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The Many Faces of Cultural Defence: How Criminal Laws Mitigate, Aggravate and Reject Honor Killing Claims

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ABSTRACT

Criminal laws attached different consequences to claims that a killing had restored family honor. This comparative doctrinal study examined legislation, authoritative judgments, and relevant scholarship across eleven criminal-law jurisdictions. Each legal rule or decision was treated as the unit of analysis rather than an assumed national attitude towards honor. The review identified mitigation routes in Iraqi law, distinct aggravation mechanisms in Türkiye and Sweden, and limits on private waiver in Pakistan. It also documented the repeal of Lebanon's former concession and the Brazilian judiciary's rejection of a purported defense of honor. Ordinary-law comparators demonstrated that the absence of a specialized provision did not necessarily amount to judicial rejection. No operative rule granting complete exculpation solely on the basis of family honor was established by the sources examined. The divergent legal outcomes reflected the particular offense elements, sentencing provisions, judicial rulings, or waiver procedures engaged. The study addressed doctrinal effects and could not establish how frequently such arguments succeeded or whether legislative reforms had reduced lethal violence.

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INTRODUCTION

A person accused of homicide may describe the killing as an attempt to restore family honor. That account does not determine the criminal charge or the sentence. Courts must still identify a legal rule that gives the claim some effect, if any. In one jurisdiction, an immediate discovery of adultery may attract a reduced penalty. Elsewhere, an honor motive makes intentional killing more serious. Some courts refuse to permit honor to serve as a justification at all. Treating these outcomes as degrees of cultural tolerance misses the legal work being done. The central problem is how an asserted social obligation becomes relevant to culpability or punishment (Aksoy & Szekely, 2025; Ne'eman-Haviv, 2021). A belief may be sincerely held and still lack any recognised doctrinal basis for reducing criminal responsibility.

Article 128 of the Iraqi Penal Code treats honorable motive as a mitigating excuse, while Article 409 provides a reduced penalty for an immediate killing in defined circumstances linked to sexual conduct (Iraq, 1969). Neither provision supplies a general licence to kill for family reputation. Türkiye instead treats a proven tradition motive as a condition of qualified intentional homicide under Article 82(1)(k) (Türkiye, 2004). Sweden makes an honor motive a consideration in sentencing under Chapter 29, section 2(10) of its Criminal Code (Sweden, 1962). Although the latter two rules aggravate punishment, their legal operation differs. The Turkish provision concerns the offence charged, while the Swedish provision concerns the assessment of penal severity (Hamzaoğlu, 2024; Uskul & Cross, 2019).

Pakistan's 2016 reform concerns punishment following waiver or compounding of *qisas*, not a freestanding cultural defence. Amended section 311 of the Penal Code limits the ability of private

arrangements to remove state punishment in the honor-related circumstances specified by the legislation (Pakistan, 2016). Lebanon removed a different legal advantage when Law No. 162/2011 repealed Article 562, a special provision associated with the discovery of specified sexual conduct (Lebanon, 2011). The first reform changes the consequences of a family-mediated disposal of a homicide case. The second removes a defined statutory concession. Neither enactment by itself establishes subsequent conviction patterns, a distinction also recognised in comparative work on gendered criminal justice (Baxi et al., 2006).

In ADPF 779, Brazil's Supreme Federal Court declared the purported legitimate defence of honor unconstitutional in proceedings concerning femicide and violence against women (Supremo Tribunal Federal, 2023). Its ruling excludes a justificatory argument rather than altering the elements of an offence. England and Wales has adopted a narrower statutory restriction. Section 55(6)(c) of the Coroners and Justice Act 2009 disregards sexual infidelity as a qualifying trigger for the partial defence of loss of control (Coroners and Justice Act, 2009). R v Clinton nevertheless permits relevant infidelity evidence to be considered as part of the setting in which another qualifying trigger is assessed (R v. Clinton, 2012). Neither legal position amounts to a general prohibition on the admission of cultural evidence. Scholarship on provocation helps explain why the precise function of that evidence matters (Hyun, 2024).

Cultural defence is best understood here as an argument made in legal proceedings, rather than a defence shared by all criminal codes. An accused person might rely on a cultural obligation to contest culpability. The same narrative could be offered to reduce sentence or to explain conduct without changing liability. Research on trial discourse shows that such narratives are constructed and contested before courts. Their factual assertion must not be mistaken for a legal entitlement. Nor can the technical distinction between justification and excuse be removed simply because an English translation uses the word excuse for a mitigating circumstance (D'hondt, 2010; Matthee, 2024; Renteln, 2005).

The term honor killing also has limits. Some deaths involve coercion from relatives or community members, while others are classified as honor-related because of the perpetrator's stated motive. Accounts of social sanction and reputation illuminate those differences but do not make every jealousy-driven homicide a collective honor crime. The classifications used by researchers and public agencies can shape what becomes visible as a case. Findings from England and Wales, for instance, caution against assuming that every perpetrator or victim fits a single ethnic or familial profile. A criminal-law comparison needs an explicit connection between the relevant event and the honor claim before drawing doctrinal conclusions (Bates, 2021; Bhatia et al., 2024; Heydari et al., 2021; Ritchie et al., 2026; Shier & Shor, 2016). This distinction is particularly consequential when a legal provision requires proof of a specified motive rather than a broad social label.

Distinguishing justification from excuse is familiar in the literature on cultural defence. Gur-Arye explains why claims invoking culture can seek quite different legal consequences, while studies of provocation expose the judgments about acceptable conduct that ordinary tests may contain (Gur-Arye, 2025; Hyun, 2024). These debates do not settle how a constitutional ban on a proposed justification relates to a sentencing aggravator, or how a statutory privilege differs from private waiver after homicide. Those mechanisms operate at different points of criminal responsibility. Earlier work on cultural narratives at trial likewise cautions against treating a defendant's account as an accepted legal defence (D'hondt, 2010; Renteln, 2005). The comparative problem is therefore narrower than deciding whether criminal law should recognise culture in general.

An honor-related claim has legal significance only when an applicable rule permits it to influence responsibility, sentence or the disposition of the case. The inquiry asks which recognised doctrines admit, restrict or reject such claims, what legal consequences follow, and how differences in offence elements, sentencing provisions, judicial rulings and waiver procedures account for those outcomes. Eleven jurisdictions are examined through selected legislation and authoritative decisions, with a limited doctrinal comparator where primary material is less accessible. The comparison concerns legal effects established by those sources rather than presumed national cultures. Whether the rules deter homicide or change the frequency of successful claims lies beyond the evidence available (Mayeda & Vijaykumar, 2016; Thrasher & Handfield, 2018). The same provision may yield different outcomes when the alleged motive, timing of the killing or relevance of private waiver is disputed.

RESEARCH METHODS

Comparative doctrinal legal research was used to examine penal statutes, amendments and authoritative judicial decisions. The sources were read to establish the legal conditions under which an honor-related argument might affect culpability, offence classification, punishment or post-homicide procedure. Rules serving similar functions were compared even when national systems used different terminology. A focused review of published legal and criminological scholarship informed the interpretation of justification, excuse and mitigation. The statutes and judgments, rather than commentary about them, were treated as the basis for claims concerning operative legal rules. This is a conventional functional comparison of legal doctrine (Theil, 2025; Van Hoecke, 2015).

The jurisdictions were selected purposively to represent distinct legal responses and ordinary-law comparators. Iraq, Jordan, Lebanon, Pakistan, India, Türkiye, Sweden, England and Wales, Germany, Brazil and South Africa were included. England and Wales was treated as one criminal-law jurisdiction. South Africa supplies a literature-based doctrinal comparator, not evidence of a comprehensive review of its courts. India contributes a protective constitutional ruling rather than a homicide sentencing rule. The sample illustrates legal variation and is not representative of the world's criminal laws. Claims about individual jurisdictions are confined to the legislation, decisions or specific doctrinal analysis identified in Table 1.

The sources comprise official penal legislation, amending laws, published appellate or constitutional judgments and institutional material used where necessary to clarify the status of a legal provision. Searches combined English expressions for honor killing and cultural defence with terms used in national legal sources, including *töre saikiyle* and *legítima defesa da honra*. Academic discussion published mainly between 2010 and 2026 was consulted, alongside older work needed to understand established doctrines. The legal materials were assessed as at 22 November 2026. Repealed provisions were identified as historical. When the available English-language consolidation or judicial record was incomplete, only the narrower proposition supported by the accessible material was retained.

The relevant factual condition, doctrinal route and legal effect were extracted from each source. E denoted complete exculpation, M mitigation, A aggravation and R express exclusion of a claimed defence. P marked an effect on post-homicide procedure or waiver. N indicated that the examined general provision established no express honor-specific rule, whereas U marked a question that the sources could not resolve. India's protective ruling was recorded separately because it does not decide the homicide penalty. Codes were attached to provisions or decisions, never to entire countries. Each proposed classification was checked against the rule's wording or the court's reasoning. The translation of a term as excuse was insufficient for E unless it displaced criminal liability (Gur-Arye, 2025; Matthee, 2024).

The method permits conclusions about the content and doctrinal consequences of the identified legal sources. It cannot measure how frequently courts receive honor-based arguments, how often they succeed, or whether reform has prevented deaths. It also distinguishes a ruling protecting adults against coercive interference with marriage from a ruling determining permissible defences at trial. Reports of later courtroom practice were treated as contextual secondary evidence unless supported by accessible judgments. The Istanbul Convention supplied a normative reference without assuming that its requirements have the same domestic status in every jurisdiction (Kalantry & Moti, 2022; Korteweg, 2014).

RESULTS AND DISCUSSION

Claim, Context and the Legal Question

Honor describes an asserted social meaning of conduct. Criminal law still has to classify the act, its mental elements and any permissible exception. The former is often expressed through a claim about family standing. The latter depends on rules governing individual responsibility and, in some settings, the liability of participants. A common vocabulary of honor does not make these legal questions equivalent. Social explanation may be relevant to evidence without giving rise to a justification or an excuse (Kadir, 2026h; Rodríguez Mosquera, 2013; Uskul & Cross, 2020).

Criminological accounts describe honor killings as violence that may be influenced by reputational pressures beyond the immediate offender (Aksoy & Szekely, 2025; Dayan, 2021; Kadir, 2026b). Yet a homicide arising from jealousy does not necessarily involve collective enforcement of family standing. The factual object of Iraq's Article 409 is an immediate discovery of specified sexual

conduct, while Lebanon's repealed Article 562 addressed related but historically distinct circumstances (Iraq, 1969; Lebanon, 2011). Neither provision requires proof of the same tradition motive named in Türkiye's aggravated homicide rule (Türkiye, 2004). The comparison remains valid at the level of legal response to asserted honor, provided those factual differences are not concealed.

Honor is a particularly unstable legal description because the same word can refer to personal reputation, familial status or an asserted community rule. The question for the court is more constrained. Was the accused's motive proved and, if so, does a valid rule attach a consequence to it? A defendant's account alone cannot resolve either question. This matters for offences where the law refers to tradition, since an act may be claimed as traditional without satisfying the required statutory motive. Analysing the source of the claim also prevents testimony about cultural background from becoming an untested substitute for proof of the elements of homicide (Elakkary et al., 2014; Kadir et al., 2026; Rodríguez Mosquera, 2013). The same evidentiary caution applies where social pressure is attributed to relatives who have not themselves been charged.

A victim's autonomy can disappear from legal argument when attention settles entirely on the accused person's sense of injury. Claims that family members were entitled to control an adult's relationships must therefore be distinguished from facts that satisfy a recognised rule of criminal responsibility. Research on gendered honor norms does not establish a single profile of offender or victim (Bhanbhro et al., 2016; Kadir, 2026a; Rogers, 2017). Survey work in Amman also describes variation in attitudes towards honor-related violence, making broad cultural assumptions a poor substitute for proof in an individual prosecution (Eisner & Ghuneim, 2013).

Cultural defence has no single procedural form. Counsel may contend that conduct was justified, that a required element was missing or that a recognised mitigating rule applies. Those submissions involve different legal tests, and admitting cultural evidence does not establish a freestanding defence. The South African discussion examined by Matthee is useful for this narrower point because it considers culture through ordinary requirements of conduct and culpability (Matthee, 2024). Studies of trial narratives further explain why a defendant's cultural account must be examined rather than accepted as a legal conclusion (D'hondt, 2010; Kadir, 2026f).

Table 1 Jurisdictions and Documentary Legal Anchors

Jurisdiction	Legal anchor and documented status	Analytical role
Iraq	Penal Code 111/1969, arts 128, 409 (Iraq, 1969)	Mitigation / privileged killing
Jordan	Penal Code arts 98, 99, 340. 2017 amendment (Constitutional Court of Jordan, 2023; Jordan, 1960)	Restricted mitigation / residual issues
Lebanon	Former Penal Code art 562. Law 162/2011 (Lebanon, 2011)	Repeal of express privileged provision
Pakistan	2016 Honor Offences Amendment, s 311 (Pakistan, 2016)	Procedural waiver and punishment
India	Supreme Court, Shakti Vahini (2018) (Shakti Vahini v. Union of India, 2018)	Protective judicial intervention
Türkiye	Penal Code art 82(1)(k) (Türkiye, 2004)	Qualified homicide: tradition motive
Sweden	Criminal Code ch 29, s 2(10) (Sweden, 1962)	Sentencing aggravation: honor motive
England and Wales	Coroners and Justice Act 2009, ss 54–55 (Coroners and Justice Act, 2009; R v. Clinton, 2012)	Loss-of-control partial-defence restriction
Germany	Criminal Code §§ 211, 213 (Germany, n.d.)	Ordinary homicide provisions
Brazil	Supreme Federal Court, ADPF 779 (2023) (Supremo Tribunal Federal, 2023)	Constitutional rejection of honor justification
South Africa	General criminal-law doctrines. Matthee (2024) (Matthee, 2024)	Culpability under ordinary criminal-law rules

The term excuse can obscure the actual legal consequence of a provision. Iraqi Penal Code Article 128 describes honorable motive as a mitigating excuse, although that designation does not, on its own, defeat criminal liability (Iraq, 1969). The operative question is whether the rule removes responsibility or reduces punishment. Article 128 therefore belongs in the mitigation category used here. Its language should not be read as authorising every homicide associated with a claimed injury to family reputation.

Concessions and Post-Homicide Waiver

Iraqi law retains particular routes to mitigation rather than a general cultural defence. Article 409 provides a substantially lower maximum penalty for an immediate killing in the circumstances it describes (Home Office, 2024; Iraq, 1969). Its conditions concern the discovery of specified sexual conduct. A planned killing following an earlier allegation cannot be placed within that provision merely by invoking family honor. Article 128 separately recognises honorable motives as a mitigating excuse. The rules can both lessen punishment, but they operate through different factual and doctrinal conditions. The statutory wording provides no measure of their use in courts (Kulczycki & Windle, 2011).

Jordan's 2017 amendment restricted the mitigating excuse under Article 98 for crimes against women, subject to the express exception concerning Article 340 (Constitutional Court of Jordan, 2023; Jordan, 1960). The latter provision addresses tightly specified circumstances related to discovery of adultery. Accounts of mitigation under Article 99 raise a separate question about family non-pursuit of claims, which cannot be resolved from Article 98 alone. The amendment therefore does not establish the disappearance of every possible mitigating route. Nor does it demonstrate how frequently those routes have been applied after 2017. The available English-language materials and institutional reporting support a qualified reading of the reform rather than a claim that Jordan's courts have reached a settled uniform practice (Kadir, 2026d).

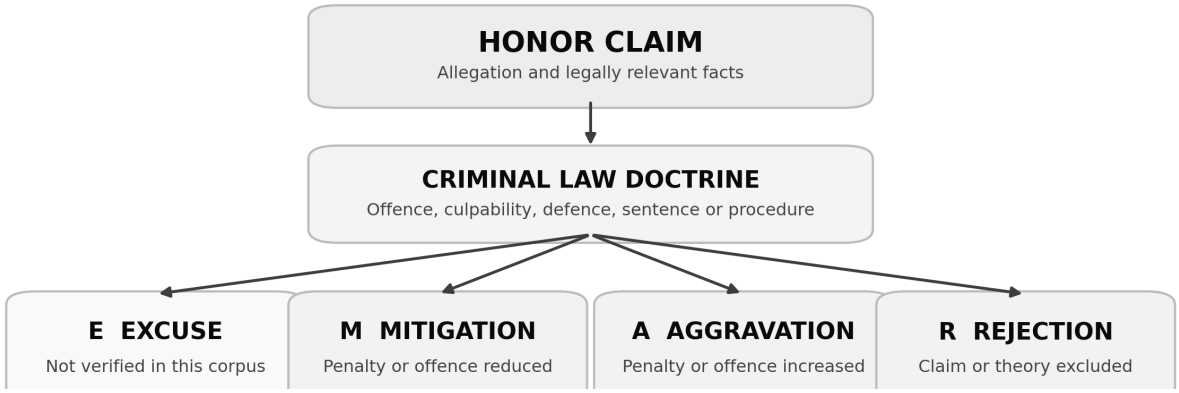
A privileged homicide provision fixes particular circumstances and may attach a special penalty range to the killing. Discretionary mitigation instead leaves the court to assess an accepted factor after the offence has been established. The formal distinction matters even where a sentence might eventually be similar. Iraq's Article 409 concerns an immediate factual situation, whereas Article 128 concerns an honorable motive (Iraq, 1969). Lebanon's repealed Article 562 belongs to the history of privileged treatment and cannot be used as a present source of relief (Lebanon, 2011). Work on gender and criminal law in the region places these provisions in their longer institutional setting (Kulczycki & Windle, 2011; Warrick, 2005). A historical privilege can clarify legal reform, but its former language is not authority for the sentence available in a current prosecution.

Article 562 of Lebanon's Penal Code was repealed by Law No. 162/2011 (Lebanon, 2011). Its removal ended an express concession linked to the discovery of specified sexual conduct. The EU Agency for Asylum has subsequently reported that general mitigation may still be invoked in cases involving the killing of women (European Union Agency for Asylum, 2026). That account is relevant to the possibility of arguments under ordinary rules, but it is not a dataset of sentencing reasons. Repeal is established by the legislative record. The acceptance of a particular honor argument after repeal would require evidence from the judgment concerned. General discretion and demonstrated judicial leniency are not equivalent.

The legal vocabulary of honor can conceal the distinction between a privileged offence and a sentencing concession. A privileged offence specifies conditions that alter the applicable offence or its penalty range. A general mitigating rule usually leaves the offence intact. A complete excuse has a different consequence because liability is displaced. Their legal requirements should not be merged solely because all three can be described colloquially as a defence. Earlier studies of gendered criminal law make clear that the removal of an express privilege is a doctrinal change, not evidence in itself of an altered pattern of violence (Kulczycki & Windle, 2011; Warrick, 2005).

Section 311 of Pakistan's Penal Code, as amended by the Criminal Law (Amendment) (Offences in the Name or on Pretext of Honour) Act XLIII of 2016, addresses the penal consequences of waiver or compounding of *qisas* in intentional homicide (Pakistan, 2016). In the circumstances specified for killings committed in the name or on the pretext of honor, the provision requires imprisonment for life. Private settlement does not thereby erase the state's power to punish. The mechanism operates after the underlying killing and cannot be treated as a distinct aggravated-homicide definition applying to every

alleged honor crime. The institutional significance of family-mediated waiver has also been examined in comparative scholarship on Pakistan (Baxi et al., 2006).



Picture 1 Doctrinal Pathways for an Asserted Honor Claim

Waiver of *qisas* is not a finding that the accused lacked culpability. The law can continue to recognise intentional homicide while giving specified heirs powers that affect its penal disposition. Restricting those powers changes the legal effect of a family decision, without changing the mental elements of the offence. Pakistan's amended section 311 illustrates this distinction (Pakistan, 2016). The historical relation between family authority and criminal procedure has been discussed in scholarship on India and Pakistan (Baxi et al., 2006). Evidence of later judicial application would still be needed before concluding how the reform works in individual cases.

Pakistan and Lebanon intervened at different legal points. Lebanon removed a specific concession from the Penal Code, while Pakistan altered the consequence of waiver or compounding after intentional homicide (Lebanon, 2011; Pakistan, 2016). These changes can be assessed as formal responses to previously recognised legal opportunities for leniency. They cannot be treated as proof of reduced impunity or fewer killings. Nor should Pakistan's restriction on waiver be classified as a cultural excuse or as an offence-specific aggravator. The consequence arises through the law governing punishment after the offence (Renteln, 2005).

Aggravated Motives and Rejected Justifications

Article 82(1)(k) of the Turkish Penal Code identifies intentional homicide committed with a tradition motive, *töre saikiyle*, as qualified homicide (Türkiye, 2004). The statutory test concerns motive, not every death labelled an honor killing in public discourse. A court must find that the relevant element is proved. Studies of honor in Türkiye indicate why the ordinary language of reputation cannot be treated as an exact substitute for the statutory expression (Hamzaoğlu, 2024; Uskul & Cross, 2019). The aggravating effect follows from the legal classification of the killing, rather than from an independent cultural narrative admitted without proof.

Sweden places honor motive in the general sentencing provisions. Chapter 29, section 2(10) of the Criminal Code refers to conduct motivated by preserving or restoring the honor of a person or a family-related group (Sweden, 1962). Unlike the Turkish rule, it does not define a separate qualified-homicide offence. Liability must first be established, after which the legally relevant motive can increase penal severity within the sentencing framework. The two systems may therefore condemn similar assertions of honor while asking courts to resolve different legal questions. The formal aggravator does not establish how commonly judges apply it.

The contrast between Türkiye and Sweden is a difference of legal design, not proof that one country's criminal courts punish honor killings more severely in practice. An offence element changes the classification of the prohibited act. A sentencing factor affects punishment after the underlying offence is proved. Both require a legally sufficient finding about motive, yet the stages of proof are distinct. Comparative discussion must attend to those stages before drawing conclusions from the shared label of aggravation (Hamzaoğlu, 2024; Uskul & Cross, 2019).

Aggravation does not mirror acquittal. It may be part of a more serious offence or arise only after liability has been established. Nor does a statutory aggravating factor dispense with proof that the accused acted for the relevant reason. The circumstances must satisfy the legal test for motive rather than merely reproduce the perpetrator's own account. Research into cultural variation and narratives of

honor shows why an accused person's description may have several social purposes without satisfying the criminal-law standard (Kadir, 2026e; Van Baak et al., 2018).

Article 42 of the Istanbul Convention excludes reliance on culture, custom, religion, tradition or so-called honor as justification for the violence covered by the treaty (Council of Europe, 2011). Article 46 deals separately with aggravating circumstances. The provisions recognise different legal problems and do not require that every domestic criminal code draft its offences identically. The Convention's obligations depend on state-party status and applicable implementation. It supplies a relevant normative reference but cannot substitute for reading the national law or deciding whether a particular defendant satisfied its legal requirements (Kalantry & Moti, 2022).

The Brazilian Supreme Federal Court's ADPF 779 decision prohibits reliance on the purported legitimate defence of honor, *legítima defesa da honra*, in cases involving femicide or violence against women (Supremo Tribunal Federal, 2023). The reasoning rejects an asserted permission to kill because a defendant regarded personal honor as injured. It does not create a separate honor-homicide offence and does not automatically raise the sentence. The ruling also has a different factual scope from every collective killing undertaken by relatives. Its significance for comparison lies in the express constitutional exclusion of a proposed justification. Other legally relevant facts remain subject to the rules governing the particular proceeding.

A judicial prohibition of a specified argument differs from the absence of a provision using the expression cultural defence. A criminal code may remain silent about culture while recognising an ordinary partial defence or a sentencing factor. The Brazilian position rests on a particular constitutional holding and should not be generalised into the proposition that every statement about social background is inadmissible (Supremo Tribunal Federal, 2023). The operative question is whether the evidence supports a legally permissible issue or is being used to revive the rejected justification (Gur-Arye, 2025).

A claim that an intimate partner injured the accused's personal honor is not necessarily a collective honor killing. Wider familial enforcement, where present, raises distinct factual questions. The difference matters because a legal rule concerned with an immediate sexual discovery and a rule concerned with a tradition motive are not addressed to identical events. Scholarship on the media representation of family murder and honor killing has also identified the risk of attaching ethnic labels selectively to similar violence (Korteweg, 2014; Rogers, 2017; Shier & Shor, 2016). A functional comparison can consider the legal status of an asserted honor justification without assuming that the underlying incidents belong to one sociological category.

Ordinary Law and the Limits of Comparison

Sections 54 and 55 of the Coroners and Justice Act 2009 define the partial defence of loss of control in England and Wales (Coroners and Justice Act, 2009). Section 55(6)(c) requires sexual infidelity to be disregarded as a qualifying trigger. This restriction is not a general cultural-defence provision. The legal relevance of other conduct and statements in the relationship must be determined by the statutory test. The Court of Appeal's decision in R v Clinton confirms that the factual setting may include evidence of infidelity when other qualifying circumstances are relied upon (R v. Clinton, 2012).

The fact that a criminal-law test does not name culture does not make its application entirely free of evaluative judgment. A legally defined threshold for loss of control and the ordinary-person standard still require attention to the particular facts. Scholarship on provocation and cultural difference has examined the assumptions that such tests may carry (Hyun, 2024). In England and Wales, however, the court must apply the legal qualifications and exclusions in the 2009 Act rather than treating an accused person's cultural explanation as a substitute for them (Coroners and Justice Act, 2009).

R v Clinton did not reinstate sexual infidelity as an independent qualifying trigger for loss of control (R v. Clinton, 2012). The Court of Appeal held that it could be considered where it was integral to the factual context in which another permissible trigger was assessed. Evidence therefore has a different legal role depending on the issue for which it is tendered. The same distinction matters when cultural background is invoked. It may explain the surrounding circumstances without establishing the legal conditions for reducing murder to manslaughter under sections 54 and 55 (Coroners and Justice Act, 2009).

In Shakti Vahini v Union of India, the Supreme Court addressed coercive interference with the freedom of adults to choose their partners. It directed preventive and protective action by public authorities (Shakti Vahini v. Union of India, 2018). The judgment deals with assertions of private

authority over lawful relationships but does not create a homicide sentencing rule. Its comparative relevance is therefore constitutional protection, not aggravation or mitigation of an established killing. Earlier scholarship on honor-related violence in India and Pakistan helps explain the institutional setting in which such private claims arise (Baxi et al., 2006). Treating the judgment as equivalent to Brazil's exclusion of a trial defence would confuse two different judicial functions.

Germany supplies an ordinary-law comparator. Section 211 of its Criminal Code addresses murder through stated aggravating features, including otherwise base motives. Section 213 deals with less serious cases of manslaughter under specified conditions (Germany, n.d.). Neither text creates an offence explicitly named honor killing or a special honor-motive aggravator on the Swedish model. The existence of general provisions does not settle how a court would classify proved honor-related facts in an individual case. Establishing such an outcome would require the relevant judgments, not an inference from the wording of the code alone.

South African scholarship similarly examines how cultural circumstances might bear on ordinary requirements of conduct and culpability. Matthee does not establish a freestanding justification for honor killing (Matthee, 2024). A cultural account could become relevant to an established element or defence, but its legal effect would have to follow from that doctrine. The possibility of considering culture is not equivalent to a verified pattern of acquittals. Nor does a secondary doctrinal analysis justify assigning the country a uniform response in the absence of a defined set of relevant decisions (Kadir, 2026f; Renteln, 2005).

Table 2 Legal Consequences of the Honor Killing Claims Examined

Legal unit	Code	Established effect	Inference boundary
Iraq, arts 128/409	M	Mitigating excuse or reduced penalty on specified facts	Not a complete excuse
Jordan, arts 98/99/340	M/U	Article 98 restriction subject to the Article 340 exception	Other routes and actual case use remain unresolved
Lebanon, former art 562	M (historical) / U	Specific privilege repealed in 2011	Later general mitigation requires case evidence
Pakistan, amended s 311	P	Penalty survives specified qisas waiver or compounding	Not a separate aggravated-homicide offence
India, Shakti Vahini	Comparator	Preventive and protective directions for adult marriage choice	Not a ruling on homicide sentencing
Türkiye, art 82(1)(k)	A	Tradition motive qualifies intentional homicide	Proof of statutory motive required
Sweden, ch 29 s 2(10)	A	Honor motive is an aggravating sentencing factor	Actual frequency of use not established
England and Wales, s 55	R (limited)	Infidelity excluded as independent qualifying trigger	Contextual evidence may remain relevant
Germany, §§ 211/213	N/U	General murder and manslaughter framework	No uniform judicial outcome inferred
Brazil, ADPF 779	R	Constitutional exclusion of honor-defence thesis	Not a separate offence or aggravator
South Africa, general law	N/U	Cultural claims examined under ordinary culpability doctrine	No general honor excuse established

Germany and South Africa reveal why absence and rejection must be kept separate. The German general provisions examined do not expressly isolate an honor motive, whereas the South African literature addresses cultural relevance under ordinary concepts of responsibility (Germany, n.d.; Matthee, 2024). Neither provides a basis for describing a uniform judicial practice across the jurisdiction. This differs from Brazil's express constitutional ruling and the explicit motive provisions in Türkiye and Sweden (Supremo Tribunal Federal, 2023; Sweden, 1962; Türkiye, 2004). The

comparison records the legal material actually reviewed, not an assumed national position on cultural defence.

Differences Revealed by the Legal Matrix

The rules considered do not form a single scale of punishment. A privileged homicide provision turns on specified facts. An aggravated offence requires proof of an additional element, while a sentencing aggravator operates after liability is established. A constitutional ruling may foreclose a proposed defence without adding a new offence or sentence. Private waiver raises yet another issue concerning the authority to affect punishment after the killing. The comparison therefore depends on the function of the rule rather than on whether it appears culturally permissive or restrictive (Gur-Arye, 2025; Van Hoecke, 2015).

No source in the examined legal corpus establishes a currently operative rule that fully excuses intentional homicide solely because the accused invokes family honor. An E classification would require a recognised ground defeating liability, not a lower sentence (Iraq, 1969; Supremo Tribunal Federal, 2023). That negative finding is limited to the selected rules and decisions. It does not claim to settle every historical case or all possible defences under the criminal law of every jurisdiction. The distinction is nevertheless decisive for evaluating rules that use the word excuse but only reduce punishment (Renteln, 2005).

Removing a privileged provision closes the concession that provision created, but it may leave ordinary sentencing discretion available. A constitutional judgment can similarly prohibit one justificatory thesis without resolving every question about admissible evidence (Lebanon, 2011; Supremo Tribunal Federal, 2023). The continued existence of ordinary criminal-law rules does not itself prove hidden accommodation of an honor claim. Such a finding would require a recognised provision or a judicial decision that actually gave the claim a material legal consequence. The distinction between the availability of an argument and its acceptance in court is central to studying cultural defence (D'hondt, 2010; Kalantry & Moti, 2022).

The Iraqi and Brazilian sources illustrate two different errors of classification. Iraqi Penal Code Article 128 uses the language of mitigating excuse but supplies a route to reduced punishment rather than general exculpation (Iraq, 1969). Brazil's rejected defence-of-honor thesis, by contrast, was presented as a justification (Supremo Tribunal Federal, 2023). Neither example establishes a current complete excuse based on an assertion of damaged family reputation. Treating the labels as equivalent would erase the difference between denying liability and changing penal severity. That distinction has long shaped the literature on cultural defence (Gur-Arye, 2025; Renteln, 2005).



Picture 2 Selected Criminal Law Reforms and Judicial Responses from 2004 to 2023

What Doctrinal Divergence can Explain?

The documented variation concerns the stage at which a legal rule gives effect to an asserted honor claim. Iraqi provisions address mitigation, while Türkiye places a tradition motive within the definition of qualified homicide (Iraq, 1969; Türkiye, 2004). Sweden considers honor motive at sentence (Sweden, 1962). Brazil excludes an impermissible justification (Supremo Tribunal Federal, 2023). Pakistan regulates punishment following certain waivers of *qisas* (Pakistan, 2016). These are different doctrinal solutions to distinct legal questions. A cultural label alone cannot establish why a defendant satisfies the conditions of any one of them. Regional discussions of criminal-law reform

supply historical background, but the operative comparison rests on the identified legal rules (Kadir, 2017). The statutory conditions explain the documented effects, although they cannot establish the political reasons behind each legislative choice.

The factual thresholds also differ. Some rules demand an immediate reaction to a specified event, whereas others turn on proof of motive (Iraq, 1969; Türkiye, 2004). An allegation of adultery does not establish a collectively enforced duty to preserve family reputation. Evidence of advance planning may, moreover, defeat a provision requiring immediacy. Social research shows how reputational pressure may influence conduct without determining the legal classification of an individual killing (Aksoy & Szekely, 2025). Comparative scholarship concerning the Middle East and North Africa offers useful background, but the validity of a claim about a particular code must still be checked against its provisions (Kadir, 2026c).

The category honor killing can encompass very different patterns of family involvement. Studies of honor-based abuse have identified variation in the relationship between alleged offenders and victims (Bates, 2021; Bhanbhro et al., 2016; Mayeda & Vijaykumar, 2016; Ritchie et al., 2026). Research on reputational norms likewise cautions against treating a community label as evidence that a defendant relied on a particular legal argument (Uskul & Cross, 2020). Records of criminal proceedings would be needed to establish whether courts treated such claims as relevant to culpability or sentence. Analyses of perpetrator roles and the attribution of responsibility reinforce the distinction between a sociological account of homicide and a judicial finding about a named accused (Bafouni et al., 2025; Kadir, 2026g).

Pakistan illustrates the importance of who holds authority after the killing. The restriction on waiver changes the penal consequence of decisions taken by specified heirs rather than creating a legal defence based on culture (Pakistan, 2016). India's protective ruling concerns a different assertion of authority over adults' marriage choices (Shakti Vahini v. Union of India, 2018). Brazil's ADPF 779 instead bars the attempt to present a wounded sense of honor as a justification at trial (Supremo Tribunal Federal, 2023). Each intervention limits a distinct route by which private claims of authority could enter public law. Their shared normative concern does not erase their different legal objects.

Individual autonomy and equality bear on the assessment of killings attributed to honor. Article 42 of the Istanbul Convention concerns the use of culture and honor as justifications, while Article 46 addresses aggravating circumstances (Council of Europe, 2011). Those provisions do not establish that any particular domestic court has applied either measure in an individual homicide prosecution. They illustrate why a rule excluding justification need not have the same effect as a rule increasing punishment. Research on honor norms and prevention also cautions against reducing legal reform to an assumed change in social behaviour (Gul et al., 2021).

A repeal can remove an express statutory advantage while leaving the wider criminal law in force. An aggravating provision may still require a contested assessment of motive. Exclusion of a particular justification may leave relevant evidence available for another lawful purpose (Lebanon, 2011; Supremo Tribunal Federal, 2023). None of these possibilities establishes residual cultural leniency on its own. An inference about accommodation becomes defensible only where the source identifies a recognised route and a legally relevant effect. General sentencing discretion cannot be treated as a finding about the courts' actual use of honor claims.

An asserted honor motive becomes legally consequential only through the conditions of an applicable rule. The same explanation of conduct may be irrelevant to one question and material to another. This can be described as doctrinal translation, but it does not imply that culture functions as an independent source of criminal law. The analysis rests on the distinction between claims presented by parties and the effects recognised by the legal system (D'hondt, 2010; Gur-Arye, 2025; Van Hoecke, 2015). A comparison that keeps those questions separate reveals more about criminal responsibility than a classification of countries as tolerant or intolerant of honor violence.

Two simplifications can distort the treatment of gendered violence. Invoking a uniform idea of tradition obscures the responsibility of individual participants. Assuming that ordinary criminal-law tests are free from social judgment overlooks the values that can shape assessments of conduct. Research on gendered honor scripts addresses the first concern (Vandello & Cohen, 2003; Vandello & Cohen, 2008). Work on the public framing of honor killing identifies how ethnic labels can alter perceptions of similar violence (Korteweg, 2014; Shier & Shor, 2016). A motive must nevertheless be proved under the applicable law, not attributed to an accused person because of group identity.

Criminal-law reform can alter sanctions and change the consequences of family-mediated settlement. Those effects do not establish that lethal violence has declined. Research on the social conditions associated with honor-based abuse points to pressures that statutory text alone cannot measure. Deterrence, where claimed, must be supported by evidence about behaviour and enforcement rather than inferred from a new offence or sentence. The legal rules considered here establish normative boundaries and possible penal consequences, not their preventive impact (Alkhatib et al., 2019; Gul et al., 2021).

The sources have unequal depth. Brazil and India are represented by higher-court judgments, while other jurisdictions are examined mainly through legislation. German law was assessed through general homicide provisions and South African law through a narrower doctrinal study (Germany, n.d.; Shakti Vahini v. Union of India, 2018; Supremo Tribunal Federal, 2023). English-language availability further limits the comparison of judicial practice. The resulting corpus establishes differences in legal mechanisms, not their distribution across all countries or the frequency of their application. That limit is consistent with the purpose of doctrinal comparison and should not be obscured by the number of jurisdictions included (Theil, 2025).

CONCLUSION

Honor-related claims can be considered under different rules of criminal law. Some provisions reduce punishment when defined circumstances are proved. Others treat an established motive as an element of a more serious homicide offence or as a sentencing aggravator. Courts may also exclude an impermissible justification. Rules governing waiver address control over punishment following the killing rather than the criminality of the act itself. These legal routes differ in their requirements and cannot be classified as a single cultural defence. Their consequences are equally distinct. Iraq retains identified mitigation rules, while Türkiye and Sweden aggravate through different legal techniques. Brazil excludes the proposed honor justification. Pakistan restricts the penal effect of waiver in specified intentional killings, and Lebanon has removed a former concession. The selected sources establish no current complete excuse based solely on an asserted loss of family honor. That finding is bounded by the rules and decisions examined rather than presented as a conclusion about every court or case.

The differences can be accounted for at the level of legal doctrine. One rule requires an immediate factual trigger, another proof of a particular motive, and another a lawful ground for considering contextual evidence. A further rule determines whether private waiver can affect state punishment. The resulting outcomes follow from these specific legal conditions, not from treating national culture as an independent explanation. The comparative contribution is to identify how an honor-related narrative acquires or fails to acquire legal effect through recognised rules of criminal responsibility and procedure. The comparison does not measure sentencing patterns, conviction rates or the preventive impact of reform. Its treatment of Germany and South Africa is more limited than that of jurisdictions with express provisions or authoritative decisions. A larger set of published trial judgments would be needed to evaluate the use of ordinary doctrines in actual honor-related prosecutions. The established conclusion is narrower but clear. Legal recognition of an asserted motive and social classification of a death are different questions.

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