

Workshop Report: Shaping Law. Shaping Gender – Experiences from India, 11th till 13th October 2018, Berlin

By *Tanja Herklotz** and *Siddharth Peter de Souza***

The developments in India since the new millennium have shown that gender equality is a topic in constant flux and dynamic change. In recent years, the Indian Parliament has passed key legislations on maternity benefits, surrogacy, HIV/Aids prevention, sexual harassment in the workplace, and amendments to the criminal law with respect to gendered violence. The Indian Supreme Court has of late delivered landmark judgments on the rights of gay and transgender people and Muslim women. In addition to the Supreme Court and the Parliament, other actors have also had a very significant role to play in legal and societal changes in India: For instance, the Law Commission of India, civil society actors such as women's rights organisations or the LGBTIQ movements, interest groups such as the Mumbai bar dancers, non-state dispute resolution systems such as *Shariat* courts, *Khap panchayats* or "women's courts" and religious organisations such as the All India Muslim Personal Law Board have all impacted the development of India's legal landscape.

The workshop "Shaping Law. Shaping Gender - Experiences from India", that took place at the Chair for Public Law and Comparative Law (Professor Philipp Dann) at Humboldt University Berlin from 11th till 13th October 2018 critically engaged with these recent developments. Organised by Siddharth Peter de Souza and Tanja Herklotz, the workshop brought together 25 participants from India, the USA, Canada, Portugal and Germany to present and critically discuss their research projects. As a trans-disciplinary endeavour that looked at law in context, the workshop was attended by participants trained in law, gender studies, political sciences and anthropology. It drew reflections from not just academics, but also practitioners and activists. The programme also featured a key-note lecture by Professor Ratna Kapur from Queen Mary, University of London, and a screening of the film "Invoking Justice" by the Indian film maker Deepa Dhanraj with a discussion by the Muslim women's rights activist D. Sharifa Khanam. It was supported by, Humboldt University's KOSMOS-programme, the university's Fakultätspartnerschaftsmittel, the Research Group on Law, Gender and Collectively and the Heinrich Böll Foundation.

The workshop analysed reform attempts in the area of gender and the law and situated where reform has taken place, by whom it was brought about and what impact on society it has had. It also attempted to reflect on the aspect that while many of the reforms of recent years have been the result of long-standing legal battles, more deep-rooted issues with the system cannot be resolved and reformed through the law alone. A central aim of the workshop was to focus on the practical impact of new legislation and landmark judgements for

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people "on the ground", and to look at community centred and bottom-up solutions to gender. The papers presented offered compelling evidence that the drivers of change are emerging from beyond the traditional institutions of courts and Parliament, and that it is important to look beyond these narrow institutional sources. They also showed that many of the discourses around law and gender are closely connected to broader debates around secularism and religion, identity, culture, nationalism and family.

The first day of the workshop began with a master class by Professor Ratna Kapur, in which the participants discussed a chapter of Professor Kapur's new book "Gender, Alterity and Human Rights: Freedom in a Fishbowl". Later in the evening, Professor Kapur gave a key-note lecture on the topic "Shaping the 'Other' Woman in Law: Gender Equality, Secularism, and the Rise of the Hindu Nation". The paper presentations that were given during the following days were structured as four sessions and organised around the theme of equality and in particular how it can be mapped, battled, bargained and realised by various actors and in multifarious contexts.

The first session, titled "Systems of Inequality", engaged with current flaws of the Indian legal and political system. Looking at the status quo through a gendered lens, the presenters in this session pointed to discrimination and stereotypes that are present among the Indian Parliament, judiciary, the media, but also society at large. Several Indian laws continue to discriminate against women and minorities or draw on paternalistic notions of gender. The Indian Supreme Court, however, often refrains from declaring these laws discriminatory and unconstitutional. Additionally, judicial institutions as well as the media in India frequently draw on problematic stereotypes in a way that negatively affects women and minorities. The papers that were presented in this session addressed these issues and the correlation between one or more of them. They showed that the situation is particularly problematic for people who face multiple forms of discrimination.

The second session, titled "Battles for Equality", traced the attempts to challenge these systemic failures mapped out in the first session. The presenters engaged with the programmes of social movement actors, such as women's rights groups, Muslim women's organisations and the LGBTIQ-movement, to bring about change. They highlighted the varying forms of activism that these actors draw on, including lobbying, litigation, street protest and media campaigns. Additionally, they engaged with the dialogue between social movement actors and "the state": the Indian Parliament, the Law Commission of India, the Indian Supreme Court, high courts and lower courts. The papers presented in this session engaged more specifically with Muslim women's groups fighting to abolish *nikah halala* and *triple talaq*, the LGBTIQ movement's effort to seek abolition of Section 377 of the Indian Penal Code, the struggle of Mumbai's bar dancers to legally work in their profession and the activism of women's groups towards addressing gendered violence. While law reforms and key court cases are hailed as landmark steps in the fight for gender equality, the papers also showed that loopholes often remain. Frequently, the reforms are watered down versions of what activists and rights groups sought to achieve.

"Bargaining for Equality" was the title of the third session. It looked at how various individuals (victims of gendered violence and their families as well as activists and social workers) navigate the different layers of law in India's pluri-legal system. Here the papers explained how despite reforms at the level of state law (through legislation or case law), providing for gender equality requires more contextual solutions. This is because no matter how progressive the laws are on paper, when faced with discrimination or experiences of inequality, individuals frequently draw support from sources other than state law and state institutions. Victims, civil society organisations and social workers often find themselves faced with a formal and informal route of justice. For instance, as the papers showed, women who experience sexual harassment at the workplace are faced with the choice between an internal complaint mechanism of their company or the filing of a criminal complaint against the perpetrator. People who have experienced domestic violence navigate between state and non-state dispute resolution systems. Muslims women might either turn to state courts or *Shariat* courts to process disputes that relate to marriage, divorce or maintenance. Whether such legal pluralism is beneficial for the individual or not, was debated. On the one hand, the choice to opt for a non-state dispute resolution forum, might be the result of a certain feeling of alienation from the state legal system, which does not seem accessible for the people "on the ground". In other cases, however, those who make use of the law, might strategically "forum shop" and see where they get an optimal solution.

The fourth session, "Realising Equality", focused on the disconnect between the implementation of reformed law and progressive judgments and people's lived realities "on the ground". While the previous session had introduced the concept of legal plurality in the resolution of everyday disputes, and the complexities and opportunities that arise through such as plurilegal system, this session attempted to showcase the complexity that arises when reform, however aspirational, is required to be realised in a myriad of socio-political and cultural contexts. This session dealt with the interaction between individual people seeking gender equality on the one side and institutions such as the police on the other. It looked at the hurdles that people face on a very practical level when attempting to make use of their rights. The papers presented in this session drew on experiences with compliance challenges in reporting sexual offences, witness protection, the situation of domestic workers and migrants and the politics of parenthood.

While practical approaches to bring about gender equality already played a central role during the discussions, the debates were enriched by a public screening of the film "Invoking Justice" at the Babylon film theatre. The documentary by Deepa Dhanraj portrays a Women's *Jamaat* (a Muslim women's court) in Tamil Nadu. One of the main protagonists of the film, D. Sharifa Khanam, was present at the screening and spoke with the audience about the work of the *Jamaat*.

The workshop not only pointed to a significant moment in India's judicial and legislative history, but also emerged from the groundswell in public discussion about law and gender. The papers will certainly provide new impulses to this discussion when they are published in an edited volume in the forthcoming year. The workshop also offered a com-

parative opportunity for scholars located elsewhere to look to India when delving into the contemporary challenges of gender-based reforms. Thereby it deepened the focus on India at the Chair for Public Law and Comparative Law and carried forward longstanding collaborations between researchers at Humboldt University and researchers based at Indian institutions and set the ground for future joint projects.