CHAPTER 12

Conclusion

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12.1 Introduction

This book started off its analysis with the promise of finding out whether states, which were handled by the contributors, present similarities or differences in the way that they fail in achieving gender equality. As demonstrated in each chapter, the states have taken progressive measures in addressing gender inequality over the last few decades, yet challenges and backlashes remain. Discriminatory legal practices and social norms are still pervasive; women and sexual and gender minorities continue to face unequal treatment, prejudice and violence. On this final note, by drawing upon the case studies presented in each chapter, we aim to bring together the patterns that the states present in how and why they fail in achieving

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gender equality. We observe that there are four overarching reasons why the states studied in this book fall short in bringing justice to gendered matters: (1) the states' tolerance of friction and ambiguity in laws, (2) the states' inertia in fully pursuing a human rights-based approach, (3) the states' oversight of intersecting marginalisation of women as well as sexual and gender minorities and (4) the states' problematic approaches towards gender-based violence. Each of these themes will be discussed in turn below.

12.2 Understanding State Failures: Friction and Ambiguity in Laws

12.2.1 Friction Within Laws

One of the most prominent findings that this book repeatedly reached is that the friction within the normative systems of the state plays a significant role in states' failure in achieving gender equality. The friction that we call here, and that can also be identified as disharmony, discord or inconsistency within the law, presented itself in mainly two forms throughout the book. The first form of friction is the one where national laws are not synchronised at subnational, regional and local levels. Eskelinen's analysis of Chinese land law and Davies' analysis of gender equality guarantees of Spanish constitutional law clearly illustrated such incompatibility between the national and subnational planes. The second form of friction is the one where laws that promise gender equality are present alongside the laws and policies that pose a threat to gender equality at the same time in the same jurisdiction. Guney's chapter on Turkey's implementation of the Istanbul Convention and Love's analysis of the UK's legal framework on the parenthood of trans men demonstrated reflections of this type of friction, and we will unpack the particularities of these cases below.

With regards to the first form of friction, Eskelinen's chapter has been illustrative of the incompatibilities of law between national and local levels. She demonstrated that there are national laws in China in line with the government's international commitment to women's rights and eliminating socio-economic inequalities suffered by Chinese women, especially those in rural areas. At the local level, however, state agencies have been reluctant and ambivalent in implementing these laws. The main cause of this failure in implementing national laws is that gendered social norms and local customs in rural counties are preserved by governmental

agencies and village councils in China. Eskelinen demonstrates that these norms and customs are embodied through local and family practices that deprive rural women of land contractual rights and land operation rights. These women's precarious situation has been aggravated by the *hukou* (household registration) system in China (Liu, 2005), which institutionalises gender stereotypes against women, including those about wives, daughters, divorced women and widows.

In a similar vein, Davies' chapter demonstrates that in the decentralised state of Spain the creation of *Stado de las Autonomías* (state of autonomies) with their own legislative character and competence has led to confusion and uncertainty over legal precedence on matters including gender-related laws. This tension between federal and autonomous states' laws is observed in RyanAir calendar case, which questioned the legality of gender stereotypes in Rynair advertisement campaigns. The case was taken to a Spanish regional court in Malaga to apply the progressive definition of gender stereotypes from the Gender Violence Act (2004). The conflict here was that the Gender Violence Act (2004) was a national law, and yet the applicants took the case to a regional court. This raised the question regarding whether or not the court in Malaga could interpret national legislation, such as the measures within the Gender Violence Act (2004). In the end, the court's jurisdiction over the Gender Violence Act was confirmed, and the act was successfully applied to the case, where the court decided that RyanAir was in violation of the act. Although, the tension was resolved on behalf of women through a progressive reading of gender stereotypes and sexism in advertisement on the grounds of the Gender Violence Act in the end, this case still illustrated how the distinction between national and regional (or local) laws and practices can raise confusion over jurisdiction on gender-related matters.

The second form of friction within the normative systems is when oxymoronic policies and laws that are adopted simultaneously by states. This book provided insight in these instances in both Turkish and the British contexts. With regards to Turkey, Guney's chapter revealed that, in implementing the Istanbul Convention, Turkey has been taking a twofold approach in addressing gender inequality which fundamentally contradicts with one other. She argued that the 6284 Law (2014), which was enacted following the ratification of the Istanbul Convention, brought effective measures in the special context of gender-based violence against women by taking a woman-centred approach, granting legal protection to women on an equal status regardless of their marital status, and ensuring a wide

range of civil measures, such as prevention and protection orders. In particular, civil measures were broadened to the extent that the monitoring body of the Istanbul Convention (GREVIO) expressed its appreciation on this matter in its country report to Turkey. Although this law was promising in challenging violence on many fronts, Guney demonstrated that the Turkish government, at the same time, took controversial political and legal initiatives that seriously endanger women's equal status in society. These included the statements of high-level representatives of the Turkish government on limiting women's behaviour in the public sphere, diminishing women's social role to only motherhood as well as legal attempts to re-criminalise adultery and prohibit abortion. This presented a clear portrayal of Turkey's twofold approach where gender equality is simultaneously promoted and yet threatened at the same time.

On the other hand, Love's chapter, analysing *repronormativity* and how it is embedded in English law, presented a picture which can be interpreted as a form of contradiction in a similar vein to the one in Turkey. In Love's chapter, we heard about the story of Freddy McConnell, a trans man who gave birth to his son and wanted to be registered as the child's father. His request was rejected by the General Register Office, and later this decision was upheld by the high court on the ground that the term "mother" is the "status offered to a person who undergoes the physical (…) process of carrying a pregnancy and giving birth" with reference to the Human Fertilisation and Embryology Act (HFEA) (2008).

The McConnell case presents two distinct approaches in the UK that are inherently contradictory in achieving gender equality. On the one hand, it becomes clear in this case that the law legally recognises McConnell as a man, and this is not debatable. Indeed, McConnell's legal gender identity is that of a man, as per the Gender Recognition Act (2004), which allows people to change their legal gender. Although this law has been subject to criticism on numerous grounds, particularly due to the medical evidence that it requires, this legislation is still a significant achievement for transgender rights in the UK. This law is undeniably progressive and is a huge step towards gender equality, considering that there is no such right given to transgender people who experience gender dysphoria in many countries. Yet, on the other hand—via the McConnell case—the UK fails to marry the legal gender and the parenthood status by explicitly rejecting the possibility of registering McConnell as a "parent" in the birth certificate. This presents a bizarre discrepancy in the UK, where, on the one hand, the social gender is recognised and legalised (via the Gender

Recognition Act (2004)) and on the other hand, as noted by Love, it is entirely disregarded in the context of parenthood (via the Human Fertilisation and Embryology Act (HFEA) (2008)) through a biological view that sees parenthood as being exclusively defined as a physical/reproductive experience.

These two chapters are indicative of the fact that complex, and sometimes contradictory, laws and policies exist in a country simultaneously and symbiotically. This also reminds us that law, as a body of norms and authority, is not always a coherent entity in itself, and it could exist and survive with its inconsistencies. In terms of gender equality, certain positive developments in law do not guarantee the departure of negative laws, policies and administrative practices. Guney and Love's chapters therefore remind us of the need to evaluate gender laws and policies not on a strict case-by-case basis, but from a holistic point of view.

12.2.2 Ambiguity of Law

In addition to the frictions or inconsistencies within law and policy, this book demonstrated the challenges that the ambiguity of law poses to gender equality. Throughout the book, we observed that although there are laws in place to promote gender equality, the ambiguity of legal terms, namely legal loopholes, creates a space for the enforcers and practitioners to interpret these laws otherwise. It was seen that these legal loopholes were often filled with ideologies and practices that threaten gender equality, disregarding the original intentions of laws.

Two particular chapters were illustrative of these ambiguities. Davies' chapter demonstrated that although the Gender Violence Act (2004) of Spain is a proactive piece of legislation through its strong measures against gender stereotypes in advertisements, the ambiguity of the terms it encompasses constitutes a problem for its effective implementation. In fact, he underlined that reification, sexualisation and gender stereotypes have lax and vague definitions, and Autocontrol, the advertising self-regulatory body, does little to develop clear definitions for these terms. The courts and Autocontrol therefore fall into a conundrum in applying the law: if these terms are applied too broadly, then courts face the risk of catching all forms of gender stereotypes that may or may not be sexist, misogynistic or harmful, and yet, if applied too narrowly, advertisements may not be caught at all.

Another example of this ambiguity can be observed in Grosso's chapter. She showed us that with legal reforms Tunisia has aimed to address the inequality between wives and husbands in the divorce proceedings. Despite all of these positive developments in law, Grosso revealed that when the laws had ambiguity in defining the harm that the individuals experienced, the courts and judges filled in the legislative gaps by facilitating and safeguarding traditional gender norms in practice. As a matter of fact, the judges have implied that these cases represent not merely legal but also moral and social judgements that involve "ethical work"—an invisible function of judicial settlement of family disputes—in order to maintain social and familial stability. In other words, the obscurity of law enabled the judges to hold up "moral work" against the interests of women that are involved in the divorce proceedings. We should be reminded that although legal ambiguity has prevented the law from realising its full promise for gender justice in the case of Tunisia, as Moscati (2020) notes, it can also be used to promote social change, all at the discretion of the interpreters of law. However, the absence of clear definition of concepts and terminologies is also where arbitrariness of legal practices arises. Therefore, the clarity of laws within the law-making process is essential to prevent forms of potential interpretational problems which would negate the positive intentions of law with regards to gender equality.

12.3 Human Rights-Based Approach to Gender Equality: Where Do States Fail?

The advantages of a human rights-based approach to tackling gender inequality have been studied and discussed extensively. Some of the most apparent positive implications of a human rights-based approach include that the state responsibility for addressing gender inequalities would be reinstated, and, in turn, the rights-holders would possess a stronger hand for their claims. Beyond these benefits, a human rights-based approach could be vital to addressing the problems presented in the previous section—namely, to address inconsistencies in laws and legal practices between national and subnational levels, reform problematic laws that are in force, and interpret vague laws to the best interests of women. This is because a human rights-based approach proposes a holistic and unified perspective and guideline on women's equality and rights, and, therefore, the problems mentioned above can be addressed in the light of the

international human rights norms, principles and standards regarding gender equality.

Despite these advantages, states rarely effectively fulfil this approach. This book detected three main reasons for states' failure in successfully implementing a human rights approach towards gender equality, and these are the utilisation of religion and culture as a ground of justification for sacrificing gender rights, states' failure in striking a fair balance between competing rights, and the lack of rights consciousness among citizens. To be more precise, the problems include (i) states relying on the so-called culture, tradition and religion to promote gender policies that are fundamentally discriminatory, (ii) states failing to respond to the competition between rights by tolerating violence against the powerless and (iii) states only paying lip service to human rights without promoting the understanding of human rights at a public level. In fact, various states that are scrutinised in this book are found out to experience, sometimes even to facilitate these problems, and we will reiterate the links between these states below.

Starting with culture defence, it is not strange to learn that states often invoke religious and traditional norms to legitimise the making (or unmaking) of law and policy, particularly regarding the status and rights of women and minority groups. As shown in Guney's chapter, for example, the Turkish government and ministers have referred to the nation's traditional cultural values to justify the limitations set to women's enjoyment of equal status and rights, in the context of implementing the Istanbul Convention. In fact, the Committee on the Elimination of Discrimination against Women (CEDAW, 2016) has expressed its concern about this development regarding Turkey's state report, stating that "high-level representatives of government have, on several occasions, made discriminatory and demeaning statements about women who do not adhere to traditional roles" (para. 28). In her analysis, Guney demonstrates the way in which religious or traditional norms are made into legal instruments—beyond merely social and symbolic tools—despite the fact that secularity is one of the constitutional principles in Turkey (Art 2 of Turkish Constitution).

On the other hand, Rashid and Rashid's chapter demonstrated how the religious and cultural position of the governing powers in Pakistan had a significant impact on policies regarding the status and rights of sexual and gender minorities throughout history. They demonstrated that during the Islamic rule *hijras* and *khawaja siras* enjoyed better social status and legal

protection. Yet, this declined dramatically under the British colonial rule, which defined transgender persons as "immoral" and "most shameless and abominable", as culminated in the Criminal Tribes Act (1871) and the Dramatic Performance Act (1876). These colonial laws have changed social norms permanently, even after the partition and in the postcolonial era. Sexual and gender minority persons have thus been suffering such a colonial legacy, which justifies their disenfranchisement and the lack of social acceptability as contrary to the Islamic teaching. As a result, we once again see religion and cultural norms acting as state tools and having a direct impact on the laws and policies on the rights of sexual and gender minority communities.

Rashid and Rashid's analysis also makes a strong case for "postcolonial" critique of transgender rights, by reminding us that sodomy laws criminalising homosexuality exist in many former British colonies, and Pakistan is one of them. The criminalisation of homosexuality with the long-standing effect of British colonialism challenges the presumption that Western liberal values are inherently supportive of gender equality. This also brings into doubt of the so-called *universalism* of human rights which were fundamentally established on Western liberal values (Mende, 2021).

Overall, both Guney's and Rashid and Rashid's chapters are a reminder of the infusion of religion into state laws and policies with regards to gender equality in an explicit or implicit manner. It should also be underlined that in cases of both Turkey and Pakistan, the so-called religious and traditional norms are invoked to limit rather than improve the rights of women and sexual and gender minority members. This also affirms the suspicious approach towards culture claims overall. As noted by Choudhury (2008), culture is almost always invoked and defined by the elites of societies and power holders (who are mostly cisgender, heterosexual men), and thus preserves and promotes existing power structures, dynamics and status quo.

In addition to the culture threat to the universal application of the right to gender equality, the second problem presents that the rights can compete and contradict with one another. To be more precise, guaranteeing an individual or a group's right to equality may interfere with the other rights of different groups. Juggling competing rights stifles legal reform and sometimes leads to inaction. Both Neller's and Davies' chapters demonstrate that the UK and Spain have an obligation on the one hand to uphold gender equality as a fundamental right and yet on the other to also safeguard freedom of expression. In Davies' case, he argues that, unlike

most EU member states, Spain has underscored the regulation and illegality of gender stereotypes in advertising by limiting the neoliberal and market-oriented version of freedom of expression in favour of gender equality. In Neller's analysis of hate crime legislation in the UK, however, we observed that women's equality—who suffer from intersecting forms of discrimination—is often sacrificed for the sake of freedom of expression.

There are different approaches towards alleviating the tension between right to equality and freedom of expression. Two decades ago, Bunch (1990) reiterated that human rights are not primarily about civil and political rights (such as the freedom of expression). She noted that granting civil and political liberties with superiority over the other rights would not only constitute a narrow understanding of rights but also ultimately impede consideration of women's rights. In emphasising how gender equality is as important as the so-called first-generation civil rights are, she stated:

> Sex discrimination kills women daily. When combined with race, class, and other forms of oppression, [sex discrimination] constitutes a deadly denial of women's right to life and liberty on a large scale throughout the world. (Bunch, 1990, p. 489)

However, this view which does not supersede civil rights (such as freedom of expression) over equality rights is not shared across every state and every jurisdiction. For example, as Boyle (2001, p. 494)) noted in his analysis of hate speech, "Unlike many other states the US courts to give a higher weight to speech than to the counterbalancing interests", including the protection of others, that is, women. Ultimately, questions over which right trumps the other depends on the political philosophy of that which the normative system is withholding. In a Western-oriented liberal approach such as the US, civil rights are often prioritised over the equality rights, whereas in other jurisdictions (such as South Africa) the constitutions may grant a vast scope to equality rights and guarantees. Within the scope of this book, which focuses on gender equality, we find it useful to note that, as reiterated by Edström and Svensson (2014), gender equality is not any less fundamental for a democratic society compared to freedom of expression, and this is confirmed by the Council of Europe, which considers "democracy and gender equality to be interdependent and mutually reinforcing" (2014, p. 483).[1]

The third problem regarding effective implementation of the human rights-based approach is that more often than not states fail to raise awareness about human rights and promote local rights consciousness in civil society. Awareness-raising campaigns are no less significant than legally available rights. The legal rights lose their practicality and therefore their potential for social change, without the knowledge about them. In Frańczak's chapter, when discussing the challenges against realisation of women's rights, she reminds us of the urgent need for raising awareness to tackle gender stereotypes. She argues that the absence of related educational programmes indicates the state's reluctance to fulfil its commitment to creating the context for gender equality. That is, the lack of campaigns and training has become a central concern regarding the states' failures to promote gender equality.

Similarly, Lukera's chapter shed some light on the everyday lived experiences of sex workers and the problems they encounter in Kenya. The magnitude of issues the sex workers face day-to-day manifest from the wilful lack of human rights knowledge amongst law enforcers and community leaders. Similarly, Davies' chapter demonstrated that this need was also imagined in Spain's Gender Violence Act, which requires all public authorities (beyond just advertisements) to provide awareness campaigns on sexist components of advertising, targeting both the regulators and the public. Altogether, these chapters imply that the law's moral legitimacy lies in law enforcers' efforts and consciousness to promote an understanding of the human rights among the rights holders. As Hintjens (2008) remarks, support for awareness-building is important for human rights protection to an extent that the absence or existence of such indicates the genuineness of a state in its commitment to ensuring gender equality.

12.4 Feminist Thought and Lives of "Others": Intersectionality and Gender Binarism

When it came to drawing out the themes and frameworks for this book, it was palpable that we should identify intersectionality and the exclusory rights of LGBTQI people and other sexual and gender minorities as core refrains. By this we mean that we saw a common thread running throughout the chapters—that despite a state's best efforts to bring about positive gender equality legislation, it often overlooked, misunderstood or forgot the intersecting lives of "others" whilst drafting or implementing law and

policy. The two prevailing themes of intersectionality and LGBTQI rights that make up for this omission are apparent in segments of the book. In applying an intersectional lens, Neller's, Winstone's and Frańczak's chapters invite us to consider the power dynamics between multiple co-existing identities and the connected systems that oppress (Romero, 2017). In order to understand how law is projected on to transgender identities, Rashid and Rashid along with Love call for the law to continually adapt to the changing social, political, cultural and linguistic attitudes.

Whilst reflecting upon these themes, we can see the application of intersectionality within Winstone's chapter when she considers the lack of retention and progression of women solicitors in England and Wales. When reflecting upon the co-existing identities that occur within the legal sector, Winstone specifically identifies those women who are often absent, namely Black, Asian and minority ethnic (BAME) and working-class practitioners. This problem has been tangible for the last two decades in England and Wales (Sommerlad, 2002), with the lack of progression and retention only being confronted relatively recently (Davies, 2018; Aulack et al., 2017). Winstone's response is to apply a *practical intersectional socio-legal* approach to the problem that endeavours pragmatic solutions within the workplace: flexible working, job shares, career breaks and "returnships". Solutions to the gaps in the legal sector are frequently grounded on intersectionality, which is perhaps where legislation such as the Equality Act (2010) is lacking. An institution, such as the legal profession, that is dominated by white, male, middle-class, cisgender practitioners is a stark reminder of the chasm between substantive equality such as that imagined in the Equality Act and the lived experience of women within that sector.

In Neller's chapter, we can equally disseminate how intersectionality has been overlooked or forgotten in the drafting of hate crime legislation in England and Wales and the gap between "law in books" and the lived experience of women when they are victims of hate crime. In her chapter, Neller identifies how the UK parliamentary debate neglects the intersection of gender with other categories, notably sexual orientation and race, when formulating hate speech legislation. In this sense, legislators ought to recognise the intersections and malleability of gender if they are to produce "good" and meaningful law. An intersectional understanding of hate crime has long been called for (Mason-Bish, 2014) as has been the need to circumvent the often-hierarchical and the "silo" effect of hate crime

categorisations (Mason-Bish, 2014; Chakraborti & Garland 2012; Neller, 2018).

Likewise, Frańczak's chapter indicates the omission of women of colour, women living in poverty, migrant women and non-binary persons when drafting international legalisation that aims to eradicate gender stereotypes (CEDAW, Beijing Platform et al.). Overlooking these intersections has led the law astray and exposed it to liberal feminist approaches that inevitably (re)produce and (re)enforce stereotypes (Cook & Cusack, 2010). By challenging the status quo of universality of women's experience, Frańczak argues that without accepting that gender intersects with other forms of discrimination, the construction of anti-stereotyping laws will inevitably replicate stagnant stereotypes by representing the dominant and "valid" experiences of women.

Applying an intersectional lens quickly reveals fissures in the drafting process and implementation of legislation; it can also reveal how interconnected systems and institutions oppress. For example, in both Love's and Frańczak's chapters, heteropatriarchy shapes and codifies laws relating to transgender identity and gender stereotypes rendering the law as reductive and based on gender binarism. In Neller's chapter, we encounter the same institutional limitations and blind spots: "whiteness" as the standard (racial privilege), thus hindering the progress of hate crime legalisation protecting Muslim women. Across the chapters, it is evident that debates surrounding gender equality quickly become fixed in traditional gender binarism with the legislative process overlooking the rights, voice and experience of LGBTQI persons. What is more is the lack of proper recognition, respect and dignity of transgender persons in legislation; with non-binary identities often misunderstood, forgotten or overlooked in the legislative process. This manifests in the lack of the pronoun "they" in Pakistan's laws on transgender people, as seen in Rashid and Rashid's chapter, and the legal right to father a child, as seen in in Love's chapter. This is of course a very concerning prospect as law is habitually a reference point for which marginalised groups look towards when it comes to non-discrimination and equality claims.

In Love's chapter, this neglect of co-existing identities is revealed within the biopolitics of the state as it legislates not just what is considered as acceptable or respectable bodies, but it also limits notions of family, motherhood and identity as biological essentialist concepts. Love's chapter shows us how legal systems from around the world still do not allow—or make it difficult—for transmasculine and non-binary people to be legally

recognised as father or mother of the child. Two recent case studies from Israel and the UK are highlighted, whereby both states' legal framework of the dominant *repronomative* order limits parents as binary (cis) male/female couple, thus excluding the right of transparents to be registered as parents. In Israel, there is no hostile law or policy that disallows a trans man to register as a father; rather, there is a clear lack of positive or gender-friendly law allowing him to do so. Such ambivalence in this area is commonplace. In the UK, Love argues that despite opposition from trans-exclusionary radical feminists, there is a need to reform legislation so that it incorporates the rights of transmasculine and non-binary people so that it allows for a definition for individuals that give birth as fathers. As Love's chapter alludes to, legislative reform in this area is never free from spectacle or problems—reforming legal systems that are built on heteropatriarchal assumptions takes time.

Rashid and Rashid's chapter reflects upon seemingly progressive gender-friendly legislation protecting third genders in Pakistan and how the unique transgender identity of *hijras* and *khawaja siras* have been formally recognised through the Supreme Court Orders and the issuance of national ID cards. As we have seen in other chapters, a progressive "one step forward" approach to legal reform that guarantees rights and obligations is frequently followed by "two steps back" discriminatory implementation or a lack of a viable roadmap to equality. In Pakistan, the transgender community are still positioned as auxiliary or second place. This is largely due to traditional norms and values that still blight the pathway for acceptance and equal treatment of the transgender community (Shah et al., 2018); but it is equally due to the continued stereotyping and pathologizing of trans identity as "disorder" or "disability" (Klinefelter syndrome) that restricts access to key services such as health and education (Fazil, 2020). Moreover, with Rashid and Rashid's chapter, we can also see the familiar "law in books" versus the sociolegal "law in action" maxim (Banakar & Travers, 2005), in which the law is construed as symbolic, short-sighted and insufficient, whereas what is required is a more radical, far-reaching human rights approach reflecting dignity and respect as well as more public awareness campaigns to ameliorate the perception of status of transgender people. Altogether, these are mainly due to the heteropatriarchal understanding of gender stereotypes and law: women as mothers, carers and homemakers.[2]

When it came to drawing out the themes and frameworks for this book, it was palpable that we should identify intersectionality and the exclusion

of the rights of LGBTQI people and other sexual and gender minorities as core themes. By this we mean that we saw a common thread running throughout the chapters, and that despite a state's best efforts to bring about positive gender equality legislation, it often overlooked, misunderstood or forgot the intersecting lives of "others" whilst drafting or implementing law and policy. The two prevailing themes of intersectionality and LGBTQI rights that make up for this omission are apparent in segments of the book. In applying an intersectional lens, Neller's, Winstone's and Frańczak's chapters invite us to consider the power dynamics between multiple co-existing identities as well as the connected systems that oppress (Romero, 2017). In order to understand how law is projected on to transgender identities, Rashid and Rashid, and Love call for the law to continually adapt to the changing social, political, cultural and linguistic attitudes.

12.5 Gender-Based Violence and the Criminalisation Paradigm

In its broad analysis of gender equality, this book specifically provided interesting insights into different forms of gender-based violence. Some of the chapters illustrated current patterns in relation to the definitions and scale of *violence* as well as variety of dynamics that surround it. For example, Guney's chapter demonstrated that in Turkey domestic violence rates exceed the ones across Europe, and domestic violence is heavily influenced with gendered practices that are caused by Turkey's unique traditional and cultural practices, such as religious marriages (legally non-recognised), polygamy, arranged marriages and so on. Guney's chapter also demonstrated that Turkey has enacted a progressive law (the 6284 Law) to provide more efficient responses to gender-based violence against women which is a positive step towards the elimination of the problem.

On the other hand, Davies' chapter revealed that Spain defines violence against women in a broad symbolic or zemiological sense (Bourdieu, 1979), so as to include harmful gendered stereotypes in advertisements, more specifically, "the use of a woman's body (or part of it) detached from the advertised object (reification) or using an image that portrays women in stereotyped behaviour(s)". This indicates how states can take initiative to adapt a wide definition of violence in their legislation, and violence does not only have to consist of traditional categories, such as sexual and physical violence but can also include harm, objectification or subordination. In

a similar vein to Turkey, Davies demonstrated that Spain has also taken a positive step towards addressing gender-based stereotypes in advertising by enacting the Gender Violence Act (2004).

In addition, Lukera's chapter sheds light on a wide range of types of violence that sex workers experience in Kenya. These include the refusal of payment or payment with fake money, conducting sexual behaviours beyond what was consented, physical violence and so on. Together with the stigmatisation and social exclusion pertaining to sex work, it once again becomes clear that violence has its own dynamics depending on cultural and political environment that it is surrounded with, and the laws and policies should be designed by taking into account these particularities.

Besides these findings in relation to gender-based violence, this book has demonstrated that the *criminalisation* approach is utilised to address gender inequalities via two different paradigms. The first paradigm, which is explicitly related to gender-based *violence*, is that, as Guney's chapter demonstrated, the Istanbul Convention obliges the states, besides ensuring civil law measures, to criminalise various forms of violence against women. Looking at the Convention, the forms of violence to be criminalised include psychological violence (Art 33), stalking (Art 34), physical violence (Art 35), sexual violence (including rape) (Art 36), forced marriage (Art 37), female genital mutilation (Art 38) and forced abortion and forced sterilisation (Art 39). In this regard, the first criminalisation paradigm that the book revealed is that the Istanbul Convention, as an international treaty, requires states to bring criminal legal measures to address violence against women, which is an assertive approach, and constitutes a strong interference in the domestic criminal legislation and proceedings. In fact, Chinkin (2012) stated that the Istanbul Convention is of a hybrid nature, as it can be regarded as a criminal law treaty, as well as an anti-violence treaty and an equality treaty.

At this point, it should be reminded that this approach is not immune from criticism. Criminalisation as a legal method to fight against gender-based inequalities, and violence has been extensively discussed within feminist literature and has encountered heavy critiques (Kethineni & Beichner, 2009; Goldfarb, 2007; Coker, 2001). One of the most prominent objections to criminalisation is its inherent individualist view of justice (Meyersfeld, 2010). In other words, criminal law views the violence as an act occurring between particular individuals at a particular time, disregarding the social circumstances and structural dynamics that leads to the act

in question. It is merely interested in bringing justice at an individual level for each particular case by losing the sight of the root causes of violence (Gruber, 2009). As a result, patriarchal social structures and social injustices amounting to the disproportionate victimisation of women are ignored, and therefore the law is reduced to a level where it is unable to address gendered structures, which, nonetheless, should be the main purpose of law (Gruber, 2009). Also, this approach would fail to contribute to empowering women in society overall and hence to eliminate the subordination of women, the main cause of violence (Gruber, 2009).

Although it is true that criminal law is inherently individualist, it is doubtful whether it would fail to empower women. On the contrary, criminal law can be utilised to achieve this goal, and thus can be considered as an effective tool. If violence is perceived from a monopolised point of view, which suggests that women do not have power while men do, and violence is simply a reflection of the power inequality between women and men, a firm state interference is necessary in order to correct this situation that negatively affects women as a whole. By criminalising gender-based violence and punishing the perpetrators, the state actually plays the role of neutralising this power inequality on behalf of women (Gee, 1983). In each conviction, the state once again gives the message that violence cannot be tolerated, and that when it happens, the state mechanism is there to punish the perpetrator. This in turn contributes to the destruction of the institutionalised male dominance (Gee, 1983).

The second *criminalisation* paradigm that this book presented was not specifically about gender-based violence, but rather was a reminder of a long-lasting problem and a prevalent practice, namely stripping LGBTQIs persons and sex workers of their rights by criminalising homosexuality and sex work. Rashid and Rashid highlighted that homosexuality is still criminalised in Pakistan, and Lukera showed that sex work is criminalised under the Penal Code in Kenya. It is true that the criminalisation of homosexuality is not a rare phenomenon. According to ILGA's (2020) report on *State Sponsored Homophobia*, although some states, including Sudan, Angola, Gabon and Bhutan, have taken steps to decriminalise or reduce the punishment over the last few years, there are currently "67 UN Member States with provisions criminalising consensual same-sex conduct, with two additional UN Member States having *de facto* criminalisation" (pp. 24–25).

On the other hand, although sex work is contentious within the feminist literature, particularly between liberal and radical feminist schools,[3] it is well demonstrated that criminalising sex work has dramatic negative impacts on women who live off sex work, including repressive policing,

deprivation of sexual and reproductive rights, and lack of employment guarantees and so on. Moreover, both Rashid and Rashid and Lukera showed that there is currently no legal or political initiative in Pakistan or Kenya to decriminalise homosexuality and sex work, respectively. This is concerning, and does not give much hope for a positive change in near future. Furthermore, it should be recognised and borne in mind that the criminalisation of homosexuality and sex work are both discriminatory in nature. As reiterated by the UN Office of the High Commissioner (2011) and as argued elsewhere (Human Dignity Trust, 2015), criminalisation of homosexuality is an explicit form of discrimination on the ground of sexual orientation, and similarly, as argued by Amnesty International (2016), criminalisation of sex work constitute a discrimination on the ground of employment and contributes to the discriminatory practices against sex workers in accessing housing, health and social services (SWARM, 2019).

Notes

1. See Recommendation CM/Rec(2013)1 of the Committee of Ministers to member states on gender equality and media (COE, 10 July 2013).
2. See, for example, the Irish Constitution's inclusion of motherhood: Article 140 (1) proclaims that the state will "endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home".
3. Overall, whereas liberal feminist approach considers sex work as an individual choice and therefore as a form of sexual liberty and women's empowerment, radical feminist camp argues that sex work is ultimately a form of oppression and therefore contributes to women's inequality and sexualisation. For debates around this issue, see Beran (2012); Sloan and Wahab (2000).

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