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# TRIBAL CUSTOMARY LAW IN JORDAN

*Muwafaq Al-Serhan and Ann L. Furr*\*

## I. INTRODUCTION

This paper focuses on the customary law of the Bedouin tribes in Jordan. It discusses and illustrates the regulations and procedures relied on to maintain social harmony and equilibrium among Bedouin people.

Consisting of four parts, part one will provide a context by giving a short history of the Bedouin people and the region where they live. Part two will discuss the relationship between the tribal justice system and the formal legal system of Jordan. Part three is a narrative description of how the Bedouin resolve conflict. Part four discusses the challenges facing Bedouin in the future.

One of the authors, Muwafaq Al-Serhan is a Bedouin from the Al-Serhan tribe and the Al-Hubab clan. Mr. Al-Serhan was born in a tent and lived in a tent until he was about ten years old. For fifteen years he was a shepherd. He is the oldest of fourteen children and the first member of his immediate family to attend school. Much of the information in this paper comes from his direct experience and reflects his personal experience in his tribe and clan.

Bedouin customary law has many faces and dimensions. The two primary concerns of Bedouin law are incidents of bloodshed and issues regarding women. Bedouin customary law systems reflect the established beliefs and rules which predate the establishment of Islam. Understanding the Bedouin customary law is particularly important because customary laws govern most issues among the Bedouin people in tandem with the state justice system.

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Muwafaq Al-serhan is a PhD student at University of Wisconsin-Madison, majoring in development studies. MA, Brandeis University, Sustainable Intentional Development. The author has firsthand experience with how tribal customary law shapes Bedouin social systems and social behavior.

The following serves as a snapshot of certain customary laws rather than as a comprehensive academic description of the complex and diverse customary laws of Bedouin tribes in Jordan.

Jordan is home to different Bedouin tribes. Bedouin customary law systems vary by tribe, but they are similar in many ways. The customary systems described in this paper are those of the Al-Serhan tribe.

## II. THE BEDOUIN PEOPLE AND THEIR SOCIAL ORGANIZATION

The Hashemite Kingdom of Jordan was established as a separate country in 1921 with a land area of about 90,000 km<sup>2</sup>. It borders Syria in the north, Iraq in the east, Saudi Arabia in the south and east, and Israel and the West Bank in the west. Jordan has a population of 6 million (2007), and a growth rate of 2.4 percent per annum.

The traditional tribes living in desert lands of Syria, Jordan, Israel, Iraq, and Saudi Arabia who care for animals and engage in seasonal migration are referred to as the Bedouin. The word Bedouin is from the Arabic word *badawiyin*, which means "inhabitants of the desert"—the *Badia*. Strictly speaking, the term "Bedouin" refers only to the camel-herding desert dwellers, but it has been used as a general term to cover all nomadic Arabs.<sup>1</sup>

The environment forced tribesmen to maintain "egalitarian corporate groups, both for their personal defense and to maintain control over tribal territory. So whenever inequalities became so glaring as to jeopardize the functioning of the corporate groups, some of the wealth was redistributed".<sup>2</sup> The Bedouin survived by herding within vast areas and, when necessary, raiding other groups. This made tribal solidarity a necessity for survival.

As the result of the dependency of the productive system of pastoral nomadic life on ecological conditions, Bedouin always "tended to integrate their pastoral activities . . . with other types of productive activity. Among these, an important role was played in the past by cattle stealing from other groups which enabled the nomads to re-establish an endangered productive equilibrium".<sup>3</sup> In times of drought or loss of livestock, "Bedouin groups could not fall back on subsistence agriculture. In these circumstances, the distribution of looted livestock among nomad raiders without animals or other

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<sup>1</sup> SHIRLEY KAY, *THE BEDOUIN* 3 (Crane, Russak & Co. Inc. 1978).

<sup>2</sup> EMANUEL MARX, *THE CHANGING BEDOUIN* 3 (Emanuel Marx, and Avshalom Shemueli, eds., New Brunswick: Transaction Books 1984).

<sup>3</sup> UGO FABIETTI, *STATE, SOCIETY AND ECONOMY IN SAUDI ARABIA* 186 (Tim Niblock, ed., Croom Helm 1982).

tradable goods of their own even helped prevent starvation within clan groups”.<sup>4</sup>

The Bedouin remained relatively isolated from contact with outsiders until the 1920s.<sup>5</sup> For centuries the Bedouin people dominated the vast Middle East desert, the Badia. During the last century an increasing number of Bedouin tribes in the Middle East have been forced or encouraged to abandon their nomadic lifestyle. Pressures from outside their environment have affected the social and economic elements of the Bedouins societies, which have rendered herding, as a main occupation, unrealistic. Bedouin have encountered successive waves of political, social, and economic changes since the newly established states in Jordan. Political changes have paved the way and accelerated the pace of economic and social changes.

Prior to the 1920s, Bedouin tribes traveled in wide swathes through the desert across what are now political boundaries. The 1920s geo-political division of greater Syria, mapped out by British and French mandates, resulted in the separation of Bedouin from their lands and kinsmen in other regions. The newly established states, with recognized borders, were the first step toward the decline of herding as a main occupation and the settlement of the Bedouin in villages.

For centuries the Bedouin were able to sustain their herds and way of life by their knowledge and familiarity with the ecological conditions and the natural resources. The freedom of movement allowed them to move their herds wherever water and pasture were available. The new borders squeezed them and their herds into a restricted and dry geographical area. Recurrent droughts within the desert area, defined as Jordan after 1921, made them think of nothing but survival.

Accepting salaried jobs in military forces was the most favored method of survival. Most of the Bedouin of Jordan accepted work as soldiers for the new state of Jordan. The British mandate officers, who were in charge of forming the Desert Patrol Force (DPF) during 1930's, convinced the Bedouin that they “would have their own military authority, manned by their own sons, who would be very well paid, far stronger, more mobile, and better trained to maintain their own peace and security”.<sup>6</sup> The mandate authorities gave other means for encouraging Bedouins to abandon their nomadic life.

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<sup>4</sup> Thomas, Martin, *Bedouin Tribes and the Imperial Intelligence Services in Syria, Iraq and Trans-Jordan in the 1920s*, 10 J OF CONTEMP. HIST. 550 (2003).

<sup>5</sup> RODERICK DUTTON, ARID LAND RESOURCES AND THEIR MANAGEMENT 1-20 (Roderick Dutton, John Clarke, & Anwar Battikhi, eds., Kegan Paul 1998).

<sup>6</sup> MAAN ABU NOWAR, THE DEVELOPMENT OF TRANS-JORDAN 1929-1939 111 (Ithaca Press 2006).

Together with enlistment in the Desert Patrol, encouragements involved “subsides [that] provided the tribes with the means to survive the drought years while perpetuating their dependence on the state”.<sup>7</sup> Joining the military provided a good hedge against starvation as the animal herds diminished.

People living within newly formed national boundaries had to have separate identities. The new states forced the nomads to settle in villages since the Bedouin movements “contravene the *raison d’être* of the state-security.”<sup>8</sup> The existence of boundaries made it necessary for the government in Jordan to defend the new territory, to seek to identify which tribes were Jordanian, and to guarantee the loyalty of tribes within the boundaries to the government of Jordan.<sup>9</sup> Efforts to settle the Bedouin were “largely complete by 1960, with nomadic populations less than 10 percent of the total population of the East Bank.”<sup>10</sup> In the following decades, the modernizing governments have intensely pursued policies to settle or resettle various nomadic tribes. For instance, the government designed the national development plans for 1973-1975 and 1976-1980 with a view towards the integration of the Bedouin tribes into the modern economy.<sup>11</sup> By the late of 1970s, nomads constituted less than three percent of Bedouin population.<sup>12</sup>

Bedouin succumbed and modified their life to the new situation by settling in specific areas according to tribe and clan affiliations. State services such as education and medical clinics further encouraged settlement. Settlement has made maintaining large herds unfeasible. In Jordan, elementary education is compulsory and most Bedouin youth now go to school, thus reducing labor availability for maintaining and managing large herds. Persistent drought has continued to decimate grass and water supply in the area, further diminishing the herds.

Bedouin want their sons to join the army, and for this they must stay in the village to attend school. They cannot leave for days or weeks with the herds as they did in earlier days. They have reached a point that the future of their children should be much better than their ancestors. Herding is no longer feasible or profitable.

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<sup>7</sup> TARIQ TALL, *THE POLITICS OF RURAL POLICY IN EAST JORDAN, 1920-1989* 93 (Cambridge University Press 2000).

<sup>8</sup> Paul Jureidini & R.D. McLaurin, *Jordan: The Impact of Social Changes on the Role of the Tribes*, 108 WASHINGTON PAPERS 14 (Center for Strategic and International Studies, Georgetown University 1984).

<sup>9</sup> DUTTON, *supra* note 5, at 10.

<sup>10</sup> Jureidini & McLaurin, *supra* note 8, at 15.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 31.

The tribe has been the principle building block of the Bedouin society. In the tribe, each family member is traditionally bound by obligations of mutual assistance to her or his immediate relatives and to the tribe as a whole. The tribe is a structure of extended families, a patrilineal kinship structure of many generations that encompasses a wide network of blood relations descended through the male line. Tribes are divided into clans. Clans are divided into family groups (*ha'mulah*), some of which can trace their ancestry back for ten generations. Accurate genealogies are treasured. Each of these family groups consists of people who share a direct blood connection. Individuals among each *ha'mulah* who share blood connections through five generations are responsible for each other regarding issues related to blood vengeance. Although relationships among individuals in this group sometimes are distant, they support each other in matters involving honor and blood revenge. Although some Bedouin settled in urban and rural areas, individuals retain their tribal names and revere kinship ties. Ask any Bedouin man or woman his name and the answer will include his or her tribe name.

Maintaining the social structure in Bedouin communities is important. Individuals are expected to show respect towards older men and to show loyalty to the collective goals and interests of the tribe. Parliamentary elections in Jordan enhanced the role of the tribe. Bedouin are allocated separate seats in the chamber. Under the current election law, three each are drawn from the southern, northern, and central Bedouin tribes. Bedouin in the north side of Jordan consist of different tribes that compete with each other. Centuries of physical conflict have metamorphosed into civil conflict along tribal lines within the elections process. Each tribe seeks to reaffirm its identity through the election process. If the tribal leader is elected it will mean prosperity for the village, since elected officials often "place" as many tribe members as possible in government positions, many of the unemployed men would be given government jobs. All the tribe's members are expected to support their own tribe's candidates.

Tribal social control is demonstrated through marriage. A woman cannot marry without the approval of her male cousin to whom she is always betrothed. If she does not have a male cousin, her nearest kinsman descended from the brothers of her paternal grandfather is considered to possess marital rights over her. Gender relationships among the Bedouin communities mirror patriarchal values. Men decide all household issues. Men also control tribal social issues. For example, a Bedouin male may not choose his wife without his father's approval. Disobeying a father's decision is a source of public shame.

Bedouin must assist each other in all situations. A Bedouin must hire Bedouin. Officers in the army must favor members of their own tribe. Bedouin

professors must ensure that their tribe members do well in their classes. Bedouin students must assist other students encountering difficulties, even to the point of doing the work for them.

Sheikhs, as leaders of tribes, had considerable power but now their power is being challenged by the spread of education and individual wealth. Sheikhs come from noble families, and sheikhdom is passed from generation to generation. They are recognized by the state as representatives of their tribes, and most of them are paid a monthly salary from the government.

### **III. LEGAL CONTEXT FOR GOVERNANCE UNDER JORDAN'S RULE OF LAW, SHARIA LAW, AND TRIBAL LAW**

The formal legal system, Sharia law, and tribal law co-exist in Jordan. For the most part they exist side by side and govern separate areas of the law. It is at the edges that the jurisdiction is blurred.

The formal legal system of Jordan can impose prison sentences and even the death penalty. The tribal legal system does not impose either prison sentences or the death penalty. The tribal system has more flexibility in discovering solutions to conflicts. Most tribal conflicts are resolved by Ja'ha, a tribal mediation system that seeks to resolve matters by consensus. The possible solutions are limited only by the creativity of those participating in the Ja'ha. In matters involving women it is important to show that the woman is "clean." An acceptable manner of showing the entire village that the woman is "clean" is to cover the entire house with a white cloth and slaughter a white camel in front of the house. This solution is only used in cases involving women.

Sharia courts generally handle cases of divorce, custody, support, and inheritance. Bedouin customs regarding inheritance differ from the rules of Islam. For instance, in Islam a daughter receives less than that of a son's share. "Allah commands you regarding your children. For the male a share equivalent to that of two females."<sup>13</sup> In the Bedouin culture the sons inherit more if not everything. Compliant Bedouin women go to the Sharia courts and renounce their inheritances.

The state legal system is more efficient in handling such modern matters as fraudulent checks, so Bedouin are likely to resort to the state system in such matters.

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<sup>13</sup> QURAN 4:11.

In theory, the law of Jordan applies equally to all Jordanians, including the Bedouin. In practice, the Jordanian legal system defers to the tribal customs and laws in most situations involving only Bedouin if all the parties choose to use the tribal system. While the formal legal system could resolve the legal issue in a serious situation such as murder, it may not resolve the side issue of revenge as allowed under Bedouin custom (revenge is allowed for forty years under tribal law). Tribal methods tend to settle the matter completely, thus forestalling future problems. In cases of murder or issues regarding women, redeeming dignity to the injured party and restoring esteem are the only satisfactory solutions for the traditional Bedouin. The police and the court system defer to the tribal system but with interesting points of cooperation. For instance, if a matter arises in a village concerning the honor of a female, the police will attempt to move her to a safe location so that she does not become the victim of an honor killing. Then, the matter will be resolved within the tribal system.

In 1924, the law of tribal courts was issued. It was modified in 1936. Both of these laws “listed the tribes of Jordan which submitted to its jurisdiction and left to the individuals of those tribes the freedom to submit their cases to their traditional judges for finding the solution (to cases) according to legal tradition.”<sup>14</sup>

Tribal law and its power have been waning, and this law “seems to be focused on the control of women and family issues, and it is in this form that it has become an integral part of the legal system in Jordan”.<sup>15</sup> Tribal law is also always used in cases involving the death of one party, from murder to automobile accidents. It may also be used if one party is non-Bedouin but only if both parties agree. Otherwise the case is resolved by the Jordanian courts.

Jordanian law recognizes two rights in criminal matters, a public right (Al-Haq al'am) and a personal right (Al-Haq Al-sakhzay). These rights acknowledge the interconnection of the state and tribal law. If a person is convicted in the state system the public right is satisfied. If the victim's family agrees, usually through the tribal recognized procedures and the payment of “blood money” to relinquish its private right, the court can reduce the sentence to the minimum required by the state. The courts can reduce capital cases to imprisonment under this system. Under the current tribal law, Sharia law and Jordanian law do not conflict. They complement each other.

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<sup>14</sup> Abu-Hassan Law Firm, <http://www.abu-hassan.com/research2.htm> (last visited April 1, 2008).

<sup>15</sup> AMIRA EL-AZHARY SONBOL, *WOMEN OF JORDAN: ISLAM, LABOR, & THE LAW* 48 (Syracuse University Press 2003).



### *A. Rules of Customary Law*

#### **1. Tribal Customary Law and Homicide**

When a serious issue, such as a murder, occurs in a village, the village carries out tribal social rituals. These tribal mechanisms are: *J'lwa* (evacuation), *Atwa* (truce or cease-fire), *Ja'ha* (peacemaking process), *Me'da* (blood money), and *Sulha* (peace agreement).

When a murder takes place in a village, the male members of the victim's family have the right under Bedouin law to murder a male member of the perpetrator's family. The victim's family need not choose to kill the perpetrator. In fact the victim's family will often choose the most respected member of the perpetrator's family so as to bring shame on the perpetrator within his own family.

As soon as the police in a village know that a killing has taken place, they will go to the victim's family and the perpetrator's family to secure a truce (*atwa*) for three and one-third days. The perpetrator's family must flee to a sanctuary as soon as possible after the incident to avoid immediate retribution, which is legitimized under traditional customs, from the injured party. This evacuation process (*J'lwa*) is carried out by and under the supervision of the policemen in the village to ensure the safety of evacuees.

The vengeance unit descended from a common ancestor five generations back. This minimal Section is jurally responsible for its members. . . . The khamsah corporate vengeance unit has been given different labels by Bedouin tribesmen. For example, it is referred to as qadabet an-nsab (holders of the sword hilt), or qadabet al-janbiya (holders of the dagger), or qadabet al-'asa (holders of the stick). Sometimes it is also referred to as al-'asaba (the tendon which binds together organs of the body).<sup>16</sup>

In Jordan, this group (*khamsa*) has been modified by agreement of the tribal leaders with the central government to three generations. This group includes women, children, and the elderly and can easily number in the hundreds. The Sheikh to whom the perpetrator's relatives have fled is responsible for the group and must feed and house them.

Within the period of the security truce, a tribal leader (Sheikh) to whom the perpetrator's family resorts asks the injured family for an additional

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<sup>16</sup> Sulayman Khalaf, *Settlement of Violence in Bedouin Society*, 29 ETHNOLOGY 3 (1990).

period of truce, a tribal *atawa*. The period of this *atawa* may be weeks, months or years. When *atawa* is given, a tribal figure will be asked to be a guarantor of security or protection (*Kafeel Al-Dafa*). This guarantor position serves to prevent aggression between involved parties. This person is a very important agent in this process since any aggressive behavior by any member of the injured group toward the killer's group will be shameful to him. Any serious aggression means disrespect to that person and is considered the crime of assaulting the face (*Taqti al-Wajah*). The injured group must respect his role and any misconduct from them will be used against them according to tribal law.

The logic of *atawa* is to have a cease-fire and cooling-off period until the parties can pursue peace negotiations. During the cease-fire, the sheikh will negotiate the return of the women, children, and elderly to the village.

The next step in the resolution process is to assemble a Ja'ha. This group is analogous to a mediation team. Often weeks or months pass before this step is taken. An effort is made in a series of meetings with the litigants, respected male tribal elders selected by the perpetrator's party, and the tribal leader who provides protection to resolve the matter by consensus. The people who compose the Ja'ha are expected to be neutral, prestigious, knowledgeable of the tribal values and customs, and personally experienced in dealing with tribal conflicts.

When the injured party accepts the Ja'ha, the tribal leader sends some people to build a black tent (the traditional house for Bedouin) in the neighborhood of the injured party. The members of the injured party and noble figures of that tribe greet the Ja'ha's members. No one of the killer's family comes to the Ja'ha.

The goal of Ja'ha is to achieve a *sulh* (peace agreement) between the involved parties. The injured party must already know the Ja'ha leader. Some Bedouin require a specific tribe's leader to be the head of the Ja'ha. Members of the injured party discuss with each other the demands that they are going to put on the table in the Ja'ha. They also assign a specific person to be their speaker, or they might choose another tribe's figure to do this on their behalf. The latter must be committed to the demands that the injured party requests. The main demand is *Me'da* (blood money).

Specific rituals are associated with the process of the peace agreement (*sulha*). When all people have a seat in the Ja'ha's tent, the head of the Ja'ha sits in the middle of the tent. A man from the injured party will offer the head of the Ja'ha a cup of coffee. The Ja'ha's members' goal is to exert social pressure on the injured party by not drinking the coffee he offers until

he responds to the Ja'ha's request. The head of the Ja'ha does not drink the cup of coffee but puts it in front of him. Then, he will explain to the injured party that all these tribal figures come for the honor of the injured party and to solve the problem. He says everything happened according to God's will and now, in order to solve the problem between you and your cousins (the injured party), we are ready to hear your demands.

The injured party might ask for 100,000 Jordanian dinar for Me'da as a compensation for their loss and restoration of their tribal honor. When they demand a specific amount of money, the Ja'ha's role is to reduce the amount of money as much as they can. There are traditional techniques used to reduce the demanded amount of money. First, the head of the Ja'ha asks the injured party to give up some amount of the requested money for God (Allah). The amount reduced as a respect for the name of God will be the highest. Next, the injured party will be asked to give up some of the requested money for Mohammed (the prophet of Islam). The third step will be asking a reduction of the requested amount of money for the King of Jordan. Finally, they ask for a reduction for the members of the Ja'ha. When this process is complete and once the amount of money is decided, the money is paid immediately. In some cases, injured parties may refuse to reduce the requested money, and the other party must pay all of the money demanded.

In case the money is not available right away, the Ja'ha is asked to assign a person who is willing to guarantee the performance of the obligation by the offending party. The guarantor is called *Kafeel Wafa*. Then it is unnecessary for the offended party to deal directly with the perpetrator regarding the money. When the parties agree upon this person, the *sulah* process takes place.

The final ritual of *sulah* is a scene of peace. Once the matter is decided, the Ja'ha leader asks the injured party to allow the killer's family to come to the tent and shake hands with them and allow them to return from their exile. All of the parties and the Ja'ha drink coffee together. At the end, the perpetrator's party will invite all the Ja'ha members for a dinner or lunch that day depending on the time of the day that the Ja'ha ends. The *sulha* ritual ends with the signing of an official peace agreement by the tribal leaders taking part in the Ja'ha, the involved parties, and an officer from the security forces in the area where the whole incident took place. The state's interest in the case is represented by the security forces who will assure that the matter is reduced to writing so there will be no doubt about the agreement in the future. The Ja'ha may have many sessions and continue over many months.

In past murder cases, it was common to require the perpetrator's family to give an unmarried girl to the victim's family. The idea was that this

girl would be taken into the victim's family and married to a male member of the family, thus creating blood bonds between the families to ease any remaining tension. This practice is called *ghurat Me'da* and is in clear conflict with Islamic law. The decision to "give" a female to the victim's family was always the decision of the patriarch of the family. The female members of the family had no say in this decision. This practice has been abandoned in Jordan although it persists in the more remote regions of Afghanistan.

#### ***a. Who Pays the Blood Money***

According to tribal law, all the members of the tribe are expected to contribute if necessary. This tribal duty gives the entire tribe a strong incentive to encourage good behavior from tribal members. A group of the perpetrator's party goes to the houses of all their tribesmen asking for help, excluding any person associated by blood with the victim's family. If the perpetrator party's efforts to collect the demanded money is not met within his own tribe, he will ask other tribes for help.

#### ***b. Who can Claim Compensation***

In case of homicide, father, brothers, sons, and uncles can claim blood money. The victim's father, if he is alive, may receive the blood money individually. Blood money, when received, may be divided among brothers. When the father or brothers are alive, uncles do not receive any portion of the blood money.

For example, in 1996 bloodshed occurring in the tribe of Al Serhan was settled in the same year. An elderly man was allegedly trying to extend his land by changing its border and digging new landmarks. The new landmarks were allegedly in his neighbor's land. The son of the owner of the targeted land appeared and demanded the elderly man to give up what he was trying to do and remove the new landmarks. The elderly man refused and claimed that he owned that part of the land. The dispute escalated from words to rage. The young man pushed the elderly man, and the latter fell on the ground. The elderly man died of a heart attack at that moment. The young man was arrested. His family was exiled to another tribe. Noblemen in the tribe immediately secured atwa. Even though the young man insisted that he had not intended to kill that man, his claim of innocence was not sustained. According to the *sulah* agreement, his family had to pay compensation in the amount of 20,000 dinar, or about \$34,000.

## 2. Tribal Law and Public Pride

Injuring a person's pride is a serious matter in the Bedouin culture and is often the cause of conflict and violence. Compensations in these situations are called whitening the face (*Tibeeth Wa'jh*) of the injured party after blackening his face (*Tisweed Wa'jh*). These cases are less grievous than bloodshed, but if they are not resolved the situation may escalate to bloodshed. An injury to public pride may arise in different situations. For example, if a person spits in public on the face of another person, it is considered particularly offensive, and the victim has a claim for this defamatory act. Attempted rape is a serious insult to the honor of family of the targeted woman. Slanderous statements include those such as one person saying to another "you are *abn haram*" (accusing the person of being born out of an illegal relationship). Another example is accusing some one of being a thief.

Most of these cases are settled by arbitration. Tribal law protects the character of a person who has been discredited. Any person slandered is entitled to restore his honor and to obtain compensation. The injured party informs his offender or his kin that he wants his rights. A third party is often asked to intervene and to try to bring about settlement. The settlement takes place with a tribal judge who is not related to either party.

Tribal judges are tribal leaders who are well known among Bedouin and who have distinguished themselves by their ability to make decisions. Their wisdom and knowledge of social issues oblige the people in the community to call upon them to solve their problems. When a judge agrees to deal with a dispute, he informs both parties to come at a specific time. Some judges ask both parties to bring a specific amount of money called *Rez'gt Qadi* (the money of Judge). The losing party will turn over the money he brought, while the winning party keeps the money that he was told to bring.

Both parties must attend and take an oath while facing Mecca. The parties must be unarmed. The judge's clan is expected to attend so that any potential conflict is controlled. Each side has the right to express his point of view. Any party to a dispute who does not feel competent to defend himself properly may have someone represent him until a decision is rendered. After hearing both sides, the judge decides which party's evidence is convincing and issues his judgment which is enforced by both parties.

## 3. Women as a Code of Honor

Women do not have the same rights and privileges as men do. The status of women depends on being a respected housewife, who does not do anything that harms her husband's or family's reputation. Marriage is

arranged. Marriage for love is uncommon. Women do not leave the house without the husband's approval except in the case of extreme emergency. The husband does all household shopping, including shopping for the woman's clothing. In traditional homes, women never possess money. If a woman has money, her honor is considered suspect until the source of the funds is discovered. Within the past five years, this has begun to change as Bedouin women begin to work outside the home.

The life of a woman is surrounded by a complex set of honor codes. According to Bedouin tradition, the concept of honor (*ird*) is the supreme value in Bedouin life, more important than life itself. Saying anything bad about a person's female relatives is a very grievous matter. According to Bedouin customary law, insulting a woman is a stupid act that might lead to unexpected consequences.

Bedouin impose severe rules on the behavior of women and deviation from these rules will result in horrible consequences. Because of the importance of chastity, prudence, and self-restraint of women, most of the severe fights and conflicts arise out of disputes over women's issues, for which special regulations and principles exist. The following are examples of crimes and punishments involving women.

Severe punishments are carried out in the case of a sex act outside of marriage. Sex outside marriage tarnishes a woman's entire family. This will devalue her family's status. Her sisters are not likely to get married, and her brothers will be looked down upon. A woman who has sex outside marriage is liable to be murdered by one of her brothers or her father. In the case that her father is not alive and she does not have brothers, her uncles or cousins from her father's side will be responsible for washing away the shame resulting from her misconduct.

The husband of an adulterous woman is not responsible for the stain of honor because a woman does not tarnish the honor of her husband or his family. The only thing he can do is to divorce her and ask for her bride price back. Why is a woman's husband not expected to kill his wife for committing adultery? Answering this question is governed by the Bedouin saying "al-*jerba* (dirty) woman must be cleaned by her family." Literally, cleaning means killing.

The misconduct of a woman does not always result in her murder, although deviation from the strict tribal rules will have negative impact on the woman's family. In 1998, in the north Badia, a woman committed adultery and her father refused to kill her. The tribe subsequently shunned and looked down upon all of her family. No one in the village would speak to them. No

one would marry his daughters or her sisters. The family was socially shunned and did not like to socialize with other people because they knew that other people disrespected them.

A woman must prove that she was forced to have sex when she alleges rape. She must prove that she struggled against and resisted the man who assaulted her. Otherwise, she is deemed to be a willing participant, and her family can not sue or demand anything from the perpetrator. The attacked woman must scream and leave scars on the attacker's body. In this case, her family will bring the sexual assaulter for tribal judgment.

In the summer of 1998, a man tried to rape a thirty-five year old married woman from the Al-Sintay tribe. The man and the woman were living in the same village. She resisted him furiously and left many scars on his face. Leaving scars of his face was strong evidence of her disagreement with the man's goal.

The woman's brothers maintained that they would punish that man due to his attempts to rape their sister and to dishonor their family. Several nobles among the tribe did their best to bring about sulha. They were successful in their attempts. This was largely due to the fact that the woman proved her morality by resisting the man's attempts.

The man's family assembled a Ja'ha from nobles and went to the family of the woman. After a long, contentious debate and the man's public admission of trying to rape the woman, his family showed their willingness to compensate her family with anything they demanded. Her family demanded that a white fabric cover their entire house and that the perpetrator's family slaughter a white camel in public. It should be mentioned that money was not a possible request in this case because it would have been shameful.

This kind of punishment is called *Tabied Al-Wajh* (literally whitening the face) or redeeming honor. The example given above does not apply when a man actually rapes a woman even if she resists him. When a man rapes a woman, no matter if she resists or not, her family will kill him. Her family will kill her as well if she does not prove signs of resistance.

In the context of rape, it is an important to mention the idea of *Tishmees* (literally. under the sun all the time without a home). When a man causes his family excessive troubles due to dishonoring other families, his family may tire of his acts and announce publicly that they will have nothing further to do with him. Then, they will no longer be responsible for any of his acts. They will not demand any compensation or revenge if he is killed due to his disreputable behavior.

#### 4. Modification of Tribal Customary Law

Two very important changes have occurred to Bedouin customary law over the last century. The first is cutting down the generations of the liable group. As a result of an agreement between the Jordanian government and the tribal sheikhs, the relatives of a perpetrator that must flee after a serious incident was reduced from five to three generations. This modification means that change is possible. Bedouin people today are settled, and sudden movements to another area due to the acts of an individual are costly. Another change from three generations to one generation might occur in the future given the state's efforts.

The second change is associated with giving a woman as a way of compensation in the case of murder. This provision was changed long ago. The tribal law in 1936 prohibited the tribal courts from issuing decisions involving giving a woman rather than blood money.<sup>17</sup>

The Bedouin apply customary law, not Islamic law, in issues associated with women's misconduct. Bedouin people kill any woman who has consensual sex outside of marriage regardless of whether she is married or not. This practice goes against the Islamic law regarding the issue of sex outside marriage. These historical and informal norms include a patriarchal hierarchy that serves to repress women. When a female violates customary law by having voluntary sex outside marriage, her death is not considered murder.

Bedouin customary law diverges from Islamic law regarding female infanticide. Before Islam, many Arabic men would bury their newborn females alive because they were afraid of bringing shame on their family in the future due to any act of their daughters. The Quran prohibits female infanticide stating:

When [a male] is given news of the birth of a baby girl, his face darkens and he is filled with gloom. In his shame he hides himself away from his people because of the bad news he has been given. Should he keep her and suffer contempt or bury her in the dust? How ill they judge!<sup>18</sup>

Adultery in Islam is one of the most heinous of sins. The Islamic law based on the Quran specifies the adultery punishment as “[s]trike the adulteress and the adulterer one hundred times. Do not let compassion for

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<sup>17</sup> Abu-Hassan, *supra* note 14.

<sup>18</sup> QURAN 16:58-59.



them keep you from carrying out God's law—if you believe in God and the Last Day—and ensure that a group of believers witnesses the punishment.”<sup>19</sup>

In Islam, all sexual intercourse outside of the marital bond is sinful. Unmarried people who have sex should be flogged but not killed. In certain countries, such as Afghanistan, rape victims are jailed under the criminal code because of the belief that all sex outside marriage is illegal and must be punished.

In Jordan, the codes of civil law regarding honor killing reflect Bedouin tribal customs. There are three laws in Jordan's Penal Code under which perpetrators of honor crimes receive reduced sentences. Law 340a is titled “Excuse for Murder.”<sup>20</sup> It states that “a person who surprises his wife or any of his [mother, sisters, daughters, or nieces] while having sex with another person and he kills them or wounds them or harms them both or one of them, he benefits from this legitimizing excuse.”<sup>21</sup> Law 340b “reduces the sentence of a person who murders, wounds, or harms . . . if he were to surprise his wife, or one of his [consanguine relatives] . . . with a man in an illegal situation [in bed].”<sup>22</sup>

#### IV. FUTURE CHALLENGES

In 2000, in the village of Safawi, Jordan, a 33 year-old man, married to two wives, called the local school posing as the father of a 16 year-old girl student. He asked that the school release the student early to attend to some duties at home. The school released her, and the man picked her up and took her into the desert for a few hours. Unfortunately for the couple, someone from the school saw this and reported it to the girl's father and to the police. When the couple returned, the police stopped the truck, removed the girl, and took her to the hospital to see if she and the man had had sex. Fortunately, she was still a virgin. She was taken to a faraway village for her own protection, and the man and his relatives fled the village. A truce was secured, and, after time, all of the parties agreed to a Ja'ha. The girl's father, who was still quite upset, had a heart attack, and the matter had to be postponed. At the Ja'ha, the girl's relatives asked for 30,000 Jordanian Dinar, that the married man's car be burned in the village square, and that the man's right arm be severed. The Ja'ha met several times over many months, and eventually the matter was settled with the payment of a lesser sum.

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<sup>19</sup> *Id.* at 24:2.

<sup>20</sup> AMIRA EL-AZHARY SONBOL, *WOMEN OF JORDAN: ISLAM, LABOR, & THE LAW* 193 (Syracuse University Press 2003).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

In 2008, a similar situation occurred in another village. The girl's family demanded that the vehicle be burned, that their house be covered with a white cloth, and that a white camel be slaughtered before their house. They also requested a Ja'ha. The father of the boy refused everything except the Ja'ha, saying that they were children who had made a mistake yet done no real harm. At the Ja'ha, the father of the boy apologized for his behavior and assured the family that their daughter was "clean" and that the family should have no shame. The boy agreed never to go into the girl's neighborhood. The girl's family accepted the apology and the matter ended. The girl, however, is unlikely to be able to marry any of the boys in the village. She will surely have to marry into a family in a distant village.

These two similar stories illustrate the rapid change in attitude that has occurred in the last few years among the Bedouin. Most Bedouin now either have cell phones or have access to phones, and the lines of communication between boys and girls are open. Camels have been replaced by cars and pickup trucks, and most Bedouin boys have access to these vehicles. Meetings between boys and girls occur much more frequently, and, while the adults do not sanction this, they are aware of the changes swirling around them.

Change is everywhere. Young girls never wear traditional dress. Middle-aged women may wear a modern long coat, or *jillbob*, over their western clothes. Most women under forty wear western clothes with the traditional headscarf. Fewer men wear the traditional white flowing robes, and more dress in western clothing. Men wear modern hair styles, and some have even shaved their mustaches or their heads. Even names have changed. Older men have fierce names like "He who kills to the right and left with his sword," while the young generation has softer names like Mwafaq, which means good luck. Most villages have an Internet center, and this year the Jordanian government has issued each family a computer for about \$8 per month. The traditional Bedouin tents have given way to concrete houses, and most of these houses have a television. Programs from all over the world are beamed down by satellite. Young men seeking a mate look for an educated woman who can work as two income families become the norm. Education has planted the seeds of change. Globalization has germinated those seeds.

Girls over the age of eighteen can legally marry anyone that they choose, even without their father's permission. A few women have chosen to exercise this option, and there is nothing legally that the family can do about it.

The government figures for unemployment are at about fourteen percent. It is estimated that the true figure is closer to thirty percent. Jordan has

no resources and little water. The growth rate of the population cannot be supported. More young families are choosing to limit family size.

The Al-Serhan tribe now has its own tribal website creating a sort of digital retribalization for tribe members all over the world. Tribal leaders find their influence diminished as education and good jobs become the currency of social mobility.

Ja'has now occur in Chicago and Detroit as ways for undocumented Bedouin to resolve their disputes since they cannot resort to the police and the courts. These same Bedouin use the Internet to keep abreast of elections in Jordan as well as tribal news.

Change has already come to the Bedouin and the pace of change accelerates daily. Bedouin have always been adaptable, and their nomadic life has involved constant change. This malleability will likely enable them to embrace the twenty-first century. Bedouin cannot pass to their children their former way of life; they can only pass to them the memories of that life.