VIOLENCE AGAINST WOMEN

AMIDST THE LEBANESE CULTURE OF IMPUNITY

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by

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ABSTRACT

OF THE THESIS

Grace George Eid for Master of Arts
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Violence against women and girls (VAWG) is marked as a widespread and continuous human rights violation worldwide. Although several efforts and advancements have been made in combating, preventing and protecting women and girls from violence – both on the international and national level – VAWG remains a global problem. This thesis aims to test the applicability of the monist theory amidst an institutionalized culture of impunity through assessing the effectiveness of the Lebanese legal framework regarding gender-based violence against women and girls and its compliance with international standards. This thesis shall be divided into two main parts. The first shall provide an overview of the relationship between international law and national law through presenting both the monist and dualist theory while later determining the applicable theory to Lebanon. The second part shall test the thesis statement through an empirical and analytical approach. In this chapter, the Lebanese legal system will be examined and analyzed by evaluating two main systems of power: the legislative system and the judicial system. It will be determined to which extent the culture of impunity in Lebanon is one of the factors that hinder the effectiveness of the legal framework regarding VAWG and the applicability of monism in practice.

ABBREVIATIONS

CoI: Culture of Impunity

CEDAW: Convention on Elimination of Discrimination against Women

DEVAW: Declaration on the Elimination of Violence against Women

GBV: Gender Based Violence

GBVAW: Gender Based Violence against Women

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic Social and Cultural Rights

ISF: Internal Security Forces

LGTBQ: Lesbian, gay, bisexual, transgender and queer

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

VAW: Violence against Women

CHAPTER 1

INTRODUCTION

1.1. Overview

Women may be subjected or threatened by violence everywhere and anywhere in the world (Green, 2018). Regardless of their age, ethnicity, status, class, race or religion, women may experience violence in diverse locations and circumstances. Violence may take place in homes, work, schools, universities, governmental institutions, on the streets, in restaurants, hotels, time of conflict and war. It may affect any women at any period in her lifetime, both women and girls. The United Nations High Commissioner for Refugees (UNHCR) defined gender based violence (GBV) as "an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females" (Committee T. I.-A., 2005). Some women and girls might be more vulnerable to GBV due to them being within specific groups that already suffer from discrimination for example, women with disabilities, refugee women, migrant women and domestic workers. An additional example is the lesbian, gay, bisexual, transgender and queer (LGTBQ) community.

Accordingly, this thesis shall follow an intersectional approach in studying the Lebanese GBV legal framework in an attempt to expose the intentional power dynamics that intersecting systems of inequalities produce and their effect on the people and policymakers based on the culture of impunity. The intersectional approach allows us to point out how policy and lawmakers treat specific groups within the society. In the field of GBV, this can be established through the lack of attention given to the perpetrators

and the discrimination/inequalities evident within policy/lawmaking (Lombardo, 2019). The violence against women (VAW) intersectional approach implies that gender intersects with other forms of discriminations/inequalities; such as ethnicity, religion, immigration status, disability, nationality, gender identity and many more; all which result in different violence experiences and results (Imkaan , 2019). Therefore, States in order to guarantee effective policies and laws in regards to GBV; the States' national plans, policies and laws shall recognize that women and girls experience forms of violence differently, depending on several factors such as their ethnicity, race, religion, nationality, social status, economic status, marital status, gender identity, sexual orientation, refugee status, migrant status, disability, age or political opinion (UN Women , 2012).

In recent years, VAW was strongly approached and addressed by the international community; some of the main conventions and frameworks include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its General Recommendations, the Beijing Platform for Action, the Declaration on the Elimination of Violence against Women (DEVAW) and the 2030 Agenda for Sustainable Development (Warner, 2018). Article 1 of the Declaration on the Elimination of Violence against Women (DEVAW) defined VAW as "any act of GBV that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." The Committee on Elimination of Discrimination against Women stated in their General Recommendation No 19 on VAW paragraph 7 that GBV is a form of discrimination that limits or extinguishes women's enjoyment of their basic most fundamental human rights. Such as their right to

life, right to be free from inhumane or degrading treatment, right to be free from cruel and inhumane treatment, right to safety and security of a person, right to receive equal protection under the law, right to the safety of one's physical and mental health. Moreover, violence affects women's health, it limits their ability to fully and freely participate in society, it affects their economic status, it restricts their right to enjoy a healthy sexual and reproductive life and it often causes a lot of physical, emotional and mental suffering for both women and their families. VAW steals a women or girls' energy, lowers their self-esteem and causes serious – both short term and long term – physical and mental health problems (Heise, 2005).

Other sources of international laws and principles deal with a human being's right to be free from any form of violence such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). According to article 3 of UDHR, all human beings have the right to life, liberty and security. Article 7 states that all humans are equal before the law and shall be free from any form of discrimination. Article 8 adds on to stress on the right of every human being to receive remedies by national courts once their fundamental rights are being violated. Similarly, the article 2 of the ICCPR ensures the necessity of granting effective remedies for those whose fundamental rights and freedoms are violated. Article 3 of the ICESCR, also ensures that all both men and women equally enjoy their economic, social and cultural rights.

As stated earlier, intersectionality is the framework upon which this thesis shall discuss VAW. This approach reveals that if a State wishes to effectively eliminate VAW, it must first address all forms of discriminations and inequalities (Warner, 2018). Article

1 of the CEDAW has defined discrimination as any distinction, exclusion or restriction that has the effect or aim to weakening or invalidating women's right to fully enjoy or exercise their fundamental rights and freedoms in all aspects of life (economic, social, political, cultural…). According to the convention, this discrimination against women shall be made based on sex and irrespective of the women's status. Meaning all acts of violence that are targeted toward women just because they are women shall be considered as acts of discrimination.

Studies have shown that one of the problems why VAW persists is that many countries still have decades old/discriminatory legal frameworks addressing VAW (Jensenius, 2020). Therefore, article 2 of the CEDAW urges all States that have ratified and signed the CEDAW to adopt appropriate and effective laws, policies, punishments and measures in an attempt to abolish discrimination against women. Additionally, these States shall provide and ensure equal legal protection to all regardless of the gender and status. Paragraph 24 of the CEDAW's General Recommendation No 19, stresses on the duty of States to ensure that GBV laws provide proper and adequate protection to women, their rights, freedoms and integrity. CEDAW and the ICCPR both stress on the duty and obligation of all states to prevent and address all forms of GBV through adopting appropriate legislation, and taking the appropriate judicial, educational and administrative measures to ensure the elimination of VAW. It is important to note that according to CEDAW's General Recommendation No 35, the prohibition of gender-based violence against women (GBVAW) has become part of the international customary law; therefore, States even if not party to the convention shall be bound by such principle.

Therefore, according to international human rights treaties, all States have a duty to act with due diligence (Rittenhouse, 2011). Article 4 paragraph c of the DEVAW

requires States to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of VAW, whether those acts are perpetrated by the State or by private persons." The State's duty to act with due diligence implies that States have an obligation and duty to respect, protect and fulfill human rights.

First, the State's obligation to respect human rights, especially when dealing with GBV, implies that State officials and citizens shall not commit GBV, the State shall ensure the equal treatment among its people and the State shall abolish all forms of discrimination between men and women (Gender-based violence in Lebanon: Inadequate framework, ineffective remedies, 2019). According to article 2 of the CEDAW, States should take the necessary measures set out by the Convention in order to abolish discrimination between men and women through embodying the principle of equality in their constitution and national legislations, providing appropriate sanctions in cases of discrimination and modifying or abolishing all laws, customs and practices that discriminate against women.

Second, the State's obligation to protect human rights implies that the State shall ensure that individuals are able to fully enjoy their rights without interference from other non-state/state actors or individuals (Gender-based violence in Lebanon: Inadequate framework, ineffective remedies, 2019). In accordance with article 2 of the CEDAW, the State shall work on ensuring legal protection for women and men, refusing all discriminatory acts and practices taken by state officials, organizations, individuals… that make women feel inferior to men.

Third, the State's obligation to fulfill human rights implies that the State shall work on realizing these rights in practice (Gender-based violence in Lebanon: Inadequate framework, ineffective remedies, 2019). Regarding GBVAW, the State shall adopt

measures (such as training for officials, data collection, education/raising awareness, monitoring…) that aim at removing discrimination and eliminating VAW as stated in article 4 of the CEDAW and article 4 of CEDAW's General Recommendation No 25. These measures shall grant men and women equal right *de jure* and *de facto.*

Accordingly, through using an intersectional approach in VAW, this thesis shall aim to study the Lebanese legal system – through both the legislative and judicial branch – in order to determine if the failure of monism is primarily the result of poor managements, ignorance, clientalism, etc, or intentional policy of the power elites based on the culture of impunity. Monism is a theoretical approach to the relationship between international law and national law within a legal system; whereby international law prevails over domestic law and international law – once binding – is directly incorporated within national law (Visar Morina, 2011). However, the effectiveness of monism in a country's legal system, especially when dealing with VAW, highly depends on the State's ability and willingness to apply international standards of gender equality and non-discrimination in practice based on impunity (Day, 2016). Once impunity becomes institutionalized and systemized: checks on arbitrary use of power is neglected, accountability is semi or non-existent, independence and impartiality of the judicial system is doubted, absence of the rule of law, institutions are politicized, and political interference within the justice/legal system is intentional for personal preferences and favors (ICJ, 2012). Although it is rare to find a specific adequate phrase defining impunity, impunity is a term that is often linked with accountability (Viñuales, 2007). In general, impunity can be defined as the failure of officials, authorities and the State, due to legal obstacles or lack of political will, to hold accountable perpetrators of serious human rights violation thus making it difficult for victims to receive justice (ICJ, 2012).

Accordingly, the focus of this thesis on GBV, specifically VAW, since the Lebanese culture of impunity, in this field, resulted in severe violations of fundamental human rights, lack of protection for victims and lack of accountability for perpetrators (International, Lebanon must end impunity for human rights abuses following UN Human Rights Council Review, 2021). Intersectionality is a component of the Lebanese State and society where there exist "multiple layers of social, confessional, ideological, economic and cultural identities" and where the "rights of marginalized populations is undermined by systematic discrimination and physical and psychological violence" (IFES, 2021). Statistical data show that VAW is still a pressing issue that should be addressed in Lebanon. According to the GBV Information Management System Lebanon's Annual Overview in 2020, 69% of the GBV cases that have been reported are cases of domestic violence (UNFPA, 2020). According to a the report, 1 out 2 reported that they personally know a person who has been a victim of domestic violence, 65% stated that a family member committed the violence and 71% stated that the violence was occurring in the household of the perpetrator. According to a research conducted by ABAAD including 1,800 women from different regions around Lebanon it was shown that, 96% of women who have been subjected or experienced some form of violence did not report it (Gharib, 2021). Also minority groups suffer from discrimination and forms of abuse. For instance, female migrant workers suffer from discrimination and abuse under the Kafala system while lacking laws that protect them (International, Lebanon must end impunity for human rights abuses following UN Human Rights Council Review, 2021). According to ILO, 40% reported they did not pay the migrant worker her wage by the end of each month, 94% claimed to keep the migrant worker's passport with them and 23% said that they lock the worker in the house. Almost 100% of the surveyed people stated that the

migrant worker has come to Lebanon for the sole purpose of working and serving; therefore, she is not entitled to a private life (ILO, 2016). According to KAFA's report on violence and exploitation, 42% of the surveyed Lebanese people said that they do not trust religious Courts while 38% said they do not trust civil Courts. Their lack of trust was due to the corruption that dominates the judicial and Lebanese authorities and due to the unjust and discriminatory Lebanese legal framework against women and girls.

In reference to the sample statistical data presented, it is evident that VAW is evident within the Lebanese State. Although many factors play a role in that, this paper focuses on determining the intentional policy followed by power elites based on impunity. Using an intersectional approach, this paper shall test the weakness and discriminatory nature of the Lebanese legal system – the legislative and judicial branch. Impunity shall be measures according to the protection level, accountability level, remuneration, penalties and targeted/addressed groups within the Lebanese legal system. Prior to examining our claim in this paper, the literature review shall provide an overview of the international legal obligation regarding the State's duty to act with due diligence and the fight against impunity.

1.2. Literature Review

The State's obligation to act with due diligence in matters of GBV, specifically VAW, has been given high importance by many scholars, academics and United Nations (UN) special rapporteurs. According to Rebecca H. Rittenhouse, a junior legal researcher at the Human Rights Foundation, every State, under international human rights law, has an obligation to act with due diligence when addressing issues of VAW; accordingly the State must prevent, investigate, prosecute and compensate for these

crimes (ICJ, 2012). She adds on to discuss the important role that the law has in addressing VAW; however, she asserts that the law alone is not enough, proper enforcement is also mandatory. According to Yakin Ertürk, a former UN special rapporteur on VAW and board member at the UN Research Institute for Social Development, the due diligence principle is based on 5Ps (Council & Ertürk, 2006). First, to prevent acts of violence against women. Second, to protect the victims/survivors. Third, to prosecute and investigate the incidents of violence. Fourth, to punish the perpetrators. Fifth, to provide redress to the victim/survivors for the harm suffered. Ertürk adds on to state that "States are obliged to prevent and respond to acts of violence against women with due diligence" in accordance with a rule set out in International Customary law. Ertürk further emphasized in her report on the importance of regarding implementation and accountability of both State and non-state actors as a priority in addressing the issue of VAW.

The due diligence principle has been discussed and interpreted in several international cases. According to the A.T. v. Hungary (2003) case before the CEDAW Committee it was established that States shall be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. Another example is the Fatima Yildirim v. Austria (2007) case. According to which the Austrian authorities were aware or should have known of a situation that was extremely dangerous to Fatma Yildirim yet the Public Prosecutor denied the requests of the Police to arrest Irfan Yildirim and place him in detention. The failure to have detained Irfan Yildirim is seen as a breach of the State party's due diligence obligation to protect Fatma Yildirim.

However, in order to determine the effectiveness of a State's duty to act with due diligence one must distinguish between two main concepts: "Rule of Law" and "Culture of Impunity". Brian Tamanaha, law Professor at Washington University, defines States that are classified under the Rule of Law as societies in which "governmental authorities and the people are bound by and abide by the law" (Tamanaha, 2012). He adds on that even though the definition provided is basic; there are several requirements that stem from it. Rule of Law first, requires the existence of a system of laws. Second, the law should be understood and known by all. Third, the imposed law cannot be impossible for people to meet. Fourth, the law should not include discrimination and be made equal to all. Fifth, effective and independent mechanisms and institutions for law enforcement. Sixth, accountability in case of breach and violations. By contrast, a culture of impunity as defined by Jorge E. Viñuales, law professor at the University of Cambridge, impunity refers to the impossibility of bringing perpetrators of human rights violations to account since they are exempted from accountability, conviction and providing reparation for the victim (Viñuales, 2007). Michele Bachelet, former President of Chile and former executive director of UN Women, once said: "Often women and girls subjected to violence are violated twice – the first time when they are subjected to violence, and the second time when they seek services and justice they are entitled to; however, do not find them" (Wilson Center, 2020). Bachelet's word are highly relatable in States where impunity dominates. According to Julie Goldscheid & Debra J. Liebowitz, professors of Law at the City University of New York and Drew University respectively, a State's failure to act with due diligence in instances of violence causes additional harm to survivors, which further contributes to a lack of accountability in a culture of impunity (Liebowitz,

2015). Michel Forst, former secretary general of the French National Human Rights Institution and former UN special rapporteur on the situation of human rights defenders, states that impunity for human rights violations and abuses is one of the main obstacles to protect and exercise human rights; therefore, he gives great importance to the right to access justice and the State's duty to act with due diligence (Forst, 2019). He adds that the failure to comply with due diligence and access to justice implies that impunity will *de facto* flourish leading to human rights violations. According to Gabriela Knaul, a judge and former UN special rapporteur on the independence of judges and lawyers, for the prosperity of the concept of the rule of law two main elements must exist: access to justice and the independence of the justice system (Knaul, 2015). According to Rashida Manjoo, law professor and former UN special rapporteur on VAW, "the first step to prevent acts of VAW is the enactment of legislations" and in order to determine if the State is complying with its due diligence duty one must look into the number of judgments that prosecuted perpetrators and the reasoning behind these judgments (Manjoo, Report of the Special Rapporteur on VAW, its causes and consequences, 2014). According to Radhika Coomaraswamy, lawyer and former UN special rapporteur for children and armed conflict, one of the indicators that determine whether a State is performing its due diligence duty is the State's effort to implement and adopt measures that raise awareness and modify discriminatory policies and laws (Coomaraswamy, 2003).

According to Ben Smith, a legal researcher at Equal Rights Trust, the evolution of discriminatory laws within a society is based on the "single-axis" approach (Smith, 2016). According to Snjezana Vasiljevic, law professor at the University of Zagreb, the "single-axis" implies that the laws and courts recognize only one legitimate ground or

identity; an example can be gender; either men or women (Vasiljevic, 2010). Kimberlé Crenshaw, law professor and critical race theory scolar, introduced the concept of intersectionality based on the experiences of black women (Crenshaw K. , 1989). She considered the "single axis" model failed and oppressed black women by making them invisible to white women. According to Crenshaw, intersectionality is the approach for analysis, advocacy and policy development through addressing different forms of discrimination in order to understand how each identity affects the rights and opportunities of the other. According to Suzanne Knudsen, author, in order to explain and understand the inequalities within a society and culture one should study how the different categories intertwine. The different categories such as gender, race, ethnicity, disability, sexuality, class and nationality (Knudsen, 2006). According to Crenshaw, violence against women occurs in patriarchal societies where man try to assert control and dominance over women and girls; therefore, it is essential to understand the nature and origin of such patriarchy in order to address and prevent VAW (Crenshaw K. , 1994).

1.3. Thesis Statement

Monism in a system based on the culture of impunity, the case of Lebanon where those in power have an intentional unwillingness to allow the Lebanese legal framework in the area of gender based violence (GBV) against women and girls, to meet international and national norms and standards.

1.4. Methodology

This thesis shall be conducted through an empirical research methodology. It aims to use a data analysis approach in an attempt to study and evaluate the Lebanese legal framework's compliance with international standards regarding GBV and the challenges they currently face in the 21st Century. The research shall rely on primary and secondary sources such as treaties, NGOs reports, IGOs reports, laws, encyclopedias, law journals, books, country reports, existing interviews and surveys.

In an attempt to test the thesis statement, the thesis shall be divided into two main chapters. The first shall provide an overview of the relationship between international law and national law. This section shall present the theoretical debate between Monism and Dualism, the theory that is applicable to the case of Lebanon and finally the applicability of the theory in practice with Lebanon as the case study. The data is gathered from articles, books, journals, reports and interviews.

The second part shall be the review chapter through which the thesis statement is being tested through an empirical and analytical approach. In this chapter, the Lebanese legal system will be examined and analyzed by evaluating two main systems of power: the legislative system and the judicial system. The legislative section shall examine the following Lebanese legislation related to GBV: the Protection of Women and Family Members from Domestic Violence law also known as law No 293 of 2014, the Lebanese Penal Code also known as law No 340 of 1943 and the Law to Criminalize Sexual Harassment and Rehabilitation of its Victims also known as law No 205 of 2020. Here the impact of impunity and intersectionality will be illustrated within the Lebanese legal system. This section shall proceed to provide judicial cases related to the previously discussed laws. These cases shall study three main points: whether monism is expressed

or neglected, the effect of the culture of impunity (CoI) in the case and finally, the role of intersectionality in the case. The section shall end by analyzing the gathered data.

Finally, the thesis shall end with the concluding section that will prove that the Lebanese monist state that is rooted in a CoI intentionally fails to address and improve the women and marginalized groups' status due to the unwillingness of those in power.

CHAPTER 2

THE RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW

The relationship between international law and national law is a topic of longstanding theoretical debate around the world. As described below, there are two basic understandings of this relationship. However, in many regions, on the level of application, this theoretical discussion may seem irrelevant, abstract and merely speculative considering the context, i.e. the institutionalized culture of impunity in a case such as that of Lebanon. This section shall start by discussing both theoretical approaches and then proceed to determine which of them would seem more applicable in the case of the Lebanese legal and political context; and finally determine the actual applicability and feasibility of the more applicable theory in the Lebanese institutionalized culture of impunity.

2.1. Theoretical Debate

Monism and dualism are the two dominant concepts and approaches used by scholars to describe the relationship between international law and national law. That being stated on the assumption that both concepts shall properly and effectively operate in a society based on the rule of law, and not in an institutionalized culture of impunity. Some scholars have added a third concept known as the monist-dualist approach, which represents a hybrid mixture of both the monist and dualist approaches (Mutubwa,

2019).[1] However, for purposes of expediency, this paper will not be discussing the hybrid approach, but rather shall focus on the main two concepts: monism and dualism. Ultimately, it must be determined whether either of them are applicable in a culture of impunity, systemic corruption, and clientalism, before it is possible to test the hybrid variant.

2.1.1. Monism

The monist theory came into existence at the beginning of the 20th century. The most popular founders and supporters of the monist theory are Geogres Scelle, Hans Kelsen and Alfred Verdross (Kirchmair, 2018). According to the monist approach, international law is regarded as part of the national law without need for domestication. According to G. Ferreira and A. Ferreira-Snyman, , professors in Law and Jurisprudence at North-West University, international law and domestic law are perceived as a single system of law; therefore, international law may be directly enforced before national courts without the need to incorporate it into the domestic laws (Ferreira-Snyman, 2015). Thus, treaties and conventions upon the signing and ratification are immediately incorporated as part of the state's national laws. According to Ferreira and A. Ferreira-Snyman, the monist approach may be established in states either by direct application of these international instruments through their national laws or by expressing through their constitutions, the place of international law in accordance with their national laws.

[1] Mutubwa defined the hybrid approach by dividing it into two categories. The first category consists of international instruments that are self-executing; thus do not require domestication by national laws in order to be enforced. While the second category consists of international instruments that require national mechanisms and procedures in order to be effectively executed such as international agreements that create human rights obligations.

In addition, according to Kelsen, the law is a hierarchical system in which each legal norm derives its validity from a higher norm. This idea provided by Kelsen is currently known and represented through the Kelsen's pyramid. According to Amrei Müller, international law is situated at the top of the pyramid. Meaning, international law may validate or invalidate laws and acts of the domestic legal system (Müller, 2013).

2.1.2. Dualism

According to the dualist approach, domestic laws are separate from international law instruments. Ferreira and Ferreira-Snyman stated that contrary to monism in which international laws and national laws are regarded as a unified system of law; dualism considers these two sets of laws as separate areas of law that exist alongside one another (Ferreira-Snyman, 2015). They continue by stating that, for these two distinct areas of law to be united, dualist states shall incorporate, domesticate and translate these international law instruments into their national laws. According to Amrei Müller, dualist states shall have the freedom to decide on the methods and procedures they wish to follow in order to incorporate international laws into their domestic legal system (Müller, 2013). As a result, domestic laws shall have superiority over international laws that have not yet been incorporated.

2.2. The Case of Lebanon in Theory

According to the aforementioned overview of both theories, it will be established here that Lebanon can be categorized as a monist state. In order to substantiate this

position, the following section shall identify the appropriate classification of the Lebanese legal system within the monist-dualist dichotomy.

Some have characterized the Lebanese legal system to be a mixture of Civil French Code, Ottoman legal traditions and religious laws (Factbook, 2020). This classification stems from Lebanese history. Since 1516, the Lebanese territories had been under the control of the Ottoman Empire. The Ottoman state had adopted several legislations that were based on the French laws while having other specific laws that were subjected to religious and confessional laws.[2] After the fall of the Empire in World War I, Lebanon was under the French Mandate for 23 years (1920 until 1943).[3] On 22 November 1943, Lebanon became an independent state. During the French Mandate, many laws were redrafted in accordance with French laws with the exception of personal status, showing the dominance of the French legacy; as well as, eastern societies in the spirit of Lebanese laws and judicial organization (Chalhoub, 2004). Therefore, the most dominant characterization given to the Lebanese legal system is a civil law based system, which originated from continental Europe, specifically France (Nsouli, 1971). To this day, due to the great influence of the French Mandate, the French laws and the legal system as a whole have been deeply rooted in Lebanon and many Lebanese lawyers and judges give reference to and rely on French doctrines and jurisprudence in their work.[4] In general, it is agreed that most countries that have a civil law system are characterized as monist states while countries that have a common law system are characterized as dualist states (Leanne McKay, 2015). Thus, being classified as a civil law legal system, and

[2] Mainly matters pertaining to personal status (such as inheritance, marriage…) where subjected to religious laws.
[3] The French Mandate over Lebanese and Syrian territories was confirmed at the San Remo Conference in 1920, which was later signed and approved by the League of Nation in 1923.
[4] For instance, the Lebanese Civil Code is mainly based on the French Napoleonic Civil Code.

because of the historical context and legal traditions, Lebanon can be considered as a monistic state in its relationship between domestic and international laws (Laverack, 2015).

Accordingly, in Lebanon, although not explicitly articulated in the Constitution, it has been agreed through customs and norms that every international law or norm that has been approved, ratified and signed by the Lebanese state becomes part of the Lebanese domestic laws automatically (UNDP, The Gender Justice & the Law , 2018). Issam Nehme Ismail stated in his article that, in Lebanon, treaties and conventions are not superior to the constitution (Ismail, 2021). He argues that treaties and conventions in Lebanon are to be negotiated, ratified and adopted in accordance to the constitution; specifically according to article 52 of the Constitution; therefore, what was created by force of the Constitution cannot be superior to it.

Thus, the constitution is the highest law in the State and no law shall be above it. According to Andre Al Chidiac, the Lebanese Constitution has supremacy over International laws; therefore, all agreements and treaties that shall be adopted by the Lebanese State shall be in compliance with the Lebanese Constitution. He adds on to state that although not explicitly stated in the Lebanese Constitution, it is implicitly known. In addition, paragraph (B) of the Preamble of the Constitution, explicitly, gave some treaties and conventions, constitutional force such as treaties of the League of Arab Nations, United Nations Organization treaties and conventions and finally the Universal Declaration of Human Rights. These treaties and conventions explicitly stated in the Constitution are regarded as an inseparable part of the Lebanese Constitution; thus giving them the superiority of the Constitution (Daoud, 2010). However, all other treaties,

conventions and international/regional agreements are placed below the Constitution, shall be integrated within the domestic laws and shall comply with the Constitution (Ibrahim, 2020). According to Dr. George Assaf, international legal expert in Human Rights and International Law, the insertion of explicitly some treaties in the preamble of the Constitution, giving them Constitutional value and enforcing them into the domestic order, confirms the monistic conception of the Lebanese legal system. Thus, in theory, the State shall not ratify nor adopt any treaty or convention that violates or contradicts the Constitution; however, it may, ratify and adopt a treaty while setting reservations on clauses that they deem in non-conformity with the Constitution. In case of conflict between a treaty – other than those that have constitutional force – and constitution, the Constitutional Council shall have competence to examine the constitutionality of all that is below the Constitution.[5]

Focus now shifts to the placement of domestic laws in accordance with international treaties and conventions; based on the joint application of the preamble of the Lebanese Constitution; as well as, article 2 of the Civil Procedures Law international treaties ratified by Lebanon are considered applicable law once they are published in the Official Gazette (Daoud, 2010). According to the hierarchy of laws and as explicitly articulated in article 2 of the Civil Procedures Law, it is established that international laws have precedence and supremacy over domestic laws. Article 2 continues by stating that national laws shall respect and comply with both the Constitution and International laws. Moreover, it explicitly stresses on the duty and obligation of Lebanese Courts to comply with the principle of hierarchy and supremacy

[5] Law No 250 of 1993, that established the Constitutional Council, granted the Council the right to look into the Constitutionality of all that is below the Constitution instead of regular and administrative Courts and that was Confirmed through articles 18 paragraph (1) of the Constitution and article 1 of the Establishment of the Constitutional Council Law.

of international laws over domestic laws whenever a conflict arises between the provisions of treaties and ordinary laws. Thus, in an attempt to ensure the effective implementation of the rights of individuals both tribunals and litigants have the right to apply and refer back to provisions included in ratified treaties (UNDP, Gender-Related Laws, Policies and Practices in Lebanon, 2018). Provided the aforementioned, it is evident that the features of the monist theory seem to apply to the Lebanese State.

2.3. The Case of Lebanon in Practice

The domestic application of international law, primarily by national courts, has recently been a subject of debate where many claim that in modern times, the monist and dualist distinction is progressively losing its significance (Omiti, 2012). Moreover, both theories are often criticized for being too simple, in opposition to reality and having a limited significance in practice (Ammann, 2019). However, the theoretical debate between monism and dualism does not seem to apply to the reality of Lebanon. The debate seems to be between the applicability of the monist theory in a system based on rule of law, on the one hand, and amidst an institutionalized culture of impunity, on the other.

Good governance and the dominance of the rule of law are necessary for a peaceful, just and prosperous nation. According to the Center for Peace and Development Initiative, on an individual scale, impunity can be defined as follows “when someone acts with impunity, it means that their actions have no consequences”. According to International Human Rights Law, impunity can be referred to as the absence of justice to victims due to the failure of holding perpetrators of human rights violations accountable. According to the UN Special Rapporteur, impunity is defined as the case in which public

authorities fail – intentionally or unintentionally – due to legal obstacles or lack of political will – to fulfill their international obligations to investigate violations committed by the perpetrators and failing to hold them accountable for their human rights violations (Orenthlicher, 2005). Impunity is categorized as one of the biggest human rights problems and a fundamental source for continuous human rights violations (UNCHR, 1998). It is often considered that impunity is the main obstacle to upholding the rule of law in many states leading to gross human rights violations (OHCHR, 2011). In general, it is commonly known that the culture of impunity dominates countries that lack the rule of law, suffer from corruption or have a weak judicial and justice system. A post-colonial or post-conflict country with diverse social groups (ethnic, religious, cultural…) trying to proclaim a new national identity will struggle with clashing interests, expectations and needs (Leanne McKay, 2015). This is applicable to Lebanon, which is a highly sectarian and confessional state. According to the Mckay, a minimal definition of the rule of law shall include government's accountability before the law.

Along with the lack of rule of law, as described above, various recent studies have also described Lebanon as a society and political system based on impunity (Almoghabat, 2021). It therefore is considered expedient for the purposes of this study to conclude that a culture of impunity dominates the Lebanese state and institutions. Over the years, impunity has taken the form of systemic and institutionalized impunity. The mechanisms to hold state actors accountable, checks on arbitrary use of power and protection of the independence of the judiciary are all very weak and some would describe them as non-existent and highly politicized. The Lebanese people see themselves as victims of this system rather than players and would seem to have no hope for remedies or reparation for these grave human rights violations. Lebanon, a country governed by a variety of

warlords, along which a party called "Hezbollah" designated as a terrorist group[6], is currently suffering from political turmoil, the Covid-19 pandemic and financial crisis. In addition, the unprecedented Beirut explosion on August 4, 2020, and its aftermath all have proven the state's lack of interest in the citizens, justice and the law (International, Lebanon: Only an International Investigation can set the Course for Justice for Beirut Blast, 2020). Mohammad Almoghabat states that the Beirut blast is the most obvious example of the systemic impunity that has dominated the country (Almoghabat, 2021).

One of the results of a dominant culture of impunity is systemic corruption. In literature, there are two main forms of corruption, i.e. petty corruption and systemic corruption. According to Transparency International, petty corruption is defined as bribes or abuse of entrusted power by public officials in their interactions with citizens, usually in aims of fastening bureaucratic procedures. However, systemic corruption also known as endemic corruption is a form of corruption due to the weakness and ineffectiveness of an organization or system as a whole. It is not limited to individuals acting corruptly. Robert Klitgaard, an American academic, former president of Claremont Graduate University and former dean at Fredrick Pardee RAND Graduate School, states that what characterizes systemic corruption the most is that "the many parts of the government that have a duty to prevent corruption have themselves become corrupt". Kiltgraad defined corruption through a formula as follows: corruption is evident once the corrupt gains more than the penalty he shall receive multiplied by the likelihood of being held accountable (Klitgaard, 1988). In Lebanon, corruption is categorized as endemic within the Lebanese political system (Courson, 2020). Nasser Saidi, former minister of the Ministry of

[6] According to "the961", almost 64 countries have designated Hezbollah as a terrorist group.

Economy and Trade and former vice president of Banque de Liban, described Lebanon as "a rare combination of an experienced kleptocracy and a kakistocracy" (Merhej, 2021). These terms refer to a corrupt political system in which the political elite took advantage of public funds for their own personal interests and have ensured that unqualified and incompetent people manage governmental affairs (Merhej, 2021). Mohamad Almoghabat further states in his article, that no new corruption investigations have been initiated and old corruption files have been stopped although the Financial Public Prosecute called upon m any politicians and public officials in order to continue them. According to the press release of the U.S. State Department, Secretary Steven T. Munchin stated that *"the systemic corruption in Lebanon exemplified by Bassil has helped erode the foundation of an effective government that serves the Lebanese people".*[7]

Another result of impunity is the violation of the principle of separation of power. The principle of separation of power is attributed with the notion of checks and balances; accordingly, each branch shall perform its function and the other branches of government shall monitor the other branch in an attempt to prevent one branch from dominating the other. The preamble of the Lebanese Constitution guarantees the principle of "separation of powers", according to which the various branches shall maintain cooperation and balance between each other. In reality, in Lebanon, the principle of separation of powers that has constitutional value is not respected and all branches seem to be highly interlocked. According to Antoine Sfeir, "the executive branch plays a self-appointed preeminent role over the legislative branch" (Sfeir, 2021). He adds on to state that the idea of a "coalition government" created inadequate institutions that ridicule and belittle

[7] Gebran Bassil, the President of the Free Patriotic Movement has been sanctioned pursuant to executive order 13818 for his role in corruption, which builds upon and implements the Global Magniysky Human Rights Accountability Act – targeting corruption and severe human rights abuses.

the concept of separation of powers; also, very often the parliament would agree to governments that were in reality mini-parliaments that represented different political parties each working in favor of their own personal interests rather than that of the nation. According to Imad Harb, the political leaders have constantly worked together "coalition" on policies and rules that serve them all (Harb, 2006). Sfeir, also criticized the parliament's inability and unwillingness to look into the decisions and actions of these governments because several parliamentary blocs were and still are represented in these cabinets. Also, Ziad Abdel Samad criticized the confessional partition of power that symbolizes the Lebanese political system on grounds that it weakens and hinders proper governance and manipulates state institutions (Samad, 2016). As a result, power becomes centralized in the hands of the confessional/political leaders and dependent on their interests and decisions. He also considers that the intentional poor governance, the weak institutions and lack of transparency leave room for political interference in the judiciary. Sfeir, criticizes the judicial system's inability to hold the political system accountable. He also emphasizes on the politician's reluctant efforts and will to not allow nor accept any laws or regulations that may strengthen the independence of the judiciary for if they did allow it then there power will be at stake. According to Ghassan Moukheiber, the political/confessional leaders have established a hegemony over the constitutional institutions. This resulted in the supremacy of the executive branch over the parliament, ineffective mechanisms of oversight and accountability by the parliament and a weak judicial system that lacks impartiality and independence (Moukheiber, 2021). Moukheiber also criticized the Constitutional Council's inability to accept requests for constitutional interpretation and it in reality it has very rarely been used for constitutional review of laws. George Assaf adds on to state that, in practice, the treaty-constitution

conflict for instance has never been raised since the creation of the Constitution Council. Thus, it is possible to believe that the treaty- constitution conflict or even the law-constitution conflict is merely an assumption in the case of Lebanon (Assaf, 2020). In Lebanon, when reviewing and analyzing the constitutional texts and laws in general, the spirit and underlying intention(s) of the legislator very often seem to benefit the political leaders and not the public good. In addition, according to the Constitution all citizens are equal before the law; however, this has not stopped the issuance of several immunities for public officials and civil servants. According to Sfeir, these immunities symbolize political impunity. In reality, many examples can be given to prove that the case of Lebanon is intentional abuse by political/confessional leaders and not merely poor governance. For instance, the presidential gap for years, the long periods to establish a cabinet amidst an economic crisis, the political will to hinder and slow the Beirut Blast investigations, the creation/legalization of immunities for politicians and officials called for investigation in the Beirut Blast, the illegitimate weapons within the state and the list goes on…

As mentioned earlier, accountability is an essential tool in the fight against corruption; therefore, in theory, all branches, officials and individuals within these branches shall be held accountable for any form of violation they are part of or commit. However, in reality, impunity – specifically for grand corruption – is dominant in the Lebanese State, which implies that the corruption is systemic and intentional. According to a UNDP report, the non-accidental corruption in Lebanon is a tool to strengthen the political system as a confessional system which controls citizens and in which public officer abuse the State's public goods to later on be redistributed to political clients (Moukheiber, 2021). In the case of Lebanon, it is established through all that has been

mentioned, that the lack of checks and balances, the absence of the rule of law, the dominance of the culture of impunity are all intentional abuse and not merely an accident of a poor administrative system.

In order to study if the Lebanese legal system complies with the international standard two main systems of power shall be evaluated: the legislative system and the judicial system. The legislative system shall be examined by providing an assessment of the Lebanese laws and their compliance with international laws. The judicial system shall be examined by providing an assessment of the impartiality and independence of the Courts and by examining precedents in order to determine the times and efforts in which tribunals applied international laws over domestic laws and cases in which the law was fairly applied in cases of GBVAW.

The independence and impartiality of the judiciary is necessary in order to ensure the proper protection of human rights and the prevalence of justice. The absence of an independent judiciary jeopardizes the rights and freedoms of the citizens resulting in rendering the citizens vulnerable to severe violations by the more powerful. The principles of independence and impartiality of judges has been guaranteed in several international human rights instruments ratified by Lebanon. Such as in articles 7 to 11 of the UDHR that deal with the principles of equality before the law and of presumption of innocence. Also, article 14 of the ICCPR. In addition, Lebanese domestic laws have also given importance to this principle through its constitution. Both the fifth paragraph of the preamble of the Constitution; as well as, article 20 respectively, encourage the principle of separation, balance and cooperation among the three powers – judicial, legislative and executive – and protect the independence of the judiciary in order to guarantee justice for

all. The principle of independence of the judiciary is further reaffirmed through article 1 of the Civil Procedures Law, article 419 of the Lebanese Penal Code, articles 4 and 44 of the Law on the Judiciary and article 14 paragraph (3) of the Law on the Status of the State Council.

In theory and on paper, Lebanese domestic laws seem to comply with the international standard of judicial independence and impartiality. However, in practice there is constant interference with the functioning of the judiciary through the legislative and executive branches and the individuals within these branches. Therefore, it is clear that "the Lebanese judiciary suffers from almost systemic violations of the principle of separation of powers by political officials and from the intrusion of politics in its affairs" (Daoud, 2010).

Going back to the main debate "how does monism play itself out within a culture of impunity", it is evident through the studied laws and judicial cases, that impunity constitutes a deterrent and obstacle in monist systems. The next chapter shall explore the Lebanese legislation and judicial decisions regarding GBVAW. The main laws that will be examined are Domestic Violence Law (Law No 293/2014), the Penal Code and the Sexual Harassment Law (Law No 205 of 2020).

CHAPTER 3

THE LEBANESE LEGAL FRAMEWORK

As previously established in Chapter 2, in theory Lebanon falls within the category of a monist state. Accordingly, national Lebanese laws shall not only comply with international laws and norms but these set of international laws that have been ratified and signed by the Lebanese state shall be considered as part of the domestic laws that shall be respected, implemented and may be used before national courts. This chapter aims to prove that the weak, inadequate and discriminatory Lebanese legal framework both – legislative and judicial – is an intentional policy adopted by the power elites due to the CoI.

This Chapter is divided into three main sections. The first section shall describe and examine the Lebanese legislation pertaining to VAW. The selected laws for this paper are: the Protection of Women and Family Members from Domestic Violence law also known as law No 293 of 2014, the Lebanese Penal Code known as law 340 of 1943 and the Law to Criminalize Sexual Harassment and Rehabilitation of its Victims also known as law No 205 of 2020. The second section shall provide Lebanese jurisprudence in order to study the reasoning behind the Court's verdict in matters related to GBVAW. The third section shall provide a judicial example of the Marwan Habib case. This section was added because of the popularity of the case during the October 2019 Lebanese revolt, the unwillingness of the Lebanese justice system to hold the perpetrator accountable; however, he was sentenced before Miami Courts. In addition, since the Law to Criminalize Sexual Harassment and Rehabilitation of its Victims also

known as law No 205 of 2020 has been recently enacted and prior to that date there was no sexual harassment law, it was also difficult to find sexual harassment cases.

3.1. Lebanese Legislation Pertaining to VAW

In this section, we will be dealing with three main legislations that deal with GBVAW. The first law is the Protection of Women and Family Members from Domestic Violence law also known as law No 293 of 2014. This law mainly aims to provide protection for women and other family members from domestic violence. It consists of a punitive section and a protective section. The second law is the Lebanese Penal Code also known as law No 340 of 1943. The Penal Code is more than 70 years old; however, it contains provisions that address some GBV crimes and punishments. This paper shall present rape, honor crimes and sexual harassment crimes and punishments as provided for in the Penal Code. The third law is the Law to Criminalize Sexual Harassment and Rehabilitation of its Victims also known as law No 205 of 2020. Issued in 2020, this law aims to criminalize and punish sexual harassment in Lebanon, specifically sexual harassment within the workplace, after years of absence of such legislation.

These laws were have been chosen for this thesis for they are the most relevant legislations that address the issue of GBV. The purpose of this review is to establish a baseline for the study of the application of monism in Lebanese GBV laws, to illustrate the intersectional nature of this law and practice, and to determine to which extent the CoI plays a role in the implementation of the law.

3.1.1. Domestic Violence Law – Law No 293 of 2014

Content: In 2014, the Lebanese parliament introduced law No 293 on the Protection of Women and Family Members from Domestic Violence law, issued on 7 May 2014, which is a step forward in addressing the issue of GBV in Lebanon. The original draft was the collective work and efforts of 64 NGOs; however, the draft was heavily reduced (OECD, Lebanon's Social Institutions and Gender Index 2019, 2019).[8] This law mainly aims to provide protection for women and other family members from domestic violence. This law was further amended in 2020 through Law No 204.[9]

This law is divided into two main sections: the punitive section and the protective section. The punitive section aims to provide punishments for crimes that have been stated in the Penal Code, if these crimes are to occur between family members. In addition, the law criminalizes and punishes acts of beating and harm. The protective section allows the victim the right to request a protection order from competent authorities in an attempt to separate the victim (and other affected family members) from the perpetrator.

The law starts by defining individuals who are considered as family members. It includes any of the spouses, the father or the mother of either of them, the brothers and sisters, the ascendants and descendants, whether legitimate or illegitimate, and those united by the ties of adoption, marriage up to the second degree of affinity, guardianship, custody, orphan sponsorship, stepfather or stepmother. Article 2 defined domestic violence as "an act, act of omission, or threat of an act committed by any family member against one or more family members as seen in the definition of family, occurring during or because of marriage, and that results in killing, or physical, psychological, sexual, or

[8] One of the amendments was the naming of the law; which was originally requested to be VAW.
[9] This section is in reference to Law 293 & its amendments.

economic harm".[10] It is important to note that psychological, marital sexual and economic abuse have been recently added through Law 204, for a long time they were not considered as forms of violence under this law. The law also set out crimes and punishments amending the Penal Code.[11] The crimes are forced begging, prostitution, adultery, homicide, indecency, threatening or causing harm to a spouse, use of force and abuse in order to cause psychological and economical harm.

Law 293 determines the necessary procedures to be undertaken for domestic violence cases.[12] According to article 4 of the law, each governorate shall be assigned a public prosecutor to receive domestic violence complaints, to examine and investigate in them. With the amendments of Law 204, the number of judges/defenders has been increased. Accordingly, in the governorate, the public prosecutor shall appoint one or more public defender(s) to receive, follow-up and investigate in the complaint. Also, the first investigative judge in each governorate, shall appoint one or more investigative judges to investigate in the domestic violence complaints. Article 5, establishes a domestic violence specialized unit at the Directorate General of the Internal Security Forces (ISF) to act as the judicial police for received complaints. This unit shall be structured according to the ISF laws and regulations and shall cover all Lebanese territories without exception. This article also encourages the inclusion of female officers in the unit. The law also provided punishment for the public prosecutor and officers if they 1) commits any act(s) of fear and intimidation against the victim in an attempt to force the victim to step back from the complaint; 2) neglects or ignores the complaint

[10] Article 2, amended by article 1 of law 204.
[11] Article 3, also amended by law 204.
[12] Articles 4 to 7.

he/she received.[13] It further emphasizes on the duties & obligations of the public prosecutor along with the procedures that he shall take upon receiving the complaints.

In addition, law 293, through article 11, allows women to obtain temporary protective measures from the police while waiting to receive the protection order from the Court. The procedures to be carried out by the victim in order to request the protective order are as follows:[14] Once violence occurs, the victim shall file a complaint within 24 hours to the ISF or with the Public Prosecutor. Then the prosecutor may issue a detention order to protect the victim from being contacted by the perpetrator. If there is high risk of danger the prosecutor may prevent the perpetrator from entering the house for 48 hours or may detain the perpetrator. Once the investigation is closed and the file is transferred to the Court: The woman may request a protection order from the investigation judge, the Criminal Court judge or the judge of summary (also known as the Judge of Urgent matters). The judge shall give his/her decision within 48 hours. This decision can be appealed. The public prosecutor can implement the decision once it becomes final. Based on the judge's discretion, the protection order may include one or more of these measures or even others not stated. No contact between the perpetrator and the victim, removing the perpetrator from the house, temporary change in accommodation if the victim is at risk, oblige the perpetrator to provide financial support, enable the victim to take her properties and belongings.

Article 18 of the law, imposes punishment on whoever violates the protection order and the penalty is augmented if the violation is accompanied with abuse or if the violation is repetitive.

[13] Article 8.
[14] Articles 11 to 16.

Article 21 of this law, calls for the creation of a special fund through the State's contributions to the yearly budget of the Social Affairs Ministry and through donations in an attempt for assisting victims of domestic violence, providing necessary help and rehabilitation for perpetrators.

Comments: Definitely, the enactment of law 293 and its amendments law 204, which was the result of more than two decades of hard work and activism by civil societies, was a great turning point in the Lebanese society and laws (Charlotte Karam, 2020). Amal Mudallali, Lebanon's permanent representative to the UN, tweeted that the passing of the 2014 domestic violence law is a major victory for women's rights and all those who have been calling and working for it to happen. However, this law faces many challenges. First, narrow and limited scope definition (Gender-based violence in Lebanon: Inadequate framework, ineffective remedies, 2019). The law failed to explicitly incorporate most/all GBV acts. Although by the end of December 2020, lawmakers broadened the scope of the definition of domestic violence to include and penalize economic and psychological violence; however, it failed to mention rape, marital rape, sexual assault, sexual harassment, acts that deny women and girls their reproductive rights (ICJ, 2020). The ICJ further raised concerns regarding other acts of GBV that may arise in a patriarchal society – like Lebanon – have not been mentioned in this law; such as honor killings, child marriage, forced marriages, preventing women from leaving the house, trafficking women and girls. The preliminary draft that was introduced before the Lebanese Parliament insisted on including marital rape within the GBV crimes; however, neither religious authorities nor their representatives acknowledged this concept (Choueifati, 2021). Second, priority to personal status laws over civil laws. Article 22 of Law 293/2014, grants personal status laws and religious courts superiority over civil

courts in determining if certain acts constitute violence and shall be criminalized (UNDP, Gender-Related Laws, Policies and Practices in Lebanon, 2018). This article states that all laws that contradict law No 293/2014, shall be annulled with the exception of personal status laws. However, personal status laws neglect the recognition of VAWG, contain discriminatory provisions and approve some GBV/discriminatory acts (HRW, 2015). Moreover, Law 293/2014 did not explicitly provide any legal provision that addresses conflicts that may emerge between civil courts judgments and religious courts judgments in matters of domestic violence. This proves dominance of religious and sectarian powers over women and girls' human rights. Third, the burden of proof lies on the victim. It is ironic to think that the victim should prove the abuse instead of the perpetrator trying to disprove his crime. Attempting to access justice and proving the claimed case may subject the victim to even more abuse (Choueifati, 2021). Fourth, no funding. To this day there are no evidence nor information on whether such fund was created (OECD, Lebanon's Social Institutions and Gender Index 2019, 2019). The Lebanese government has a recurring pattern of not providing information and whereabouts about funds and donations in diverse sectors and issues (Combaz, 2018). Fifth, unrecognition of specific groups. Law 293/2014, protects all women present in the Lebanese territories; however, this creates an obstacle to illegal residents who are unable to benefit from this protection (Yassin, 2017). The law failed to provide further recognition and protection to refugee women, LGTBQ, migrant worker, migrant domestic workers, women and girls with disabilities. These groups, might be exceedingly exposed to different kinds of domestic and sexual violence, are not targeted by the law although they require even stronger protection. Syrian refugee women and girls are highly exposed to several cases of GBV; however; most of the cases are not reported for there is a lack in legal provisions that

protect them (Usta, 2015). People with disability are at high risk of GBV; yet no legal protection is accessible to them (Combaz, 2018). The final version accepted by the Parliament, after their several requests for amendments, are proof of the direct and intentional influence of religious and elite authorities' power in shaping legislation in Lebanon (Salameh, 2014). Those in power do not hesitate to strongly oppose and hinder the human rights of women, girls and specific groups (UNDP, Gender-Related Laws, Policies and Practices in Lebanon, 2018). The aforementioned comments show the intentional attempt of religious and elite powers in limiting protection against VAWG and allowing the deeply rooted discriminatory nature of laws to prevail over women, girls and specific groups' human rights.

3.1.2. The Penal Code

The Penal Code contains several articles that cover some acts that are considered as GBV under International Human Rights. The crimes that will be discussed are rape, sexual harassment and honor crimes. However, the ongoing reporting and occurrence of deadly incidents of VAWG along with the lack of accountability for perpetrators, questions the effectiveness and adequacy of criminal laws in protecting women from various forms of GBV.

3.1.2.1. Rape – Sexual Assault

Content: Articles 503 and 504 of the Lebanese Penal Code define the crime of rape as the coercion by violence, threats, deception, or abuse of a mental or physical impairment, of any person other than one's spouse into sexual intercourse, and lay down the punishment for this offense. These articles add on to consider rape as a punishable

crime if committed outside marriage while explicitly excluding forced sexual intercourse within marriage. Article 505 criminalizes rape committed against a minor. Articles 506 and 507 respectively impose sanctions upon anyone – relative, religious leader or an official – who abuses their official position and powers to force a minor (15 and 18 years old) into sexual intercourse and anyone who forces someone by use of violence or threat to endure an indecent act. Articles 507, 508, 509, 510, 519 and 520 of the Penal Code also prohibits and punishes indecent acts against minors. Article 524, sanctions anyone who seduces, with or without her consent, a women or girl under the age of 21 in an attempt to satisfy the needs of others. Article 522 provided exemptions for the offender from punishment to all crimes stated in articles 503 and 521 of the Penal Code. The offender was to be exempted from these crimes if he was to marry the victim. Since both the Law No. 293 and the Penal Code have failed to mention marital rape, the CEDAW Committee and many civil activists has been highly demanding that the criminalization of marital rape (Committee C. , 2008). In an attempt to abolish article 522 regarding rape-marriage law, in December 2016, ABAAD launched the campaign **"A White Dress Doesn't Cover the Rape".** Also, Jean Oghassabian, a former member of the Lebanese Parliament, criticized this article and other provisions of the law as laws from the Stone Age. Thus, in 2017, article 522 was repealed.

Comments: First, limited and weak definition for sexual violence. Law No. 293 of 2014 gave a restricted reference to sexual violence; while the Penal Code only mentions rape as a form of sexual violence and refrained from identifying any other form such as sexual assault or sexual abuse (UNDP, Gender-Related Laws, Policies and Practices in Lebanon, 2018). This narrow definition of rape further undermines a women or girl's rights, especially when it is attributed or combined with different legal

provisions that fall outside the scope of the penal code; i.e. personal status legal provisions. Second, the virginity factor (Gender-based violence in Lebanon: Inadequate framework, ineffective remedies, 2019). Articles 503-512 of the Penal Code, consider "virginity" as an aggravating factor in rape crimes and their punishments. In other words, determining whether the victim was a virgin at the time, the rape was committed determines the punishment of the perpetrator. If she was a virgin then the punishment shall be increased; however, if she was not, then the punishment will be lessened. According to legal practice and precedents in Lebanon, sexual intercourse is understood within the scope of vaginal penetration and is only possible between man and women, making rape only possible if the victim and the perpetrator where female and male (LAW, 2021). The notion of "virginity" in rape crimes shows the deeply rooted patriarchal and discriminatory nature of the Lebanese legal system (Karame, 2021). Third, ironically, although the exemption through marriage was abolished regarding rape crimes, articles 505 and 518 still regard a valid marriage as an act that shall suspend the criminal liability of the perpetrator (UNDP, Gender-Related Laws, Policies and Practices in Lebanon, 2018). KAFA considered the repeal of article 522 as a "partial victory" mainly because of articles 505 and 518, which still provide an exemption from punishment (KAFA, 2017). In an interview with al Jazeera, Manar Zaiter, a lawyer with the Lebanese Women Democratic Gathering NGO, stated that she will not applaud the Lebanese Parliament's efforts in repealing article 522 for this is a right that should have been granted a long time ago and although article 522 was repealed articles 505 and 518 still exempt the perpetrator from his rape and sexual assaults committed to girls (between the ages of 15 and 18) if they gave their consent or if there is a prior promise for marriage (Najjar, 2017). Article 505 states that the rape of

a minor – regardless of her consent – under the age of 15 is a punishable offense. Anyone who raped a minor between the ages of 15 and 18 shall be punished by imprisonment and the punishment shall be increased if the minor is under 12 or between the ages of 12 and 15 years. Article 518, states that any man who seduces a virgin girl while promising to marry her afterward shall be punished. However, both articles add on to stipulate that a valid marriage contract will suspend the prosecution. These provisions indirectly are encouraging child marriage in an attempt to be expected from accountability and protecting the honor of the victim. Thus, no effective protection is available for girls. The notably most vulnerable group of child marriage are Syrian refugees in Lebanon (HRW, 2017). Fourth, no recognition for marginalized groups. The rape crime's scope is limited for it fails to target all groups that are subject to this crime. No reference is made to refugee women and girls, migrant domestic workers, LGTBQ and women and girls with disabilities. Although it is well known that Lebanon hosts many Syrian and Palestinian refugees, along with a large number of domestic workers from diverse nationalities; all who are vulnerable groups who suffer from discrimination, violence and lack of access to justice (LAW, 2021). It is evident from the aforementioned comments that the Penal Code contains discriminatory provisions regarding rape crimes, limited scope of definition and patriarchal nature in drafting the laws. The lack of political will to improve the status of women, girls and marginalized groups is evident in the current Lebanese Penal Code which is more than 70 years old. Although several amendments have been proposed to the Lebanese Parliament, to this day there has been no comprehensive review conducted (Gender-based violence in Lebanon: Inadequate framework, ineffective remedies, 2019).

3.1.2.2. Honor Crimes

Historically, honor crimes exempted their perpetrators from punishment according to article 562 of the Penal Code. Studies show that the plea of hour crimes lies within the scope of femicide, where women were shot, beaten, stabbed, strangled, poisoned or burnt by men simply because they are women (Gabriel, 2008). Honour crimes have been taking place under the pretext of "cleansing" the same that male family members undergo when a female relative (spouse, cousin, child…) commits or is assumed to have committed an act contrary to cultural norms (Baydoun, Cases of Femicide before Lebanese Courts, 2011). Accordingly, this article exempted whoever catches his wife or one his female ascendants or decedents or his sister committing unlawful sexual intercourse or adultery and as a result, he unintentionally injures or kills one of them. Later in 1999, article 562 of the Penal Code was amended and instead of exemption it allowed the reduction of the punishment for perpetrators of honor crimes (UNDP, The Gender Justice & the Law , 2018). It is deeply rooted in the offender's mind and imagination their predominant patriarchal position in society and this causes a threat (Committee C. , 2008). Meaning that the reduction of the punishment is not enough to contain the offender from committing such a crime under the name of "Honor" which still threatens the safety of girls and women. In 2011, this article was repealed. Although article 562 of the Penal Code was repealed, article 252 of the same law raises concern. Article 252 can be categorized as a "crime of passion", which grants the perpetrator a reduced sentencing if he committed the crime in a state of anger (Mikdashi, 2011). The issue with this article is that it is still used by judges to shorten the sentencing of the perpetrator, so after honor reduction was repealed, article 252 remains to grant this reduction (Alami, 2020). To this day, the judicial system is merciful on murderers who

commit crimes in a moment of rage (Moussa L. S., 2020). This will be further elaborated in the Mana Assi Case in the following section. Moreover, to this day there is no accurate statistics for honor crimes since these crimes are mostly classified as suicide cases instead of murder and the perpetrator is often not held accountable (HRW, Lebanon: Law Reform Targets 'Honor' Crimes, 2011). The aforementioned clearly shows that although the provision has been removed, there is still legal loopholes that allow the perpetrator to benefit and in some cases the perpetrator is not even held accountable. Thus, the State does not have the intention of holding perpetrators fully accountable to such crimes.

3.1.2.3. Sexual Harassment

Prior to December 2020, both the Penal Code and the Labor Law did not address nor include the term sexual harassment.[15] However, it may be stated that the Penal Code imposes sanctions for actions, which may fall within the scope of sexual harassment. For instance, articles 385, 507, 519 & 532 of the Penal Code impose punishment for acts that fall within the scope and description of sexual harassment. Therefore, Lebanese Courts have long been condemning perpetrators of sexual harassment as indecent acts as provided for in the criminal code. Definitely not having laws that discuss sexual harassment although there are many victims and vulnerable marginalized groups facing such crimes shows no political will to address this issue (Munshey, 2020).

[15] Both laws did not define, criminalize nor punish sexual harassment.

3.1.3. Sexual Harassment Law – Law No 205 of 2020

Content: Up until 2020, there had been no law that criminalizes and punishes sexual harassment in Lebanon, specifically sexual harassment within the workplace. The CEDAW Committee, in its 2015 concluding observations, urged the Lebanese State to adopt a legislation that criminalizes sexual harassment within the workplace. After years of absence of a legislation that criminalizes sexual harassment, it was until December 2020, that Lebanon passed it first law regarding sexual harassment known as law No 205 of 2020 "Law to Criminalize Sexual Harassment and Rehabilitation of its Victims". Daniella Hoyek, lawyer at ABAAD, in here interview with Al Jazeera stated that the enactment of such law gives a little hope in these difficult times that Lebanon is going through.[16] It shows that we are not living by the law of the jungle. The newly enacted law consists of 6 main articles.

The first article defined sexual harassment as any unfamiliar repetitive bad behavior committed against the victim and against the victim's will that infringes the victim's body, privacy or emotions irrespective of the place. The behavior may be through words, acts, signs, sexual or pornographic signals or any other method, including electronic devices. In addition, any act or attempt – even if not repetitive – through the use of emotional, moral, material or racial pressure which gives the perpetrator or others a benefit of sexual nature is also considered sexual harassment. The second article provides punishments for perpetrators of sexual harassment through imprisonment and settlement of a penalty and the punishment shall be augmented if the crime was recommitted or reattempted. The third article explicitly states the cases in which the prosecution of the victim's complaint may not be suspended. It also states the steps that

[16] Lebanon is has been suffering from an economic crisis, political instability, global health crisis (corona virus) and the aftermath of the Beirut Port Explosion.

shall be adopted in order to protect the victim and the witnesses throughout the investigation and prosecution process. It requires the security agencies, prosecutors and the judges to take into consideration the mental and emotional state of the victim and witnesses during the investigation or prosecution along with providing a safe environment for them. The fourth article further strengthens the protection of both the victim and the witnesses through restricting and rejecting all forms of discrimination and infringements on all rights that are protected by the law. It adds on to impose punishments to whoever violates such rights. The fifth article states that the criminal prosecution does not stop the victim's right to pursue civil remedies including the unlawful termination of the employment contract. In addition, the victim has the right to receive compensation for the psychological, moral and/or material harm incurred. The sixth article calls on the Ministry of Social Affairs to create a sexual harassment fund in order to support the survivors and to rehabilitate the perpetrators. The fund shall consist of donations, annual budgetary allocations and 10% of the penalties settled by the convicted.

Comments: First, vague and limited in scope. It requires the officials to consider the mental and emotional state of the victim and witnesses during investigation and prosecution procedures. However, it is highly debatable how effectively and fairly the process will be carried out and the law is silent on this matter. According to the International Commission of Jurists, the justice system in Lebanon limits women's access to justice, lacks effective and just gender-sensitive investigations, and contains limited resources, discriminatory and gender stereotypes in policies and practices (ICJ, 2020). This leaves space for violations and provides limited protection. Second, no civil remedies. The law fails to provide an adequate legal framework which enables the victim to seek compensation before civil courts in case the victim does not want to request the

compensation before the criminal courts. This law falls short of international standards and failed to follow an " inclusive, integrated and gender-responsive approach" since sexual harassment was addressed solely as a crime while neglecting to make civil remedies an available option for victims (HRW, Sexual Harassment Law Missing Key Protections, 2021). According to the Legal Agenda, this law allows the victim to seek justice and protection through the criminal courts while failing to include the civil courts. Refraining from allowing the victim to go before civil courts most probably results in the victim not filing a complaint since the only resort they have is before criminal courts where the case will be public (The Legal Agenda, 2020). Third, no funding. Several funds have been created in Lebanon; however, many have not yet been activated or they took many years to start operating (Combaz, 2018). In addition, today Lebanon is facing a financial crisis with corrupt elites in power. This makes one wonder whether the creation of such fund is even possible. Fourth, no recognition for the unbalanced power between employee and employer. The law also failed to address and distinguish the unequal and hierarchical division of power between the employee and the employer, which leaves room for the employer to take advantage and exploit the employee (France 24, 2022). An example is the burden of proof. Accordingly, the burden of proving sexual harassment lies on the victim rather than the perpetrator; which seems unjust. Fifth, Failure to include marginalized groups. The law has failed to include migrant domestic workers, Syrian and Palestinian refugee women, the LGTBQ community and people with disabilities, who are at high risk of sexual harassment. Migrant domestic workers are bound by the Kafala (sponsorship) system, which grants full authority and power to their employers in determining their living and working situation. This leaves them exposed to different types of violations while lacking protection. The lack of legal protection legitimizes the

exploitation of migrant workers and as a result they are underpaid, discriminated against and subjected to daily life GBV (Carrascal, 2021). The Kafala system is attributed with the Lebanese patriarchal norms and approaches, which are rooted around control (Zeina Mehzer, 2021). In recent years, many efforts have been made requesting the abolishment of the Kafala system and the adoption of a new law; however, to this day the Lebanese government has taken no major steps (Cabruja, 2021). These efforts might remain on paper for a long time because of the Lebanese government's intentional unwillingness and corruption (Rak, 2020). Syrian and Palestinian refugee women and children are vulnerable groups that are highly exposed to sexual harassment in Lebanon yet they have no legal protection. Based on a study conducted in Burj Barajneh, the Palestinian camp, it was shown that women and children are most subjected to sexual harassment (Khalidi, 2015). Moreover, based on a report by Amnesty International, out of 77 Syrian refugees from diverse areas in Lebanon, the majority claimed that they were constantly faced with sexual harassment in public (International, Lebanon: 'I Want a Safe Place': Refugee Women from Syria Uprooted and Unprotected in Lebanon, 2016). These numbers along with no legal laws for victim protection and accountability for the perpetrators are a clear sign of the lack of political will to address the issue. The case is similar to people with disabilities who continuously face persistent and aggressive sexual harassment. However, there is a systemic lack of laws for people with disabilities in Lebanon because of the intentional inaction of the State, political deadlock and neglect towards the issue of disability (Combaz, 2018).

After having presented the chosen Lebanese legislation, the next section shall proceed to provide some case examples in order to assess the judicial verdicts in relation to their application of Lebanese laws when dealing with GBVAW.

3.2. Lebanese Judicial Decisions Pertaining to VAW[17]

This section shall proceed to examine Court decisions for the previously presented GBV laws. Mainly aiming to provide examples of verdict and reasoning taken by the Lebanese judiciary in matters related to GBVAWG. This section is intended to assess three main points through each of the presented cases: first, whether monism is expressed or neglected in the case. Second, whether the CoI is exemplified in the case. Third, the role of intersectionality in the case.

This section will present three decisions issued by the Judge of Urgent Matters for protection order requests. In these three cases, the applicable law is law 293 of 2014 on the Protection of Women and Family Members from Domestic Violence. Then three decisions issued by the Criminal Court for rape/sexual assault crimes. The applicable law in these cases is law No 340 of 1943, the Penal Code. Finally, one decision issued by the Criminal Court for sexual harassment. The applicable law in that case is law No 205 of 2020 on the law to Criminalize Sexual Harassment and Rehabilitation of its Victims.

3.2.1. Judge of Urgent Matters

Case Number: N/A
Applicable Law: Law 293/2014 on the Protection of Women and Family Members from Domestic Violence
Category: Domestic Violence
Protection Order Request

[17] The sources from which the cases have been retrieved are: the Lebanese University website of the "Center for Research and Studies in Legal Information" "مركز الابحاث والدراسات في المعلوماتية القانونية" , Legal Agenda's report on Sexual and GBV in Lebanon and the EU4WE guide on Justice for Survivors of Domestic Violence.

Facts: The wife (the petitioner) was subject to domestic abuse by her husband since their marriage in 2010 (they had a child in 2012). He would constantly beat and threaten her. The end of July 2019, the husband aggressively assaulted her, he held a knife to her throat and threatened to kill her. He also called his son into the room so that he can witness the murder of his mother. Early September, the wife's attorney requested the Judge of Urgent Matters to issue a protective order in her favor. The petitioner accordingly submitted evidence – medical reports – proving both the physical and mental abuse that the wife had suffered from (some which she still suffers from today) and its effect on both her physical and mental health.

Procedures: The Judge of Urgent Matters set a hearing for September 17, 2019. They both appeared before the judge. The husband admitted that he suffered from a mental problem and he has abused his wife several times. The judge proposed reconciliation to the parties. The petitioner rejected reconciliation and no protection order was issued. A few days later, the petitioner submitted further medical reports to prove her claim.

Decision: On September 24 2019, the judge ruled to issue a protective order and to oblige the petitioner's husband to first, stop all contact with his wife, son and her family (in case of violation a penalty shall be settled). Second, to give the petitioner ___ L.L. as son expenses. Third, to allow his wife to recover all her stuff from their marital home. As a safety measure, a clerk accompanied the petitioner to her marital home.

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. First, the concrete evidence of violence submitted the first time by the victim were not taken into account by the judge of summary as a reason

to grant a protection order. Second, the timeframe since she filed her petition for a protective order until the time she actually received it is almost 2-3 months. According to article 13 of Law 293/2014, protective orders should be issued within 48 hours maximum. However, the timeframe in this case violated the law, leaving the victim unprotected and the perpetrator free from accountability. Third, the judge of summary offered reconciliation although there was concrete evidence (the husband even admitted) of constant abuse. Although according to the law and international standards, reconciliation should not be an option is violence crimes especially if the abuse is repetitive and constant. Reconciliation repositions the victim in an abusive environment and does not provide any protection for the victim while leaving the perpetrator free from accountability. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and females. The wife (victim) was unable to directly receive the protection that she and her son needed, on the contrary, the Judge prolonged and complicated the granting of the protection order although concrete evidence was submitted and the perpetrator (husband) admitted to his abusive behavior. Thus, the prolonged timeframe and the unacceptance of the evidence by the Judge put the wife and son (victims) in an inferior position to the husband (the perpetrator).

3.2.2. Judge of Urgent Matters

Case Number: N/A
Applicable Law: Law 293/2014 on the Protection of Women and Family Members from Domestic Violence
Category: Domestic Violence, Protection Order Request
Protection Order Request

Facts: On May 11 2017, the wife requested a protective order and to oblige her husband to settle house/food expenses on grounds that she and her four children have been repeatedly physical, mentally and emotionally abused by her husband. She supported her claim with proof. Two of her children are from a previous marriage. She further claimed that her husband has been sexually harassing and forcing into prostitution (in return of money) their teenage daughter.

Procedures: On May 15 2017, the judge requested the wife to submit proof if there is any other legal proceeding before the Court between her and her husband. To submit proof of her work and income. To submit information regarding her husband and children residency. To submit all available evidence in order to validate granting the petition. On May 24 2017, the wife submitted medical reports that prove the physical and psychological abuse.

Decision: On May 29 2017, the judge ruled to grant the wife the protective order and to oblige the husband to leave his marital home within three weeks, to refraining from contacting his wife and kids, to provide daily expenses for the family and to oblige the husband to attend rehab sessions.

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. First, the concrete evidence of violence submitted by the victim were not enough for the Judge and he requested additional various documents although the already submitted documents proved the abuse claimed by the victim. Second, the timeframe since she filed her petition for a protective order until the time she actually received it is almost 3 weeks. According to article 13 of Law

293/2014, protective orders should be issued within 48 hours maximum. However, the timeframe in this case violated the law, leaving the victims unprotected and the perpetrator free from accountability. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and female; including children. The wife (victim) was unable to directly receive the protection that she and her children needed, on the contrary, the Judge prolonged and complicated the granting of the protection order although concrete evidence was submitted. Thus, the prolonged timeframe and the unacceptance of the evidence by the Judge put the wife and her children (victims) in an inferior position to the husband (the perpetrator).

3.2.3. Judge of Urgent Matters

Case Number: N/A
Applicable Law: Law 293/2014 on the Protection of Women and Family Members from Domestic Violence
Category: Domestic Violence
Protection Order Request

Facts: The wife was being beaten by her husband. After some time, the husband left the house and neglected all the needs of his family. Later she no longer was able to pay rent so she and her kids moved to her family's house and she filed for divorce. She was granted custody of the children; however, her husband has been delaying the divorce proceedings by refusing to sign the divorce papers unless his wife agrees to lose custody and not ask for any alimony. One day she met with her husband, thinking she was going to get money for her sick daughter, but upon arrival he assaulted and beat her forcefully leaving her unconscious. He called the police claiming that she attached him and as a

result he had to take such measures. The police filed a report against the husband. As a result, the wife filed a criminal complaint before the Public prosecution..

Procedures: She requested a protective order on 2 July 2019 for her and the kids. She submitted the police report, the criminal complaint and medical reports that prove the physical, mental and emotional abuse she went through. She also submitted proof of the psychological state of her kids that had to witness this abuse.

Decision: The judge issued the protective order on May 3, 2020.

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. The timeframe since she filed her petition for a protective order until the time she actually received it is months later. According to article 13 of Law 293/2014, protective orders should be issued within 48 hours maximum. However, the timeframe in this case violated the law, leaving the victims unprotected and the perpetrator free from accountability. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and female. The wife (victim) was unable to directly receive the protection that she needed. The Judge prolonged and complicated the granting of the protection order although concrete evidence was submitted. Thus, the prolonged timeframe and the unacceptance of the evidence by the Judge put the wife (victims) in an inferior position to the husband (the perpetrator).

3.2.4. Criminal Court

Case Number: 302/2015
Applicable Law: Law No 340/1943, the Penal Code
Category: Rape

Hearing date: 17/06/2015
President of the Panel: Jocelyne Matta
Counselors: Nidal Howayek & Hussein Al Abdallah

Facts: In May 2014, the Plaintiff filed a lawsuit against her husband accusing him of the following crimes: rape attempt and sexual harassment of her three daughters (14, 12 and 10 years old). All three daughters testified that their father did in fact commit indecent acts with them. In addition, the medical examiner, Dr. Bilal Sablouh, conducted three medical reports, all which prove anal penetration in all three girls. However, the accused repeatedly denied the crimes attributed to him. He further claimed that his wife is "loose", "has a bad reputation" and has been in multiple relationships with different men. The public prosecutor requested the conviction of the accused; whereas, the accused asked for "innocence, pity and mercy".

Decision: The Court ruled to the innocence of the accused of the rape crime – as defined in article 507, supported by article 511 of the Penal Code, on grounds of failure to prove the accusations and insufficient evidence.

Reasoning: In rape and sexual harassment cases, medical report are required. The medical reports shall measure the virginity of the victim; if the report does not prove that the victim lost her virginity due to the committed act; then the report cannot be used as proof. The medical report submitted in this case proved anal penetration; thus it did not constitute enough proof to the Court.

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. First, proving a rape crime is depended on proving the loss of virginity of the woman or girl. If loss of virginity is not proven then the

perpetrator may not be convicted for his crime. Therefore, reports that do not prove loss of virginity are not effective evidence before the Court in rape crimes. Thus, limiting the victim's protection and freeing the perpetrator from accountability. Second, the Court did not consider the Plaintiff and her three daughters' testimonies as proof although they were backed by the medical report. Third, the Defendant denied the accusations and thus, the Court ruled to his innocence. The Court took the perpetrator's statement over the Plaintiff and the 3 daughters' statements and their medical evidence. Thus, the perpetrator was not held accountable for his crimes and the victims left unprotected. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and females/children. It clearly shows how the Court requires loss virginity as a mandatory condition for rape crimes; in other words any other forms of penetration or molestation may not be accepted by the Court to hold the perpetrator accountable. Making it more difficult for women and girls to prove rape before Courts. Moreover, it is evident that the verdict was rendered by favoring the perpetrator's denial of the crime attributed to him over the statements of all victims and their submitted medical proof. Thus, the unacceptance of the concrete evidence and testimonies submitted by the Plaintiff and her children to the Court, the failure to prove loss of virginity and the favoring of the perpetrator's statement to that of the victims put the wife and children (victims) in an inferior position to the husband (the perpetrator).

3.2.5. Mount Lebanon Criminal Court

Case Number: N/A
Applicable Law: Law No 340/1943, the Penal Code
Category: Rape
Hearing date: 15/11/2017

President of the Panel: N/A
Counselors: N/A

Facts: The Plaintiff, who works as an oriental dancer, filed a lawsuit against the Defendant who she accused of rape. Stating that after an argument they had, he went on to rape her in her chalet. The Plaintiff submitted a medical report to prove her claim.

Decision: The Court ruled to the innocence of the accused of the rape crime – as defined in article 507.

Reasoning: The Plaintiff waited some time before filing the lawsuit. There were contradictions in her testimonies. The Plaintiff was characterized as a liberal and open "mutaharira wa mounfatiha" women due to the nature of her work as an oriental dancer. In addition, the Court considered the consent as evident due to her liberal mentality and since in the past for several times they have already had a sexual relationship (in accordance with the Defendant's testimony).

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. First, proving a rape crime is depended on proving the loss of virginity of the woman or girl. If loss of virginity is not proven then the perpetrator may not be convicted for his crime. Therefore, reports that do not prove loss of virginity are not effective evidence before the Court in rape crimes. Thus, limiting the victim's protection and freeing the perpetrator from accountability. Second, the Court did not consider the Plaintiff's testimony and medical reports as proof. Third, the judgment was issued in a manner that blames the woman's behavior and prejudges her because of her work. The Plaintiff was prejudged and not victimized on grounds that she is an oriental dancer with a liberal mindset thus, she could not have been raped. This

old fashioned and discriminatory approach, regardless of the details and reality of the case, directly negated the chance of the existence of a sexual violence/rape crime towards the victim. Thus, the victim is left without justice and protection while the perpetrator is left unaccountable for his actions. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and females. Moreover, it shows the Court's discriminatory, stereotypical and patriarchal approach in reasoning and rendering its verdicts. Where, the Court considered the woman's openness and liberal way of living as an implicit acceptance to perform and engage in sexual acts. Thus, the Court belittled her claims and evidence while on the other hand, favoring of the perpetrator's statement, which left the women (the victim) in an inferior position to the perpetrator.

3.2.6. Criminal Court

Case Number: 210/2015
Applicable Law: Law No 340/1943, the Penal Code
Category: Sexual Assault
Hearing date: 28/05/2015
President of the Panel: Joseph Samaha
Counsellors: Francois Elias & Layla Reaidy

Facts: On 17 April 2007, Fatima Nagib Mourad filed a lawsuit against Abu Fady, owner of glass shop, and Abu Abed, owner of coffee shop, accusing them of attempting to sexually assault her minor daughter. Stating that they took her into the glass shop where they took off her clothe, they also took off their lower part clothing and attempted to assault her. The daughter, Rima Talal Choker born in 1995, gave her testimony regarding the assault that she was exposed to by both men and she testified that there was no intercourse; however, there was molestation and other indecent acts committed. Both Abu Fady and Abu Abed denied and refuted the daughter's testimony. They

claimed that her mother set her up because she wants money. A medical report was submitted that proved that the girl did not lose her virginity and that she had a red mark near her thigh; however, it cannot be guaranteed that it is due to assault.

Decision: The Court ruled to the innocence of both the accused men.

Reasoning: The medical reports shall measure the virginity of the victim; if the report does not prove that the victim lost her virginity due to the committed act; then the report cannot be used as proof. The medical report submitted does not consist enough proof for an assault crime. In addition, the Court did not consider the Plaintiff and her daughters' testimonies as proof.

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. First, proving a rape crime is depended on proving the loss of virginity of the woman or girl. If loss of virginity is not proven then the perpetrator may not be convicted for his crime. Therefore, reports that do not prove loss of virginity are not effective evidence before the Court in rape crimes. Thus, limiting the victim's protection and freeing the perpetrator from accountability. Second, the Court did not consider any of the testimonies submitted by the mother and the daughter. Third, the medical reports submitted were not considered as enough proof to hold the perpetrator accountable. Although the young girl testified that there was no penetration; however, they performed on her other sexual acts. The medical report that showed a red mark near her thigh was not looked much into since there was no proof of penetration or loss of virginity. Fourth, thus, the Court favored the testimonies of the perpetrators on grounds that the girl did not submit enough proof of her claim. Thus, the victim is left without justice and protection while the perpetrator is left unaccountable for his actions.

This reasoning is based on the simple idea that if loss of virginity is not proven through a medical report, the perpetrator's testimony is enough to rule to his innocence. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and females/children. It further shows the Court's discriminatory, stereotypical and patriarchal approach in reasoning and rendering its verdicts. It clearly shows how the Court requires loss virginity as a mandatory condition for rape crimes; in other words any other forms of penetration or molestation may not be accepted by the Court to hold the perpetrator accountable. Making it more difficult for women and girls to prove rape before Courts. Moreover, it is evident that the verdict was rendered by favoring the perpetrators' denial of the crime attributed to them over the statements of all victims. Also, the Court refrains from looking into the medical report submitted by the women and the daughter simply because it does not prove anything related to virginity; therefore, according to the Court it is not worth looking into. Thus, the unacceptance of examining the evidence and testimonies submitted by the Plaintiff and her daughter before the Court, the failure to prove loss of virginity and the favoring of the perpetrator's statement to that of the victims put the wife and daughter (victims) in an inferior position to the husband (the perpetrator).

3.2.7. Criminal Court of Beirut

Case Number: N/A
The Manal Assi Case
Applicable Law: Law No 340/1943, the Penal Code
Category: Honor Crimes
Hearing date: N/A
President of the Panel: Helene Iskandar

Facts: Her husband, Mohammad Al Nhaily, murdered Manal Assi in front of her two daughters in 2014. It was reported that Mohammad had tortured Manal for two hours before killing her.

Decision: The Court ruled to reduce the perpetrator's sentencing from death penalty to a 5 years in prison.

Reasoning: In his testimony, Mohamad stated that he was in an extreme state of anger because Manal had admitted to cheating on him. Articles 562 and 252 of the Penal Code which allow the reduction of the penalty in case of cheating and extreme anger respectively. However, article 562 related to honor killings was abolished. Thus, the verdict reduced the sentencing in accordance to article 252 of the Penal Code without considering the crime as an honor killing.

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. First, the Court took the perpetrator's testimony as a justified cause for extreme anger; although other witnesses testified that Manal never cheated and Mohamad constantly abused her. Second, although the perpetrator was sentenced for his crime, the loopholes in the penal code along with the reasoning of the verdict, which took his testimony about his extreme anger, managed to highly reduce his accountability and judgment for his crime. Third, his word was taken over the word of other witnesses (family members and relatives). In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and females. It further shows the Court's discriminatory, stereotypical and patriarchal approach in reasoning and rendering its verdicts. It clearly shows how the Court took into account solely the testimony of the perpetrator and justified his extreme anger as a

justifiable cause for reducing the sentencing. Thus, his sentencing was reduced at the expenses of blaming the victim of cheating without looking further into the validity of his testimony. It is evident that the verdict was rendered by favoring the perpetrators' testimony over the statements of other witnesses. Thus, another proof that the deceased (his wife) was put in an inferior position to the husband (the perpetrator), who was partially held accountable.

3.2.8. Criminal Court, Beirut

Case Number: N/A
The Case of Jaafar Al Aattar
President of the Panel: Taki Al Dean
Applicable Law: Law No 205/2020 to Criminalize Sexual Harassment and Rehabilitation of its Victims
Category: Sexual Harassment

Facts: On 26 May 2021, a group of 7 women filed a lawsuit against Jaarafar Al Aattar before the public prosecution accusing him of sexual harassment. The women presented their testimonies before Hobeish police station. In September 2021, in accordance with article 2 paragraph (a) of the Sexual Harassment Law, the public prosecution charged Al Aattar with sexual harassment. Then the public prosecution referred the lawsuit to the Criminal Court in Beirut. The first hearing date was set for 11 November 2021; however, it was adjourned due to employee strike. The next hearing was set for 10 March 2022; however it was also adjourned due to the request of the Defendant's attorney claiming that there is a document she did not go through because she did not have a copy of that document. The next hearing was set for 14 April 2022 in which an interrogation session with the accused will take place in the presence of the claimiants.

Decision: The Court ruled to adjourn the hearing until 14 July 2022.

Reasoning: The Defendant's lawyer requested again the adjournment of the hearing on grounds that there are some documents in the file that the lawyer is not aware of and would like time to review them.

Comment: In this case, it is evident that monism is neglected. The Court proceedings and reasoning exemplify the CoI. First, the timeframe after which the Public Prosecution took action was four months which is relatively long. Second, the Public Prosecution took action only after the women started a campaign and protest against Al Aattar's actions towards them that consisted of a series of defamation, threat and intimidation acts against the women who exposed him requesting them to go back on their accusations before the Court. Therefore, this long timeframe, which left the perpetrator free from accountability, incurred more harm on the victim and others. Third, the perpetrator's attorney was requesting to suspend the hearing on questionable and weak grounds; however, the judge agreed to their request. This further delays the accountability process and leaves the perpetrator free. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and females. The victim's right to access justice is being clearly delayed and slowed down leaving the perpetrator free to roam in the streets without a sentencing. Moreover, the first delay by the Public Prosecution shows their lack of interest in the case at hand. It was not until the issue was raised before the public that they took action. Proving that officials are intentionally choosing the cases, they wish to take on. Thus, the prolonged delay put the victim in an inferior position to the perpetrator who is still roaming around free from accountability.

3.3. Additional Judicial Case

After presenting the judicial cases that were issued in by Lebanese Courts, this section shall provide an overview of the Marwan Habib case. The perpetrator who was left to roam free by Lebanese authorities; however, he got caught and is now sentenced for sexual harassment and assault in Miami.

3.3.1. Sexual Harassment – The Marwan Habib Case

Facts: An example of the weakness of the Lebanese legal framework and inadequate implementation measures is the case of Marwan Habib. Shortly after the October 2019 uprising that took place in Lebanon Marwan Habib's name and pictures became attributed with a "dangerous predator". Marwan Habib is a 32 years old Lebanese sports and fitness coach who has been accused of sexual harassment by many women. Many lawsuits and complaints were filed against him claiming him of sexual harassment and assault. Many women, even minors, shared their testimonies involving sexual harassment, attempt of sexual harassment and/or assault by Marwan Habib. According to statements provided by Kareem Majbour on his twitter account, a Lebanese lawyer who was handling the cases of the victims, Marwan Habib was constantly being bailed out immediately due to his strong connections with politicians. A factual example is when Marwan Habib got arrested on December 25, 2019 at Rafic Hariri airport after arriving from Istanbul (Hayek, 2022). He was taken to Hbeish police station where he was released on the same day on bail.[18] On January 6, 2022, the Miami Beach Police arrested Marwan Habib and the next day he was brought before a Miami, Florida, Court on charges of burglary with assault

[18] It is important to note that when these claims were filed against Habib, there was still no law that criminalized or protected victims from sexual harassment. Habib did not have much to worry about when it comes to being held accountable for his acts.

and battery two months after his arrival on a tourist visa.[19] He has been charged for assaulting a woman in her hotel room in Miami. Afterwards different women filed claims against him and thus he became accused of a double charge of sex battery, burglary and assault. Currently he is still in locked up in jail with no bail (Keuchkerian, 2022).

Comment: In this case, it is evident that monism is neglected. The fact that this perpetrator was never brought before Court although several women filed claims against him exemplify the CoI. First, he had been bailed out everytime he got arrested due to his strong political connections. Second, he managed to receive a visa to the United States although there were accusations against him. Third, he always managed to escape from trial; however, once he got to the United States he immediately got arrested. Proving more that in a Country where the rule of law prevails, the perpetrator will immediately be held accountable; whereas, in a country where impunity prevails, the perpetrator is left to roam around freely. In this case, intersectionality plays a role in demonstrating the discrimination and inequality between genders, both male and females. It also shows the special treatment that some people may get due to their political connections. This further proves the intentional power and control that authorities have over the judicial system as a whole. All, which is linked to the dominant CoI in Lebanon. The arrest of Marwan Habib in the US triggers his victims in Lebanon who have the full right to blame and judge the Lebanese judicial system's incompetence and ineffectiveness in holding him accountable for his crimes.

[19] According to L'Orient-Le Jour and Karim Majbour (a lawyer that took dozens of victims of Marwan Habib), Marwan was able to obtain a tourist visa because there was no sentencing against him it was merely complaints filed against him.

3.4. Common Findings

As a summary of this Chapter, the common findings in the studied GBV crimes are weak and limited scope definitions of GBV crimes. Not including nor addressing all GBV crimes within the laws. Dominance of Personal Status laws and religious authorities/courts over civil laws and courts. Borden of proof on the victim. Effect of virginity in crimes and the perception that is attributed to women according to the law. Lack of funding proof. Most importantly and the biggest proof of intersectionality is the discrimination between men and women within the law, along with the failure to include and address marginalized groups although they are the ones most in need of protection. It can be asserted that the common findings in all laws prove the systemic intention by political elites to have inadequate, discriminatory, weak and ineffective laws and even more the intentional unwillingness to address the issue of GBV.

The common findings in the studied cases. First, in domestic violence cases, victim's evidence – usually medical reports of the abuse – is not taken into account from the first time of submitting them. The Judge usually requests additional documents which delays the process of granting a protection order. The timeframe for granting the protection order took is delayed for weeks to months which violates article 13 of Law 293/2014. According to the law protective orders should be issued within 48 hours maximum. The judge as a solution to an abuse case often requests reconciliation. case of abuse. Second, in rape cases, medical reports are submitted in order to prove the virginity or non-virginity of the victim. The lack of proof that the victim lost her virginity, then the perpetrator is free from the crime. Thus, his testimony is favored over that of the female/victim or witness. The issue of virginity results in having verdicts that are patriarchal, bias and stereotypical in nature. Moreover, it further discriminates against

women and their right to live their life the way they choose, conservative or liberal. Third, in honor killing cases, although the honor killing article 562 of the Penal Code was repealed, the penal code contains loopholes that still largely reduce the penalty of the perpetrator, article 252 of the Penal Code without considering the crime as an honor killing. It simply justifies the perpetrator's crime if it was committed in a case of extreme anger. Fourth, in sexual harassment cases, the, public prosecution was slow in taking action and the Court delayed the proceedings based on weak grounds provided by the perpetrator's lawyer. Perpetrators not held accountable yet. Also proof that having strong political connections protects the perpetrator from any type of accountability. Moreover, the common finding in all the presented cases is that none of cases had an expression of monism; on the contrary, monism was neglected in all. Second, all contained reasoning that demonstrated the CoI. Third, the CoI in rendering the verdict showed the high level of discrimination between men and women/girls before the Lebanese laws and Courts. Based on these findings it is evident that there is lack of impartiality and independence within the judiciary. Lack of gender-sensitive approach, discrimination and patriarchal culture evident in Court's reasoning. This implies intentional unwillingness to provide victims with proper justice and protection along with their intentional willingness to leave perpetrators free from accountability.

CHAPTER 4

CONCLUSION

Gender discrimination and inequality is deeply rooted in the Lebanese legal framework. Assessing the legal framework from an intersectional approach, it was clear that there exists a high form of gender inequality and discrimination between men/boys and women/girls. This discrimination and inequality is not limited to women but it encompasses other marginal groups – such as refugee women and girls, domestic migrant workers, LGTBQ and the disable – that are not even represented in the Lebanese legal framework thus leaving them unable to ask for protection or demanding their rights. This high form of discrimination and inequality is attributed to the CoI that dominates the Lebanese State. This CoI often gives perpetrators complete freedom to do whatever they want without fearing accountability for their acts. On the other hand, the inferior group – in this case women, girls and marginal groups – are left without justice nor protection. Impunity given to men grants them the freedom to use violence and abuse against women, girls and marginal groups without fearing any consequences for their actions. The weak, inadequate and incomplete laws along with the discriminatory, biased and corrupt justice system grant this impunity to the perpetrators. Both the laws and the judicial system are not effective in granting protection and justice to the victims of violence mainly due to the high level of gender discrimination and inequality evident in the laws and the Court's decisions. The question remains as to whether this discrimination and this CoI is intentional or is it merely an issue of poor organization and management.

As a monist State, all international treaties and conventions ratified by Lebanon are immediately incorporated into the Lebanese national law. In theory, this implies that all international rights related to GBV and gender equality that have been ratified by the

Lebanese State are directly accessible to its citizens. However the applicability of this theory is possible once there is willingness by power elites to apply gender equality in practice. However, the studied law in many instances failed to meet international standards, they still contained gaps and all failed to target all groups that require protection from GBV. Moreover, none of the cases presented had even a slight expression of monism, the Court reasoning was discriminatory always favoring men and failing to effectively provide justice for the victims. The similar comments in both the laws and the cases are proof that the CoI causing this discrimination and gender inequality is in fact intentional unwillingness by those in power to actually make men and women equal before the law.

The common findings in the studied GBV crimes that are addressed within the Lebanese legal framework clearly represent the Lebanese State's unwillingness to address the issue. First, often the definitions of the GBV crimes are weak and limited in scope. Second, not all GBV crimes are incorporated and addressed. Third, Personal Status laws and religious authorities/courts have dominance over civil laws and courts. Fourth, the burden of proof lies on the victim. Fifth, the role of virginity and its relation with how a women is viewed. Sixth, no evidence of funds, where the law requires the creation of a fund. Seventh, marginalized groups are never addressed nor mentioned. Eighth, discriminatory provisions between men and women. Ninth, legal loopholes which often grant perpetrators a way from receiving full accountability. The similarity in the comments regarding the studied GBV laws clearly proves the systemic intention by political elites to have inadequate, discriminatory, weak and ineffective laws and even more the intentional unwillingness to address the issue of GBV.

The common findings in the studied cases. In domestic violence cases, first, the victim's evidence – usually medical reports of the abuse – is not taken into account from the first time of submitting them; often the Judge of Urgent Matters would request additional documents. Second, the timeframe from the date of filing the petition until the date of receiving the protection order took weeks to months which violates article 13 of Law 293/2014, which clearly states that protective orders should be issued within 48 hours maximum. Third, the judge offered reconciliation as a solution to a case of abuse. In rape cases, first, medical reports are required to prove the virginity or non-virginity of the victim. Second, virginity plays a vital role in proving rape. Third, male/perpetrator testimony favored over that of the female/victim or witness. Fourth, patriarchal, bias and stereotypical judgment against victims because of their liberal lifestyle. In honor killing cases, first, although honor killing has been repealed, the judge reduced the sentencing on grounds that the perpetrator was in a state of anger. Second, no evidence against perpetrator so no accountability. In sexual harassment cases, first, public prosecution delay in taking action. Second, delay before the Court. Third, perpetrator still not held accountable. Fourth, political interference to protect the perpetrator from accountability. Moreover, the common finding in all the presented cases is that none of them had an expression of monism; on the contrary, monism was neglected in all. Second, all contained reasoning that demonstrated the CoI. Third, the CoI in rendering the verdict showed the high level of discrimination between men and women/girls before the Lebanese laws and Courts. Based on these findings it is evident that there is lack of impartiality and independence within the judiciary. Lack of gender-sensitive approach, discrimination and patriarchal culture evident in Court's reasoning. This implies

intentional unwillingness to provide victims with proper justice and protection along with their intentional willingness to leave perpetrators free from accountability.

Another point worth mentioning is both the Lebanese laws and judicial system do not give significance nor interest in marginalized groups. All which suffer the most in the Lebanese societies. Domestic migrant workers, refugee women and children, LGTBQ and the disabled are subject to high levels of violence yet the law is silent about them and few verdicts are issued in their favor. The discrimination when dealing with violence goes beyond men and women it also encompasses other marginalized groups. These groups are left behind due to the intentional unwillingness is deeply rooted in the culture of impunity that dominates the Lebanese State. However, it is important to note before concluding, that impunity is one of many other factors that minimize women's access to justice and protection in matters pertaining to GBV. As it was showcased in this research, the culture of impunity in Lebanon very often results in making access to justice more difficult and the perpetrators' actions may go unquestioned. The culture of impunity implies that the State is unwilling to perform its international obligation to act in due diligence. This results in weak protection of human rights, limited enactment of effective and non-discriminatory laws, non-representation of all groups in society, restricted independence and impartiality of officials and the judiciary. However, in opposition to Lebanon, monism in a system based on the rule of law would have had a different impact on the issue of GBV. In such a system, laws would be adopted and modified in a manner that meets international standards and promotes gender equality and targets all groups within a society without any form of distinction or discrimination. The judicial system would be independent and impartial in rendering the verdict. The Court's judgments would be rendered in accordance with the existing laws and in case of gaps; judges may

rely on international laws. Moreover, everyone would have the right to access justice and protection. Most importantly, perpetrators would be held accountable for their actions. Thus, the intentional political unwillingness would not have power over the law and justice. Intersectionality; having men regarded as superior and overlapping to women would be abolished and gender equality will have a chance to prevail.

As a conclusion, monism in a system based on the CoI, as is the case of Lebanon in practice, results in intentional discrimination between men and women in laws and before Courts. Men are granted protection for their crimes while women and other marginal groups are denied protection for their rights. The State intentionally favors groups over others for their own personal interests irrespective of justice, the law and international standards.

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