

THE UNIVERSITY OF HULL

Investigating Domestic Violence through Human
Rights Lens in the Kingdom of Saudi Arabia

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By

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Abstract

Domestic violence can happen to anyone, but women and children in most cases of abuse are the victims. Despite considerable scholarship on domestic violence, Saudi Arabia remains an anomaly in terms of the Kingdom's approach to domestic violence from both a social and legal perspective. In 2013 a new law was introduced in Saudi Arabia that outlawed all forms of domestic violence. Also, in 2000 the Kingdom ratified the Convention on the Elimination of All Forms of Discrimination (CEDAW) with a general reservation on the basis that precedence is given to Islamic law in the situation of conflict between CEDAW's provisions and those of Islamic law.

This research has taken the challenge of assessing the effectiveness of the 2013 Saudi domestic violence law; and investigates the compatibility of the new law with the rights mentioned in CEDAW and its complementary instruments.

Through using a qualitative research approach based on textual legal analysis and conducting interviews with those involved in both the prevention and treatment of domestic violence, this thesis aims at offering an insight as to how the renaissance in outlawing domestic abuse works in practice.

The thesis employs an interpretive approach aimed at understanding and reconciling Saudi domestic violence law and International Human Rights Law.

The outcomes of the research reveal deficiencies in the legal text of the new Saudi Law; And highlight the performance of the Ministry of labour. The thesis suggests that the differences between International Human Rights Law and Islamic law view with regard to combatting domestic violence are minimal, although there is some conceptual divergence regarding women's rights. Finally,

this thesis contends that there is an urgent need to reform the provisions of the Saudi domestic violence law; and a need to provide an additional legal framework that bridges the gender inequality gap and challenges gender discrimination in Saudi Arabia.

Table of Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Convention on the Rights of the Child, 1989

European Convention for the Protection of Human Rights and Fundamental Freedoms, 1953

International Covenant on Civil and Political Rights, 1966

The International Covenant on Economic, Social and Cultural Rights, 1966

The International Labour Organization Domestic Workers Convention, 2011

Other documents:

Committee on Economic, Social and Cultural rights, General Recommendation No. 23, 2016

Committee on the Elimination of Discrimination against Women, General Recommendation No. 35, 2017

Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 on Violence against Women, 1992

Declaration on the Elimination of Violence against Women, 1993

Framework for Model of legislation on domestic violence, 1996

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999

Table of Statutes and Regulations

Statutes:

Saudi Shoura Council Law (Consultative Council) issued by Royal Decree No. A/91 on 1/3/1992

Saudi Council of Ministers Law issued by Royal Decree No. A/13 on 21/08/1993

Saudi Basic Law of Governance issued by Royal Decree No. A/91 on 1/3/1992

Law of Protection from Abuse issued by Royal Decree No. M/52 dated 15/11/14

Combating Domestic Violence in Kurdistan - Iraq Law, 2011

Saudi Law of Judiciary issued by Royal decree No. M/2 on 01/11/ 2007

Child Protection Law issued Royal Decree No. M/14 on 15/6/2015

Anti-harassment Law issued by Royal Decree No.488 on 23/6/2018.

Regulations:

Implementing regulation of Law of Protection from Abuse issued by Ministerial order No. 43047 on 10/03/2014

The Domestic Workers Regulation No. (310) issued by the Saudi Council of Ministers on 15 July 2013

The rules regulating marriage officiants work issued by the Ministry of Justice order No. 163 on 6/4/2003

Abbreviations

CEDAW	The Convention on Elimination of All Forms of Discrimination Against Women
CRC	The Convention on the Rights of the Child
DEVAW	Declaration on the Elimination of Violence against Women
DSP	The General Department of Social Protection
DV	Domestic Violence
FGM	Female Genital Mutilation
GCC	Gulf Cooperation Council
GR 19	General Recommendation No. 19 on Violence against Women
SHRC	Saudi Human Rights Commission
IPV	Intimate Partner Violence
KSA	The Kingdom of Saudi Arabia
MLSD	The Ministry of Labour and Social Development
MOJ	The Ministry of Justice
NFSP	The National Family Safety Program
NGO	Non-Governmental Organizations
NSHR	The National Society for Human Rights
OP	The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
UDHR	Universal of Declaration of Human Rights
VAW	Violence Against Women:
WHO	The World Health Organization

Chapter 1 Introduction

Violence against women persists in every country in the world as a violation of human rights and a major impediment to achieving gender equality. Such violence is unacceptable, whether perpetrated by the State and its agents or by family members or strangers, and whether it occurs in the public or private sphere, in peacetime or in times of conflict. The UN Secretary-General has stated that as long as violence against women continues, we cannot claim to be making real progress towards equality, development and peace.¹

1.1. General Background

The family is often equated with a sanctuary, a place where individuals seek love, safety, security, and shelter. But it is also a place that imperils lives, and breeds some of the most drastic forms of violence.² Domestic violence can be inflicted upon virtually anyone including men, women, and children. It can exist in every country, culture, class and ethnicity, and the perpetrators can be male or female.

There has been a distinction between Violence Against Women (VAW), which is beyond the focus of this study, and domestic violence.³ Domestic violence has

¹ United Nation General Assembly, 'In-Depth Study on All Forms of Violence against Women' [2006] Report of the Secretary General <<http://www.unhcr.org/refworld/pdfid/44168ab80.pdf>> accessed 11 May 2015.

² Julie Zothanpuii Khawlhing, 'Are Women Responsible for Domestic Violence?' (2014) 3 International Journal of Science and Research. See also, 'Domestic Violence Against Women and Girl' (2000) 6 Innocenti Digest 22 <<https://www.unicef-irc.org/publications/213/>>.

³ VAW is "any act of gender-based violence 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 in private life." This definition stretches the protection to cover all forms of violence against women occurring in the private or public sphere, whether the perpetrator is a stranger or a family member or the State. See: United Nation General Assembly Resolution, 'Declaration on the Elimination of Violence against Women' (20 December 1993) UN Doc A/RES/48/104 [hereinafter DEVAW].

been variably defined by different laws in different countries, international organizations and scholars; but all the variations refer to a crime which, although enjoying different characteristics, nevertheless contain forms of violence. Domestic violence is understood as violence occurs within the family sphere or involving members of the same household or who formerly shared a household.⁴ It is also known as domestic abuse, battering, family violence, and Intimate Partner Violence (IPV).⁵ Domestic violence commonly refers to a broader concept than IPV and refers to various forms that would include the aforementioned terms and they are used interchangeably in the literature.⁶ Also, the term domestic refers to the type of relationship between the victim and the abuser / perpetrator rather than the place where the violent act occurs.⁷ It covers numerous types of relationships such as marriage, family (e.g., spouses, partners, in-laws, parents, children, sibling) dating and cohabitation such as boyfriend and ex-boyfriends,⁸ or even domestic workers (from Saudi perspective), whether the violent act is active or passive. This study argues domestic violence may be perpetrated by not only an intimate partner but also by other family members or people who are linked with victims by legal relationship derived from trusteeship, guardianship, dependency, sponsorship and livelihood relationship as stipulated in the Saudi domestic violence law. Therefore, the legal protection within the Saudi domestic violence law has been extended very wide by the legislature to encompass all possible relationship to include even the residents of public and private shelters

⁴ Saltanat Childress, Deborah Gioia and Jacquelyn Campbell, 'Women's Strategies for Coping with the Impacts of Domestic Violence in Kyrgyzstan: A Grounded Theory Study' (2018) 57 Social Work in Health Care 164. Gunilla Krantz and Claudia Garcia-Moreno, 'Violence against Women.' (2005) 59 Journal of epidemiology and community health 818.

⁵ Audrey Mullender, *Rethinking Domestic Violence: The Social Work and Probation Response* (First edit, Routledge 1996). p.15.

⁶ Krantz and Garcia-Moreno (n 4).

⁷ Hence the Saudi domestic violence law encompasses the resident of public institutions such as shelters whom related by the abuser by one of the relationships mentioned in article 1 in the Law

⁸ Stergios Skaperdas and others, 'The Costs of Violence' *Social Development Department: The World Bank* (Washington, DC, USA, 1 March 2009) 1. p.59.

whom would abuse by workers during their stay in reaction to local needs.⁹ The rationale behind this inclusion is justified in the literature because the relationship between victim and abuser in domestic violence is the key factor distinguishing it from other forms of violence. Therefore, the abuser derives his/her power against the victim from the intimacy or trusteeship that develops between them in the private sphere, regardless of the abuse taking place during the current or former relationship.¹⁰

Although domestic violence in most cases targets women, women can also be the abusers; however, their actions constitute only a small percentage of domestic violence and tend to be less frequent and severe.¹¹ In many cases, domestic violence is accompanied by child abuse.¹²

Domestic violence has a devastating impact and extends far beyond the individuals and their household. The cost of individuals can be debilitating and include immediate medical expenses, legal costs, property damage, and time and productivity lost at work due to injuries and suffering.¹³ In addition, the strain on families and communities who bear the burden of housing and caring for victims is massive. On the macro level, the cost of responding to domestic violence

⁹ The study will discuss this issue in section 3.4.2.2

¹⁰ This term usually comes with guardianship and refers to formal bodies involved in foster care, child custody and related issues. Also, More details about the term in the Saudi context in section 4.2.2.1; See Also: Renate Klein, Meranda Horwarth and Liz Kelly, 'Ending Domestic Violence in Russia and the UK: Opportunities and Challenges in International Action Research' (2009) <<http://www.kc-ekaterina.ru/en/finalReport.doc>>.p.13

¹¹ Marianne Hester, 'Who Does What to Whom? Gender and Domestic Violence Perpetrators' [2009] Violence Against Women Research Group School for Policy Studies University of Bristol. p.3; Russel P Dobash and R Emerson Dobash, 'Women's Violence to Men in Intimate Relationships Working on a Puzzle' (2004) 44 British journal of criminology 324.p. 338

¹² Elaine Hilberman and Kit Munson, 'Sixty Battered Women' [1977] Victimology .cited in: Skaperdas and others (n 8).

¹³ *ibid.*

drains resources for health, justice, housing, and therefore, decreases the overall growth productivity.¹⁴

Domestic violence impact also extends to other sectors that cannot be measured in monetary value, as its impact undermines women's progress toward achieving equality in society and other human rights-related issues. Similarly, domestic violence has had a negative impact on children who face a greater risk of continuing the cycle of violence themselves in the short term, or by transmitting their experience across generations in the long term.

Prior to issuing a law against domestic violence, the Saudi criminal justice body had no written legislation to treat domestic abuse as criminal behaviour. In the absence of written penal code, judges relied solely upon their individual interpretations of the uncodified Sharia law to determine whether certain actions could be construed as criminal.¹⁵ In 2013, the Kingdom of Saudi Arabia (KSA) declared war on domestic violence for the first time by introducing a new law that outlawed domestic abuse in Saudi Arabia.¹⁶ The law extends to all family members, women and children,¹⁷ as well as to non-Saudi domestic workers. Penalties upon conviction for offenders in the Saudi domestic violence law include fines of up to \$13,000 (£ 9500) and jail sentences ranging from a minimum of one month to a maximum of one year. Also, Saudi law enforcement agencies will now also be held accountable for the investigation and prosecution of domestic violence cases. One particular difficulty that has been criticised

¹⁴ *ibid*; Nata Duvvury and others, 'Intimate Partner Violence : Economic Costs and Implications for Growth and Development' (2013).

¹⁵ Human Rights Watch, 'Saudi Arabia: New Law to Criminalize Domestic Abuse' <<https://www.hrw.org/news/2013/09/03/saudi-arabia-new-law-criminalize-domestic-abuse>> accessed 15 May 2015.

¹⁶ Law of Protection from Abuse issued under Royal Decree No. M/52 dated 15/11/2013 and its implementing regulation was released by Ministerial order No. 43047 on 10/03/2014

¹⁷ Saudi Arabia passed another legislation to protect children on 26/11/2014, which is considered complementary to the domestic violence law and provides greater guarantees against child exploitation and abuse in a broad sense.

already is that the new law has no provisions relating to the offence of rape within a marriage.¹⁸

Addressing domestic violence against women on an international level has become a priority for many countries around the world. It is a widespread phenomenon, not only in developing countries, but also in developed ones. Over the last 20 years, legislation and governmental policies have been issued and regional treaties established to prevent all forms of violence against vulnerable groups, such as women and children.¹⁹ Nevertheless, there is no comprehensive international treaty on the prevention and prosecution violence against women or domestic violence though there have been some calls to such treaty to be negotiated.²⁰ International states' obligation arises under international and regional human rights treaties, which are supported by multiple 'soft law'.²¹ Most importantly in this regard is the Convention on Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) and its general recommendations.²² Although CEDAW does not explicitly address violence against women, the advancement achieved through CEDAW committee's "creative interpretation" for article 1 in the convention that related to the definition of discrimination against women.²³ The international acceptance that states are

¹⁸ Investigating this issue from an Islamic perspective is merited, given the prevalence of western critiques. Therefore, it will be discussed in section 4.2.1.3

¹⁹ As examples of this trend, see: the Lebanese domestic violence law (2014); the Bahraini (2015); the Algerian (2015); the Jordanian (2017), the Tunisian (2017), the Moroccan (2018). With respect to regional and international organizations, see: The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994), which was the first international convention on this issue. Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), which came into force on 1 August 2014; and the African Charter on Human and People Rights on the Rights of Women (the Maputo Protocol) entered into force on 5 November 2005.

²⁰ Christine Chinkin, 'Addressing Violence against Women in the Commonwealth within States' Obligations under International Law' (2014) 40 Commonwealth Law Bulletin 471.

²¹ *ibid*

²² Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 Dec 1979, entered into force 3 Sep 1981) 1249 UNTS 13 [hereinafter CEDAW]

²³ Ronagh JA McQuigg, 'The Responses of States to the Comments of the CEDAW Committee on Domestic Violence' (2007) 11 The International Journal of Human Rights 461.

obliged under international human rights law to combat violence against women including domestic violence evolved by issuing CEDAW General Recommendation No. 19 in 1992 (GR 19), which will be examined in depth in the following chapters.²⁴

Passing the Saudi domestic violence law is a landmark step aimed at protecting women, children and other family members against abuse. However, the response to combating domestic violence requires more than utilizing the legal mechanism. Epstein argues that:

A law is only as good as the system that delivers on its promises, and the failure of the courts and related institutions to keep up with legislative progress has had a serious detrimental impact on efforts to combat domestic violence. This gap, between the responsive legislative branch and the unresponsive judicial and executive branches, suggests where the next generation of reform must focus on a fundamental restructuring of the traditional justice system's approach to this age-old social problem.²⁵

1.2. Research Questions

The new legal status in Saudi Arabia after enactment of the domestic violence law raises many questions that currently remain unanswered. New research into this area is urgently needed to address these concerns: Is the new law theoretically effective as currently drafted? Has it proven to be effective in practice? Is domestic violence still a significant problem in Saudi Arabia? Can

²⁴ Committee on the Elimination of Discrimination against Women, General Recommendation No 19 on Violence against Women, 11th Session, Jan. 20-30, 1992, U.N. Doc. A/47/38 [hereinafter GR 19].

²⁵ Deborah Epstein, 'Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System' (1999) 11 Yale JL & Feminism.

legal mechanisms effectively tackle domestic violence or is it largely a pervasive cultural problem? Therefore, the research questions of this study are as follows:

1. Is the Saudi domestic violence law effective and is there an attitudinal and/or change in the practice of Saudi professionals in the field?

To answer this question a group of professionals acting within the sphere of domestic violence, namely, human rights activists, non-governmental organizations (NGO) activists, lawyers, and government officials were interviewed, and in-depth analysis of the interviews data was conducted. The interviewees gave substantive views regarding the application of the new law from a legislative perspective, since it came into force on 10th March 2014. The participants' views need to be considered (represent relevant competent and knowledgeable professionals) due to their involvement with the victims in the field, i.e. counselling and legal assistance. The importance of answering these questions will lead to the practical feedback this study is aiming to achieve.

2. What are the main textual lacunae of the Saudi domestic violence law which may hamper the effective application of the law, and how can these lacunae, if any, be addressed?

Answering this question is one of the fundamental objectives for this study as it is examining the provisions of the Saudi domestic violence law. The Saudi government ratified the relevant human rights treaties such as CEDAW and the Convention on the Rights of the Child (CRC) 1989, Despite the general reservation made by the Saudi government on the basis of Sharia when signed these treaties, a positive sign is that the Saudis did not, explicitly indicate a direct

contradiction or objection between these treaties and Saudi laws. The Saudi government, as well as other Islamic countries, use this defensive mechanism in respect of most human rights treaties especially those that are connected with women or family. In addition, the information that obtained from the Saudi participants used to boost the effectiveness of the Saudi domestic violence law through suggesting recommendations aimed at improving its current application or allow to take into account for any textual modification in the future.

3. To what extent is the current Saudi domestic violence law compatible with international human rights law?

This study attempts to investigate how remedying domestic violence is being currently processed, it examines the law itself and reviewing the governmental and non-governmental efforts in this regard. This study also considered the assumption that domestic violence is a global problem, victims especially women and girls are abused by their perpetrators through similar forms of violence, although some differences in cultural settings.

Generally, international treaties do not stipulate how states should domesticise human rights standards at the national level, allowing each state to decide how its obligation will be met.²⁶ The proliferation of human right treaties and the emergence of the international human rights law has prompted states parties to accord human right treaties special status in their national systems. The states facilitates the domestic implementation of the decisions are taken by international and regional tribunals that interpret and apply these treaties.²⁷ Also, it contributes

²⁶ United Nation Human Rights Commission, 'Human Rights and Refugee Protection Self-Study Module 5 Volume 1' (2006). p.45

²⁷ Thomas Buergenthal, 'The Evolving International Human Rights System' (2006) 100 American Journal of International 783. p.804.

to a legal and political climate in these countries to take international and regional obligations into account without having to face some of the constitutional obstacles that have traditionally impede effective national compliance with these treaties' obligations.²⁸ States voluntarily ratify or accede to treaties with an opportunity to enter reservations to certain provisions of a given treaty if they wish not to be bound to by those provisions.²⁹ Domestication of human rights is typically an obligation to states parties when becoming parties to treaties. The process of incorporating treaties into domestic law, in very broad terms, can be undertaken via automatically incorporation or via legislative enactment. In monist states after once, the treaties have been ratified and published in the official gazette of some states, the treaties provisions automatically become self-executing. Other states require the express legislative enactment of treaty provisions before they become domestic law.³⁰ Saudi Arabia is monist state where domestication of the treaty requires issuing a royal decree by the King to approve a given treaty then it comes into force after publishing it in the official gazette unless the royal decree stipulates another date to execute the treaty.³¹

Therefore, utilising international human rights law as a lens to see whether the Saudi law is compatible with international human rights standards is a practical approach. The international human right regime has been and can be used effectively as a part of the solution.³²

²⁸ *ibid.*

²⁹ Niaz Shah, *Judicial Resource Book on Violence Against Women for Asia: Combating Violence against Women and Girls for Cambodia, India, Pakistan and Thailand* (Commonwealth Secretariat 2018).

³⁰ United Nation Human Rights Commission (n 26).

³¹ The Saudi Basic Law of Governance issued under Royal Decree No. A/91 on 1 March 1992 , article 70: 'Laws, international treaties and agreements, and concessions shall be issued and amended by Royal Decrees'; article 20 in the Saudi Council of Ministers Law and article 17 the Saudi Shoura Council Law which means that Saudi Arabia is monist state with regard to domestication international treaties

³² Malyadri MCom, 'Domestic Violence against Women: Strategical Remedies for Its Causes and Consequences' (2013) 5 International Journal of Information, Business & Management 97.p.105

1.3. Theoretical Approach for this Study

Although international organizations have reacted positively to this new law, what happens in the event of inconsistencies between the Saudi domestic violence law and the international human rights regime. What potential mechanism would this study use to resolve the incompatibilities or tensions, if any, and what could be proposed to resolve this matter. To resolve any incompatibilities between the two regimes this study mainly relies on specific mechanisms, known among Muslim and non-Muslim as stated below, named “the interpretive approach”.³³ This approach relies on the fact that the primary sources of Sharia, the Quran and the Sunnah (model behaviour of the prophet Mohammad), have been adaptable sacred texts through their application since the advent of Islam. The Quran has a general, broad and flexible nature in most cases; therefore, it could be translated besides the Sunnah into the terms of specific social reality by each generation of interpreters.³⁴

The exercise of the interpretive approach is mentioned by many scholars; amongst them are Alhibri ³⁵, Shah ³⁶, Fazlur Rahman ³⁷, Ashgari Ali Engineer ³⁸, Amina Wadud ³⁹, to mention but a few. This approach has its ‘insider strategy’ by not seeking compatibility between Islamic and international human rights standards, but rather by re-interpreting the divine text (the Quran) to meet the

³³ Niaz Shah, *Women, the Koran and International Human Rights Law: The Experience of Pakistan* (Brill 2006).

³⁴ Barbara Freyer Stowasser, ‘Liberated Equal or Protected Dependent? Contemporary Religious Paradigms on Women’s Status in Islam’ [1987] *Arab Studies Quarterly* 260.p.262

³⁵ Azizah al-Hibri, ‘Islam, Law and Custom: Redefining Muslim Women’s Rights’ (1997) 12 *American University Journal of International Law and Policy*.

³⁶ Shah (n 33).

³⁷ Fuzlur Rahman, *Major Theme in the Quran* (2nd edn, Bibliotheca Islamica 1982). Cited in Niaz Shah (n 33).

³⁸ Ali Engineer, *The Rights of Women in Islam* (Vanguard books limited 1996).

³⁹ Wadud Amina, *Qur’an and Woman: Rereading the Sacred Text from a Woman’s Perspective* (Oxford University Press 1999).

contemporary needs of Muslim societies.⁴⁰ The adoption of the interpretive approach means that the Quran is a living text and can be re-construed in conjunction with the current requirements for Muslims societies. Haliday has pointed out that the difficulties with human rights in Muslim societies is not with the divine text, the Quran, rather than the political and social context of interpretation. He adds: "Islam is not the issue, the manner in which that text is conventionally interpreted what should receive the attention".⁴¹

Abdel Halim criticises the gender perspective, the process of re-interpretation that has been used with the divine text, where women's right have had to adopt the outdated interpretation, she contends that:

Although Islamic rules have been reinterpreted, modified, or simply treated as inapplicable when dealing with changing circumstances in such issues as slavery and modern commercial practices, no such flexibility has been shown with regard to women's rights. For women, the trend of interpretation has worked almost exclusively in the opposite direction.⁴²

Fazlur Rahman and Engineer suggest re-shaping our understanding of all Quranic passages by taking into account that certain passages in it were referencing different circumstances, times and social contexts. The rationale derived from the notion of the universality of Islam and its spirit that is not confined to practice in a specific society.

⁴⁰ Shah (n 33). p.13

⁴¹ Fred Halliday, 'Relativism and Universalism in Human Rights: The Case of the Islamic Middle East' (1995) 43 Political Studies 152.

⁴² Asma Mohamed Abdel Halim, 'Tools of Suppression', *Gender Violence and Women's Human Rights in Africa* (Center for Women's Global Leadership 1994). p. 28.

Al-Hibri is a reformer amongst Islamic scholars who attempt to introduce fundamental arguments in support of using the interpretive approach by contending:

The majority of Muslim women who are attached to their religion will not be liberated through the use of a secular approach imposed from the outside by international bodies or from above by undemocratic governments. The only way to resolve the conflicts of these women and remove their fear of pursuing rich and fruitful lives is to build a solid Muslim feminist jurisprudential basis which clearly shows that Islam not only does not deprive them of their rights, but in fact demands these rights for them.⁴³

Bulbeck has referred to the practical advantage of utilizing this approach. She explains: 'many Muslim women now campaign against genital mutilation but not on the ground that it is barbaric or even infringe the right of women, the feminist position. Instead, they claim that it is unhealthy, it is no longer necessary due to social change, or the Quran does not advocate it'.⁴⁴

Shah identifies the fundamental principles for the interpretive approach that aims to remove the traditional interpretation that emerged primarily from male's jurisprudential perspective, which in turns, lead to the gender discriminatory legal principles as practised in Muslim societies today, he argues that if the Quranic verses interpreted in their proper context greater compatibility may be achieved with international human rights law. Context according to Shah refers to three things: (1) history context (7th century), (2) social context (Arab society), and (3)

⁴³ al-Hibri (n 35). p.3

⁴⁴ Chilla Bulbeck, 'Less Than Overwhelmed by Beijing: Problems Concerning Women's Commonality and Diversity' (1996) 6 Australian Feminist Law Journal 30. p.34

the Quranic context, which in turns has two meaning. First, when and why was a verse revealed? Second, what is the overall intention of the Quran regards women. This contextual interpretation will reveal the real intention of the Quran which was to uplift the women status not to relegate women to social and legal subordination as in the era pre-Islam or as believed and legally practiced in the Islamic world today.⁴⁵

Using the interpretive approach in this study could lead to more successful results than are being achieved currently; particularly as it would enable Muslim scholars and researchers to introduce progressive explanations for Sharia that reconcile it with some sensitive issues in human rights discourse. Religion plays a vital role and is considered as a major contributor to the process of change in Saudi society. Thus, it can be argued that by providing an enlightened Islamic interpretation in respect of domestic violence, there is a further opportunity to support current efforts to eradicate all forms of violence in Saudi Arabia where this study is located. It is reasonable to argue that parallel to such advancements, more practical results could be achieved especially in the corpus of human and social experience. Imposing human rights on the Muslim world could be problematic as some Muslims think of it as an alien, western product or, at least, they have suspicion views toward it.

Shah argues that the interpretive approach has certain advantages over other approaches that try to reconcile human rights standards and Islam. He points out two main reasons. First: it is the Islamic approach 'not alien imposition' and is supposed to be acceptable to Muslims. Likewise, any results emerging from it will

⁴⁵ Shah (n 33). p.14

be applied in Muslim states. Second: it provides answers to the challenges posed by Islamic relativists and supports the Universalists' drive. Shah adds that:

The foremost advantage of the interpretive approach is that it is achievable because Islamic law can be reformed through the mechanism of *ijtihad*.⁴⁶ It is practical and has the virtue of realism. Muslim will listen to and follow what is based on the Quran and the Sunnah.⁴⁷

1.4. Aims of the Study

As the birthplace of Islam, Saudi Arabia and its practice of Islamic doctrines have occupied the limelight, particularly when it comes to women's rights. Islam is considered the main source of law in Saudi Arabia, though modern laws have been applied to modernize its legal structure. Consequently, one of the most conservative Islamic countries in the Muslim world has now opened the door for reform via the human rights perspective, which raises questions about the compatibilities between Islam and women's rights.⁴⁸ Through human rights' lens, this study focuses on the domestic violence issues in Islam and uses the specific practices of Saudi Arabia to determine whether Saudi law is compatible with the international human rights regime. In the event that there is an observed conflict between these two legal systems, the next stage will employ the interpretive approach selecting greater compatibility.

In addition, the domestic violence law in Saudi Arabia is relatively new, to the author's knowledge, this type of study has not been carried out in practice in

⁴⁶ *ijtihad* means the process of making legal reasoning by independent interpretation of sources of Islamic law; more details in section 3.2.2

⁴⁷ Shah (n 33). p.14-15

⁴⁸ One of the general areas of tension between human rights standards and Islamic law (as interpreted and practiced by Muslim states) is unequal treatment of women. See *ibid*

Saudi Arabia. This study also will critically evaluate whether the existing law Saudi Arabia is sufficient or adequate in comparison to international human rights standards to protect women and children from domestic violence as well, and will seek to provide a unique critical analysis into whether or not the existing law will be sufficient to effectively combat domestic violence, or whether other social, economic, religious, cultural, or political reasons may prevent this from occurring. It is hoped that these aims will provide an overall review, analysis, and evaluation of Saudi domestic violence law. Furthermore, this research specifically contains semi-structured interviews that seek to critically evaluate its impact from a substantive legislative perspective, as well as its overall effect in practice.

1.5. Significance of the Study

This research will contribute to an area of scholarship that is so far underexplored by developing knowledge and understanding of domestic violence in Saudi Arabia. The purpose of my research is intended to provide a new a qualitative insight into legal practice in Saudi Arabia, to critically evaluate the domestic and international issues of human rights that related to domestic violence and the standards arising therefrom; and to explore the existing law, which it is not yet officially or unofficially known whether it has made any impact at all in practice, making recommendations as to whether the status quo has sufficient cultural, social and political dynamism to bring about change. (Including policy recommendations, if necessary).

1.6. Research Methodology

This study adopts a qualitative empirical approach in order to investigate the Saudi domestic violence law, its effectiveness in practice and to what extent the law is compatible with international human rights through two stages.

The first stage is to conduct legal textual analysis through black-letter approach (or doctrinal legal research. The researcher's role in Black-letter approach is purely based on studying the legal texts, statutes, case law and others.⁴⁹ Therefore, the researcher will examine in depth the primary and secondary sources of international human rights law, Islamic law. Islamic sources include the Quran, the Sunnah (model behaviour of the prophet Mohammad), and the relevant statutory law of the Kingdom of Saudi Arabia. The study will also focus on the primary and secondary sources of international human rights law, especially on the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and its general recommendations. Although literature and legal texts are analysed to provide a theoretical basis, this study applies an empirical legal research methodology.

Partington states that empirical legal research seeks to understand and explain how the law works in the real world, and therefore, it has become a recognized part of the social science research environment.⁵⁰ Galligan argues that despite the various purposes of empirical legal research that they have one thing in common which is "examine how law works in practice."⁵¹ In qualitative research, data usually are collected through three main methods: analysis of documents, in-depth interviews and direct observation, used singly or in combinations.⁵² This study uses Saudi Arabia as a case study in order to address its main objectives.

⁴⁹ Lydia A Nkansah and Victor Chimbwanda, 'Interdisciplinary Approach to Legal Scholarship: A Blend from the Qualitative Paradigm' (2016) 3 Asian Journal of Legal Education 55.

⁵⁰ Martin Partington, 'Empirical Legal Research and Policy-Making' in Peter Cane and Herbert M Kritzer (eds) (Oxford University Press 2010). 1002

⁵¹ Denis J Galligan, 'Legal Theory and Empirical Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010).

⁵² Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010).

In the second stage as part of the empirical research, semi-structured interviews will be conducted in Saudi Arabia. The qualitative approach does not rely on quantity, since the usual range of participants is between four and 40.⁵³ The participants were chosen to be part of the sample for a specific purpose. In the present research, that purpose will be their ability to provide informed and detailed knowledge and opinions on domestic violence in Saudi Arabia. The participants will be selected by using purposive sampling technic rather than randomly.⁵⁴ It is envisaged that the participants will potentially include human rights activists, government officials, and individuals working for voluntary and other non-governmental associations acting within the sphere of domestic violence in Saudi Arabia.

The main objective of these interviews is to obtain information and details about Saudi domestic violence law, in terms of its practice, and its development from various perspectives, particularly given that it is a new law and requires an ongoing evaluation process. The specific research method and research design of the qualitative research on how the Saudi domestic violence law work, in reality, are explained in chapter 4 of this study.

1.6.1 Limitation

This study has focused on the experience of the professionals working in the field of domestic violence about how the law works in practice rather than interviewing

⁵³ Immy Holloway, *Basic Concepts for Qualitative Research* (Wiley-Blackwell 1997). p.142

⁵⁴ Creswell stresses that “this means that the inquirer selects individuals and sites for study because they can purposefully inform an understanding of the research problem and central phenomenon in the study. Decisions need to be made about who or what should be sampled, what form the sampling will take, and how many people or sites need to be sampled”, for more details: John W Creswell, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (2nd edn, SAGE Publications 2007). 125; Alan Bryman, *Social Research Methods* (4th edn, Oxford University Press 2012).

domestic violence victims. However, interviewing victims is impossible if it is not risky for a male researcher in Saudi Arabia. One reason is that the process of getting permission or security clearance to visit a shelter will take a long time and might not be obtained. Also, the researcher in light of strict sex segregation is unable to meet victims independently due to the risk of violating the rules still practised in Saudi Arabia. In addition, the time scale for conducting the research field was two months. This short period limited the researcher's ability to mix a combination of interviews includes professionals and victims. However, interviewing people who work in the system is still very valuable in the sense of investigating the law in practice due to their expertise in the field and their ability to explain how the legal process is working.

Another main limitation in this study is the limited access to the General Department of Social Protection (DSP) that operates domestic violence cases in Saudi Arabia. The data and documents that available in its archive could provide enrich information about how the treatment of DV is being dealt with and what the actual response took regarding victims' call for protection from abuse victims. However, the researcher attempted to reduce the impact of this limitation by using secondary data resources, such as some academic research, NGO's reports and media news.

1.7. Structure of the Study

This study is divided into seven chapters and an introduction. Chapter one contains the general background of research; the definition of domestic violence and its key features; it explains the relationship between domestic violence and human rights as it is considered a global trend to tackle this problem; it also

presents an overview for domestic violence law in Saudi Arabia; it looks at the various research questions that need to be addressed. It also probes the theoretical approach for solving incompatibilities, if any, between human rights and Saudi domestic violence law. It highlights the aims and the significance; and the main methodology adopted in carrying out this study, it will also highlight the limitation and recommendation for policymakers and further research.

Chapter two outlines the treatment of domestic violence in Saudi Arabia; the social perception; causes of domestic abuse; the reaction of women's rights groups and non-governmental organizations especially the 2013 anti-domestic abuse campaign by king Khaled foundation and other community response to domestic violence.

Chapter three contains the legal response to domestic violence in Saudi Arabia: laws; how they are applied, consequences, deficiencies. Likewise, Chapter three discusses the policy and procedures to combat domestic violence in Saudi Arabia, including the role of the Ministry of Social Affair, Ministry of Justice (the Special Judges Training Programme for domestic violence cases), and the efforts of the National Family Safety Program. The chapter focuses on the type of intervention that should be taken and assesses strategies to prevent such violent acts from occurring.

Chapter four provides a textual analysis of the Saudi domestic violence law. This chapter aims to critically evaluate the law and its implementing regulations by analysing the relevant legal text; in order to achieve a better understating of the law and its implications, and to consider the longer-term effects of this new

development. In addition to analysing appropriate legal text, Also, chapter four raises questions regarding the consequences of the new law, its far-reaching effects, and its impact on changing or reforming society.

Chapter five reports on profiles of the participants in the empirical study. It details the coding process and the results that emerged from the data in order to evaluate the effectiveness of the law from the Saudi legislative perspective. It also presents an analysis of the findings from the in-depth interviews conducted.

Chapter six introduces the international human rights regimes and addresses the relationship between domestic violence and human rights in order to set criteria derived from IHRL in order to investigate to what extent the Saudi Law is compatible with the international standards.

Chapter seven utilising the criteria set in chapter six as a lens to investigate the compatibility between the Saudi domestic violence law and International Human Rights Laws. The chapter focused on answering the research question 'To what extent is the current Saudi domestic violence law compatible with international human rights law'.

Chapter eight concludes the study, and it will summarise the main findings of this research. statements about the study.

Chapter 2 Treatment of Domestic Violence in Saudi Arabia

2.1. Introduction

This chapter aims to provide a better understanding of the nature of domestic violence in Saudi Arabia. Therefore, it requires the study of Saudi social and cultural structure by exploring some of the facts about the country. The chapter, also, will examine the causes of domestic violence and its common types and will analyse how Saudi women have responded to and coped with domestic violence this phenomenon in recent years.

2.2. Country Background Information

Saudi Arabia, officially the Kingdom of Saud Arabia, is located in the Middle East between the Arabian Gulf and the Red Sea and occupies most of the Arabian Peninsula; it has an area of 2,146,690 square kilometres. Saudi Arabia's population is 33,413,660, of these Saudi nationals constitute 67% (20,702,536).⁵⁵ The distribution of gender among Saudis is 51% male and 49% female while 70 % of the 12.5 million expatriates are males. Riyadh is the capital, and Jeddah is the principal port. Saudi Arabia is also the birthplace of Islam and home to the two holiest mosques in Islam: Makkah and Madinah. The country's geography is diverse, with some green forests, grasslands, mountain ranges in the south-west, and deserts. The climate varies from region to region. Temperatures can reach over 43 degrees Celsius in the summer while in the winter temperatures in some parts of the country can drop below freezing. Saudi Arabia has no water

⁵⁵ 'General Authority Statistics: General Information about The Kingdom of Saudi Arabia' <<https://www.stats.gov.sa/en/4025>> accessed 15 April 2019.

resources and gets very little rain, only about four inches a year on average.⁵⁶

The modern Saudi state was established in 1932 by King Abdulaziz bin Abdulrahman Al Saud, and one of his male descendants rules the kingdom today.⁵⁷ The Kingdom, based on the constitution of 1992, is classified as an Arab/Islamic state that follows the Quran and Sunnah; the King is both Head of State and government.⁵⁸ There is no elected legislative branch; instead, the King is advised by the Consultative Council comprised of 150 members appointed by the King to serve for four years. The only democratic aspect in Saudi Arabia is an elected Municipality Council, which is partly responsible for local issues. Both male and females are appointed by the King to the Consultative Council (25% quota for female), and both can be elected in Municipality Council.⁵⁹

2.3. Scope of Domestic Violence in Saudi Arabia

2.3.1. The Magnitude of the Problem

Before issuing the new law there were no official comprehensive statistics based on a national or regional survey that measures the prevalence of domestic violence in Saudi Arabia, its cost on health services, social care or the criminal justice system. These statistics were not known, nor were they ever measured. Police stations and hospitals, for example, were not legally responsible under any protocol or guideline for reporting incidents that occurred. Another important

⁵⁶ *ibid.*; Royal Embassy of Saudi Arabia in Washington DC, < <https://www.saudiembassy.net/about-saudi-arabia> > accessed 15 January 2018

⁵⁷ There were two terms for the royal Saudi dynasty before the current state, the first from 1744 to 1818 and the second from 1824 to 1891. For more details : < <http://www.the-saudi.net/saudi-arabia/> .> accessed 17 February 2019.

⁵⁸ Basic Law of Governance is divided into nine charters, consisting of 83 articles. It was issued in 1 March 1992 by King Fahad bin Abdul Aziz under Royal Decree No. A/90. Available at: < <https://boe.gov.sa/ViewStaticPage.aspx?lang=en&PageID=25> .> 15 January 2017

⁵⁹ In December 2015 about 20 females were elected for municipal council, see: < <http://www.bbc.co.uk/news/world-middle-east-35112844> .> 15 January 2017

factor of the lack of figures regarding domestic violence is the desire of victims to not disclose incidents. Many cases went unreported as a result of the victim's fear that the abuse would escalate, social stigma, the concern about the impact of the violence on children, or even due responding would not help them.⁶⁰ The limited government data and media reports, along with the absence of any legal obligation that forced official institutions such as schools, social affairs protection centres, hospitals or police stations to report incidents or announce figures for public interest or media, led to a lack of knowledge about the extent of this epidemic.

The Human Rights Watch declared after the passage of the new law in 2013:

There are no reliable statistics regarding domestic abuse in Saudi Arabia, and it is probable that the vast majority of cases go unreported, given the isolation of victims and difficulty of reporting and seeking redress.⁶¹

Nevertheless, there is some importance in examining the figures that are available regarding how pervasive this type of violence is in Saudi, and they can assist in understanding the real intention of the governmental reaction toward combating Domestic Violence in Saudi.

The World Health Organization (WHO) estimates that 30 % of women globally have experienced either physical and/or sexual intimidation by partners.⁶² With

⁶⁰ Farhana I Madhani and others, 'Women's Perceptions and Experiences of Domestic Violence' (2017) 32 *Journal of Interpersonal Violence* 76.

⁶¹ Human Rights Watch (n 15).

⁶² Department of Reproductive Health and Research WHO, 'Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence' [2014] World Health Organization <<https://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>> accessed 4 March 2019. See Also: 'World Health Organization Violence against Women' <<http://www.who.int/mediacentre/factsheets/fs239/en/>> accessed 16 March 2016.

respect to Saudi Arabia, relatively new studies have begun to examine the prevalence of domestic violence; only women were surveyed, particularly married women.⁶³ In the Afifi et al. study in eastern Saudi Arabia (AlAhsa), the lifetime prevalence of DV was 39.3% among the participants.⁶⁴ Fageeh estimates that lifetime prevalence of DV was 34 % among the participants which included Saudi and non-Saudi women in Jeddah, the second-largest city in Saudi.⁶⁵ Barnawi reports that the rate of violence experienced by women attending a primary care centre in Riyadh was 20% over the previous year of the study.⁶⁶ Although the Saudi estimates that derived from the previous studies about the frequency of DV prove similar figures to the global level, the current prevalence is generally lower than previously reported as Barnawi stated.⁶⁷ However, caution should be exerted in comparing the frequency of DV from different studies, because of the lack of consistent DV definitions and variability in study designs, recruitment methods and duration covered.⁶⁸ Furthermore, a clearer understanding of the scope and causes of DV, demands more concentrated and culturally sensitive researches in order to obtain accurate statistical data on the national level.⁶⁹ Therefore, a good aspect of the new law is that it has obligated the Ministry of Labour and Social Development to provide authenticated data about the

⁶³ Fatima Hamza Barnawi, 'Prevalence and Risk Factors of Domestic Violence against Women Attending a Primary Care Center in Riyadh, Saudi Arabia' (2017) 32 Journal of interpersonal violence. Wafa MK Fageeh, 'Factors Associated with Domestic Violence: A Cross-Sectional Survey among Women in Jeddah, Saudi Arabia' (2014) 4 BMJ open. Emam M Afifi, Nouriah S Al-Muhaideb and Nina F Hadish, 'Domestic Violence and Its Impact on Married Women's Health in Eastern Saudi Arabia.' (2011) 32 Saudi medical Journal <<http://www.smj.org.sa/index.php/smj/article/view/7209>> accessed 17 February 2016. AA Tashkandi and P Rasheed, 'Wife Abuse: A Hidden Problem. A Study among Saudi Women Attending PHC Centres' (2009) 15 Eastern Mediterranean Health Journal.

⁶⁴ Afifi, Al-Muhaideb and Hadish (n 63).

⁶⁵ Fageeh (n 63). p.3

⁶⁶ The study took place in the capital city Riyadh where one fifth of Saudi population live.

⁶⁷ Barnawi (n 63).

⁶⁸ Samia Alhabib, Ula Nur and Roger Jones, 'Domestic Violence against Women: Systematic Review of Prevalence Studies' (2010) 25 Journal of family violence.; Fageeh (n 63).

⁶⁹ *ibid.*

magnitude of the problem⁷⁰. In order to achieving this goal, a database was formed with cooperation from the National Family Safety Program.⁷¹ The database collects statistical data to be utilized in devising treatment and conducting scientific research and studies, which will have expected to release official data regarding domestic violence and its impact especially with the gradual increase in awareness in Saudi society due to media campaigns that have been launched.

2.3.2. Types of Domestic Violence

Most types of domestic violence that are inflicted on women by partners or family members, can generally be categorised into four types: physical, psychological or emotional, sexual and economic violence.⁷²

The most dangerous type of violence is physical and can be defined as hitting, slapping, punching, kicking, choking, pushing or shoving; and any acts that result in hurt; and threats with a gun, knife or other weapons against the victim.⁷³ This type of abuse also includes denying a victim medical care or forcing alcohol and/or drug use upon him or her. The definition of the physical act may vary from one society to another, depending on the amount of tolerance that is given to the use of physical punishment in the family.

Psychological or emotional abuse is defined as insulting, belittling, intimidating, undermining the victim's self-worth or self-esteem, neglect, controlling the

⁷⁰ Law of Protection from Abuse, art. 15/3

⁷¹ The National family Safety Registry, See < <http://www.nfspreg.org.sa/> >

⁷² Sahar Alhabdan, 'Domestic Violence in Saudi Arabia' (PhD thesis, Indiana University 2015). p.10

⁷³ *ibid.* p.10. Also: 'United States Department of Justice - Office on Violence Against Women' (2015) <<http://www.justice.gov/ovw/domestic-violence>> accessed 17 February 2016.; Afifi, Al-Muhaideb and Hadish (n 63).; Barnawi (n 63).

victim's freedom. Or any act that includes verbal abuse or intimidation or terrorizing the victim.⁷⁴

Sexual violence is defined as using force, attempting to coerce to have sexual intercourse or behaviour without consent,⁷⁵ or being forced to do degrading and humiliating sexual activity.⁷⁶

Economic violence is not mentioned in Saudi law, despite the fact that it is a common form of abuse in Saudi Arabia against Saudi women. Economic violence refers to maintaining total control over the victim's money and other economic resources to make him/her financially dependent.⁷⁷

Table 1. Examples of violence against women throughout the life cycle

Phase	Type of violence
Pre-birth	Sex-selective abortion; effect of battering during pregnancy on birth outcomes
Infancy	Female infanticide; physical; sexual and psychological abuse
Girlhood	Child marriage; female genital mutilation; physical, sexual and psychological abuse; incest; child prostitution and pornography
Adolescence and Adulthood	Dating and courtship violence (e.g. acid throwing and date rape) economically coerced sex (e.g. school girls having sex with "sugar daddies" in return for school fees); incest; sexual abuse in the workplace; rape; sexual harassment; forced prostitution and pornography; trafficking in women; partner violence; marital rape; dowry abuse and murders; partner homicide; psychological abuse; abuse of women with disabilities; forced pregnancy.
Elderly	Forced suicide or homicide of widows for economic reasons; sexual, physical and psychological abuse. ⁷⁸

⁷⁴ *ibid.*

⁷⁵ 'United States Department of Justice - Office on Violence Against Women' (n 73).

⁷⁶ Afifi, Al-Muhaideb and Hadish (n 63).

⁷⁷ Barnawi (n 63).

⁷⁸ Violence against women, World Health Organisation, FRH/WHO/97.8

Based on the Barnawi study conducted mainly among Saudi women, the most common types of domestic violence were emotional (69%), social (34%), economic (26%), physical (20%), and sexual violence (10%).⁷⁹ By comparison, Afifi et al.'s findings indicate the pattern was for (35.9%) for emotional violence, (17.9%) for physical violence and (6.9%) for sexual violence.⁸⁰

Although Saudi Arabia has recognized the maltreatment of children as a public issue since the 1990s, only a few relevant works have been published regarding various types of abuse that exist within Saudi Arabia, but this research does not provide sufficient statical data to be able to determine the extent of this problem.⁸¹ Also, the issues of domestic workers, and the abuse of domestic workers have never been fully examined. This is often the result of the complicated arrangements in which most of them are living and working, particularly in private homes, and this technically complicates any attempt to find out what abuse exists among them, owing to its sensitivity to the government regarding this issue.⁸²

2.3.3. Causes of Domestic Violence

A major concern in the Middle East regarding the domestic violence issue is that most literature is specific to the attitudes of men against women and its causes, especially wife battering. Not much has been written about violence against

⁷⁹ Fageeh (n 63).p.1

⁸⁰ Afifi, Al-Muhaideb and Hadish (n 63).

⁸¹ Aref Alsehaimi and Abdullah Alanazi, 'The Nature of Domestic Violence against of Children in Saudi Arabia Systematic Literature Review' (2015) 4 J Psychol Abnorm Child.

⁸² Rachel Silvey, 'Consuming the Transnational Family: Indonesian Migrant Domestic Workers to Saudi Arabia' (2006) 6 Global Networks 23.

children, female relatives such as sisters, or any other forms of domestic violence in the family including abuse by other family members such as in-law, parents, and brothers; except within the context of honour crimes.⁸³ Women in Arab and Muslim societies live in a wide variety of family structure arrangements, and within a particular cultural context, structural factors can contribute to domestic violence in the home such as family dynamic with brothers or in-law.⁸⁴

Many researchers use an ecological framework to form the process that combines to cause violence in the family sphere.⁸⁵ Their studies have shown four different levels that initiated attitude towards domestic violence against women in the social environment: Individual, Family, Social (or organizational) and Societal. The individual-level includes experiencing or witnessing violence in the family, personality or alcoholism. The family level relates to the supportive context where the male is dominant in the process of exercising control or decision-making and the quality of the relationship. The social (or organizational) level represents participating in social groups or networks i.e. neighbourhood, workplace and any informal peer groups. The societal level refers to cultural norms, values, a belief which promotes the superiority of male over female.⁸⁶

⁸³ Angie Boy and Andrzej Kulczycki, 'What We Know about Intimate Partner Violence in the Middle East and North Africa' (2008) 14 *Violence Against Women*.

⁸⁴ Lori L Heise and Andreas Kotsadam, 'Cross-National and Multilevel Correlates of Partner Violence: An Analysis of Data from Population-Based Surveys' (2015) 3 *The Lancet Global Health* 332.; Subadra Panchanadeswaran and Catherine Koverola, 'The Voices of Battered Women in India' (2005) 11 *Violence Against Women* 736. Childress, Gioia and Campbell (n 4).; Adnan A Hyder, Zarin Noor and Emma Tsui, 'Intimate Partner Violence among Afghan Women Living in Refugee Camps in Pakistan' (2007) 64 *Social Science & Medicine* 1536.

⁸⁵ An ecological approach to abuse conceptualizes violence as a multifaceted phenomenon grounded in an interplay among personal, situational, and sociocultural factors. For more details: Lori L Heise, 'Violence Against Women: An Integrated, Ecological Framework' (1998) 4 *Violence Against Women* 262. Also: Michael Flood and Bob Pease, 'Factors Influencing Attitudes to Violence against Women' (2009) 10 *Trauma, Violence, & Abuse*.; Susan Somach and Gihan Abou Zeid, 'Egypt Violence against Women Study: Literature Review of Violence against Women' (2009) 1 *The National Council of Women in Egypt* <http://pdf.usaid.gov/pdf_docs/Pnadq891.pdf> accessed 16 March 2016. , Bonnie E Carlson, 'Causes and Maintenance of Domestic Violence: An Ecological Analysis' (1984) 58 *The Social Service Review*.

⁸⁶ *ibid.*

A multi-country study found a correlation between physical intimate partner violence and several abusers' characteristics including consumption of alcohol by the perpetrators regularly, the victims' history with a violent family, the women's mental health, and low-income family work status.⁸⁷ In another example, a national surveys review in nine countries, found that major contributors to the occurrence of domestic violence included similar conditions: low educational level, being under 25 years old, having witnessed a father's abuse against the mother. Living in an urban area and having low socioeconomic status.⁸⁸

Haj-Yahia has examined the perception of patriarchal ideology and sociocultural themes in some Arab societies. He notes that among a sample of Arab husbands, the most significant predictors of belief about wife-beating over their age and level of education, the sex-role stereotypes, negative and traditional attitude towards women, the nonegalitarian expectation for marriage, and familial patriarchal beliefs.⁸⁹

Almosaed, a Saudi sociologist, described Saudi Arabia as a patriarchal society, she explained that the hierarchal structure and the importance of the family i.e. men's superiority and women's inferiority are clearly the main features of the family structure. Males have absolute authority over children and females, even though their authority is becoming questioned and challenged as some other studies indicated.⁹⁰ Although there are common facts in the broadest sense about causes of domestic violence in all societies, such as the role played by

⁸⁷ Sunita Kishor and Kiersten Johnson, 'Profiling Domestic Violence: A Multi-Country Study.' <<http://www.popline.org/node/628738>> accessed 15 May 2016.

⁸⁸ Lakshman Jeyaseelan and others, 'World Studies of Abuse in the Family Environment–Risk Factors for Physical Intimate Partner Violence' (2004) 11 Injury Control and Safety Promotion.

⁸⁹ Muhammad M Haj-Yahia, 'Beliefs About Wife Beating Among Palestinian Women The Influence of Their Patriarchal Ideology' (1998) 4 Violence against women.

⁹⁰ Norah Almosaed, 'Violence against Women: The Lives of Abused Women in Saudi Arabia' (2009) 25 Journal of Social Affairs 11. p.13

unemployment, poverty or alcoholism as contributing factors to all types of abusive actions into the family; these contributory factors are being well documented in the literature.⁹¹ It has been noted that other causal factors dominant in developing countries have not been investigated yet, i.e. polygamy, that does not exist in non-Muslim countries. Contrary to common belief, in some studies that carried out in Arab societies, women who are highly educated are associated more as victims of domestic violence.⁹² This association, owing to the nature of patriarchal society and the tendency of educated women to challenge male authority, increases the risk of being targeted by more aggressive behaviour. However, another theory supported by evidence from the WHO multi-study, suggested that the protective effect of education is related to a certain level of high education. Jewkes contends that women empowerment could provoke the risk of violence only up to a certain level, namely secondary school, after which it confers protection.⁹³

Research conducted among Saudi women shows that in a group of 55 participants that the act of disagreement with the husbands was reported as a cause in (20%) of the incidence. Jealousy and disputes with his family resulted in (20%) for each cause. The dispute over money or personality problems accounted for (14%) respectively. The possessiveness of the husband, drugs, sex and differences in social and economic backgrounds accounted for (4%). Acting like his friends and blaming the woman for not getting pregnant came in the bottom of the scale with (2%) as reasons for violence.⁹⁴

⁹¹ AAbdulaziz Albrithen, 'Alcoholism and Domestic Violence in Saudi Society' (University of Liverpool 2006). Also: Rachel Jewkes, 'Intimate Partner Violence: Causes and Prevention' (2002) 359 *The Lancet*.

⁹² Barnawi (n 63). p.12; Julie Cwikel, Rachel Lev-Wiesel and Alean Al-Krenawi, 'The Physical and Psychosocial Health of Bedouin Arab Women of the Negev Area of Israel The Impact of High Fertility and Pervasive Domestic Violence' (2003) 9 *Violence Against Women*.

⁹³ Jewkes (n 91). p.1425, Somach and Abou Zeid (n 85). p.16

⁹⁴ Almosaed (n 90). p.22

Alkhateeb, in a study that was made in Riyadh classified the causes of DV within the Saudi context as including; inferiority of women, the misconception of male authority where the male uses the misinterpreted religious verses to control women.⁹⁵ Alkhateeb mentioned other causes such as economic difficulties e.g. insufficient income with a high number of dependents, interpersonal problems in the family and addiction to drugs and alcohol (even though drugs abuse and alcohol consumption as contributors may have been under-reported since it is completely banned by the government). Psychological diseases come as the last cause, as many perpetrators were regular patients under clinical treatment and suffered from mental problems. Alkhateeb contends that the majority of perpetrators were husbands in the respondent's sample in the counselling centre (88.42%). Whereas other members of the family were the abusers in the central hospital (80.3%) resulted from the low-income atmosphere in this area.⁹⁶ However, it should be noted that despite the characteristics identified above, Jewkes contends that studying the causes of DV is substantially more difficult than studying a disease. For instance, diseases have a biological basis and occur within a social context and can be measured objectively, but DV is entirely multiple and operate in its social context.⁹⁷

2.3.4. Responses of the Victims to Domestic Violence Acts

The sensitive nature of domestic violence has a number of inherent commonalities known in domestic violence studies; the majority of incidents go

⁹⁵ Salwa Alkhateeb, 'Domestic Violence Against Women in Riyadh: A Study Some Cases of Patients at the Central Hospital and the Charity Centre' (2005) 20 Journal of University Research Centre, King Saud University <<http://repository.ksu.edu.sa/jspui/handle/123456789/8347>> accessed 15 May 2016.

⁹⁶ *ibid.*

⁹⁷ Jewkes (n 91). p.1425

unreported, and most statistical data underestimates the prevalence of this problem. Dobash and Dobash argue that as a result of the historical roots of dealing with family violence, women are left alone due to the nature of the violence and marital relationship.⁹⁸ These roots have contributed to the attitude that any intervention in family matters is not a welcome step and violates personal privacy.⁹⁹ According to the World Health Organization, between 55-95% of abused women have never gone to ask for help from any agency.¹⁰⁰ The multiple and complex position of women in Arab countries within the cultural context and patriarchal ideology, contributes to why such violence is either tolerated or acceptable.¹⁰¹

Haj-Yahia contends that although about 58% of the participants indicated that there was no excuse for women being assaulted by their spouse, 15-62% of the men surveyed still justified wife-beating for certain misconduct.¹⁰² Another study carried out in Arab setting estimated that only one-third of women who have been physically or sexually abused by their partners have asked for assistance.¹⁰³ Similarly, Afifi et al's studies in Saudi Arabia showed a large proportion of women (41.4%) claim that they tolerate violent actions with no reaction.¹⁰⁴

Women's reactions towards maltreatment or enduring abusive behaviour vary, and pose the question of why women continue to endure such violence in silence

⁹⁸ R Emerson Dobash and Russel P Dobash, *Violence against Wives: A Case against the Patriarchy* (Free Press 1979).

⁹⁹ *ibid*

¹⁰⁰ World Health Organization, 'WHO Multi-Country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses' (2005) <<http://apps.who.int/iris/handle/10665/43310>> accessed 16 March 2016.

¹⁰¹ *ibid*

¹⁰² Muhammad M Haj-Yahia, 'Beliefs about Wife Beating among Arab Men from Israel: The Influence of Their Patriarchal Ideology' (2003) 18 *Journal of Family Violence*.

¹⁰³ Fatma El-Zanaty and Ann A Way, 'Egypt Demographic and Health Survey 2000.' <<http://www.popline.org/node/178347>> accessed 16 March 2016. p.228

¹⁰⁴ Afifi, Al-Muhaideb and Hadish (n 63).

behind walls. The most common reasons are denial or fear of social stigma; for the sake of children; lack of economic independence; fear of divorce and hoping the abuser will change his attitude.¹⁰⁵

Given the complexity of the situation of a woman in an abusive relationship, and given that women may not seek help from an authority or agency, there are limited options available to them in the process of obtaining assistance. Some women tend to resort to an informal network, ranging from a relative (in blood or in-law); friends; neighbours, or even sheikhs (religious leaders) in some cases.¹⁰⁶

The tendency to seek help seems to decrease in more formal situations such as health services or legal advice. The worst situation is the absence of formal or informal assistance for lonely women who do not have friends or relatives, and where her abuser is her own family.¹⁰⁷

Almosaed pointed out that is the issue of accommodation for Saudi women, in order to prevent the perpetration of domestic violence. Women are expected to live with a male relative at all times in Saudi Arabia, which in turn puts more pressure on her to return to the perpetrator in many cases. Almosaed argues that women have two options to choose from; either their parents' houses or their husbands' houses, nothing else - even if they can afford separate accommodation. She concludes:

Patriarchy gives men a powerful position in the society and in the family, that is; power in both the public and private sphere. Saudi women through their life cycle move from the power territory of

¹⁰⁵ *ibid.* Also: Norah Almosaed and Seham Alazab, 'Why Stay? Saudi Women's Adaptions to Violence' (2015) 5 *International Journal of Humanities and Social Science*.p.155

¹⁰⁶ Haj-Yahia (n 89).

¹⁰⁷ Lenda E Rose and Jacquelyn Campbell, 'The Role of Social Support and Family Relationships in Women's Responses to Battering' (2000) 21 *Health Care for Women International*. See also: Somach and Abou Zeid (n 85)., Afifi, Al-Muhaideb and Hadish (n 63).

male to another [...] men abuse women, not for the reason, men or women sometimes reveal, but fundamentally because men made the choice about using violence as an effective tool for power and control.¹⁰⁸

Disclosure of Domestic Violence reduces its occurrence, while the largely passive reaction or hiding it would cause massive damage as the perpetrators have no fear of retribution. Even though the exposure that a woman is a victim of violence could lead to dangerous consequences or even death in some countries where family honour lies on chastity or purity of female members.¹⁰⁹

2.4. Islam and Domestic Violence

It is commonly held that Islam or any cultural beliefs and traditions, affect society and organizational characteristics which in turn influence individual lives and interpersonal relationship.¹¹⁰ Islam and its interpretations are often perceived, from a traditional western perspective and others, as being biased against women. However, in the last two decades, Islam has been part of a comprehensive discussion that has arisen as a result of political or human rights issues. Articulations and scrutiny have emerged due this debate, for example, Islamic feminism involvement in supporting the status of Muslim women, is a vehicle to bring about gender equality perspectives. Islamic feminism urges the use of theological frameworks that can promote gender equality, i.e., the re-

¹⁰⁸ Almosaed (n 90). p.39

¹⁰⁹ WHO study (n 101).

¹¹⁰ Bret Kloos and others, *Community Psychology: Linking Individuals and Communities* (Cengage Learning 2012).

examination and re-interpretation of Quranic religious interpretations.¹¹¹ Therefore, the assumption that violence against women, specifically family violence, is far too complex to be attributed solely to Islam, belongs to the past. Much research and many attempts have been made to clarify the actual link between domestic violence and social norms/ traditions rather than religion.¹¹² In the Islamic heritage, maltreatment of any beings is not permitted; the Prophet Muhammad Said:

A woman was punished due to a cat she had imprisoned until it died, so she entered the Hellfire. She did not give it food or water while it was imprisoned, neither did she set it free to eat from the vermin of the earth. ¹¹³

A man suffered from thirst while he was walking on a journey. When he found a well, he climbed down into it and drank from it. Then he came out and saw a dog lolling its tongue from thirst and licking the ground. The man said: This dog has suffered thirst just as I have suffered from it. He climbed down into the well, filled his shoe with water, and caught it in his mouth as he climbed up. Then he gave the dog a drink. Allah appreciated this deed, so he forgave him.¹¹⁴

The Sunnah (practices, customs, and traditions of the Prophet Mohammed) clearly and decisively condemned any forms of violence against women, the

¹¹¹ Sonia D Galloway, 'The Impact of Islam as a Religion and Muslim Women on Gender Equality: A Phenomenological Research Study' (Nova Southeastern University 2014).

¹¹² Diane S Morse and others, 'An Effect That Is Deeper than Beating': Family Violence in Jordanian Women' (2012) 30 Families, Systems, & Health, 19.; Also: Zaleha Kamaruddin and Umar A Oseni, 'Between Ideals and Reality: Violence against Women and the Real Image of Women in Islam' [2013] The Journal of Oriental Studies., Muhammad M Haj-Yahia, 'Can People's Patriarchal Ideology Predict Their Beliefs about Wife Abuse? The Case of Jordanian Men' (2005) 33 Journal of community psychology.

¹¹³ *Sahih Al-Bukhari*, vol. 4, book 5, Hadith 689.

¹¹⁴ *Sahih Al-Bukhari*, vol. 3, book 40, Hadith 551 ; Diab M Al-Badayneh, 'Violence against Women in Jordan' (2012) 27 Journal of family violence.

prophet Muhammed on many occasions prohibited the beating of women under any circumstances and he never hit any female. He expressed his view in many Hadiths: “do not beat the female servants of Allah” ¹¹⁵; in another Hadith, He Said: “how does anyone of you beat his wife as he beats the stallion of camel and then embraces (sleep with) her”.¹¹⁶ Aisha, the Prophet’s wife, said,

The Prophet never hit a servant or a woman.¹¹⁷

However, the controversy regarding wife beating emerges from a passage of the Quran 4:34 (Surah Al Nisa 4 verse 34) which dealt with the *nushuz* (wife disobedience), apart from the controversial word within the passage, the entire passages in the Quranic text, based the relationship between male and female on mutual love and kindness.

Almighty Allah said:

As for those from whom you apprehend infidelity, admonish them, then refuse to share their beds, and finally hit them [lightly]. Then if they obey you, take no further action against them. For God is High, Great. If you fear any breach between a man and his wife, appoint one arbiter from his family and one arbiter from her family. If they both want to set things right, God will bring about a reconciliation between them: He is all-knowing and all aware.¹¹⁸

Much has been written regarding the interpretation of the verse; Badawi is highly cited in this debate, in his discussion of verse 34, which is often used to justify maltreatment of women, indicates that:

¹¹⁵ *Sunan Abu Daud*, book 12, Hadith 2141

¹¹⁶ *Sahih Al-Bukhari*, vol. 8, book 73, Hadith 68.

¹¹⁷ *Sahih Muslim*, vol. 3, book 9, Hadith 1984

¹¹⁸ Muwlanah Wahiduddin Khan Khan, *The Quran* (Farida Khanam ed, Goodword Books 2009).

Under no circumstances does the Qur'an encourage, permit, or condone family violence or physical abuse. In extreme circumstances, and whenever greater harm, such as divorce, is a likely option, in an effort to save the marriage it allows for a husband to administer a gentle pat to his wife that causes no sort of physical harm to the body nor leaves any sort of mark.¹¹⁹

He does not deny the prerogative but explains that such a measure is more accurately described as symbolic as punitive.¹²⁰

Ammar summarizes into four schools, the understanding of the Quranic verse 34 of Al Nisa: The first is an interpretation that justifies wife-beating as a permissible in the case of wife disobedience, which is not a position advanced by many prominent scholars as well as should be considered as a historical school. The second interpretation which is more dominant in contemporary Muslim communities sees Islam as permitting wife-beating but with conditions that do not result in injury. Those who agree with this school argue that the beating should be a last resort and should be inflicted with anything larger than a toothbrush or any symbolic tool, and the aim is to avoid divorce between the spouses in specific serious behaviour. The third interpretation regards Quranic verse 34 of Al Nisa addresses exceptions to the general spirit of Islamic sources, and to those who uphold this point of view, wife-beating is permissible but not desirable and is not consistent with the general principles perceived about women in Quran or Hadith. Adherents to this interpretation ask how a religion that emphasizes family values, promote spousal equity, and mutual relationship in marriage within the Quranic

¹¹⁹ Jamal Badawi, *Gender Equality in Islam: Basic Principles*, vol 2 (IDM Publications 1995).

¹²⁰ Kamaruddin and Oseni (n 112). p. 85

text could permit wife-beating as a general rule. The final interpretation uses linguistic rules to show that Verse 34 of Al Nisa has been misinterpreted and does not even refer to beating when using the Arabic word *idribuhunna* “beat/hit/strike them”. Interpreters of this school believe that the logical sequence in this verse would be revoked by prescribing any behaviour that is not conciliatory. Many within this school in order to get a better understanding the meaning for this verse, have gone to the etymology of the word *idribuhunna* “beat/hit/strike them”.¹²¹

It is important to recognize the position of the Saudi religious establishment regarding domestic violence. The Grand Mufti of Saudi Arabia, Abdul-Aziz bin Abdullah Al-Sheikh, the head of the Permanent Committee for Research and Issuing Fatwas and classified as the highest religious figure in Saudi, in reply to the request made by the National Family Safety Program (NFSP) to condemn domestic violence, made a long speech that was publicly broadcasted.¹²² The Grand Mufti asserted the importance of stability in the family and made the point that Islam encourages mercy, love, and good manners between spouses which are considered the pillars of marriage and family members. He addressed the dangerous effects for prevailing such crimes that not accepted religiously and described it as misdeeds. Also, it is worth noting that the Mufti warned about using any excess cruelty or abuse against children and urged the victims who might be faced by harm, or anyone who witnessing violence, to report it to the police.¹²³ However, the speech was a response to NGO's effort to combat DV, and this will be elaborated in the next section. Seemingly the Mufti still who retains some loyalty to his traditional school, has not completely forbidden using any forms of

¹²¹ Nawal H Ammar, 'Wife Battery in Islam A Comprehensive Understanding of Interpretations' (2007) 13 Violence against women.pp.519-524

¹²² 'The Grand Mufti Warns from Domestic Violence' *Al-Riyadh Newspaper* (16 June 2009) <<http://www.alriyadh.com/438128>>.

¹²³ *ibid*

violent action in the family sphere. This attitude from the Grand Mufti can be justified due to the existence of explicit Quranic verse which I argue it is not necessarily correct from Islamic perspective as shown in the literature above. On the other hand, he provided a relatively enlightened statement and condemned, in strong language, the practice of physical violence, maltreatment and verbal abuse. His Fatwa could benefit those who want to support the efforts of preventing all forms of domestic violence in the Saudi context, where Islamic views are dominant. It should also be borne in mind that the position of the official Saudi religious establishment regarding DV does not necessarily reflect the views of society, whether from intellectual figures or Islamic reformers, whose presence has been recognized in the last two decades. Although some could utilize religious justification as an excuse to perpetrate violence, religion, in itself, could be used in a reverse way to provide justification for a protective factor in some Islamic countries, this will be discussed widely in the chapter relating to compatibility between Islam and human rights.

2.5. The Reaction of Women's Rights Groups and Non-Governmental Organizations (NGO's) to Combating Domestic Violence

Attitudes towards domestic violence is a critical subject in deciding what kind of support women will get from family, friends, voluntary agencies and the state. The role of NGO's in formulating the law was vital and decisive insofar as it fuelled the need for legal change for the first time; it initiated a draft law; and the campaigns that accompanied the debate about these changes comprised an extraordinary story in the complex and conservative Saudi society.

In the 1990's Saudi Arabia began to consider the importance of being a member of the World Trade Organization (WTO); the application had been made in 1993.¹²⁴ For 12 years during which its accession was being negotiated; Saudi Arabia had to adopt many international treaties, in particular, those human rights treaties which are integral to this research. The Convention on the Rights of the Child (CRC) was ratified in 1996 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2000; which meant that they become part of the national law of the Kingdom.

These treaties have provided the first platform for women's rights groups and non-governmental organizations (NGO's) to demand more social change to fulfil the government's obligation regarding human rights violations. The calls for reform accelerated as a collation of intellectuals and educated professionals to meet and lobby for reform at the end of 2001.¹²⁵ Their demands included political and civil rights, equality between genders, judicial reform, curb the role of religious establishment's power.¹²⁶ Along with the reforming tendency of the then King Abdullah, there appears to be an enhance freedom of expression in Saudi Arabia, which has enabled activists, whether they belong to NGO's, columnists, intellectuals etc. to criticize the government's record and suggest plans to improve women's status. Therefore, In 2008, the King Khaled Foundation, a Non-Government Organization, sparked the first attempt to tackle domestic violence by using a legal mechanism to criminalize such incidences. The story began because of the efforts of the King Khaled Foundation, established in 2001. Two

¹²⁴ 'World Trade Organization, Accession Status: Saudi Arabia' <https://www.wto.org/english/thewto_e/acc_e/a1_arabie_saoudite_e.htm> accessed 16 March 2016.

¹²⁵ Nimrod Raphaeli, 'Demands for Reforms in Saudi Arabia' (2005) 41 Middle Eastern Studies 517.

¹²⁶ Due to consequences of September 11th attack in New York as some Saudi citizens were among hijackers, Mai Yamani, 'The Two Faces of Saudi Arabia' (2008) 50(1) Survival: Global Politics and Strategy 143.p. 145

academic professors were delegated to propose a new law to criminalize DV; Dr Munerah Al Saud and Dr Sami Aldameg drafted a bill which initially constituted 15 chapters, and included an idea to establish a national commission for protection of women and children. The draft was delivered to the Panel of Experts in the Saudi Cabinet for more discussion, then transferred based on the Saudi Basic Law of Governance rules, to the Shoura Council. The draft also was discussed and referred to the Saudi Cabinet where it was finally approved on September 2013.¹²⁷ Also, the callings for reforms led to the establishment of two human rights organizations in the country. First, The National Society for Human Rights (NSHR), a Quasi-autonomous non-governmental organization, was founded on 10th March 2004, approved and funded by the government.¹²⁸ Second, the Saudi Human Rights Commission (SHRC) was established in 2005.¹²⁹ Both NSHR and HRC have aimed to promote and protect human rights, based on Sharia and on international human rights principles. These bodies receive complaints from individuals about any violations of their human rights; they investigate and correspond with official bodies. Also, they tend to launch workshops and conferences to enhance citizens and residents aware of their rights, publish annual reports contain data about victims and types of abuse that is suffered.

Along with NGO's efforts, the stories that have been published in media help in shaping and understanding the detrimental effect of domestic violence and the vulnerability of those who are being abused. Traditional media such as television,

¹²⁷ Mohammad Hayder, 'The Panel of Experts Approved The Protection From Abuse That Was Drafted By King Khalid Foundation' *Al-Riyadh Newspaper* (Riyadh, 10 March 2009) <<http://www.alriyadh.com/414892>>.

¹²⁸ It claims that: "the National Society for Human Rights ...is financially administratively independent and has no connection with any governmental agency; for more details: 'The National Society for Human Rights' <<http://nshr.org.sa/en/>> accessed 16 March 2016.

¹²⁹ 'The Saudi Human Rights Commission' <<http://www.hrc.gov.sa/ar-sa/pages/home.aspx>> accessed 16 March 2016.

newspapers, and the new media: YouTube, Twitter and Facebook, have contributed a lot to expose and combat domestic violence in recent years, and many cases have occupied the limelight since the freedom of speech expanded after 2001. Alhomod contends that addressing domestic violence cases through media would assist in reducing its occurrence; when family member become aware of types, pattern, and consequences of abuse, then it is likely that the circumstances that would lead to such abuse would be avoided in the future.¹³⁰ He explains; when the media shed light on domestic violence incidences, it will create a public awareness that accelerates the demand for more social justice reform; it also reassures victims that the justice regime stands behind them.¹³¹

Bearing in mind that many incidents go unreported¹³²; the media from 2004 has been used effectively to combat the prevalence of DV in Saudi Arabia. The Rania Albaz case was the beginning of vivid coverage, and campaigns that clearly indicated domestic violence issue should be publicly addressed and discussed in the country. Rania was a TV presenter beaten by her husband and suffered such severe physical abuse that she was nearly killed.¹³³ Because of her high-profile stature, Raina's case became widely publicised, and many public figures and NGO's members participated in supporting her case.¹³⁴ The aggressor ended up in Jail for six months after reducing the charge from attempted murder to severe battery due to unknown mitigation factors. However, in recent years, new technology and social media have played a critical role in determining the Middle East's future; the Arab Spring of 2011 showed clear evidence of the power of

¹³⁰ abdullah N Alhomod, 'Domestic Violence in Arab Media', *Family and Arab Media: towards new role for family media* (2010). p.6

¹³¹ ibid

¹³² See section 2.3.1 magnitude of the problem.

¹³³ 'Beaten Saudi Woman Speaks Out' <http://news.bbc.co.uk/1/hi/world/middle_east/3667349.stm> accessed 23 March 2016.

¹³⁴ The National Society for Human Rights (NSHR) backed her to file a case and the governor's wife princess Sara Alanqari payed all medical expences.

social platforms, and provided a crucial alternative voice for political and social changes. In Saudi Arabia, the social media speeded up the process of change in many aspects from 2011, namely social changes. In Saudi Arabia most radio networks, television channels and newspapers are government-owned or under the influence of censorship and strict monitoring from the government. Therefore, youths and civil activists resort to express themselves freely on Twitter and other social media platforms. In Fact, Saudi Arabia is one of the biggest users of YouTube per capita in the world.¹³⁵ Also, Saudi Arabia is the fourth most active country on Twitter as of Jan 2019 and half of the Saudi active users log into Twitter daily.¹³⁶ These new tools broadened the exposure of many cases before the law, and dozens of victims have used Twitter particularly where it is increasingly dominant social platform among Saudis,¹³⁷ to protecting abused children and adult women by bringing instance responses for helpless victims and to ask for safety and help. Twitter users launched Hashtags regularly to stir the weak response from formal bodies to intervene and investigate alleged abuse. For example, Hashtags [#معنفه سكاكا](#) (Arabic for "Abused woman in Skaka"; [#اب يعنف زوجته وبناته](#) (Arabic for "Father abuses his wife and daughters") and [#الطفله المعنفه ليان](#) (Arabic for "abused child Lyan") have been deployed by activists prove to what extent the power of media could be a sufficient tool to alert society about the extent of abuse. In all previous Hashtags, the incidents were investigated and the protection committee responded for the calls from public by

¹³⁵ matt Smith, 'Young Saudis Getting Creative on YouTube' (*Reuters*) <<https://www.reuters.com/article/us-saudi-youtube/young-saudis-getting-creative-on-youtube-idUSBRE9AH0GY20131118>> accessed 23 March 2016.

¹³⁶ ibid, 'Countries with Most Twitter Users 2019' <<https://www.statista.com/statistics/242606/number-of-active-twitter-users-in-selected-countries/>> accessed 13 March 2019. see also: '4 Ways How Twitter Can Keep Growing' (2016) <Blog Beerreach> accessed 3 June 2017.

¹³⁷ Valdini Claire, 'Twitter Use in Saudi up 3000%, Says CEO' <<https://www.arabianbusiness.com/twitter-use-in-saudi-up-3-000-says-ceo-466042.html>> accessed 3 May 2017.

official statements. Furthermore, these campaigns have raised many questions about the absence of a governmental response until the cases erupted via social media.

However, it is also claimed by the participants in the hashtag who supported the abused victims, that the volume of unreported cases is massive. Many victims suffer in silence without receiving any assistance from the relevant agencies; the governmental response should not depend on social platforms to address DV problem in Saudi. The participants suggested hotlines, campaigns in schools and media in their tweets to enhance the governmental response.

Another key thing is before the introduction of the new law; intensified efforts were made by activists and NGO's; two remarkable campaigns were launched to raise awareness among Saudis and to call attention to the risks of domestic violence. Firstly, a significant campaign ran by King Khaled Foundation entitled: "No more abuse", which made headlines in April 2013. The advertisement spread through national newspapers and on social media platforms, and depicted an image of women wearing a traditional niqab (veil) covering her face, but not her eyes; one eye is a badly bruised, beneath the advert a slogan reads: "Some things can't be covered".



Figure 1. 'No more abuse' campaign advertisement

Secondly, in a similar fashion to the so-called “white ribbon” movement and inspired by the first Saudi campaign above; other well-known Saudi activists independently fought to end violence against women and children. The “White Ribbon” initiation has spread to over 60 countries around the world since 1990, it aims to encourage men and boys to “embrace the incredible potential they have to be part of positive change”.¹³⁸

Activists such as Sahar Fatani and Abdullah Alalmi with others, announced on the social media anti-abuse campaign - by using the provocative hashtag: [#اضربها](#) (Arabic for “hit her”). Most of the participants are featured in the campaign are Saudis. The campaign was sponsored by an audio production studio and agency ‘Libra Productions,’ based in Jeddah were popular Saudi tweeps and YouTube hosts, who expressed their views on domestic violence in their words. Some of these include: ‘I’d kill myself if I ever thought of hitting you’; ‘Just because you are

¹³⁸ For more details: ‘Who We Are: White Ribbon’ <<http://www.whiteribbon.ca/who-we-are/>> accessed 23 March 2016.

male doesn't necessarily mean you are a man,' the photos have been posted on their Twitter accounts and the hashtag.¹³⁹



Figure 2. examples from the Saudi White ribbon campaign

These campaigns challenge the cultural norms of abuse in Saudi Arabia for the first time and have triggered debate, whether they can help in eradicating DV, in light of strict censorship. Both campaigns spread mainly through the Internet, it is difficult to estimate how far reached these images.¹⁴⁰ However, the campaigns faced opposition and criticism by some Saudi clerics, who claims that it is a western agenda and claimed that organizers collectively advocate immorality. Others critique the campaign's focus on men, arguing the ineffectiveness of raising the awareness of abusers rather than providing support for abuse

¹³⁹ Afifa Jabeen Quraishi, 'New Anti-Domestic Abuse Campaign Asks: Dare to "Hit Her?"' *Arab News* (3 June 2013) <<http://www.arabnews.com/news/453753>> accessed 23 March 2016. Also: Tom Throneburg Butler, 'The Times: Are They a-Changin'? Saudi Law Finally Addresses Domestic Violence with Its Regulation on Protection from Abuse' (2014) 100 Iowa L. Rev. 1233. p.1245

¹⁴⁰ 'First Anti-Domestic Violence Campaigns From Saudi Arabia' <<http://msmagazine.com/blog/2013/06/14/first-anti-domestic-violence-campaigns-from-saudi-arabia/>> accessed 23 March 2016.

victims.¹⁴¹ Regardless of the critics, the campaigns and the bulk of its effectiveness, they gain positive responses from the audience and throw a new twist into a pond that no one has dared to stir it for a long time.¹⁴²

2.6. Conclusion

Little research has been conducted to address domestic violence in Saudi Arabia, other than that primarily stemming from physicians who approach the subject from a medical perspective and who employed scientific tools to gauge the magnitude of the family violence. In the absence of further national surveys to measure its prevalence, the truth about how much DV occurs, is still incomplete. Married women are those who are mainly surveyed in these researches, children, other members of the family, elderly and domestic workers have never been investigated. However, from available data taken together, and despite the limitation and reliability, it can be assumed, contrary to allegations made against the subject of abused women in Saudi Arabia, the researches showed the level is within the international average (12%/58%). The most common types of abuse were emotional with physical. Unexpectedly, economic abuse was notable even though economic status in Saudi Arabia is relatively high. Also, in the second section of this chapter it was revealed that Islam neither promotes family violence nor condones it, but the role of religion or Islamic teaching in producing the circle of family abuse in Saudi Arabia is non-conclusive. It seems most studies avoid exploring this factor because of its sensitivity in a conservative society like Saudi. Even though the Saudi religious establishment has taken an intolerant position

¹⁴¹ *ibid.*

¹⁴² 'Opposition to a Saudi White Ribbon Campaign' <<https://saudiwoman.me/2013/05/21/opposition-to-a-saudi-white-ribbon-campaign/>> accessed 23 March 2016.

explicitly in recent years towards DV, compared with other Islamic countries. Therefore, it seems there are no barriers for researchers in conducting further studies to examine the dimension of the religious factor in formulating DV in Saudi Arabia. The traditional structure of Saudi society has been under massive pressure from modern pressing needs in the last two decades. Many aspects of life have changed; women's status and traditional family values are in conflict with, on the one hand, advancing reform and on the other a reluctance stemming from fear of westernization of the family. However, it is not enough to transfer any strategies sourced from the Western perspective because of the risk of being discredited as unsuitable for a very different socio-cultural environment as discussed above. Non-profit organizations and activists have played an essential role in issuing the Saudi domestic violence law and is still a sufficient tool at the national level to tackle it.

Chapter 3 The Legal Response to Domestic Violence in Saudi Arabia

3.1. Introduction

This chapter will illustrate the legal response to domestic violence in Saudi Arabia by drawing a brief analytical overview of legal structures and laws, how they are applied; their consequences and their deficiencies. This Chapter also discusses the policy and procedures adopted currently to combat domestic violence in Saudi Arabia, particularly the role of the Ministry of Labour and Social Development (MLSD), the National Family Safety Program (NFSP) and the Ministry of Justice with a special focus on the Special Judges Training Program for domestic violence cases. The chapter focuses on the types of possible intervention and assesses strategies to prevent violent acts related to domestic violence.

3.2. Legal Reform and Structure

Saudi Arabia is one of the major Muslim countries that plays an influential role in many aspects of Islam, particularly as it is home to the two holy sites in Islam: Makkah and Madinah. It has oil reserves comprising of about 24% of the world's total enabling the country to develop economic and commercial ties with other countries and to contribute to the global economy. The Saudi legal system in Western scholarship has not been the subject of much attention among

researchers, and specifically, there is a scarcity of work, that addresses and examines new developments taking place in the judicial system, particularly in the last decade. The same applies to the lack of literature on the subject of domestic violence topic which could be as a result of the latest law that has not been reviewed or examined adequately as the law is relatively new and came into force in 2014 due to the lack of researchers who specialised in domestic violence from legal perspective.

Moreover, the dominance of the traditional image of Islamic law – seen in isolation from its contemporary application in Saudi Arabia due to lack of updated literature may prove to be a crucial factor in determining the image of the Saudi legal system. Consequently, apart from a few studies in recent years,¹⁴³ the notion of the Saudi legal structure is often perceived as a stereotype of the old Islamic Qadi (Judge) system.¹⁴⁴

This depiction evokes a medieval scene: a man with a long beard, turban and barefoot, sitting in a mosque or under a tree to dispense justice based on books from the medieval ages.¹⁴⁵ Accordingly, some studies regularly tend to stigmatise the Saudi legal system as continuing to exist under fixed classifications suggesting that the Saudi legal system applies Sharia as the only state law; or it

¹⁴³ Frank Edward Vogel, *Islamic Law and Legal System Studies of Saudi Arabia* (Harvard University Press 1993); Muhammad Al-Atawneh, 'Is Saudi Arabia a Theocracy? Religion and Governance in Contemporary Saudi Arabia' (2009) 45 Middle Eastern Studies 721.; Tawfiq Alsaif, 'Relationship between State and Religion in Saudi Arabia: The Role of Wahabism in Governance' (2013) 6 Contemporary Arab Affairs 376. Also it is worth noting that most of Stéphane Lacroix's work presents an authentic and updated study that have been analysing Saudi society from different aspects in recent years e.g. ;Stéphane Lacroix, 'Between Islamists and Liberals: Saudi Arabia's New "Islam Liberal" Reformists' (2004) 58(3) The Middle East Journal 345.; Stéphane Lacroix, 'Is Saudi Arabia Immune?' (2011) 22(4) Journal of Democracy 48.

¹⁴⁴ *Terminiello v. Chicago* (1949), Mr. Justice Frankfurter, commenting on his own court, said: "This is a court of review, not a tribunal unbounded by rules. We do not sit like a kadi under a tree dispensing justice according to considerations of individual expediency." Cited in: Lawrence Rosen, 'Equity and Discretion in a Modern Islamic Legal System' (1980) 15(2) Law and Society Review 217.

¹⁴⁵ *ibid*

presents a classic version of the most traditional legal structure among Muslim countries “where the national constitution is the Quran”.¹⁴⁶ It would be fair to say that, *prima facie*, an outsider may well see Saudi law as underpinned in its entirety by the Quran and the Sunnah. Nevertheless, such an assumption undervalues a complex legal system, which, whilst having a basis in Islam, nevertheless has a contemporary history of applying a modern perspective embedded in modern laws and legal approaches. The state’s identity and the legitimacy of its social ordering are undoubtedly derived from Islamic law. Article 1 of the Saudi Basic Law, for instance, stipulates that: ‘Allah’s Book and the Sunna of His Prophet are the country’s constitution’ while Article 7 expressly states: ‘governance in the Kingdom of Saudi Arabia shall be based on justice, shura (consultation), and equality in accordance with Islamic Shariah’.¹⁴⁷ In other words, this means that these divine sources have sovereignty over all laws and regulations in the country.

Another important factor is that Saudi Arabia has never been colonised by any foreign force, unlike most other countries within the Middle East where foreign legal, mostly European countries, influence is noticeable; but in Saudi Arabia, such influence does not exist. When it came to modernising the law or introducing the first constitutional document in Saudi history, Saudi legislators were therefore faced with the huge task of bridging several centuries of change, whilst avoiding, at the same time, upsetting the social arrangements and moral values in Saudi society and scrupulously avoiding any conflict with Sharia rules.¹⁴⁸

¹⁴⁶ Mashood A Baderin, ‘A Comparative Analysis of the Right to a Fair Trial and Due Process under International Human Rights Law and Saudi Arabian Domestic Law’ (2006) 10(3) *The International Journal of Human Rights* 241,243.; George N Sfeir, ‘The Saudi Approach to Law Reform’ (1988) 36(4) *The American Journal of Comparative Law* 729.

¹⁴⁷ Sfeir (*ibid*)

¹⁴⁸ Ali M Al-Mehaimeed, ‘The Constitutional System of Saudi Arabia: A Conspectus’ (1993) 8 (1) *Arab LQ* 30.

Also, the process of creating a Saudi legal system in previous decades resulted in the emergence of the legal temporal sub-system, autonomous but not entirely independent of the Sharia".¹⁴⁹ Other observers note that the continuous reform from 1932 when the Kingdom of Saudi Arabia was established, has led to the present massive introduction of new regulations and laws in order to sustain the demands of society. Consequently, the result is a unique blend consisting of a civil law system which is inspired by Islamic Sharia and Egyptian and French civil laws as it will be addressed later in depth.¹⁵⁰ In sum, the nature of the Saudi legal structure is more complex than is commonly understood and is somewhat removed from the stereotypical perception of being a pure Islamic system.

3.2.1. Judicial Structure:

A new judicial system was introduced in 2007 as the Saudi government overhauled of the judicial system.¹⁵¹ The reform epitomised a hidden desire that has existed for decades between Saudi officials and Saudi society, to reconstruct the judicial system in line with modern neighbouring countries such as Gulf Cooperation Council Countries (GCC) and Egypt.¹⁵²

¹⁴⁹ Sfeir (n 146).

¹⁵⁰ Maren Hanson, 'The Influence of French Law on the Legal Development of Saudi Arabia' (1987) 2 (3) Arab Law Quarterly 272.; Saud Alhassan Al Saud, 'Making Sense of Judicial Remedies in Saudi Arabia: An Insider View' (2016) 3 Indon. J. Int'l & Comp. L. 127.

¹⁵¹ Royal decree No. M/78 dated on 1 October 2007. However, some judges and reluctant traditionalists, mainly from some Ulema (Muslim scholars) united in opposition after King Abdullah made the reform decision. The traditionalists justified their resistance to the reform because they claimed, it could threaten adherence to Sharia and other Islamic traditions that constitute the foundation of the country. Although the traditionalists' reaction has caused a delay in the completion of the whole plan to modernise the judicial system, a lot of legal reform nearly has been completed.

¹⁵² The reform came along with aspects of changes in many areas such as adopting more moderate speech regarding religious freedom and initiate dialogues between religions as well. Signing International human rights treaties. In addition, establishing the allegiance council to manage succession line to achieve certainty of thron, GCC countries includes: Kuwait, Qatar, Oman, Bahrain, United Arab Emirates.

The previous judicial system, in force for more than 30 years, consisted of two main bodies: the public courts' system and the Board of Grievance [the administrative court]. Initially, the Saudi Board of Grievance only had jurisdiction over administrative disputes or any claims against the Saudi government, but over the years, it acquired significant wider jurisdiction and dealt with most types of commercial and criminal disputes, stripped from the public court's jurisdiction.¹⁵³ These included, for example, cases such as bribery, embezzlement and forgery. The Board of Grievance applied the relevant Saudi laws regarding each case brought before it in accordance with the law. In addition, it is worth mentioning that the public court system, that was originally conceived to apply solely Sharia laws. Currently, as the new court system has been implemented, the public court system applies man-made laws within its jurisdiction in all aspects of law whether the case brought before the court commercial, criminal, labour, personal status.¹⁵⁴

The current hierarchal order for the court's system, based on 2007 regulations, organised the court system as follows:

- High Court;
- Courts of Appeal
- First-Degree Courts, which consist of:
 - General Courts

¹⁵³ Many of these Committees were created because of passive attitude of the Sharia Courts and its refusal to enforce man-made laws under the Judiciary system applied before 2007. Abdullah F Ansari, 'A Brief Overview of the Saudi Arabian Legal System' (*GlobaLex*) <http://www.nyulawglobal.org/globalex/Saudi_Arabia1.html> accessed 5 March 2017. See: Vogel n (1).; Ayoub Al-Jarbou, 'Judicial Independence: Case Study of Saudi Arabia' (2004) 19(1/4) Arab Law Quarterly 5.

¹⁵⁴ The new courts staffed by the same personnel who have been adjudicating these disputes in the Board of grievances and presumably to have no compulsion against applying man-made law. Al-Sudairy indicates that this step helpful but not sufficient; unless be made at the level of the courts of appeal, the Supreme court and Judicial supreme council. For more details see: Ziad Al-Sudairy, 'The Constitutional Appeal of Shari'a in a Modernizing Saudi State' (2010) 2 Middle East Law and Governance .

- Criminal Courts
- Personal Status Courts
- Commercial Courts
- Labour Courts
- Enforcement Courts

Also, the Board of Grievance's courts' ordinary system comprised of the:

- High Administrative Court;
- Administrative Courts of Appeal; and,
- Administrative Courts

Each of these judicial bodies has jurisdiction over cases brought before them according to the provisions of the Law of Judiciary and supplemented by the Law of Procedure before Sharia Courts and the Law of Criminal Procedure.¹⁵⁵ In closing, it is extremely important to reflect on the fact that Saudi Arabia embarked on one of its most sweeping judicial changes in generations, and despite the manoeuvring of some existing powerful groups who have striven to prevent judicial reform for many years, the process of reform has achieved most of its goals in the creation of a modern court system.

3.2.2. Three Categories of Crimes

In order to achieve a better understanding, this section will try to shed light on the notion of crimes in Islamic law and its context in the Saudi legal system. In Islamic Sharia, there are three types of crimes: Hudud, Qisas and Tazir. Hudud and Qisas are crimes in which a fixed punishment has been determined by God, as

¹⁵⁵ Royal decree M/2 on 23 November 2013.

revealed in the Quran or Sunnah and it is, therefore, unchangeable.¹⁵⁶ Hadd (plural Hudud) means something fixed but Judicially it means a violation of a right belonging to God, Hudud crime consists of zina (unlawful intercourse), qadf (false accusation of zina), drinking intoxicants (shurb al-khamr), theft (sariqa), robbery (hiraba), apostasy (ridda), and rebellion (baghy).¹⁵⁷ Qisas is also a fixed crime but the main difference with Hudud, is that it is embodied in the context of being a crime committed against an individual involving, for example, taking a life, or the causing of bodily harm. In this situation, the victim or the victim's family have three options, the right to exercise retaliation, forgiveness or to accept blood money.¹⁵⁸

Tazir or discretionary penalties is a crime (and its penalty accordingly) not specified in the Quran and the Sunnah of the Prophet but left to the discretion of legitimate authority or the judge, based on the circumstance and the severity of each crime. Furthermore, Tazir, which consist of 90 per cent of crimes in society in a similar way to Qisas, could involve private and public claims if the offender affects public safety, societal interest or public order.¹⁵⁹ Crimes can be categorised under Tazir into two divisions: uncoded and coded. In the situation of uncoded crimes, the judge decides on the case penalty through a mechanism called ijihad, which means the process of making legal reasoning by independent interpretation of sources of Islamic law. Ijihad is a flexible mechanism which enables the judges to evaluate the crime and decide the proper punishment

¹⁵⁶ Ashgar Mohamed and Kulliyyah Ahmad, 'Implementation of Hudud (or Limits Ordained by Allah for Serious Crimes) in Malaysia' (2012) 2(3) International Journal of Humanities and Social science 237. Cherif Bassiouni, *The Islamic Criminal Justice System* (Oceana Publications 1982).

¹⁵⁷ Among of three of Hudud offences: drinking intoxicants; rebellion and apostasy; the punishment was specified by the Sunnah. However, opinion to apostasy is not unanimous where some Muslim schools such as Hanafi School does not categorise it within Hudud for more details see: Mohamed S El-Awa, *Punishment in Islamic Law: A Comparative Study* (American Trust Publications 1982).; Mohamed and Ahmad (n 156).

¹⁵⁸ *ibid.*

¹⁵⁹ Alhabdan (n 72).

based on its severity.¹⁶⁰ The punishment could vary from community services, fines, imprisonment and death penalty. The second division of Tazir crimes are those regulated by legitimate authority when the need arises to meet societal needs. Thus, Saudi Arabia has managed the legal domain effectively through criminalising any act that could be classified under the category of Tazir crimes in written laws. Previously, and before adopting the domestic violence law in Saudi Arabia, any violent act inflicted on members of the family, would be categorised under Tazir crimes. Under Islamic law, any form of violence to anyone was and still is a crime against a human person. Therefore, domestic violence was a punishable crime but with no precise definition or punishment to be applied. The judges had discretionary power to determine whether a perpetrator was entitled to retribution based on their own view of justice. Many factors could influence a judge's personal understanding of the nature of the crime of domestic violence as the same happens in all Tazir crimes. For instance, during their formative educational years, Judges in Saudi Arabia usually study the Hanbali's School of thought literature. This can have the effect of causing them to adopt strict views towards the role of the male as guardian or protector for women and other family members. In such an interpretation, the man can enforce his wife's duty of obedience right in a violent manner and as a permissible power based on the judges' interpretations for the Quranic verses. This may inevitably lead to some tolerance of those who exercise such powers. A further influence on attitudes may be the judge's social backgrounds as the majority of them traditionally come from conservative cities or villages in Najd, which would frame their concept about this matter.¹⁶¹ Therefore, issuing the new domestic

¹⁶⁰ Shah (n 33). pp.69-85

¹⁶¹ Najd refers to the central region of present-day of Saudi Arabia.

violence law might be a significant breakthrough in the criminalization of Tazir in Saudi Arabia and it may indicate a step away from the dominance of theological and societal status quo in the Saudi context.

3.3. The Legislative Authority in Saudi Arabia:

The legislative process in Saudi Arabia is quite different from other countries with respect to how laws are made and is comprised of three authorities as stated in the Saudi Basic Law of Governance. The authorities are The King, the Council of Ministers and the Shura (Consultative) Council. Together, these three authorities form the lawmaking authority. The following section will further examine how these authorities work to introduce a new law.

3.3.1. Law-making Process:

The legislative power in Saudi is shared between three authorities: The King, the Council of Ministers and the Shura (Consultative) Council. The King occupies the top slot at the pyramid of the legislative power. Article 44 states that the King as the ultimate authority over all state authorities.¹⁶² The King is seen as the President of the state and Commander in Chief as well; which is the superior power, and the Head of the cabinet, and therefore he plays a significant role in rule-making function. Royal Order grants the King the right to repeal, enact or amend any law or regulations when there is no clear text in Sharia (Islamic law) which could regulate a given issue. This broad power in the King's authority stemmed from Sharia, where the Head of an Islamic state is granted discretion over matters of public interest (*Al-maslahah Al-mursalah*). Under the concept of

¹⁶² The Saudi Basic Law of Governance, art. 44

public interest, a Muslim state can keep pace with societal needs and development. In Saudi Arabia, as in other Islamic states, regulations are lawful and enforceable as long as they do not contradict the Sharia. Despite the fact that the King has massive power in the legislative process nevertheless, no laws, treaties, international agreements, or concession can be enacted or amended until they have been reviewed by the Council of Ministers and the Shura Council.¹⁶³ Only then, will they enjoy the approval of the King and be the subject of a royal decree. The Basic Law does not provide any limitation on the authority of the King, except that he should follow the Islamic Sharia. Thus, the power of the king is substantial.

Unlike other executive bodies in the world, the Saudi cabinet, since its creation in 1953, has played a significant role in the legislative process and in the modernization plans in Saudi Arabia. Before establishing the Shura Council in 1992, the Council of Ministers was the sole authority that enacted laws and regulations. Following the reform of 1992, the Council of Ministers has shared the regulatory function with the other two bodies of the state: The King and the Shura Council. Each minister has the right to propose a bill of law relating to the affairs of his ministry or may propose what he deems worthy of discussion during the Council of Minister meeting after approval by the Prime Minister. Resolutions and legislative proposals and amendments are not considered binding without majority votes and final approval by the king.¹⁶⁴ The consultative council's process began in 1927 after the founder of Saudi Arabia, King Abdul Aziz, had imposed his control over Hejaz.¹⁶⁵ The process developed in an uneven fashion,

¹⁶³ Ansari (n 153).

¹⁶⁴ *ibid.*

¹⁶⁵ Hejaz is historically referring to the west region of the Arabian Peninsula that contains the two holy sites in Islam: Makkah and Madina.

starting with eight members later expanded to 20 and chaired by the King's son. In 1956, the council membership increased to 25, but eventually, its functions as a legislative and consultative body were transferred to the Cabinet.¹⁶⁶ In March 1992, King Fahad (ruled from 1982 to 2005) announced the formation of the Shura Council; *inter alia* as a step aimed at broadening the participation of Saudi citizens in making decisions. The function of the Shura Council is to submit opinions concerning public policy, comments on state affairs including the general social and economic plans. Most importantly, vested in the function of the Shura Council is the ability to propose new bills of law or amendments to existing legislation and debate them within the Council of Ministers.¹⁶⁷

The resolutions of the Shura Council are sent to be reviewed by the King, who decides which resolutions will be referred to the Council of Ministers. If the Council of Ministers endorses the views expressed by the Shura Council, the resolutions are issued once the King has granted his approval. Every legislative proposal or amendment which becomes law must be approved by the two Councils and the King. If the views of the two Councils vary, the matter is referred to the Shura Council which adopts whatever resolution it deems appropriate. The new resolution is then presented to the King, who takes the final decision. Thus, the King has the authority to accept or reject bills from the Cabinet and Shura Council and when the two have a conflict or not.¹⁶⁸ The current number of members of the Shura Council is 150 headed by a chairman.¹⁶⁹ In 2015, the late King Abdullah announced a quota for women in the membership of the Shura

¹⁶⁶ Hrair R Dekmejian, 'Saudi Arabia's Consultative Council' (1998) 52(2) Middle East Journal 204.

¹⁶⁷ Ansari (n 153).

¹⁶⁸ Layla Alnahdi, 'Quality of Legislation and Law-Making Process in Saudi Arabia' (University of London 2014).

¹⁶⁹ The volume of the members was increased by 30 members in each of the following terms to reach 150 members in 2005.

Council, who should always hold at least fifth of its 150 seats. Thirty women were appointed because, as King Abdullah said previously:

We refuse to marginalise women in society in all roles that comply with Sharia, we have decided, after deliberation with our senior Ulema (Muslim scholars) and others to involve women in the Shura Council as members in line with the Sharia regulations.¹⁷⁰

The King, according to the Shura Council law, chooses the members of the Council, and 50% of them must be replaced by newly selected members every four years.¹⁷¹ The majority of the member are PhD holders, and a large proportion has a western education.¹⁷²

The Shura Council was initially toothless and described as a cosmetic move as the Council rendered only non-compulsory consultations.¹⁷³ However, in 1994 a new amendment granted the Shura council more power. In a case where the views of the Council of Ministers and Shura Council differ, the issue is returned to the Shura Council (previously not required), which delivers whatever decision it deems appropriate. The new resolution is then sent to the King, who renders the final decision.¹⁷⁴ Moreover, Al Jarbou contends:

The Basic Law of Saudi Arabia states in article 47 that the authorities of the state are a judicial, an executive and legislative authority, which suggests that a separation of powers is recognised. On the contrary, in practice, there is no separation between authorities, especially between the legislative and the

¹⁷⁰ 'Saudi Arabia's King Abdullah Gives Women Right to Vote, Run in Municipal Elections' <<https://www.alarabiya.net/articles/2011/09/25/168602.html>> accessed 9 December 2016.

¹⁷¹ The Saudi Basic Law of Governance, art. 13

¹⁷² Faisal M Al-Fadhel, 'Legislative Drafting and Law-Making Practices and Procedures under Saudi Arabian Law: A Brief Overview' (2012) 1(1) IJDLR 95.

¹⁷³ Yamani (n 126).; Dekmejian (n 166).

¹⁷⁴ Law of Shoura Council (Consultative Council) issued by Royal Decree A/91 dated 27/8/1412H, art. 17 amended by the Royal Order No. A/198 dated to November 27, 2003.

executive branches. The Council of Ministers undertakes both functions at the same time. It shares the legislative function with the King and the Shura Council (the Consultative Council) which renders only advisory opinions.¹⁷⁵

3.3.2. Modern Laws and Codification

Many articles of the Saudi Basic Law of Governance firmly claim sovereignty of Sharia over all aspects of life, and promote the role of the Quran and the Sunnah as the only constitution for Saudi Arabia. It is understandable that the Saudi regime has linked its legitimacy since 1744 to the adherence of Islamic principles.¹⁷⁶ However, since the unification of the state by the founder King Abdul-Aziz in 1932, the practical nature of the Saudi government has taken a pragmatic approach to use some aspects of modern laws. Supported by the changing economic conditions and the demands for development in Saudi society, steps have been taken towards restricting the discretionary power of the judges that derived from the Sharia.

Article 48 of the Basic Law provides that:

The courts shall apply the rules of the Islamic Sharia in the cases that are brought before them in accordance with what is indicated in the Book (Qur'an) and the Sunnah, and statutes decreed by the Ruler which do not contradict the Book (Qur'an) and Sunnah.

Article 48 emphasises that the Sharia is still the supreme or primary basis of law in the state. Therefore, the traditionalists among Saudi scholars have strongly

¹⁷⁵ Ayoub Al-Jarbou, 'The Saudi Board of Grievances: Development and New Reforms' [2011] Arab Law Quarterly.

¹⁷⁶ Amr D Marar, 'The Duality of the Saudi Legal System and Its Implications on Securitisations' (2006) 20(4) Arab Law Quarterly 389.

opposed any idea of codifying the rules of Sharia in modern written texts. They have also rejected applying any man-made laws.¹⁷⁷ The traditionalists' argument can be mainly summarised into two main objections. First: Sharia as represented in the Holy Quran and the Sunnah through explanations in Islamic jurisprudence books (Fiqh) is a rich heritage and are still applicable and valid for any situation that may occur today. Second: codification could lead to restricting of ijtihad or creativity of judges by obliging them not to go further than the codified rules.¹⁷⁸ Also, in support of this view, the Saudi Board of Senior Ulema released a Fatwa No.8 in 1973 rejecting a codification of Sharia and described it as a non-Islamic act.¹⁷⁹ However, there were voices among these members advocating the codification of Sharia, nevertheless, the decision arose from a majority vote.¹⁸⁰ Despite the reluctance of the Ulema, the Saudi government has effectively adopted the concept of public interest (*Al-maslahah Al-mursalah*). Through utilising this mechanism, Ansari states that:

The head of an Islamic State is granted broad discretion over all matters in the field of public policy. Public interest (*Al-maslahah al-mursalah*) is one of the main areas in which Islamic governments such as that of Saudi Arabia deal with the comprehensive development of the country.¹⁸¹

The introduction of modern laws would not have succeeded if the government had not used a religious technique based on public interest. Currently, modern

¹⁷⁷ Ayoub Al-Jarbou, 'The Role of Traditionalists and Modernists on the Development of the Saudi Legal System' (2007) 21(3) Arab Law Quarterly 191.

¹⁷⁸ *ibid.*

¹⁷⁹ For more details see: 'Portal of the General Presidency of Scholarly Research and Ifta' – Main Page' <<http://www.alifta.net/default.aspx?language=en>>.

¹⁸⁰ 6 out of 13 of Ulema in this Fatwa had different point of view and urged explicitly to codify of the rules of Sharia if that necessary.

¹⁸¹ Ansari (n 153).

legislation covers the majority of issues in the public domain, and the legal system seems to be meeting society's needs as well.¹⁸² The legal reform movement is part of the historical establishment of the Council of Ministers in 1953 that led to the introduction of hundreds of laws and regulations covering the field of private and public law.¹⁸³ Accordingly, commercial, administrative and criminal areas of law have mostly been written and codified. However, it must be emphasised that Saudi law is not fully codified. Thus, in some areas of criminal law, family law, contract law and property law¹⁸⁴ judges rely on Islamic sharia sources to adjudicate these issues.

Most of the new legislation took inspiration from other legal systems in neighbouring countries, especially the Egyptian legal system which, and because of historical circumstances, had been influenced by the French system.¹⁸⁵ The existence of a highly educated elite including technocrats and legal professionals, who studied in Western countries and who occupy particularly dominant positions in the Shura Council and the Council of Ministers, has resulted in a modernising effect.¹⁸⁶ Moreover, the attitude of the traditionalists and religious establishment towards the codification of Sharia and applying new law has caused two primary results. Firstly, from the early times, and because of their own decision not to cooperate in the development of the law, they have faced exclusion from the legislative process. This exclusion has had and still has a positive effect in the law-making process by providing the legislative authority with the cognitive flexibility to achieve its goal of reforming the legal structure in the kingdom, which

¹⁸² Sfeir (n 146).

¹⁸³ Al Saud (n 150).

¹⁸⁴ *ibid*

¹⁸⁵ Al-Jarbou, 'The Role of Traditionalists and Modernists on the Development of the Saudi Legal System' (n 177).

¹⁸⁶ Hanson (n 150).

has not been possible since the formative years until today. Admittedly, the restriction on the authority of government to issue new laws remains based on the condition that it must not contradict the Sharia, as mentioned in the Basic Law of Governance. Secondly, the movement to enact new statutory law has put more pressure on the traditionalists to revise their position particularly in areas that are traditionally under their control i.e., family law or contract law. Meanwhile, more voices from the religious establishment itself strongly advocate codification of Sharia; Alobeikan stated:

Why would this be religiously prohibited? What is the difference between the books of jurisprudence and the codification of the rules? We know that the books of jurisprudence contain rules directly or indirectly taken from the Quran and the Sunnah to the human mind is limited, which may cause conflict between opinions. It is for this reason codification is necessary. It would contribute to establishing justice. It will facilitate a judge's work and relieve him of conducting difficult research in the books of jurisprudence. We are living in times that require rapid verdicts in accumulating cases. This process will be speeded up by codification. Codification would also be useful to end the serious matter of conflicting judgments that sometimes occur within the same case and in the same city, perhaps even in the same court or that is passed by the same judge.¹⁸⁷

Moreover, the proponent's voices among moderate scholars, and the social pressure they exerted led to a new Fatwa No.236 dated 3 February 2010 issued by the same establishment: The Saudi Board of Senior Ulema, that previously forbade any form of codification, reconsidered its position in the new Fatwa by

¹⁸⁷ Torki A Alshubaiki, 'Developing the Legal Environment for Business in the Kingdom of Saudi Arabia: Comments and Suggestions' (2013) 27 Arab Law Quarterly 371.

allowing the notion of codifying the Sharia rules.¹⁸⁸ It seems there was irreversible governmental pressure behind the scenes to push King Abdullah project forward. Following the new Fatwa, on 10 December 2014, King Abdullah issued a Royal Order establishing a committee to design a project for the compilation of a Code of Judicial Rulings on legal cases and issues, classified by Islamic jurisprudential category, to meet the needs of the judiciary.¹⁸⁹ The committee based on the ministry of Justice accomplished its mission in drafting the first code of judicial rulings, which is under final revision and which will hopefully, be published soon.¹⁹⁰ However, the process of legal reform in Saudi Arabia demands greater effort and understanding than writing modern, progressive constitution and establishing functional court systems. The process must be gradual and based on inherent principles formulated carefully.¹⁹¹

In conclusion, the previous introduction highlighted the nature of the Saudi legal system. Undoubtedly, the source of legitimacy is derived from the Quran and the Sunnah, therefore, Sharia rules are sovereign over all aspect of life and laws must be compatible with Sharia or they will be rejected. However, the Saudi legal system could be described as a unique blend consisting of a civil law system primarily inspired by Islamic Sharia and foreign elements of laws that have been crepted into the system through gradual reform in the last decades. Next section will trace the current governmental efforts that aim to combat domestic violence before and after enactment the law.

¹⁸⁸ Mansour Alzoghaibi, 'Project of Judicial Codification' (28 December 2014) <<http://www.alhayat.com/Opinion/Mansour-Al-Zghebi/6497678>> accessed 12 November 2016.

¹⁸⁹ Ansari (n 153).

¹⁹⁰ 'Alsama'ni: Finishing Touches on the Final Draft of Fiqh Codification' (6 August 2016) <<http://www.alriyadh.com/1509764>> accessed 12 November 2016.

¹⁹¹ Hossein Esmaeili, 'On a Slow Boat towards the Rule of Law: The Nature of Law in the Saudi Arabia Legal System' (2009) 26(1) *Ariz. J. Int'l & Comp. L.*

3.4. The Governmental Policy and Procedures to Combat Domestic Violence

3.4.1. Introduction

The purpose of this section is to provide an evaluation of what the official Saudi response is towards domestic violence. The section also uncovers what actions or strategies have occurred in the Saudi government and inter-governmental organisations to combat abuse in the national sphere. Thus, passing the DV law in 2013 was a tremendous step, as it defines DV and criminalises its various forms. The law enables all stakeholders, either from the government, NGO members or public to stand up on the concrete platform to start the efforts. In fact, the political will that is expressed in a legislative document is a decisive sign demonstrates that a policy of non-toleration of DV came into force. However, the legal reform is not itself an adequate remedy unless it is a part of the effective system operates to minimise occurring DV. Thereafter, comprehensive national strategies incorporating all efforts should be set to prevent, prosecute and punish perpetrators along with protecting victims by all forms of support and assistance. In addition, following the increasing recognition of the international treaties such as CEDAW, CRC and relevant treaties, all state parties must fulfil their duties. Therefore, the recognition should be accompanied by a detailed and integrated legal framework encompasses all the organisational structure of society. For instance, courts, police stations and other administrative apparatus as a part of the state's obligations must achieve the conventions' objectives by a holistic

response.¹⁹² Hence, this section will illustrate the current Saudi government's response so far regarding combating domestic violence, in particular, the efforts of Ministry of Labour and Social Development (MLSD),¹⁹³ the National Family Safety Program (NFSP) and the Ministry of Justice (MOJ).¹⁹⁴ Accordingly, the years before 2004 did not witness any remarkable efforts from either the government bodies or NGOs. The collective efforts actually started in 2004 by establishing the General Department of Social Protection¹⁹⁵ and the NFSP in 2005. These issues are in need of discussion, and will be addressed as follows:

3.4.2. Ministry of Labour and Social Development (MLSD)

The official start for the national effort began in 2004 by establishing the General Department of Social Protection (DSP) that linked directly with the Deputy Minister for social development. The aim of the DSP is to provide protection for women, children under 18 years old, and vulnerable groups targeted by DV. According to DSP's website, its duties incorporates, inter alia, many functions:

- Creating 17 Social Protection Committees spread over the 13 regions in Saudi Arabia, also in the main cities in collaboration with other government bodies to achieve social security and protect the victims from abuse.
- Establishing more protection committees by coordinating with non-profit charities in the case of non-official committees available in a specific city.

¹⁹² Chinkin, 'Addressing Violence against Women in the Commonwealth within States' Obligations under International Law' (n 20).

¹⁹³ The Ministries of labour and social affairs were merged to be named as the Ministry of Labour and Social Development from May 2016, therefore, the supervisory authority to implement the Domestic Violence Law directly became under the new ministry.

¹⁹⁴ These governmental bodies specifically are the active actors in fighting domestic violence whereas ministry of health, police or prosecution are passive or their efforts not noticeable in the literature.

¹⁹⁵ As a branch of Ministry of Social Affairs.

- Facilitating hotline centre 1919 to receive calls from victims and to provide counselling treatment or any form of consultation.
- Intervention in any reported domestic violence incidents to protect victims within Saudi society.¹⁹⁶

Hence, evaluating any government's response regarding DV should raise the most urgent demands for victims, particularly, in the case of the early period of the application of any new law. Availability of hotlines and shelters are among the core issues that should be available in the first place, as an immediate response. These two services are the basis from which any assumed victim would be able to proceed further toward security and safety. The legal remedy including a judicial process to exercise justice would be the subsequent steps in the treatment of DV. Therefore, unless there is a meaningful response to victim's complaints via the sufficient provision of safe sanctuary for victims, then the system will prove a potential failure from the early stage of the application of the law. Hence, the accessibility to hotlines and the desirability of shelters is a pressing problem that is in need of discussion.

3.4.2.1. Hotline Centres

Empowering victims of domestic violence requires extensive investment in hotlines centres in any governmental policy within society. Domestic violence agencies service varies from one place to another, but the main functions are typically a combination of the following services: hotlines, counselling, advocacy

¹⁹⁶ For more details: 'Social Protection: Ministry of Labor and Social Development' <<https://mlsd.gov.sa/en/services/622>> accessed 15 April 2019. The number of Social teams and units increased to 24 in 2017 for more details: 'MLSD: We Do Not Disclose the Names of Whom Reporting Abuse Cases' <[https://sabq.org/العن-هوية-مبلغ-عن-لا-نفصح-الاجتماعية-الانتمية-D9%](https://sabq.org/العن-هوية-مبلغ-عن-لا-نفصح-الاجتماعية-الانتمية-D9%>)> accessed 15 April 2019.

and shelters.¹⁹⁷ Hotlines present the first resort for the assumed victims; however, the benefit of hotlines is not only that they receive emergency calls from victims seeking for instant help but also that they provide extra services such as advocacy or counselling are compelling. Volunteers, paraprofessionals or professionals usually staff hotlines in most countries that provide such service. Presumably, the staff have undergone intensive training programs in crisis interventions and legal procedures.¹⁹⁸ The Saudi law regulating the reporting of cases of abuse through any possible methods as Article 3 reads:

1- Anyone who becomes aware of a case of abuse must report it immediately. 2- Without prejudice to the procedures set in other relevant laws, any public servant, civilian or military, as well as any employee in the private sector who becomes aware of a case of abuse, by virtue of his employment, must immediately report such a case to his employer, who in turn must report it immediately to the Ministry or the police. The [implementing] Regulations shall specify reporting procedures.

Therefore, the implementing regulations addressed the reporting of incidents in four articles in details. These articles determine the responsibility for not reporting alleged DV cases from either public or private workers, the confidentiality of the person who reports without fear of repercussion or exposure to anyone.¹⁹⁹ In addition, article 4/1 obliged the Ministry of Labour and Social Development (MLSD) to initiate a plan to establish central hotlines to response for all abuse incidents over Saudi Arabia. The question is to what extent these efforts have

¹⁹⁷ Larry Bennett and others, 'Effectiveness of Hotline, Advocacy, Counseling, and Shelter Services for Victims of Domestic Violence: A Statewide Evaluation' (2004) 19 Journal of Interpersonal Violence.p.817

¹⁹⁸ *ibid*

¹⁹⁹ The Saudi Law of Protection from Abuse, art. 3,4,5 and 6.

met the legal requirements to provide sufficient and adequate hotline centre, and how helps victims of DV since the General Department of Social Protection (DPS) was established. Therefore, in order to track this process, the development of the services will be explored in two phases.

(a) From 2004 to 2016

In 2004, the General Department of Social Protection (DSP) became a governmental umbrella for all efforts related to DV issues in the national sphere. Therefore, in light of the scarcity of formal reviews, the independent reports from the NGOs or any type of academic literature that trace its evolvement, it is inevitable that some degree of reliance has to be placed on the local media and other sources of information. The first step to establishing hotlines started in 2006 by making a public statement via local media outlets and announcing that 13 telephone and fax machines were allocated to receive calls from alleged victims throughout the 13 regions of the KSA. Even though this service is obviously essential and should be the first priority of the DSP after its establishment, it took a long time - approximately two years - to appear publicly. Other problems associated with the service arise from the fact that the service was not toll-free or available out of normal working hours, which meant that its accessibility was very limited if not impossible. For instance, the Riyadh region has a dozen cities within its administrative borders, and the capital city of Riyadh itself has a population of 8 million people. Moreover, no single sign shows that the staff, who are presumably men, had gained special training to be able to deal with callers. Therefore, it is expected that it was a symbolic step and no conclusive evidence proves it displayed any degree of competence. In 2008, there was further progress when a new hotline service 1919, was established receiving calls, and

re-directing them to the local protection committees.²⁰⁰ Along with 1919, another free service 8001245055 emerged whose initial function is to provide counselling and a familial advisory service for the public. This service later emerged as an additional channel for reporting DV cases. The 800 line is toll-free which enables everyone to dial the number from any cell phone or landline during working hours. The recipients of the calls prepare a summary regarding the alleged abuse, and the caller's complaint can be optionally transferred to 21 part-time specialists who have expertise in social science or psychology. They will decide whether to deliver counselling to the abused person. Otherwise, the operator can report the matter to the local social protection committees. The decision-making process and evaluation of the risks that the victim could face, are conducted on an individual basis and the decision could be arbitrary.²⁰¹ However, during this period before the law came into force, there was a great deal of uncertainty and the options for unqualified staff were limited. Actually, no binding legal remedy is yet available because the law awaits enactment. The staff operating the 1919 Hotline were required to fill in a form containing information about the victim and the type of abuse; thereafter, their role was the compilation and summary of emergency calls, which they sent to the local protection committees by phone or fax. The weak response for 1919 apparently continued even after the law was passed in 2013. In many media reports, abused women expressed their rage at the failure of the hotline service in responding to the practical level needed in this situation. For instance, Ameerah said she repeatedly called the hotline 1919 to save her from abuse and imprisonment by her abuser (a brother) but the service did not

²⁰⁰ Iman Alkatef, 'Saudis Reported 84 Monthly Calls to the Ministry of Social Affair, Most Callers Were Women' <<http://archive.aawsat.com/details.asp?section=43&article=597957&issueno=11694#.WN07Im8rKUI>> accessed 30 January 2017.

²⁰¹ Talal Alnaser, 'The Social Counselling Freeline 8001245005' <<http://swmsa.net/forum/showthread.php?t=535>> accessed 22 January 2017.

offer any help. Another victim Ghadah told the reporter she continuously dialled the hotline to complain about her father's abuse but no one answered.²⁰² Therefore, she resorted to a DV shelter in order to get the necessary help. However, they offered to provide her with matchmakers' phones to find a husband or to reconcile her with her abuser. Ghadah wondered if the advice offered was the perception of solutions by these organisations to cases of DV.²⁰³ Meanwhile, the NSHR admitted the weak response for the hotline.²⁰⁴ One of the popular TV Arabic channels revealed the result of a poll indicating that 78% of Saudis did not know of the existence of a hotline for reporting DV cases.²⁰⁵ Seemingly, the lack of sufficiency, the absence of procedural guideline and disqualified staff combined to bring about the failure of the first 1919-hotline. This failure lasted until the new hotline centre opened in March 2016.

(b) From March 2016

Following the criticism of the old hotline centre, in March 2016 the Minister of Labour and Social Development (MLSD) opened the newly updated hotline centre, an event which attracted widespread media attention. The main functions of the new centre are: (a) receiving reports from victims (b) conveying the incidents to the local protection committees (c) coordination with other official competent agencies to process reported incidents (d) giving counselling (e) probing and publishing data. The new version of hotline 1919 is working 24 hours throughout the week. Seventy well-trained female employees staff the new

²⁰² Salwa Alomran, 'Hotline Service, a Problem Cannot Be Solved on Phone' (*Alriyadh Newspaper*) <<http://www.alriyadh.com/809685>> accessed 30 January 2017.

²⁰³ *ibid*

²⁰⁴ 'Law of Protection from Abuse: Few Reports and No Lines Respond' (*Sabq Newspaper*) <<https://sabq.org/BluGHe>> accessed 22 January 2017.

²⁰⁵ Manal Alzahrani, 'Most Saudis Do Not Know about Domestic Violence Hotline' (*Al Arabia Channel*) <<http://www.alarabiya.net/articles/2010/11/02/124582.html>> accessed 22 January 2017.

centre, which is equipped with all types of advanced technology. Women, children, seniors and other vulnerable groups such as the disabled can report violent incidents. In addition to the traditional methods of reporting, victims can use websites, fax or smartphone applications to report abuse. Also, a twitter account @mlsd_1919 was released in October 2018 to support the hotline. According to the introductory press release, processing the calls begins by classifying the level of the risk faced by the alleged victim on the scale of three categories. Firstly, a low-risk category including verbal abuse, which might involve a referral for a reconciliatory meeting between the victim and abuser. Secondly, moderate-risk calls where abusive behaviour mainly consists of abuse such as beating. Interestingly calling the police here is not priority besides considering beating as moderate-risk though it could result in the death of the victim in some severe cases. Nevertheless, the new hotline policy prioritises providing hospital treatment as the primary service for the victims in these cases. Thirdly, high-risk calls such as the threat of death or the use of weapons during a violent act. In this dangerous situation, the hotline will communicate with the police to rescue the victim.²⁰⁶ Liaison officers have been appointed to enhance the collaboration between the hotline and the related government agencies i.e. police or local administrative governors. Despite the massive development in rebuilding the current hotline in terms of the number of staff and the resources, it is hard to reach a definite answer on its success. At this stage, it is too early to decide whether it operates efficiently or whether it has achieved the desired outcomes, in responding to DV victims. However, some critical issues were not included in this reform of the hotline centre. These issues concern the ability of

²⁰⁶ Ministry of Labour and Social Development, '1919 Induction Clip' (*youtube*) <<https://www.youtube.com/watch?v=5ni3uWDIJWM&feature=youtu.be>> accessed 25 January 2017.

the staff at the centre being able to speak languages other than Arabic in order to respond to calls from foreigners living in Saudi Arabia. Presumably, some staff are able to speak English as it is an international language. Many domestic workers who largely come from African or Asian countries work in densely populated cities such as Jeddah or Riyadh. These groups usually work in household management or the public sectors as low-cost labourers. They can speak neither Arabic nor English fluently, which is problematic because the hotline must be able to communicate with this vulnerable group. Another discriminatory action concerns the lack of any explanation for the exclusion of men seeking help from the hotline centre. The DV law articles did not differentiate between genders in their texts especially in article 1 where the definition of abuse and victims is mentioned in neutral-gender terms. There are some justifications why particular groups are mentioned, usually because of their vulnerability, but it does not follow that men generally cannot be victims. Saudi patriarchal society enjoys many common beliefs, and men, as victims of abuse, challenges many preconceptions. In addition, if the call for help is well received from the hotline team it is unknown whether the new approach to assess and diagnose the level of risk is established by way of a systematic approach, rather than based on the operator's personal understanding. In other words, the role of the new 1919 line is to serve more as a conduit between the victims and the local committees. The new assessment criteria for the level of the risk would not vary from the old approach applied before March 2016. Admittedly, the partnership and assigned departmental liaison officers appear to promise a better response for the callers, especially in cases of high risk. But apart from this advantage, it is likely to follow the familiar bureaucratic approach by guiding the victim through the reporting process – and no more. Consequently its role will end by transferring the case of

abuse to the local committee. However, and in order to discover whether the new hotline centre has made a pivotal change in DV treatment in Saudi Arabia needs more time. In addition, the current hotline policy has revealed some signs of failure in cases of calls for help at the weekend. Extraordinarily, the local committee does not work at the weekend. In one case which occurred after the new hotline centre came into force, a 20 years girl was badly beaten by her abuser (her father). She complained that the operator's response was literally:

We do not have a specific time to take any measure or response,
the local committee in Makkah will contact you within one week,
I cannot promise to do anything, and if the situation deteriorates,
you can call the police.

The girl claims she recorded the call to prove her claims but the MLSD has not investigated or responded to it.²⁰⁷ However, some reforms have taken place; in March 2016, the Director of the General Department of Social Protection (DSP) released a timed response to deal with each call depending on its level of risk: two hours to process the call from the local committee in the case of a high-risk call. Moderate and low-risk responses will take four and six hours respectively. The hotline service released its first data about the bulk of calls by revealing that it had received 11,000 calls in 2016.²⁰⁸

In closing, it is extremely important to consider the massive improvements that have been made to the hotline service. However, there should be more effort to bring about cooperation with the local protection committees and all stakeholders

²⁰⁷ Ashwaq Altwairqi, '1919 Ignores Abused Girl..Police Involved' (*Okaz Newspaper*) <<http://okaz.com.sa/article/1049063/>> accessed 25 January 2017.

²⁰⁸ 'MLSD: We Do Not Disclose the Names of Whom Reporting Abuse Cases' (n 196).

from either governmental agencies or NGOs in order to combine all the efforts into a unified approach.

3.4.2.2. Shelters

Shelters are a critical service for abused persons whether it is an individual or a woman with her children. The shelter offers sanctuary from assailants, providing time for the victims to think about their options and to put their life on track again with medical, legal and social assistance.²⁰⁹ Shelters are a safe refuge; many studies that evaluated the shelter's service found it more beneficial than the traditional counselling service. It can reduce the frequency and intensity of new violence but this effect depends on variables such as whether the victim has already started to make a change to life before entering the shelter. Another study found that after two weeks of living at a shelter, the abused women would be less depressed and more hopeful.²¹⁰

The first shelter for DV survivors was established in 2005; the shelter was an initiative launched by a group of volunteers then adopted by Albir Society Jeddah.²¹¹ The current systems of shelters in Saudi Arabia largely consist of two groups: governmental shelters run directly by the Ministry of Labour and Social Development (MLSD) and charity shelters licensed and supervised by the MLSD's instructions. According to the MLSD, there are 9 charity shelters providing accommodation for domestic violence victims besides the

²⁰⁹ Richard Berk, Phyllis Newton and Sarah Berk, 'What a Difference a Day Makes: An Empirical Study of the Impact of Shelters for Battered Women' (1986) 48 *Journal of Marriage and the Family*.p.431; Bennett and others (n 197). p. 817; Judy Cox and Cal Stoltenberg, 'Evaluation of a Treatment Program for Battered Wives' (1991) 6 *Journal of Family Violence*.p.395

²¹⁰ *ibid.*

²¹¹ 'Saudi: Opining the First Domestic Violence Shelter' <<http://www.wluml.org/ar/node/2522>> accessed 30 January 2017.

governmental shelters.²¹² However, there is a lack of evaluation on the growth of centres both officially and unofficially. Therefore, their impact on the process of supporting domestic violence's victims on the national stage is unknown. In the years following 2005, the General Department of Social Protection (DSP) announced that it has 24 shelters active along. The DSP also collaborated with a further nine charity shelters under its supervision. However, it seems that the published number of shelters is inaccurate and does not reflect the real situation. In fact, apart from the few existing shelters orientated to victims of DV, the other shelters are just institutions belong to the MLSD and are only suitable for short-term accommodation. In other words, the MLSD has authority over rehabilitation centres for disabled or corrective institutions. What is happening is that the local committees make a decision to provide shelter for victims based on the vacancies in these establishments or others that could accommodate the victims temporarily. Hence, it becomes possible for the government to claim publicly that they are providing shelters as a part of their national policy to combat DV. Setting aside the theoretical rhetoric, the reality points to evidence the contrary. For instance, in Taif, there is no shelter, and victims are being accommodated in the local rehabilitation centre.²¹³ In another city, the victims are being accommodated in the local hospital until such times as they can be transferred to the nearest major city where a shelter is available.²¹⁴ Victims of abuse face the danger of having their specific needs confused with the needs of the disabled, corrective institutions and orphanages, principally because of the lack of shelters.

²¹² 'MLSD: We Do Not Disclose the Names of Whom Reporting Abuse Cases' (n 196).

²¹³ Ahalm Aljohani, 'Victims in Taif Shelter Complaining from Maltreatment and Oppression' <<http://www.alsharq.net.sa/2012/03/26/184605>> accessed 30 January 2017.

²¹⁴ 'Lack of Shelters Forced Victims to Resort to Hospital' <<https://www.almowaten.net/2016/12/الغيايب-دور-الحماية-يجبر-المعنقات-على-ال>> accessed 30 January 2017.

Therefore, many victims of DV are left in unprofessional conditions, which do not suit their needs.²¹⁵ The importance of specialised shelters is that the women who utilise shelters are among the most vulnerable survivors.²¹⁶ In addition, shelters are the first step to accessing remedies, and the policymaker should be aware that most survivors could not navigate through the entire civil or criminal law process by themselves.²¹⁷ The shelter is not a safe zone for the survivors, but it does provide an essential link to much needed medical, legal, psychological, welfare services. In the Saudi media coverage, there have been reports highlighting the terrible conditions in shelters. These media reports expose the extent to which the role of the shelters is disproportionate to the advanced efforts of combating DV. The problems can be summarised as follows:

1. Lack of specialised shelters for DV survivors as mentioned previously. The current situation provides a vacant space in any institutions available - not a safe professional refuge specifically for DV survivors. The provision of new shelters in some major cities is to be welcomed, but it is not enough. Some major cities and smaller cities are struggling to cope with the demand.²¹⁸
2. Shortage of informal networks that support victims, whether NGOs or activists, the correlation between the needs of victims and the shelter service is primitive. The volunteer's informal networks can be an effective

²¹⁵ In Saudi Arabia, women who completed their sentence in prison cannot be released until male relative (or Mahram) agree to guarantee them under his authority. They will stay in hostel homes run by the government until the matter is sorted, this violation for their rights has been condemned by NGO's and activists continuously but the government still apply it in discriminatory with men who served their sentence.

²¹⁶ Catherine Glenn and Lisa Goodman, 'Living With and Within the Rules of Domestic Violence Shelters A Qualitative Exploration of Residents' Experiences' (2015) 21 *Violence against women*.

²¹⁷ Bennett and others (n 197).

²¹⁸ Fraih Alremali, 'After Norah's Case: A Shelter Is Prepared in Hail' (*Alwatan Newspaper*) <http://alwatan.com.sa/Nation/News_Detail.aspx?ArticleID=223283&CategoryID=3> accessed 30 January 2017.

way to fill the gap in this area. The informal networks can through providing services such as legal assistance, counselling and other services assist the victim. Many activists reported that it is difficult to meet a victim seeking help or consultations without following the bureaucratic process, even if they do so it might not get approval from the shelter managers.²¹⁹

3. The formal staff in shelters are mainly formed by female supervisors and manager. However, in some shelters, staff could include social workers, because of the lack of qualified and trained staff in DV issues is a frequent complaint among survivors. On more than one occasion riots erupted in these shelters between residents and staff often because of claims of the inhuman behaviour of staff.²²⁰
4. The NSHR and local press revealed systematic violations and abuse being practised in shelters.²²¹ The violations include stigmatising abused women as being a responsible party, not a victim especially from some professionals who place some or all responsibility for the abuse as what often referred to as victim-blaming. Depriving the victim of some basic needs such as food or water. The lack and abuse of personal privacy manifest by members of staff insisting that door remain unlocked because of routine (but unjustifiable) checks. The confiscation of mobile phones or personal items in situations of confrontation between the staff and the victim is commonly practised. Other forms of human rights violations are

²¹⁹ Samar Alhaisoni, 'Residents of Shelters' *Al madina Newspaper* <<http://www.al-madina.com/article/431510/>> accessed 2 February 2017.

²²⁰ For example in 2015 in Makkah see : 'Abused Women Complain from Beaten and Insults in Makkah Shelter' (*Al madina Newspaper*) <<http://www.al-madina.com/article/378037/>> accessed 2 February 2017.; also in 2009 in Jeddah: Amal Bagazi, 'Social Affairs Evaluates Jeddah's Shelter' (*Asharq Al Awsat Newspaper*) <<http://archive.aawsat.com/details.asp?section=43&article=545372&issueno=11317#.WN5D728rKUUn>> accessed 31 January 2017.

²²¹ Hana Alaloni, 'Residents of Shelters Not Protected' *Okaz Newspaper* (8 April 2010) <<http://okaz.com.sa/article/325655>> accessed 2 March 2017.

also evident and include prohibiting residents from leaving the shelter, and the threats that should they do so the police will be called. A further threat is the possibility of children over the age of 13 years being separated from their mothers by the shelter authorities. Many media reports claim that among the threats made to victims is that of being sent to an asylum if they reject the conciliation or solution proposed from shelters' administration.²²² There is a long list of violations to be traced in the local media. The traumatic effect of experiencing shelters in Saudi as one victim describes as "an elegant prison"²²³, where isolation and a besieged mentality prevail during their stay in shelters. However, recently some free movement has been given for victims as they can go to work or study if the shelters internal instructions followed. Despite no detailed procedures issued by the Ministry of Labour and Social Development (MLSD) to govern shelters, except general instructions, the shelters' administration is given massive authority to control victims' life. The privilege of free movement could be revoked without any justification or as a penalty for any objections that targeting the manager or her staff. It is unknown whether these arbitrary decisions from the shelters' administration could result from either victim mixed with other offenders or institutionalised women in the shelter or because they are stigmatised themselves.

5. Discrimination against non-Saudi victims as it is difficult, if not impossible, to accept foreign females into shelters unless there are exceptional circumstances.²²⁴

²²² Hyat Alghamdi, 'Abused Women Revolted against Shelters' (*Alhayat Newspaper*) <<http://www.alhayat.com/Details/525151>> accessed 2 February 2017.

²²³ Haya Alobaid, 'Abused Women Complain' (*Aljazeera Newspaper*) <<http://www.al-jazirah.com/2011/20110210/th1.htm>> accessed 11 February 2017.

²²⁴ Aisha Alfaifi, 'A Victim Escapes from Her Abuser and a Journalist Wants to Get Back to Her Country' (*Okaz Newspaper*) <<http://okaz.com.sa/article/255726>> accessed 2 February 2017.

Consequently, given that the importance of setting rules for shelters to govern the victims' everyday life, fundamental failures persist in the shelter system. Perhaps this is because the MLSD does not have any applicable up to date guidelines with which to govern the shelters. Its policy, as announced many times, is not to prioritise shelters, but to provide them as a last resort to tackle any individual case. The conditions of the service in shelters are well below the standards originally perceived. Therefore, shelters in Saudi Arabia seem to be contrary to government efforts in the legal and hotlines sides. The absence of specialised shelters for DV, in which victims share the same venue with other women who have previous convictions in criminal cases has caused a negative impact. Although the MLSD released a statement regarding a plan to separate and accommodate these two groups in separate shelters, so far, this plan has only been implemented in Jeddah.²²⁵ Moreover, the administrative authority given to the shelters' administration is unlimited; they have absolute control over the residents' lives at the shelter. Consequently, there is a need to introduce guidelines for a new relationship between the victims and staff based on a different approach to their respective positions. It is, also, strongly recommended that victims maintain their own and individual informal networks which may include support from friends, relatives, activists or NGOs outside shelters.²²⁶

²²⁵ Adnan Alshabrawi, 'A Plan to Restructure Shelters' (*Okaz Newspaper*) <<http://okaz.com.sa/article/1022629/>> accessed 2 February 2017.

²²⁶ Glenn and Goodman (n 216). p.1482

3.4.3. Ministry of Justice (MOJ)

The judicial response to DV in any country is of particular significance, especially when the question of remedies available through the legal system arises. Judges can hold the abuser accountable; the punishments handed down by judges send a message to potential assailants that the law will be strictly applied.²²⁷ In Saudi Arabia, the system of courts is in the process of reform and the DV law is quite new. The DV law came into force in March 2014 after the Minister of Labour and Social Development published the implementing regulations in the official gazette. In light of the fact that the judicial branch takes a long time to publish courts' verdicts for the public, the evaluation of the judiciary's response is relatively challenging. Therefore, any understanding of actual judicial practice apropos the new law is still evolving. However, it is important to highlight all efforts made by MOJ in comparison to the situation as it was before the new law was issued.

3.4.3.1. How Courts Dealt with Perpetrators of Domestic Violence Before the New Law was Promulgated.

Before the introduction of the new law, Judges had discretion under Tazir to interpret any case. Cases arrived at the courts because of a complaint from a victim; sometimes cases were a referral from the Administrative Governor (Emir) or Bureau of Investigation and Prosecution. This was because of no legal article obliging any public authority to intervene in family disputes. The judge adjudicated disputes according to his personal interpretation of the Islamic Sharia, and, in these cases, the defendant could be punished, blamed verbally or freed if the

²²⁷ Judith Kaye and Susan Knipps, 'Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach' (1999) 27 W. St. UL Rev.p.9

judge perceived that no crime had been committed. Judges could, in some cases, focus on protecting family relationships, and hold the abuser accountable for their crimes; alternatively, there could be an order that resorted to the conciliatory process. The dilemma here was that the judge's action was not effectively addressing the risks faced by the victim; especially in physical abuse cases.²²⁸ In some circumstances, if the abuser was a parent, they may file a counter case accusing the plaintiff (the abused person) of *Uquq* (disrespecting and disobeying the parents) which is punishable in Sharia Law.²²⁹ Therefore, a certain degree of ambiguity was attached to any case brought to courts in the period before the promulgation of the new law. Judges were relying on their understanding of the concept of DV from a religious perspective rather than from the need to take action in the interests of the victim.

3.4.3.2. After the Promulgation of the New Law: A Special Training Programme for Judges

The social pressure has helped to make progress and shape the governmental attitudes towards stemming the epidemic of abuse. A new public awareness has changed the views that DV is a private family matter. Judges in personal status courts and criminal courts who deal with abuse may have noticed the social movement against abuse. A growing number of cases are now making their way to the courts, and there is pressure from the MOJ to force the judiciary to implement the law. Thus, the MOJ began a nationwide training program for judges dealing with DV issues. The program intends to train judges in personal status and criminal courts by equipping them with skills to fill their expertise gaps

²²⁸ Alhabdan (n 72).p. 91

²²⁹ This topic will be examined in depth in chapter 4.

particularly with reference to the subject of DV. The program has completed its first stage by training 150 judges, and the second stage has already started.²³⁰ The trainers were a team of experienced judges and specialists in fields such as sociology and psychology. The program objective was to prepare the ground for judges to implement DV law in a satisfactory way. Its purpose was to also to alleviate reservations or resistance emanating from the fear of judges being stripped of their power in the category of Tazir crimes. Consequently, the program was designed to accelerate the time-scale in adjudicating DV cases, improving the quality of verdicts and strengthening judges' ability to deal with family business. Remarkably, the Minister of Justice who at the same time, is the chief of the Supreme Judiciary Council, issued a decree requiring judges to refer to the domestic violence law in verdicts appertaining to any domestic violence case brings before him.²³¹

Meanwhile, the MOJ and the Supreme Judiciary Council of Saudi Arabia has launched many initiatives on many levels to empower women's status after issuing the domestic violence law. For example, women in the past were not able to get custody of their children after divorce without filing a lawsuit or perform legal acts on behaving her children without consent from the father, having difficulty in receiving alimony, etc. In landmark decisions, mothers have been allowed to retain custody, provided she signs an acknowledgement of no existing dispute, collect all child support and maintenance from government and civil entities, carry out all the formalities on behave of a child at government offices

²³⁰ 'A Workshop for Judges Dealing with Domestic Violence Cases'
<<https://www.moj.gov.sa/ar/MediaCenter/News/Pages/NewsDetails.aspx?itemId=108>>
accessed 2 February 2017.

²³¹ 'Minister of Justice Orders Courts to Refer to Law in Abuse Cases'
<<https://www.moj.gov.sa/ar/MediaCenter/News/Pages/NewsDetails.aspx?itemId=51>> accessed
2 April 2017.

and institutions. Another progress is employing 300 women to easily facilitate marital matters in the court system.²³² Nevertheless, the introduction of family courts and legal reform in this regard have made a step forward but it is insufficient without issuing family law or at least codify Sharia rules that govern marital matters.²³³

The researcher examined some verdicts from Saudi courts to show to what extent judges apply the domestic violence law.²³⁴ As reviewed previously, some Saudi Judges maintain traditional reluctance to apply man-made laws, especially within the family sphere. Therefore, the firm administrative circular by the chief of the Supreme Judiciary Council that obliged judges to refer to the law as a foundation of their verdicts is justified from this perspective. Cases show that the law is being implemented and judges use the law in convection of perpetrators in any domestic violence case brings before them.²³⁵ However, in most cases examined by the researcher, judges inclined to subject the perpetrators to the minimum imprisonment (1 month) or only fined them the minimum limit. It is also can notice that judges convicted an employee from a rehabilitation centre who physically abused a resident which indicates that the range of relationship protected by the law is very broadly.²³⁶ And yet, although in all cases were reviewed judges impose penalties upon conviction for abusers, Judges also explained that the abuser had been charged with “committing behaviour beyond the limit of the right of discipline permissible by Sharia”. This condition cited by judges is vague and would jeopardise the power of the law as it included in article 1 in the Saudi

²³² <https://www.khaleejtimes.com/region/saudi-arabia/saudi-arabia-grants-divorced-women-right-to-child-custody->

²³³ See section 3.3.2

²³⁴ Cases obtained through contact between the Minister of Justice’s office and the researcher.

²³⁵ See annex 4: Decision render by Saudi courts about domestic violence cases.

²³⁶ See section 4.2.2

domestic violence law. This condition will be examined in depth during analysing the legal text to reveal its detrimental overall effect in tackling domestic violence.²³⁷

3.4.4. National Family Safety Programme (NFSP)

Another vital governmental player since the effort began to tackle domestic violence is the National family safety programme (NFSP). The program was established in 2005 by royal decree (No. 11471/M) as a national program that is administratively linked to the National Guard Health Affair. The NSFP aims at establishing foundations of an aware and safe community that protects and defends individuals' rights and helps the victims of DV.²³⁸ It works in partnership and collaboration with professionals, public and private agencies and international organisations. Reviewing NFSP activities through the national sphere is not a simple task, and it needs more than a section to adequately reflect its work. However, this review will demonstrate the most significant features that have been accomplished by the NFSP recently. The program is the only body that has an operating strategy and that thrives to achieve its goals related to the DV issue. The strategy was prepared in collaboration with an international partner to meet global standards.²³⁹ Even though the NFSP is linked administratively to the National Guard Health Affair; it plays a primary job in coordinating all national efforts. The NFSP, for instance, has an unofficial supervisory power over the activities of the Ministry of Health. All protection committees of DV spread through the Saudi hospitals, run through procedures that have been created by the NFSP.

²³⁷ See section 4.2.1.2

²³⁸ For more details about National Family Safety Programme: <https://nfsp.org.sa>

²³⁹ National Family Safety Program, 'Annual Report' (2012) <https://nfsp.org.sa/ar/awareness/DocLib/annual_report2012.pdf> accessed 2 March 2017.

The grassroots efforts in one decade of the NFSP's life has prompted the following:

- Establishing the National Family Safety Registry in 2009 that aims to mandate health care professionals representing all health sectors in the country to report all substantiated cases. Data is entered via 41- centres distributed throughout hospitals and stored on the central database. The registry task is to document incidence rates, its prevalence and pattern of child abuse.
- Establishing a Child Helpline 116111 in 2011. This pioneering project serves children under the age of 18 who are subject to any form of abuse or neglect. The goal of this service is to support children by providing a professional consultation for the children, their parents or their caregivers. In addition to transferring the required cases to the related authority for immediate intervention. The total number of calls has risen to reach over than 270.000 calls in 2015, though 30.00 calls of the total were serious or seeking for help.²⁴⁰

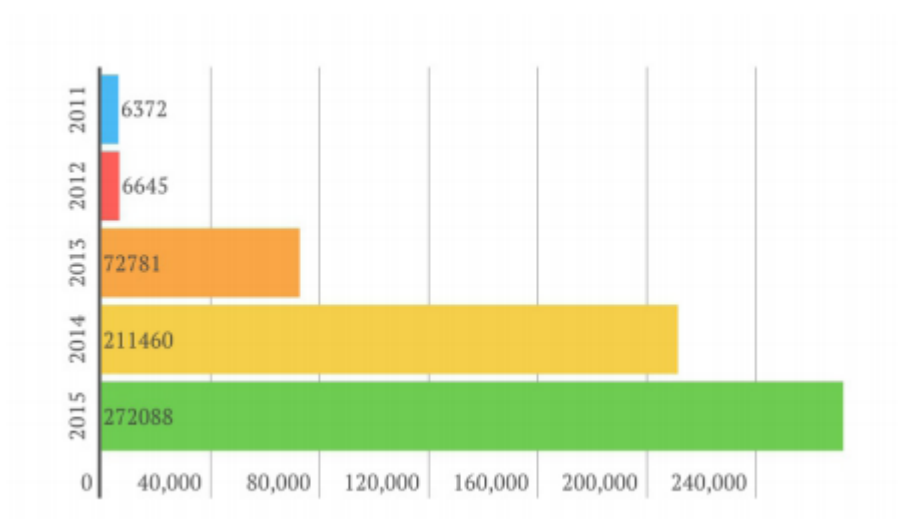


Figure 3. The number of calls received by Child helpline from 2011 to 2015

- The NFSP offers specialised training courses to professionals in different sectors. The annual average of trainees is intended to reach 400-500 persons. The intensive training workshops aim to raise professional ability, particularly those who are active in combating abuse and child maltreatment. These professionals are recruited from many fields including legal, judicial and medical. Social workers in local protection committees, security enforcement officers and psychiatrists are among other groups who are targeted by the workshops. The NFSP from 2015 becomes a regional hub attracts trainees from neighbouring countries.²⁴¹

Further to these achievements, the NFSP is active in all local or regional campaigns via distribution of various leaflets and publications or social media activities, and their co-operation with celebrities in the national stage. It also represents Saudi in internal and external conferences, publishes annual scientific research and sponsors many events.²⁴² The aforementioned achievements of the NFSP can be described as the bright side in the governmental efforts to combat DV in the last decade.

However, the relationship between the NFSP and the Ministry of Labour and Social Development as the ministry responsible for implementing the law is not fully integrational. Although the relationship between them is getting stronger, particularly as the ministry formally joined the NFSP, the potentiality to benefit from the program's expertise has not been fully utilised. It is observed that the

²⁴¹ National Family Safety Program, 'Annual Report' (2015) <https://nfsp.org.sa/ar/awareness/DocLib/2015_nfsp_annual_report.pdf> accessed 2 February 2017.

²⁴² *ibid*

national registry for DV cases is a pure data collection tool for DV issues. However, the Central Registry must be opened to the public whether for employers or other official agencies, and be used to screen persons entrusted with the care of children. This is a practice used in many countries. In addition, the law must oblige the government to register all crimes of abuse, neglect and sexual abuse in this database. The current function for the registry is very important but the function should be expanded to maintain a national database for investigation or treatment purposes. Another concern is that the NFSP funding resources could be problematic in the future insofar as maintaining its spending level on its activities. The program has been privileged for years by support from the late king, whose daughter is the Chairman of Board of Directors. Therefore, the absence of political supporters from the highest authority could cause a reduction in the programme's budget.

3.5. Conclusion

This chapter has analysed the government's efforts to combat DV in Saudi Arabia since 2004. The reporting process of incidents has witnessed a pivotal shift, the victim's right to complain about any abuse has become legally guaranteed. Furthermore, shelters have been created behind the current development in the effort to fight DV. The government must now pay attention to improving their conditions. Massive violations occur and victims face a dual infringement being under abuse in their homes and shelters. The judicial implementation of the new laws is a common problem in Saudi Arabia. Nevertheless, judges under pressure from the MOJ start to apply the law and punishing abusers based on its provisions. Luckily, the bright side in the governmental efforts is the NFSP's role,

much successful work has been done, even though the program focuses more on child maltreatment rather than DV. The government must allow the NFSP to become the leading power in its efforts to fight DV. The potentiality of the NFSP could well be exploited if it becomes the sole authority to implement the law instead of the Ministry of Labour and Social Development. The NFSP has qualified staff, coherent strategy and many resources whereas there is some question as to the ability of the Ministry of Labour and Social Development to adequately and proportionately deal with these issues.

Chapter 4 Saudi Domestic Violence Law: An analysis

4.1. Introduction

The innovative Saudi Domestic Violence Law, which was issued in 2013, in this context should be considered as one of the most crucial legal issues to be addressed in modern times of Saudi Arabia. The law is a progressive step toward providing protection for all family members against abuse for the first time. However, it raises questions regarding the consequences of the new law, its far-reaching effects, and its impact on changing or reforming society. In common with many other Islamic countries, most aspects of family laws such as marriage, divorce and custody in Saudi Arabia are derived from Islamic Sharia. However, the difference is that in Saudi Arabia family laws are not set out in written codes or regulations, and this inevitably means that when family cases come before the courts, judges resort to Islamic jurisprudence, mainly relying on Hanbali Fiqh, in order to adjudicate. Although the process of legal and judicial reform started in 2007, the codification movement did not extend as far as codifying Sharia rules on family law.²⁴³

This chapter aims to critically evaluate the law and its implementing regulations by analysing the relevant legal text. Hence, this approach will achieve a better understating of the law and its implications, and to consider the longer-term effects of this new development. In addition to analysing appropriate legal text,

²⁴³ section 3.3.2

this chapter also draws from the responses of participants in a survey I conducted in Saudi Arabia in 2017 to ascertain views of the new domestic violence law.

4.2. Textual Analysis: Where the Law Stands?

It is fair to say that the perspective and quality of national laws on domestic violence vary widely, a detailed model has been developed at international and regional levels in order to provide a roadmap for national legislatures wanting to develop such a framework.²⁴⁴ The framework model on domestic violence contains a set of basic elements which must be covered in drafting a national law to ensure sufficient competence and redress in the issue of domestic violence.²⁴⁵

In the survey conducted to ascertain responses to the new domestic violence law the salient responses that emerged will be utilised as a platform from which an analysis of the domestic violence law can be conducted, namely:

- i. The definition of domestic violence, types of prohibited acts, and the range of protected relationships.
- ii. The reporting provisions.
- iii. The provision of criminal and civil remedies.
- iv. The enumeration of specific government duties, including those of non-governmental organisations.
- v. The provisions of non-legal preventive measures including raising awareness, training and public education.

²⁴⁴ Istanbul Convention (n 19)

²⁴⁵ For example: a framework for model of legislation on domestic violence (E/CN.4/1996/53/Add.2) developed by the UN; UN Women, *Handbook for Legislation on Violence against Women* (United Nations 2012).

4.2.1. Definition of Domestic violence

4.2.1.1. The Title

The official title of the Saudi domestic violence law is: “The Law of Protection from Abuse”. Alhabdan criticises the title of the law because it does not send a clear message that domestic violence is a punishable crime and not be tolerated. She argues that the title of the law leads some alleged victims to think it does not apply in domestic situations rather the law applies to relationships between strangers.²⁴⁶

Alhabdan raises a fair point because it is only after reading the text of the new law that it becomes clear that the law is inapplicable to situations of domestic violence. She goes further and provides a convincing argument to support using the term ‘domestic violence’ in the title of the law.²⁴⁷

However, her argument ignores the reservations of some commentators who caution against the use of a uniform legislative framework because different legal systems require different approaches.²⁴⁸ Black and Merry suggest that instead of promoting a complete homogeneity of approach, there should be room, at the local level to contribute to the wider process of reformulating the understanding of the need to combat violence against women; a process which is likely to enhance the effectiveness of the new law in practical terms.²⁴⁹ On the other hand, Alhabdan’s argument seemingly disregards the local norm and realities because the process of enacting new laws in Saudi Arabia is different from other

²⁴⁶ Alhabdan (n 72).

²⁴⁷ *ibid* p.102

²⁴⁸ Christina Beninger, ‘The Effectiveness of Legislative Reform in Combating Domestic Violence: A Comparative Analysis of Laws in Ghana, Namibia and South Africa’ (2014) 32 *Netherlands Quarterly of Human Rights* 75. p. 93

²⁴⁹ Mindie Lazarus-Black and Sally Engle Merry, ‘The Politics of Gender Violence: Law Reform in Local and Global Places’ (2003) 28 *Law & Social Inquiry* 931.

countries.²⁵⁰ The Saudi legislature tends to introduce new laws without an accompanying preamble or explanatory memorandum, the importance of which is that they would explain the intention of the legislature or seek to explain what is meant by the provisions of the bill. Moreover, any explanatory text would explain what the proposed Bill was seeking to achieve if passed into law.²⁵¹ It also reveals whether the legislature has taken into account the state that has entered into *vis a vis* international conventions.

It is worth considering that although the attitude of introducing laws without explanatory memorandum could be problematic and should not be encouraged in the long term, it nevertheless proves to be an effective approach in the Saudi domestic context to avoid clashes with traditionalists and conservative groups.²⁵²

The traditionalists and conservative groups held a strong suspicion and distrust of any attempt to introduce new laws which reduced their authority especially in areas such as family law, and this alarm and mistrust have been particularly reserved for anything which might “westernise” society.

Arguably, at some point when it is evident that a new law is going to be passed, the opponents would accept the confidential assurances or clarification from the government. Thus, it becomes clearer in the light of these issues that the title of “The Law of Protection from Abuse” appears more innocuous than would an alternative descriptive title that could, in a deeply religious society such as Saudi Arabia, provide an excuse for some groups to oppose the law. Consequently, exposing the intention of the legislature or choosing an inappropriate title could jeopardise governmental efforts in this regard. For example, who would oppose

²⁵⁰ Section 3.3.1 Law making process in Saudi Arabia

²⁵¹ For more details see ‘European Memoranda’

<<http://europeanmemoranda.cabinetoffice.gov.uk/faqs>> accessed 12 March 2018.

²⁵² Section 3.3.2

a law that prevents all forms of abuse prohibited under Sharia. On the contrary, it can be argued that opposing a law which intervenes in family matters is perfectly acceptable to some Islamists based on their understanding of religious and cultural norms. Therefore, the neutrality of the words in the title of the domestic violence law is justified from this perspective if it enables the legislature to achieve its goal of making the social change at less cost.²⁵³

4.2.1.2. The Definition

There is no consensus or universal definition of domestic violence. Some activists and states have espoused the need for a limited definition in order not to lose the actual descriptive power of the term. Others have adopted a more broad-based definition for domestic violence, originating from the gender-based roots of domestic violence, which initially aimed to eliminate all forms of discrimination against women.²⁵⁴ Also, definitions of domestic violence around the world derive from varying perspectives, as a result of involving many factors such as cultures, customs, religions and the composition of the family.

In the UK, for example, there is currently no statutory definition of domestic violence. However, In September 2012 the Home Office announced a comprehensive definition for domestic violence and abuse as follows:

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16

²⁵³ In 2016 the government faced fierce opposition to enact the land tax law due to claims that it contradicts with Zakah which is one of the major pillars of Islam. Zakah means giving of a set proportion of one's wealthy to charity. However, when the government used the term fee rather than taxation, the law was approved especially after the government supported its position by a fatwa from the Senior Ulema (scholars) Agency.

²⁵⁴ Report of the special rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85; Also: A Framework for Model Legislation on Domestic Violence (n 246).

or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial and emotional.²⁵⁵

In March 2013, the UK government modified its definition. As a result, the victims' age extended to include those aged 16-17. Also, the new definition redefined coercive or controlling behaviour. This modification for coercive and controlling definition is a reflection of its impact as a core part of domestic violence.²⁵⁶ Arab and Middle Eastern countries which have many commonalities in social context with Saudi Arabia have more narrowly legal definition for domestic violence. For example, Lebanon, Jordan, Bahrain and the regional government of Kurdistan-Iraq, have established laws criminalise domestic violence only within family sphere.²⁵⁷ These laws restrict the protected relationship to familial relationship that legally defined, i.e. people related by blood or affinity. Thus, the spectrum of people who can be protected by domestic violence laws differs significantly between different legislations as Western laws recognise some relationships that not legally exist or recognised in Middle East, i.e. dating, cohabitation.

However, the Saudi law follows different approach to define domestic violence differ from other legislations as it describes domestic violence very broadly in

²⁵⁵ 'Guidance Domestic Violence and Abuse' <<https://www.gov.uk/guidance/domestic-abuse-how-to-get-help>> accessed 20 May 2015. The UK government's definition, which is not a legal definition, includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage, without being confined to one gender or ethnic group. See also: 'Definition of Domestic Violence and Abuse: Guide for Local Areas' <<https://www.gov.uk/government/publications/definition-of-domestic-violence-and-abuse-guide-for-local-areas>> accessed 19 May 2015.

²⁵⁶ Ibid

²⁵⁷ Kurdistan is a federated region in Iraq for more details see: Fact sheets about the Kurdistan Regional Government, available at: <http://cabinet.gov.krd/p/p.aspx?l=12&p=180> ; for more details see (n 19).

gender-neutral terms; article 1 states the types of abuse and the range of relationship that are protected:

any form of exploitation; physical, psychological or sexual, or the threat thereof committed by an individual against another exceeding the limits of power and responsibilities derived from guardianship, dependency, sponsorship, trusteeship, or livelihood relationship, the “abuse” shall include the omission or negligence of an individual in the performance of his duties or responsibilities in providing basic needs for a family member or an individual for whom he is legally responsible.

Although there is currently little consensus on the proper way to define domestic violence ²⁵⁸, article 1 tends to adopt the broadest possible definitions of acts of domestic violence.²⁵⁹ The acts that constitute the crime of abuse include all active and passive forms of abuse, i.e. physical or non-physical, omission and negligence. Aldosri criticised the characteristic of abuse mentioned in article 1, as it would leave the door open for more violation against women. The article defines some forms of abuse as “ Omission or negligence of an individual in the performance his duties or responsibilities in providing basic needs”. The interpretation of this article can be used to justify the abuse committed by a husband against his wife due to the refusal of sexual relations or talking in an inappropriate manner. In these examples, the wife violates the right of the husband according to a narrow interpretation, and the husband takes a self-defensive position if he forced her to fulfil his right. However, this does not mean the wife could be prosecuted for her behaviour, but the abuser might benefit from

²⁵⁸ Steve Mulligan, ‘Redefining Domestic Violence: Using the Power and Control Paradigm for Domestic Violence Legislation’ (2009) 29 Children’s Legal Rights Journal.

²⁵⁹ A Framework for Model of Legislation on Domestic Violence (n 246).

a tolerant and understandable reaction, either from some narrow-minded officials or even from society, in response to his violation.²⁶⁰

However, bearing in mind that recognising domestic violence for the first time is a progressive move, the wording of the definition fails to specifically mention commonly practised forms of abuse and acts of abuse which are dominant in a local context. Article 1 of the implementing regulations provides definitions of each form of abuse; these definitions are as follows:

- i. Exploitation: “any act committed by an individual against another by any means, using his or her guardianship, authority, responsibility, family relationship, dependency, sponsorship, or livelihood relationship, with the aim of an unlawful purpose”.
- ii. Physical abuse: “any act, omission or negligence committed by an individual against another, resulting in assault or bodily injury”.
- iii. Psychological abuse: “any form of conduct or misconduct that takes the form of continuous or persistent repetition by an individual against another, with the aim of violating her or his dignity or moral rights guaranteed by law or Sharia”.
- iv. Sexual abuse: “any unlawful act, speech or illicit sexual exploitation committed by an individual against another”.
- v. Threatening: “any intentional act or verbal statement made by an individual against another, causing fear of danger on her or his safety or their wealth, with the aim of illegal purposes such as threatening to commit any kind of physical, psychological or sexual abuse”.

²⁶⁰ Legal Agenda, ‘Law of Protection from Abuse: Absence of the Mechanisms’ <<http://www.legal-agenda.com/newsarticle.php?id=462&lang=ar>> accessed 15 September 2015.

It can be noted from the previous definitions in the implementing regulation that the definition of exploitation seems narrower than the broader definition of abuse mentioned in the law. It does not clarify what “unlawful purpose” means. If a guardian used the power given to him by Sharia over his daughters or sisters, e.g., to force a daughter to marry someone, in this case is this consider “unlawful” act, or it is permissible under other provision or authority given by law or Sharia to the guardian. Also, although on the face of the sexual abuse definition a fantastically broad definition, presumably it means that any unlawful sexual act. However, what defines “unlawful” act is not clearly mention again. Does this refer the court back to uncodified Sharia or to other law practised in Saudi Arabia, in particular, the 2018 anti-harassment law.²⁶¹ Also, it is not clear whether the definition of sexual abuse extends to cover the issue of marital rape. However, due to the importance of the issue of marital rape, as it is a key element in the contemporary of domestic violence law around the world it will be elaborated below. Also, the process of inclusion early marriage, forced marriage and Female Genital Mutilation (FGM) has within the scope of domestic violence laws in neighbouring countries has started. Therefore, these forms of abuse will be elaborated as well in this chapter.

Moreover, compared to other domestic violence law in neighbouring countries, it can be noticed that the Kurdish domestic violence law which operates in a social context similar to that of Saudi, pays more attention to local forms of abuse common within the Kurdish region.²⁶² Consequently, after defining the crime of domestic violence, it highlights some acts that are regarded as examples of

²⁶¹ The Anti-harassment law, Royal Decree 488 of 2018.

²⁶² The law No.8 passed in 2011 on Combating Domestic Violence in Kurdistan- Iraq.

domestic violence such as Forced Marriage, Al-Shighar (exchange) Marriage and the marriage of minors, Female Genital Mutilation, and Forced Divorce.²⁶³ Kurdish law refers to more than 13 specific local acts, whereas Saudi law does not. Many of the examples of domestic violence regarding marriage are also practised in some parts of Saudi Arabia, such as Adhl ²⁶⁴, a male relative depriving a woman of her salary or her share of the inheritance. Thus, the wording in article 1 regarding forms of abuse has done a little to address the nature of local forms of abuse. This has to be seen as regrettable insofar as the effectiveness of the new law as an agent for both preventing and addressing ultimately changing the wide problems of domestic violence, is undermined and weakened.²⁶⁵

Moreover, the definitions contained in the new law seems to address any act of domestic violence whether it is a single act or pattern of behaviour, and which roughly fits the guidelines of the modern legal definition.²⁶⁶ Consequently, there is a worry that a pattern of behaviour, which may otherwise be considered minor or trivial if viewed in isolation and with due regard to the new legal definitions, may cumulatively amount to domestic violence.²⁶⁷

Even though adopting the broadest possible definition is recommended by all regional and international treaties, it may pose some difficulties if the legal text is not well crafted. In other words, if the definition does not specify what constitutes

²⁶³ *ibid*

²⁶⁴ Adhl is preventing women from marrying by legal authority of her male relative.

²⁶⁵ Lazarus-Black and Merry (n 8).

²⁶⁶ Mulligan (n 258).

²⁶⁷ Beninger (n 248).

a form of abuse accurately, it creates a 'grey area' in which an alleged or potential abuser may escape punishment. The Saudi definition is the cause of much ambiguity by using the broad terms of describing an act which "exceeds the limits of power and responsibilities derived from guardianship, dependency etc." Therefore, the process of interpreting this degree of ambiguity could well jeopardise potential legal action against an alleged perpetrator.

In other words, there is a danger that the issue of combatting domestic violence may well be in exactly the same position as it was before the new law, where alleged abusers could claim immunity because their action was approved by Sharia or other societal interpretations within the family. Zain Alabdeen says the enigmatic condition in article 1 of the implementing regulations has a detrimental effect on the treatment of domestic violence in Saudi Arabia as it makes the law meaningless.²⁶⁸ Aldosri, points to the same issue and gives an example where the General Prosecution Bureau in Saudi Arabia failed to utilize the new law in the framing of accusation against the abuser in Lama's case. The abuser had been charged with "committing behaviour beyond the limit of the right of discipline permissible by Sharia". Aldosri's view seems to represent a charge of failure to apply Saudi law from the early stage. She explains: "even though the abuse committed in this case was included under article 8, the General Prosecution Bureau preferred, to disregard the Law".²⁶⁹

²⁶⁸ Member of the National Society for Human Rights (NSHR) In Saudi Arabia; Suhailah Zain Alabdeen Hammad, 'Spotlight at the Implementing Regulations of the DV Law' (2014) <<http://www.al-madina.com/article/298686/>> accessed 12 March 2018.

²⁶⁹ A case of Lama has erupted public anger in the last two years, Lama was abused by her father Fayhan Alghamdi which is classified as novice preacher. With the state of polarization between moderates and extremists in Saudi Arabia, the case swept social networks and news outlets. Lama was died after seven months and the abuser was sentenced three years and 400 lashes. He paid Blood-money for lama's mother, his ex-wife, for more details see: twitter hashtag #AnaLama Arabic for "I Am Lama"; [#الاسراف في التاديب](#); Also: 'Fayhan Case: Strict Action for

However, Aldosri's arguments are not sustainable. In fact, Lama's case happened in October 2013 prior to the application of the new law and its implementing regulation of March 2014; presenting problems in being able to support Aldosri's claims. The practice of the Saudi prosecution authority in many cases examined by the researcher proves that the law has been used to prosecute offenders.²⁷⁰

Human Rights Watch, also, criticised the same article by stating that while the law clearly criminalised guardian abuse, the definition by stating that abuse is only that which exceeds the bounds of guardianship. It does not highlight what action would be permissible within the bounds of guardianship and what would exceed it.²⁷¹ Consequently, the justification presented by abusers could be endorsed either by the social committee members in the early stage or by the judge at the trial stage. The harsh reality is that some local practices like beating children, forced marriage or depriving females of her salary, maybe tolerated based on the father's authority or fall within the guardian authority. Also, passive forms of abuse like neglecting children's basic needs can be described as an acceptable act of discipline in the same way. Unlike other domestic violence laws, the abuse act is not being linked with the notion of harm or specific measure, rather it is being linked with exceeding the limits of power and responsibilities of many relationships in which the legal frontiers are unknown. Thus, the vagueness

Attempts to Criticize Court Decision' *Arab News* (2015) <<http://www.arabnews.com/saudi-arabia/news/799046>> accessed 15 September 2015. See also: Hala Aldosri, 'Definition and Terminology Dilemma in Domestic Violence' <<https://hunasotak.com/article/18266>> accessed 4 March 2019.

²⁷⁰ Section 3.4.3.2

²⁷¹ Human rights Watch, 'Boxed In: Women and Saudi Arabia's Male Guardianship System' <<https://www.hrw.org/report/2016/07/16/boxed/women-and-saudi-arabias-male-guardianship-system>> accessed 12 March 2018.

of the definition would cripple emerging good practice and the forthcoming revision, according to article 17, must amend this article first and foremost.

Also, it is noteworthy that the form of economic abuse in the law does not explicitly include one of the elements of domestic abuse as required under international standards.²⁷² Economic abuse by husbands over wives is a common form of abuse worldwide. In a study conducted in Saudi Arabia, it was revealed that female employees are subjected to this form of abuse insofar as they give their husbands part of the salary in return for permission to keep their jobs.²⁷³ In another study carried out among women in the capital city of Riyadh, Alradihan contends that 67% of the participants suffered from economic abuse. He identifies the form of economic violence that is common among Saudi females in which a husband or male guardian applies for a bank loan under the woman's name without her consent. Also, the denial of women's rights to inherit, for example by a brother or other relatives, is a pervasive economic abuse in some parts of the country, but which arises from and seeks justification through the tribal or patriarchal hierarchy that dominates in Arab countries.²⁷⁴ Alhabdan further says that Saudi women are subject to economic-social abuse which is often as a result of local traditions or culture of the family rather than actual Islamic teaching. She adds that this type of abuse includes the deprivation of the right to education, work, salary, property or inheritance.²⁷⁵ Giving the existence of the notorious guardianship system in Saudi Arabia which will be examined later in this chapter, the fundamental weakness of the law that exists in ignoring

²⁷² *ibid*

²⁷³ Alshehri Faten, 'Saudi: 60% of Married Women Are Being Used by Their Husbands' *Alsharq Alawsat* (2011) <<http://archive.aawsat.com/details.asp?section=43&issueno=11776&article=609616>> accessed 12 March 2018.

²⁷⁴ Khaled Alradihan, 'Domestic Violence against Women in Riyadh' [2007] *Journal of Security Research*, King Fahad Security College.

²⁷⁵ Alhabdan (n 72), p.11

economic abuse will result in depriving women specifically of their resources and threaten their financial independence. In recent years, Saudi Arabia has been witnessing an increase in the number of women in employment. For instance, the share of women in the workforce in the private sector has risen dramatically from 12% in 2011 to 30% by the end of 2016.²⁷⁶ The effort of the government to boost employment among women could be hindered by the fact that women are not protected from common economic abusive behaviour in society. Therefore, even the notion that economic abuse can be covered by the broader definition of exploitation that is set out in article 1/i in the implementing regulation seems unsuccessful. Economic abuse requires special treatment and has many forms that cannot be covered even in a broader interpretation of the legal text.

In sum, the absence of economic abuse from the definition explicitly is a major lacuna that must be filled quickly to ensure effective legal protection from all forms of abuse.

4.2.1.3. Marital Rape

Marital rape has become a controversial issue in many countries, and Saudi law has been criticised for not identifying this form of violence. In general, due to its sensitivity, the debate about marital rape in Muslim countries still lags behind the debate in other countries, therefore, it merits a mention in this separate section.

The criminalisation process of marital rape is considered relatively new, in the last two decades, there has been an increase in the number of countries that have recognised it as a crime. In the USA it became a crime in all states by 1993

²⁷⁶ Majed alkhaldi, '130 % Rise in Women Employment since 2012' (2017) <http://www.aleqt.com/2017/03/22/article_1155996.html> accessed 12 March 2018.

while in the UK legally it did not exist until 1993.²⁷⁷ Globally, at least 119 countries have passed laws on domestic violence, but approximately 76 have laws on marital rape.²⁷⁸ Nevertheless, only a few Islamic countries such as Malaysia (2007)²⁷⁹, Tunisia (2017)²⁸⁰, Indonesia (2004)²⁸¹ Pakistan (2006) recognised rape in marriage as being a crime.

However, the seriousness of marital rape crime compared to stranger rape differs among legal systems. While some countries consider marital rape is not as serious as stranger rape, other countries hold it to be a serious crime or even worse.²⁸² The concept of rape in marriage is a new introduction in the modern Islamic world.²⁸³ Because Islamic jurisprudence mostly a practical exercise providing answers for a specific case through the practice of issuing a fatwa (legal judgement). Therefore, Classical Islamic jurisprudence generally used to adjudicate the issue of marital rape on individually basis as it will be addressed below. Also, it is known that the mechanism of ijtihad enables Muslim jurists to

²⁷⁷ Kate painter, 'Wife Rape in the United Kingdom' (1991) 11 the American Society of Criminology.

²⁷⁸ Janalle N Robinson, 'Marital Rape Perception and Impact of Force' (City University of New York (CUNY) 2017).

²⁷⁹ The Malaysian law does not recognise the marital rape in a whole. The amendment Section 375 of the Malaysian Penal Code states: "sexual intercourse by man with his own wife by a marriage which is valid under any written law for the time being enforce, or is recognized in the federal as valid, is not rape." However, the amendment went further by inserting explanation (1) and (2) of the section. Explanation (1) states: a woman:

(a) living separately from her husband under a decree of judicial separation or a decree nisi not made absolute or

(b) who has obtained an injunction restraining her husband from having sexual intercourse with her shall be deemed not to be his wife for the purpose of this section.

For more details see: Norazlina Abdul Aziz, 'Marital Rape: A View on Malaysia Law and Common Law' (2004) 4 Jurnal Akademik UiTM Cawangan.

²⁸⁰ The Law number 58 passed in 2017 on Elimination of Violence Against Women

²⁸¹ The Law number 23 passed in 2004 on anti- Domestic Violence law

²⁸² Muhammad Endriyo Susila, 'Islamic Perspective On Marital Rape' (2015) 20 Jurnal Media Hukum.

²⁸³ There is one exception here, marital rape is crime in Pakistan. The Pakistani Law is based on classical jurisprudence. For more details: The offence of Zina ordinance 1979 amended by the Protection of women (Criminal Law) Amendment Act in 2006.

find solutions for problems confronting contemporary Islamic societies and this process could be utilised to reform Islamic law.²⁸⁴

Generally, in Islam, the relationship between husband and wife is established based on the general rules that confirm the principles of intimacy and love. Also, marriage is not only regarded as a union between man and woman for the gratification of sexual need but a social contract with wide and varied responsibilities.²⁸⁵ Many verses in the Quran and Sunnah express that values must be practiced between spouses. Allah said:

Live with women honourably.²⁸⁶

Do not harm them in order to oppress them.²⁸⁷

Also, the Prophet Mohammed (peace be upon him), said:

How does anyone of you beat his wife as he beats the stallion camel and then embrace (sleep with) her?.²⁸⁸

The most complete of the believers in faith are those with the best character, and the best of you are the best in behaviour to their women.²⁸⁹

I enjoin upon you good conduct toward women.²⁹⁰

According to the Islamic perspective, the purpose of the marriage is to satisfy the human desire and to maintain the human race through reproduction. Hence,

²⁸⁴ Ijtihad is literally means striving and exerting, Shah (n 33).

²⁸⁵ Abdul Aziz (n 279).

²⁸⁶ Quran, *Surat An-Nisa* 4:19

²⁸⁷ Quran, *Surat Al Talaq* 6:65

²⁸⁸ *Sahih Al-Bukhari*, vol. 8, book 73, Hadith 68.

²⁸⁹ *Sunan At-Tirmidhi*, vol. 1, book7, Hadith 1162.

²⁹⁰ *Sahih Muslim*, book 1, Hadith 273.

sexual intercourse is sacred in Islam, and it counts as a part of worship so long as it is being carried out within a legitimate relationship (i.e. heterosexual marriage).²⁹¹

The right of the husband to have sexual intercourse with his wife is not regulated by guidance in Sharia, unlike the general principles that stress mercy and kindness between spouses. However, in one Hadith ²⁹², which is highly cited by Muslim clerics, when it comes to the issue of sexual intercourse, the Prophet Mohammed said:

If a man calls his wife to bed and she refuses for no reason, and he spends the night angry with her, then the angels will curse her until the morning.²⁹³

It is beyond the scope of this research to discuss in detail the duties of both parties in marriage according to Sharia, but the contract of marriage grants a husband intimacy with his wife.²⁹⁴ Even so, most Islamic scholars say the sexual intercourse remains unlawful in the following situations:

- i. It is conducted during fasting Ramadan,
- ii. It is conducted during her menstrual period,
- iii. Penile penetration upon wife's anus (anal sex).²⁹⁵

Although the Hadith of the Prophet Muhammed does not imply that the husband can seek to obtain his right violently or forcefully, it could, with careful

²⁹¹ Susila (n 282).p.325

²⁹² Hadith is sayings of the Prophet Mohammed.

²⁹³ *Sahih Muslim*, book 8, Hadith 3368.

²⁹⁴ Susila (n 282). p.325

²⁹⁵ *ibid.*

consideration, be cited as a proof against marital rape.²⁹⁶ Nevertheless, apart from some few extreme opinions that could allow the husband to force his wife into sexual intercourse, the position of most Islamic jurists regarding marital rape can be divided into two groups as follows:

i. The Classical Scholars

This group includes most fatwa establishments in the Islamic world and some traditional clerics as well. The exception here is the Tunisian Mufti who has declared in a statement that:

Islam prohibited forcing a wife to sexual intercourse if she does not want, the right of having sex in marriage is not absolute for males over a female but it requires mutual consent.²⁹⁷

Basically, the view of the classical scholars emanates from the presumption that the contract of marriage contains an obligation for a wife to fulfil a husband's sexual needs. Therefore, these scholars use the Prophet Muhammed's Hadith in a way that the wife rejection should be grounded on valid reasons, i.e. illness, tiredness, otherwise the wife is described as a sinner, and the angels will curse her till the morning. Classical scholars present some justifications which say that the wife refusal is a violation of the implicit consent for sexual intercourse if she refuses him out of a mean-spiritual attitude.²⁹⁸ It might also tempt the husband to seek unlawful relationship which causes more harm to the marriage relationship

²⁹⁶ 'Fatwa from Abu Amina Elias' (2015) <<https://abuaminaelias.com/marital-rape-and-domestic-violence-in-islamic-law/>> accessed 13 March 2018.

²⁹⁷ Fatwa for Hamdah Saeed, the Mufti of the republic of Tunisia, For more details: CNN, 'Tunisian Mufti: Islam Prohibited Marital Rape' (2015) <<https://arabic.cnn.com/world/2015/12/29/tunisia-mufti-republic-marital-rape>> accessed 13 March 2018.

²⁹⁸ Abu Amina Elias (n 297).

itself.²⁹⁹ At the same time, they neither endorse forcing the wife to satisfy her husband's sexual desire nor condemn it. For example, a member of the Senior Ulema (scholars) Agency in Saudi Arabia when he was asked about the fatwa regarding refraining a wife from having sex with the husband, replied that it is a sin from the wife to refrain from sexual intercourse without an excuse and she should be responsive to the husband's request for intimacy.³⁰⁰ Even so, apart from the moral condemnation of the wife's attitude, the classical scholars' view is problematic because it does not take a clear position nor does it not rightfully reflect the notion that no single verse or Hadith indicates that a husband can force his wife to have sexual intercourse. In other words, neither opponents or proponents for prohibiting such an act can utilise the vague view of classical scholars to support their opinions.

The reasons why the classical scholars are reluctant to determine a precise position probably would result from the assumption that it can be used as a sign of provocation of desertion and could endanger family stability. Moreover, the incident must be dealt with individually by a judge who engages in the details rather than issuing a general judgement. Also, generally the term of marital rape is unknown in traditional Islamic teaching as it is identified in the recent time, therefore, they are suspicious and act defensively as they usually do in the conjugal relationship issues. Many other reasons could explain the view of classical scholars. Nevertheless, it provides a platform that shows that the official religious establishment in Islam, does not adopt or encourage marital rape, and further discussion is needed to articulate its position in this regard.

²⁹⁹ *ibid.*

³⁰⁰ Interview with Saad Alkhathlan, ex-member of Senior of Ulema Agency available at: 'Interview with Shaikh Saad Alkhathlan' (2014) <<https://www.youtube.com/watch?v=rfLEAgjOB1I>> accessed 13 March 2018.

ii. The Moderate Scholars

It could be said that the moderate scholars do not recognise rape within marriage due to the presumption of consent implicit in the legal contract of marriage and it may intervene with the concept of adultery as well. At the same time, these scholars condemn such assaults and have made clear that marital rape is not allowed or condoned under any circumstances, therefore, the husband who commits such an act must be held accountable and punished. It is important to note that the main argument for this group of scholars is that forceful sex between married people would infringe on the concept of adultery and therefore with Hudood crimes in Sharia, it is simply a matter of legal exactness based on their statement. For example, one scholar says:

Rape is adultery by force. So long as the woman is his wife, it cannot be termed as rape. It is reprehensible, but we do not call it rape.³⁰¹

Also, the foundation of Dar Al-Ifta (religious verdicts) in Egypt ³⁰² replied to a question about the existence of marital rape in Islam by stating:

If the husband used violence to force his wife to sleep with him, he is legally a sinner, and she has the right to go to court and file a complaint against him to get punished. The woman also has the right to refuse to engage in sexual relations with her husband

³⁰¹ Sheikh Maulana Abu Saeed, president of the Islamic Sharia Council in Britain, Mark Hughes and Jerome Taylor, 'Rape "impossible" in Marriage, Says Muslim Cleric' (*The Independent*, 2010) <<http://www.independent.co.uk/news/uk/home-news/rape-impossible-in-marriage-says-muslim-cleric-2106161.html>> accessed 13 March 2018.

³⁰² The foundation of dar al-ifta established in 1895 in Egypt and it is considered one of the pioneering foundation for fatwa in Islamic world, for more details: <http://www.dar-alifta.org/Foreign/Module.aspx?Name=aboutdar>

if he has a contagious disease or use violence which hurts her body during sexual intercourse.³⁰³

In the same way, Al-Hakeem says:

There is no such thing as marital rape. So as long as she is married, it cannot be described as a rape. Someone can call it domestic violence, physical abuse or any other form of aggression.³⁰⁴

The basic reasoning for criminalising rape in marriage for the moderate scholars is derived from the Islamic principle of removing harm which forms essential legal maxim in the Islamic doctrines. The prophet Mohammed (peace be upon him) said: “do not cause harm or return harm”.³⁰⁵

These scholars determined that the husband has no right to have sexual intercourse with his wife if he will cause harm to her. The principle of avoiding harm can serve as the basis for developing the law that protects wives from violation of their rights in refusing sexual intercourse. Therefore, under Islamic law marital rape is forbidden and these scholars are urged to close any loophole in the current legislation to make it illegal.³⁰⁶

³⁰³ *ibid*, Fatwa No.6033 available at: <http://www.dar-alifta.org/Foreign/ViewFatwa.aspx?ID=6033>

³⁰⁴ Assem Al-Hakeem is a Saudi Islamic scholar, well known for publishing a large amount of Islamic material in English. For more details about his comment on marital rape see: <<https://twitter.com/Assimalhakeem/status/929295190648553472>> accessed at 08 March 2018.

³⁰⁵ *Sunan ibn Majah*, vol. 3, book 13, Hadith 2341.

³⁰⁶ Fatwa from the Indonesian women's Ulema (scholars) Congress available at : <http://www.newsweek.com/gathering-female-muslim-clerics-issue-fatwa-against-child-marriage-rape-591442> ;See also: Abu Amina Elias (n 297)

To sum up, the views of the official Islamic establishment and some moderate scholars on the issue of marital rape could provide the necessary theoretical framework to Islamic governments in order to criminalise marital rape. Therefore, the role of the official Islamic establishment is crucial and could be the platform to facilitate any legal action. Their fatwas are still silent or passive and do not reveal the opinion of Sharia in cases of a wife's refusal to have sexual intercourse with her husband. The efforts of all concerned parties in the Islamic world should strive to eliminate any fears that could prevent the official Islamic establishments from prohibiting marital rape.

4.2.1.4. Early Marriage

According to the Convention on the Right of the Child 1989, a child is "every human being below the age of eighteen years under the law applicable to the child, the majority is attained earlier".³⁰⁷ In the same way, the Saudi Child Protection Law date sets the same principle by stating that until the age of eighteen a person is considered a child.³⁰⁸ Nevertheless, judicial application in the Saudi court system recognises a different principle on which to draw the distinction between a child and an adult. The criterion sets aside the question of age, relying instead on the onset of puberty to determine the transition from child to adult. The judge usually demands two valid testimony to be provided especially for girls in order that a decision can be made.

Early marriage or Child Marriage is prevalent, UNICEF estimates that there are 650 million child brides around the world including women and girls who were first

³⁰⁷ CRC, art. 1. However, the committee on the Right of the Child urged States parties to review the age of majority if it is set below eighteen.

³⁰⁸ Child Protection Law, Royal Decree No. (M/14) dated 3/2/1436 H, article 1

married in childhood, the Middle East is home to nearly 40 million.³⁰⁹ Factors contributing to a child or early marriage vary across communities. Poverty and lack of security are the root cause of early marriage because it is a way to ensure girls economic livelihoods, and also it can have other economic advantages such as a lower dowry for child bride or financial gain for families.³¹⁰ However, some wealthy families perceive early or forced marriage as a means of preserving wealth amongst families from the same socioeconomic class.³¹¹ Also, cultural and religious motivations play a key role in the child or early marriage where it is perceived that marriage protect girls from the risk of sexual violence, prevent pre-marital relations that would risk the family honour.³¹²

Child marriage is a violation of child rights, and it has a negative impact on physical growth, health, mental and emotional development, and educational opportunities.³¹³ Plan International notes that 70,000 girls die in labour every year because their bodies are not ready for childbirth.³¹⁴ Therefore, it is a harmful practice that prevents them from living their lives free from all forms of violence according to GR 19 and other international human rights treaties.³¹⁵

The Saudi domestic violence law does not criminalise child marriage as a local practice, neither does it set criteria to protect girls from being abused by their parents or guardians through coercing them into matrimony. Nevertheless,

³⁰⁹ UNICEF Middle East and North Africa, 'A Profile of Child Marriage' (2018).

³¹⁰ UN Human Rights Council, Preventing and eliminating child, early and forced marriage: Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc A/HRC/26/22

³¹¹ *ibid.*

³¹² *ibid.*

³¹³ UNICEF, 'Child Marriage' <<http://unicef.in/Whatwedo/30/Child-Marriage>> accessed 26 February 2019.

³¹⁴ Plan International UK, 'Ending Forced Child Marriage' <<https://plan-uk.org/about/our-work/child-marriage>> accessed 26 February 2019.

³¹⁵ Also, it is considered slave like practice under UN Economic and Social Council (ECOSOC), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 Sep 1957, entered into force 30 Apr 1957). For more details: Akram Alsaidi, 'What Drives Child Marriage in the Arab World and How the World Is Combating the Problem' (Seton Hall University 2105).

significant progress has been made in improving child survival from this harmful practice in recent years. The Ministry of Justice (MOJ) has prevented all licenced marriage officiants (or solemnisers), who are under its supervision, from carrying out marriage for girls under 18 without getting approval from the competent department in the Ministry of Labour and Social Development (MLSD).³¹⁶ The MOJ says the restriction on the minimum age of marriage is taken to be in compliance with the Saudi child protection law and aimed to achieve the best interests of a child.³¹⁷ Likewise, child marriage is under consideration in the Shoura (legislative) Council as it approved a proposed bill that prevents any marriage for a child under 15 years old regardless of their sex. Also, the bill restricts marriage for those between 15 years old and under 18 years old other than with the approval of the competent court.³¹⁸

4.2.1.5. Forced Marriage

Forced marriage is a form of abuse that violates women's basic human rights. The corpus of human rights law defines any marriage that occurs without the full and free consent of one or both of the parties or when the parties are unable to end or leave the marriage, as being in breach of human rights.³¹⁹ The consent of marriage must be expressed in person and in the presence of the competent authority.³²⁰

³¹⁶ Adnan Alshabrawi, 'A Marriage Officiant Being Investigated for Performing Child Marriage' (16 December 2018) <<https://www.okaz.com.sa/article/1692768>> accessed 26 February 2019.

³¹⁷ *ibid*

³¹⁸ Asharq Awsat, 'New Rules to Prevent Minors Marriage' (10 January 2109) <<https://aawsat.com/home/article/1539201/ضوابطسعوديةللحدمنزواجالقاصرات>> accessed 26 February 2019.

³¹⁹ UN Human Rights Council report (n 311).

³²⁰ ICCPR, art. 23, para 3; ICESCR art. 10 para 1; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (adopted 7 Nov 1962, entered into force 9 Dec 1957), article 1.

The reasons why women and girls are coerced into wedlock are various and victims are subject to emotional pressure or physical threat, the UK's forced marriage legislation has outlined the following reasons:

- To control unwanted sexual behaviour and sexual orientation, and prevent 'unsuitable' relationship, i.e. people out of their ethnic, cultural or religious group.
- To protect perceived religious, cultural ideals and family honour.
- Peer group pressure and strength family ties with others.
- To ensure land, property and wealth preservation within the family.
- To gain citizenship and residence, or to provide a carer for a disabled member of the family.³²¹

In Saudi Arabia, there is no data that shows the incidents of forced marriage, NGO or human rights organizations have not published a figure that would reveal the bulk of the problem and maybe it is acutely underreported. Given that the patriarchal nature of Saudi Society, i.e. guardianship system supported by media reports about some incidents of forced marriage, it can be assumed that girls and women, especially in rural areas, are victims of this form of abuse. Although Saudi religious scholars have denounced forced marriage frequently, there are few protections against such situations.³²²

Valid marriage in Saudi Arabia requires either parties' written and verbal consent. Thereby, the regulation of marriage officiants issued by the Ministry of Justice (MOJ) stipulates that prior to conducting a marriage contract the marriage

³²¹ 'Forced Marriages: Motives and Methods' <http://www.bbc.co.uk/ethics/forcedmarriage/motives_1.shtml> accessed 26 February 2019.

³²² Saleh Alfawzan, 'Fatwa about Forcing Girl to Marry' <<https://www.youtube.com/watch?v=n3lxfm99eEM>> accessed 27 February 2019.; Saleh Alohaidean, 'Fatwa of Forcing Girls to Marry' <<https://www.youtube.com/watch?v=oRt0yuopl8M>> accessed 27 February 2019.

officiants must ensure the marriage has been performed according to Islamic and legal requirements i.e. the consent of both parties, dowry, presence of witnesses.³²³ The MOJ also has taken initiative to prevent forced marriage through obliging the marriage officiants to personally obtain the verbal and written consent of the wife along with handing over a copy of marriage certificate to her.³²⁴ Violation of the MOJ's instruction in getting the approval of the bride will lead to a revocation of the marriage officiant's license.³²⁵ However, the main problem in Saudi Arabia, it might be the same in most Islamic countries as well, is that the contract of Islamic marriage is concluded between the bridegroom and the *Wali* of the bride (the male guardian). Although Muslim scholar are divided over the meaning and interpretation of the term of guardianship (*wilaya*), the role of guardian, either religiously or legally in Saudi Arabia, is only to represent the bride in a marriage contract but he has no right to give consent or sign on behalf of the individuals who are involved in the marriage.³²⁶ Nevertheless, in some cases the guardian because of social or cultural practices exceeds his authority by giving consent without even acknowledging the bride-to-be, he may then provide another female relative to impersonate the bride-to-be to make verbal

³²³ The rules regulating marriage officiants work in Saudi Arabia, art. 14

³²⁴ 'Justice Minister Is Ordering to Provide a Wife to Be with a Copy of Her Contract Marriage.' *Al madina Newspaper* (2 May 2016) <<https://www.al-madina.com/article/446517>> accessed 27 February 2019.;

³²⁵ 'Two Marriage Officiants' Licence Are Being Revoked Due to Absence of a Wife to-Be Signature from Marriage Contract' *Okaz Newspaper* (5 November 2017) <<https://www.okaz.com.sa/article/1586720/>> accessed 27 February 2019.

³²⁶ It is important to note that presence of the *Wali* (or guardian) is necessary in performing marriage contract and consider one of pillars of marriage in Hanbali school that Applied in Saudi Arabia. However, if he refused to represent the bride she can dispute his decision by resorting to the court. The guardian authority in this regard could be challenged and the judge would transfer it to another guardian if he has not valid reasons or the judge would present the bride if there is another male to represent her in marriage contract. In any case, forcing a women to marry by the guardian against her will is not permissible practice in Saudi Arabia; see more details about marriage guardian in: Muhammad Khalid Masud, 'Gender Equality and the Doctrine of WILĀYA' in Ziba Mir-Hosseini and others (eds), *Gender and Equality in Muslim Family Law: Justice and ethics in the Islamic legal tradition* (IB Tauris 2013).

consent or sign the marriage contract.³²⁷ Though this act of impersonation is prohibited by Sharia and the guardian could be punished, the options of the bride-to-be, to void the marriage contract are limited. In light of the practiced current Saudi laws and judicial remedies, the girl or woman who is facing forced marriage is not covered adequately. Pursuing annulment or divorce requires long legal proceedings, i.e. petitions to the court and witnesses to support her claim.

4.2.1.6. Female Genital Mutilation

Female Genital Mutilation (FGM) (also called Female Genital Cutting/Circumcision) refers to all procedures including partial or total removal of the external female genital or other injuries to the female genital organs for non-medical reasons.³²⁸ Contrary to claims that it has health benefits, it is known to be harmful practice to women and girls in many ways and is associated with medical, psychological and sexual problems.³²⁹ Communities that practise FGM report a variety of social and religious reasons for continuing with it. Yet there is no reliable statistic of prevalence and age of FGM in Saudi Arabia. However, it has long been rumoured that FGM is practised in the southern regions bordering Yemen.³³⁰ A study conducted in Saudi Arabia, in a small town in the southern coastal line where FGM is practised though it is not near the Yemeni borders, shows over 80% of incidents of circumcision among the sample in this town. However, this sample does not imply in any means that this form of traditional

³²⁷ With existing veil another female can pretend she is the bride to be and provide the bride ID that obtained secretly by the guardian.

³²⁸ *Eliminating Female Genital Mutilation : An Interagency Statement* (World Health Organization 2008).

³²⁹ Hala Aldosari, 'The Effect of Gender Norms on Women's Health in Saudi Arabia' [2107] The Arab Gulf States Institute in Washington.

³³⁰ 'Stop FGM Middle East :Saudi Arabia' <<http://www.stopfgmmideast.org/countries/saudi-arabia/>> accessed 27 February 2019.

practice is commonly known in the rest of the country.³³¹ The study also may confirm that the practice is rooted in the culture of people in the rural and semi-urban areas in this part of Saudi Arabia. Another study shows that FGM taking place among the migrant population from neighbouring countries who live in Saudi Arabia.³³² Though female circumcision is not obligation according to the practised Islamic doctrine in Saudi Arabia and the current regulation issued by the Ministry of Health formally bans performing FGM, the previous studies raise a concern whether FGM is still an underreported form of abuse in Saudi Arabia.³³³

4.2.2. Who Are Protected

Another key feature in the definition is that the range of relationships protected is very broadly defined as any relationship between an individual against another derived from guardianship, dependency, sponsorship, trusteeship or livelihood relationship. This includes spouses, any people related by blood or affinity, or any people living in the home together. Each term is specifically defined in the implementing regulations issued by the Ministry of Labour and Social Development (MLSD) to precisely clarify its meaning as follows:

Guardianship: “An authority approved by Sharia for a guardian to act on behalf of another with respect to his/her life, body and wealth”.

³³¹ Waleed Abdullah Milaat, Nahla Khamis Ibrahim and Hussain Mohammed Albar, ‘Reproductive Health Profile and Circumcision of Females in the Hali Semi-Urban Region, Saudi Arabia: A Community-Based Cross-Sectional Survey.’ (2018) 38 *Annals of Saudi medicine* 81 <<http://www.ncbi.nlm.nih.gov/pubmed/29620540>> accessed 27 February 2019.

³³² Sharifa A Alsibiani and Abdulrahim A Rouzi, ‘Sexual Function in Women with Female Genital Mutilation’ (2010) 93 *Fertility and Sterility* 722 <<https://linkinghub.elsevier.com/retrieve/pii/S0015028208042696>> accessed 27 February 2019.

³³³ Aldosari (n 329).

Family relationship: “a social and moral association between individuals founded on a family basis between husband and wife, children, grandparents and grandchildren, and includes relatives through blood or by marriage”.

Dependency: “the maintenance of an individual by another with whom he or she has a family relationship or looks after his affairs”.

Sponsorship: “the provision of some or basic needs to another person with whom he has a family relationship, including cases sponsored by fostering families and charities supervised by the ministry”.

Trusteeship: “a person entrusts to others by a will to perform work after his death and which is permitted by law as with regard to his minor children”.

Livelihood relationship: “a situation in which a person is dependent on another person for his livelihood and for securing his basic needs”.³³⁴

Although the spectrum of people who can be protected by domestic violence law differs significantly between different legislations, Saudi law confines the jurisdiction of the law to legitimate relationships that are defined either by the current law or Sharia. Nevertheless, the extent of legal protection is wide and encompasses all possible relationships that are known in Saudi society. Also, another key feature is that the law reflects the recognition of some issues rooted a local context like the concept of the extended family. Because the meaning of family members in Saudi Arabia may go beyond simply married people bound by a certain degree by blood or affinity. Although article 1 defines exclusively family members as husband and wife, children, grandparents and grandchildren, and includes relatives through blood or by marriage, it seems the protection includes the whole range of family members who may live together or at least have kinship,

³³⁴ The implementing Regulation of the Law of Protection from Abuse, art.1

and who can be classified under the types of relationship mentioned in the definition such as sisters, brothers, aunts, nieces, nephews, cousins or distant relatives. Many extended family members in Saudi Arabia share the same house or building, therefore, as long as the abuser committed the crime based on the powers or responsibilities derived from the relationship listed in the article, the abuser will be held accountable for his/her abusive actions.

On the other hand, it should be noted that the definition has not provided examples of what each relationship refers to. Linguistically terms like livelihood relationship (تبعية معيشية) in Arabic seem to have the same meaning as a dependency (إعالة) in the Arabic language. Also, there is a subtle difference between “guardianship” and “sponsorship” though the definition tries to distinguish between them. It is difficult for someone specialising in law or Sharia in Saudi Arabia to give examples for each relationship without repeating what is being said. It can be argued that when the government released the law, it aimed to introduce a comprehensive law that protected all possible relationships that existed in Saudi Arabia. According to article 16, the MLSD was assigned to draft its implementing regulations. However, the MLSD has failed in its mission by introducing confusing definitions for all relationships that are protected. The implementing regulations, as many participants confirmed in the next chapter, were formulated without consultation with concerned parties in combating domestic violence and to meet the MLSD’s needs as well. The definition of the term of guardianship, for example, presents ultimate authority for some guardians to control life, body and wealth of those under their guardianship. Thus, the definition of guardianship seems to a certain degree to tolerate or even legalise some forms of abuse if done by a guardian. Alongside this, as no explanatory memorandum is available to reveal the intention of the government, as to

whether, for example, domestic workers are included or not, it becomes a debatable issue for many participants as outlined in the preceding chapter. Thus, these issues will be examined in-depth as follows.

4.2.2.1. Guardianship system

In April 2017, King Salman bin Abdulaziz issued a Royal Order to relax some aspects of Saudi Arabia's notorious guardianship system, which restricts women's rights within the state. All government agencies and service providers are forbidden from requiring a male relative's consent – a father, brother, husband or even a son – in cases where a woman is seeking some services unless there is a regulatory obligation for this request.³³⁵ The King gave three months in which all government agencies should provide a list of procedures that require male approval. The royal order's language reflects the fact there are unofficial or arbitrary guardian requirements that have mainly been practised unlawfully. Also, it presents the first official recognition that imposing a male guardian for women amounts to a discriminatory policy that must be rooted out unless existing regulations are requiring such permission. This section aims to highlight the guardianship practices that have taken place in Saudi Arabia over the last two decades.

Male guardianship in Saudi Arabia is not written law, instead, it is a set of conventions bylaws, and state-sanctioned policies, which restrict women's ability to take a wide range of critical decisions and to participate freely in public life. In fact, the guardianship system is not only implemented in Saudi Arabia, but it is

³³⁵ Lulwa Shalhoup, 'Saudi Women No Longer Need Guardians' Consent to Receive Services' *Arab News* (5 May 2017) <<http://www.arabnews.com/node/1094681/saudi-arabia>> accessed 10 March 2018. However, the three months period expired but no further update has been shown the issue yet.

known in other Gulf Cooperation Council countries (GCC) in one way or another.³³⁶

The notion of guardianship is seemingly grounded in the most restrictive interpretations of some Quranic verses.³³⁷ For instance, one Quranic verse states:

Men are the protectors and maintainers of women, because God has given the one more [strength] than the other, and because they support them from their means.³³⁸

Many Islamic experts have argued that the current application of guardianship in Saudi Arabia misinterpret fundamental Quranic principles like equality and respect between sexes.³³⁹

Two reasons might formulate an explanation for the proliferation of restrictions on women's freedom. The expansion of administrative governmental bodies at the end of the 1970's accompanied by the rise of an Islamic revival in the region. These factors taken together played a significant contribution in instituting the guardianship system in most aspect of life in Saudi Arabia during the last decade. It seems that the concept of guardianship had already found fertile social and religious soil, in which to grow and the government turned a blind eye or was not interested in intervening in women's rights issue at this time.

³³⁶ Shaikhah Albahaweed, 'Not Only in Saudi Arabia, What Do You Know about Guardianship System in GCC Countries' (2018) <<https://manshoor.com/people/male-guardianship-over-women/>> accessed 10 April 2018.

³³⁷ Human rights Watch, 'Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia' (2008) <<https://www.hrw.org/reports/2008/saudiarabia0408/>> accessed 10 February 2018.

³³⁸ Quran, *Surat An-Nisa* 4:34

³³⁹ Human rights Watch, 'Boxed In: Women and Saudi Arabia's Male Guardianship System' (n 271).

Every adult Saudi woman regardless of her economic or social status was treated like a legal minor who needed a male to take decisions on her behalf. However, the impact of guardianship on women varies widely based on a range of factors such as socioeconomic status, education levels and place of residence.³⁴⁰

To be sure, the guardianship system gained increased attention prior the royal order as women's rights activists joined forces to seek its abolition and to end other forms of discriminatory measures against women in private or public institutions. In 2009 and 2013 after its Universal Periodic Review at the United Nations by the Human Rights Council, the government agreed to take steps to reform certain aspects of the system, but the changes remained insufficient and incomplete.³⁴¹ The demand for reform has significantly increased since 2013; activists, especially women, have been calling for the abolition of the guardianship system and to ease restrictions on women: all of which put the government under tremendous pressure. Campaigners resorted to traditional ways, such as signing petitions delivered to the King office or signing online public petitions.³⁴² The striking public campaigns were on social media, activists urged through hashtags that trended globally for months, to abolish male guardianship. Women started tweeting their thoughts and disapproval of the system under hashtags #IAmMyOwnGuardian, and #TogetherToEndMaleGuardianship, the Arabic version of this hashtag took on a life of its own and became very popular both inside Saudi Arabia itself, and gaining worldwide attention.³⁴³ Women posted

³⁴⁰ *ibid.*

³⁴¹ *ibid.*

³⁴² Sudarsan Raghavan, 'Saudi Women Need Permission from Male Guardians for Life Choices. Will New Reforms Help End This?' *The Washington Post* (12 May 2016) <https://www.washingtonpost.com/news/worldviews/wp/2017/05/12/saudi-women-need-permission-from-male-guardians-for-life-choices-will-new-reforms-help-end-this/?utm_term=.bda26ad275aa> accessed 10 April 2018.

³⁴³ Alma Hasan, '600 Days Later: Saudi Women Are Still Fighting Guardianship' (2018) <<http://www.bbc.com/arabic/middleeast-43215793>> accessed 8 February 2018.

personal video testimony about how guardianship has a detrimental effect on their lives, created art slogans about the subject, and wrote articles critiquing various aspect of the guardianship systems.³⁴⁴ However, and conversely, women who were advocating that the guardianship system should stay in place, started a counter-campaign often depicting the anti-guardianship cause as a western conspiracy to destroy Saudi society. Users tweeting under the hashtag #TheGuardianshipIsForHerNotAgainstHer attempted to tarnish the abolitionists' campaign by alleging that there was an atheist agenda behind it.³⁴⁵ Some segments of the religious establishment also stood by the concept of guardianship by denouncing opposition as "the crime that targeting the Saudi and Muslim society".³⁴⁶ Although women activists have amassed an impressive catalogue of justification for abolishing guardianship and succeeded in limelighting the debate with significant publicity, the system is entrenched within Saudi society at a deeper level than is perceived by many observers. Also, some caution is needed before treating Saudi women as a homogenous bloc that uniformly resists male guardianship just because some women want freely to access public service. For example, it is worth considering whether all women necessarily support abolishing guardianship as the best way to achieve these things.³⁴⁷ Luckily, activists' efforts finally intersected with the government announcement of their Vision 2030. The Vision is a profound economic and modernisation program aimed at decreasing the country's reliance on oil. The

³⁴⁴ Human rights Watch, 'Saudi Arabia: "Unofficial" Guardianship Rules Banned' (2017) <<https://www.hrw.org/news/2017/05/09/saudi-arabia-unofficial-guardianship-rules-banned>> accessed 18 March 2018.; Htoon Alfassi, 'Women Are Guardians of Themselves' *Alriyadh Newspaper* (11 September 2016) <<http://www.alriyadh.com/1532496>>.

³⁴⁵ Kendall Bianchi, 'Twitter and the Saudi Campaign to Preserve Male Guardianship Over Women' (2017) <<http://www.washingtoninstitute.org/fikraforum/view/twitter-and-the-saudi-campaign-to-preserve-male-guardianship-over-women>> accessed 10 April 2018.

³⁴⁶ Donie O'sullivan, 'Saudi Arabia Women Are Tweeting for Their Freedom' <<https://edition.cnn.com/2016/09/16/world/saudi-arabia-male-guardianship-campaign/index.html>> accessed 19 January 2018.

³⁴⁷ Bianchi (n 345).

initial plan declared that women play a vital role in the success of the reform, and the government “will continue to develop [women’s] talents, invest in their productive capabilities and enable them to strengthen their future and contribute to the development of our society and economy”.³⁴⁸ Notable examples of reform after announcing Vision 2030 include removing the restriction on women’s work in labour law. Lifting the ban on women driving, relax the strict sex segregation policy that curbs women’s ability to participate in public life, i.e. allowing women to attend sports stadiums or mixed public events. Also, the Saudi government had already begun to undertake steps to demonstrate positive signs towards enhancing women’s status. These reforms included specifying a 25% quota for women in the highest advisory council (the Shoura Council), allowing women to vote and run in municipal elections and to provide thousands of scholarships for women to study abroad. Moreover, other signs emerged from the religious establishment there may be an opening for a relaxation of the remaining restrictions that require a male guardian. A member of the Senior Ulama (scholars) Agency has said he believes the male guardianship should apply only to marriage and all rights that a man has, the woman has the same. Almanea’s comment was in response to a question about the ongoing online campaign calling for an end to guardianship - which meant that the support as a result of the campaign for women’s rights, had apparently yielded another success. Although Almanea’s statement is not issued in a formal fatwa, it can be argued that it is an “unusually liberal opinion for a senior scholar” and at least this comment opens the door for further discussion in the religious establishment.³⁴⁹

³⁴⁸ For more details about ‘Vision 2030’ see official report: ‘Vision 2030’ <http://www.spa.gov.sa/galupload/ads/Saudi_Vision2030_EN.pdf> accessed 10 April 2018.

³⁴⁹ Reuters, ‘Saudi Cleric Says Male Guardianship Should Apply Only to Marriage’ (2016) <<https://www.reuters.com/article/us-saudi-women-rights/saudi-cleric-says-male-guardianship-should-apply-only-to-marriage-idUSKCN11E2AB>> accessed 5 March 2018.

In much the same way as these encouraging steps, the Saudi Shura (legislative) Council will discuss a recommendation proposed by two women members, to ban any forms of discrimination against women on the grounds that the country is a signatory to CEDAW. The women members contend that their recommendation would lead, in the end, to the abolition of guardianship entirely. It is unknown if the action will obtain support from other members but it shows that the dynamics of the debate has reached all political levels.³⁵⁰

Although the ultimate goal for the activists is to remove guardianship entirely, it is unknown whether the government intends to pursue the same goal despite encouraging progress in the last years that indicate a political will to do so. The current situations require to obtain a male approval in these matters: travelling outside the country or getting a passport, getting a scholarship to study abroad, his signature on marriage certificate to get married, leaving prison or rehabilitation or correctional facilities: a male relative must receive the female after her discharge. However, some of these restrictions were abolished by Royal decree in 2019.

Even though, for example, health regulations do not require male consent for medical procedures in either public or private hospitals, some hospitals have internal regulations which are still implemented, and that require such consent.³⁵¹ It is expected that the royal order will curb such practices due to its firm language that prohibits illegal guardianship requirements.

The guardianship system creates an environment ripe for abuse and also it exacerbates the prevalence of the problem in the country. Contrary to the

³⁵⁰ Souad Alshomrani, 'The Shoura Council Discusses a Recommendation Prohibits Guardianship' *Alhayat Newspaper* (5 March 2018) <<http://www.alhayat.com/Articles/27802160>> accessed 10 April 2018.

³⁵¹ Human rights Watch, 'Saudi Arabia: "Unofficial" Guardianship Rules Banned' (n 344).

mainstream public efforts to abolish many aspects of guardianship, it seems those who are responsible for drafting the law and its implementing regulations do not take into account this reality. The law sets out a problematic definition for a male guardian that did not exist before, therefore, this definition might be an obstacle to achieving any advance in the treatment of domestic violence or promoting women status in general. Zain Alabdeen argues that the law is enforcing the discriminatory male guardianship system rather than eradicating it. She explains that article 1 legalises abuse by a guardian by giving him absolute authority under the name of Sharia. She claims that this point appears to give the guardian permission to abuse his dependents or relatives on condition that he does not exceed the limits of power and responsibilities given to him. She goes on to suggest that it puts women in massive danger because the definition of guardianship mentioned in article 1 does not distinguish between adults and children who need to be guarded or taken care of. Rather Article 1 deals with women and children under the same classification.³⁵² After raising this concern, the MLSD responded to Zain Alabdeen's critique claiming that the authority of guardianship must be endorsed by a judge to be valid, and if the guardian misused the given authority, it could be revoked and transferred to another relative. Also, the source from MLSD claimed that guardianship is derived from Sharia and it is known practices in every Islamic school as well.³⁵³ Zain Alabdeen refutes the statement that imposing male guardianship is an Islamic practice; she argues that guardianship is an authority which theoretically only aims to supervise personal or financial issues for orphans, not women. Zain Alabdeen provides

³⁵² Hammad (n 268).

³⁵³ Suhailah Zain Alabdeen Hammad, 'Reply to Who Drafted the Implementing Regulations' *Al-madina Newspaper* (6 May 2014) <<http://www.al-madina.com/article/303328/>> accessed 16 February 2018.

evidence on how guardianship is manifested in Islamic doctrinal books and Arabian personal status laws, and she adds that the Saudi definition has not so far, been wholly accepted under any traditional or modern classifications. Zain Alabdeen strongly argues in similar language that the status of women and their legal independence are robbed permanently by those who draft the law.³⁵⁴

Despite the law not requiring male consent to report abuse, women repeatedly still struggle to report abuse to the police and other specific male-dominated areas. Police officers occasionally turn the victim away or ask them to file the complaint with or through a guardian or male relative.³⁵⁵ Also, in some cases, authorities whether the police or local protection committees, often said they could not enter a house without male permission or presence.³⁵⁶ To put the law entirely in practice in light of these barriers related to male guardianship is very difficult. Breaking free from an abusive relationship is typically not easy. Therefore, women in Saudi Arabia are trapped into guardianship that makes it nearly impossible for them to survive alone. Even if the woman has the financial capacity to leave the abuser, the imposition of guardianship prevents her from independently renting an apartment or living separately and away from risk. In some instances, seeking redress for domestic violence could cause more harm to the victim. The guardian is able to sue the victim on the ground of “*Uquq*” or parental disobedience. Fortunately, Judges and government bodies have become more responsive and increasingly recognise violence by guardians as a domestic violence case and rejected such claims about *Uquq* or disobedience.³⁵⁷ The available options for abused women seeking redress are still hampered by

³⁵⁴ *ibid.*

³⁵⁵ Human rights Watch, ‘Boxed In: Women and Saudi Arabia’s Male Guardianship System’ (n 271).

³⁵⁶ *ibid.*

³⁵⁷ *ibid.*

guardianship even if the abuser is the guardian. The options for abused women are therefore limited and consist of either transferring guardianship to another male relative or being locked in a shelter pending a solution that may not be forthcoming or permission from male relatives to exit.

To sum up, although there has been some progress in abolishing some guardianship practices, the guardianship system still poses a real challenge to finding an effective remedy for domestic violence. Complexity and multiple problems face the victim and government agencies in effectively implementing the law or reaching tangible solutions as long as guardianship is in place. It is evident that the current definition of guardianship is the state's failure to change women's inferior status and strengthen the authority of men over women.

4.2.2.2. Domestic Workers

The International Labour Organisation (ILO) estimates that there are at least 67 million domestic workers in the world, of whom 11.5 million are international migrants.³⁵⁸ Following the oil boom in the 1970's, the Arabian Gulf Countries (GCC) started recruiting a large number of foreign workers, most of them men for infrastructure development and industrialisation projects. Later in the 1980's, many female domestic workers were recruited; mainly Asian women from Sri Lanka, Philippines, India, Bangladesh and Indonesia; a smaller percentage came from Arab countries such as Morocco and Egypt.³⁵⁹ Recently, in 2017 a statistic issued by the MLSD in Saudi Arabia, estimated domestic workers to be 2.4

³⁵⁸ International Labour Organisation, 'ILO Global Estimates on Imigrant Workers Executive Summary' (2015) <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436330.pdf> accessed 10 April 2018.

³⁵⁹ Silvey (n 82).

million, of whom 775,000 were women (32%).³⁶⁰ Historically, regulating work in households is a sensitive and challenging issue, in almost every country around the world, national labour laws exclude domestic workers or these workers receive inadequate legal protection than those of other workers.

Although Saudi Arabia is one of the top ten destinations for recruiting domestic workers, it is also not a signatory to the IOL Domestic Workers Convention (2011) that sets out basic labour rights for domestic workers.³⁶¹ This convention aims to address the existing exclusion of domestic workers from labour law and tries to provide more recognition for their economic, social and legal needs. Saudi Arabia similar to other countries have introduced legislative reform extending basic labour rights to domestic workers.

In 2013, the Saudi Arabian government issued the Domestic Workers Regulation No. (310). The regulation aimed to regulate the contractual relationship between the employer and the worker for the first time.³⁶² It sets out certain minimum worker entitlements, i.e. daily break, rest day and end of service gratuity. It also gives either party the right to terminate the contract in specific circumstances and provides a dispute resolution channel. Further reform introduced in 2017 to improve the domestic work environment, allows domestic workers to transfer their employment to a new employer, and also allows them to open a bank account to guarantee their entitlements regarding wages and their protection.³⁶³

³⁶⁰ Abdulsalam Althomairi, '2.4 Millions Domestic Workers in Saudi Arabia in 2017' *Aleqtessadiah Newspaper* (10 October 2017) <http://www.aleqt.com/2017/10/03/article_1261306.html> accessed 5 April 2018.

³⁶¹ The ILO's Domestic Workers Convention, 2011 (No. 189) entered into force (05 Sep 2013). The number of countries that ratified the convention is 25 countries as at March 2018.

³⁶² Regulation No. (310) published in 15 July 2013 issued by the Saudi council of ministers.

³⁶³ Mohammed Al-sulami, 'Saudi Labour Ministry Launches Plan for Bank Accounts for Domestic Workers' *Arab News* (24 April 2017) <<http://www.arabnews.com/node/1089411/saudi-arabia>> accessed 11 Feb 2018 . See also: Arab News, 'Domestic Workers Can Transfer Sponsorship If Salary Is Delayed for 3 Months' (12 July 2017) <<http://www.arabnews.com/node/1128136/saudi-arabia>> accessed 10 April 2018.

Domestic workers cannot work or reside legally without being tied to their employers under the *Kafala* (sponsorship) system. The *Kafil* (sponsor) in most cases is the employer who is entirely responsible for the employee during the contract period, which usually lasts two years.³⁶⁴ However, illegal workers or undocumented workers constitute a considerable number in this sector.³⁶⁵ Although the *Kafala* system is ostensibly no different from many other guest programs around the world.³⁶⁶ However, the uniqueness of this program is the near total control of workers during their stay in Saudi Arabia.³⁶⁷ Because of these conditions, domestic workers tend to be isolated and confined in the employer's home. They are afraid to seek assistance because they do not know they have rights and because of the language barriers or their low education level. Also, many are afraid of being deported and therefore accept the abuse silently in order not to jeopardise their employment.³⁶⁸

The abuse of domestic workers in Saudi Arabia and other GCC countries has been at the centre of a heated debate between receiving countries and sending countries. For example, Indonesia stopped sending maids to Saudi Arabia and 21 other Middle Eastern countries due to labour norms and human rights

³⁶⁴ Annelies Moor and Marina de Regt, 'Migrants Domestic Workers in the Middle East' in Marlou Schrover (ed), *Illegal migration and gender in a global and historical perspective* (Amsterdam University Press 2008).

³⁶⁵ In some cases, workers arrive on visit or Hajj visa, other simply run away from their employers due to various reasons to end up working illegally for new employer. For more details: Staci Strobl, 'Policing Housemaids: The Criminalization of Domestic Workers in Bahrain' (2008) 49 *British Journal of Criminology* 165; Katherine Scully, 'Blocking Exit, Stopping Voice: How Exclusion from Labor Law Protection Puts Domestic Workers at Risk in Saudi Arabia and around the World' (2009) 41 *Columbia Human Rights Law Review*.

³⁶⁶ Guest worker is a foreign national who is permitted to live and work temporarily in a host country. For more details see: Sarah Parry, 'Guest Worker' <<https://www.britannica.com/topic/guest-worker>> accessed 5 December 2018.

³⁶⁷ Onn Winckler has identified five distinct ways differentiate between kafala system and other pattern of migration: 1) no citizenship available for workers; 2) lack of employment stability; 3) permanent settlement not sought by workers; migrants workers constitute majority of the workforce; 5) sweeping interest of GCC countries citizens in cheap foreign labours. Cited in: Heather E Murray, 'Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries' (2013) 45 *Cornell International Law Journal*.

³⁶⁸ Scully (n 365).

violations.³⁶⁹ In 1998, Nepal banned female migrants from going to GCC countries as domestic workers after a Nepali maid who had been abused committed suicide in Kuwait. However, the Nepali government in 2003 partially lifted some previous restrictions then all lifted by 2010.³⁷⁰ Besides sending countries, human rights organisations heavily criticised the record of receiving countries in the treatment of domestic workers. While Human Rights Watch described the Saudi reform regarding the introduction of the new domestic regulation as a slow move in the right direction;³⁷¹ past reports have shown that while many domestic workers enjoy decent working conditions, other suffer from a range of abuse including unpaid wages, forced confinement, overload working hours, and instances of severe psychological, physical and sexual abuse.³⁷²

Moreover, the issue of domestic workers abuse was recognised by Saudi activists. The first campaign was launched in 2008 via adverts which appeared on Saudi-owned satellite channels and newspapers. The slogan of the Rahma (Mercy) campaign reads in English: “He who shows no mercy will receive no mercy [from God]”. The first television advertisement shows a Saudi man shouting angrily at a foreign maid for failing to iron his clothes, while the second shows a man in his car yelling racist abuse at Asian workers. The sketches end with the man praying and asking God for help and mercy as the slogan appears on the screen to show the irony. The print version of the campaign caused a

³⁶⁹ The Guardian, ‘Indonesia to Stop Sending Domestic Workers to Middle East : Reports’ *The Guardian* (5 May 2015) <<https://www.theguardian.com/world/2015/may/05/indonesia-to-stop-sending-domestic-workers-to-middle-east-reports>>.

³⁷⁰ Rooja Bajracharya and Bandita Sijapati, ‘The Kafala System and Its Implications for Nepali Domestic Workers’ (2012) 1 Centre for the Study of Labour and Mobility.

³⁷¹ Nisha Varia, ‘Dispatches: New Protection for Saudi Arabia’s Domestic Workers’ (2014) <<https://www.hrw.org/news/2014/02/19/dispatches-new-protection-saudi-arabias-domestic-workers>> accessed 11 April 2018.

³⁷² Human Rights Watch, “‘As If I Am Not Human’: Abuses against Asian Domestic Workers in Saudi Arabia’ (2008) <https://www.hrw.org/sites/default/files/reports/saudiarabia0708_1.pdf> accessed 11 April 2018.

furious reaction from some commentators, and some major newspapers have refused to publish it as it was too shocking. The advertisement showed a maid held inside a kennel with a dog collar around her neck, and a foreign driver harnessed like a horse with a Saudi woman holding the reins. While Qaswarah Alkhateeb, the campaign manager states: we are obliged to treat servants well, why ask them to do things we cannot do ourselves. Alkhateeb adds:

the targeted audience for these advertisements is not just Saudi society but the whole of the Arab world. Others criticised the campaign because discussing domestic problems on satellite channels allegedly turn them into a scandal for Saudi Arabia.³⁷³



Figure 4. Campaign images showed a maid and a driver being abused by their employers.³⁷⁴

³⁷³ Magdi Abdelhadi, 'Saudi Campaign against Maid Abuse' (2008) <http://news.bbc.co.uk/1/hi/world/middle_east/7796051.stm> accessed 11 April 2018.; also: Najwa Hashem, 'Who Shows No Mercy Will Receive No Mercy' *Alriyadh Newspaper* (25 November 2010) <<http://www.alriyadh.com/579496>> accessed 10 Jan 2018.

³⁷⁴ *ibid.*

Given the fact that there is no reliable data to show the extent of violations or abuse targetted at domestic workers, and that most cases of abuse will never be reported, Human Rights Watch estimates that it is a significant problem.³⁷⁵ Despite domestic workers accounting for a quarter of foreign workers, a vast majority of complaints received by sending countries' embassies concerned domestic workers.³⁷⁶ One Filipino diplomat in Saudi Arabia said a daily average of one runaway maid walks into his consulate.³⁷⁷ Also, it is worth noticing that neither the National Society for Human Rights (NSHR) nor Human Rights Commission (HRC) who are active in the country, have documented the scale of domestic workers abuse in their recent reports.³⁷⁸

The divergence of opinion among the professionals who took part in this research, on whether domestic workers are covered by the legal protection provided by the law is problematic. Nevertheless, many indicators accompanying the release of the law in 2013 illustrated that the government intended to include domestic workers among potential victims. One of these indicators is the workshops that were sponsored by the government and held to discuss the inclusion of domestic workers during the period immediately before issuing the implementing regulation of the law.³⁷⁹ Another indicator is a statement from Saudi official confirming this intention, he says:

³⁷⁵ Human Rights Watch, *As I am not human* report (n 373).

³⁷⁶ *ibid.*

³⁷⁷ Faiza Ambah, 'A Critical View of Saudis' Treatment of Foreign Help' *The Washington Post* (7 December 2008) <<http://www.washingtonpost.com/wp-dyn/content/article/2008/12/06/AR2008120602149.html>> accessed 11 April 2018.

³⁷⁸ Based on reviewing either organisation's reports in April 2108.

³⁷⁹ Najla Alharbi and Majedah Abdualziz, 'Experts Put Executive Regulations for Domestic Workers' *Alwatan Newspaper* (30 August 2013) <http://www.alwatan.com.sa/Discussion/News_Detail.aspx?ArticleID=158003&CategoryID=1> accessed 11 April 2018.

This is a good law that serves major segments of society in the kingdom, including women, children, domestic workers and non-domestic workers.³⁸⁰

Consequently, the controversy among the professionals surveyed in this research regarding the inclusion of domestic workers is understandable because of discrepant signs from the governmental bodies after enactment of the law.

Undoubtedly in the absence of explanatory memorandum, it is difficult to predict the real intention of the Saudi legislature with respect to many critical issues in this law. However, it could be argued that a bureaucratic factor may contribute indirectly to this confusion resulting from the lack of coordination between governmental bodies. The Domestic Workers Regulation No. 310 issued in May 2013 and the authority to implement it was given to the Ministry of Labour. While the Domestic Violence law issued in September 2013, a different ministry was assigned to implement the law which is the Ministry of Social Affairs.³⁸¹ The disparity in taking responsibility for managing the issue of protecting domestic workers may be the source of a dilemma here. To put it simply, it might be that the Ministry of Social Affairs in its preparation for drafting the implementing regulations, preferred to ignore any mention of domestic workers. The reason behind that seems that the relationship between the worker and the employer had already been regulated by another new law that was implemented by another governmental body. Therefore, the bureaucrats in the Social Affairs ministry

³⁸⁰ Khaled Al-Fakheri, secretary general of the National Society for Human Rights (NSHR), whose organisation helped to draft the law. For more details: Mahmoud Habboush, 'Saudi Arabia Passes Kingdom's First Domestic Abuse Law' (2013) <<https://www.reuters.com/article/us-saudi-women-violence/saudi-arabia-passes-kingdoms-first-domestic-abuse-law-idUSBRE97S0Q620130829>> accessed 11 April 2018.

³⁸¹ The Ministries of labour and social affairs were merged to be named as the Ministry of Labour and Social Development from May 2016, therefore, the supervisory authority to implement the Domestic Violence Law directly became under the new ministry.

purposely distanced the jurisdiction of the law from domestic workers by neglecting to name them and the initial plan to include domestic workers is not valid plan anymore subsequently as their issue is being processed by another ministry issue. There could be other reasons behind not naming domestic workers, and not long afterwards the two ministries merged and became the Ministry of Labour and Social Development (MLSD). It is also expected that the inclusion of domestic workers will cause more debate unless an official statement appears by the MLSD to clarify this issue.

Hence, by not naming domestic workers in the implementing regulations, it resulted in controversy among the professionals surveyed in this research.

Nevertheless, the broad definition of abuse in article 1 seems to include domestic workers among victims protected by the law. The relationship between the worker and his/her employer could be covered under the terms of the 'sponsorship' or 'livelihood relationship' listed in the article. Also, regulation No. 310 is a mechanism to regulate the contractual relationship between the worker and the employer. It is mainly a guideline that explains the rights and duties of either party through listing minimum standards aimed to protect workers basic rights from violations. The relationship between either party stemmed from unequal positions, therefore, providing more legal protection via domestic violence law which may enhance workers status.

Finally, another concern to be raised is that contrary to the expectation that lifting the ban on women driving in Saudi Arabia will reduce a large proportion of domestic workers; mainly male drivers of who constitute 70% of the workforce in this sector. Due to the promotion of women's status and the rise of women in employment, it is likely that Saudi women will recruit more female workers for

household jobs. Female domestic workers such as maids and nannies are already vulnerable and are being considered victims in most cases of abuse among foreign workers. Therefore, a great deal of attention should be addressed to the presence of female domestic workers and the possibility that incidents of abuse will escalate in the foreseeable future. Accordingly, the current demand on recruiting maids is already high and would be higher in Saudi Arabia, and whilst the legal guarantees and protection are still inadequate the case of future textual modifications regarding this issue should be carefully clarified.

4.2.3. The Reporting Provisions

The law regulates the reporting of cases of abuse in article 3 and 4 with further explanation in articles 3,4,5 and 6 in the implementing regulations. The apparent progress seemingly occurred in individual reporting through most importantly establishing two hotlines centres: 116111 for children and 1919 for all other victims. However, institutional reporting by public or private workers is not sufficiently applied yet. In addition, to some difficulties facing workers which were addressed by participants who have been surveyed in this research, some gaps in the provisions of the law relating to mandate reporting would prevent making any progress in this regard. The law obliges the relevant authorities whether is it private or public to report the domestic violence incident. Nevertheless, the role and function of the relevant authorities when the case of abuse is identified vaguely and not clarified. The law does not adequately recognise a clear guideline or mechanism to report the alleged case. Instead, it gives discretionary power to the worker to decide to report the abuse, which would lead to arbitrary judgement. Given that the reality is that some victims are unable to report such as children, while some women choose not to do due to fear of further various

consequences and domestic workers may be unable to speak the local language to express themselves; the institutional reporting provides the needed response in these cases. The mandatory reporting provision in the law is a progressive step in itself, but there is still considerable room for improvement. The following are some of the critical measures that have proved to be effective in facilitating institutional reporting:

- i. Setting guidelines for medical practitioners and social workers to identify abuse. Battered woman syndrome and shaken baby syndrome are already known and applied requirements in some legislatures.³⁸² The crucial role played by medical staff in blowing the whistle allowing for timely intervention in suspected abuse cases.
- ii. Provide legal protection and immunity against counter-accusation for the worker as a result of his duty in a reporting abuse case. Some participants indicated that the abuser could file a complaint against workers who dare the culture of covering up; in particular in case of the victim refuses to file a charge. Moreover, pressure from superiors and fear of clashes with the abuser or his family put more burden on the worker to not report the legal text particularly has not covered these gaps yet.
- iii. Setting penalties on workers and their superiors if they fail in reporting abuse cases. The current measure in article 3/4 in the implementing regulation obliges the worker to escalate the case to the superior; the article does not explicitly specify the sanctions in failing to do so either for

³⁸² Interviews with P11; see chapter five; Also, "The Florida Legislature has taken bold steps to require that every health care professional licensed in the state receive ongoing education concerning how to identify and screen for domestic violence victims, and what measures should be taken to ensure that the victim and her family receive referral to the proper resources." For more details :Marjorie Conner Makar cited in: MC Makar, 'Domestic Violence: Why the Florida Legislature Must Do More to Protect the Silent Victims' (1998) 72 Florida Bar Journal 13 <<http://en.journals.sid.ir/ViewPaper.aspx?ID=150380>> accessed 19 April 2018.

the superior nor workers.³⁸³ The tribal structure of the Saudi society and the networks of relatives and friends, specifically in small towns, could allow the abuser to get away from being held accountable in many instances. Thus, the measures of institutional reporting seem to be vaguely crafted in the article; the division of the responsibilities between the worker and the superior must be taken into account to avoid legal gaps in this regard.

- iv. Although launching an all-female staffed hotline centre is a step forward in the governmental effort, it is still not enough to respond to all victims. In light of the guardianship system and the strict sex segregation policy prevailing in Saudi Arabia, women will end up with only option to report abuse. Women especially still hesitate and struggle to report abuse in the dominant male environment, i.e., the police and protection teams. Therefore, it is necessary to recruit more female staff as some evidence emerged that women who had filed complaints with police without a male relative said police had turned them away, or they felt uncomfortable going to the police station without a male accompanying them.³⁸⁴ Also, calling the hotline centre in rural or isolated areas cannot be an available option, but police stations are other alternative option for women to report abuse.

Another legal and practical gap in the reporting process is that individual anonymous reporting is not acceptable according to article 4/1 in the implementing regulations. It is perceived that some individuals can not disclose

³⁸³ Implementing Regulations for the Protection from Abuse Law, art. 3/4

³⁸⁴ Human rights Watch, 'Boxed In: Women and Saudi Arabia's Male Guardianship System' (n 271).

their identity for various reasons such as security concern or fear of breaking social ties with their relative abuser. Moreover, the anonymity of individuals who report a case of abuse still under the risk of disclosure by the discretionary power of the protection team. The Saudi law indicated that the protection team can reveal the name of people who report a case of abuse in two instances. First, in the case of the protection teams are considering the treatment of the case requires this measure. Second, if another official institution is requesting the name of the individual who reports the case with valid reason.³⁸⁵ Instead, the law must put the right of disclosure under the court supervision to guarantee the confidentiality of the individual in all stages, otherwise many individuals would be reluctant from reporting a case of abuse. A clear example of the identity of individuals who report abuse is not completely secured and could be illegally revealed is a story went viral via television channels and social media in April 2018. A woman is heard screaming as her husband was allegedly abusing her. The video captured by the woman's neighbour who reported to the police then after half an hour she posted the footage online when no response is shown. After the incidence, people and especially women activists outraged and urged authorities to take action and protect the victims. They tweeted under the hashtag ([#معنفة ابها](#)) Arabic for #Abha abused woman), in few hours the story started to make the rounds online and trended the hashtag globally. Officials in Abha city issued an order to investigate the incident but women activists followed a new strategy via mentioning the relevant international organisations and other TV shows in their tweets. They claimed that the next expected step from the authorities is known and useless, the MLSD spokesman will release a statement that the incident is being under investigation and that the end of the story and the

³⁸⁵ Implementing Regulations for the Protection from Abuse Law, art. 5

offender will not be brought to justice as usual. However, a joint statement from the MLSD, the police and Abha city authority revealed that the woman was not abused and supported their statement by a medical report. A local newspaper confirmed the authenticity of the footage and with the activists accused the authorities of trying to cover up the incident. In the middle of the heated debate, the name of woman who reports the incident was leaked from the anonymous resource. In a statement she made on the Saudi TV show “Ya Hala” she said: my identity was not protected in this case, I am known by everybody now though the law protects the individual who reports a case of abuse from being disclosed. I do not expect after what happened anyone will dare to report alleged incident. Allahim, a Saudi lawyer, commented on this statement:

The press release from the woman who reported the abuse is horrific and sad, it sends bad message to public that if you do your ethical and legal duties by reporting alleged incident, your name would be disclosed by the police or the MLSD, public will be reluctant from reporting in the future and those who leaked the name must strictly punish.³⁸⁶

4.2.4. The Provisions of Civil and Criminal Remedies

The law does not provide detailed criminal, and a civil remedy for domestic violence offences except that it creates a criminal offence in one article. Article 13 states that if such offences specified in article 1 are committed, the offender shall be subject to imprisonment with a sentence of between one month and no more than one year and a fine of not less than five thousand Riyals and no more

³⁸⁶ For more details: ‘Ya Hala Show: First Statement for the Woman Who Captured Abha Abused Girl’ (*Ya Hala Show*, 2018) ,<<https://twitter.com/YaHalaShow/status/981942781848576000>> accessed 19 April 2018.

than fifty thousand Riyals. In the case of repeated offences, the sentence shall be doubled.³⁸⁷ The law does not expressly establish a civil remedy for domestic violence as applied in many countries and as required by the framework model of legislation on domestic violence issued by the UN. Under the provisions of the law, the MLSD upon receipt of a case of abuse, takes protection measures such as providing health care, making arrangements to prevent recurrence of abuse, summoning the parties or other relatives to take statements and subject the victims or the offenders to psychological treatment or rehabilitation programmes appropriate for each case.³⁸⁸ Therefore, the law specifies that two different measures should be instituted in cases of abuse in accordance with its degree of seriousness, nature of the abuse and the frequency of abuse.³⁸⁹ Firstly, in the instance of severe-cases defined as the act of abuse resulting in severe damage to the body of the victim and which requires immediate intervention to stop it; or if the act of abuse would pose a real risk on the body, health, safety of the alleged victims.³⁹⁰ In these instances, the MLSD must contact the governor and the police to inform them about the situation and coordinate with the said authority to ensure the safety of the victim whether by transfer of the aggressor to a proper place or by providing accommodation for the victim. Secondly, there are the non-severe cases (or not serious) which appear as a vague term and which are defined as potential, regular or recurring abuse in daily life. It seems in case of non-serious abuse, the measures rely on reconciliation between the victim and the abuser.³⁹¹ Apparently, the wording of the law and its implementing regulations differ between two levels of seriousness in order to give priority to cases that demand

³⁸⁷ This amount is approximately equivalent to £ 9500 or \$ 13500.

³⁸⁸ Law on Protection from Abuse, art. 7

³⁸⁹ *ibid*, art. 8

³⁹⁰ Implementing Regulations for the Protection from Abuse Law, art. 8

³⁹¹ Implementing Regulations for the Protection from Abuse Law, art. 10

urgent intervention and others that are not urgent. In other words, it is a matter of emergency rather than actual classification.

Nevertheless, the cornerstone of civil remedy is a protection order which is not mentioned in the law, though other neighbouring countries apply the same measures to protect victims in certain cases.³⁹² Protection orders have proven to be one of the most effective legal remedies for victims in domestic violence cases.³⁹³

There are two types of protection orders: emergency or ex parte orders issued in an urgent situation without notice to the respondent which last within a short time. Standard (longer-term) orders, which require a full hearing before a judge with the respondent present to be issued and protect the victim for long time.³⁹⁴ Although a person who experienced domestic violence can apply for a protection order, such an order can be brought on the victim's behalf by any other person who has interest in the wellbeing of the complainant, such as police officer or social worker.³⁹⁵ Such orders vary significantly in specifying the length of the order, its enforceability and whether financial support or other relief may be ordered.³⁹⁶

Bearing in mind that the Saudi law does not explicitly recognise protection orders, it could be argued that, to some extent, the law tries to create an alternative mechanism. The implementing regulation stipulates that in non-severe cases, the victim must remain with her family on condition that the protection committee forces the abuser or the head of the family to sign a pledge that the victim will be

³⁹² Article 4 in the Kurdish law; article 15 in the Bahraini law, article 12 in the Lebanese law, article 16 in the Jordanian law.

³⁹³ UN Women (n 245).; also: A Framework for Model of Legislation on Domestic Violence (n 246)

³⁹⁴ *ibid*

³⁹⁵ Beninger (n 248).

³⁹⁶ UN Women (n 245).

protected from further abuse. The pledge must also contain the right to enable the victim to contact the committee directly and enable a social worker to contact and visit the victim to follow up their condition at any time. In a case of the pledge being infringed, the abuser will be held accountable.³⁹⁷ However, this hybrid measure of protection order within the guardianship system is evidently ineffective. Due to the absence of specific punishment, violating the terms of the pledge is expected by abusers exactly as the situation before issuing the law in 2013. It could be assumed that if the pledge is signed, a warrant of arrest would automatically be issued, but it remains suspended unless the abuser violates the term of the pledge. In this situation, the settlement might achieve some success.

A Saudi journalist, who covered the domestic violence, said:

It does not make sense to assume that [once] you have brought in the guardian who is abusing the woman and make him promise, 'Oh I am not going to beat her again,' [then] things are fine and she [can be] signed out to him.³⁹⁸

Moreover, Saudi law in article 10 states that in dealing with a case of abuse, priority shall be given to preventive and counselling measures, unless the case requires otherwise.³⁹⁹ This provision is conceivable to be included in any domestic violence law aims to implement gradual measures based on the seriousness of the case or level of danger. However, the implementing regulations are being plagued by the concept of conciliation procedures in many articles as the forefront agenda in the treatment of domestic violence. This is contrary to the UN recommendations on Legislation on Violence against Women

³⁹⁷ Implementing Regulations for the Protection from Abuse Law, art. 5/7.

³⁹⁸ Human rights Watch, 'Boxed In: Women and Saudi Arabia's Male Guardianship System' (n 271).

³⁹⁹ Law on Protection from Abuse, art. 10

that the local law's response for violence must ensure prioritising "the right of the complainant/survivor over other considerations, such as the reconciliation of families or communities".⁴⁰⁰ The tendency to apply the conciliatory approach in the implementing regulations is confirmed by the participants' response presented in chapter five. Many participants indicated that the MLSD formulated the regulations in accordance with the needs of its workers. Accordingly, the MLSD strives to conciliate victims with their abusers as a general principle; the priority must always be given to "preventive measures, guidance and conciliation between the two parties".⁴⁰¹ Even in the severe case of abuse, when a shelter is granted to the victim, the MLSD's workers would practice indirect measures to force the victim to resort to conciliation measures. These measures can be done through informing her the shelter is temporary⁴⁰², putting restrictions on free movement during staying in the shelter ⁴⁰³ and contacting her family to host her if possible at any stage.⁴⁰⁴ The wording in many provisions in the implementing regulations is being crafted adversely to the victim's interests and to the overall intention of the law itself. The victim's rights to be treated in accordance with human rights standards is stipulated in the provision of the law. Article 14 states:

The provisions and procedures provided in this law shall not prejudice the obligations of other competent authorities, nor shall they prejudice any more favourable right of the protection from abuse stipulated in other law or an international convention to which the Kingdom is a party.

⁴⁰⁰ UN Women (n 245).

⁴⁰¹ Implementing Regulations for the Protection from Abuse Law, art. 7/2.

⁴⁰² Implementing Regulations for the Protection from Abuse Law, art. 8/7/D,H.

⁴⁰³ *ibid*, art. 8/8.

⁴⁰⁴ *ibid*, art. 8/7/H.

Thus, the lawmakers appear to be more enlightened to the overall picture of the treatment of domestic violence in Saudi Arabia whereas the implementing regulations makers tend to be bureaucratic and have some backward views regarding the same issue.

4.2.5. An Account of Specific Government Duties, Including those of Non-Governmental Organisations.

Comprehensive law reform initiatives at a national level in response to domestic violence requires engaging all relevant actors as part of a holistic approach to domestic violence. The law and its implementing regulations are somewhat limited in involving the role of other governmental agencies and tend to centralise the measures that can be taken against abusers to those available at the MLSD. The role of criminal justice actors such as police, prosecutors, lawyers and others such as experts, witnesses, doctors and NGO's are vital in delivering an effective approach aimed at eradicating domestic violence.

The UN Handbook for legislation on violence against women contends that the police and prosecutors are of central importance in ensuring that perpetrators of violence are punished.⁴⁰⁵ The law does not impose specific duties upon the police to investigate or become involved in legal action except in limited cases such as summoning the alleged perpetrators to the protection units in the MLSD's office to investigate the incident⁴⁰⁶; in cases of abuse require urgent intervention or access to the place where the incident has occurred; or the victim needs to transfer to a shelter or safe place according to a request from the MLSD.⁴⁰⁷ Even

⁴⁰⁵ UN Women (n 245).p.19

⁴⁰⁶ Implementing Regulations for the Protection from Abuse Law, art. 7/6

⁴⁰⁷ Law on Protection from Abuse, art. 8 and 9

in cases where the victim chooses to report a case directly to the police, the law does not expressly oblige the police to take specific measures other than to refer the report to the MLSD and take necessary procedures falling under its jurisdiction. The nature of these ‘procedures’ and whether they are required to be undertaken by the police is not explained. For example, there is a need to ensure that if there is a necessity to protect the victim’s safety or the need to provide shelter, some process should be available whereby these duties can be undertaken by the police until such times as the MLSD respond to the referral from the police.⁴⁰⁸ Moreover, the law does not mention any specific role for the public prosecution; it has been the experience of many countries that if incidents are not investigated thoroughly or documented precisely, an abuser might not be convicted.⁴⁰⁹

Normatively, there is an assumption that the public prosecutor has specific authority in deciding whether a case should be investigated. That investigation may involve taking witness statements, collecting evidence etc. But the difficulty here is that, with the current concentration of power in the MLSD’s hand it is questionable whether the social workers in the MLSD are competent to deal with various legal issues, which may well prove beyond the scope of their expertise.

In this way, the provisions of the law and its implementing regulations are worded to be within the remit of the MLSD, rather than involving the police and prosecutors to assist in the investigation and prosecution of domestic violence.

However, a positive aspect is that the law has become innovative in that it is allowing the courts to apply alternative or additional punishment to abusers in some cases. This provision is encouraging when taken by the courts and can

⁴⁰⁸ Law on Protection from Abuse, art. 4

⁴⁰⁹ UN Women (n 245).

guarantee best practices within local realities. It has to be remembered that some women just want the abuse to stop, but they do not necessarily want to end their marital or family relationships or find their partners facing criminal consequences or imprisonment.⁴¹⁰ However, the law is not designed to take into account special circumstances presented by domestic violence cases; neither is there provision for a fast-track system of adjudicating domestic violence cases, which can result in long delays in judicial proceedings. This in itself is another factor that discourages victims from pursuing cases.⁴¹¹

Another positive provision is that if the victim of abuse is a child whose parents are separated or divorced, the protection committee has absolute right to hand the child over to his/her other parent or another relative based on the best interest of the victim. In this instance, the person who disputes the decision of the committee can resort to the court.⁴¹² Given the bitterness that surrounds many divorces, it is not uncommon for parents to place their children in the centre of any dispute, and therefore initiating derived abuse by involving them in a parental fight in order to achieve revenge. Also, another critical factor is that in the absence of a written custody statute in Saudi Arabia - apart from the principles of Sharia, divorced women are in a weaker position than men in a custody issue. Therefore, this provision offers little advancement in this regard but could provide more protection for women and children from an abusive parent.

Moreover, it is known, as previously discussed in chapter two, that the story of the Saudi domestic violence law was primarily initiated by the King Khaled Foundation, a Non-Government Organization which sparked the first attempt at

⁴¹⁰ Implementing Regulations for the Protection from Abuse Law, art. 4; Beninger (n 248).

⁴¹¹ Judith S Kaye and Susan K Knipps, 'Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach' (1999) 27 Western State University Law Review.

⁴¹² Implementing Regulations for the Protection from Abuse Law, art. 8/4.

drafting a bill consisting of 15 chapters. The draft was delivered to the Saudi Cabinet and eventually became law in September 2013. NGOs in Saudi Arabia such as the King Khaled Foundation and Hemayah Organisation were instrumental in lobbying for the passage of the law. Also, they have made important strides in educating and raising awareness of society. In many countries, NGO's fill the lacuna in governmental efforts, health care and support services to respond to short-term injuries and protect victims of violence from further violations. Moreover, in some cases, NGOs provide long-short needs.⁴¹³ Also, The UN Handbook for legislation on violence against women recommends that where possible, services provided to victims should be run by experienced and independent women's NGO's. The State plays an important role in establishing such services for victims but, also funds NGOs as the most appropriate body in supporting victims at all levels.⁴¹⁴ Because of the encouraging step from the Saudi government in passing laws which involve the co-operation of local NGO's. However, the law and its implementing regulations are not specific on the role of the NGO's in the effort to combat domestic violence.⁴¹⁵ Apart from general language encouraging all relevant parties in the domestic violence arena in Saudi Arabia to provide necessary services and help victims, no additional details are written in the law and its implementing regulations. Nevertheless, the reality is that the MLSD is prone to control all activities in this regard. For example, the MLSD was able to put its hand on the first charity shelter for domestic violence survivors according to some participants who had been surveyed in this research. Instead of supporting such initiatives to allow activists to establish and run shelters, the MLSD tendency seems to the opposite. By not

⁴¹³ UN Women (n 245).

⁴¹⁴ *ibid.*

⁴¹⁵ Implementing Regulations for the Protection from Abuse Law, art. 2/3, 2/4 and 14/1

giving NGOs and activists the role to be part of the comprehensive strategy to eradicate domestic violence, it will remain another area of concern in the law and confirmed that it is central and bureaucratic in its view to domestic violence treatment.

4.2.6. The Provisions of Non-Legal Preventive Measures Including Raising Awareness, Training and Public Education

Until recently, little attention was paid to preventive measures that might help end intimate partner violence.⁴¹⁶ The law clearly stipulates that the government is collaborating with other active parties in the area of domestic violence to engage in a wide range of preventive measures. Therefore, the law contains essential initiatives that have imposed obligations to facilitate change with the objective of preventing or eliminating domestic violence. In addition to the legal measures, the law specifically refers to the necessity of preventive measures, such as public awareness, and makes particular reference to the role of media in combating domestic violence. It refers to educational programs, the need to support and conduct scientific research and studies relating to the protection from abuse. It does provide for the adoption of specialised training programs for all persons involved in dealing with abuse cases, including judges, detecting and recording officers, investigation officers, physicians, specialists and others. The law addresses the importance of monitoring the scale of domestic violence in Saudi Arabia and the need to build a statistical database to be utilised in devising treatment mechanisms to assist the MLSD in ensuring effective implementation.

⁴¹⁶ Shamita Das Dasgupta, 'Preventing Intimate Partner Violence: Thinking Forward', *Preventing intimate partner violence: Interdisciplinary perspective* (1st edn, Policy Press 2017) <<http://www.jstor.org/stable/10.2307/j.ctt1t89gf6.15>>.

The Saudi law also particularly innovative as it refers to the need to intensify family counselling programs that aim to address undesirable social behaviour conducive to creating an environment leading to abuse.⁴¹⁷ Thus, it can be argued that the non-legal preventive provisions in the law are well crafted as it included various responses to the problem of domestic violence and can be seen as a significant achievement for a country which has criminalised domestic violence for the first time. However, the challenge is whether the MLSD is capable of implementing most of these non-legal preventive measures alone without coordination with NGOs or civil society. As discussed previously, progress in raising awareness and training persons involved in dealing with abuse cases is notable. Also, it is too soon to expect immediate implementation from the MLSD regarding other non-legal preventive measures, and it will remain partly or not entirely in practice especially compulsory counselling treatment for offenders and insert education program in the national curricula in schools.

4.3. Conclusion

Overall, the law represents a progressive step forward in recognising domestic violence in Saudi Arabia as a serious threat to the safety of the people who live within the family sphere; whether they be family members, domestic workers or any individuals for whom the abuser is legally responsible. Also, the law is a strong attempt to provide practical tools arising from local reality to combat the problem. Although the definition of law is quite broad and includes many forms of abuse, it fails to recognise economic abuse as one of the common forms of abuse against women. Also, the vagueness of the definition regarding the concept of

⁴¹⁷ Law on Protection from Abuse, art.15

guardianship and its limits with a range of relationships protected by the law would cripple emerging good practice. Moreover, some gaps exist in the provisions of the law relating to mandatory reporting by workers, also the possibility of exposing the identity of the individuals who report incidents is high and confidentiality in this matter is not fully secured. Although the law generated some remedies for domestic violence, it failed in providing protection orders as the most essential civil remedy, or in failing to provide adequate criminal remedies similar to the existing international standards. Also, consisting enforcement between the MLSD and the other governmental agencies and NGOs is lacking. However, the law contains positive aspects by underpinning a growing range of non-legal preventive measures and assistance mechanism to protect victims from domestic violence.

Chapter 5 Participants' Perspective on Domestic Violence

5.1. Introduction

In chapter one it was discussed that the Saudi Government introduced a new law through a Royal Decree No. M/52, 15 November 2013 dealing with the protection of victims of domestic violence. This law is supposed to be a substantial reform in the area of domestic violence and protecting women's right. The law aims to provide protection for all family members, including servants, from domestic abuse. NGO's and activists in Saudi Arabia campaigned for the domestic violence law, as it brings the issue into line with both Islamic law guarantees for human beings and international human rights norms. The full extent of the outcome whether it has acted as a deterrent and whether it has changed official practice is not known yet

In Saudi Arabia, there is a lack of officially detailed statistics and empirical studies concerning the issue of domestic violence, and the effectiveness of the new law remains undocumented and unexplored. Therefore, the aim of this chapter is to fill this gap and explore the practical application of this law, i.e. to what extent it has impacted on the practice. Therefore, the chapter focuses on exploring those who are implementing the law and those professionals working in the field of domestic violence. By professionals, I do not mean necessarily the government officials only. The combined experience of official and non-official sources may help to construct a picture of the law in practice.

However, it is useful, at this stage, to briefly revisit some of the key issues of this research before moving on to look at the results arising from the interviews

which aim to give an empirical evaluation of the new law. This study asks, inter alia, the following questions:

- (i) Whether Saudi Domestic Violence law has shown any effectiveness in its practice
- (ii) If recommendations can be made to improve the effectiveness of the Saudi DV law.

To collect data from professionals and officials, interviews were conducted with these people. The questions asked of the participants were designed to solicit some in-depth reactions to the main issues of the introduction of the new law, in order to address the matters arising from the aims of the research.⁴¹⁸

5.2. The Process of Gathering Data

Before conducting the interviews, the researcher shared the interview schedule with his supervisors and peers to get their feedback and comments on the schedule. The aim of piloting the interviews was to minimise the likelihood of respondent having problems in answering the questions as well as to allow some assessment of the questions' validity and reliability of the data that will be collected.⁴¹⁹

Before the summer of 2016, thirty invitation letters were sent to potential participants.⁴²⁰ Twenty participants responded to the invitation that was sent by email. The initial plan was to interview twenty persons between July and August

⁴¹⁸ Main interview questions and themes are attached in annex 3

⁴¹⁹ Alan Bryman, *Social Research Methods* (4th edn, Oxford University Press 2012). P.364; Mark Saunders, Philip Lewis and Adrian Thronhill, *Research Methods for Business Students* (7th edn, Pearson Education Limited 2016).

⁴²⁰ Sample of invitation letter is attached in annex 1. Also, information sheet and consent form are attached in annex 2

2016, but due to lack of professionals who are active in this area in Saudi Arabia, and because of time limitations, the target did not meet. A group of three specialist judges in DV cases refused because of unknown reasons to carry out interviews. Also, two participants for personal circumstances were not able to be interviewed as planned. The process of replacing those participants was not possible, however, the principle of data saturation is accomplished. The place of conducting the interviews was up to the participants, mostly in the interviewee's offices. The average length of the interview was between 40-60 minutes.

5.3. Recording the Interview

The researcher used a tape recorder to record the interviews, which will provide accurate information for paraphrasing and quotations. The face-to-face interviews conducted will engage in an in-depth discussion with the interviewees. The researcher will be able to raise issues or ask questions that stimulate discussion⁴²¹, which can help in developing and clarifying responses and following up on ideas, which are facilities that are not available in methods such as questionnaires.⁴²² The interviews were conducted in the Arabic language as it is the native language in Saudi Arabia. Then it had to be translated into English by the researcher. The English version of the interviews was given to interpreter to translate it into Arabic again to make sure that translation is reliable. Back translation method is used to ensure the meaning contained in the original

⁴²¹ Ranjit Kumar, *Research Methodology: A Step-by-Step Approach* (SAGE Publications Limited 2019). P.128

⁴²² Judith Bell, *Doing Your Research Project: A Guide for First-Time Researchers* (McGraw-Hill Education (UK) 2014).

language are produced authentically in the translated language.⁴²³ Thus, minor differences were noted and reconciled.

5.4. Research Ethics

All research involves some ethical issues; hence every researcher must act ethically to satisfy the university requirements and to produce good work. Creswell said: 'A qualitative researcher faces many ethical issues that surface during data collection in the field and analysis and dissemination of qualitative reports'.⁴²⁴ Therefore, the researcher obtained formal ethical approval from the research ethics committee in the Faculty of Arts and Social Sciences at the University of Hull. This research did not include sensitive questions or risk and ethical issues were considered before conducting the empirical study. All participants were informed before their participation in the nature of the research through the information sheet. Also, the researcher asked the participants to give their permission by signing a consent form. In order to maintain the confidentiality of participants' identity, the letter (P) is used as an abbreviation of respondents, followed by the transcript number from 1 to 15.

5.5. Overview of Research Participants

Fifteen participants, whose experience and qualifications are varied - more than two-thirds held a high degree, master or PhD, and four participants held a bachelor degree - were interviewed separately. However, the survey drew on the length of experience of respondents working in the field of domestic violence.

⁴²³ Saunders, Lewis and Thronhil (n 419).

⁴²⁴ Creswell (n 54).p141

What emerged was that those working in or associated with the medical Centre tended to have more firsthand experience of the subject than others because of the nature of their work in hospitals and primary health clinics.

Table 2. Respondents' education

Qualification	Number of participants
Bachelor	4
Master	4
Ph.D.	7

With respect to the interviewees' gender and occupation/job, it should mention that females were found to be more active in the process of being combatting domestic violence. Generally, the females who took part in the survey, played a dual role, insofar as in addition to their professional occupations, they were also involved in other voluntary activities relating to combating DV. For example, P4, P6 and P7 worked in hospitals, and also volunteered in various organizations aimed at combatting domestic violence. Furthermore, P9, P3 and P14 are activists and use the media and public campaigns to support alleged victims by bringing perpetrators to justice. However, male representatives, on the whole, tended to be less active and more bureaucratic within the limits of their job's description.

The table below presents more details about the characteristics of respondents:

Table 3. Characteristics of respondents

Name	Occupation/Job	Experience	Gender

P1	Consultant psychiatrist	2 years	M
P2	Lawyer	+20 years	M
P3	Lawyer	6 Years	F
P4	Consultant pediatrician	+20 years	F
P5	Lawyer	2 years	M
P6	Consultant pediatrician	+20 years	F
P7	Social worker/NGO member	10 years	F
P8	Employer at National Family Safety program	6 years	F
P9	Physician/activist	10 years	F
P10	Director at Human Rights Commission	4 years	M
P11	Pediatrician /NFSP member	12 years	M
P12	Legal adviser at the National Society for Human Rights (NSHR)	4 years	M
P13	Lawyer	3 years	F
P14	Clinical psychological	7 years	F
P15	Consultant psychiatrist	10 years	F

The researcher identified categories while conducting the interviews; also, they were finalised after the required interviews' saturation point was reached. Three categories emerged; each category has different themes. The researcher through the analysis process started to identify the code from the study data then grouped into different themes. The final stage themes were grouped into three main

categories. This chapter will present and examine each of the three categories with its themes separately. Table 3 illustrates this more clearly:

Table 4. Categories and Themes

NO.	Category	Themes and sub-themes
1	Societal perception of DV	<ul style="list-style-type: none"> i. Adequacy of publishing and Advertising the DV law. ii. Addressing the issue of how to publish/advertise the law and raise awareness. iii. Process of reporting DV
2	Participants' textual assessment	<ul style="list-style-type: none"> i. Definition of abuse and its sanctions. ii. Documentation issue. iii. Inclusion of domestic workers. iv. Shelters and accommodation. v. Absence of unified coordination measures
3	Performance of the Ministry of Labour and Social Development (MLSD)	<ul style="list-style-type: none"> i. Overall evaluation. ii. Shortage and untrained staff. iii. Absence of intervention policy.

5.6. Societal Perception of Domestic Violence

Investigating societal recognition of domestic violence in Saudi society is a crucial step in presenting empirical findings related to the effectiveness of laws on domestic violence. Perhaps this is because the acceptability of domestic violence differs across cultural groups largely due to the cultural perception of domestic

violence; therefore, in many Arab countries, the social understanding of gender roles and implications arising from marriage constitute the most influential factors in the occurrence of domestic violence.⁴²⁵ Consequently, it is important to discover the extent to which the public in Saudi Arabia, whether professionals or ordinary people are aware of the presence of domestic violence. The participants in the survey were asked to give their views on how they perceive domestic violence and the extent to which they feel the general public were receptive to the law banning this practice within the family.

All participants indicated that the society had, and still have limited knowledge of domestic violence and that factor results in a misconception of its existence. For example; Participants 1, with two years' experience stated:

We didn't have that concept before, but now there is more interest in the subject (P 1).

Another participant, with four years' experience, said:

It is a transition, the head of the patriarchy authority was absolute, and it has been abused. Therefore, the state is kerbing it by issuing such laws (P 10).

The participants generally believed that awareness of the concept of domestic violence was new to Saudi society. Other respondents agreed, adding more details on causes of domestic violence how society had received the new law. Of course, the causes of domestic violence are already known from studies of the subject and were discussed, from different angles in Chapter 2. For example; participants 14, with ten years' experience stated:

⁴²⁵ Kohlman Stephanie and others, 'Contribution of Media to the Normalization and Perpetuation of Domestic Violence' (2014) 1 Austin journal of psychiatry and behavioral sciences.

The law itself is opposed to these cultural norms which indicate that the parents have the right to do anything they want with their children, they have the right to beat them or torture them, insult and abuse because children are their property. The other thing is that the man has the right to abuse his wife physically, and society is not denouncing such issues, especially specific groups in our society (P 14).

Participant 14 described how some parents or men could abuse other family members due to the lack of knowledge about the concept of abuse and the limits to their parenthood authority. The abusers believe the violent action is permissible, or they do not think it is criminalised. Therefore, the influence of law and policies are important to establish an unacceptable practice. Although the new law serves as a practical method of legal recourse for the victims, the law is not a holistic cure for domestic violence unless it is underpinned by multi-sector coordination serving as prevention and response mechanisms.⁴²⁶

Accordingly, the burden of raising awareness requires multiple efforts on the part of all the concerned parties in Saudi whose aim is to tackle the problem. In other words, the newly introduced law has been introduced into an environment in which some perpetrators are unaware that they are committing unlawful acts.⁴²⁷ Interestingly a participant in the survey suggested that domestic violence is pervasive in all classes, regardless of educational background or any other factor. The participant said:

Domestic violence in Saudi Arabia permeates many classes in society, even individuals with higher degrees because it always

⁴²⁶ Lori Michau and others, 'Prevention of Violence against Women and Girls: Lessons from Practice' (2015) 385 *The Lancet* 1672.

⁴²⁷ Dobash and Dobash (n 98).

takes place behind a closed door. I have found that many of those with higher degrees are extremely violent because I dealt with many cases in which the father is a prominent PhD holder, but his understanding of the role of the father and parenthood has not been updated or progressed. He deals with his wife and children as if they were his property. They have no right to choose or even express themselves (P 7).

The participants agreed with P1 about the absence of awareness of domestic violence in society. However, it seems that the response of P1 also reflects a misunderstanding present among some workers in the field, insofar as there is an implication that domestic violence is present in specific groups, rather than the whole of society.⁴²⁸ This seems contrary to the accepted wisdom on the subject. Although the participant did not explain what they meant in detail, the answer discloses a somewhat shallow understanding of the nature of domestic violence. This behaviour is all-pervasive and is not subject to boundaries of high education or illiteracy; or wealth or any other discernible factor. In other words, no one is immune. Returning to the respondent's suggestion that domestic violence may be the preserve of "specific groups", the ambiguity of this statement was not resolved because the respondent preferred not to expand these comments due to the sensitivity of the issue or other unidentified reasons.

It is possible to explain these comments as a gesture to the fact that Saudi society consists a large proportion of tribal or religious groupings, nevertheless, and unlike the comments from P7, this suggestion of P1 is not supported by any data or scientific evidence. However, the suggestion does have the benefit of

⁴²⁸ See section 2.3.1 The magnitude of the problem

demonstrating how the domestic violence debate might be adversely reconciled by misconception, particularly among those involved in the area.

This, also, points to an interesting phenomenon insofar as the more interviews that were conducted, the more unexpected the outcomes appeared to be. For example, and bearing in mind that

- (i) Among ordinary people awareness of domestic violence – in the terms pertinent to this research is low, and
- (ii) This is a country that is addressing the issue of domestic violence for the first time.

Some interesting results were received.

One respondent believed the principle of physical discipline is a peculiar response; another participant had not read the domestic violence laws even though the respondent had the responsibility to implement its legal texts.

Participant 12; who works at the National Society for Human Rights (NSHR) states that:

The Saudi law is built on the Quran and Sunnah which prohibits abuse. Even removing harmful objects from the road is a charity, how about abusing a victim. Even if the victim made a mistake, you could beat up, but don't beat so bad to leave marks on the victim. Also, you can discipline the child by taking away things he/she likes; it is discipline with discretion (P 12).

This participant whose *raison d'être* is the defence and promotion of human rights, takes a surprising view, and suggests that physical discipline could be acceptable on condition that “do not leave marks”. Even if it is to be assumed that the response was well-intentioned, such a message can be so easily interpreted

as approving beatings of children and adults always providing that these beating do not leave marks on the body of the recipient. Consequentially, it is fair to ask whether practitioners, such P12 and those who share similar views, are professionally or indeed morally qualified to be involved in the treatment of domestic violence in the Kingdom.

Another participant, who works as a member of the local committee with 2-year experience, answered the question of how understandable they found the new law on domestic violence replied:

I haven't read the law itself and I am not sure about its contents, all we have is instructions via central committees in the Ministry of Health because we are a branch committee which coordinates with the central committee in Makkah region. Our role is supposed to receive instructions and guidance (P 1).

The participant had not read the law though enjoying membership of the local committee of protection from abuse. These committees are located in hospitals and were established by the Ministry of Health as a response to the implementation of the new law. It is important for anyone participating in implementing the new law to have read the laws in order to understand the definition of abuse or other relevant issues. Although this participant had read the administrative instructions, the participant had not followed the guidelines by referring himself to the legal texts within the law for more details.

Another participant, a trainer in the National Family Safety Program (NFSP) has confirmed this attitude by saying that:

I noticed that 10% of these people had read the law, but none of them has read its implementing regulations. Thus, it can

conclude that most of these people such as workers in social protection, individuals responsible for applying the law in the Ministry of Labour and Social Development, so imagine the situation for other people such as judges and police officers had not read these regulations at length. I do not have any statistics or analytical study about this. Anyway, this is only a personal impression I accumulated through training courses (P 11).

It is fair to conclude that professionals, who do not familiarise themselves with new legislation and its implications can lead to a significant degree of the dysfunctional application of the laws on domestic violence.⁴²⁹

However, some caution is required because it is fair to conclude from the information returned, that the vast majority of participants expressed the view that the new law is a positive move, and could lead to better results in the long term. A noticeable exception to this view was Participant 5, with experience of more than 20 years, who concluded:

Unfortunately, things got worse with the intervention of many people such as the media and social affairs. We used to contact the Emir's office (the governor), and he would handle issues of abuse immediately, while now we are much less productive. Some people think having a law is better, but I think it is the opposite (P 4).

It seems that the respondent was dissatisfied with the slow process of applying the law rather than the law itself, and that becomes clear as the same respondent praises the law in other comments. Her objection is not presented on solid ground

⁴²⁹ Epstein (n 25).

because of the media coverage, especially in Saudi Arabia, is a fundamental key in shedding light on violations or alleged abuse. In reality, the media has played a significant part in exposing cases of domestic abuse, and has helped to bring many a perpetrator to justice.

So, and returning to the views of the last respondent, the media has underpinned the official response and not undermined it as the respondent implied. It could also be the case that the respondent's response might be better adjudicated in terms of personal preferences, such as losing direct access to the Emir's office, and perhaps under the terms of the new law, losing some status.⁴³⁰

On the other hand, there is evidence of a more positive attitude, and these are listed below.

Table 5. Examples of participants' response

Participants, Gender	Response
P11, male	Generally speaking, I believe that adopting the law is a positive step, especially if taken for granted that the Saudi state does not have social aspects related legislation because of they allegedly conflict with the Islamic law matters sometimes.
P13, female	It has just criminalized violence in general and domestic violence. Before the law, some would allow domestic abuse by the father, husband, and brother on the basis of discipline, but the law has clarified that these are criminal acts.
P 14, female	The situation has improved over the last four years than before, and when I talk about sexual abuse now, it is different from before. Maybe Twitter is the best example available, in the beginning, I couldn't tell about these

⁴³⁰ For more details about the role of media in exposing DV in Saudi Arabia see section 2.5

	issues, but now people are thanking me and asking for more ways to raise children awareness.
P 7, female	There is a big difference. In the past, we used to be helpless in the face of domestic violence cases as we could not intervene to protect the victims who returned to their abusers, but now, despite some difficulties, the situation is improving. People have started understanding the concept of domestic violence and co-operated to stop it.
P 4, female	The law is an excellent move, but we are going to face difficulties as to implementing it because some families believe it is a private matter especially in sexual abuse, and usually, the abuser is a well-known member of the family, and this is the difficulty. The law is good.

It is reasonable to say that the extent of domestic violence in Saudi Arabia remains an unknown factor, as no official reliable data is available on which to base a solid conclusion. However, some studies, with research limitations, found that the current rate of domestic violence in Saudi Arabia similar to that found internationally and the participant's answers could support this claim as the awareness of existing domestic violence is low.⁴³¹ In other words, the DV occurrence rate in Saudi Arabia could be higher than in other countries where awareness is developed, and the laws have been in place for a relatively long period.

In summary, the current awareness of domestic violence whether it is among professionals or just ordinary citizens is not enough to bring about the change needed in society to successfully challenge violence of this kind. Clearly, some professionals still do not understand the implications of the new law, and this

⁴³¹ For more details see section 2.3.1

needs a dedicated programme designed to inform and empower citizens in terms of what constitutes domestic violence, and what new remedies are available to combat it.

5.6.1. Adequacy of Publishing and Advertising the Law

It is known that anti-domestic violence campaigns educate people to change their behaviour and encourage victims to challenge their abusers. Also, publishing and advertising the law; as part of the anti-DV campaign; alert victims to the resources that available for them. Hence, the participants were asked whether the process of publishing and advertising of the DV law from the early stages is useful.

The respondents reflect a divergence of opinion, with some agreeing that the law is entirely accessible and well-published/advertised, whilst others take a different view.

Some of the respondents who believed that the laws on domestic violence was well advertised and published stated:

Everybody knows the law, and I do not think advertising it is the issue. The issue is the victims are helpless in front of their abuser, and the question is how we can reach them (P 10).

The law can be found on the home pages of local authorities such as social affairs and health sectors (P 15).

Yes, because it has been published when it was first issued, and advertised by the legislators, lawyers, and the government. Women and children can access the law via social media or any audio-visual programs (P 3).

The victims can access it; they don't have to understand the law, but those who are handling it need to; any victim can get in touch

with the local authorities which is enough in my opinion. It is easy to access in any case (P 5).

But a contrary view was taken by other respondents who considered that many victims do not know anything about the law, even though it is easily accessible when needed.

We have got a cultural problem in our country that can't be changed overnight. If people want to get access to something, they will find a way either via social media (i.e. Facebook), Google, telephone contact. etc. But, our people won't look for something unless they need it (P 10).

Bearing in mind these views, it is worth pointing out that some victims of domestic abuse may be illiterate or from rural areas or even non-Arabic speakers. Such victims do not perhaps have access to media or the internet.

Other respondents imply that the wider context of domestic violence as an illegal act is low among the Saudis. The participants holding this view claim that despite advertising the new laws on domestic violence, the message has not reached the majority of people in Saudi. Accessibility to redress under the new law is not satisfactorily though some progress has been made. One participant pointed out:

I think a percentage of 20% of the Saudis know the law exists, but not its content. In this case, it is the responsibility of the authorities because they failed to raise awareness of this law and make it easy to be reached (P 8).

Another participant's view is a clear example of the gap between the aspiration of the law and the societal understanding of domestic violence. The participant

emphasised that the new legal grounds, which outlaw domestic violence in a sense contradict, the tolerance shown by society to this issue, therefore, and before the publishing and advertising approach takes place there has to be an emphasis first on raising awareness of domestic violence. Without this raising of awareness, publishing and advertising is not the correct approach.

Neither publishing nor advertising the DV is law satisfactory. In fact, considering printing and publishing the law is such achievement is misleading. I think it is not enough unless we launch more awareness campaigns. This law was issued on sensitive social family matters. The issue of privacy would cause confusion when it comes to the fact of whether to allow physical discipline or not for example. However, being issued by Saudi Arabia is a big step for other Muslim and Arab countries (such as Indonesia, Pakistan and Malaysia) to follow this path and drop any sensitivity regarding DV (P 11).

Another participant added:

No, publishing and advertising the law is not enough. I believe we need to concentrate on certain things such as raising individuals' awareness in society. For example, children are among the most vulnerable group, therefore, they do not benefit from more publishing /advertising directly and this process drains the resources. Whereas more campaigns to raise children's awareness apart from general awareness campaigns would be more beneficial (P 14).

Thus, the level of publishing/advertising the law on domestic violence seems to be a controversial issue among those who participated in the survey. Overall it seems that the findings suggest that a third of the sample thought the law was

published/advertised adequately. However, two-thirds of the sample disagreed either completely or partially, and think the law is not widely known by society. It might be argued that there is a disproportionate relationship between advertising the law and the magnitude of the mischief it seeks to address, and this factor is likely to impact on the effectiveness of the law.

5.6.2. Addressing the Issue of How to Publish/Advertise the Law and Raise Awareness

Most participants were asked how to speed up public awareness of the domestic violence laws and there seemed to be a consensus among the respondents concerning the use of a combination of traditional and modern ways to reach potential victims. The traditional way includes ongoing campaigns via newspapers, radio, TV programs and distribution of pamphlets and leaflets in all public places such as schools, hospital and shopping centres. In addition, the role of new media represented by social networks was highly recognised by most participants. Earlier it was noted that nearly half the Saudi population are under 25 years old, and Saudi society constitutes one of the top ten active countries on social media. Therefore, most participants mentioned the new media as platforms that should be utilised to increase awareness regarding DV.

This is clear in the following statements :

The law should be advertised through T.V. and radio 24/7, and the awareness-raising should include all family members: men, woman, and children. Everybody needs awareness and encouragement (P 14).

Only in cases of physical abuse could be found through hospitals, but in cases of negligence, abuse, and maltreatment

schools are the very important place to raise awareness between girls, boys and staff as well. You will find schools whenever you go, therefore, it is a frontline in this regard and children must be educated what is DV (P 3).

The law should be advertised on TV and the main radio channels. They should also put some adds on Facebook or Snapchat because everybody can reach social media (P 4).

Furthermore, the method of raising awareness should be linked with the nature of local communities if it is to be beneficial to protect abused people. The untraditional method could lead to more achievement in combating DV if it emanates from a deep understanding of the society's structure. Although utilising belief in God may serve as a protective factor for domestic violence, some research showed the religious leaders may incline to protect the institution of marriage which could lead to negative impact.⁴³² One participant believes in a remarkable comment, she stated:

In fact, "how to approach" the issue in these local authorities is the key factor in raising awareness in such places. Take for granted Bisha city which is a conservative-rural community, its Islamic figures (Imams) is the instrument to raise the awareness of the whole community. Therefore, raising awareness of this law among these Imams can benefit the society because this person shares the same values and cultural language with his community. This facilitates the process of implementing the law due to the status of these imams have in their communities (P 8).

⁴³² Stephanie and others (n 425).

Another participant adds a new dimension towards boosting the success of awareness among the society, and suggests sending a message to the community, particularly to victims, that the new law is trusted. In other words, the law is operating in a new environment that might its members still sceptical about the ability the legal remedy provided by the government could be able to protect her/him from abuse. The participant insists on the realism better than idealism in making successful publicity for the DV law, she explained:

There is a vital instrument to raise awareness which is the trust issue that makes the victim trust the government bodies and other relevant parties. Hence, the executive departments have to rise to the occasion properly, they have to talk about success stories that should be advertised, and every case needs to be treated as an emergency even if it was vague (P 14).

5.6.3. Process of Reporting Domestic Violence

According to the literature review, the process of reporting domestic violence in Saudi Arabia has witnessed massive reform. The law obliges public and private workers to report any case of abuse which falls within their job limits. Additionally, many channels have been provided for victims to improve governmental response. Perhaps the most important of these has been the decision to establish two hotlines: 1919 and child helpline 116111 that operate 24 hours a day through the week.

Critical to assessing the success of the new law is the role of institutional reporting, however, this pivotal role has not been explored previously because of the lack of source available. Therefore, the participants taking part in the survey were asked how they perceive the response of public and private institutions.

Two-thirds of participants expressed their satisfaction concerning the performance of the public and private institutions in reporting DV incidents. P14 stated that:

Compulsory reporting for workers in health sectors, for example, made doctors and workers take these issues seriously and report them without hesitation (P 14).

Nevertheless, P14 adds that some worker may decide to not report alleged abuse, and whatever the specific reason for this omission may be, they do not worry about failing to report abuse because the legal texts are not clear on whether this failure is punishable or not.

Although reporting is compulsory, we don't see any punishment for those who don't report abuse. Therefore, the law is still not fully implemented (P 14).

This view, also, is shared by third of respondents who think the mechanism of institutional reporting is not clarified in the legal texts and is still not sufficiently applied. It seems that the discretionary power of the worker to consider the incident as domestic violence highlights a serious gap between the law and the practice. P 11 goes on to say:

The institutional reporting is neither explained in the law nor the implementing regulations by which this should be done clarified in a situation where cases of domestic violence are identified (P 11).

Also, many participants have the same negative view as P 8 confirmed:

My point is that the institutional mandatory reporting hasn't yet been activated. Therefore, the law needs to be amended, updated and monitored to ensure its application toughly (P 8).

The previous statements are also supported by others who confirm that discretionary power in the issue of institutional reporting by some workers must be curbed. The importance of institutional reporting could be undermined by the reckless attitude of the workers and vice versa. This was stressed by participant 15, who said:

It all depends on who is handling the case, if the worker is professional, the case will be easy, if not, of course, it will get difficult. For example, if an abused woman who reports her husband is told she cannot report the incidence of abuse, but she can be only hospitalized. In this case, she won't get her right, but if the worker is professional enough to report directly to police, then the protection committee will hospitalize her for a couple of days and report to the MLSD. The woman will not feel the difficulty then. The workers in the cases who are not well-trained cause prolonged procedures and likely will affect the process of institutional reporting (P 15).

Another participant explained why institutional reporting is not implemented though it is mandatory. Participant 4 emphasised the risk that would be faced by a person reporting domestic violence if the abuser's family or the workers superior choose to not cooperate in this matter. The abuser's relatives/family might resort to threatening the worker given that the law is operating in a new environment. In other words, latent social beliefs are dominant among some Saudis, and it, therefore, opposes any attempt to intervene in private family matters. Hence, the

worker would rather not to take the risk especially if his/her employer does not provide the necessary support or may take the side of the family in such matters.

P 4 Stated:

We have got an issue with reporting cases of abuse because the doctors don't dare to report as the abuser families might not take the doctor's side, they might even file a complaint against the doctor. Sometimes, even the hospital administration opposes the doctor's reporting such cases. Moreover, the reporting process itself is very slow. Therefore, some doctors won't even bother (P 4).

P 4 was also asked how to solve the problem that might face the worker even though the law clearly provides legal immunity against any counter-accusation as result of doing his/her duty. The respondent stated:

I believe that authorities should have educated workers about mandatory reporting and confidentiality. They should have prepared staff for this situation especially in this early period of introducing the DV law. The law is a progressive step, but we should be patient as all provisions will not be enabled directly unless we provide supportive administration and assure the worker that he/she is not alone, it is again awareness issue includes all parties (P 4).

To sum up, the accessibility of new hotline services is a welcome reform in reporting incidents of domestic violence. However, what clearly emerges is that there is some evidence to suggest that the institutional reporting based on the views of a third of the participants is still a vague process and not clarified by the law or the implementing regulations. Therefore, those who work in the field of

domestic violence are still entitled to make an arbitrary judgement on whether an incident should be classified as domestic violence or not. Lack of punishment, pressure from superiors or fear of a clash with the abuser's family are the main reasons for such attitudes. Hence, the next step should be improving the mechanism of the institutional reporting by update the legal texts to include all relevant information that would facilitate this process.

5.7. Participants' Textual Assessment

The domestic violence law has undoubtedly helped Saudi Arabia to enter a new period of systematic treatment of the victims of domestic violence through a legal mechanism which criminalises such behaviour and introduce remedies. Despite this fact, participants in the survey shared their views on the weaknesses of the new law, which could cripple its potential. The feedback gained from the respondents could bridge the gaps in the legal text which already has a revision mechanism to detect any deficits during its application as indicated in the article (17). This article in the implementing regulations of the domestic violence law reads:

The deputy of the Ministry of Labour and Social Development shall review and evaluate the provisions of this regulations every two years; the proposal shall be submitted to the Minister to take any action in this regard.

Hence, the participants shed light, from their personal perspective on some textual weakness. These points can perhaps be summarised as follows:

5.7.1. Definition of Abuse and Its Sanctions

One of the most important articles in the Saudi Domestic violence law is article 1, which defines abuse and extends the scope of abuse to quite a broad definition which includes both abuse and neglect. Article 1 abuse as:

Any form of exploitation; physical, psychological or sexual, or the threat [...] the “abuse” shall include the omission or negligence of an individual in the performance of his duties or responsibilities in providing basic needs for a family member or an individual for whom he is legally responsible.

Also, this article explains the nature of the relationship between the abuser and the victim in the context of defining the incidents as domestic violence crime.

A number of participants (P9, P8, P14, P11 and P15) expressed the view that the current definition of abuse is unsatisfactory as it falls short of international standards. Participant 9 said:

The DV law did not put clear definitions for violence compatible with the results ensued from the scientific studies and recommendations of international conventions. Also, the DV law vaguely acknowledged the authority of the guardianship in contradiction with the Sharia and international laws. Also, the existence of a general language which does not put precise definitions for the forms of violence and the sanctions incurred by this violence (P 9).

Although the current definition of domestic violence in Saudi law is quite broad, thus including many possible cases which could be classified as domestic violence within its scope, the participant noticed that the definition is outdated.⁴³³

⁴³³ Article 1 from the Saudi domestic violence law reads: “any form of exploitation; physical, psychological or sexual, or the threat thereof committed by an individual against another

The question of guardianship limits and its responsibilities under Islamic law and the current laws in Saudi Arabia are not defined and are in need of clarification at a later stage. It is the opinion of some participants that the system of guardianship may be a significant component in the oppression of women.

Although the implementing regulations provided a somewhat flexible definition, the vagueness of this term poses a challenge for those victims who dare challenge the authority of guardianship. Similarly, Participant 15 confirmed this vagueness by pointing out:

The law tolerates abuse by the guardian to a certain threshold, if crossed, it is considered violence, but who decides what the threshold is? violence has been indirectly connected to guardianship as if violence is allowed to the guardian unless decided by the judge. The judges have changed to some extent and they are more aware when dealing with such cases but still; to leave deciding what violence is to the discretion of the judge is a disaster (P15).

In the same way, the Participant's 11 view stated:

Regarding the definition, I think the law is merely providing a clear definition. For example, I depend on the results yielded by the physical examinations to identify shaken baby syndrome, which considers domestic violence crime. Staff members in Social Affairs jump to conclusions based on what parents or relative narrate. Therefore, more is needed to be done to build the capacity of definition that deal with these situations, yet the best is to treat any alleged incidents as domestic violence victims

exceeding the limits of power and responsibilities derived from guardianship, dependency, sponsorship, trusteeship, or livelihood relationship, the "abuse" shall include the omission or negligence of an individual in the performance of his duties or responsibilities in providing basic needs for a family member or an individual for whom he is legally responsible".

and never judge these incidents from personal perspectives (P 11).

In addition, article 13 that sets out the sanctions to be imposed on abusers it does not reflect a system of punishment based on the level of abuse. Article 13 states that a person who commits an act that constitutes a crime of abuse [...] shall be subject to be sentenced to jail for a period of not less than one month and not than more one year and a fine of not less than five thousand and not more fifty thousand Saudi riyals or either punishment. In the case of recidivism, the punishment is doubled. Participant 9 stated: 'It does not specify, for example, the sanctions according to the extent of the violence'. While participant 11 shared the same perspective:

The only worrying thing is the domestic violence law did not specify sanctions, punishment or fines and determine how perpetrators should be punished. The attempt to fine perpetrators an amount of 50,000 riyals was not received positively. Therefore, I believe that redrafting this law is necessary to include specific sanctions to guarantee punitive justice (P 11).

Based on these views, the definition of domestic violence and its sanctions, as well as the limit of the authority of guardianship are fundamental aspects that should be scrutinised for future textual modification. This can be achieved through article 17 and may go towards giving the law practical effect to protect the victims of abuse in Saudi.

5.7.2. Documentation Issue

Some participants illustrate another flaw in the law as it is presently drafted. They claim that it fails to provide grounds for proving the incidents of abuse. The process of documenting domestic violence incidents is neither mentioned in the law or its implementing regulations. Neither is it mentioned in cases of sexual abuse or child abuse. Participant 7 described the current procedures as something of a mess:

For instance, in a neighbouring country like Jordan, they handle things in a different way. Let me give you an example, let's suppose that a child has been sexually abused in a family. In Jordan, the psychiatrist, the forensic doctor, and the legal authorities are all located in the same building. Therefore, the process is smooth and quick. While in Saudi Arabia, when I receive a case of child rape, a long process will start involving four different governmental bodies. We might lose evidence in the process (P 7).

Participant 7 extended the statement further and identified the risks that would face the abused child. The participant said:

Why would the child talk to me as a social worker, then talk to the forensic doctor, the paediatrician and the local committee of protection from abuse to explain what happened? Bearing in mind also that the child will be called by the judge to be asked about the same incident (P 7).

Another participant shared the same fear about the abused children documentation process. The participant suggested redrafting the law to facilitate

the documentation issue in order to avoid exposing children to inevitably harm in the courts; the respondent added:

Also, I suggested specifying one government body to hear the story of abuse rather than repeating what happened to him/her in three or four different places and to deal with the abused children in cooperation with the reconciliation committee of the courts. We will record the child's story so that the child will not be intimidated by the court environment and other formal procedures (P 4).

5.7.3. Inclusion of Domestic Workers

After the passage of the Saudi domestic violence law, media coverage and some officials announced that domestic workers, mainly women working as maids, caretakers and nannies were among the victims who were presumably protected by the provisions of the new law. Based on this supposition, article 1 in the law did not, unlike other domestic violence laws, exclusively limit protection to family members. Rather it extended protection to anyone living within the family environment in quite a broad definition to include even relatives and domestic workers. Given that neither the domestic violence law nor its implementing regulations had explicitly mentioned domestic workers as potential victims, participants in the survey were asked about their views on this matter. The majority of respondents were in favour of including domestic workers. However, there is an opposing view as 4 out of the 15 respondents said the law does not include domestic workers. The 4 participants claim that the law with its implementing regulations had not explicitly mentioned the domestic workers as potential victims. Therefore, the inclusion of this group should be considered an unlawful interpretation regardless of whether it is supported by the press or

officials. In addition, the trial period in which the definition of victims is extended will have a detrimental effect on the law and its power as the MLSD is already struggling with implementing the law. This was clear in these views:

Expanding the law to include domestic workers is not right I think, and I don't see any legal vacuum suggesting the lack of domestic workers' protection. They are protected according to the general rules and regulations in the country (P 10).

We have asked about the inclusion of domestic workers after passing the law they said the sponsorship term in the definition refers to the orphans and not the domestic workers. The law covers family relationships only (P 2).

I don't think they are classified as family members. In case any violence occurred against any domestic labour, they will be dealt with like other ordinary citizens because they are temporal members (P 3).

The driver and the babysitter, for example, are not among the family members. So, they are not being named in the Domestic violence law as you can see. Any violation for their rights or harming them will go under the category of the criminal law (P 8).

Although there is some ambiguity of the definition in article 1 by not naming domestic workers explicitly, the broad definition of abuse seems to include domestic workers among the expected victims. The relationship between the worker and his/her employer could be categorised under the terms of the 'sponsorship' or 'livelihood relationship' mentioned in the definition. In addition, domestic workers are exempt from the jurisdiction of the Saudi labourer law and their issues are regulated by administrative rules which explain their rights and

duties. Accordingly, they are not covered by any legal protection mechanism like the other labour forces in the country. Also, it can be assumed that the Saudi legislature made the definition more flexible in order to encompass domestic workers who can benefit from legal protection.

5.7.4. Shelters and Accommodation

The service of providing victims with shelters is an important remedy in governmental efforts. Therefore, some participants indicate another flaw in the legal text which causes difficulty in providing some victims with accommodation. The basic legal article governing providing shelters is laid down in article 2 which, *inter alia*, clarifies the aims of the law as a whole to

- (1) Ensure protection from all forms of abuse;
- (2) Provide assistance, treatment and shelter as well as social, psychological and health care.

In addition, the regulations highlight in article 8, more details on how to provide victims with accommodation. This article stipulates in provision 6/H that:

the length of time in providing shelter is 3 days; the deputy of the minister can extend it to a further period not exceeding 2 months; if the case warrants it, the time can be extended again by the same authorisation.

Hence, some participants believe the legal grounds for providing the victims with shelter as stipulated in article 8 is unrealistic and problematic. Additionally, looking at the situation from a purely theoretical perspective undermines the efficient process. Participant 11 pointed out;

The accommodation of victims for three days is grounded in unrealistic aspects because the permission of the Ministry is mandatory for more than three days. Sometimes, you feel that your hands are tied and simultaneously worried because accommodating victims for more than three days without permission from the deputy minister is illegal therefore discharging them is remorseful. In a nutshell, the regulations are established to meet the expectations of Social Protection teams to free it from any responsibility (P 11).

Participant 12 shares the same concern regarding the bureaucracy applied in providing the accommodation:

There is bureaucracy, for example. Why does the deputy minister have to approve providing accommodation for the victim, such administrative procedures might delay processing things (P 12).

To sum up, it can be argued that despite a main feature of the domestic violence law is to provide shelters for victims, the current implementing regulations of the law puts bureaucratic obstacle that impedes the professionals from undertaking the best interests of the victims. The revision of the legislation must link the decision to providing and extend accommodation wholly to the local protection committees that deals with the victims rather than the deputy of the minister.

5.7.5. Absence of Coordination Strategy

Another example of flaws in the legal text which were emphasised by some participants concerns the absence of a minimum teamwork plan to gather government entities and NGOs who could together address the issue of domestic

violence. This disconnect results from a lack of obligatory legal articles that should regulate this important issue. Despite some progress being made in March 2016 following the establishment of the new hotline service, the level of coordination between all stakeholders working in the field is unsatisfactory from the respondents' perspective. According to some participants, the implementing regulations of the domestic violence law seems to be crafted to suit the interest of the Ministry of Labour and Social Development (MLSD). Therefore, it will serve the interest of its employees and confine the actions of other workers in the field, from different sectors, when they try to intervene in domestic violence cases. This was confirmed by some participants, one of whom stated:

The currently applied measures are critically ineffective, compared with the former procedures before passing the law, because they were created by the Ministry of Labour and Social Development's perspectives. Simply put, the latter formulated these measures in accordance with the needs of its workers and demanded that other institutions to implement them, even if the roles of these institutions are totally different from the Ministry of Labour and Social Development. Therefore, these measures should have integrated different perspectives from different institutions such as the police, the judiciary and the hospitals (P 11).

Participant 9 also indicated the same problem, saying there are conflicting goals between different government agencies handling abuse cases, the participant explains that the MLSD's measures do not give any duty to other governmental sectors involved in the treatment of the abuse case to weigh the options.

The law put expansive power to determine the mechanisms by which victims are treated, but it did not put extensive

mechanisms to coordinate cooperation between the concerned sectors. Therefore, it is unpredictable to have a unified application of the law. In other words, the procedures for applying the law are weak due to the dispersion of cooperation between sectors, which are unattached to unified management. For example, the authority of determining the risk of victims is given solely to the staff of Social Protection committees rather than the police or social workers with doctors in the hospitals. Therefore, the committees prioritised the preservation of family relations and neglected the provision of protection to the victims (P 9).

Other participants echoed the sentiment, as follows:

If either parent has abused the child, we can say they need to stop contacting or visiting the victim, but we cannot stop them, unfortunately, our recommendation weight in the process is trivial, the judge or the member of protection committee can do whatever they want (P 15).

Victims of violence are always taken to the police stations instead of taking the aggressor who should ban from getting back home. This is, in fact, due lack of coordination between concerned parties, as well as degrading for victims because they are treated as a perpetrator taking her in the midnight to file a formal complaint in the police station. We need humanitarian treatment in this regard (P 8).

For specialists like me, I do not know what happened to those who abuse children, we refer cases of abuse to the protection local committee, but we do not know what the punishment for those cases is nor at least notify me to keep an updated file in my clinic (P 14).

Consequently, it seems that these participants have doubts that real reform can take place. The implementing regulations seem to be designed to meet the MLSD needs specifically. In other words, the dominant power role for one government body will result in inappropriate levels of coordination. What might be done is to improve the legal text toward boosting the mechanism of coordination and partnership between all active parties and to give the opportunity for NGOs to take part in the current effort.

5.8. Evaluation of the Ministry of Labour and Social Development (MLSD)

Performance

According to article 1 of the domestic violence law, the competent authority given the power to apply the law is the Ministry of Labour and Social Development (MLSD). The assigned task for MLSD's is massive as it handles all issues related to domestic violence starting from receiving reports of abuse to ensuring the prompt investigation of alleged abuse and the prosecution of those who commit abuse. But they also have a further role in providing victims with other resources such as assistance, treatment and shelter, as well as social, psychological and health care. All of these ancillary support mechanisms fall under the supervision of the MLSD. Although other government departments have been given some responsibilities especially at the reporting stage, their role is insignificant compared with the pivotal role of the MLSD. After passing the law the Saudi National Society for Human Rights released a statement indicating that the MLSD had a massive responsibility to apply the new law. Therefore, its administrative apparatus was incapable of dealing with the issue due to lack of human and technical resources; thus, the effectiveness of any effort to combat domestic violence in Saudi Arabia would be lessened. The NSHR proposed the

establishment of a national agency connected with the prime minister office to undertake the implementation of the new tasks required by law, and it criticised the MLSD's weak response during the last period. The NSHR referred to the initial draft law and to the discussions about establishing an independent administrative agency to supervise all governmental activities regarding domestic violence, but the objections raised from other parties in the cabinet because of their bad publicity on Saudi Arabia's image.⁴³⁴ The respondents shared their views on how they evaluated the performance of the MLSD since the law came into force in 2013.

On the one hand, a few participants, mainly very experienced professionals, expressed their dissatisfaction regarding the MLSD being assigned as the competent authority to apply the law. For example, P 11, P 4, P 14 suggested that assigning another governmental body with the responsibility of combating domestic violence such as National Family Safety Program (NFSP) or the Family Council could be more consistent in this regard. This is clear in the following statements:

The Social Protection committees that governed by the MLSD are professionally and legally unqualified to be the right option to implement the law. This is because of the dominant factors such as personal values or cultural ideals that enforce these type of unprofessionalism (P 11).

The MLSD does not give a chance to anyone to handle the cases. For example, unfortunately, the MLSD was able to put its hand on the first charity shelter in Saudi that was run by a non-profit organisation (Hemayah); where we had volunteering doctors and psychiatrists to rehabilitate the victims beside

⁴³⁴ Bandar Alrashedi, 'Innocents in Misery' *Alriyadh Newspaper*
<<http://www.alriyadh.com/alyamamah/article/990830>> accessed 15 September 2015.

accommodating victims. The MLSD is a central and bureaucratic governmental entity. They need to let a non-profit organisation such as the National Family Safety Program or Family Council handle the law with the supervision of experienced persons (P 4).

I wish that the role of the Ministry of Labour and Social Development be given to the Ministry of Interior Affairs. The idea is that the MLSD disconnect from other government institutions and its response does not meet the bulk of the problem (P 14).

The participants considered the performance of the MLSD to be disappointing and falling short of the promise offered by the new law. Lack of a professional attitude from the workers and the tendency to keep all efforts under its authority are major obstacles in the treatment of domestic violence in the country.

On the other hand, the majority of participants did not say that the authority of implementing the law should be revoked from the MLSD, but they share the same negative view regarding its weak performance. Many respondents criticised its incapability to manage the domestic violence file or to be in line with other governmental entities. This failure of the MLSD to facilitate the domestic violence law properly can be summarised, from the participants' perspective, as 3 reasons:

- i. Shortage and Lack of Trained Staff

Three participants, P15, P8 and P14 indicated that there is a staff shortage in the MLSD and this has led to instant responses for reported cases difficult. The MLSD employees processing the incidents after the referral come from hotline centre and other authorities, therefore the flow of the work of reported incidents will end up in their desks. The participants' state:

The MLSD employees are still lagging behind in this sense because they are under pressure, they do not have enough people. However, they are not consulting people from other sectors to help them or take some burden from their shoulders though (P 15).

In fact, the executive department represented by the MLSD is unable to deal with most of the cases due to an internal problem. When I talked to them about it, they said that do not have enough staff (P 8).

Well, there is a shortage in the number of employees in the MLSD responsible for applying the law. This shortage affected the handling of the cases and protect the victims as required (P 14).

Of course, it can be argued that these views are predictable given the central approach followed by the MLSD. In other words, the centralism of decision-making regarding cases of domestic violence determines that decisions come from the MLSD and that, in turn, transfers the burden to its employees.

Additionally, there is an issue which arises from the situation in which more people are being encouraged to report cases of violence and abuse, but the number of people in the MLSD empowered to deal with these complaints remains the same.

Also, the majority of participants pointed out another obstacle linked the MLSD staff with respect to their ability to deal with domestic violence cases. Many employees have limited experience or have not been trained properly, and this raises the question of whether staff will be able to implement the new laws effectively. The lack of training has led some employees to act in an unprofessional way when dealing with abuse cases, a situation that harps back

to the days before the new law. For example, due to the dominance of cultural or personal values among some workers, domestic violence is still seen as a private or family problem. Furthermore, it is critical that those involved with these cases possess personal qualities such as respect, being non-judgemental, treating people with equality and reliability and communicating well.⁴³⁵ This issue was raised by some participants:

My perspective is that domestic violence is a social problem, and the Ministry of Labour and Social Development's existence is essential, but the idea is the MLSD must train its employees and cadres to have the ability to meet what they asked for. Frankly, if you put me under the strain of implementing new law without preparing me as a worker via workshops or extensive training programs I would definitely fail (P 8).

The workers on the cases, who are not well trained, cause prolonged procedures, it is a real disaster (P 15).

Most of the violence cases, and due to the privacy of the Saudi families, refuse to report to police or file a lawsuit, but they don't mind talking to the MLSD, but unfortunately, victims are shocked by their attitude and unprofessionalism (P 13).

Based on these views, it can be argued that efforts that the Ministry of Labour and Social Development has concentrated primarily on improving the accessibility of the victims to report abuse via reforming the hotline services. Thus, there are no indicators that other departments in the ministry have been given the same attention. As previously discussed the hotline centre staffed by

⁴³⁵ June Keeling and Katherine van Wormer, 'Social Worker Interventions in Situations of Domestic Violence: What We Can Learn from Survivors' Personal Narratives?' (2012) 42 British Journal of Social Work 1354.

dozens of well-trained employees equipped with the necessary support while it is not clear whether new employees being hired to process the cases in the other departments into the MLSD.

ii. Absence of Intervention Policy

The process of intervention in situations of domestic violence in the Saudi law is primarily sourced from articles 1 – 7, which set out the procedures that shall be undertaken upon the receipt of a case of abuse. However, many respondents expressed the view that the MLSD is still unable to interpret these articles into detailed guideline instead of the general framework mentioned in articles 1-7. Thus, workers have an absolute discretionary power to determine what should be done regarding victims' complaints. This uncontrolled power given to the workers has enhanced the tendency to practice a treatment derived from the local environment rather than the legal text. This concern can be confirmed by some participants' views:

Some of the workers in dealing with some incidents will only oblige the aggressor to sign a bond of good behaviour and in some rare cases would recommend jailing them for a certain time especially if the injury inflicted on women would take more than 21 days to recover. Unfortunately, no comprehensive intervention plan exists (P 6).

Other participants have confirmed this concern:

Take the culture of covering things up as an example of absence clear policy that let the workers with discretionary authority. As you know rape is not like adultery, cannot be considered as

equal, and should not be covered up. The victim needs to be defended, as part of the treatment, there must be a penalty to guarantee no more rape victims. However, unfortunately, even the executive institutions like the MLSD are covering up for the rapist on the basis of repentance, and I do not believe in repentance in these cases (P 4).

The absence of a scientific and logical examination of issues, the current issues are being treated depending on emotions and the prevalent cultural norms. The law itself is opposed to these cultural norms but the worker resorts to them because we let a room to this attitude, and it must be changed' (P 9).

Keeping the family together might be one of the obstacles facing the local authorities like the MLSD which sometimes, try to reconcile the family to lessen the damage. That is OK on condition that it is not the only solution as I can say it practised now (P 10).

iii. The Limited Role for Other Governmental Agencies and NGO's in the Treatment of Domestic Violence

Although the MLSD suffers from deeply- set bureaucracy, and shortage and lack of trained staff as discussed previously, it does not give other governmental agencies and NGO's any role in providing assistance to its effort. Some of the participants' criticism regarding the performance of the MLSD is directed at its inclination to centralise all efforts under its authority and not involve other agencies. Al Soqiyah contends that the ambiguity in the legal text regarding the coordination between the competent agencies in Saudi Arabia in order to apply the Saudi domestic violence law would eventually lead to weakening its

effectiveness.⁴³⁶ Also, the UN Handbook for legislation on violence against women issued by the UN recommends that where possible, services provided to victims should be run by experienced and independent women's NGO's. Therefore, and from the perspective of those respondents who took part in the survey, that this brief evaluation for the performance the Ministry of Labour and Social Development (MLSD) suggests that it will face difficulty operating the law on domestic violence.⁴³⁷

5.9. Conclusion

This chapter has established the view of the Saudi professionals working in the area of domestic violence in Saudi Arabia about the effectiveness of the Saudi law. Therefore, it examined the perception of domestic violence among Saudi society. The findings emerged from the interviews revealed that the law is a progressive step. However, the current awareness of domestic violence whether among professionals or ordinary citizens is not enough to bring change. Some professionals still do not understand the implication of the new law. Also, two-third of the participants think the law is not widely known by the Saudi society. Thus, they suggest mixed of methods to boost the level of the awareness about domestic violence issue. Another finding that the textual assessment for Saudi law shows that the definition of DV is problematic and should be scrutinized due to its failure in defining the crime. Other textual flaws in the Saudi law include the absence of documentation process, not include domestic workers, providing victims with accommodation is faced with bureaucratic obstacle exist in the implementing regulations and absence on a unified strategy to combat DV.

⁴³⁶ Haifa'a Alzahrani, 'Law of Protection from Abuse: Interviews with Lawyers' <http://www.aleqt.com/2013/09/21/article_787437.html> accessed 1 January 2015.

⁴³⁷ UN Women (n 245).

Finally, the brief evaluation for the performance the Ministry of Labour and Social Development (MLSD) from the participants' perspective suggests that it will face difficulty operating the law on domestic violence because the MLSD suffers from deeply- set bureaucracy.

Chapter 6 International Human Rights Law and Domestic Violence

6.1. Introduction

Human rights issues have become an important topic for discussion in all countries and religions especially since the end of the second world war, and after founding the United Nation (UN) in 1945. The essential change for human rights was the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.⁴³⁸ The concept of human rights has evolved throughout the last seven decades from abstract notions of essential rights to become an international legal regime containing various treaties and mechanisms to ensure that human rights are protected universally. Therefore, the success of the development of human rights law from the UDHR was an encouragement model to adopt in the international level.⁴³⁹ In light of the absence of treaty law on the subject of the prohibition of violence against, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its general recommendations present the cornerstone in combating violence against women and they have established legal framework and filled a void in this regard. This chapter aims to demonstrate this issue after providing a brief introduction for the current international framework to combat domestic violence, then consider the most suitable human rights lens which can be utilised to assess the compatibility of the Saudi domestic violence law with the International Human Rights Law (IHRL).

⁴³⁸ United Nation General Assembly 'Universal Declaration of Human Rights' (1948) G.A. res. 217A (III), UN Doc. A/810 at 71 [hereinafter UDHR].

⁴³⁹ Christine M Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 International & Comparative Law Quarterly.

6.2. Approaches within International Human Rights Law to Deal with Domestic Violence Issues Committed by a Private Actor

Until the 1990s, it was difficult to include domestic violence within a human rights perspective under international human rights law.⁴⁴⁰ The Universal Declaration of Human Rights (UDHR) 1948, as well as all major United Nations and regional treaties have provided grounds for all anti-discrimination laws throughout the world. The adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, changed the gender-neutral standards that can be noted, for example, in the UDHR as it uses the terms of “all human beings” and “everyone” in order to leave no doubt that the Declaration on human rights was intended for everyone, woman and man alike.⁴⁴¹ CEDAW was considered to be formal international recognition of the rights of women as a human rights issue.⁴⁴² Additionally, the 1990s witnessed increasing efforts to shape domestic violence laws globally for the future by legitimising and mainstreaming the issue.⁴⁴³ The CEDAW Committee adopted in 1992 general recommendation No. 19 (GR 19) which states that gender violence is a form of discrimination against women, and outlining states parties’ responsibilities to prevent violence against women.⁴⁴⁴ The integration process was advanced by appointing the first U.N. Special *Rapporteur* for Violence against Women leading

⁴⁴⁰ Dorothy Q Thomas and Michèle E Beasley, ‘Domestic Violence as a Human Rights Issue’ (1993) 15 Human Rights Quarterly, p.520

⁴⁴¹ Office of the High Commissioner of Human Rights, ‘International Standards and Global Commitments’ <<https://www.ohchr.org/EN/Issues/Women/Pages/InternationalStandards.aspx>> accessed 23 October 2019.

⁴⁴² *ibid.*

⁴⁴³ T Purushotham Naidu, ‘Domestic Violence against Women in India: A Human Rights Violation’ (2013) 5 Asia-Pacific Journal of Social Sciences. P.135

⁴⁴⁴ Due to gender-based violence not being specifically mentioned in CEDAW, see: Rhonda Copelon, ‘Gender Violence as Torture: The Contribution of CAT General Comment No. 2’ (2007) 11 NY City L. Rev.p.239; Committee on the Elimination of Discrimination against Women, General Recommendation No 19 on Violence against Women, 11th Session, Jan. 20-30, 1992, U.N. Doc. A/47/38 [GR 19].

to legal, structural, and political victories in international venues.⁴⁴⁵ These developments provided a platform for preventing any violation of human rights regarding women and children.⁴⁴⁶ The link between domestic violence and international human rights laws relies upon three doctrines that have to be taken into account when dealing with the issue of violence against women by private actors.⁴⁴⁷

The first was developed by feminist theory, in which the State has an obligation to exercise due diligence concerning non-state violence.⁴⁴⁸ On the basis of CEDAW's General Recommendation 19 which emphasises that "States may also 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," Coosmaraswamy wrote:

The concept of due diligence has been moved forward by the judgement of the Inter- American Court of Human Rights in the case of *Velásquez Rodríguez*.⁴⁴⁹ The court required the government to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within this jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.⁴⁵⁰

⁴⁴⁵ More details are provided below when CEDAW is examined below; Alice M Miller, 'Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection' (2004) 7 Health and Human Rights 16. P.21

⁴⁴⁶ Naidu (n 443).p.148

⁴⁴⁷ Radhika Coomaraswamy, 'Combating Domestic Violence: Obligations of the State' (2000) 6 Innocent Digest <<http://www.unicef-irc.org/publications/213>> accessed 20 May 2015.

⁴⁴⁸ Copelon (n 444).

⁴⁴⁹ Velásquez Rodríguez Case (Honduras), 4 Inter.Am. Ct. HR, Ser. C, No.4, 1988, para 174.

⁴⁵⁰ Coomaraswamy (n 447).p10.

In a similar way, in *MC v Bulgaria*, the European Court of Human Rights ruled that the state had failed to fulfil its obligation in this rape case, under articles 3 and 8 of the European Convention. The Bulgarian state did not provide effective protection against rape and sexual abuse experienced by the victim in this case.⁴⁵¹

The second doctrine is related to the notion of equality and equal protection mentioned in Article 2 of CEDAW. The Convention obliges state parties to embody the principle of equality of men and women in their national constitutions or other appropriate legislation, but also to ensure the practical realisation of this principle.⁴⁵² The expansion of State responsibilities requires parties to eliminate all forms of discrimination against women by creating legislation to modify or abolish existing laws, regulations, or customs that constitute discriminatory policy. If any State fails to fulfil the equality and protection doctrines for victims of domestic violence, it may be held liable for violating international human rights standards.

The third doctrine in dealing with domestic violence was contained within the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Proponents of this approach argue that domestic violence requires an extensive level of state intervention into the traditionally private sphere of family life.⁴⁵³ Romany argued that the power men exercise in the home – permitted by state inaction- constructs a “parallel state” for women.⁴⁵⁴

⁴⁵¹ *MC v Bulgaria* (2005) EHRR 20

⁴⁵² Dubravka Šimonović, ‘Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions’ (2014) 36 *Human rights quarterly* 590. p. 592

⁴⁵³ Darren Hawkins and Melissa Humes, ‘Human Rights and Domestic Violence’ (2002) 117 *Political Science Quarterly*. P.256. See also: Shazia Qureshi, ‘Reconceptualising Domestic Violence as “ Domestic Torture ”’ (2013) 20 *Journal of Political Studies* 35.P.43

⁴⁵⁴ Celina Romany, ‘State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Law’ in Rebecca Cook (ed), *Human Rights of Women: National and International Perspective* (1995). Cited in Copelon (n 444).

Subsequently, it can be understood that domestic violence incorporates four elements that constitute torture: (a) it causes severe physical and or mental pain; (b) it is intentionally inflicted; (c) for specified purposes; and (d) with some form of official involvement, whether active or passive.⁴⁵⁵

However, the Convention on the Elimination of All Forms of Discrimination against Women is the international instrument use in my research particularly with reference to the case of Saudi Arabia. Therefore, it is helpful to have an overview of the convention and other supplementary instruments and mechanisms. The justification as to why CEDAW is the appropriate and practical human rights lens to investigate Saudi law will be become clear.

6.3. The Convention on the Elimination of All Forms of Discrimination Against Women 1979

6.3.1. What is CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women was the first universal legal instrument to specify women's rights as human rights, and it recognised the obligation of states to respect, fulfil and protect the rights of women and girls.⁴⁵⁶ CEDAW was adopted on 18 December 1979 by the United Nation General Assembly and came into force on 3 September 1981. The CEDAW Committee was established in order to monitor the implementation of the convention.

⁴⁵⁵ Coomaraswamy (n 447).p.10

⁴⁵⁶ Jennifer Ulrich, 'Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic within Reach?' (2000) 629 Indiana Journal of Global Legal Studies.p.640

When a state becomes a party to CEDAW, it must submit an initial report to the committee and then present a periodic report every four years. The committee can make general recommendations to the states on the measures needed or concerning any issue in relation to their jurisdictions. In 1999, non-governmental organisations in the jurisdiction of states, were given the right to submit their own report on the issue in question. These reports from NGOs tend to provide an accurate and informative image of the situation and adopt a more critical approach than the report submitted by the state in question.⁴⁵⁷

Bayefsky maintains that the contribution of CEDAW and its implementation framework to the international human rights system has expanded the understanding of modern international human rights standards, integrating women's rights into the broader human rights context, prompting national efforts and fostering a rights-based approach into the operation of well-placed UN field agencies.⁴⁵⁸ Meron argues that

While other conventions address a particular aspect of women's rights, the convention is the first universal instrument which focuses on the general prohibition of discrimination against women.⁴⁵⁹

Zwingle maintains that the original scope of contents of CEDAW as specified in article 16 entails three main principles: elimination of discrimination against women, equality between men and women, and state responsibility to achieve both goals.⁴⁶⁰

⁴⁵⁷ McQuigg (n 23).

⁴⁵⁸ Anne F Bayefsky, 'The CEDAW Convention: Its Contribution Today "In Proceedings of the ASIL Annual Meeting"'; (2000) 94 Cambridge University Press 197.

⁴⁵⁹ Theodor Meron, *Human Rights Law Making in the United-Nations: A Critique of Instruments and Process* (Oxford University Press 1986). Cited in: Shah (n 33).

⁴⁶⁰ Zwingle Susanne, *Translating International Women's Rights: The CEDAW Convention in Context*, (Palgrave macmillan 2016).

Nonetheless, because CEDAW is monitored only through the reporting system and suffers from lack of enforcement mechanism, the General Assembly of the United Nations adopted a vital supplementing instrument to the convention which is the Optional Protocol (OP). The OP was adopted in 1999 and came into force in 2000 to present the most crucial development in the evolution of women's rights stipulated in the CEDAW through two enforcement procedures, i.e. the "communications and inquiry". The communications procedure allows the CEDAW committee to receive claims of violation of rights set forth in the convention from or on behalf of individuals or group of individuals.⁴⁶¹ The enquiry procedure enables the CEDAW committee to conduct inquiries into a situation of 'grave or systematic' violation of women's rights under the CEDAW.⁴⁶² As of May 2018, the CEDAW convention enjoyed the support of 189 states parties, and the OP had 109 states parties.⁴⁶³

CEDAW, somewhat surprisingly, had not explicitly mentioned violence against women despite the fact that violence against women affects the lives of millions throughout the world. Nevertheless, the scope of CEDAW through the next decades was further developed to cover the issue of violence against women in all its various forms that not explicitly mention in its original text in 1979. The CEDAW committee has integrated violence against women within the scope of the treaty by using "creative interpretation" as a particularly severe form of discrimination against women.⁴⁶⁴ The CEDAW committee affirmed that the

⁴⁶¹ The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 Oct 1999, entered into force 22 Dec 2000) 2131 UNTS 38 (hereinafter OP), art. 2

⁴⁶² *ibid*, art. 8

⁴⁶³ For more details about CEDAW: 'United Nations Treaty Collection' <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en> accessed 20 September 2018. [hereinafter Participants, Declarations, and Reservations].

⁴⁶⁴ McQuigg (n 23).

existence of the prohibition of violence against women in human rights law covered by many provisions in CEDAW especially article 1.⁴⁶⁵ This strategy suggested that the prohibition of violence against women is part and parcel of the already existing hard law (CEDAW Convention).⁴⁶⁶ Therefore, based on this interpretation, CEDAW committee issued a General Recommendation No.19 (GR 19) which explicitly brings violence against women within the purview of the Convention. The GR 19 states that: ‘The full implementation of the Convention required the states to take positive measures to eliminate all forms of violence against women’. It, also, states:

The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.⁴⁶⁷

Coomaraswamy observed that “State-tolerated violence intended to control women in their so-called private lives has thus far not been accounted for” and that the rhetoric public versus private has ‘fundamentally affected perceptions of women’s rights’.⁴⁶⁸ She went further by arguing that:

⁴⁶⁵ Ekaterina Yahyaoui Krivenko, ‘The Role and Impact of Soft Law on the Emergence of the Prohibition of Violence Against Women within the Context of CEDAW’ in Stéphanie Lagoutte, Gammeltoft-Hansen Thomas and Cerone John (eds), *Tracing the Roles of Soft Law in Human Rights* (Oxford University Press 2016).

⁴⁶⁶ *ibid*

⁴⁶⁷ GR 19, para. 6

⁴⁶⁸ Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc. E/CN.4/1996/53; para 26

the role of State inaction in the perpetuation of the violence combined with the gender-specific nature of domestic violence require that domestic violence can be classified and treated as a human rights concern rather than merely as a domestic criminal justice concern.⁴⁶⁹

Ever since the adoption of GR 19, CEDAW state parties are more likely to pass laws and programs against violence and domestic violence. States parties have done a lot to comply with this recommendation.⁴⁷⁰ Englehart points out that these new initiatives from state parties provide strong evidence to impact CEDAW's general recommendations. However, those laws and programs have an uncertain, and at best modest effect on violence against women. Englehart also contends that "these effect takes several years to become manifest".⁴⁷¹

Likewise, in July 2017, the CEDAW Committee adopted General Recommendation No.35 (GR 35) on gender-based violence against women.⁴⁷² The GR 35 complements and updates the guidance to state parties set out in GR 19 and should be read in conjunction with it.⁴⁷³ Although GR 19 was considered to set the international framework for combatting gender-based violence, the necessity to amplify state obligations to tackle gender-based violence against women as set out in the CEDAW committees General Recommendations, resulted in drafting the new GR 35. Chinkin concludes that the significant contributions of GR 35 include: giving voice to the issues of structural gender-

⁴⁶⁹ *ibid*, para 29; Also: Lee Hasselbacher, 'State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection' (2010) 8 *Nw. UJ Int'l Hum. Rts.*

⁴⁷⁰ Neil A Englehart, 'CEDAW and Gender Violence: An Empirical Assessment' (2014) 265 *Michigan State Law Review*.

⁴⁷¹ *ibid*.

⁴⁷² Committee on the Elimination of Discrimination against Women, General Recommendation No 35 on Violence against Women updating general recommendation No 19, *67th Session, 2107*, CEDAW/C/GC/35 [*hereinafter* GR 35].

⁴⁷³ *ibid*.

based violence and the effects of prejudices and gender stereotyping, expanding the issues of multiple and intersecting forms of violence against women experience, and recognising the complicity of the Global North for the 'the pervasiveness of gender-based violence against women and culture of impunity'.⁴⁷⁴

Therefore, the CEDAW committee by adopting General Recommendations especially GR 19 stepped the soft law stage in the development of the prohibition of violence against women propelling it immediately into the realm of hard law along with other supplementary instruments.⁴⁷⁵

6.3.2. CEDAW: Taking a realistic International Human Rights Law Approach to Investigate the Protection of Women from Domestic Violence and the Need to Secure Reform

Saudi Arabia acceded to CEDAW on 28 August 2000. Since its accession, Saudi Arabia has submitted two reports to the CEDAW's committee, the combined initial and second report in 2008 and its combined third and fourth reports in 2018. It is noticeable that there is a significant time lag of more than four years between the reports. Given that the Saudi government has routinely presented combined periodic reports duration two reporting cycles, the next report, due in 2022, will apparently not be submitted as indicated in the specified convention scale for periodic reports based on the Saudi government attitude so far. Failing to meet

⁴⁷⁴ For more details see: Christine Chinkin, 'CEDAW General Recommendation 35 on Violence against Women Is a Significant Step Forward' <<http://blogs.lse.ac.uk/wps/2017/09/06/cedaw-general-recommendation-35-on-violence-against-women-is-a-significant-step-forward/>> accessed 20 September 2018.

⁴⁷⁵ Krivenko (n 465).

its reporting obligation would undermine the purpose of regular reporting on a 4-year cycle.⁴⁷⁶

Despite the accession of CEDAW by the Saudi Government, it has formulated a general reservation, whereby precedence is given to the Sharia in situations where there is any conflict between the provisions of the Convention and those of Sharia. There are also reservations to articles 9 (2) and article 29 (1) of the convention.⁴⁷⁷ CEDAW generally is plagued with a large number of reservations referring to domestic law or Islamic law. According to one commentator, CEDAW has been subject to more reservation than any international human rights treaty.⁴⁷⁸ But this widely spread information could be misleading as the total number of reservations are mainly regarding article 29, relating to dispute settlements. This article allows contracting states to choose not to be bound by dispute procedure within the Convention.

In fact, CEDAW's reputation as the most human rights treaty has been struck by state parties' reservations is baseless. Some international human rights experts note that the Convention on the Rights of the Child has more substantive reservations overall than CEDAW.⁴⁷⁹ Since CEDAW came into force Several countries have withdrawn their reservations, wholly or partly, more than any other human rights treaties with respect to general reservations as well as to specific provisions.

⁴⁷⁶ The Saudi government intends to accept the amendment to article 20(1) of the convention concerning the meeting time of the committee, see: Committee on the Elimination of Discrimination Against Women, Concluding Observation on the combined third and fourth periodic reports of Saudi Arabia, U.N. Doc. CEDAW/C/SAU/CO/3-4 (14 March 2018) [hereinafter concluding observation report 2018]

⁴⁷⁷ Royal Decree M/25 of 28/08/2000. Article 9 (2) of CEDAW states that: 'States Parties shall grant women equal rights with men with respect to the nationality of their children'.

⁴⁷⁸ Susan W Tiefenbrun, *Women International and comparative Human Rights*, 52-53 (2012) cited in: Linda M Keller, 'The Impact of States Parties' Reservation to the Convention on the Elimination of All Forms of Discrimination against Women' (2014) 309 *Michigan State Law Review*.

⁴⁷⁹ Marsha Freeman cited in: *ibid*.

Nevertheless, Saudi Arabia gives assurances that there is no contradiction in substance between the Convention and Sharia.⁴⁸⁰ However, the CEDAW committee has considered the general reservation made by Saudi on ratification, and they appear to be contrary to object and purpose of the Convention. The committee also urges the Saudi government to consider the withdrawal of the general reservations via special recommendation.⁴⁸¹

Hélaoui argues that in the light of general principles of international law, the legal effect on incompatible reservations must take into account the intent of reserving states.

In the case of Saudi Arabia, the strong traditionalist Islamic identity speaks against an intent to be bound by CEDAW without the reservation. And the de lege lata effects must accordingly be the invalidation of the treaty ratification. Assumingly, most States that enter reservations incompatible with the object and purpose of a treaty will regard them as inseparable from the intent to be bound by the treaty. In particular, it can be concluded with relative certainty that reservations formulated as a result of strong cultural (religious) relativist arguments, which falls outside the margin of appreciation afforded to sovereign states, are unlikely to be separable from the reserving State's intent to be bound by the treaty.⁴⁸²

⁴⁸⁰ Committee on the Elimination of Discrimination Against Women, Concluding Observation on the combined initial and second periodic reports of Saudi Arabia, U.N. Doc. CEDAW/C/SAU/CO/2 (8 April 2008), para.10 [hereinafter concluding observation 2008]. However, until 2018 Saudi Arabia is still reluctance to withdraw its general reservation on CEDAW convention.

⁴⁸¹ Concluding observations report 2018 (n 443), para 10, the committee suggested it can be done through leaders' consultation with leaders of religious communities, religious scholars and women leaders, with a view to withdrawing the reservations within an established time frame, taking into consideration the best practices of countries that are members of the Organization of Islamic Cooperation and have similar cultural and religious backgrounds and legal systems.

⁴⁸² Sarah Hélaoui, '*Cultural Relativism and Reservations to Human Rights Treaties: The Legal Effects of the Saudi Reservation to CEDAW*' (Master thesis, University of Lund 2004).

Elmasry considers the death knell of CEDAW is the sweeping reservations that were made by MENA countries.⁴⁸³ Most significant provisions in CEDAW that promise any real change to the situation of women especially articles 2,9,15 and 16 are reserved. Elmasry, also, contends that no change can be introduced by an outsider. She argues that for the attainment of gender equality, change has to come without blaming traditions or religion.⁴⁸⁴ Alternatively, Muslims should be encouraged to look into the source of their religion or culture and use them as the basis for achieving gender equality. In the meantime, there should be encouragement and financial support for women's NGO that are already active in the region. The organisation of workshops by local reformers for women's rights is the best practice for getting the consent of the Arab MENA for change in this regard.⁴⁸⁵

Also, Saudi Arabia had not ratified the Optional Protocol to CEDAW despite many calls for them to do so. The Saudi government has stated that accession to the OP is being studied in the framework of a review of the human rights laws.⁴⁸⁶ Nevertheless, at the same time, Saudi Arabia claimed the objectives of the OP had been achieved in the Kingdom because there are many effective mechanisms to seek remedies that ensure fair treatment for women and redress for damage caused to them. These contradictory signs from Saudi Arabia do not indicate whether it intends to ratify the OP or not. In fact, the volume of human rights treaties that Saudi Arabia has acceded so far is generally low and does not keep up the ratification record by Islamic or Arab countries in this regard. The KSA have ratified five out of the nine core International treaties until 2018,

⁴⁸³ Samar El-Masri, 'Challenges Facing CEDAW in the Middle East and North Africa' (2011) 16 *The International Journal of Human Rights* 931.

⁴⁸⁴ *ibid.*

⁴⁸⁵ *ibid.*

⁴⁸⁶ Concluding observation 2018 (n 476).

therefore, it is uncertain whether Saudi Arabia will ratify the OP before the next periodic report in 2022.⁴⁸⁷

6.3.2.1. The United Nations Campaigns for Women's Rights and Domestic Violence: Supplementary Instruments to CEDAW

Over the decades CEDAW has been supported by number of “soft law” instruments. Most importantly, the four world conferences sponsored by the UN, that were held in Mexico City, Copenhagen, Nairobi and Beijing in order to address women's issues.⁴⁸⁸ These supplementary instruments were designed not to produce legally binding documents but rather to encourage international uniformity on women's issues.⁴⁸⁹ The 1995 UN Fourth Women's Conference that issued the Beijing Declaration and Platform for Action aimed at achieving roadmap to gender equality and more opportunities for women. In the subsequent conferences the 5, 10 and 15 year follow-up processes represented an advance in this area. The Beijing platform suggests a variety of commendable measures to prevent and eradicate violence such as adopting legislation, creating institutional mechanisms that allow women to report abuse and violence and the need to provide shelters and relief.⁴⁹⁰ Another important supplementary instrument issued by the UN is the Declaration on the Elimination of Violence against Women (DEVAW), which was adopted by a resolution of the United Nations General Assembly (GA)1993.⁴⁹¹ Therefore, women's rights in general -

⁴⁸⁷ The five treaties that were ratified by Saudi Arabia are: CRC, the ratification date in 26 Jan 1996; CERD, the ratification date in 23 Sep 1997; CAT, the ratification date in 23 Sep 1997 CEDAW, the ratification date in 7 Sep 2000; CRPD, the ratification date in 24 June 2008.

⁴⁸⁸ Ulrich (n 456).

⁴⁸⁹ *ibid*

⁴⁹⁰ United Nations, 'Report of the Fourth World Conference on Women Beijing, 4-15 September 1995' <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing_full_report_E.pdf> accessed 20 September 2018.

⁴⁹¹ DEVAW.

and violence against women in particular – before drafting these documents had never been considered effectively in any significant manner by the international community and these instruments act symbiotically and enjoy a synergistic relationship.⁴⁹² Although none of these documents alone has achieved an immediate change, collectively they represent a progression towards enhancing women's right, or at least indicate that women rights can be successfully translated into the language of international law.⁴⁹³

The GR 19 and DEVAW contain a similar definition of violence against women. Also, a similar set of principles concerning some human rights appertaining to women are provided in both instruments to ensure women are “entitled to equal enjoyment and protection of all human rights”.⁴⁹⁴ Both instruments define violence against women, which impairs or nullifies the enjoyment by women of their human rights and fundamental freedom under general international law or under human rights conventions. Also, States may be held accountable for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, or for failing to provide compensation to victims.⁴⁹⁵ DEVAW article 2 (a) clearly sets out a detailed definition of domestic violence which encompasses all violent acts perpetrated by private actors, regardless of affinity or relationship within the family. The definition also provides specific examples of the most prevalent acts of domestic violence as perceived in the time of the declaration. However, the concept of violent acts that target women within the family sphere has evolved since the declaration first appeared, and now takes a more comprehensive approach that covers every imaginable

⁴⁹² Ulrich (n 456).

⁴⁹³ *ibid.*

⁴⁹⁴ DEVAW, art. 3; GR 19, art. 7

⁴⁹⁵ GR 19, art. 9 and DEVAW, art. 4(c).

type of infringement. In addition, information indicating some local traditional practices regarding the definition of domestic violence has emerged. This is undoubtedly due to the progress of the criminalisation of domestic violence in many states throughout the world. For example, throwing acid, honour killing, forced marriage, forced sterilization or abortion were not properly recognised as domestic violence in the 1990s. However, DEVAW's definition was strongly worded and clearly drafted compared to GR 19. The violent acts in DEVAW encompasses, but are not limited to, "Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation".⁴⁹⁶ Nevertheless, the character of GR 19 is different from DEVAW because the declaration is a statement of principles whereas CEDAW's general recommendations are binding on states parties.⁴⁹⁷ The list of the rights to be applied to ensure the aim of both instruments are nearly the same. Those rights are designed to uphold women's fundamental human rights, guaranteed within the International conventions. In other words, the list of rights mentioned in either instrument reinforce the provisions of existing international conventions related to women rights and have proved that "the mere fact of their humanity has not been sufficient to guarantee women the protection of their rights".⁴⁹⁸ The following are rights mentioned in GR 19 compared with their equivalent within international conventions, the list includes, inter alia:

(a) The right to life (UDHR, article 3; ICCPR, article 6);

⁴⁹⁶ DEVAW, art. 2(a).

⁴⁹⁷ Englehart (n 470).

⁴⁹⁸ 'Fact Sheet No.22, Discrimination against Women: The Convention and the Committee' (1993) <<https://www.ohchr.org/Documents/Publications/FactSheet22en.pdf>> accessed 20 September 2018.

- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment (UDHR, article 5; the CAT; ICCPR; article 7);
- (c) The right to be free from all forms of discrimination (ICCPR, article 26); ⁴⁹⁹
- (d) The right to liberty and security of person (UDHR, article 3; ICCPR, article 9);
- (e) The right to equal protection under the law (ICCPR, article 26);
- (f) The right to equality in the family (ICCPR, article 26);
- (g) The right to the highest standard attainable of physical and mental health (ICESCR, article 12) ⁵⁰⁰;
- (h) the right to just and favourable condition of work (UDHR, article 23; ICESCR, article 6 and 7).

Thus, one of the aims of this research is to investigate the compatibility between the Saudi domestic violence law and International Human Rights Laws. Given that there is no international treaty on the prevention and prosecution of violence against women, although there are many calls for such treaty to be negotiated.⁵⁰¹ CEDAW and its implementing mechanisms are still the most suitable human rights mechanism to be utilised for the purposes of this research, and there are many reasons which support this approach. Firstly, Saudi Arabia abstained in the voting of the UDHR ⁵⁰² and has not signed or ratified (ICCPR) and (ICESCR).

⁴⁹⁹ DEVAW, art. 3(e).

⁵⁰⁰ GR 19, art. 7. However, the right to equal protection according to humanitarian norms in time of international or internal armed conflict in GR 19 is not very relevant to the aims of the research. Thus, it is replaced by the right to be free from all forms of discrimination which is mentioned in DEVAW. Apart from these two rights, the list of rights in the two instruments is the same.

⁵⁰¹ Chinkin, 'Addressing Violence against Women in the Commonwealth within States' Obligations under International Law' (n 20).

⁵⁰² The objections of Saudi were particularly about the scope of the draft provisions on equal rights of spouses within marriage and at its dissolution, and the right to freedom of religion including freedom to change one's religion or belief.

Consequently, in the case of Saudi Arabia CEDAW and its implementation is the most relevant IHRL convention to be utilised to assess the Saudi obligations regarding domestic violence. Also, the list of rights mentioned in GR 19 stems from provisions that already exist in the nine core international human rights convention. Secondly, although the jurisdiction of Saudi law incorporates all people who live within the family sphere; whether they be family members, domestic workers or any individuals for whom the abuser is legally responsible, a large number of abuse victims are women and girls and the prevalence of violent acts perpetrated against them mainly. Thirdly, the attitude (or commitment) of Saudi Arabia so far shows some political interest to implement and to be in compliance with its obligation in CEDAW. This political will that is expressed in sending a large and high-level delegation to the periodic review meetings and the submission of periodic reports contains information on the prevalence of violence against women, and the legal, protective and preventive measures taking place in this regard.⁵⁰³ Also, Saudi Arabia claimed that there is no contradiction in substances between the convention and Sharia. The Saudi government contends in its periodic reports that CEDAW has been promulgated by royal decree and the convention became a part of the domestic law and that, in practice, international treaties are given precedence over domestic law.⁵⁰⁴

The following chapter will look at the degree to which the Saudi law responded to the principles set out in the CEDAW's General Recommendation No.19 (GR 19). This recommendation is more comprehensive and more strongly worded on

⁵⁰³ The large delegation headed by the chairman of the Saudi Human Rights Commission accompany with 39 members of delegation who represent most of the competent authorities in Saudi Arabia. See: Committee on the Elimination of Discrimination Against Women, list of delegation/participants. Available at: https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=SAU&Lang=EN accessed 2 July 2018.

⁵⁰⁴ concluding observation 2008 (n 480)

eradicating violence against women within the international human rights laws. The CEDAW committee argues that states parties are obliged not to pass and enforce laws against violence against women, but to change attitude and social dynamics that lead to violence against women.⁵⁰⁵

6.4. Conclusion

This chapter has provided a brief introduction to the International Human Rights Law regime (IHRL). It has examined how the Convention on the Elimination of All Discrimination against Women (CEDAW) has evolved throughout the previous decades to be the cornerstone in combating violence against women. The chapter has discussed the justification for why CEDAW and its General Recommendation No.19 is the most suitable human rights lens to be used to answer one of the research questions in the case of Saudi Arabia. The list of rights in CEDAW's General Recommendation No. 19 (GR 19) in particular, will be employed in the next chapter to investigate the compatibility between the Saudi law and IHRL.

⁵⁰⁵ Report of the Committee on the Elimination of Discrimination against Women, 11th Sess., 1992 U.N. Doc. A/47/38;) para.4 [hereinafter 11th Session Report]; Also: Englehart (n 470).p.267

Chapter 7 The Compatibility Between the Saudi Domestic Violence Law and International Human Rights Law

7.1. Introduction

International law, besides its traditional functions, i.e. governs relations between States, is specifically engineered not to change people's behaviour. Rather it is constructed, particularly within international human right scope, to change the way states and communities respond to some forms of violent behaviour. Also, the way they react to breaches of the recognised rules of human rights and most importantly the way they listen to a person's pain.⁵⁰⁶ Domestic violence denies numerous fundamental human rights guaranteed by Saudi law and Saudi's international obligations towards protecting human rights. CEDAW and its supplementary instruments are the most suitable mechanism in the human rights regime in the current time to investigate the compatibility of Saudi domestic violence law against IHRL. Therefore, the criteria set out in the preceding chapter were taken from CEDAW and its supplementary instruments such as General Recommendation No. 19 (GR 19) and DEVAW that aim to combat all forms of violence against women including domestic violence. GR 19 required States parties to ensure that women enjoy full protection against violence. Also, these criteria (or list of rights) in GR 19 were originally derived from various human rights treaties, therefore, they provide a comprehensive and suitable framework through which the main research question can be answered.

⁵⁰⁶ Meyersfeld Bonita, 'Domestic Violence, Health, and International Law' (2008) 22 Emory Int'l L. Rev.

7.2. The Right to Life

The right to life is the most fundamental of all rights, it is the fountain from which all the other human rights spring and therefore without effective guarantee to this right, all other rights would be 'devoid of meaning'.⁵⁰⁷ The right to life is found in article 3 of the Universal Declaration of Human Rights 1948 (UDHR),⁵⁰⁸ it was later to become a cornerstone in every human rights treaty or national law across the world. Although the right to life is mentioned in the UDHR, the International Covenant on Civil and Political Rights (ICCPR) 1966 defined and enlarged this right.⁵⁰⁹ The Saudi law *per se* does not contain a separate listing for human rights that must be protected and therefore does not mention the right to life explicitly. However, article 26 of the Saudi Basic law presents the only constitutional article within Saudi law to deal with human rights issues. Article 26 affirms: 'The state shall protect human rights in accordance with Islamic Sharia'.⁵¹⁰

As a result of the developments in human rights worldwide, the promotion and protection of the right to life, as guaranteed in several international instruments, is no longer considered to be a matter exclusively within the domestic jurisdiction of a state, the right to life is considered now a peremptory norm of international law - *jus Cogens*. Nevertheless, understanding the right to life must not be interpreted as only applying to the actions of a state, and agents of the state, or paramilitary groups or private forces. The right to life, also means an individual has a right for the state's system to be designed so that they protect life, including

⁵⁰⁷ Nowak Manfred, *UN Covenant on Civil and Political Rights: CCPR Commentary* (second ed, N P Engel, Publisher 2005). P.121; also see: ICCPR draft; 'Fact Sheet No. 11 (Rev.1), Extrajudicial, Summary or Arbitrary Executions' (1997) <<https://www.ohchr.org/Documents/Publications/FactSheet11rev.1en.pdf>> accessed 23 February 2019.

⁵⁰⁸ UDHR, art.1 provides that: "everyone has the right to life, liberty and security of person".

⁵⁰⁹ ICCPR, art. 6 provides that: "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

⁵¹⁰ The Saudi basic law of governance, art. 26.

through criminal law. Also, in certain circumstances to require the state to take reasonable steps to prevent a loss of life.⁵¹¹

Domestic violence affects the lives of a disproportionate number of women around the globe. A recent report published by the UN finds that home is the most dangerous place for women. A total of 87,000 women were intentionally killed in 2017. More than half of them -50,000- were killed by partners or family members, meaning that 137 women across the world are killed by a member of their own family every day.⁵¹²

These figures illustrate how women could be in danger in their homes which supposed to be a sanctuary and safe zones. Therefore, introducing GR19 was a vital step in the international level that recognising women needs more protection from domestic violence. GR 19 is a key element in interpreting the positive legal obligations derived from CEDAW, and the requirement that explicitly provides for state parties to take measure to eliminate discrimination against women.⁵¹³ This obligation underpins the convention as a whole, frequently referred to as an obligation of due diligence. Accordingly, GR 19 provides that the positive obligation to protect the right to life requires that states hold the responsibility for private acts if the state fails to act with due diligence in the prevention of violations, or the failure to investigate and prosecute.⁵¹⁴ Also, State parties are

⁵¹¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 Nov 1950, entered into force 3 Sep 1953) ETS 5 (hereinafter European Convention of Human rights), art. 2.

⁵¹² Although women and girls account for a smaller share of total homicide (20%). However, they bear by far the greatest burden of intimate partner/family related homicide. For more details see: United Nations Office on Drugs and Crime (UNODC), 'Global Study on Homicide: Gender-Related Killing of Women and Girls' (2108) <https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf> accessed 25 February 2019.

⁵¹³ CEDAW, art. 2 (e).

⁵¹⁴ GR 19, art. 9.

obliged to ensure that these functions are effectively practised, supported and diligently enforced by all state agencies and actors.⁵¹⁵ The failure of state party to take appropriate measures to prevent acts of gender-based violence against women when the authority knew or should to have known the danger of violence, or a failure to investigate, prosecute or punish, and to provide reparation to victims/ survivors of such acts, provides tacit permission or encouragement to acts of gender violence. This failure on any level whether in law, institutions or the system, on a whole, constitutes human rights violations.⁵¹⁶

Saudi Arabia is bound by the general obligation to fulfil its obligation under CEDAW. The requirement to address domestic violence in Saudi Arabia must include all areas of state actions, including the executive, legislative and judicial branches.

With regards to the legislative level (section 5.2.1), Saudi law defines domestic violence very broadly in gender-neutral terms. It also provides a problematic definition of what would be considered domestic violence in article 1 Saudi law failed to ban domestic violence entirely and at the same time struck another failure by not being precise about the time and the existence of a real and immediate risk to the life of an identified individual. Article 1 links the accountability of the abuser to the enigmatic condition that not “exceeding the limits of power and responsibilities derived from guardianship, dependency, sponsorship, trusteeship or livelihood relationship”. Thus, the act of abuse is not being linked to the notion of harm and what constitutes a form of abuse is not specified definitively. Although article 17 provided some details in the instances of sever-cases of physical abuse, the interpretation of the limits of power given to

⁵¹⁵ GR 35, art. 24 (e)

⁵¹⁶ *ibid.*

an abuser, i.e. a guardian, whether it is derived from Sharia or local societal practices could jeopardise any potential legal action that would be taken to protect victims' life from being threatened. Also, lack of civil remedies in the Saudi domestic violence law is another failure to meet human rights standards (section 5.2.4). For instance, the ex parte temporary/protection order, which generally forbids abusers from having any contact with the victims/survivors, has proven to be one of the most effective civil legal remedies. These loopholes in the legal text underestimate the ongoing danger posed to the lives of victims by not improving the legal protection framework. The protection of life is a critical component of a state's due diligence because it extends the obligation of a state to prevent and respond to the action of non-state and private actors.⁵¹⁷

In addition, Saudi Arabia prior to enacting the domestic violence law had never tolerated the so-called honour murder. This crime, as one of the most dangerous forms of violence against women, never received an exception or reduction in sentencing under Saudi law. Honour crimes are conceivable in a patriarchal society like Saudi society and have been reported.⁵¹⁸ Therefore, the adoption of a new law to tackle honour killings similar to other countries or abolishing provisions in its penal code that make an exception for whoever committed such crimes is not a necessity.⁵¹⁹ Yet the suggestion that Saudi law does not play its

⁵¹⁷ Ronagh JA McQuigg, 'Domestic Violence and the Inter-American Commission on Human Rights: Jessica Lenahan (Gonzales) v United States' (2012) 12 Human Rights Law Review 122. p.506

⁵¹⁸ Lindsey Devers and Sarah Bacon, 'Interpreting Honor Crimes: The Institutional Disregard towards Female Victims of Family Violence in the Middle East' (2010) 3 International Journal of Criminology and Sociological Theory .

⁵¹⁹ For example, in July 2017 Jordanian parliament abolished article 98 of the Penal Code which usually invoked in honour crime and the act was deemed to have been committed in a fit of rage caused by an unlawful or dangerous act on the part of the victim. However, Amnesty International commented on this incomplete reform by saying: article 340 [of the Penal Code] remained; it allowed for a reduced sentence on grounds of mitigating circumstances in cases where a man murdered his wife or any woman relative after finding her in an "adulterous situation". Although this applied to both men and women, men remained less likely to face adultery charges in a polygamous system". For more details: Amnesty International, 'Jordan 2017/2018'

role in the affair of the family triggered concern such as abortion due to domestic violence or suicide due to domestic violence is justified in this regard.⁵²⁰ The incorporation of such crimes into the legal text takes into account that the right to life should not be violated by any means.

Regarding the executive level, the policies designed by the Ministry of Labour and Social Development (MLSD) (section 3.4.2.1) have revealed that the danger to the life of potential victims is immense and hence there is a need for adequate protection. The process of classifying the level of the risk faced by the alleged victims prioritises the reconciliatory and hospital treatment by hotline services. For example, beating an individual or using any type of violent actions is classified as moderate risk. Calling the police is not a priority unless there is a case of high risk, i.e. the abuser uses a weapon or knife. It is self-evident that women and children are the most vulnerable groups among domestic violence victims. This category of classifying the level of the risk ignores the fact that physical abuse could result in severe injuries or death. Thus, it is clear that the lack of appropriate steps in the Saudi hotline service to ensure the right to life is adequately protected; this is worrying because international statistic shows that almost half of the female victims of homicide are killed by a family member or intimate partner.⁵²¹

Life is sacred in Islam and protection and preservation of life is one of five goals of Islamic Sharia.⁵²² Causing any harm or injury to an individual, whether they are strangers or family members, is a punishable crime under either Qisas or Tazir

<<https://www.amnesty.org/en/countries/middle-east-and-north-africa/jordan/report-jordan/>>
accessed 25 February 2019.;

⁵²⁰ Similar to the Kurdish domestic violence law, see Section 4.2.2.2

⁵²¹ UNODC report (n 512).

⁵²² The Islamic Sharia was mainly made to protect five things which are the basic rights of human in life (religion, self, mind, offspring, and property).

category of crime in Islamic Sharia. On the other hand, providing the necessary means to safeguard the right of life is important as the right to life itself. The Saudi definition for domestic violence is not in line with the position of Islamic law in this regard as it failed to ban domestic violence entirely. The Quran and prophetic practices (Sunna) and legal verdicts (fatwas) do prescribe different concepts that prohibited all forms of abuse. The Quranic concept regarding familial relationships stresses that these relationships are based on love, compassion, tranquillity, protection, and justice and mercy. The Holy Quran refers to the nature of the relationship between spouses: 'Live with them in accordance with what is fair and kind' ⁵²³; 'and do not harass them in order to make their lives difficult' ⁵²⁴.

Also, Allah said:

Another of His signs is that He created for you from among yourselves spouses so that you might find repose in them, and He created between you affection and kindness. Truly there are signs in this for people who reflect.⁵²⁵

The believers, both men and women, are friends to each other; they enjoin what is good and forbid evil.⁵²⁶

Prophet Muhammad (peace be upon him), said:

The most complete of the believers in faith are those with the best character, and the best of you are the best in behaviour to their women.⁵²⁷

I enjoin upon you good conduct toward women.⁵²⁸

⁵²³ Quran, *Surat An-Nisa* 4:19

⁵²⁴ Quran, *Surat Al Talaq* 6:65

⁵²⁵ Quran, *Surat Al-Rum* 30:21

⁵²⁶ Quran, *Surat Al-Tawbah* 9:71

⁵²⁷ *Sunan At-Tirmidhi*, vol. 1, book 7, Hadith 1162

⁵²⁸ *Sahih Muslim*, book 1, Hadith 273

Never beat God's handmaidens (female believers).⁵²⁹

Also, Aisha, the Prophet Muhammad's wife, is reported to have said, 'The Prophet never beat any of his wives or servants'. When the Prophet had serious marital disputes with his wives, he never resorted to violence under any circumstances. Instead, he gave them the option of leaving him or remaining with him, as explained in the Quran:

O Prophet, say to your wives, 'If you seek the life of this world and all its finery then come, I will make provision for you, and release you honourably.'⁵³⁰

In the same way, classical and contemporary Muslims scholars' views reveal that the overall meaning of verse 4:34 in Quran for the word *wadribuhunna* is symbolic and the verse specifically is addressing the legal issue of *nushuz* (wife disobedience) (section 2.4). Therefore, the definition of *nushuz* cannot be analysed in isolation from the spirit of Quranic verses and Sunna as a whole. The progressive definition paves the way for more egalitarian relationship within marriage and limits the women's obedience to God, not to the women's husbands.⁵³¹ Accordingly, even in case of severe marital conflict, Islam allows marital dissolution rather than beating.⁵³² The conditional ban for domestic violence in the Saudi law, along with the judicial application from Saudi Judges, as shown in many cases ⁵³³, reduces the effectiveness of the law.

⁵²⁹ *Sunan Abu Daud*, book 11, Hadith 2141/

⁵³⁰ Quran, *Surat Al-Ahzab* 33: 28

⁵³¹ Atiyat Reem, 'No Redress? Investigating Wife Abuse Through the Lens of Feminist Theory And Resource Theory IN Jordan' (University of New York 2015).; Salma Elkadi Abugideiri, 'A Perspective on Domestic Violence in the Muslim Community' (2010) 6 Faith Trust Institute .

⁵³² Amira El Azhary Sonbol, *Women of Jordan : Islam, Labor & the Law* (Syracuse University Press 2003).cited in: *ibid*.

⁵³³ Section 3.4.3

In sum, the meaning of the right to life must not be understood within its traditional scope. The development in the international level says that this meaning has been interpreted via IHRL to include the right of an individual for the state's system to be designed so that protect life. The state must take reasonable steps according to CEDAW to prevent a loss of life or any. As demonstrated above, there is a looseness in defining abuse, the condition of not 'exceeding the limits of power and responsibilities' to some extent sanctioned domestic violence and justify violence overall. Also, Saudi law does not draw a line between what is considered a crime or not. Besides the absence of ex parte and inappropriateness of the process for evaluating the level of the risk, all together can be considered as threats to the right of life, and hence contrary to the Islamic and international standards. Therefore, The Saudi law neither in compliance with Islam nor IHRL in the legislative, executive and judicial level with respect to protecting the right of life fully.

7.3. The Right not to be Subject to Torture or to Cruel, Inhuman or Degrading Treatment or Punishment

Domestic violence may amount a form of torture, cruel and degrading treatment. As discussed earlier (section 6.2). Proponents of this interpretation among human rights scholars argued that domestic violence may be contained within the scope of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment due to existing similar characteristics between DV and torture. Nevertheless, the right not be subject to torture or to cruel, inhuman or degrading treatment or punishment is deeply rooted in the IHRL. it mentioned in the UDHR, article 5; ICCPR, CEDAW General Recommendation No. 19, article 6. However, in explaining the need for a specific convention against torture to

acknowledge the desire “to make effective the struggle against torture throughout the world” the UN adopted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT).⁵³⁴ Over the last two decades, a movement led by feminist activists in the field of gender-based violence began to draw on an analogy between domestic violence and torture (section 6.3).⁵³⁵ This changing and the increasingly international trend has developed a correlation through some criticism.⁵³⁶ The GR 19 and DEVAW refer to this right as set forth in the aforementioned treaties, to uphold the requirement that women’s fundamental human rights must be guaranteed in national law.

The Saudi domestic violence law extends the protection from abuse very broadly to include residents of the government shelters or charity shelters licensed and supervised by the MLSD’s instructions supervised.⁵³⁷ Any abuse inflicted upon a victim by the public or private employee is punished by the same penalties as family members.⁵³⁸ Although this inclusion of the residents of shelters is a positive aspect in the law, the mass violation of human rights is taking place in shelters (section 3.4.2.2), and hence shelters might be regarded as unsafe places for domestic violence survivors. The conditions of the shelters do not provide an essential link to much needed legal, psychological and welfare services - as exposed by the National Society for Human Rights (NHSR) and the local press. For instance, depriving victims of basic needs like free movement, lack of access

⁵³⁴ Preamble CAT.

⁵³⁵ Bonita Meyersfeld, ‘A Theory of Domestic Violence in International Law’ (Yale Law School Dissertations 2016) <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1002&context=ylds>> accessed 25 February 2019.

⁵³⁶ Because of the supporters of this parallel between domestic violence and official torture have highlighted the similarities between frequent forms of intimate violence and the acts contemplated by the drafters of the Torture Convention and other international instruments, the explicit legal consequences of this analogy still need to be explored. For more details see: *ibid*

⁵³⁷ Implementing regulations of the Saudi domestic violence law, art.1

⁵³⁸ *ibid*, art.13

to informal networks that aim to help victims, i.e. activists and lawyers, and the absence of specific guideline that protect victims' rights inside shelters is do not exist to name a few (section 3.4.2.2). Although some exceptions are mentioned in the law allowing victims who are studying or working as to some partial free movement the shelters are described by many commentators as 'elegant prisons'.⁵³⁹ The violation and abuse being practised in shelters represent an extreme failure by the state to exercise due diligence. All these failures signal a violation by the state of its obligation to prevent torture, inhuman and degrading treatment mentioned in GR 19 and DEVAW. The human rights committee has referred to domestic violence in relation to article 7 of ICCPR, which stipulates that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Thus, victims in Saudi Arabia are being subjected to institutional abuse in many aspects during their stay in shelters. Theoretically, victims in shelters are legally protected from being physically abused/tortured or privately inflicted abuse, but they are not being protected from inhuman and degrading treatment that takes place in shelters according to human rights standards.

In Islam, any kind of torture, inhuman and degrading treatment are forbidden. The conception of human dignity allows no distinction between people irrespective of gender, race, religion, age. Allah said:

We have honoured the children of Adam (karramna bani Adam), and have borne them on the land and the sea, given them for sustenance things which are good and pure; and exalted them above many of Our creatures.⁵⁴⁰

⁵³⁹ Section 5.7.4

⁵⁴⁰ Quran, *Surat Al-Isra'* 17:70

The Arabic expression equivalent to 'human dignity' is *karamat al-insan*. Therefore, *karamat* refers to an elevated position, special treatment, the result of which is a comfortable life.⁵⁴¹ In the same way, Prophet Muhammad (peace be upon him) declared in a hadith that 'people are God's children and those dearest to God are the ones who treat His children kindly'.⁵⁴²

Zuhayli has similarly noted that 'dignity is the natural right (*haqq tabi'i*) of every human being. Islam has upheld it as such and made it a principle of government and a criterion of interaction (*al-mu'amalah*) among people.' It is not permissible to violate the personal dignity of anyone, regardless of whether the person is pious or of ill-repute, Muslim or non-Muslim.⁵⁴³ Thus, the restrictions and conditions on victims/survivors who live into shelters (section 3.4.2.2) contrary to the right of human beings to be dignified in Islam.

To sum up, the current conditions of shelters do not provide the needed services for DV victims. Also, the mass violation of human rights is taking place in shelters represents an extreme failure by Saudi Arabia to exercise due diligence to prevent torture, human and degrading treatment mentioned either in CEDAW, GR 19 and Islam.

7.4. The Right to Equality and to be Free from All Forms of Discrimination

From the beginning of its activities, the CEDAW committee clarified in its reasoning that violence against women in all its forms, including domestic violence, is discrimination prohibited by the provisions of CEDAW.⁵⁴⁴ Therefore,

⁵⁴¹ Miklos Maroth, 'Human Dignity in the Islamic World' in Marcus Duwell and others (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (Cambridge University Press 2014). P.156

⁵⁴² Hadith, Albaihaqi, Shuab-ul-Iman (7048)

⁵⁴³ Wahaba Al-Zuhayli, *Islamic Jurisprudence and Its Proofs* (Dar al-Fikr 2003).8/208

⁵⁴⁴ Krivenko (n 465).

CEDAW obliges States parties to eliminate discrimination against women by undertaking to promote the principle of the equality of men and women in their national constitutions or other appropriate legislations; adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.⁵⁴⁵ Also state parties are obliged to establish legal protection of the rights of women on an equal basis with men; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; and to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.⁵⁴⁶

The Saudi Basic Law of Governance does not afford a constitutional remedy against harmful social and cultural traditions prevail within Saudi society such as the guardianship system. Women do not enjoy actual legal equality (*de jure*) despite efforts to improve women status by adopting some policies and measures. On one hand, fundamental advancement towards recognising gender equality and gender discrimination requires constitutional provisions to protect women's rights. On the other hand, according to CEDAW article (3-5), states can achieve actual equality *de facto* by adopting certain measures to avoid equality existing on paper.

Even though Saudi law describes domestic violence in gender-neutral terms, it provides, in its implementing regulations, a precedent by establishing a definition of the notorious guardianship system. Such a definition did not previously exist. (section 5.2.2.1). The guardianship system is an unofficial requirement that has been practised mainly unlawfully. The recognition of guardianship in Saudi

⁵⁴⁵ CEDAW, art. 2

⁵⁴⁶ *ibid*

domestic violence law, and its definition is a setback as well as a failure to meet international standards. The right to equality and to be free from all forms of discrimination is a cornerstone of CEDAW and many international human rights treaties.⁵⁴⁷

Although reforms designed to relax some aspects of guardianship which restricts women's rights within the state were carried out in April 2017, guardianship is still posing a major threat towards achieving gender equality. Many policies have been plagued by requiring a male guardian. The impact of guardianship in Saudi Arabia creates an environment for ongoing abuse within the family especially the abuse of women and girls, regardless of whether it is physical, psychological or economic. Scrutinising the guardianship system (section 4.2.2.1) noted that Saudi Women are overwhelmed by its effects in all part of their lives. Even if women pursue the right to justice and protection from abuse by filing a complaint against the abuser, some local practices by officials require a male guardian to process the case. Staying safely in shelters or trying to leave the abuser and live independently is hindered by the authority of the guardian. Theoretically, the neutrality of words in drafting the law is a positive side but finding an effective remedy is questionable as long as the guardian system in place. State parties are obliged by international treaties to modify the social and cultural patterns of conduct with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.⁵⁴⁸

Principally, the Quran is against gender discrimination; achieving equality between men and women is brought about by the mere essence of righteousness

⁵⁴⁷ CEDAW, art. 1(1) UDHR, art. 1; ICCPR, art. 2(1); ICESCR, art. 2(2); CRC, art. 2(1)

⁵⁴⁸ CEDAW, art. 5

in Quranic verses that uphold the moral standing of one human being over other and not gender differences.⁵⁴⁹

Allah said: 'The noblest of you in God's sight is the one who fears God most. God is all-knowing and all-aware' ⁵⁵⁰ , and 'Every soul is held in pledge against its own deeds'⁵⁵¹, in another verse Quran prescribes that women and men are equal by birth:

O mankind! Fear your Lord, who created you from a single soul. He created its mate from it and from the two of them spread countless men and women [throughout the earth]. Fear God, in whose name you appeal to one another, and be mindful of your obligations in respect of ties of kinship.⁵⁵²

Though some Quranic verses would be misunderstood by some Muslims that males are superior to women. Shah says that:

The Koran prescribes different social roles for different sexes, such as the role of woman as a mother in the family. These roles are complementary rather than discriminatory and no one should be discriminated because of her/his specific role as a member of society.⁵⁵³

Furthermore, The Quranic perspective regarding gender discrimination and gender equality sees no difference between *de jure* and *de facto* equality, yet give an intricate system of rules for the equal and human treatment of women must be followed in letter and spirit by each individual as well as the ruler.⁵⁵⁴ Also,

⁵⁴⁹ Yahya Al Alhareth, Yasra Al Alhareth and Ibtisam Al Dighrir, 'Review of Women and Society in Saudi Arabia' (2015) 3 American Journal of Educational Research 121.

⁵⁵⁰ Quran, *Surat Al-Hujurat* 49:13

⁵⁵¹ Quran, *Surat Al-Muddathir* 74:38

⁵⁵² Quran, *Suart Al-Nisa* 4:1

⁵⁵³ Shah (n 33).

⁵⁵⁴ *ibid*

general Quranic rules can be interpreted differently to fit Muslim society needs, yet some specific Quranic verses that are permanent and cannot be changed such as the ban on sex without marriage.⁵⁵⁵

Thus, the legal framework concerning gender equality gap and gender discrimination in Saudi Arabia would not match the strong obligations required under CEDAW and the current articles in the Basic Law of Governance do not come even close to the spirit of Quran.

7.5. The Right to Liberty and Security of Person

As discussed before that the new definition of domestic violence (section 4.2.1 and 2.3.2) would include isolating victims, regulating their everyday life and depriving victims of the means needed for independence or any kind of controlling behaviour. Among human rights, liberty, physical freedom and security of person are the most important ones. By guaranteeing these right people are able to have a normal life in society including working, studying and practising other social activities.⁵⁵⁶ Therefore, the rights to liberty and security of person is enshrined in most human rights treaties such as in the UDHR, ICCPR and others. The Saudi Basic of Governance of 1992 affirms the recognition, and respect to protect human rights in accordance with Islamic Sharia but do not mention the right to liberty specifically.⁵⁵⁷ The Saudi Basic of Governance does not include an explicit guarantee to the right to liberty. It only prohibits government agencies from

⁵⁵⁵ *ibid*

⁵⁵⁶ Tien Viet Trinh and Thi Hong Le Tran, 'Protection of Constitutional Rights to Liberty and Security of Person in the Penal Code 2015 of Vietnam' (2018) 4 *Vestnik of Saint Petersburg University* <[https://dspace.spbu.ru/bitstream/11701/15152/1/08-Trinh Tien Viet.pdf](https://dspace.spbu.ru/bitstream/11701/15152/1/08-Trinh%20Tien%20Viet.pdf)> accessed 25 February 2019.

⁵⁵⁷ The Saudi basic law of governance, art. 26.

arbitrarily arresting citizens and from violating their privacy.⁵⁵⁸ Most domestic violence laws refer to the arbitrary deprivation of liberty as a punishable crime due to its importance as a form of abuse. Nevertheless, Saudi domestic violence law failed to outlaw the deprivation of liberty in its definition of forms of abuse. Also, the rights to liberty and security of person for every Saudi woman are being threatened by the guardianship system. The royal decree in 2017 confirmed abolishing some unofficial aspect of guardianship that was practised in Saudi Arabia is a welcome step towards achieving gender equality and it stressed that unless there is a regulatory obligation for this request women must not be asked for permission from guardians. However, the current restrictions on Saudi women under the guardianship system strike through the right to liberty and security clearly and directly. As highlighted in chapter 4, enjoying many practices related to an individual's basic human rights still require a male relative approval - such as applying for a passport, travel outside the country, leaving prison or even for exiting a shelter. Complexities in multiple perspectives face abused women who want to exit a shelter, either she needs the consent of her guardian- who can be the abuser -or she has similar option to exit "in coordination with her family members in order to receive her".⁵⁵⁹ Nevertheless, releasing a woman from a shelter to her family does not necessarily ensure her safety. In fact, this policy can directly put the woman at further risk of violence.⁵⁶⁰

In addition, another obstacle to women's liberty or security even if she is a victim, is being abused and is trying to strip authority from an abusive guardian, is that she could face counter-accusation which leads to detention or prosecution. In

⁵⁵⁸ The Saudi basic law of governance, art. 36 and 37.

⁵⁵⁹ The implementing regulation of the Saudi domestic violence law, art. 8/7/H

⁵⁶⁰ Americans for Democracy & Human Rights in Bahrain (ADHRB), 'Report on Saudi Arabia's Review under CEDAW' <http://www.adhrb.org/wp-content/uploads/2016/01/It-is-Our-Right_Saudi-> accessed 26 February 2019.;ADHRB report

some domestic violence cases, the father or the guardian can file a charge of “*Uquq*” or “disobedience” against victims.⁵⁶¹ However, judges increasingly recognise domestic violence within the family and rejected such claims about *Uquq*. The counter-accusation by a guardian is a loophole and is not covered by any legal provisions either in the Saudi domestic violence law nor its implementing regulation.⁵⁶²

Generally, the Quranic perspective places no bar on freedom of movement and choosing or residence and domicile between men and women. However, in practice traditions and customs, i.e. married woman should stay with her husband whereas unmarried women have to stay with their family, are commonly attributed to religion though the Quran does not support them.⁵⁶³

Women’s mobility and freedom restrictions in Saudi Arabia as previously elaborated (section 4.2.2.1) are products of the rise of Islamic revival in the region along with expansion of administrative bodies at the end of the 1970s. Admittedly, the restrictions found fertile social and religious soil to aid its proliferation by misinterpreting some Quranic verses and gender equality as well. However, it emanates primarily from the lack of legal reform more than pertaining to Islam itself or the religious texts. Therefore, reframing constitutionally mandated articles within the boundaries of Islam would not be radical because women had no such restrictions in the past. The Quranic perspective overall does not speak about this issue in detail but it gives a general rule. Allah has said in the Holy Quran: ‘It is He who has made the earth subservient to you, so traverse its regions and eat its provisions. To Him, you shall all be resurrected’.⁵⁶⁴ The right to liberty and

⁵⁶¹ Human rights Watch, ‘Boxed In: Women and Saudi Arabia’s Male Guardianship System’ (n 271).

⁵⁶² *ibid.*

⁵⁶³ Shah (n 33).

⁵⁶⁴ Quran, *Surat Al-Mulk* 67:15

freedom to move in Islam is a quality of all living things and it is a necessary part of what it means to be alive as it established by the Quran and Sunnah and the consensus of Islamic jurists.⁵⁶⁵

Restrictions on women's rights to obtain a passport on their own, travel outside the country without the consent of their male guardian are not only applied in Saudi Arabia as one may think. Such restrictions are practised in many Arab and Muslim countries such as Egypt, Yemen, Iran and other GCC countries. In Egypt and Kuwait, for example, women won an appeal in the supreme constitutional court which granted them the right to obtain passports without their husbands' approval in 2001 and 2009 respectively.⁵⁶⁶ Yet, a woman must obtain her husband's or father's signature on her passport in Egypt. So, while men can no longer go to the Interior Ministry and bar their wives or daughters from leaving the country, the male relatives can refuse to sign their passports and can seek court injunctions against such travel, on a case-by-case basis.⁵⁶⁷ The effect of guardianship on the right of liberty and security of life for women is relatively similar to neighbouring Arab and Islamic countries to Saudi Arabia. The difference is that women can challenge restrictions on their right to liberty and free movement by using provisions of national constitutions to abolish these restrictions that contradict equality between men and women. While in Saudi Arabia the constitutional guarantees to protect their rights in such issue is not secured.

⁵⁶⁵ 'Concept of Freedom in Islam' (2011) <<http://www.masjidma.com/2011/02/03/concept-of-freedom-in-islam/>> accessed 8 April 2019.

⁵⁶⁶ BBC News, 'Egyptian Wives Win Travel Rights' (2000) <http://news.bbc.co.uk/1/hi/world/middle_east/1007427.stm> accessed 8 April 2019.

⁵⁶⁷ Heather Bourbeau, 'Egyptians Seek Right to Travel Without Male OK' (2001) <<https://womensenews.org/2001/04/egyptians-seek-right-travel-without-male-ok/>> accessed 8 April 2019.; Eman Riad and Heba Suliman, 'Women's Rights under Egyptian Law' <<http://www.riad-riad.com/en/publications/women-rights-under-egyptian-law>> accessed 8 April 2019.

Thus, Saudi law is not fully in compliance with international human rights law and is contrary to its obligation under CEDAW that guarantees women the right of liberty and security of person.

7.6. The Right to Equal Protection Under the Law

Equal protection under the law is a positive concept that no one is excluded from the protection of the law whether they are citizens or non-citizens. The UDHR, article 7 stipulates that: “All are equal before the law and are entitled without any discrimination to equal protection under the law”. Also, the phrase “equal protection of laws” means that people in similar circumstances should be treated equally as well as it means those who are not equal circumstances should not be treated equally.⁵⁶⁸ As discussed in chapter five, domestic violence reflects a view that women are subordinate and forbids them to deviate from stereotyped gender roles. The debatable issue among participants who took part in this research on whether domestic workers are covered by the legal protection provided by Saudi law raised concern in this regard. Women constitute 23% of domestic workers in Saudi Arabia and tend to be confined and isolated in their employers’ home.⁵⁶⁹ Also, most of these domestic workers are unable to speak the local language and not entitle to reside in shelters if they are abused by the employer. The vulnerability of domestic workers and the ambiguity of the legal text to explicitly include them among victims who should be protected as a citizen is a violation for the right to equal protection under the law.

⁵⁶⁸ *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (United Nations 2003).

⁵⁶⁹ Section 4.2.2.2.

In Islamic law, the obligation to do justice is absolute and is not subject to any limitation or modification with reference to the parties to a dispute or with reference to their being Muslims or non-Muslims, or their being in conflict with the Muslims or in alliance with them.⁵⁷⁰ The Quran considers Justice to be supreme virtue; Allah declares: 'Believers, be steadfast in the cause of God and bear witness with justice'⁵⁷¹, 'God commands justice, kindness and giving their [due to] near relatives, and He forbids all shameful deeds, and injustice and transgression'.⁵⁷²

Thus, domestic workers are not equally protected from abuse as are citizens under Saudi domestic violence law. The absence of including domestic workers in Saudi domestic violence laws has resulted in growing criticism as it does not outlaw all acts of violence against women and violates the right to equal protection under the law.⁵⁷³

7.7. The Right to Equality in the Family

Family-related rights in CEDAW are addressed in article 16 which obligates states parties to take all measures to eliminate discrimination against women in all matters relating to marriage and family relations. Article 16 is among the most significant, it is also the most heavily reserved article in the convention, especially by Muslim states.⁵⁷⁴ It requires states to ensure, a set of rights which include, inter alia, the same right to enter marriage or freely to choose with their free and full consent, the same responsibility during marriage and after its dissolution, the

⁵⁷⁰ Muhammad Zafrulla Khan, 'The Concept of Justice in Islam' <<https://www.alislam.org/library/book/concept-justice-islam/>> accessed 8 April 2019.

⁵⁷¹ Quran, *Surat Al-Ma'idah* 5:9

⁵⁷² Quran, *Surat Al-Nahl* 16:90

⁵⁷³ See section 5.2.2.2

⁵⁷⁴ Shah (n 33).

same right to decide freely on behalf of their children, prohibition of early marriage and registration of marriage. Although all these important topics need to be addressed in the context of reforming family law, I will discuss only the most relevant areas appropriate to domestic violence legislation as discussed in the chapter four, such as marital rape (section 4.2.1.3), early marriage (section 4.2.1.4), forced marriage (section 4.2.1.5). These issues are being under an ongoing discussion in Saudi society due to lack of protection of women and girls in this regard.

With respect to Marital rape is increasingly criminalised and repudiated by international conventions as highlighted in preceding chapters. In a society or culture that negates women's right to give consent to or refuse sex in marriage, there can be no real gender equality.⁵⁷⁵ Inequality in the familial relationship is a part of gender inequality in a society in general as it would validate marital rape.

Article 5 of CEDAW requires states to:

modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The Saudi Basic Law of Governance and relevant laws in Saudi Arabia do not give the husband the authority over the household neither do they give him the sole legal right to represent the family. The Basic law stresses that the nucleus of Saudi society is the family and its member should be raised in the Islamic creed

⁵⁷⁵ Melanie Randall and Vasanthi Venkatesh, 'The Right to No: The Crime of Marital Rape, Women's Human Rights, and International Law' 41 *Brook. J. Int'l L.*

[...] the State shall aspire to promote family bonds, maintain its Arab and Islamic values, care for all individuals and provide conditions conducive to the development of their talents and abilities.⁵⁷⁶ Saudi law does not include a mandate for the wife's obedience neither does it require her to have sexual intercourse.⁵⁷⁷ Other than what is mentioned in Islamic teaching no legal or constitutional provisions entitle men any superiority. However, State parties' obligations towards equality according to CEDAW, is to accelerate the improvement to achieve *de facto* or substantive equality with men.⁵⁷⁸ Therefore, even if women are given *de facto* equality (or legal equality) or it is granted by law and the constitution, another level of change is necessary for women's equality to take place by removing the social, cultural and traditional patterns that hinder the women's realization of full rights.⁵⁷⁹ Given that the sphere of family law is not codified yet, judges mainly resort to adjudicate familial cases brought before the courts based on their personal understanding of Sharia. Also, the perspective of Islamic law on marital rape shows that forcing the wife to have sexual intercourse is neither endorsed by Islamic religious establishments or the majority of contemporary Muslim scholars. Therefore, it can be assumed that the view of international human rights law is not divergent from the Islamic law view regarding marital rape. The platform to criminalise marital rape in Saudi Arabia already exists based on genuine Islamic interpretation and evidence. Nevertheless, one must not simplify the problem as it demands only religious text to start the needed change. In a patriarchal society like Saudi Arabia, focusing on social change by providing constitutional guarantees for gender equality as well as introducing

⁵⁷⁶ The Saudi Basic Law of Governance, art. 9 and 10.

⁵⁷⁷ For example, article 40 (2) in the Yemeni Personal Status that stipulates that: 'A husband has the right to be obeyed by his wife in the interest of the family, especially in regard to the following: (2) She must permit him to have legitimate intercourse with her when she is fit to do so'.

⁵⁷⁸ CEDAW, art. 4.

⁵⁷⁹ Shah (n 33).

written family law protects married women's rights would institute an appropriate step to criminalise marital rape.

Regarding early and forced marriage, article 16 in CEDAW obligates States parties to undertake legislative measures to specify minimum age and consent to the marriage. Many improvements are taking place in Saudi Arabia with respect to the prevention of forced and early marriage, but nothing has been achieved to tackle the issue of marital rape. In the absence of written family law, the Saudi domestic violence law can play a key role in protecting women and girls from such abuse. The current legal progress within Saudi Arabia is positive especially in forced and early marriage areas. It would allow the legislature, in an upcoming revision for the law, to stipulate that forced marriage is voidable and people who had coerced the victim into marriage may face a criminal charge.

7.8. The Right to the Highest Standard Attainable of Physical and Mental Health

Domestic violence impacts on victims not only in physical terms but all aspect of victims' health and well beings. According to the World Health Organization (WHO), domestic violence has a significant effect upon individuals, families, communities and wider society.⁵⁸⁰ This can lead to negative consequences especially on women's physical and mental health through direct pathways, such as death, injury and sexually transmitted infections, or indirect pathways, such as depression and emotional distress and suicidal behaviour.⁵⁸¹

⁵⁸⁰ 'Preventing Intimate Partner and Sexual Violence against Women: Taking Action and Generating Evidence' (World Health Organization 2010) <https://www.who.int/violence_injury_prevention/violence/activities/intimate/en/> accessed 27 February 2019.; WHO, 'Understanding and Addressing Violence against Women' (2012).

⁵⁸¹ *ibid*

The right to the highest standards attainable of physical and mental health is one of the fundamental human rights recognized by several international human rights treaties and instruments.⁵⁸² The realization of the right to health may be achieved through various approaches such as health policies, implementing health programmes developed by the World Health Organization, or the adoption of legal instruments.⁵⁸³

With regard to Female Genital Mutilation (FGM), there is no reference to circumcision at all in the Quran, but there is a well- established tradition of male circumcision as a Sunnah act. However, female circumcision is mentioned once in the traditional report from the Prophet Muhammad though the authenticity of this tradition is disputed. The tradition (called Hadith) permits but does not encourage female circumcision provided no harm is done and it does not cause adverse effects on the child.⁵⁸⁴

A woman used to perform circumcision in Medina. The Prophet (peace be upon him) said to her: 'Do not cut severely as that is better for a woman and more desirable for a husband.'⁵⁸⁵

Al-Qaradawi, a leading contemporary Muslim scholar explains that performing of FGM is banned according to Islamic law. He affirmed that there is no evidence in the Islamic religion that obliges female circumcision or makes it preferable act. Al-Qaradawi adding that if a certain action is proven by a specialist to cause

⁵⁸² The UDHR; the ICSECR; CEDAW, art. 12; GR 19; and the Vienna Declaration and Programme of Action of 1993.

⁵⁸³ ICESCR, art. 12

⁵⁸⁴ Ahmad Imad-ad-Dean, 'Islam and Female Circumcision' <<http://www.minaret.org/fgm-pamphlet.htm>> accessed 8 April 2019.; Female Circumcision is not from Islam, Ministry of Endowment in Egypt, 2007.

⁵⁸⁵ *Sunan Abu Daud* , book 42, Hadith 5251

harmful results either physically or psychologically, then it is prohibited by Sharia on the basis of Islamic rule that prevents harm (or Darar).⁵⁸⁶

Thus, taking into consideration the weak implementation of health regulation and partially social acceptance in some areas, the Saudi domestic violence law by not criminalising FGM does not meet the international human rights standards and the view and interpretation of most contemporary Muslim scholars.

In addition, Saudi domestic violence law does not adequately assign clear responsibilities to medical practitioners to evaluate the degree and the severity of violence. Several adverse health consequences resulting from domestic abuse, the health system is an ideal place to intervene and protect victims since women will visit facilities to seek medical care for them or their children.⁵⁸⁷ Saudi law leaves social workers in protection committees to decide the response needed in every abuse case, hence social workers prioritise “maintaining familial ties” over the remedies.⁵⁸⁸ Though the Saudi domestic violence law draws some guideline for social workers (section 4.2.4) in instances of severe-cases, it is worth noticing that mechanism would lead to arbitrary judgement by social workers. Therefore, the right of alleged victims to the highest attainable standards attainable of physical and mental health is not secured.

Furthermore, the notorious guardianship system again plays adversely impact on the enjoyment of women and girls to the right to health. Despite the health regulations not requiring male consent for getting some medical care, i.e. surgical intervention, some hospitals have an internal policy that requires such consent. Also, another form of abuse is the refusal of the guardian to allow care from other

⁵⁸⁶ Al-Qaradawi Yuosif, ‘View of Islam Regarding FGM’ <<https://www.al-qaradawi.net/node/4306>> accessed 8 April 2019.

⁵⁸⁷ Aldosari (n 329).

⁵⁸⁸ *ibid.*

than same-sex paramedics in emergency cases. The Saudi Red Crescent reported that 5% of the cases attended by its services, male guardians refused to the administration of care, mostly in remote and conservative areas.⁵⁸⁹ The paramedics follow the wishes of guardians if the case is not urgent or serious, otherwise, they would contact the police to protect themselves from liability but they will not force the guardian to accept medical treatment in any circumstances.⁵⁹⁰ Hence, the protection of women's right to health is violated by not criminalisation the obstruction of emergency service by some guardians.⁵⁹¹

7.9. The Right to Just and Favourable Condition of Work

The analysis of Saudi domestic violence law regarding the range of relationship protected by its provisions highlighted the importance of including domestic workers (section 4.2.2.2). domestic workers are the most vulnerable group among victims of abuse, most of them are migrant women. They are often confined in employers' homes, can be exploited, harassed are unable to speak the local language. In some cases, domestic workers are subject to slave-like work condition given that the current legal framework exempts them from Labour law.⁵⁹²

Also, domestic workers frequently do not have the right to join a union or become involved in free communication with others. Their skills in managing households due to stereotyped perception are undervalued.⁵⁹³ The right to just and favourable

⁵⁸⁹ Eissa Alnayer, 'Saudi Red Crescent: 5% of Men Refuse Our Emergency Services for the Women, and 1% in Riyadh' *Aleqtasadiyah Newspaper* (5 December 2014) <http://www.aleqt.com/2014/12/05/article_912130.html>. accessed 27 February 2019

⁵⁹⁰ *ibid.*

⁵⁹¹ Aldosari (n 329).

⁵⁹² See section 4.2.2.2

⁵⁹³ Committee on Economic, Social and Cultural rights, General Recommendation No 23 on the right to just and favorable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 44th Session, Jan. 7, 2016, U.N. Doc. E/C.12/GC/23.

conditions of work apply to everyone. Therefore, domestic workers are not adequately protected in Saudi Arabia as required by international standards including protection against abuse, violence and harassment, decent working condition, paid annual leave, normal working hours, minimum wage, daily and weekly rest, and remuneration on the basis of equality with other workers.⁵⁹⁴

7.10. Conclusion

This chapter focused on answering the research question: ‘To what extent is the current Saudi domestic violence law compatible with international human rights law’. The rights violated by domestic violence based on CEDAW’s General Recommendation No. 19 (GR 19), that aims to combat all forms of violence against women including domestic violence, are fundamental. Saudi law failed to ban domestic violence entirely through providing a problematic definition. Also, the law neither recognizes the local form of abuse that must be prohibited nor provides adequate protection measures, i.e. *ex parte* and fails to design intervention policy for victims contrary to states obligations in CEDAW and Islam perspective. In addition, although some progress in achieving gender equality and promoting women status has been made, the main problem is the absence of the principles of equality. Women do not enjoy legal equality (*de jure*) nor actual equality (*de facto*) with men in the Basic Law of Governance or the current laws in Saudi Arabia. Islam’s view suggests that equality between genders are the main principle in the relationship between men and women in general or in the family. However, contrary to Islam’s view, the laws related to women in Saudi Arabia are plagued by a guardianship system that affects women in all cycle of

⁵⁹⁴ *ibid.*

their life. Additionally, another significant factor that motivates the prevalence of some form of abuse is the absence of family law which may further enhance the compatibility between the two legal regimes. Leaving the courts to rely on uncodified Sharia has led to many violations to women and girls' rights. For instance, forced marriage is prohibited by all Muslim scholars in Saudi Arabia but marriage annulment in this case if a girl being forced to marry is difficult and takes a long time. The same applies to early marriage, divorce, custody, child maintenance and other marital matters. It is also important to note that the differences between International human rights laws and the Islamic view with respect to combatting domestic violence are minimal though some differences in their views regarding some women's rights. Therefore, the Saudi domestic violence law with careful consideration can be modified to approach the level of international human rights standards.

Chapter 8 Conclusion

8.1. Introduction

This study has aimed, by means of empirical and doctrinal analysis, to assess the effectiveness of Saudi domestic violence law and to determine whether it is compatible with international human rights law. Saudi Arabia introduced the Law of Protection from Abuse, issued under Royal Decree No. M/52 dated 15/11/2013, that outlawed domestic violence, followed by its implementing regulations in 2014. This action constituted the first attempt by the Saudi government to enact written law within the setting of the family that is wholly governed by Islamic law. Saudi Arabia has acceded to CEDAW and CRC. Thus, Saudi Arabia is obliged to behave in a way which is compatible with the provisions of the CEDAW and CRC and has to comply with them in good faith, and this applies to its constitution and other appropriate legislation to protect women from violence.

In chapter two established a better understanding of the scope of domestic violence in Saudi Arabia: its magnitude, types and causes. In the absence of national survey that reveals figures about domestic violence magnitude in Saudi Arabia, it is reasonable to assume in the light of the little research that has been conducted that the occurrence of domestic violence ranks on a par with the international picture and national averages (12%-58%). Even though this suggests that the evidence, however scant, is contrary to an international perception on the subject of domestic violence in Saudi Arabia, the truth about how much domestic violence occurs, is hard to gauge accurately. Although the Saudi law obligated the Ministry of Labour and Social Development (MLSD) to

provide authentic data about the frequency of domestic violence, the Ministry of Labour and Social Development (MLSD) has failed to publish any statistical data so far. Also, this study has found that the causes and types of domestic violence in Saudi Arabia share the same common causes that are present in most Arab and Muslim countries. The study has also highlighted that violence and other socio-economic factors are connected. Within the cultural context and patriarchal ideology present in Saudi, the role of women is complex, and contributes to the reasons why domestic violence against women is tolerated and acceptable.

The issue of domestic violence and the position taken by Islamic law is tremendously complex. What has tended to happen is that much of the research conducted into the subject of domestic violence has been to establish links between domestic violence and social norms/ traditions of society rather than to involve the role of Islam. Chapter two attempted to establish some connections between domestic violence and the position of the Quran and the Prophetic Sunnah regarding the subject. It was established that Islam neither promotes family violence nor does it condone it. However, some interpretive controversy arises from a passage of the Quran (Surah Al Nisa 4 verse 34) which deals with family disputes. However, apart from the controversial word (*Nushuz*) within the passage, the emphasis of the Quranic text, when read in its entirety is more about the relationship between male and female, and about mutual love and kindness. It is a fair and valid conclusion that the contribution of religion and Islamic teaching in the circle of family abuse in Saudi Arabia is unproven and inconclusive. Also, this study concluded that although the Saudi religious establishment has taken an explicitly intolerant position in recent years regarding domestic violence, it still retains some loyalty to the traditional interpretation of the passage in the Quran (Surah Al Nisa 4 verse 34). Thus, the new laws on

domestic violence have not completely forbidden the use of any form of violent action in the family sphere. This study has argued that although some utilize religious justification as an excuse to perpetrate violence, religion, in itself can also be used to provide a contrary argument - if correctly interpreted - against domestic violence. Islam is fundamentally important in Saudi Arabia and Islamic teaching should be incorporated into the solution and not be excluded from the modern legal text preventing domestic violence. This study sees Islamic principles as derived from the Quran and the Sunnah as being a liberating influence in favour of women when correctly interpreted.

The study has described the influence of women's rights activists and Non-Governmental Organizations towards the issue of domestic violence have come together to establish an extraordinary force within the complexities of Saudi society, and for the first time, fuelled the need for legal change. The Saudi domestic violence law was initially introduced to the government by the King Khaled Foundation. Therefore, this attempt to tackle domestic violence succeeded in being approved by the Saudi cabinet. Also, social media platforms, especially Twitter provided a crucial alternative means for voicing the change in attitudes towards the treatment of domestic violence. These facilities were used effectively either by victims or activists to broaden the exposure of many cases of domestic violence before the law. Furthermore, social media platforms have played a significant role in delivering women's demand for social justice, the abolition of the guardianship system and the easing of restrictions on women. I argue that the announcement of Vision 2030 in Saudi Arabia was followed by encouraging steps related to promoting women's status. Vision 2030 intersected positively with women's demands for equality and social reform through enhancing women's status in the public domain; lifting bans on restricted

freedoms, and ending many forms of discrimination against women. I argue that any reform that is achieved in the promotion of women's rights in Saudi Arabia will inevitably lead to the reduction of incidents of domestic violence. Also, the government's response to domestic violence is determined by women's actions, which means increasing the involvement of NGO's and of women activists in fighting domestic violence, leading to better outcomes for society.

In chapter three I found that the process of legal reform accelerated in the last decade after introducing a new judicial system and laws. This reform is a step in the right direction as it would positively impact the current situation of the treatment of domestic violence in Saudi Arabia. Also, in chapter three I established that although some progress has been made in the treatment of domestic violence, the government's effort is still insufficient. A brief analytical overview of the performance of the Ministry of Labour and Social Development (MLSD), the Ministry of Justice (MJ) and the National Family Safety Programme (NFSP) indicated to certain aspects need to be considered in order to achieve better treatment by these governmental bodies

This study has considered three research questions:

- What are the main textual lacunae of the Saudi domestic violence law which may hamper the effective application of the law, and how can these lacunae, if any, be addressed?
- Is the Saudi domestic violence law shown effective and is there an attitudinal and/or change in the practice of Saudi professional in the field?

- To what extent is the current Saudi domestic violence law compatible with International Human Rights Law?

This study addressed these questions. The following section will provide a summary of the answers:

8.2. What are the Main Textual Lacunae of the Saudi Domestic Violence Law Which May Hamper the Effective Application of the Law, and How Can these Lacunae, if Any, be Addressed?

This study established in chapter 4 the problems and the major areas of both the effectiveness and non-effectiveness of the Saudi domestic violence law and its implementing regulations. The study went on to examine the in-depth wording of the law on domestic violence to identify the lacuna that needs to be addressed in the new amendments to the law.

Firstly, it is evident that political will has a significant effect on the enactment of the laws and in the law-making process in Saudi Arabia in general. Chapter five indicated that the process of enactment of laws without explanatory memorandum is an effective approach in the Saudi context to avoid clashes with traditionalists and conservative groups. However, the absence of explanatory memorandum could be problematic as noted in the debate about the inclusion of domestic workers within victims protected by the law. Therefore, the government and the legislative authorities should issue an explanatory memorandum in the next phase of legal revision to avoid any conflict between the aims of this law as

distinct from other laws so as to ensure that the intentions of the legislator are not only clear but implemented.

Chapter four also raised concern regarding the Saudi legal definition of domestic violence because it is not well drafted. Although Saudi law describes domestic violence very broadly in gender-neutral terms, the definition contains many textual flaws that could endanger potential legal action against an alleged perpetrator. Firstly, the definition does not accurately define what constitutes abuse. The crime of abuse is linked to a rather enigmatic condition that it does not exceed the limits of power and responsibilities derived from guardianship, dependency etc. Therefore, it makes the definition meaningless as abuse is not being linked to harm. Secondly, the definition fails to specifically mention commonly practised forms of abuse and acts of abuse which are dominant in the local context. Thirdly, the implementing regulations of the law set out an unprecedented definition of guardianship in its provisions that did not exist previously. Although some aspects of the guardianship systems have been abolished in the last few years, the guardianship system has adversely impacted all stages of the desire to bring to an end domestic violence in Saudi Arabia. Those who are responsible for drafting the law did not take into account this reality. The definition of the current guardianship's authority could be interpreted as including adult women. Therefore, it must be amended by explicitly limiting its legal frontier to include only minors or orphans who need to be guarded or taken care of. Finally, under practised cultural attitudes, the crime of marital rape could go unpunishable. The law fails to raise the issue of marital rape and leaves it to be adjudicated according to the general legal principle of the Kingdom of Saudi Arabia. Although the process of criminalisation of marital rape is relatively new,

the law should not lag behind other Islamic countries which regard marital rape as a crime of domestic violence.

Another concern of Saudi law is that it does not recognise a civil remedy for domestic violence. The cornerstone of the civil remedy is that it applies protection orders to protect victims in certain cases. Protection orders have proven to be the most effective legal remedies for victims in domestic violence.

Also, the law does not impose specific duties upon the police and prosecutors to investigate or become more involved in legal actions except in limited cases. This flaw in the law emphasises what the participants said in this study that the MLSD is inclined to centralise all efforts under its authority and not involve other agencies contrary to the recommendations contained in the UN Handbook for Legislation on Violence Against Women issued by the UN and other relevant guidelines.

In closing, on the one hand, the new domestic violence law represents a significant advancement in recognising domestic violence in Saudi Arabia as a serious threat to the safety of the people who live within the family sphere; whether they be family members, domestic workers or any individuals for whom the abuser is legally responsible. Moreover, this new law is a significant attempt to provide practical tools arising from local reality to combat the problem. On the other hand, this study addressed some specific problems and major flaws in the legal text as elaborated above. Therefore, in this chapter, some recommendations will be proposed about how these shortfalls in the law could be bridged.

8.3. Is the Saudi Domestic Violence Law Shown Effective and is there An Attitudinal and/or Change in the Practice of Saudi Professional in the Field?

Chapter five analysed the view of Saudi professionals working in the area of domestic violence. Although the law was seen as a substantial reform in terms of the Saudi legal reform, it is not yet known, either officially or unofficially whether it has resulted in any change. The findings that emerged from the interviews revealed that the awareness of the new domestic violence laws whether among professionals or ordinary citizens, is not enough to bring much-needed change. Also, some professionals are unclear or have a full understating of the new law. Moreover, the acceptability of domestic violence is similar to many Arab countries, as the social understanding of gender roles and the implications arising from marriage, constitute the most influential factors in the occurrence of domestic violence. Two-thirds of the participants said that the new law is not widely known. Thus, they suggest mixed methods of boosting the level of awareness about domestic violence issue. Another important finding was that the textual assessment of the law from the perspective of the Saudi professionals, shows weak points which could cripple its potential. For instance, the definition of domestic violence is problematic and should be scrutinized because of its failure to define the crime. Another example of the textual flaws in the Saudi law includes: the absence of documentation process, domestic workers are not explicitly included, the issue of providing victims with accommodation is fraught with bureaucratic obstacles that exist in the implementing regulations. There is also an absence of a unified strategy to combat domestic violence. Finally, the brief evaluation of the performance the Ministry of Labour and Social Development (MLSD) from a participants' perspective suggests that it will face

difficulty operating the law on domestic violence in the long term because the MLSD suffers from deeply- set bureaucracy. The assigned task for the MLSD is massive and the participants in the survey indicated that there are three particular reasons for the failure of the MLSD to facilitate the domestic violence law properly. Firstly, the lack of trained staff. This has led to difficulties in instant responses of reported cases. In addition, the process of reporting domestic violence has witnessed massive reform. The improvement of accessibility for the victims to report abuse is one of the bright aspects of the effort to combat domestic violence. Many channels are established, and the call for help by victims is undoubtedly being heard. However, the flow of reported incidents will end up in the MLSD's due to a shortage of staff. Also, because of the lack of trained staff, many MLSD's employees have limited experience or have not to be trained properly. Secondly, the Ministry of Labour and Social Development (MLSD) is still unable to interpret the process of intervention in a situation of domestic violence that exists in the law into a detailed implemented guideline. Thus, workers in the Ministry of Labour and Social Development (MLSD) have an absolute discretionary power to determine what should be done regarding victims' complaints. This power has enhanced the tendency to respond in a way that is derived from the local environment rather than the legal text. Thirdly, some of the participants' criticism regarding the performance of the MLSD is directed at its propensity to centralise and not involve other agencies.

This study also addressed the response of the judicial branch to the treatment of domestic violence. Pressure from the Ministry of Justice (MJ) to force the judiciary to implement the law and the nationwide training program for judges dealing with domestic violence are steps in the right direction. The research of many verdicts indicated that the courts applied the law in cases brought before the judges.

However, the available data is scarce, and it is unclear how many registered cases were referred to the courts and how many of these resulted in conviction or the imposition of the penalties. Therefore, it is difficult to estimate the real scale of the application by the courts.

The overall outcome of the effectiveness of Saudi law emerging from the perspective of the Saudi professionals shows that there is some potential contained within the law to tackle domestic violence. Uneven progress is being made because whereas there have been improvements in some areas, others are not achieving the objectives. Hence, the government must develop new understanding and strategies for its treatment of domestic violence in the light of the new 2014 laws. The recommendations emerging from Saudi professional regarding how to improve the effectiveness of the law on domestic violence is highlighted next in this chapter.

8.4. To What Extent is the Current Saudi Domestic Violence Law Compatible with International Human Rights Law?

Chapter six demonstrated that the formation of a human rights law began with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. International Human Rights law has evolved over the following decades from an abstract notion of essential rights, to an international regime containing various treaties and mechanisms to ensure that human rights are protected universally. The Convention on the Elimination of All Forms of Discrimination Against Women 1979 was the first universal legal instrument to specify as an international bill of rights for women women's rights. CEDAW recognised the obligation of states to respect, fulfil and protect the rights of women and girls. The chapter aimed to

address the current international framework which has been established to combat domestic violence and consider the most suitable human rights lens through which Saudi domestic violence law can be analysed. Saudi Arabia has acceded to CEDAW and obliged to its provisions. However, Saudi Arabia has entered a general reservation whereby precedence is given to Sharia Law in situations where there is any conflict between the provisions of the Convention and those of Sharia. Also, the legal effect on incompatible reservations on international treaties especially in the case of Saudi Arabia has been discussed in chapter six. Nevertheless, the list of rights in CEDAW's General Recommendation No. 19 (GR 19), which explicitly brings violence against women within the purview of the Convention, was employed in chapter seven to investigate the compatibility between the Saudi law and IHRL

Chapter seven established that the norms of international human rights law are compatible with the norms of Islamic law regarding domestic violence. The differences between International human rights law and Islamic law view with respect to combatting domestic violence are minimal, although there are some conceptual differences regarding women's rights. It has been shown that the Quran and the Sunnah are the main sources of the law in Saudi Arabia. Nevertheless, Saudi law fails to meet Islamic principles or international standards in combatting domestic violence. Therefore, one must not simplify the problem of domestic violence as it demands only religious text or different Islamic interpretation for the Quranic verses or the prophetic traditions. The main problem in Saudi Arabia, is that women are still not considered as full legal persons with all characteristics associated with this term. Women neither enjoy legal equality (*de jure*) nor actual equality (*de facto*) with men in the Basic Law of Governance or the current laws in Saudi Arabia in general. For instance, Islamic law view

suggests that equality between genders are the main principle in the relationship between men and women in general or in the family. Contrary to that, the implemented policy related to women in Saudi Arabia is plagued by a guardianship system that affects women in all cycle of their life.

Another major difficulty with Saudi family law is that it is not codified. Leaving the courts to rely on uncoded Sharia has led to many violations of women and girls' rights and makes women vulnerable to several forms of abuse. For instance, forced marriage is prohibited by all Muslim scholars in Saudi Arabia but marriage annulment in this case, is difficult and takes a long time. The same applies to early marriage, divorce, custody, child maintenance and other marital matters. The proposed project for the compilation of a Code of Judicial Rulings on legal cases and issues, classified by Islamic jurisprudential categories, could help in bridging the gap in some areas of family law. However, even if the codification project is accomplished, it will not be adequate without introducing written family law to protect women's rights.

Chapter seven addressed in detail how each right mentioned in General Recommendation 19 is being violated in Saudi Arabia at executive, legislative and judicial levels. Saudi Arabia is bound by international law to fulfil its obligation towards CEDAW. Hence, the legal text should not be seen as the only solution to the issues of domestic violence without providing an additional legal framework concerning the gender equality gap and gender discrimination. To increase the process of achieving greater compatibility between Saudi law and international human rights, reform must include all areas of state actions, including the executive, legislative and judicial branches.

8.5. Recommendations

A clearer understanding of the scope and causes of domestic violence in Saudi Arabia demands more concentrated researches in order to obtain accurate statistical data. Further national surveys are required to measure the prevalence of domestic violence in Saudi society. Also, most literature in the Middle East is specific to the issue of wife-beating or married women, not much has been written about violence against children, female relatives such as sisters or in-law. Women in Saudi Arabia live in a wide variety of family structure that must be studied within this cultural context. In addition, taking into account that the Saudi Domestic Violence law obliged the competent authority to release data regarding the prevalence of domestic violence in Saudi Arabia, the current database that was formed in cooperation with the National Family Safety Program has not released any figures yet.

Moreover, most studies conducted in Saudi Arabia failed to consider deeply exploring the factor of religion in the Kingdom's largely conservative society, when formulating a response to domestic violence. Islam plays a vital role in Saudi Arabia. Therefore, more research should be conducted to discover the actual link between domestic violence and religious belief. The findings in this study illustrate that there is extensive evidence that Islamic teaching could assist in changing social attitudes towards domestic violence and the detrimental effect it has on women and family if Islamic teaching is correctly interpreted.

Domestic violence in most cases targets women. Men's superiority and women's inferiority are clearly the main features of the family structure in Saudi Arabia. Thus, the reform in promoting women's status could be positively reflected in improving domestic violence treatment in Saudi Arabia. The reform could be achieved by providing constitutional guarantees and amending the appropriate

legislation that legally subordinates women. Also, by uplifting women status greater compatibility between the Saudi law and international human rights law will be achieved.

The assigned tasks for the Ministry of Labour and Social Development (MLSD) are massive as it handles many issues under its power. Therefore, assigning another governmental body with the responsibility to operate the domestic violence law could be more practical and consistent. For instance, the National Family Safety Program (NFSP) due to its cumulative experience in the last years in the efforts of combatting domestic violence, might be an ideal candidate. Transforming the NFSP into an independent commission or under the umbrella of the newly established Family Council would definitely improve the progress of the treatment of domestic violence in Saudi Arabia.

It is clear that the loopholes in the legal text hinder the good application. Therefore, the findings in this study highlighted in chapters four and five regarding some textual flaws should be considered by the legislators and policymakers during the expected revision according to article 17 in the Saudi Domestic Violence Law.

This study concluded that the awareness of domestic violence and of the domestic violence law has increased among the Saudi society and the professionals who work in this area. However, the level of awareness is still low and insufficient to make the needed change. The process of raising awareness could be enhanced through public awareness campaigns and education program in schools. In addition, increasing men's participation in the effort of treating domestic violence could help, particularly as it is a strategy being used effectively

in many other countries. The belief in why the abuse of women is acceptable needs to be changed.

The existing socio-legal support network in Saudi Arabia must be further strengthened. Non-Governmental Organisations (NGOs) have played a significant role in moving domestic violence treatment in the Saudi sphere through proposing the law and establishing charity shelters etc. However, activists and NGOs efforts are being seizure by the inclination of the MLSD to centralise all efforts under its authority. The legal reform should give more independent role for all non-governmental efforts to take place.

Future research methods may include in-depth qualitative interviews, as well as quantitative studies, investigate the insider perspective of women's experience DV in Saudi Arabia. Areas of further investigation may include how victims see the law is responsive to their needs for protection from DV.

Annex 1: Invitation letter

The University of Hull

Invitation letter

Dear Sir/ Madam

My name is Saleh E. Alosaimi. I am a PhD student in Faculty of Arts and Social Sciences (Law School) at the University of Hull. I am conducting a doctoral study, on Investigating Domestic Violence through Human Rights Lens in the Kingdom of Saudi Arabia.

You are being invited to participate in this study. Participation will entail a single 40- 60-minute face to face interview.

Please take your time to read the information enclosed. If you are happy to participate, please inform me. Your participation in this study is highly valued.

This research study has been granted ethical approval through the University of Hull, and will be supervised by Dr. Niaz Shah (n.Shah@hull.ac.uk) and Dr. Tony Ward at the University.

Kind regards,

If you have any queries, please contact me to clarify these for you. My contact details a:

Name: Saleh E Alosaimi

Mobile (UK): 00447445006422

Email: S.e.Alosaimi@2014.hull.ac.uk

Annex 2: Information Sheet and Consent Form

The University of Hull

Participants Information Sheet for Interview Volunteers

Project Title: Investigating Domestic Violence through Human Rights Lens in the Kingdom of Saudi Arabia.

Dear Sir/Madam,

You are being invited to take part in a research study to investigate the effectiveness of the Saudi Domestic Violence Law. This research is part of a Ph.D. in law studies which I'm undertaking at the Faculty of Arts and Social Sciences (Law School), University of Hull.

Before you decide whether to take part in the study it is important that you understand what the research is for and what you will be asked to do. Please take time to read the following information and discuss it with others if you wish. It is up to you to decide whether or not to take part. If you decide to take part you will be asked to sign a consent form or give an oral agreement.

What the study about?

This study aims to explore the effectiveness of the Saudi Domestic Violence Law adopted in 2013, from the perspective of Saudi officials, human rights activists, individuals working for voluntary and other non-governmental associations acting within the sphere of domestic violence in KSA.

By conducting this study in KSA, the study will provide critical analysis whether the existing law is adequate to combat domestic violence in KSA from the substantive legislative perspective, as well as its overall effect in practice.

Why I have been chosen?

You have been chosen because you have been working in this field and may have valuable experiences to share.

Do I have to take part?

It is entirely up to you to decide whether to take part or not. If you do decide to take part you are still free to withdraw at any time and without giving a reason.

What will happen to me if I take part?

If you choose to take part I will organize a place and time for the interview convenient to you. You will be given an opportunity to ask questions at this time. If you decide to participate, you will be asked to sign two copies of the consent form (one copy is to be retained by you, the participant).

The study will involve around 20 people, forming three classes of the participant, namely: Saudi officials, human rights activists and NGO's members who will all be interviewed separately. The interview will take approximately 45-60 minutes.

What are the possible disadvantages and risks of taking part?

- There are no physical risks in participating in the interviews.
- If talking about your experience in relation to domestic violence law issues may be upsetting or embarrassing for you, you are free to stop the interview at any time.

What are the possible benefits of taking part?

- There is no direct benefits from participation in this study (e.g. payment for participation). However, the findings of the research may provide primary data regarding the effectiveness of the Saudi domestic violence law which will be helpful to the public at large.

- By participating in this study, your voice will be heard by a national authority and the relevant parties who may use my findings to improve the legal mechanism for combating domestic violence in Saudi.

Will the information I give kept confidential?

Your interview will be recorded on and then transcribed onto a computer. The audio tapes will be stored in a secure locked place at all times, and the computer data will also be protected from intrusion. The audio tapes will be destroyed at the end of the study. Your response will be treated with full confidentiality, and anyone who takes part in the research will be identified only by code numbers or false names.

I will not share the tapes with anyone other than my doctoral supervisors, Dr. Niaz Shah from the University of Hull, and Tony Ward from Northumbria University and if necessary, my Ph.D. examiners.

What will happen to the result of the study?

The interviews will be analysed by using a computer package by myself. At the end of the research, I will write a report and the results may be published in peer-reviewed journals and conference presentations. No research participant will be identifiable from any of the information presented in the publications.

Who is organizing and funding the research?

The research is part of a Ph.D. study. The cost of the study is met by a scholarship from the Saudi Government.

Who has reviewed this study?

This research is reviewed and approved by the Law School's Ethics Committee at the University of Hull.

What I have to do if I want to take part

The researcher will contact you thereafter to arrange a convenient date, time, and venue for the interview

If you have any queries, please contact me on so I can clarify these for you. My contact details are: Name: Saleh E AlosaimiCity/ Country: UK

Mobile: 00447445006422/

Email: S.e.alosaimi@2014.hull.ac.uk

CONSENT FORM

Title of research project: Investigating Domestic Violence through Human Rights Lens in the Kingdom of Saudi Arabia

Name and position of the researcher: Saleh E Alosaimi, Ph.D. student, Law School, University of Hull.

Please initial box

1. I confirm that I have read and understood the information sheet for the above study and have had the opportunity to ask questions.

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving a reason.

3. I agree to take part in the study.

Please tick box

No Yes

4. I agree to the interview being audio recorded.

<input type="checkbox"/>	<input type="checkbox"/>
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5. I agree to the use of anonymised quotes in publications.

<input type="checkbox"/>	<input type="checkbox"/>
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Name of Participant:

Date:

Signature:

Interviewer (researcher) S.E. Alosaimi

Date: 20/06/2016

Signature: S.E.

In case of oral Consent

I confirm that I have informed the interviewee about the purpose of the data collection, explained the details of this consent, and gained his or her agreement.

Location, Date:

interviewer:

Signature:

Saleh Alosaimi

S.E. Alosaimi

Annex 3: Interview Questions

A sample of Themes and possible questions for the interview

Interview Themes:

- 1- The effectiveness of the Saudi domestic violence law since it came into force.
- 2- The existence of any obstacles that could affect the application of the law.
- 3- The future amendments needed to be carried out on the law from the participants' view.
- 4- The need for compatibility between the Law and the International Human Rights standards from the participants' view. Example: The appropriateness of including domestic workers among the potential victims.
- 5- Areas intended to be covered:
 - Clarity and accessibility of the law for the victims.
 - To what extent the Saudi government has enforced the law.
 - Has the Saudi legal system, for example, courts and police played a supportive role in applying the law.
 - Obstacles are facing the law since it came into force based on the participants' experience.
 - Any relevant regulations needed to be amended to guarantee good implementing the law.
- 6- Suggested recommendations (e.g. modifications)

Part 1; introducing part

- Say Hi! Introducing myself and the aims of the project, explain how the interview will help me in the research
- Allow the participant to introduce themselves and what they do etc.

Part 2; General view of the effectiveness of current Saudi domestic violence law

- Q1.** How long have you been working on domestic violence issues?
- Q2.** What do you think about the current Saudi domestic violence law? If the answer is (positive or negative) ask why?
- Q3.** Is the law well publicised? Is it accessible for the victims?
- Q4.** Is the law reasonably clear for the victims and other relevant parties? Do you perceive any grey area in the law?
- Q5.** Is the law applicable and fully enforced to your knowledge?
- Q6.** Based on your experience, could you tell how the legal system in Saudi Arabia could affect the application of the law?
- Q7.** Can you tell what are the obstacles (if any) that normally face domestic violence law in Saudi Arabia? (Ask for more explanations).
- Q8.** What is your opinion of the regulations and rules concerning domestic violence and how could this affect the victims?
- Q9.** What do you think about the incorporation of domestic workers among the victims? Follow up questions: why, how?
- Q10.** Do you think that the Law contradicts with other laws and Islamic norms?

Part 3; The Saudi domestic violence law and international human rights law

- Q1.** Do you think the Saudi law is in line with IHRL or with international standards?
- If no: is it important to be in line with IHR?
- Or is it negative?

Finally: Would you like to add any other thoughts or recommendations? Thank you

صالحه مطلق الحكومه

دائرة الجرائد
[٢٧٧]

المحكمة الجزائية بالرياض



دائرة القصاص والحدود

صحيفة رقم [REDACTED]

مجلد الضبط رقم [REDACTED] جنائي

ضبط

لغة رقم (٢) التابعة للقضية المقيدة برقم [REDACTED] المضبوطة بالصحيفة رقم (٧٩) بالمجلد رقم [REDACTED] ثاني

الحمد لله وحده ويعد قاضي المحكمة الجزائية بالرياض وبناء على المعاملة المحالة لنا من فضيلة رئيس المحكمة الجزائية بالرياض المكلف برقم [REDACTED] وتاريخ ١٤٣٧/٠٧/١٠ هـ المقيدة بالمحكمة برقم [REDACTED] وتاريخ ١٤٣٧/٠٧/١٠ هـ قتي يوم الخميس الموافق ١٤٣٧/٠٨/١٩ هـ افتتحت الجلسة الساعة ١٩ : ١٠ وفيها حضر الطرفان وجرى سؤال المدعى عليه عن اجراء الصلح بين الطرفين فأجاب قائلا بأنه لم يحدث اي شيء وبيننا دعوى لدى محكمة الاحوال الشخصية وسؤال المدعية عن ذلك أجابت قائلة بأن ماذكره المدعى عليه صحيح ولدينا موعد شهر رمضان هكنا أجابت فبناء على ذلك فقد قررت التوقف عن نظر الدعوى حتى انتهاء للقضية لمنظورة بينهما لدى محكمة الاحوال الشخصية ويعرض ذلك على الطرفين فتعا به وبالله التوفيق ، وصلى الله على نبينا محمد وعلى آله وصحبه وسلم .
حرر في ١٤٣٧/٠٨/١٩ هـ اقبلت ١٠:٣٠

المدعي
قاضي المحكمة الجزائية بالرياض

المستدعي

المستدعي بالمدعى

[REDACTED]

وزارة العدل
المحكمة الجزائية بالرياض
دائرة القصاص والحدود الساعة
صورة طبق الاصل بتاريخ ١٤٣٧/٠٨/١٩ هـ
الاسم [REDACTED]



وزارة العدل
[٢٧٧]

دائرة القصاص والحدود المصاحبة

صحيفة رقم [REDACTED]

مجلد الضبط رقم [REDACTED] جنائي

ضبط

المحكمة الجزائية بالرياض

المصنوعة بالصحيفة رقم (٨٢) بالمجلد رقم [REDACTED] الجنائي

الجلسة رقم (٣) التابعة للقضية المعقّدة برقم [REDACTED] المحامي
الحمد لله وحده وبعد ففي يوم الثلاثاء الموافق ١٤٣٨/٠١/١٧ هـ افتتحت الجلسة الساعة ٩:١٥ هـ لدى أن [REDACTED] القاضي
بالمحكمة الجزائية بالرياض خلفاً لناظرهما لانتقاله من الدائرة ، وفي هذه الجلسة حضر المدعي العام والمدعية بالحق الخاص ، ثم جرى الاطلاع
على ما سبق ضبطه وعرضه عليهم فسانقروا عليه ، هذا وكان فضيلة سلفنا قد قرر إيقاف النظر بالدعوى حتى انتهاء القضية المعقّدة بين الطرفين
بمحكمة الأحوال الشخصية ، ونظراً لعدم وجود ارتباط بين القضيتين وعدم توقف هذه القضية على ما يصدر بالقضية الأخرى لذا قررت الاستمرار
في نظره الدعوى وأفهمت المدعى عليه بالجواب عن دعوى المدعي العام والمدعية بالحق الخاص فأجاب قائلاً : ما جاء في الدعوى العامة
والخاصة من ضرري لزوجتي الحاضرة والتسبب في إصابته غير صحيح والصحيح أنها أخطأت علي بالفاظ سيئة فضررتها بيدي على كتفها
فأعادت التلطف فضررتها بيدي على وجهها هذا ما حصل هكذا أجاب . ويسأل المدعي العام عن بينته أجاب قائلاً : بينتي التقرير الطبي المرفق
بالمعاملة هكذا أجاب . فجرى الاطلاع على التقرير الطبي الصادر من مستشفى عبدالرحمن النور وتضمن الكشف على [REDACTED] وأنها تعاني
من وجود كدمات بفروة الرأس باليمين واليسار وكدمات بالذراع اليميني واليسرى وكدمات بالساق اليميني انتهى مضمونه ، وبعرضه على المدعى
عليه أجاب قائلاً : صحيح أن هذا التقرير صادر بنفس الليلة التي حصلت فيها المشكلة ولكنني خرجت من منزلي وليس بها شيء وهي خرجت
بعدني للمعشفى ولا أعلم من تسبب لها بالإصابات المذكورة هكذا أجاب . ويسأل الحاضرين هل لديهم إضافة قرروا جميعاً بأنه لا مزيد لديهم
فقلت بآب المرافعة ، وبناء على ما تقدم من الدعوى والإجابة ونظراً لإقرار المدعى عليه بضرره زوجته المدعية بالحق الخاص على وجهها وكتفها
وإنكاره التسبب في إصابته بالإصابات المشار لها بالتقرير الطبي المدون مضمونه أعلاه ، وإقراره بكون التقرير صدر في ليلة الواقعة التي حدثت
بينهما ولذهبه عليه الصلاة والسلام : ((إذا قاتل أحدكم أخاه فليجنب الوجه)) أخرجه مسلم في صحيحه ، والزوجة أولى بذلك ، ولأنه وإن جاز
تأديبها بالضرب إلا أنه لا يجوز التجاوز فيه للحد المسموح شرعاً ، ولما جاء بالمادة رقم ١٢ من نظام الحماية من الإيذاء ولكل ما تقدم ثبت لدي
إدانة المدعى عليه بضرره زوجته المدعية بالحق الخاص على وجهها والتسبب في إصابته المذكورة وحكمت عليه للحق العام بتغريمه مبلغاً قدره
خمس ألف ريال وللحق الخاص بالسجن خمسة أيام وأفهمت الأطراف بأنه مسلم كل منهم نسخة من حكم الحكم حالا ولهم تقديم الاعتراض على
الحكم خلال ثلاثين يوماً اعتباراً من تاريخ يوم عد ، وإذا انتهت المدة دون تقديمهم للاكتة الاعتراضية سقط حقهم في الاعتراض واكتسب الحكم
القطعية ، وختمت الجلسة الساعة ٩:٤٥ هـ ، وبالله التوفيق ، وصلى الله على نبينا محمد وعلى آله وصحبه وسلم . جري في ١٤٣٨/٠١/١٧ هـ

المدعى
[REDACTED]

المدعى عليه
[REDACTED]

المدعى العام
[REDACTED]

القاضي في المحكمة الجزائية بالرياض

كتب الضبط

الحمد لله
محمد بن عبد الله

وزارة
المحكمة الجزائية
دائرة القصاص والحدود
صورة طبق الأصل بتاريخ
الاسم
[REDACTED]

نموذج

(هذا النموذج مخصص للاستخدام بالحاسب الآلي ويمنع تعديله)

نسخة نظام المحكمة [REDACTED]



دائرة القصاص والحدود السابعة
صحيحة رقم [REDACTED]
مجلد الضبط رقم [REDACTED]

المحكمة الجزائية بالرباط

الجلسة رقم (٤) الثانية القسبية المعقودة بـ [REDACTED] المدعومة بالندبة رقم (١١) بالمحكمة رقم [REDACTED]

الحمد لله وحده وبعد، وفي هذا اليوم الاثنين الموافق ١٤٢٨/٠٢/٠٦ هـ افتتحت الجلسة الساعة ١٢،١٥ وفيها وردتنا الثلاثة الاعتراضية المقدمة من المدعية بالحق القصاص أميرة العجايدة بـ [REDACTED] بتاريخ ١٤٢٨/٠٢/١٢ هـ والمكونة من ورقتين، كما وردتنا الثلاثة الاعتراضية المقدمة من المدعى عليه إبراهيم الأسطى بـ [REDACTED] بتاريخ ١٤٢٨/٠٢/١٠ هـ والمكونة من ورقتين، وبالإطلاع على هاتين اللاتين لم أجد فيهما ما يؤثر على ما حكمت به، هذا وقد انتهت البدة المقررة للاعتراض ولم تردنا لائحة التدعي العام، لذا فقد سقطت حق في الاعتراض وفقدت رافع كائن أوزاق المعاملة المستحقة الاستئناف لتتبقى الحكم حسب الماترغ وبمقتضى الجلسة الساعة ١٢،٥٥ هـ، والله الموفق، وهو يهدي السبيل وصلى الله على نبينا محمد وعلى آله وصحبه وسلم جزر في ١٤٢٨/٠٢/٠٦ هـ

القاضي في المحكمة الجزائية بالرباط

كاتب الضبط



وزارة العدل
الجزائية بالرباط
القصاص والحدود السابعة
تاريخ ١٤ / ١ / ١٤٢٨
الوقوع
بار الله

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