation but that the fact that the depressive illness might have disinhibited the respondent from behaving violently was irrelevant. On appeal the Court of Appeal ruled that the trial judge had been wrong to direct the jury as he did. The depressive

illness from which the respondent was said to be suffering could properly be attributed to the reasonable man, and so taken into account by the jury. The Crown appealed and argued for a more objective approach as endorsed in *Luc Thiet Thuan*. The majority of the House, however, ruled that personal characteristics of the defendant other than age and sex could be taken into account when considering whether the reaction to the provocation was that of a reasonable man. In deciding whether the circumstances were such as to make a loss of self-control sufficiently excusable to reduce murder to manslaughter, the jury must apply what they considered to be "appropriate standards" of behaviour and the jury must ask whether the defendant exercised the degree of self-control to be expected of someone in his 'situation' (*Smith* at p.296, c, per Lord Slynn) or in his 'position' (*Smith* at p.318, f, per Lord Clyde). However, it was emphasized that this apparent relaxation of the objective approach should not be understood to suggest that persons with defective character can be given full licence or credit for the purposes of the reasonable man test. The defendant should be prevented from relying upon his own exceptional pugnacity or excitability as an excuse for loss of self control (*Smith* at p.320). Similarly, male possessiveness and jealousy, or a tendency to violent rages, or childish tantrums, should not today be an acceptable reason for loss of self-control leading to homicide (*Smith* at p.309, 312).

The judgement of Lord Hoffman, in the opinion of this author, clearly establishes that when the jury assesses whether the defendant's reaction can be said to be reasonable, it is possible to sustain a more subjective approach that gives due weight to the personal circumstances and character of the defendant and provides a proper balance between the principle of the sanctity of human life and the effect of provocation on human frailty, which is the true rationale of provocation. Lord Hoffmann said in *Smith* at p.302, 303 that:

'[After the 1957 Act] the jury was given a normative as well as a fact-finding function. They were to determine not merely whether the behaviour of the accused complied with some legal standard but could determine for themselves what the standard in the particular case should be. In this way they

could..."give weight to factors personal to the prisoner" in cases in which it appeared unjust not to do so... [I]t would not be consistent with s 3 for the judge to tell the jury as a matter of law that they should ignore any factor or characteristic of the accused in deciding whether the objective element of provocation had been satisfied. That would be to trespass upon their province. In a case in which the jury might consider that only by virtue of that characteristic was the act in question sufficiently provocative, the effect of such a direction would be to withdraw the issue of provocation altogether and this would be contrary to the terms of s 3.... But that did not mean that he was required to leave the jury at large and without any assistance in the exercise of their normative role. He could tell the jury that the doctrine of provocation included the principle of objectivity and that they should have regard to that principle in deciding whether the act in question was sufficiently provocative to be acceptable as a partial excuse.'

In spite of this clear re-statement, approximately 5 years after the ruling in *Smith*, in an unprecedented Privy Council case, *Holley*, a decision involving a Board of nine judges (Lord Bingham, Lord Hoffmann and Lord Carswell dissenting) ruled that the defendant's disease of alcoholism could not be taken into account for the purpose of the reasonable man test in provocation. In *Holley*, the defendant and the deceased (the defendant's girl friend) were both alcoholics. While under the influence of alcohol, the defendant killed his girl friend in a quarrel, when she told him that she had just had sex with another man. For the majority, as the defendant was not taunted on account of his intoxication, the defendant's chronic alcoholism was not a matter to be taken into account by the jury when considering whether a person having ordinary powers of self-control would have done what the defendant did. So, the Privy Council disapproved the ruling of the House of Lords in *Smith*. Though, Privy Council decisions are of course regarded as persuasive authority rather than binding on English courts, and the Privy Council does not have power to overrule a decision of the House of Lords, this time the decision and reasoning in *Holley* has been followed by the Court of Appeal in subsequent cases such as *Faqir Mohammed* (para 57, 58) and *James, Karimi*. It means that *Holley* is now the leading case and former authorities of the House of Lords such as *Morhall*

and *Smith* that give greater weight to factors personal to the defendant are sidelined, even if not technically overruled.

Such an inconsistent approach in the application of the provocation defence urged the Home Secretary to ask the Law Commission to consider and report on the law and practice of the partial defences to murder. This began a lengthy process which ended with the Coroners and Justice Act 2009 which received Royal Assent on 12 November 2009 and will come into force on 4th October 2010. The author now turns to discuss the concept of the test of reasonableness in the new partial defence of ‘loss of control’ in the Coroners and Justice Act 2009.

5.3.5 The test of reasonableness in the Coroners and Justice Act 2009

The Coroners and Justice Act 2009 replaced the reasonable man test with an ordinary man or ‘normal person’ test (s. 54 1 (c), s.54 (3), which will be applied in both limbs of the partial defence of loss of control. The test now, in terms of language, is clearer for the jury to understand. The judge is no longer required to describe the second part of the test, or the objective element in provocation, to the jury by reference to the reasonable man. In its report, the Law Commission stated that, for the objective test, they preferred the minority position in *Smith* (The Partial Defences Report, 2004, para.3.110), which is consistent with *Camplin* and *Holley*. Therefore, in the new partial defence of loss of control, the objective requirement will be explained in accordance with these rulings and it will test the defendant’s own reaction against the standards of someone of his or her age, with a normal degree of tolerance and self-restraint, and in the circumstances of the defendant.⁶⁹ The Law Commission was reluctant to

⁶⁹ However, it should be noted that there is no reference to sex in the formulation of objective requirement proposed by the Law Commission in the Partial Defences Report or the Murder Report (The Murder Report 2006, para.5.11). The reference to sex was added to the formulation by the Government in the Ministry of Justice’s Consultation Paper (Consultation Paper, 2008, p.33).

speculate on how the courts should interpret the new objective test and which circumstances of the defendant should be taken into account in the application of the new partial defence (The Murder Report, 2006, para.5.39). But they made it clear that in deciding whether there was gross provocation in the sense of words and/or conduct which caused the defendant to have a justifiable sense of being seriously wronged, they did not intend the test to be purely subjective to the defendant (The Partial Defences Report, 2004, para. 3.70). According to the Law Commission:

‘Taking into account the circumstances and characteristics of the defendant does not mean that if the defendant considered it to be gross provocation, the jury must therefore accept that it was gross provocation. The jury may conclude that the defendant had no sufficient reason to regard it as gross provocation, or indeed that the defendant's attitude in regarding the conduct as provocation demonstrated an outlook (e.g. religious or racial bigotry) offensive to the standards of a civilised society’ (The Partial Defences Report, 2004, para.3.70)

The Law Commission also gave some helpful examples. They said that unless the defendant has specifically been taunted about factors such as, alcoholism, mental deficiency or mental disorder, (which are of course liable to affect temper, tolerance, and the capacity of self-control), these are characteristics that should be ignored for the purposes of the partial defence and the judge should instruct the jury to do so (The Murder Report, 2006, 5.40). Here, the Law Commission seems to agree with *Newell* and *Holley*. Abnormal states of mind, such as intoxication, irritability, or morbid jealousy, should also be left out (The Murder Report, 2006, 5.41). According to the Law Commission, a person who has killed because his or her capacity for self-control was reduced by such a characteristic must look instead to the defence of diminished responsibility. However, in a case where the defendant is dumb, and so unable to respond verbally, this is a factor that might legitimately be taken into account when considering the defendant's reaction to a particular provocation given on a particular occasion (The Murder Report, 2006, 5.43). In this example the provocation need not be directed at that

characteristic. The circumstances of the defendant, as in the aforementioned case of *Roberts*, where there was evidence that irrational violence was to be expected from some immature prelingually deaf persons when emotionally disturbed, are relevant to a plea of diminished responsibility, rather than to a plea of provocation (The Murder Report, 2006, 5.44).

The Government referred to these points in its consultation paper (The Ministry of Justice, Consultation Paper, 2008, para.22) without stating clearly whether it agreed or not with the Law Commission. However, as explained before, the Government took a firm view that ‘some deserving cases might fall in a “gap” between the partial defences’ (Government Position, 2009, para. 86). In such cases, the defendant ‘should not be able to benefit from a partial defence to murder when he does not meet the tests for either’ (Government Position, 2009, para. 86).

In the light of the Law Commission’s recommendation and the Government’s position, it seems that in the application of the partial defence of loss of control, only the age and sex of the defendant will be regarded as relevant factors that affect the defendant’s general capacity for self-control. Though the defendant’s circumstances will also be taken into account, the tenor of the Law Commission’s account is that those circumstances will not include the defendant’s culture and ethnicity. Section 54 (3) and 55 (4) will be interpreted in a way such that the ethnic and cultural circumstances of the defendant can only impact on the defendant’s assessment of the gravity of the provocative conduct and not on his response to the provocation.

In the view of this writer, this situation will cause injustice in certain honour killing cases where there is evidence to show that the partial defence of loss of control might well otherwise apply. If the distinction between the gravity of the provocation and the concept of self-control is applied rigidly, defendants who are ‘mentally normal’ and whose mental or emotional condition is likely to fall short of diminished responsibility will have no defence to

argue. Unless full account is given of what they have experienced as a relevant factor not only affecting the gravity of the provocation to them but also affecting their capacity of self-control, and their response to the provocation, they will be found guilty of murder, a crime attracting the greatest moral stigma and a very long minimum term in a life sentence, that may be considered disproportionate and inappropriate. The judge, as a matter of settled legal principle deriving from *Camplin*, will be obliged to direct the jury that they must ignore ethnic and cultural factors when they consider the defendant's capacity of self control and how an ordinary man would react to provocation of that type and gravity. However, the only workable strategy, which the defence might have in such cases is to show that the extraordinary nature of the defendant's circumstances did cause the defendant to lose self-control and 'any one of us might have reacted in the same way if we had been in the defendant's shoes' (*Smith*, per Lord Millett at p.344, Dressler, 1988:476). In such a case, the defendant should be given the opportunity to properly argue and demonstrate his case, by calling evidence, whether cultural or non-cultural, from expert witnesses to enable the jury to make an informed appreciation about the reasons behind the defendant's loss of self-control, to decide whether it could reasonably be expected from the defendant to do more than what he did, and to help them understand the defendant's state of mind at the time of the killing.

Unfortunately, legal principles laid down in *Camplin*, and especially in *Turner*, regard such evidence as inadmissible. In *Turner*, it was ruled that:

'Jurors do not need psychiatrists to tell them how ordinary folk who are not suffering from any mental illness are likely to react to the stresses and strains of life.' (*Turner* at p.841)

The effect of *Turner* has been to exclude expert evidence that does not strictly deal with mental abnormalities or mental disorders, on the assumption that other psychological functions and phenomena are matters of common knowledge and experience that a jury can understand without the help of experts. The case of *Turner* involved the provocation defence, the Court of Appeal holding that expert evidence was inadmissible on the question of how a

mentally normal person might react to extreme provocation. As rightly explained by Colman and Mackay, in cases where the defendant's state of mind at the time of the killing falls short of a qualified defence of diminished responsibility but involves a situation of stress and provocation not well understood by ordinary people, further explanation by experts might lead to a different verdict. Such evidence should be admissible to explain the complex reasons that lay behind the defendant's loss of control (Colman and Mackay, 1996: 90). The proper task for the medical and psychology expert is to help to explain the defendant's state of mind at the time of the killing, the nature of his act and the reasons behind the defendant's alleged loss of self-control. Then, the question for the jury is whether a man or woman of reasonable firmness with the defendant's characteristics, which include his culture and circumstances, might have reacted to the provocative conduct in the way that the defendant did, rather than whether an ordinary person from an entirely different culture and background would have been provoked, and acted as the defendant did. Of course, when the experts give their evidence, there is some risk of intruding into the jury's province. However, as Lord Morris explained in *Camplin* at p.176 'to consider the mind of some different person, and to consider what his reactions would have been if comparably provoked, could involve an unreal test.'

The application of the *Turner* rule appears to have been relaxed in cases such as *Humphreys* and *Newell* where experts were permitted to assist the jury on the issue of provocation and to explain the defendant's state of mind which was, in each case, unusual and not generally encountered by the public at large. However, what the authorities suggest is that in honour killing cases expert testimony about the circumstances of the defendant, or cultural features of the case are relevant only to the gravity of the provocation (The Murder Report, 2006, Appendix C, paras.C 12-14). In the recent trial of Mehmet Goren, where the defendant killed his daughter, Tulay Goren, but protested his innocence, an expert was called, but offered only general insight into honour killing cases and her understanding of the reasons

behind them (BBC News , 17 December 2009). It seems likely that the principle laid down in *Turner* will continue to impose an unnecessary restriction on the defence in the application of the new partial defence of 'loss of control'.

What defendants have experienced in certain honour killing cases (such as where a male defendant has lost self control due to a build up of pressure over time, or a female defendant has experienced sexual harassment) is surely not so different from the response of a defendant suffering from battered woman syndrome, or that of a defendant who has experienced violence and abuse for a long time. Indeed, there are many similarities in the experiences of these two different groups of defendants such as experiencing a 'sense of relief rather than remorse' after the killing (Wells, 1994:267). An informed appreciation of the nature of the conduct in question requires a proper assessment of the reasonableness of the defendant's response in the light of his/her own circumstances and in the full context in which it took place. That can not be done in isolation from the defendant's different and deeply held values and cultural understanding. By taking the defendant's different values and cultural beliefs into account, the rule of reasonable relationship between the resentment and retaliation in the provocation might also be solved. Such an approach to provocation is not so different from what is contained in the American Law Institute, Model Penal Code or what was suggested by New South Wales Law Reform Commission and, finally, not so different from the principles laid down by the majority in *Smith*. Indeed, the Model Penal Code treats as manslaughter any intentional killing: 'committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.' (Model Penal Code (1985) s.210.3(1) (b)). However, though the Law Commission recognised that the phrase 'extreme mental or emotional disturbance' has formed the basis for a provocation

defence in at least some American state jurisdictions and cannot therefore be dismissed as unworkable, it (regrettably) took the view that the phrase 'extreme mental or emotional disturbance' was unduly vague and indiscriminate (The Partial Defences Report, 2004, paras, 3-47-3.59; The Murder Report, 2006, para. 5.22), and in many cases would lead to legal scrutiny in the appeal courts to determine its meaning and scope (The Murder Report, 2006, para 5.22). Therefore, it did not recommend reformulation of the law of provocation in accordance with this premise. The New South Wales Law Reform Commission recommended replacing the objective standard of self-control with a subjective test coupled with a standard based on community standards of blameworthiness (NSWLRC Report 83, (1997), para. 2.81). In deciding whether the accused in fact lost self-control, the jury would be required to consider all the personal characteristics of the accused, including ethnic origin, temperament, and whether he or she was intoxicated.

In the UK, when a man or woman who has a different cultural understanding of honour and shame kills for honour after experiencing such pressure, s/he is judged by an alien culture which lacks any real understanding of the context of his/her act. Defendants are forced to explain what they have experienced in the context of legal categories and defences provided by English law that ignore, misunderstand or are at least reluctant to understand and appreciate, their actions and motivations. Without this appreciation the defendant has no defence to argue. Indeed, the application of the Coroners and Justice Act 2009, which is consistent with authority laid down in *Turner*, *Camplin* and *Holley*, will continue to cause injustice.

The Law Commission took the view that 'there is, nevertheless, a case to be considered for the introduction of a *partial* defence to murder in circumstances where the defendant kills another *in the honest belief that it is the only way to prevent grave future violence to him or herself*' (The Law Commission, 2003, Consultation Paper, para 10.101

emphasis as in original), and this approach is reflected in the 2009 Act. It may prevent injustice in the cases of female interviewees-36 and 38, who were sexually abused. Each faced a dilemma, either to kill their abuser or continue to accept the sexual abuse of the deceased. Eventually each killed the deceased to save themselves and their honour. It may also prevent injustice in the case of female interviewee-39, who was raped. She killed the rapist in the belief that it was the only way to prevent further rape. However, even in these cases, the formulation of the new defence is not based on an informed appreciation of the defendant's different cultural understanding of honour and shame and the reason behind loss of control. Needless to say, by isolating the condition or circumstances of the defendants from their cultural context the case of female interviewee-37, who was pressurised and beaten to take part in killing her elder sister (see Appendix 3), and the cases of male defendants who killed for honour in the honest belief that killing was the only way to deal with the pressure and threat from the community, will not be considered as cases deserving to benefit from the new defence.

The jurors in honour killing cases will have different moral and cultural values than the defendant, which will prevent them from understanding the gravity of the provocation to a person with the values of the defendant. They will assume an explanation based on mental abnormality, or something disturbed in the mind of the defendant. The average member of the public on an English jury will have difficulty in understanding the defendant's set of values. They may expect the defendant to be strong and to resist the pressure, simply by refusing to do what his cultural norms require. He should seek outside help, or pack his bag and just leave. But the jury must be allowed to understand the nature of the act in the circumstances of the defendant. As explained by O'Donovan, in the context of battered women, the availability of community support, without which it will be very difficult to leave the environment in which the criminal act occurs, is a crucial issue (O'Donovan, 1991:235). The jury needs to

have it explained to them that a battered woman cannot simply pack her bag and leave. The defendant's dependency on the community is clear, and where there is no help available, or the community is reluctant to intervene, this markedly increases the difficulty of leaving, makes the defendants more desperate, and may well tip them over into killing.

The *Turner* rule should be relaxed. Cultural evidence provided by expert witnesses to explain the nature of the defendant's act, and psychiatric evidence to explain the defendant's state of mind, should be admitted for the consideration of the jury. The courts should be prepared to admit evidence about the broader social conditions experienced by the defendant. The courts should allow both cultural and non-cultural evidence to provide a fuller explanation in the proper context of the defendant's behaviour, and provide an appropriate framework for the jury to make an informed decision.

Only this individualized consideration can provide a workable solution for the honour killing cases that the author has discussed, and it is necessary to counterbalance the stereotypical bias against such defendants. Only with this formulation it is possible to make room, within the test of reasonableness in provocation, for the fact of human diversity. This formulation would allow the jury to hear everything 'that might conceivably help them to be more understanding of the reactions of the person in the dock before them, and allow (but not require) them to make corresponding relaxations in the applicable standard of self-control' (Macklem and Gardner, 2001:625).

None of the above arguments should be regarded in any way as exoneration for the defendant who kills for honour. Nor should my approach be understood to mean that other people who have experienced the same pressures but did not kill, have suffered less, or that people who killed are less blameworthy than people who did not kill. It should be understood as a quest for an informed appreciation of the defendant's circumstances to be taken into account to prevent injustice in such cases.

During the time of writing this thesis the English law on provocation has undergone change, prompted by the government and guided by the Law Commission. It is a pity that the Commission dismissed the issue of defendants from a different ethnic and cultural background so quickly, on the basis of unconvincing research evidence. In a culturally diverse country such as the UK these problems will not disappear, and it is to be regretted that the recent process of law reform did not address the issues considered in this thesis more fully and sympathetically. An important opportunity to make English law fairer to its citizens has been missed.

5.3.6 Culture as evidence or defence

Judges often exclude evidence about cultural background on the ground that it is irrelevant, and decline to give a jury instruction on the proper weight to be given to culture. However, culture strongly influences human motivation, and shapes reasoning and behaviour. It is especially vital in multi-faith, multi-cultural societies such as the UK that judges acknowledge variations in motives to better understand the behaviour of individuals who come before them. Therefore, there should be room in the legal system to allow cultural arguments to be presented properly in criminal cases. The admissibility of such cultural arguments as evidence does not of course mean that every defendant should be exonerated, nor does it mean that when determining culpability, every defendant's argument should be regarded as a mitigating factor (Renteln, 2004:5-7). The balance between the victim's and defendant's interests must be preserved in order to prevent injustice.

There is an ongoing vigorous debate about the merits and implications of a cultural defence or the admissibility of cultural evidence in a criminal trial. It has been much discussed in the American context; and several positions have been staked. The positions taken by some commentators on these issues appear to be strongly motivated as pro-defendant or pro-victim, where either the defendant's right to individualised justice is regarded as

paramount, or the right of the victim is seen as paramount because it is the victim that the criminal law ultimately seeks to protect (Coleman, 1996:1155) The main dividing line is between those who support and those who oppose a new cultural defence. In addition, many commentators have suggested a range of limitations and restrictions on an independent defence, or on the admission of cultural evidence.

Some commentators are in favour of the establishment of an official ‘cultural defence’ (Renteln, 2004:187, Chiu, 2006:27) and argue that culture should be accepted as a ‘stand-alone’ or a ‘free-standing’ defence. Others object to this and argue that cultural evidence should be used only in conjunction with an already-existing defence, in an effort to explain the state of mind of a defendant (Volpp, 1994:58, 91), or to negate the presence of the requisite mens rea (Lyman, 1986: 98; Coleman 1996:1160). It is also suggested that cultural arguments may be used at the sentencing stage, to influence the form or duration of punishment (Coleman, 1996: 1095, 1159; Golding, 2002:157; Tunick, 2004:404,406).

For the purposes of this thesis, the use of cultural argument in trials of honour killing cases means that cultural evidence provided by expert witnesses to explain the nature of the defendant’s act, and psychiatric evidence to explain the defendant’s state of mind, should be admitted for the consideration of the jury, and the specific cultural logic behind the defendant’s response and loss of control must be taken seriously. The admission of such policy and cultural information in court would provide a more accurate portrayal of factors influencing the defendant’s response. The jury, then, after hearing all the evidence will determine the appropriate degree of culpability, and the judge will be better informed on sentencing.

The adoption of such an approach is not to say that individuals are programmed by their culture such that their behaviour is predetermined. The author does not agree with the ‘inability thesis’, which asserts that ‘one’s culture can determine one’s behaviour so as to

make one unable to comply with the law' (Tunick, 2004:397). Cultural conditioning, in and of itself, does not render human beings incapable of making moral judgements. The point is simply that cultural conditioning predisposes individuals to act in certain ways (Renteln, 2004:13).

When it comes to how much weight should be given to culture, different jurisdictions have taken different approaches to the cultural defence and admissibility of cultural evidence in criminal proceedings.⁷⁰ Cultural evidence has been presented and taken into account either during the trial stage or the sentencing stage as a mitigating factor.⁷¹ However, there are also reported cases where such evidence has been used in the prosecutor's assessment of whether to charge a defendant or not (Coleman, 1996:1102). The major obstacle to using cultural evidence or arguments to explain the reasons behind the defendant's loss of control in the provocation defence is the concept of the ordinary or objective reasonable man, who is generally assumed to be an ordinary man who belongs to the dominant culture, which reflects 'white, male, heterosexual, middle class and largely Christian values' (Power, 2006:878). If the reasonable defendant from another culture can not control his actions in the face of certain provocation, why should we find him guilty of murder by denying him an opportunity to explain the reasons behind his loss of control in the light of his culture and personal circumstances? If the defendant felt compelled to act in the way he did, his culpability is at least lessened. The reasons or arguments he puts forward should be treated seriously and sensitively for a just outcome. Here, justice demands that the legal system focus on the

⁷⁰ See Renteln (2004:24-48) for cases where cultural defences were raised via insanity, automatism, self-defence and provocation. See also Phillips (2003) for the discussion of cultural defence in the English Courts.

⁷¹ See Renteln (2004: 40-48) for cases where it was argued that the failure of defence counsel to present cultural factors during the sentencing stage constituted a constitutional error, or the absence of cultural evidence led to an unjust outcome. For instance, it was argued that there is a strong sense that Chinese males should not express emotion in a public context. Therefore, the Chinese defendant's apparent lack of emotion during the trial in the case of *Kwai Fan Mak v Blodgett* (1991, 1992, 1993) is culturally expected behaviour and not a manifestation of an absence of remorse. So, imposing the death penalty on this defendant just because his body language was culturally misunderstood was an error and unjust decision (Renteln, 2004:40-42).

defendant as well as on the act, and focus on his motive as well as on his intent. This can only be achieved, if the courts are prepared to allow both cultural and non-cultural evidence to be adduced which provide a fuller explanation in the proper context of the defendant's behaviour and provide an appropriate framework for the jury to make an informed decision. The purpose of this thesis is not to argue that as the defendant's action is culturally motivated, honour killing is less blameworthy than other forms of killing and therefore deserves less punishment. However, if motive is relevant to the determination of guilt, it is unfair to exclude consideration of the defendant's cultural motive. If the law acknowledges the relevance of culture to the gravity of the provocation, it can not avoid its relevance to self-control nor the fact that the cultural imperatives shape the defendant's choice-culpability in honour killing cases.

Taking the defendant's culture and motive into account does not require accepting that the capacity of self-control varies from one culture to another, or that people coming from a particular culture have a lower standard of self-control than the rest of society. It means that culture strongly influences human motivation, shapes reasoning and behaviour, and that defendants from different cultures may not control their actions in the face of certain forms of provocation. It requires assessing and judging the culpability of the defendant in accordance with his capacity for making the right choice which can only be understood in the light of his culture and circumstances. Indeed, '[s]ince punishment expresses blame, and one cannot fully blame someone who had no choice [*in his circumstances*], the full measure of punishment would be inappropriate' (Tunick, 2004:397). What matters when gauging culpability for punishment is not whether the defendant could have resisted certain features of his culture, or whether it was physically possible for him to refrain from killing. Instead, what matters is whether it is reasonable to expect the defendant to comply with the law in the light of his personal and cultural circumstances (Tunick, 2004:402). English law acknowledges that some

killings are less morally culpable than others. This does not mean that society condones the action, or that honour killing is justifiable. The question of how we should punish the defendant who has committed honour killing is distinct from the question of whether the killing is good or bad. By acknowledging the constraints the defendant faced, and his capability of making the right choice in his circumstances, the law should allow for the possibility of excuse. '[T]he question of excuse concerns whether we can blame someone in light of the fact that they are acting reasonably from their cultural perspective and is distinct from the question of whether their cultural practices are justified.' (Tunick, 2004:405)

The author turns now to consider several key arguments advanced against the use of the cultural arguments in the criminal trial whether as defence or evidence [hereafter the phrase 'cultural defence' will be used for the sake of consistency], some of which are principled and some of which are practical.

The first argument against the cultural defence is that by reducing culpability or mitigating sentence, the cultural defence would undermine the deterrence function of the criminal justice system. If a person is not punished for a culturally motivated act, he may well continue to follow that tradition. Further, failure to punish the defendant for his culturally motivated crime, on the basis that 'his culture made him do it', does little to deter others in the defendant's circumstances from committing the same act (Coleman, 1996:1136). So, acceptance of the cultural defence would serve only perpetuate the crime (Smartt, 2006:7).

To respond, this argument is only valid if the cultural argument provides a complete defence or if the defendant is sentenced very leniently. If the cultural defence works as a partial defence, or as mitigation, the deterrence function of the law and punishment would still exist. In any event, the validity and effectiveness of deterrence is highly controversial. The assumption that more severe punishment creates greater deterrence is not supported by empirical data (Von Hirsch et al, 1999: 7, 27, 41). No matter how severe or light, punishment

may well not serve as a deterrent to culturally motivated crime. (Renteln, 2004: 194, 195)

Some defendants in their interviews with the author asserted that after their release, if they met similar or the same circumstances, they would kill again. Even if the cultural defence were to undermine the deterrence function of the law and punishment to some limited extent, this does not justify the rejection of cultural arguments in provocation cases.

The second argument against the use of culture as a defence is that the acceptance of such a defence will lead to the loss of a uniform legal code and to anarchy. If individuals and groups could decide on their own standards with which laws they will comply, there would no longer be any certainty or predictability in the legal system (Coleman, 1996:1100, 1144).

This argument is, however, implausible. Cultural dimensions are already taken into consideration by the law in many other contexts, such as forms of exemption from obligation, or immunity from prosecution; and these do not cause anarchy. It is accepted that compliance with legally binding rules may require a much greater sacrifice of cultural values for some groups than for others, and therefore, some groups of people in the society should be exempted from those obligations, or be granted immunity from prosecution (Phillips, 2003:518). Turban-wearing Sikhs are exempted from the requirement to wear safety helmets on building sites, or when riding a motorbike (The Motor-Cycle Crash Helmets (Religious Exemption) Act 1976, The Employment Act 1989). Jewish or Muslim slaughterhouses are exempted from legislation governing the slaughter of animals (The Slaughter of Poultry Act 1967, Slaughterhouses Act 1974). Knives that are carried for religious reasons are exempted from the legislation prohibiting people from carrying knives and offensive weapons in public (The Criminal Justice Act 1988) (Phillips, 2003:518). Finally, though the US federal government considers it a Schedule I controlled substance along with heroin, LSD, and ecstasy, the chewing of *khat* or *qat*, which is a cultural tradition in Somalia or Yemen, has not been made illegal in England (Renteln, 2004: 74, 75). Although all of these examples deal

with matters of food and dress, they show that cultural dimensions have been accepted as a characteristic affecting the formulation of legal norms.

The third argument advanced against the use of the cultural defence is that it would operate to sustain male power and to undermine the rights of vulnerable groups, such as women and children (Coleman, 1996:1095, 1166; Volpp, 1994: 94). It is argued that if the legal system mitigates punishment for those who commit culturally motivated crimes, but not for those who commit the same crimes in the absence of cultural imperative, the victims of the former receive less protection than victims whose perpetrators come from the mainstream community. This violates the principle of equal protection (Lyman, 1986:116; Coleman, 1996:1098, 1136).

However, concern relating to the availability of cultural defences operating to sustain and reinforce male power requires some caution. First of all, of course, the availability of a cultural defence does not entail that the defence will succeed. Secondly, the cultural defence does not simply equate with male interests. When it is available, both males and females may benefit from it. Thus, in the case of *Kimura*, a Japanese-American woman tried to drown herself, and succeeded in drowning her two children, after learning of her husband's adultery. At her murder trial in California in 1985, it was claimed that this constituted a traditional Japanese practice of parent-child suicide (*oyaka-shinju*). A wife shamed by her husband's adultery might choose suicide as the more honourable course of action, and would think it cruel to leave her children to live on without her in conditions of disgrace. She was convicted of voluntary manslaughter and sentenced to one year's imprisonment. Further, as the author's research has established, there were some cases (interviewees-36, 38, and 39,) where the main motive of a female defendant was to protect her honour, or the honour of her husband or family, but also where the defendant was in fear of serious violence from the victim, (from further sexual harassment or rape), and the killing occurred when there was no immediate risk

of violence. For these female defendants justice can only be provided if the defendant's response is understood in the context of her culture. If the evidence is not admitted, the defendant's motive to save her honour might suggest that she acted in a considered desire for revenge and therefore is guilty of murder. Here, the cultural defence does not work against women. Instead, it is the only way to provide justice for those female defendants who were interviewed in the course of preparing this thesis.

The fourth concern over the use of a cultural defence is that it may promote cultural stereotypes (Volpp, 1994:100). There is a fear that such a defence will promote racism and discrimination (Leader-Elliott 1996; Phillips, 2003:514, 515). It is argued that the use of a cultural defence 'lends itself to stereotypical representation of the non-Western "other"' (Phillips, 2003:515), or 'judicial acceptance of negative stereotypes such as the emotionally volatile Latin, or the particularly aggressive Vietnamese' (Yeo, 1996:304).

This important concern requires careful consideration. According to Renteln:

'First, the stereotypes exist whether or not the defense is used. Second, patterns of culture are not equivalent to racist stereotypes, even though in the debate about the cultural defense there is an unfortunate tendency to conflate race and culture. Third, some stereotypes are true or at least contain a kernel of truth, if by stereotype we mean one group's perception of another group.' (Renteln, 2004:198)

What is important in a pluralistic society is to recognise that the desire to apply a uniform standard, which reflects the standard of the dominant culture, should not lead to the unfair treatment of individuals. It is possible to prevent stereotyping by providing practical guidance and training for judges, to enable them to use a non-pejorative language and take a balanced approach (Equal Treatment Bench Book, 2004, Part 1, sections 1.1, 1.2.1, 1.2.2, Part 5, section 5.1.3) to prevent 'judicial acceptance of negative stereotypes' (Yeo, 1996:304) or 'stereotypical representation of the non-Western "other"' (Phillips, 2003:515). In order to prevent stereotyping, judges should hear expert evidence that meets high standards. Failure to

do so, as argued before, itself causes a flawed view about the defendants who commit honour killing. This is, in itself, another stereotype.

In this context when cultural evidence is introduced into courtrooms in the USA, cultural ‘experts’ are used, whilst in Australian trials of indigenous defendants ‘community representatives’ may be called on to testify to their cultural practices (Power, 2006:882).⁷² However, when community representatives or leaders give evidence in the trial of honour killings, this is likely to be controversial. Such witnesses may seek distance between their community and such cultural practices, and contend that killings have nothing to do with the culture within which they take place. If there is a lack of consensus whether the practice exists, this does not prove that the tradition is nonexistent. A more accurate picture of the impact of the defendant’s culture on his behaviour or response can be gained through calling experts on ‘transcultural psychology’ (Volpp, 1994:88) who can better explain the defendant’s state of mind. Transcultural psychologists or psychiatrists who come from the defendant’s culture or are immigrants themselves ‘may present a fuller, more human analysis of the defendant’ (Volpp, 1994:89) that can help to prevent stereotypes.

The fifth argument mainly reflects practical concerns and asserts that, even if the use of cultural defence is accepted, there will be difficulties and problems related to the implementation of the policy. It will be impossible, it is said, to draw the line between legitimate and illegitimate uses of the defence. This is partly because it is hard in some cases to prove the existence of specific customs (Golding, 2002:150; Tunick, 2004:406; Coleman, 1996:1162). To what extent is a practice a tradition? There are problems in testing the validity of a cultural claim put forward by the defence (Phillips, 2003:513; Van Broeck, 2001:8). Some defendants, such as gang members or contract killers, may seek to take advantage of the defence by falsely claiming that they belong to a particular group and that their practice is

⁷² For an example of the important role that the defendant’s community may play see Volpp, 1994:67; Tunick, 2004:396; Coleman, 1996:1102, 1110; Renteln, 2004:125, 230.

traditional. They may claim that their actions were motivated by cultural factors, when they were not (Renteln 2004: 193, 194; Tunick, 2004:396).

However, all available excuses in criminal law are subject to issues of proof and the risk of occasional fabrication by an unscrupulous defendant. A defendant may claim to have acted in self-defence, or under duress, where that was not actually the case. Criminal courts are used to testing such claims through evidence and cross-examination. There do not seem to be any special difficulties here associated with a cultural defence. In the opinion of this author, the question of whether the defendant's act was influenced by his culture as he claimed, or not, is a matter best determined by the court in accordance with the testimony of expert witnesses. Therefore practical difficulties should not be used as the rationale to justify the possibility of injustice.

In honour killing cases the defendant should not be silenced from telling the reasons behind his response, from his own cultural perspective. Otherwise, if we are prevented from explaining the concept of honour killing by taking into account the defendant's cultural background and ethnicity we are compelled to explain the killing in simplistic psychological terms, such as '*temporary insanity*' or that the murderer was 'crazy' (Kurkiala, 2003:6). This situation puts such defendants at an unfair disadvantage and in an incorrect category by giving the impression that all the defendants committing such crimes are mentally disordered.

Though the defendant should be punished as much as he deserved, this can not be done in isolation from the social causes of the act in question and the social repercussions for what occurs if that act is not done. This requires that the defendant's motive be considered, and that the ethnicity and culture of the defendant should also be relevant in assessing the power of self-control to be expected of him. This submission has found support in India. In India the courts have recognised that the defendant's ethnic, cultural or social background is capable of being taken into account on the issue of self-control. For example in *Nanavati*, the

leading Indian case on provocation and the concept of the reasonable man, the Indian Supreme Court, in accordance with Exception 1 to Section 300 of the Indian Penal Code, ruled that:

‘The test of ‘grave and sudden’ provocation is whether *a reasonable man, belonging to the same class of society as the accused*, placed in the situation in which the accused was placed would be so provoked as to lose his self-control.’ (*Nanavati* at p.630 emphasis added).

Also, until the decisions of the High Court of Australia in *Stingel* and *Masciantonio*, (where ethnicity and culture of the defendant were excluded from the concept of power of self-control), this submission had found support in a number of Australian decisions, notably the Victorian decision in *Dincer* and the judgment of Murphy J in the High Court Case of *Moffa*.

A majority of the High Court in *Moffa* chose to substitute the original murder conviction with a conviction for manslaughter. In *Moffa* the defendant, a man of Italian origin, had killed his Australian wife with an iron pipe after she had, amongst other provocative words, said to him that she had enjoyed ‘screwing with everybody on the street’. In this case, Murphy J said:

‘The objective test is not suitable even for a superficially homogenous society, and the more heterogeneous our society becomes, the more inappropriate the test is. Behaviour is influenced by age, sex, ethnic origin, climatic and other living conditions, biorhythms, education, occupation and, above all, individual differences. It is impossible to construct a model of a reasonable or ordinary South Australian for the purpose of assessing emotional flash point, loss of self-control and capacity to kill under particular circumstances The same considerations apply to cultural sub-groups such as migrants. The objective test...has no place in a rational criminal jurisprudence.’ (*Moffa* at p.625, 626)

In *Dincer*, which was an honour killing case, the defendant was a Turk and Muslim and had deeply held values and cultural understanding about the concept of honour. His daughter, who was 16 years old at her death, had over a period of months, against the wishes of her family, formed an association with young men, and at least twice run away from home. Shortly before

the murder, she had become involved with a young man and had apparently engaged in sexual intercourse with him. The defendant stabbed and killed his daughter in the presence of her boy friend when she was trying to persuade him to allow her to go away with her boy friend. By referring to the New Zealand case of *McGregor* and the English case of *Newell*, Lush J, first ruled that the matters put forward on the defendant's behalf as a Turkish and Muslim man who had deeply held values about what is desirable or undesirable, permissible or not permissible, could constitute relevant characteristics that could properly be taken into consideration by the jury in the application of the reasonable man test. These matters had a permanent nature, which marked the defendant off from, or distinguished him from, the ordinary man of the community. Therefore, the question of whether a reasonable man might have reacted to that provocation as the defendant did should be left to the jury. Here, the question should be asked whether an ordinary man of the defendant's background and characteristics would have lost his self-control and reacted as the defendant did (*Dincer* at p.463, 464).

Later, in his charge to the jury, Lush J summarised the problems arising from running the defence of provocation in an honour killing case that this thesis has attempted to address. He suggested that it would be jumping to conclusions to assume that in such a case, killing is premeditated and simply dictated by a belief possessed by the defendant without taking into account other circumstances and additional events which may supply additional fuel for the grievance that the defendant might have due to the victim's shameful conduct. He stated that:

'The defence has put it to you that [the defendant] was under stress of being shamed...by his daughter's conduct... So the first question in this area of provocation is this. Might an ordinary man of [the defendant's] origin, religion and background have lost his self-control on learning of what [his daughter] was doing, and upon being exposed to the final events seconds before the stabbing?.... You may be asking yourselves, "How are we to know what an ordinary conservative Turkish Moslem might have done in these circumstances?" There is no answer to that question... The law does not allow the

calling of evidence to assist the judgment of the jury on a question like that. It is your problem... If you are in the position of saying, "We cannot say that an ordinary man of this background would not have lost his self-control or would not have acted in this way, we simply cannot say", then the onus of proof means that the Crown has failed to satisfy you that an ordinary man would not have done these things.' (Dincer at p.467, 468)

What these authorities suggest is that since the crime of murder carries both moral stigma and a mandatory sentence, any explanation in the form of excuse that has moral and legal significance should be considered by the courts seriously in order to provide a fair trial. Provocation, or the loss of control defence, provides legal grounds for the defendant to present such an explanation by adducing evidence from expert witnesses to enable the jury to reach an informed view of the reasons behind his loss of self-control, to help them decide whether he could reasonably have been expected to do more than he did.

But English law and courts resist the idea of educating and informing the jury to enable them to make an informed judgment about the reasons behind the defendant's loss of self-control. They reject taking the defendant's culture, ethnicity and other personal characteristics into account on the issue of self-control. This is inconsistent with the opinion of behavioural scientists that the accused's personality must be taken as a whole, and cannot be dissected into the way he or she would view some provocative conduct on the one hand, and the way he or she would respond emotionally to that conduct on the other (Brett, 1970).

It is apparent that in the UK equality before the law does not exist for some honour killing defendants when they are on trial for murder according to a standard that reflects the values of the dominant culture, and when they are prevented from calling evidence to assist the jury on the question whether a man or woman of reasonable firmness with the defendant's characteristics, which include his culture and circumstances, would have reacted to the provocative conduct in the way that the defendant did.

CONCLUSION

The trial judge's direction to the jury, and how he sums up and presents the series of event claimed to be provocative, will have tremendous impact on the viability of a provocation or loss of control defence raised by the defendant which is based on cultural dimensions and a different understanding of honour and shame. Moreover, the formulation of the partial defence of 'loss of control' allows the judge to withdraw the defence if he believes there is insufficient evidence tending to show that a person with a normal degree of tolerance and self-restraint, and in the circumstances of the defendant, might have reacted in the same or in a similar way to the defendant. As we have seen, in some honour killing cases, the provocative circumstances comprise a complex history, with several distinct and cumulative strands of potentially provocative conduct, which falls outside the experience of the judge, and of an English jury of ordinary men and women. These cases can not fairly be filtered out by the life experience of the trial judge without first seeking an expert opinion. Failure to do so, when assessing the seriousness of the provocation and whether the defendant showed a reasonable amount of self-control, might well lead to the withdrawal of the defence from the jury in honour killing cases, some of which, as this research has established, deserve to be left for the consideration of jury.

The possibility of error arises not just from a failure by the judge to see and fully understand potential evidence that can explain why the defendant lost his self-control, but also from the adequacy of guidance to the jury as to the complex history of the case which is committed in a very different social and cultural context. The jury's assessment of whether some act, or series of acts, done by the deceased to the defendant, which are purportedly provocative, violating honour and bringing shame, justify a finding of manslaughter rather than murder, is deeply influenced by the 'cultural, moral and gender-specific norms' (Yeo, 1996:307) of the society in which the jury's members grow up. Only those response patterns

of the defendant which are regarded by the jury as morally acceptable, reasonable and normal will be taken to deserve mitigation. The jurors in honour killing cases will often have different moral and cultural values than the defendant, which will prevent them from understanding the gravity of the provocation to a person with the values of the defendant. Without expert evidence, the average member of the public on an English jury will have difficulty in understanding the defendant's set of values. They will assume an explanation based on mental abnormality, or something disturbed in the mind of the defendant.

However, in the trial of honour killings, one of the possible defence strategies, or perhaps the only realistic defence strategy, is the partial defence of provocation or loss of control. This thesis has established that in some honour killing cases, the defendant killed the deceased upon loss of control where the defendant's loss of control was the result of a combination of the deceased's conduct, the defendant's emotional stress, and in many cases explicit or implicit pressure from the community or extended family members over a long period of time. Taken together, these caused the defendant to reach the point where s/he decides that s/he can take no more, and kills the deceased, with or without a final triggering event. In such cases, though the defendant might have a disturbed mind at the time of killing, the mental or emotional condition of the defendant does not meet the requirements for a defence of insanity, or those of diminished responsibility. The killing is attributable to the extraordinary nature of the defendant's circumstances and the defendant's particular cultural understanding of honour and shame. As we have seen, that cultural understanding leaves for the defendant very little freedom of choice for the situations which it regulates. That is why, when we listen to the accounts of honour killing defendants, they talk in terms of self defence or necessity when they say: 'I had no choice', or 'it was not in my hands'. In their opinion, their case might be thought of in terms of self-defence, that in law requires a full acquittal. By using such words in their stories, on the one hand they try to describe the pressure that they

have experienced and, on the other hand, they seek to neutralize the killing that they have committed by appealing to higher loyalties (Sykes and Matza, 1957:669) which are their cultural norms. In the interviews the defendants did not reject legal and religious norms which establish that killing is wrong. Indeed, they accepted that killing was wrong, and a sin. However, as their cultural norms were more pressing in their circumstances, they asserted strongly that the killing was the only option. Seen from their perspective, their actions may become more understandable, explainable, or perhaps partially excusable in all the circumstances, but clearly not as right, justifiable or lawful.

It is their particular circumstances that make the nature of the defendant's act, to some extent, understandable. In other words, the choices available for the defendant were all so bad that his 'choice-capabilities' (Dressler, 1982: 467) were affected to an extent that even an ordinary person would have reacted similarly under the same circumstances. The only workable strategy for the defence is to argue that the extraordinary nature of the defendant's circumstances did cause the defendant to lose self-control, and 'any one of us might have reacted in the same way if we had been in the defendant's shoes' (Smith, per Lord Millett at p.344, Dressler, 1988:476). To do this requires presentation before the court of the full circumstances of the defendant, in the proper context, and in the light of his culture and ethnicity. Only if this is done might these cases meet the requirements of a qualified defence of provocation or loss of control. So, defendants should be given the opportunity to adduce evidence, whether cultural or non-cultural, from expert witnesses to enable the jury to reach an informed view of the reasons behind the defendant's loss of self-control, and to decide whether the defendant could reasonably have been expected to do more than he did. The trial judge should then direct the jury on the possible influence of the ethnicity and culture of the defendant as characteristics affecting the gravity of the provocation, and the defendant's response to provocation.

However, neither the 1957 and nor the 2009 Act allow the calling of evidence to assist the judgment of the jury on a question like that. Legal principles laid down in *Camplin*, and especially in *Turner*, make such evidence inadmissible. The defendant's culture, ethnicity, and the social conditions and environment in which s/he grew up are, in English law, regarded as irrelevant characteristics affecting the defendant's response to the provocation.

In the view of this writer, the law will cause injustice in honour killing cases where the mental or emotional condition of the defendant falls short of diminished responsibility but where there is evidence to show that the partial defence of loss of control or provocation might well otherwise apply. If the distinction between the gravity of the provocation and the concept of self-control is applied rigidly, defendants who are 'mentally normal' but whose fragile mental or emotional condition falls short of diminished responsibility will have no defence to argue. Unless weight is given to what they have experienced as a relevant factor not only affecting the gravity of the provocation to them, but also affecting their capacity for self-control, and their response to the provocation, they will be found guilty of murder, a crime attracting the greatest moral stigma and a very long minimum term in a life sentence, an outcome disproportionate and inappropriate. The judge, as a matter of settled legal principle deriving from *Camplin*, will be obliged to direct the jury that they must ignore ethnic and cultural factors when they consider the defendant's capacity of self control and how an ordinary man would react to provocation of that type and gravity.

What may not be fully understood, in some honour killing cases, are certain power inequalities in the defendant's relationship with others. In some honour killing cases, as we have seen, what forced the male defendants to kill was the escalating effect of continued insult, taunting, belittling, exclusion, and explicit and implicit family and social pressure. In the case of the female defendants crucial factors were the escalating effect of continued insult, exclusion, pressure from the community and, sometimes, physical or sexual abuse by the

deceased. In these cases it could be said that the community, and sometimes the abusing victim, were in a more powerful situation than the defendant, and that there was no available support for the defendant in the community and nowhere else to turn. Under these circumstances, insisting on law abiding behaviour from the defendant when its consequence is the defendant's loss of honour, which as we have seen is for these defendants equal to loss of life, would be demanding extraordinary qualities of the defendant and requesting extraordinary standards of self-restraint.

During the time of writing this thesis the English law on provocation has undergone change, prompted by the government and guided by the Law Commission. It is a pity that the Commission dismissed the issue of defendants from a different ethnic and cultural background so quickly. On the basis of unconvincing research evidence, honour killings were simply viewed as revenge killings and ruled out as potential provocation cases. However, the findings of this thesis show that the conventional image of honour killings and the defendants who killed for honour is a flawed view. The real picture is much more complex. It is simply wrong to categorise all honour killing cases as revenge killings. In these cases the defendants feel pain, anger, desperation, shame and humiliation, or betrayal by their relatives, but the desire for revenge is not the motive in the majority of cases. In a culturally diverse country such as the UK, subcultures endure, and these problems will not readily disappear, and it is to be regretted that the recent process of law reform did not address the issues considered in this thesis more fully and sympathetically. An important opportunity to make English law fairer to its citizens has been missed.

In order to make English law fair to all, the *Turner* rule should be relaxed. Cultural evidence provided by expert witnesses to explain the nature of the defendant's act, and psychiatric evidence to explain the defendant's state of mind, should be admitted for the consideration of the jury. After hearing all this evidence, the question for the jury is whether a

man or woman of reasonable firmness with the defendant's characteristics, which include his culture and circumstances, would have reacted to the provocative conduct in a way that the defendant did, rather than whether an ordinary person from an entirely different culture and background would have been provoked, and reacted as the defendant did. The impact of the defendant's culture on his behaviour or response can be better understood through hearing from experts on 'transcultural psychology' (Volpp, 1994:88) who can truly explain the defendant's state of mind. In particular, transcultural psychologists or psychiatrists who come from the defendant's culture or are immigrants themselves, 'may present a fuller, more human analysis of the defendant' (Volpp, 1994:89) that can help to prevent stereotypes. Of course, when the experts give their evidence, there is some risk of intruding into the jury's province. However, as Lord Morris explained in *Camplin* at p.176, 'to consider the mind of some different person, and to consider what his reactions would have been if comparably provoked, could involve an unreal test.'

Only this individualized consideration can provide a workable solution for the honour killing cases that the author has discussed, and it is necessary to counterbalance the stereotypical bias against such defendants. Only with this formulation, is it possible to make room, within the test of reasonableness in provocation, for the fact of human diversity. This formulation would allow the jury to hear everything 'that might conceivably help them to be more understanding of the reactions of the person in the dock before them, and allow (but not require) them to make corresponding relaxations in the applicable standard of self-control' (Macklem and Gardner, 2001:625).

None of the above arguments should be regarded in any way as exonerating the defendant who kills for honour. Nor should my approach be understood to mean that other people, who have experienced the same pressures but did not kill, have suffered less, or that people who killed are less blameworthy than people who did not kill. It should be understood

as a quest for an informed appreciation of the defendant's circumstances to be taken into account to prevent injustice in such cases.

This appreciation does not mean that society condones the actions, or that honour killings are justifiable. The question of how we should punish the defendant who committed honour killing is distinct from the question of whether the killing is categorised as murder or manslaughter. By acknowledging the constraints the defendant faced, and his capability of making the right choice in his circumstances, the law only grants partial excuses.

Nor does this appreciation require acceptance of the notion that capacity of self-control varies from culture to culture, or that people coming from certain cultures have a lower standard of loss of control than the rest of the society. But, it recognises that culture strongly influences human motivation, shapes reasoning and behaviour, and that defendants from different cultures may not be able to control their actions in the face of certain provocation. It requires assessing and judging the culpability of the defendant in accordance with his capability of assessing choices and making the right choice, which can only be understood in the light of his culture and circumstances.

To provide a fair trial and equal treatment in honour killing cases the ordinary person test should be reformulated in the following terms, in which the author has made an important addition to Yeo's original suggestion:

"An ordinary person (with the exception of youths) is a person who possesses the capacity for self-control of an ordinary adult. The jury should consider whether such a person might have lost self-control as a result of the provocation in question and responded to provocation in the same or similar way as the defendant did. When considering the response of the ordinary person, the jury should take into account the defendant's age, sex, ethnic origin, *[culture, and the nature of the environment in which the provocative act occurred and the defendant grew up]* (Yeo, 1996:321).

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