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Becoming Inheritance: The Politics of Widows losing Personhood

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ABSTRACT

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-Mouna Sunkara

A culture can be defined by its adherence to its customs. These customs are recognised and legitimised in the eyes of the law and given legal sanctity. Customs can also become an excuse to strengthen the foundations of patriarchy and usurp the rights of marginalised communities such as widows. This paper will analyse the custom of widow inheritance, which, unlike what the term suggests, is not about what widows inherit upon their husband's death but how widows themselves are inherited as property. They are subsumed into her husband's family, generally, his brothers, to take control of the property left behind by her husband. Using the radical feminist lens of the theorist Katherine Mackinnon, this paper will use her book, "Toward a Feminist Theory of the State" to understand how the State is complicit with the structures that keep these customs in existence. The practise of widow inheritance is widely practised in sub-Saharan Africa. However, this paper will be focus specifically on Uganda and use its statistics and laws to examine the interdependence of customs and the State.

Movements are happening in parts of all the nations, big and small. Movements against sexual harassment at the workplace, for an expansive redefinition of consent, for the right of people of different sexualities and genders to live peacefully and have access to all the privileges that straight cis people possess by default. Maslow's Hierarchy of Needs² says that a person and, in this case, society will naturally progress from wanting fundamental physiological rights to more advanced rights of self-actualisation. So going by Maslow's theory, it is only normal to expect that the revolutions which took place in the 19th and 20th centuries, like the abolition of slavery³ and the suffragette revolts to ensure that women had a right to vote and hold property,⁴

¹ Author is a student at O.P. Jindal Global University, India.

² A. H. Maslow, *A Dynamic Theory of Human Motivation. Understanding Human Motivation.*: 26-47. See at <http://dx.doi.org/10.1037/h0054346>

³ Abolition of slavery in US took place after the enactment of the 13th Amendment in 1865 and the Slavery Abolition Act 1833 led to abolition of slavery in Britain.

⁴ Women got right to vote in US and UK in 1920 1918 Representation of the People Act gave the vote to only

will pave the way to the movements we see in the 21st century.

But what we expect is not always what is real. Primitive ceremonies which the ‘civilised’ world believes it has moved long past are still very real and are being practised on such a large scale that it still is affecting millions of women right now in the very same 21st century that we’re living in and is the cause of an AIDS epidemic sweeping through the nation with a rate of 24% of the population being affected by the virus.⁵ Payment of bride price to the family of the bride for her hand in marriage, polygamy, forcing a widow to have sex with a social outcast in order to perform a ritualistic cleansing, inheritance of widows themselves by the relatives of her dead husband, all of them contribute to a particular notion of holding women not as individual humans but as property.⁶ A woman is hardly better off than cattle, bought and owned at the time of marriage and passed around after her ‘owner’ dies.

Catherine Mackinnon, in her book, “The Feminist Theory of State”, talks about “consciousness-raising”⁷. The term originated in the 1960s-70s in the United States of America by early women’s liberation and feminist movements. They believed that for any movement to gain popularity and become successful, the first step would be to shift from individualism and focus on a larger section or cause of society.

Mackinnon says that consciousness-raising is to feminism what dialectical materialism is to Marxism.⁸ Structurally, patriarchy is something that is so inbuilt in our society that dismantling it would require as radical a revolution as Marx felt would be necessary to overthrow the Bourgeoisie.

Unlike other theories, feminism does not move towards scientific objectivity. Feminism expands to absorb the distinctive experiences of different women belonging to various strata of society. It legitimises the trials that every woman has gone through and the limitations that every woman has faced because of no other reason than her femaleness.

Katherine Mackinnon emphasises consciousness raising in women so that women's collective

women who were householders over the age of 30. women over 21 did not get the vote until 1928. The 19th Amendment to the U.S. Constitution granted American women the right to vote, a right known as women's suffrage, and was ratified on August 18, 1920, ending almost a century of protest

⁵ “Uganda Factsheets on HIV and AIDS estimates”, *UNAIDS*, 2016. <http://www.unaids.org/en/regionscountries/countries/uganda> accessed on 15 March 2020.

⁶ Louise Donovan and Hannah O'Neill, *These Kenyan widows are fighting against sexual 'cleansing'*. *The World*, October 23, 2018.

<https://www.pri.org/stories/2018-10-23/these-kenyan-widows-are-fighting-against-sexual-cleansing> accessed on 20 March 2020

⁷ Catherine A. Mackinnon, *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press, 1989

⁸ *Ibid*, p. 83

experiences can raise echoes of similarities and recognition in individual women. The diversity in every ordeal but their own identification with others and their stories can make each woman become conscious of the deeply permeated roots of oppression and patriarchy. She will be able to open her eyes to how the society, to which both men and women belong, continuously denies them opportunities and benefits that are given freely to men. A quote from Katherine Mackinnon which perfectly captures the essence of the power dynamics between men and women and the foundational structure of patriarchy is,

“It is not only that men treat women badly, although it is often they do, but that it is their choice whether or not to do so.”⁹

She agrees that it is not all men who abuse their privilege, but the problem is not dependent on the choice of men to do or not to do. The conflict arises because of the existence of their authority at all. No one should have that much power over a whole section of society, primarily because of the mere privilege of possessing a penis. Consciousness-raising will reveal the power struggle and the hierarchy of the genders seen in daily interactions, some of which may even be well-intended.

When a man in Uganda dies and leaves behind his widow and perhaps also his children, their future may play out in a certain manner depending upon a number of factors. The first one is that the dead husband might have made a will in his lifetime to secure the widow's and their children's rights which is legally recognised. Another slightly optimistic view would be that there is a chance that the husband's parents and his relatives will treat the widow kindly and not dispossess her of her means of livelihood despite the existence or non-existence of a will. There is also a probability that the widow herself would be resilient enough to fight against everyone who is trying to force her to marry her husband's brother immediately after his death to ensure that the property remains in the family.

The possibility of these situations occurring exists, but even a naïve optimist will question the probability of them actually happening. The question that Mackinnon will ask here is that why is there inequality at all? Why is the widow essentially reduced to prostituting herself to one or several men to secure her own and her children's livelihood? Why is there such an imbalance of power that she has to fight tooth and nail for the property of her dead husband which she has a legal claim to?

The laws of Uganda recognise the property rights of women and provides Constitutional guarantees to ensure that women can also hold ownership of property. The Constitution of

⁹ *Supra* 7.

Uganda guarantees equality to both genders and prevent discrimination on any grounds, especially gender and sex. The fundamental right of Article 21 says that “everyone had a right to equality and wouldn’t be discriminated against on any grounds.”¹⁰ Article 21 is a right that claims to be fundamental and inherent to all but hardly translates so off the paper into real life. In Uganda, there are mainly three types of laws that govern the people, which are the Customary laws, the Mohammaden laws and the Constitutional law of the nation. Now though the Constitution of Uganda allows for the practice of all codes, Article 2¹¹ explicitly states that laws inconsistent with the Constitution will be inapplicable and void. The Constitutional law will trump other customary or religious practices and codes if a dispute ever arises.

There are no ifs and buts here. There should not even be an iota of doubt that injustice might occur. The statutory laws *prima facie* seem to ensure that patriarchal structures which propagate and maintain sexism are not given any place in its laws. But at the same time, it is also true that disturbing practices of inheritance of widows, polygamy etc., are still carried out.

Uganda protects its rich cultural diversity and safeguards the right to enjoy, practice and promote its culture in Article 37¹² of the Ugandan Constitution. Though it seems admirable at the surface, it provides the soil for various blatantly discriminatory and sometimes violent practices to take root in. Article 29¹³ reasserts the right of its citizens to practice any religion and protects them against any discrimination upon religious grounds. Sections like these are where orthodox proponents of practices like the inheritance of widows take refuge in by stating that even law sanctions their right to preserve the true traditions of the nation and that people who are fighting for the abolition of these customs are actually subscribing the western notions of equality and justice¹⁴.

Section 33(6) in chapter 2 of the Ugandan Constitution specifically declares that "Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution."¹⁵ The section is as unambiguous as it can be. But the lack of freedom of women to their bodily integrity and property clearly points to a mechanism that works to ensure that women are repressed.

Mackinnon holds that the reduction of women to their sexuality is the root of oppression.¹⁶

¹⁰ The Constitution of Uganda, 1955, article 21

¹¹ The Constitution of Uganda, 1955, article 2

¹² The Constitution of Uganda, 1955, article 37

¹³ The Constitution of Uganda, 1955, article 29

¹⁴ E D Mabumba, J Liljestrang, et al, “Widow Inheritance and HIV/AIDS in rural Uganda”, *Trop Doct.* 2007 Oct. 37(4):229-31. doi: 10.1258/004947507782332955.

¹⁵ The Constitution of Uganda, 1955, s 33(6),

¹⁶ *Supra* 7, p. 132.

The school of Post-Foucault holds that sexuality is socially constructed.¹⁷ The unanswered question posed by this assumption is the process through which this assumption came into existence and how it became so widely accepted. Sexuality can be interpreted by Marxists and Capitalists differently. Any prefix of power, speech, culture, religion or some other factor will change the nature and meaning of sexuality. It is seldom seen as a lens in itself.

The most commonly accepted understanding of sexuality arises from Freud, who says that it is not born of any external element but is inherent in the genetic makeup. It is not influenced by nurture but given by nature. Even feminists never really confront the notion of why the sexuality of men and women is distinctive of each other. Katherine Mackinnon says that this division is fundamental to the establishment of sexual dominance, and it is this sexual dominance and its eroticisation that allows for a male to subordinate women. The subjugation of women is based and widely accepted on the assumption that women are the weaker sex. If the male and female qualities are stripped of their gender roles and Simone de Beauvoir's perceptive insight that "one is not born, one rather becomes a woman"¹⁸ is acknowledged as a fact, then the foundation for male dominance topples down.

The theory of feminism would then be that sexuality is neither about innate abilities that occur naturally from birth nor about cultural socialisation, which starts from the moment of birth but becomes instead about the existence of a power that is largely universal and intent on upholding male supremacy.¹⁹

Mackinnon argues that the State intrinsically embraces the role of male dominance, and the law unequivocally supports the male viewpoint instead of being truly gender-neutral. The problem is that the State assumes that society is free and equal while making laws and holds that the purpose of the law is to uphold this environment of peace and equality²⁰. If the Constitution does not take into account the ground reality and differences that lead to discrimination and deprivation and supposes that gender is innate and beyond its reach, then there can never be a law and order which creates a society of equals. As Mackinnon puts it, the liberal State only appears to be independent of the influence of sex and sexuality. The male power is not just legitimated but is actually the regime.

So, when Uganda has provisions like Article 246²¹ and laws that validate archaic customs like

¹⁷ Michel Foucault, "The History of Sexuality, vol I: An Introduction" (New York: Random House, 1980)

¹⁸ *Supra* 7, p. 109

¹⁹ *Supra* 7, p. 51

²⁰ *Supra* 7, p. 163.

²¹ The Constitution of Uganda, 1955, article 246

widow inheritance²², the State is legitimising discrimination and not only upholding it but also enforcing it over and over again. Dominance is masked as kindness, and violence is seen as a right. Law can become the harbinger of change if only it moves away from the dominant perspective of male and becomes one with the others also. It is not gender neutrality, which is required, for that will only turn a blind eye to the social, economic and cultural inequalities and power dynamics cemented in the dynamics of our society.

What Catherine Mackinnon puts forward is a feminist theory of State which will change the cornerstone of how authority conducts itself towards genders and sexuality, which are not male. The current state has laws made by men with a minuscule amount of female input, but they are applied universally without the consent of half the population it governs. Its neutrality and objectivity mask its assumption that gender and sexuality are pre-jurisprudence. Section 33 of the Constitution of Uganda expressly and emphatically forbids customs that dehumanise women, but the same Constitution allows leaders of tribes to practice and advance the practice of widow inheritance.

Though it seems contradictory on the face of it, the fact is that the Ugandan Constitution never really tackles why do women need this express protection in the first place. When it is argued that women can take refuge in law, it is easily forgotten that women oftentimes do not have easy access to the legal system and the means or the will to fight against everybody she knows in order to live out their existence. After constant socialisation of hundreds of years to make sure that the sole purpose of a woman's existence is to be liked, which is only possible if she is meek, weak and submissive, it is completely ridiculous to suddenly expect her to stand up against her relatives, her tribe, her entire community. It is the State in which Catherine A. Mackinnon chooses to reside her hopes in and in women to become conscious of the need for a feminist State and work towards its creation. The imagining of such a State has only just begun, and the future of its existence creates hope which one can work towards.

As one of the most influential poets in the 20th century and a radical feminist, Adrienne Rich sums up, *"We need to imagine a world in which every woman is the presiding genius of her own body. Sexuality, politics, intelligence, power, motherhood, work, community, intimacy will develop new meanings. Thinking itself will be transformed. This is where we have to begin."*²³

²² The Judicature Statute 13, 1996 s 16(2) b(ii); mandates customs such as widow inheritance.

²³ Catherine A. Mackinnon, "Toward a Feminist Theory of the State". Cambridge, MA: Harvard University Press, 1989, 155