CHAPTER 1

Introduction

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1.1 The Context

This book is the product of an international and interdisciplinary conference that was held at the University of Sussex, UK, in 2018. The primary aim of the conference was to have a closer look at the reasons and impacts of numerous problematic legislation and policies that have been adopted across the world over the last decade and which had a destabilising effect on gender equality and justice. There have been some notable examples in this regard: Poland has reintroduced restriction on women's right to abortion in 2020 (Calkin & Kaminska, 2020); the debate over the so-called foetal "heartbeat" bills in Taiwan (Liu, 2020) and the ephemeral unconstitutional anti-abortion state laws have been heated in the US and

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internationally since 2019 (Bakst, 2019; Evans & Narasimhan, 2020); Russia has partially decriminalised domestic violence in 2016, despite the outcry from activists and victims (Semukhina, 2020). As a pandemic swept Europe (Kuhar & Paternotte, 2017), the mobilisation of "anti-gender", anti-feminist and misogynist discourse in the political and policy domains has its global resonance in, for instance, Brazil (Hunter & Power, 2019), India (Rothermel, 2020) and South Korea (Kim, 2021). In this light, it would not be an exaggeration to contend that the last decade marks a global crisis of gender equality.

All of these problematic *anti-gender* laws and policies came into existence during the same decade in which new international laws and initiatives were simultaneously adopted to promote women's rights and gender equality. The positive international developments include, just to name a few, the following: the Council of Europe adopted its first legally binding instrument that is specifically devoted to gender-based violence against women ("the Istanbul Convention"); the Committee on the Elimination of Discrimination against Women updated its blueprint General Recommendations No. 19 with No. 35 on gender-based violence against women in 2017; the Committee on Economic, Social and Cultural Rights adopted a comprehensive General Comment No. 22 for the right to sexual and reproductive health; the UN Human Rights Council appointed an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in 2016, whose mandate has been renewed in 2019. In addition, the national delegates, at the UN venues, also adopted a Political Declaration on the occasion of the 20th Anniversary of the Fourth World Conference on Women in 2020, not to mention the significant attention given to "gender equality" as one of the 17 Sustainable Development Goals (Esquivel & Sweetman, 2016).

At the international level, the efforts to promote gender equality continued ambitiously in the face of states' problematic attitudes towards restricting gender equality at the domestic level. This is not the first time that our contributors have observed the contradiction between international and domestic systems. The tension between international and national norms has been persistent, and the question regarding which of these two normative systems should have superiority in protecting individual rights has been discussed previously. Traditionally, the internationalist camp has taken the stand for the integration of international norms into the domestic laws and their judicial interpretation, which is recently rebranded as "global constitutionalism" (Wiener et al., 2012; Peters,

2009). At the other end of the spectrum, the constitutionalist school advocated for a more restrictive approach towards integration based on democratic accountability, self-governance and state sovereignty (Powell, 2008). Benvenisti and Harel (2017) suggested an alternative approach based on the "discordant parity" hypothesis, which claims that neither international nor domestic laws are superior to the other, and, moreover, the tension between the two systems should be embraced as it contributes to the evolution and development of individual rights at the end.

The tension, friction and disharmony are not unique to the interaction between international and domestic laws; they can be found within international law as well. Marjan Ajevski (2014) has identified this as "fragmentation" where different international texts and bodies developed different principles towards the identification and realisation of human rights. Moreover, the same tension can also be observed within the domestic normative systems—between national, subnational and local levels—which has been explored with the approach of legal pluralism (Merry, 1988; Benda-Beckmann & Turner, 2018). Ashford and Maine (2020) has also noted the inconsistencies despite the states' repetitive recognition of their human rights obligations in relation to mainstreaming and promoting gender equality. Overall, it becomes clear that the concept of *law* that is to be used in achieving gender equality is a multidimensional, multilayered and, to an extent, a contradictory phenomenon, and this book starts off by acknowledging this.

In the face of this complex nature of law, this book casts its focus on state failures in gender equality. In other words, this book aims to find out how and why states fail in their gender equality laws and policies, and, in doing this, it holds a broad perspective. Namely, the book sheds a light on states' failures in their legal systems that include different levels and forms of law, namely domestic laws, local regulations and the implementation of international law, individually or in combination. While taking state failure seriously and thus holding the governments responsible seems self-evident, once gender equality is not achieved, as noted by Vasiljević et al. (2017), the nuances between how states "failed" is nevertheless an underresearched topic. Considering that various problematic legal reforms have been observed across the globe over the last decade as exemplified above, for this project we feel the need to better understand these backlashes against gender justice and women's rights in law and life.

1.2 Rethinking State Failures

Against the background where tensions and sometimes contradictions between laws at different levels occur, this book represents an eagerness to interrogate the political, social and cultural contexts from which these states' failures have emerged, in contrast to the renewed and even advanced commitments of international agencies to gender equality. Our main purpose is to investigate whether there are similarities, namely repeating patterns, in the way in which the states are unable and/or unwilling to keep their promises to realise gender and sexuality justice. Gender inequality is one of the most discussed topics of this decade, and there is a broad literature on how states individually fail in ensuring gender equality in their laws and policies. This provides a broad basis for a series of case studies (Örtenblad et al., 2017). However, there is a pressing need for an analysis approaching these failures from a perspective that looks beyond written words of different laws, as if these legal systems exist and run independently on their own, as held by the conventional approach to comparative law. Rather, acknowledging the connectedness and interrelatedness between the contexts in which these failures happened, we consider "law as written/stated" versus "law as applied/practised" within a given culture, to use Edward Eberle's (2011) words, and its global implication.

Moreover, the question concerning how gender equality law has *failed* should be answered not only by examining related legal developments; it also requires an analysis of the social norms and trends that have allowed for such legislative change. Informed by such an interdisciplinary approach to the contextualisation of law, in this book, the authors have drawn on data from ethnographic studies, sociolegal studies, the sociology of law, and media and cultural studies. This book, therefore, deploys a methodology where the law is located at the centre while exploring and uncovering the interactions between law and social norms in other forms (Banakar, 2011).

Therefore, while taking sociocultural dynamics into account, all the contributors to this book also consider that, rather than treating the failing of national systems for gender equality as individual cases, to situate the questions in the global context would be vital for developing better policy responses to the problem on both the international and domestic planes. This is to respond to Ratna Kapur's (2018) call for taking into account the non-juridical factors that influence progressive politics and legal agenda and also paying attention to the globalisation of the rights discourse. Thus,

eventually, this book pursues its analysis based on a wide geographical spectrum by including societies that are less represented in academic literature, such as Kenya, Pakistan, Tunisia, China, Spain, Turkey and Israel, in order to properly represent the diversity in the circumstances where the states are or have become reluctant or even resistant to realising gender equality and sexuality justice.

As "gender equality" is the focal point of the book, this collection draws upon various feminist approaches. However, it is also important to highlight that, above all, the book has adopted an intersectional perspective, proposed by Kimberlé Crenshaw (1991) 30 years ago and developed greatly over the past decades, regarding the marginalisation and exclusion of women and sexual and gender minorities. Namely, the disadvantages that women and sexual and gender minorities face are understood to stem from their intersecting social identities (see Mouffe, 1995), such as race, religion, sexuality, class, nationality and so on. Hence, this book challenges the dominant discourse concerning "discrimination" and "inequality" as along a single, independent axis. It does this by paying attention to how discrimination on the grounds of class, race, sexual orientation and gender identity interplays and exacerbates discrimination on the grounds of sex and gender.

The chapters in the volume are organised according to the themes regarding the neutrality, coherence and practicality of law, respectively. That is, this book consists of three parts, and each part will present different states' failures in achieving gender equality under their legal frameworks. In conclusion, we identify the overarching and repeating patterns between states in how they fail in achieving women's rights and gender justice.

1.3 Law Is Neutral, or Is It?

Part I sheds light on the gendered foundations of law, upon which rights and responsibilities are assigned according to a binary spectrum that favours men's interests under a gender-neutral disguise (also see Gina, 2018). To open up the discussion with theoretical engagement, Olga Frańczak's chapter, drawing on feminist legal theory, critically attends to the role of law—including human rights discourse—in tackling gender stereotypes. Frańczak demonstrates that human rights are not gender-neutral, although they are presented as "value-free" in their "universalistic" preposition. Frańczak also detects the complicity of the Anglo-American

liberal feminist approach in sustaining the hegemonic structure that is characterised as patriarchal and paternalistic and positions women as "victims". The ideas around justice represented in and by law are thus androcentric; in this light, Frańczak argues for "soft" law and policy measures as an alternative in addition to the conventional, prohibitive and punitive means of law.

Gillian Love's chapter considers that although the UK and Israel laws recognise the diversity of gender identity categories, by allowing individuals to change their legal gender, they are blind to transgender people's desire for the self-determination of their bodies and reproductive rights. More specifically, Love demonstrates that the relevant legal frameworks do not allow childbearing transgender men to be registered as fathers. Overall, this chapter demonstrates that despite the recognition of gender identity within the law to an extent, the law, as a whole, still holds a very much *gendered* position when it comes to parenthood; motherhood is still defined by the physical and biological experience of carrying a pregnancy. The law also follows an exclusively *binary* route, where parenthood is defined through the lines of motherhood and fatherhood. Identifying this as "repronormativity" of law, Love demonstrates how the laws still reproduce gendered legal subjects (i.e. mothers and fathers) as a result of the states' biopolitical projects.

Echoing the previous two chapters, Sarah Grosso's chapter explores the gendered divorce procedures and experiences as well as women's growing rights consciousness in Tunisia and uncovers that, though aiming to become gender-neutral in addressing family disputes, relevant legal practices have turned out to be blind to women's subjugated positions. The imbalanced relationship between wives and husbands in Tunis has been maintained due to the judges' gendered opinions regarding family, despite the progressive development of marriage and family law reform. Drawing upon anthropological accounts, Grosso has identified the tension in law in multiple forms, such as that between law and cultural norms, between different agents of law and between law (the purpose of law) and legal practices (the application of law). The interpretation and enforcement of law in this regard have become, as observed in the field, not just a legal but also a moral work, which involves judgements about what is good and bad about family and society.

1.4 Law Is Coherent, or Is It?

Part II of the book moves to the question of whether the law is a coherent entity that has consistent implications to gender equality within the jurisdiction where it is applicable. Amna Rashid and Umar Rashid explore the legal reforms that have taken place in Pakistan to ensure equality for transgender individuals initiated by the Constitutional Court in 2009, which recognised "third gender" as a distinct identity category. Their chapter puts these positive developments in context, where they at the same time contradict other legal regulations, such as inheritance laws and penal laws that criminalise homosexuality. This demonstrates the fragmentation and incoherence between positive and problematic laws and policies with regard to gender equality in Pakistan.

Similarly, Pia Eskelinen's chapter portrays how Chinese women's land rights recognised in national legislations are inconsistent with local councils' rulings in practice. The chapter, based on Eskelinen's fieldwork study, explores the barriers facing Chinese rural women for "not having" or "losing" their rights to own, use and dispose of lands, and locates the question in a larger politico-economic context—such as the capitalist economy and urban expansion—that has influenced women's role in China. The tension between law in books (legal rules for equality) and law in action (the inertia of law enforcers at the village level) is obvious. The general practice that deprives women of contractual rights in rural areas and negative legal implications of the change of marital status (e.g. divorcee and widow) have placed these women in a precarious position. Eskelinen thus argues that both legal and social recognition of women's rights relating to land use are the key to empowering rural women and promoting their status in households and communities.

This is followed by Gizem Guney's chapter, which attends to how Turkey has been taking progressive legal steps to eliminate gender-based domestic violence in order to comply with its obligations under the Istanbul Convention while adopting policies that undermine women's equality. As the first state to ratify the Istanbul Convention and the first signatory to withdraw from it after implementing it for six years, Turkey has manifested ambivalent attitudes towards international human rights legal rules regulating gender-based domestic violence. Observing from the various changes in law, Guney finds that Turkey always oscillated between two ends—progressive versus conservative—even before its withdrawal. This situation not only reflects the Turkish government's

insincerity in its political commitment to addressing gender-based violence; it also implies that law can be instrumentalised for political considerations. That is, rather than a single and harmonious body of authority, law is a body that contains multiple principles and practices, which are sometimes contradictory.

Jen Neller's chapter problematises the conundrum regarding the "conflict" between values of gender equality and others such as free speech and multiculturalism. This is both a theoretical and an ethical contradiction. Situating the debates on hate speech legislation in England and Wales, Neller identifies that discourse has been dominated by the overemphasis on potential conflicts between the freedom of expression and the freedom from the harms of hate. Also, Neller argues that the tolerance of misogynistic narratives and the persistent absence of gender in the UK anti-hate law excludes the gender aspect of hate and deprives women of legal protection from hate. With a critical review of the UK parliamentary debate, Neller finds that the Parliament has pretended to be neutral in negotiating and balancing "competing" interests. However, the fact that such a need exists also represents potential *incoherence* inherent to the human rights-based approach to gender equality discourse.

1.5 Law Is Practical, or Is It?

Part III of the book is concerned with gender equality in practice by comparing what the law has pronounced in statutes and the experiences of women in reality. Julia Winstone's chapter draws upon the law's attempts to remove invisible barriers and hurdles women experience within the legal profession in the UK and shows how these attempts have failed due to structural and cultural factors against women's inclusion in this professional field. Despite the numerous legal initiatives to improve the career progression of women in the solicitor profession in England and Wales over the last five decades, in reality the gap persists between participation rates for women and men, with the number of women active in the profession reducing with age and experience. Drawing upon an approach that incorporates the theoretical accounts of intersectionality into sociolegal studies, Winstone explores the barriers faced by women solicitors and argues for practical measures to be developed to bring about a meaningful change.

Drawing on individual and group interviews with sex workers and other stakeholders in Kenya, MaryFrances Lukera's chapter identifies the

tension between the upheld international human rights standards and everyday challenges that sex workers encounter. Lukera underlines the lack of understanding of laws not only by sex workers but also by social workers. Lukera demonstrates how this lack of understanding has resulted in sex workers' distrust in state service providers that makes them tend to look out for non-state, alternative solutions to their problems. Lukera, therefore, advocates a human rights-based approach to sexual health, which requires decriminalising sex work, promoting civil education and cultivating human rights awareness in Kenyan society. These strategies are also crucial in addressing stigmas and discrimination against sex workers by health workers, state officials and community members.

David Davies' chapter offers insights into Spain's legal regulations concerning sexist content in advertising. Spain is often viewed as a pioneer in combatting violence against women for its egalitarian laws of the Zapatero era. This is to an extent that Spain brought specific measures for gender stereotypes in advertising through Gender Violence Act (2004). In the European Union where most member states opt for self-regulation, Spain's attitude is an unorthodox approach. Analysing the advertisements of RyanAir and Cillit Bang as case studies, Davies demonstrates how the law fails in practice, and it complements, rather than counteracts, self-regulation. Davies' chapter also puts these trends in a sociohistorical context by portraying how Spanish society transformed from dictatorship to democracy and the politics of "the new way" has emerged since the 1970s.

1.6 The Vision of the Book

Overall, this book aims to find out the contradictions between different forms of laws concerning gender equality (namely international, national or regional), as well as the social and political factors that play a part in facilitating and promoting problematic gender policies. More importantly, this project also unravels whether there are any similarities/patterns regarding the way in which states define and utilise policies and laws that harm gender equality. In this way, this book proposes to contribute to the efforts to devise holistic policies to address gender inequalities across the world.

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