



Legal system and Islamic legal system in Lebanon

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2011A

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Introduction :Law system in Lebanon

- ▶ • Lebanon is located in the western part of Asia, bordered by Syria to the east and north, Israel to the south, and the Mediterranean Sea to the west. Lebanon has a population of around four million people, and an area of 10,452 sq. km, and hence counts among the smallest countries in the region. Beirut, the capital city of Lebanon, contains approximately half of the Lebanese population and is located towards the middle of Lebanon's 220 km coast. Despite its small size, Lebanon has figured prominently on the world stage for a diversity of reasons, not all of which are good. Lebanon has and has had immense cultural influence on its Arab entourage, as the Lebanese society is considered to be one of the most liberal in the region with its strong western ties, particularly with its former colonial ruler, France.
- ▶ • Lebanese individuals are also known to be natural-born entrepreneurs. The Lebanese community living abroad consists of approximately 15 million people, almost four times the Lebanese population living in the homeland, and is considered in its respective host countries as an economic force to be reckoned with.
- ▶ • Lebanon is mostly known for its civil war (1975-2000) which took the lives of more than 200,000 people. Following the war, Lebanon witnessed a period of calm and prosperity up until the assassination of its prime minister, Rafik Hariri, in February 2005. In the aftermath of the assassination, civil unrest and demonstrations, coupled with a strong international pressure, led Syria to withdraw its troops from Lebanon after almost 20 years of presence. Since that time there has been significant political unrest, with an Israeli invasion in 2006, dozens of politically motivated assassinations, and many sectarian clashes; in short, the political situation in Lebanon is considered to be volatile and highly unstable

The Lebanese legal system

- ▶ • The Lebanese legal system is based on and inspired by the French legal system. Just like France, which occupied Lebanon until 1943, Lebanon is considered to be a civil law country and possesses its own set of codes. The most notable code is the “Code of Obligations and Contracts” promulgated in 1932 during the French Mandate. The COC, as it is known among law students, is the equivalent of the French Civil Code except for matters related to personal status (heritage, marriage, divorce, etc.), which are governed by a separate set of laws designed for the different sectarian communities. For instance, the Islamic personal status laws are inspired by the Islamic Sharia’a, some of which were promulgated during the Ottoman rule (ending in 1918). • Although a civil law system, the courts in Lebanon are not reluctant to follow established precedents, which are usually set in place through landmark rulings by the Court of Cassation. In addition to this, one can find many court rulings that are based on precedent established in France or in Egypt, the two most influential legal systems in Lebanon. • As a politically unstable nation which is surrounded by hostile regional forces, Lebanon requires very strong laws for the purpose of national defense. Following the Israeli invasion of Beirut in 1982, legislative decree number 102 of 1983 set a strategy for national defense and instituted mandatory military service. This law is now being revised in the context of a national dialogue that aims at setting a new strategy, which would enable the state to make use of the paramilitary resistance currently controlled by Hezbollah to defend Lebanon against Israel. • Despite the best efforts of certain civil society organizations, Lebanon still makes use of the death penalty to sanction certain severe crimes. • There have been also serious, but so far fruitless, efforts aiming to allow people to opt for civil marriage as an alternative to the currently mandatory religious marriage. These efforts are intended to promote secularism, or at least minimize the impact of sectarianism which is a prominent source of conflict and which precipitated sectarian violence and the civil war

Islamic law

- ▶ • 'Islamic law' refers to the diverse legal systems that have been and continue to be produced with the objective of being in accord with the Islamic faith.
- ▶ • Islamic legal systems operate in multiple and sometimes discontinuous ways. Usage of the singular term 'Islamic law' should not be understood as suggesting the absence of legal polycentricity (multiple groups and institutions generate Islamic law) or legal pluralism (within Islamic societies, since Islamic and non-Islamic legal systems coexist).

Historical of Islamic law

- ▶ • There are significant historical and substantive distinctions between 'Islamic law' and 'Muslim legalities' (the legal systems in use by Muslims). 'Islamic law' refers to juristic interpretations (fiqh) of divine law (sharī'ah); 'Muslim legalities' refers to either state law (where Muslims are the majority or minority) or the legal practices of non-state Muslim communities

Islam means

- ▶ • Islamic law, unlike the previously discussed systems, is not an independent branch of knowledge (Ende and Steinbach, 2010).
- ▶ • Law is integral to Islamic religion, which defines the character of the social order of the faithful who create laws in the name of Allah, or God (Ghanim, 2010; Hallaq, 2009).
- ▶ • Islam means “submission” or “surrender” and implies that individuals should submit to the will of God. Islamic religion states what Muslims must believe and includes the Shari’a (“the way to follow”), which specifies the rules for believers based on divine command and revelation. Unlike other systems of law based on judicial decisions, precedents, and legislation, Islamic law is derived from four principal sources (Shaham, 2010).

The key of Islamic legal

- ▶ • The key distinction between these two overlapping categories is that Islamic jurisprudence is generated by an interpretive process anchored in canonical Islamic texts;
- ▶ • in comparison, Muslim legalities are generated by an interpretive process anchored in a state or other legal system that may or may not be Islamic and with a population that may or may not have a Muslim majority (Salaymeh, 2014).

The principal source of Islamic law

- ▶ • The principal source of Islamic law is the Koran, the word of God as given to the Prophet.
- ▶ • The second source is the Sunna, which are the sayings, acts, and allowances of the Prophet as recorded by reliable sources in the Tradition (Hadith).
- ▶ • The third is judicial consensus; like precedent in common law, it is based on historical consensus of qualified legal scholars, and it limits the discretion of the individual judge.
- ▶ • Analogical reasoning is the fourth primary source of Islamic law. It is used in circumstances not provided for in the Koran or in other sources. For example, some judges inflict the penalty of stoning for the crime of sodomy, contending that sodomy is similar to the crimes of adultery, out-of-wedlock sex, and drinking alcohol and thus should be punished by the same penalty the Koran indicates for adultery (Economist, 2010:48). In the same vein, a female would get half the compensation a male would receive for being the victim of the same crime, because a male is entitled to an inheritance twice that of a female. In addition to these principal sources, various supplementary sources, such as custom, judge's preference, and the requirements of public interest, are generally followed (Nielsen and Christoffersen, 2010)

Shari'a legal precepts

- ▶ Shari'a legal precepts can be categorized into five acts: • commanded, • recommended, • reprobated, • forbidden, • and left legally indifferent. Islamic law mandates rules of behavior in the areas of social conduct, family relations, inheritance, and religious rituals, and defines punishments for heinous crimes including adultery, false accusation of adultery, intoxication, theft, and robbery. For example, in the case of adultery, the proof of the offense requires four witnesses or confession.

Property and Housing Rights in Islam in Lebanon

- ▶ • Under Islam all property vests in God and is temporally enjoyed by human beings. Islam promotes individual property rights subject to ethical rules laid down by Islamic law. • Private homeownership is commonly a high priority for Muslims. • Islam also has a pro-poor agenda facilitating collective rights and social housing. Muslim countries, despite their differential economic capacities, aim to prioritise the poor and homeless for initiatives through the State treasury. • Another way low-cost housing has been funded, for example in Lebanon, is through State collection of obligatory charity (zakat), which is one of the five pillars of Islam. The primary objectives of Islamic law (Supreme Shiite Council lebanese) are the protection of life, property, mind, religion, and offspring. The State thus has, under Islamic law, to protect property and by extension the inviolability of homes. Further, Islamic law provides legal remedies and mechanism for arbitrary eviction from homes by State or private parties and well-developed alternate dispute resolution mechanisms of negotiation, mediation, and arbitration • This right is limited by the state's right to deprive individuals rights of possessions under certain conditions (compulsory purchase), and to control the use of property (land-use planning). The rights associated with private ownership (the so-called bundle of rights beloved of land lawyers) are thus constrained by various statutory provisions, such as land-use planning, environmental controls, and water rights

