
Protection as Exclusion: A Postcolonial Feminist Reading of Gender Discrimination in Lebanese Labour Law

Zahra Nasrallah*

Abstract

The Lebanese Labour Code (1946) contains a structural tension that has received insufficient theoretical attention: Article 26 explicitly prohibits gender-based discrimination in the workplace, yet Article 27 and Annex 1 — both unchanged since the law's colonial-era enactment — ban women from nineteen categories of industrial employment. This paper argues that this tension is not a legislative oversight but the inherited architecture of French Mandate paternalism, which constructed the Arab woman worker as a body requiring protection — and then used that protection as the primary mechanism of economic exclusion. Drawing on postcolonial and decolonial feminist legal theory — specifically Kandiyoti's (1988) concept of the patriarchal bargain, Abu-Lughod's (2013) critique of the saving-women discourse, Lugones's (2010) argument about the colonality of gender, and Fricker's (2007) concept of epistemic injustice, situated within their decolonial context — the paper conducts a close reading of the Labour Code as a colonial text that continues to produce gendered colonial subjects eighty years after independence. The analysis identifies four discriminatory mechanisms: protective exclusion from named industries (Article 27); total exclusion from the law's scope for domestic workers (Article 7); symbolic equality without enforcement (Article 26); and the absence of intersectional protection for hijab-wearing women and working mothers managing child sick care. The paper recovers the suppressed history of Lebanese women tobacco workers' organised resistance between 1930 and 1946 as the political context of the law's enactment, and engages with Lobato's (2026) recent argument that labour law

* Independent scholar. Email zahra-a-nasrallah@hotmail.com

functions as a technology of exclusion. It concludes by asking what a genuinely decolonised Lebanese labour law — one that alters the epistemic legal paradigm rather than merely diversifying existing protections — would require.

Keywords: Lebanese labour law; postcolonial feminism; decolonial feminism; coloniality of gender; protective exclusion; epistemic injustice; hijab discrimination; tobacco workers; Kafala system; intersectionality

1. Introduction: The Architecture Written in Law

On 23 September 1946, the Lebanese Parliament enacted the country's first Labour Code. French troops had not yet fully withdrawn from Lebanese soil. The ink of formal independence was barely three years old. Into this liminal moment — suspended between colonial governance and sovereign statehood — the new republic wrote a law that would regulate the working lives of its citizens for the next eight decades. The law's second article defined the worker (al-ajir) as 'every man, woman, or juvenile who works for wages under an employer' (Lebanese Labour Code, 1946, Art. 2). Women were workers. The law said so explicitly.

Forty-four articles later, the same law prohibited women from working in nineteen categories of industrial employment — including mines, explosives manufacturing, tanneries, glassworks, and the production of alcohol. No justification was offered. No safety rationale was stated. The prohibition appeared in a single sentence: 'It is prohibited to employ women in the industries and works listed in Annex 1 of this law' (Lebanese Labour Code, 1946, Art. 27). That sentence has never been amended. In 2000, Lebanon added Article 26, which prohibited gender-based workplace discrimination in wages, promotion and conditions — yet the exclusion provisions remained intact beneath it, untouched.

This paper argues that this tension — equality proclaimed in Article 26, exclusion enforced in Article 27 — is not a legislative accident, nor a logical contradiction. The two articles operate at different legal levels: Article 26 establishes an equality principle within co-employment contexts; Article 27 operates upstream, defining which employment contexts women may enter in the first place. Their relationship is one of architectural collusion rather than inconsistency. It is the structural inheritance of French Mandate paternalism: a legal logic that constructed the Arab woman worker as a body requiring protection, and then used that protection as the primary instrument of economic exclusion. As Lobato (2026) has recently argued in the context of international labour law, law does not only protect certain forms of work — it also systematically excludes other forms of work from protection, especially those performed by racialized and gendered individuals. The Lebanese Labour Code exemplifies this dynamic at the national level, with the additional dimension that its exclusionary architecture was designed under colonial administration and carried forward, without fundamental revision, into eight decades of independent governance.

The analysis proceeds in five movements. First, it sets out the paper's theoretical framework. Second, it situates the Labour Code within its colonial genealogy, recovering the suppressed history of Lebanese women workers' organised resistance — particularly the tobacco workers' protests of 1930-1946 — as the political context of the law's enactment. Third, it surveys the health and social consequences of the law's exclusionary architecture, grounding the theoretical analysis in lived effects. Fourth, it conducts a close reading of the law's text as a postcolonial document. Fifth, it theorises the concept of 'protective exclusion' through postcolonial and decolonial feminist frameworks, before asking what a genuinely decolonised Lebanese labour law — one that alters the epistemic legal paradigm rather than merely diversifying existing protections — would require.

2. Theoretical Framework: Postcolonial and Decolonial Feminist Legal Analysis

This paper situates itself at the intersection of postcolonial and decolonial feminist legal scholarship. These are related but distinct traditions that share a commitment to reading law as a colonial inheritance, but differ in emphasis and genealogy. Postcolonial feminist legal theory, drawing on Said (1978), Spivak (1988) and Bhabha (1994), focuses on the afterlives of colonial discourse in law and the continued operation of colonial power through juridical categories. Decolonial feminist theory, developed primarily from Latin American scholarship by Lugones (2007, 2010), Segato & Monque (2021) and Espinosa Miñoso (2014), goes further: it argues that colonialism did not merely distort pre-existing gender relations but actually produced the modern gender binary as an instrument of racial domination. The distinction matters: while postcolonial analysis asks how colonial power operates through law after colonialism, decolonial analysis asks how the very categories of law — including the category 'woman worker' — are themselves colonial constructions. This paper draws on both traditions, using postcolonial tools to read the law's text and genealogy, and decolonial tools to interrogate the foundational categories through which the law constructs its subjects.

2.1 The Patriarchal Bargain and Strategic Essentialism

Kandiyoti's (1988) concept of the patriarchal bargain offers the first theoretical tool. Kandiyoti argues that women in patriarchal systems do not simply suffer oppression — they negotiate it, accepting specific constraints in exchange for specific protections. The bargain is not freely chosen: it is the set of strategic accommodations women make within systems whose terms they did not design. The Lebanese Labour Code enacts precisely such a bargain at the level of

law: women are offered protection from hazardous industries in exchange for accepting exclusion from the economic sectors that protection covers.

Understanding this bargain requires engagement with the concept of strategic essentialism, developed by Spivak (1988) and subsequently theorised in the decolonial tradition by Mignolo (2010). Strategic essentialism refers to the provisional adoption of an essentialist identity category — here, 'woman worker' — for political purposes, while remaining aware of its constructed and contested character. The Lebanese Labour Code's construction of 'women' as a unified legal category requiring protection is a form of imposed essentialism: the state assigns an essential nature (fragility, vulnerability, need for protection) to a heterogeneous population of workers, then uses that assignment to justify systematic exclusion. Reading the law through strategic essentialism reveals how juridification can simultaneously name women as rights-bearing subjects and constrain the conditions of their agency — a dynamic that cannot be understood through a binary view of feminist collective action as either complicit with or opposed to colonial legal doctrine.

2.2 Saving Women: The Colonial Grammar of Protection

Abu-Lughod's (2013) critique of the 'saving Muslim women' discourse was developed primarily in relation to humanitarian intervention, but its analytical structure applies with equal force to colonial labour legislation. Abu-Lughod argues that discourses of saving Muslim or Arab women from their own cultures function to legitimate external intervention, construct non-Western women as passive victims incapable of self-determination, and displace attention from the structural conditions — including imperial military and economic power — that produce the vulnerabilities they claim to address. The critique is not that protection is never warranted, but that the 'saving women' discourse systematically misidentifies the source of

harm and positions the protector — colonial state, humanitarian agency, or in our case, labour legislation — as the agent of women's liberation rather than as a party to the system that constrains them.

The French Mandate's paternalistic approach to gender, documented by Thompson (2000), constructed Arab women as subjects in need of civilisational uplift: protection from dangerous labour, regulation of their domestic and public roles, and guidance toward appropriately feminine economic participation. This was not incidental to colonial governance — it was one of its central legitimating mechanisms. When the 1946 Lebanese Labour Code prohibited women from nineteen industries in the name of their protection, it was translating this colonial grammar into postcolonial law. The French Mandate's gender management did not require citation or acknowledgement in the new republic's legislation — it had been encoded into the categories, the institutional structures, and the political culture from which that legislation emerged.

2.3 Coloniality of Gender and the Racial Division of Labour

To understand what makes protective exclusion specifically colonial — rather than merely patriarchal — the paper draws on the decolonial feminist scholarship of Lugones (2010), Segato & Monque (2021) and Oyěwùmí (1997). Lugones's concept of the 'coloniality of gender' argues that the modern gender binary was itself a colonial imposition: European colonialism did not merely subordinate pre-existing gender identities but produced the male/female hierarchy as an instrument of racial classification and economic domination. The colonial modern gender system, as Lugones (2010, p. 742) argues, 'imposed itself on the biological in a way that was deeply marked by race'. Indigenous and colonised women were rendered 'non-

women' — positioned outside the protection that the colonial gender system claimed to extend to women — while simultaneously being subjected to its labour extraction.

Segato & Monque (2021) extend this analysis by tracing how colonial contact transformed what she calls 'low-intensity communal patriarchy' into 'high-intensity colonial-modern patriarchy' — intensifying gender hierarchy and stripping women of the communal and political authority they had held in pre-colonial contexts. For the Lebanese case, this means that the 1946 Labour Code's construction of women as a protected/excluded category was not simply a continuation of pre-existing Levantine patriarchy but a colonial restructuring of gender relations in the image of French Mandate paternalism, operating through legal categories — 'worker', 'employer', 'protected category' — that were themselves Eurocentric constructions.

The fact that protective exclusion has also operated in countries that were not colonised raises the important question of whether it can be seen as specifically colonial. This article proposes that the mechanism itself — protection as justification for exclusion — is not uniquely colonial. But its specific instantiation in the Lebanese case is colonial in two distinct ways: first, in its genealogy (the Mandate's deliberate gender management of the labour market, documented by Thompson (2000) and Abisaab (2010)); and second, in its intersectional effects (the exclusions fall disproportionately on migrant women of colour, reproducing the racial hierarchies of colonial labour extraction). As Lobato (2026) argues, what distinguishes colonial labour law is not merely its content but its function in the racial and gendered organisation of global production — a function that the Lebanese Labour Code continues to perform.

2.4 Epistemic Injustice in Decolonial Context

Fricker's (2007) concept of epistemic injustice — particularly testimonial injustice, in which a speaker's credibility is deflated due to identity prejudice — provides an additional analytical tool. The use of this concept requires a critical caveat. Fricker's framework operates within an analytic philosophical tradition that largely disregards the body/geopolitics of knowledge that is central to postcolonial and decolonial methodologies. Fricker's account of epistemic injustice is a wrong done to individuals in their capacity as knowers; it does not systematically engage with the colonial structures of knowledge production that postcolonial scholars such as Mignolo (2010) and Santos (2016) have theorised as epistemicide — the destruction of entire knowledge systems by colonial power.

This article uses Fricker's concept in a qualified way, as a diagnostic tool for identifying the silencing of specific forms of women's knowledge within the law — while recognising that the deeper epistemological problem is not testimonial injustice at the level of individual credibility but the colonial constitution of legal knowledge itself. When the Lebanese Labour Code declines to ask women workers what work they can safely perform, it is not merely deflating individual testimony: it is reproducing a legal epistemology in which women's embodied knowledge of their own capacities does not count as relevant knowledge for legislative purposes. This is epistemic injustice in Fricker's sense, but it is grounded in the colonial legal paradigm that Mignolo (2010) and Segato & Monque (2021) describe — a paradigm that defines whose knowledge counts in the production of law.

3. Colonial Genealogy: Gender, Labour and Resistance Under the French Mandate

This section traces three interconnected histories that together constitute the colonial genealogy of the 1946 Labour Code: the French Mandate's construction of a paternalistic civic order; the

organised resistance of Lebanese women tobacco workers between 1930 and 1946; and the colonial timestamp of the law's enactment. These are not merely background — they are the political conditions from which the law's gendered architecture cannot be separated. A methodological note is warranted: the selection of these three threads reflects a reconstructive approach to colonial legal genealogy. The goal is not comprehensive historical narrative but the identification of the specific colonial mechanisms — institutional, discursive and political — that produced the law's foundational gendered categories and that continue to operate within them.

3.1 The Mandate's Paternalistic Civic Order

France received the League of Nations mandate over Lebanon and Syria in 1922, at a moment when gender was already a central axis of colonial governance across the French empire. Thompson (2000) documents how the French Mandate constructed what she calls a 'paternalistic colonial civic order,' in which state officials manipulated the disbursement of material benefits to a mediating elite as a way of exerting control over the unprivileged majority (p. 66). This system had produced a full-blown 'colonial welfare state' by the late 1930s, which entailed an extensive network of state-funded schools and clinics, along with rights of popular expression and association (Thompson, 2000, pp. 163-169). Crucially, Thompson argues that key elements of this mandate order outlived the French presence itself, contributing to Lebanon's political crises in subsequent decades (2000, p. 286).

Lawson (2002), reviewing Thompson's work, notes a limitation that is relevant to this article: Thompson sometimes treats gender relations as 'divorced from other aspects of the local political economy', separating women's movements from labour activism in discrete analytical chapters (p. 407). The Lebanese Labour Code of 1946 is precisely the site where this separation

breaks down. It is simultaneously a labour document and a gender document, and its discriminatory architecture can only be understood by reading both dimensions together — as this article attempts to do. The colonial welfare state Thompson describes did not regulate labour and gender separately: it encoded their intersection into law, producing a legal instrument in which women's access to industrial employment was structured by the same paternalist logic that governed their access to education, healthcare, and public life.

It is important to distinguish two related but distinct arguments in Thompson's account. The first concerns the colonial welfare state as a system of governance — the French Mandate's use of selective material benefits to maintain political control. The second concerns gender specifically — the Mandate's construction of Arab women as subjects requiring civilisational uplift and protection. These are distinct issues, and the article is primarily concerned with the second: how the specific colonial logic of gender protection was encoded into the 1946 Labour Code's architecture. The colonial welfare state provides the institutional context; the colonial grammar of gender protection is the specific mechanism this article traces.

3.2 Women Tobacco Workers and the Politics of Resistance

The colonial management of women's industrial labour was not an abstract policy — it was actively contested on the ground, in factories and in the streets. Women workers in the tobacco industry built their activism on agrarian experiences and traditions of peasant protest, developing a sustained tradition of resistance that predated the French Mandate's formalisation of the tobacco sector (Abisaab, 2010). The tobacco workers' history is essential context for the 1946 Labour Code, not merely as background but because it demonstrates that the law was enacted in response to organised women's political demands — and that it answered those demands by encoding their suppression into statute.

In November 1930, hundreds of women tobacco workers gathered at the government's central office in Beirut to protest the increase in mechanisation under French authority (Abisaab, 2010). This protest established women workers as a coherent political force capable of confronting both colonial economic policy and the emerging Lebanese state simultaneously. In December 1934, five thousand tobacco workers and their families sent a formal petition to the Lebanese President, the Mandate parliament, and French authorities, demanding that the proposed tobacco monopoly not be established (Abisaab, 2010). When their petition was ignored, the protests escalated. In June 1935, workers demonstrated daily for a week across Beirut, Tripoli, Homs and Damascus — with women forming the majority of protesters (Abisaab, 2004). The creation of the Regie monopoly displaced between 1,500 and 3,000 workers, and its Cahier des Charges did not require the transfer of existing tobacco workers, leaving women workers in acute financial insecurity (Abisaab, 2010).

The protests continued through 1944 and 1945, with workers demanding wage increases and full pension rights for women who left employment upon marriage (Abisaab, 2010) — a demand that directly anticipated the Labour Code's maternity provisions and exposed the gap between women's economic needs and the state's paternalist response. Tannoury-Karam's (2021) research on Lebanon's anti-colonial left during this period confirms that women workers were active participants in a broader political movement that understood colonial economic exploitation and gender subordination as interconnected rather than separate issues. The most dramatic moment came in 1946 itself: the killing by Lebanese security forces of the young working woman Warda Boutros Ibrahim, while suppressing a strike at the Regie plant in Chiyah, triggered protests across the country (Abisaab, 2010). The Labour Code was signed four months later. The law did not emerge from a vacuum of women's political passivity — it

was drafted in the shadow of fifteen years of organised women's industrial resistance, and it encoded exclusion rather than rights as its answer to that resistance.

3.3 The Colonial Timestamp

The minimum wage decree of 1941, introduced under French Mandate administration, was the immediate legislative predecessor of the 1946 Labour Code. Its wage categories already embedded gender differentials. When the independent Lebanese state drafted the Labour Code in 1944-1946, it inherited these categories and this paternalist logic, encoding them into the new republic's founding labour legislation. The law was signed by President Bishara Khalil al-Khoury on 23 September 1946. French troops completed their withdrawal the same year. The colonial architecture of the law and the colonial military presence left Lebanese soil almost simultaneously — but only one of them actually departed.

The argument that the law is colonial despite being finalised after formal independence requires clarification. The claim is not merely that the law was drafted during a period of colonial influence — it is that the specific gendered categories it encodes (women as a protected/excluded class, domestic work as outside the law's scope, industrial masculinity as the implicit norm of the protected worker) were produced by Mandate-era governance and carried into the new law without critical revision. As Lobato (2026) argues in relation to international labour law from the interwar period, the standard employment relationship that labour law protects was itself constituted through the exclusion of racialized and gendered workers — exclusion that was not accidental but structural to the legal categories being formed. The 1946 Lebanese Labour Code instantiated precisely this dynamic at the national level, in a moment when French colonial authority and Lebanese state authority overlapped almost completely.

4. The Body the Law Produces: Health and Social Consequences

Before conducting a close reading of the law's text, it is analytically necessary to attend to the health and social consequences of its exclusionary architecture — to ground the subsequent theoretical analysis in the lived effects of the mechanisms the law produces. Legal exclusions do not keep women out of labour; they determine where women work and under what conditions.

4.1 Domestic Work, Kafala, and Structural Vulnerability

The exclusion of domestic servants in private households from the Labour Code under Article 7 — combined with the Kafala sponsorship system's tying of migrant workers' legal residency to their employer — creates conditions of profound structural vulnerability. Domestic service in Lebanon is performed overwhelmingly by migrant women from Ethiopia, the Philippines, Sri Lanka and Nepal (Rak, 2021). An estimated 250,000 migrant domestic workers fall entirely outside the Labour Code's protections: they cannot unionise, cannot bring discrimination claims, have no statutory maternity rights, no minimum wage guarantee, and no unfair dismissal protection (Rak, 2021). The Kafala system enables employers to have near-complete control over workers' lives — workers cannot change employer without their kafeel's consent, and leaving employment means losing legal residency status (Amnesty International, 2019).

In September 2020, Lebanon's Labour Ministry adopted a new standard unified contract for migrant domestic workers that would have provided vital safeguards, including the right to terminate their contract without employer consent, a 48-hour work week, overtime pay, and the national minimum wage. One week later, the Syndicate of Recruitment Agency Owners filed a complaint with Lebanon's State Shura Council, which suspended the contract's

implementation (Amnesty International & Human Rights Watch, 2020). The suspension is itself analytically significant: it was the recruitment agency industry — the commercial beneficiary of the Kafala system's unregulated labour supply — that successfully blocked reform. The barrier to extending Labour Code protections to domestic workers is not legal or technical; it is the political interest of those who profit from Article 7's exclusion.

Research on migrant domestic workers in post-2019 Lebanon found systematic patterns of sexual violence, physical confinement, passport confiscation and denial of adequate food and rest (Diab et al., 2023). These are not aberrations in an otherwise functional system — they are consequences enabled by Article 7's exclusion, which removes the legal mechanisms through which such abuses could be reported, documented and sanctioned. The law that protects Lebanese women workers from tanneries does not protect Ethiopian or Filipino women workers from the households into which Article 7 has directed them.

4.2 The Child Sick Leave Gap: Care Work and the Invisible Burden

A further and largely unremarked dimension of the Labour Code's gendered architecture concerns what the law does not provide: any statutory right to take paid leave to care for a sick child. Lebanese law provides sick leave exclusively for the employee's own illness, requiring a medical certificate and capped by years of service. It provides maternity leave for birth and immediate postpartum recovery. It provides no parental leave, no child sick leave, and — beyond employer discretion — no paternity leave. There is no statutory parental leave shared between both parents in Lebanese labour law (Papaya Global, 2026). The result is a structural gap that falls almost entirely on mothers.

When a child is ill in Lebanon, the default caregiver is the mother. Since Lebanese law provides no statutory right for either parent to take paid leave to care for a sick child, and since fathers have no legal paternity entitlement that would establish their caregiving role from the start, the burden falls informally on whichever parent absorbs it. In practice, mothers use their annual leave — capped at fifteen days for the first five years of service — to cover their children's illnesses, medical appointments and care crises. The annual leave is not replenished. It is consumed by care work that the law has declined to name, recognise or protect.

This mechanism is invisible in the Labour Code's text because it operates through absence rather than prohibition. As World Bank analysis of Mashreq countries confirms, Lebanese mothers spend an average of five to seven hours each weekday on direct care work — labour that the law neither counts, compensates nor protects (World Bank, 2022). The motherhood penalty in Lebanon produces reduced professional opportunities, higher risks of poverty, and perpetuates stigmatised views of working mothers (Ghanem, 2022). Lebanon's maternity leave remains below the ILO's fourteen-week recommendation and the WHO's eighteen-week standard, with reform impeded by the absence of social insurance funding mechanisms (Carnegie Endowment, 2025). These are distinct problems — the child sick leave gap and the maternity leave shortfall — but they share the same root: a legal framework that acknowledges women's reproductive function while declining to structurally support the care work that reproduction requires.

4.3 Labour Market Exclusion and Informal Work

Lebanese women excluded from formal industrial employment by Article 27 are not protected from dangerous work — they are displaced into informal, seasonal and agricultural sectors that carry their own physical risks without the Labour Code's minimal protections. Agricultural

work — explicitly permitted for women and one of the most physically demanding forms of labour available — is subject to far less regulatory oversight than the industrial sectors from which women are nominally protected. Lebanon's economic collapse since 2019 has intensified this displacement: around two-thirds of the Lebanese workforce are now estimated to be in informal employment, unregistered for social security and unprotected by employment legislation (HR-inform, 2025). Women, concentrated in sectors with weaker contractual protections and higher informality rates, bear a disproportionate share of this displacement. The law protects women from lead compounds while leaving them unprotected in the fields and in collapsed labour markets.

5. The Law as Colonial Text: A Close Reading

The Lebanese Labour Code (1946, as amended) is available in its official Arabic text from the Ministry of Labour. Reading it as a postcolonial document — attending to what it says, how it says it, what it juxtaposes, and what it silences — reveals a text whose gendered logic is embedded at every structural level.

5.1 Article 2: Recognition and Its Limits

The law's second article defines the worker as 'every man, woman, or juvenile who works for wages under an employer' (Lebanese Labour Code, 1946, Art. 2). The inclusion of women in this foundational definition formally recognises women as legitimate subjects of labour law. Yet this recognition immediately operates within a framework that will spend the next forty articles systematically qualifying it. The law recognises women as workers in order to regulate them as a distinct and specially governed category. Recognition here is the precondition of differentiation, not its alternative.

5.2 Article 7: Exclusion Through Apparent Neutrality

Article 7 lists categories of workers exempt from the Labour Code's provisions. Its first category is domestic servants in private households (al-khadam fi buyut al-afrad) (Lebanese Labour Code, 1946, Art. 7). The article uses no gender qualifier. It is ostensibly neutral. Yet as documented in Section 4.1, domestic service in Lebanon is overwhelmingly performed by migrant women. The recruitment agency industry's successful legal challenge to the 2020 standard contract — invoking Article 7's exclusion as justification — demonstrates that this neutrality is not merely descriptive but actively maintained by political interests (Amnesty International & Human Rights Watch, 2020). Article 7's neutrality produces harm through strategic silence: it declines to name the gender and racial dimensions of its exclusion, precisely because naming them would make the exclusion visible as discrimination.

5.3 Article 26 and Article 27: Architectural Collusion

The most analytically significant feature of the Lebanese Labour Code is the juxtaposition of Articles 26 and 27. Article 26 — added by Law No. 116 in 2000, replacing the original Article 15 — states:

It is prohibited for the employer to discriminate on the basis of sex between male and female workers regarding: type of work, wage amount, employment, promotion, advancement, professional qualification, and clothing. (Lebanese Labour Code, 1946, as amended 2000, Art. 26)

The very next article states: 'It is prohibited to employ women in the industries and works listed in Annex 1 of this law' (Lebanese Labour Code, 1946, Art. 27). No justification. No safety rationale. No sunset clause. No review mechanism. The prohibition has stood unchanged since 1946.

The 2000 amendment added an anti-discrimination clause directly above an exclusion clause — and left the exclusion clause intact. The ILO Committee of Experts has noted that the principle of equal pay for work of equal value is not expressly provided for in Lebanese law, and that the law lacks penalties for violations of Article 26 (ILO CEACR, 2020). The anti-discrimination clause has no enforcement mechanism. Discrimination prohibited by Article 26 carries no statutory sanction. As the Carnegie Endowment (2025) confirms, the 2000 amendment did not include an enforcement mechanism or clearly outline a penalty for noncompliance. The protection is symbolic. The exclusion is enforceable.

This juxtaposition might appear contradictory, but it is more accurately understood as operating at two distinct legal levels. Article 26 establishes an equality principle within co-employment contexts — situations in which male and female workers are performing comparable work for the same employer. Article 27 continues to operate upstream of that principle: it defines which employment contexts women may enter in the first place, thereby structurally limiting the range of situations in which Article 26's equality guarantee can apply. The two articles are not in logical contradiction — they are in architectural collusion: Article 26 promises equality within the space that Article 27 has already bounded.

5.4 Annex 1: Reading the Prohibited List

Annex 1 lists nineteen categories of work prohibited to children, adolescents and women (Lebanese Labour Code, 1946, Annex 1). The list includes genuinely hazardous activities — underground mine work, production and handling of explosives, work with molten glass, processing of lead compounds. But item 7 prohibits work in 'the production of alcohol and all other alcoholic beverages.' Alcohol production involves no particular physical hazard not equally present in dozens of other unprohibited industries. The logic is moral and cultural: it

constructs alcohol production as an improper space for women's presence, revealing that Annex 1 is not a list of objectively dangerous industries but a map of the industries in which women's presence was considered culturally inappropriate.

The list's selectivity further exposes this logic. Lebanese women are legally permitted to work in agriculture — carrying heavy loads, working in all weather conditions. They may serve in the military and fly commercial aircraft. Yet they are prohibited from tanneries, heavy machinery operation, and mirror-silvering. The law does not protect women from danger — it protects them from specific industrial spaces associated with masculinity, organised labour, and economic independence (ILO CEACR, 2020; NCLW & ESCWA, 2021).

5.5 Article 34: The Body as Legislative Object

Article 34 states that whenever working hours exceed six hours for men and five hours for women, employers must grant a midday rest of no less than one hour (Lebanese Labour Code, 1946, Art. 34). This differential encodes a presumption of female physical fragility into the law's basic time structures — not as protection from specific hazards but as the inscription of biological difference as legal fact. The law produces the fragile female body it claims merely to protect.

5.6 Article 26's Clothing Clause: Hijab Discrimination and Intersectional Invisibility

Article 26's anti-discrimination provision includes al-malbas — clothing — among the grounds on which employers may not discriminate (Lebanese Labour Code, 1946, as amended 2000, Art. 26). Al-malbas translates literally as 'clothing' or 'dress', and the term appears in the context of prohibiting differential treatment of male and female workers regarding their attire. The

word is there, written into the law. Yet it has never been interpreted, applied or enforced to protect women who face employment discrimination on the basis of their hijab. It is important to note the precise nature of this gap: the available evidence does not document cases of hijab discrimination that were brought before Lebanese courts and rejected. Rather, the gap appears to be one of non-enforcement and non-recognition — discriminatory practices that are openly advertised by Lebanese employers are not challenged through legal mechanisms, suggesting either that affected women do not know the law could protect them, lack access to legal remedies, or — more likely — that the legal system does not recognise hijab discrimination as falling within Article 26's scope. This is a gap in the law's application and imagination rather than necessarily in its text alone.

No-hijab policies are openly advertised by Lebanese employers across banking, hospitality, retail and professional services. A Lebanese architect was refused a job interview when her employer learned she wears a headscarf. One woman reported that being denied jobs for her hijab had happened five times (StepFeed, 2018). As Daraj (2022) reports, bans vary from preventing veiled women from working in the public sector to allowing private sector companies to enforce the same policies. Researchers who have conducted fieldwork with hijabi women workers in Lebanon found that participants experienced the Lebanese state as an institution that magnifies rather than protects against this discrimination — understood as a powerful instance of absencing in the realm of the colonality of being (Rowaq Arabi, 2021). 'Absencing' refers to the active production of legal non-recognition — not merely the failure to protect, but the production of a legal non-subject: a person whose identity marker (religious dress) is simultaneously visible in social space and invisible to the legal framework that ostensibly covers her. This absencing replicates the Mandate's construction of the unveiled woman as the legitimate subject of colonial modernity, rendering the hijab-wearing woman a

remainder who exceeds the law's imaginary. 'The coloniality of being', a concept developed by Nelson Maldonado-Torres (2007) from Frantz Fanon's analysis of colonial subjectivity, refers to the ontological dimension of colonial power — the ways in which colonial relations do not merely restrict what colonised subjects can do but fundamentally affect what they are permitted to be in the world, how they experience themselves as subjects, and whether they are recognised as fully human within colonial and postcolonial legal orders. Applied to the hijab-wearing woman worker in Lebanon, the coloniality of being names the condition in which her religious identity is not merely legally unprotected but legally unrecognised — she is produced as a subject who falls outside the implicit human norm around which the law's protections are organised. The fieldwork documented in Rowaq Arabi (2021) captures this dynamic directly: participants did not describe the state as indifferent to their situation, but as actively constituting the conditions of their exclusion, through the legal non-recognition of clothing-based religious discrimination as a category worthy of remedy. The labour market's hostility to hijabi women today is the Mandate's cultural grammar reproduced in hiring decisions.

6. 'Protection as Exclusion': Theorising the Colonial Grammar

The mechanisms identified in Section 5 — protective industrial exclusion (Article 27), total exclusion through apparent neutrality (Article 7), symbolic equality without enforcement (Article 26), and intersectional invisibility (the hijab gap) — operate together within what this article terms a grammar of protective exclusion. Understanding this grammar requires engaging with the fundamental question raised above: what makes protective exclusion a colonial specificity, given that similar mechanisms operate in countries that were not colonised?

6.1 The Four Features of the Grammar

The grammar of protective exclusion has four characteristic features. First, it identifies women as a distinct legal category requiring special treatment. This is not inherently discriminatory — pregnancy protections and maternity leave are legitimate instances of sex-differentiated legislation. But the grammar extends this logic to industrial categories (tanneries, mines, alcohol production) that have no necessary relationship to women's biological capacities.

Second, it frames exclusion as care. The law does not say it is excluding women from certain industries because women do not belong there — it says it is protecting women from those industries. The shift from exclusion to protection is the law's central rhetorical move, one that makes the exclusion difficult to challenge because challenging it requires arguing against one's own protection. This is Kandiyoti's (1988) patriarchal bargain at the level of juridical language.

Third, it produces asymmetric effects without acknowledging them. Article 7's exclusion of domestic workers appears neutral. Article 27's prohibition applies to 'women' as a universal category. Both mechanisms operate at the level of category, allowing the law to deny individual discriminatory intent while producing systematic gendered and racialised effects. As Lugones (2010) argues, the colonial gender system produces women as a universal category while differentiating their actual treatment along racial and class lines — exactly the structure this article identifies in the Lebanese Labour Code.

Fourth, it reproduces itself across the transition from colonial to postcolonial governance. The 2000 addition of Article 26's anti-discrimination language is the clearest evidence: rather than dismantling the colonial architecture, the postcolonial legislature added equality language on top of it. As Bhabha (1994) describes, the postcolonial state can engage in a form of colonial

mimicry in reverse — mimicking the colonial state's gender management while adorning it with the vocabulary of rights.

6.2 The Colonial Specificity Question

Protective exclusion mechanisms exist in non-colonised contexts. European labour law of the late nineteenth and early twentieth centuries also used protective legislation to limit women's access to certain industries, night work and heavy labour. What, then, is specifically colonial about the Lebanese case?

The answer lies in three dimensions. The first is genealogical: the specific exclusionary categories in the 1946 Labour Code were produced by French Mandate governance, in the context of a colonial project that used gender management as a mechanism of social control, as documented by Thompson (2000) and Abisaab (2010). The second is intersectional: as Lugones (2010) argues, the coloniality of gender produces differentiated treatment of women along racial lines. The exclusions in Articles 7 and 27 do not fall equally on all Lebanese women — they fall most heavily on migrant women of colour (Article 7), working-class women without access to the service and professional sectors (Article 27), and Muslim women whose religious identity is not recognised by Article 26's clothing clause. The third is epistemic: the colonial constitution of legal knowledge — the paradigm in which women's own testimony about their capacities does not count as relevant legal knowledge — is not merely patriarchal but colonial, in the sense described by Mignolo (2010) and Santos (2016). These three dimensions together constitute the colonial specificity of protective exclusion as this paper analyses it.

6.3 Decolonising Law vs. Diversifying It

How, then, might the Lebanese Labour Code be decolonised? In answering this question, it is important to acknowledge that addressing gender discrimination arising from specific regulations is not the same as rooting out the coloniality inherent in the very foundational categories of labour law. On this basis, the article distinguishes between two levels of reform. The first level — repealing Article 27, extending Labour Code protections to domestic workers, adding enforcement mechanisms to Article 26, and introducing parental leave — is reformist rather than decolonial. It addresses discriminatory provisions within the existing legal paradigm. The article argues that these reforms are necessary but insufficient.

The second level is genuinely decolonial in the sense articulated by Lugones (2010) and Segato & Monque (2021): it requires interrogating the foundational categories of labour law themselves. The colonial legal paradigm, as Lobato (2026) argues, centres the standard employment relationship (continuous, full-time, formal, employer-employee) as the normative form of work deserving protection. This centrality is not neutral — it reflects the specific labour arrangements of European industrial capitalism, and it structurally marginalises the forms of work — domestic, agricultural, informal, care — that are disproportionately performed by women in the Global South. A decolonised Lebanese labour law would need to reconstitute protection around the forms of work actually performed by Lebanese and migrant women, rather than assimilating women into a protective framework designed around male industrial employment. A decolonised Lebanese labour law would require not merely the addition of new protections but a genealogical reckoning with the colonial logic embedded in the law's foundational provisions.

7. Discussion: What Would Decolonised Labour Law Require?

Lebanon's labour law reform has been discussed for decades. The dissolution of the Office of the Minister of State for Women's Affairs in 2019 and subsequent closure of its replacement ministry reflect the fragility of institutional commitment to gender-responsive reform (NCLW & ESCWA, 2021). CEDAW, ratified by Lebanon in 1997, obligates the state to eliminate discriminatory legislation — yet Lebanon maintains reservations on the very CEDAW articles most relevant to labour and personal status law. What has held reform back is not technical complexity but political economy: the interests of recruitment agencies in maintaining the Kafala system (demonstrated by their successful legal challenge to the 2020 standard contract), the interests of employers in maintaining gendered informality, and the absence of a political constituency with the institutional power to overcome these interests.

At the first level of reform — necessary but insufficient — a decolonised approach would require: repeal of Article 27 and Annex 1 in their entirety, since their prohibitions have no legitimate safety rationale not already covered by gender-neutral occupational health legislation; extension of Labour Code protections to domestic workers, overturning Article 7's exclusion; addition of enforcement mechanisms to Article 26, since an anti-discrimination provision without penalties is an aspiration rather than a protection (ILO CEACR, 2020); explicit extension of Article 26's clothing clause to protect religious dress; and introduction of statutory shared parental leave, replacing the current system in which care work falls invisibly on mothers' annual leave (SAWI/AUB, 2022).

At the second level — the genuinely decolonial — reform would require reconstituting the law's foundational categories. The Lebanese Labour Code's implicit norm of the protected worker is a full-time, formally employed, industrially located male worker. Women are accommodated as a special category within this norm, rather than the norm being reconstituted

around the actual diversity of working lives. A decolonial reconstitution would place at the centre of labour law's protective mandate the forms of work currently at its margins: domestic work, care work, agricultural work, informal work. It would require, in Santos's (2016) terms, an 'ecology of knowledges' — the recognition that women workers' knowledge of their own working conditions, the knowledge embedded in the tobacco workers' demands of the 1930s and 1940s, and the knowledge of migrant domestic workers about the conditions the Kafala system produces, are all legitimate epistemological inputs into law's construction. It would require, in Lugones's (2010) terms, attending to the modern colonial gender system that the law reproduces and seeking legal categories adequate to the lived realities of women who were rendered 'non-women' by that system.

A genuinely decolonised Lebanese labour law would begin not from the question of what protections women require, but from the question of what rights women workers have historically demanded and been denied — and would require listening to workers rather than legislating in their name. The tobacco workers make this demand concrete: for fifteen years, from the 1930 protest at the government's central office in Beirut to the enactment of the Labour Code four months after Warda Boutros Ibrahim's death in 1946, women workers demanded wages, job permanency, pension rights, and the right to organise. The state responded with maternity leave and industrial exclusion. A decolonised law would return to those demands — not as historical curiosities but as the suppressed political agenda that the 1946 Labour Code was designed to deflect — and would ask what it would mean to finally answer them.

8. Conclusion

The Lebanese Labour Code of 1946 is a postcolonial document that is not yet post-colonial. Its founding gendered architecture — the exclusion of women from nineteen industrial categories,

the effective exclusion of domestic workers from the law's entire scope, the absence of enforcement for its formal equality provisions, the invisibility of care work, the failure to protect hijab-wearing women, and the structural child sick leave gap — was designed under French Mandate administration and has been reproduced, with modifications but without fundamental revision, across eight decades of independent Lebanese governance.

This paper has argued that the law's central mechanism is what it calls protective exclusion: the construction of women as a category requiring protection, and the use of that protection as the legal instrument of economic limitation. The Mandate's paternalist grammar — which Thompson (2000) documents as having treated gender as a central battlefield of colonial governance — was not dismantled at independence but encoded into the republic's labour law. The suppressed history of women tobacco workers' resistance — from the 1930 protests to Warda Boutros Ibrahim's death in 1946 — reveals that the law was the state's legal answer to organised women's demands, answering those demands by encoding their suppression into statute.

Reading the law through the intersecting frameworks of Kandiyoti (1988), Abu-Lughod (2013), Lugones (2010), Segato & Monque (2021), Fricker (2007), and Lobato (2026) reveals a document that simultaneously recognises women as workers and administers them as a protected/excluded class. The law speaks of women universally while differentiating their treatment along lines of race, class, religion, and nationality — producing a hierarchy of women workers in which some are partially protected, others symbolically acknowledged, and others entirely outside the law's scope. This hierarchy is colonial in its genealogy, intersectional in its effects, and epistemic in its silencing of women workers' own knowledge of their conditions.

A decolonised Lebanese labour law would require two levels of transformation: the reform of specific discriminatory provisions, and the reconstitution of the law's foundational categories

around the actual working lives of Lebanese and migrant women. The first level is necessary but insufficient. The second level — interrogating the Eurocentric standard employment relationship, the marginalisation of care and domestic work, and the epistemic exclusion of women workers from the knowledge that produces law — constitutes the genuinely decolonial task.

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