

A PHILOSOPHICAL INVESTIGATION OF GENDER ROLE ON INHERITANCE IN CONTEMPORARY AFRICA

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Abstract

Gender is among the most globally discuss topic due to its inherent nature which centre on the societal role place on male and female that is mainly cause by religion and culture. Gender has a greater role to play as a major determinant factor with regard to the issue of inheritance in contemporary Africa, and inheritance according to African point of view is gender sensitive and most often gender bias, which prioritises a particular sex against the other. The research employs hermeneutical method to elucidate that one cannot discuss about gender without taking cognizance of its equality and inequality, gender inequality is mostly female marginalization which is frequently used terminology in Africa that plays out often with issue relating to inheritance, and the African societal role of gender place more value on male than female regarding the issue of inheritance. The problem of female marginalization on inheritance which was as a result of gender role is the bane of this hermeneutical investigation, which the right of female to participate in sharing of

inheritance is unpopular and hardly seen both in ancient and contemporary Africa, and in some circumstance female that clamour for gender equity and emancipation are psychologically/emotionally traumatized and physically abused, and the male counterpart is seen as a superior being that has exclusive right to inheritance. The research discovers that female marginalization on inheritance is as a result of societal creation that perceives female as a weaker sex and also can be married out at anytime; which is fuelled by the philosophies behind those culture and religion in Africa. The research concludes that for there to be a comprehensive eradication of female marginalization on inheritance in contemporary Africa, female rights to inheritance needs to be enshrined in all the customs and traditions of all African nations backed up by their various constitutions in order to protect and project the female rights to inheritance and arguably to a reasonably extent gender equity achieved.

Keywords: Gender Inequity, Inheritance, Gender Equity, Female, Gender Sensitive

Introduction

Africa is a diverse continent with so many cultural traditions and different ethnic group, for decades now there have been many popular debates of gender equality through the three world conferences on women (Mexico 1975, Nairobi 1985 and Beijing 1995), which was aimed to achieve a globalized gender equality throughout the world, according to Maitrayee Mukhopadhyay (2001:13), but

despite all these efforts to have a gender balanced world, the issue of female inheritance among the African has been a perennial problem bedevilling the African woman. The global quest for gender equality and cultural revolution has create a new dimension for issues bordering on inheritance, succession and the leadership roles of women, women are now encouraged to seek legal help where they are denied these rights based on their sex, much success has been recorded and this has influenced the decision of judges who now recognise the rights of female children and wives to inherit property. These judgements are hardly enforceable, particularly in the rural communities, according to Mary-Ann Ajayi (2017: 102), this above statement forms the bane of this research on the applicability of favourable court judgement on women in rural areas, where customs and traditions are very powerful, the only way forward is when the issue of female inheritance is enshrined in various customs and traditions, which in return will be rooted in the constitution, the issue of female marginalization will reduce drastically in Africa. The research will critically review the psychological damage done on female psyche, which was majorly done by culture and African way of practicing religion, which makes most women to be perceived as weaker sex, not fit in handling properties and can be married out at anytime.

Gender Equality and Its Principles

Gender is a concept that shows the difference between men and women seen through socio-religious and socio-cultural

aspects. The concept of gender was as a result of social construction and not a natural order by God. The concept is the characterization of men and women who are formed socially and culturally by the society. Feminist movement emerged as a response to the issue of gender equality, working hard to change and eliminate the societal change against women (marginalization of women) and oppression of women. According to Nurmila in *Husein Muhammad's Thoughts on Gender Equality in Islamic Inheritance Law*, the main criterion of feminism is “awareness” of the existence of oppression and subordination, as well as “actions” to eliminate and change this oppression. In the Muslim world itself, this gender issue has birthed two schools of thought: First school of thought is a group of scholars who view men and women as unequal, men as leaders, superior, and women as inferior. Second are the scholars who think that men and women are the same, having the same intellectual, physical, and spiritual mentality. The difference depends only in its physical function. The two above mentioned views refer to the same source, namely the Qur'an and Hadith. (Ansori: 244-272) The issue of gender inequality from the religious perspective emanated from the holy books of Quran and Bible, placing more emphasis on male role and less on female and some particular duties and functions were assigned to male than female, despite the fact that some religious doctrine has established the principle of human equality, which is very much relevant to the principle of gender equality. Some verses of the Quran and Bible has also explained that a sense of justice is a principle that must be established in all aspect of human life, and this principle

of justice applies universally to all human being. As stated in *Husein Muhammad's Thoughts on Gender Equality in Islamic Inheritance Law*:

.....in the Surah al-Mâidah: 8 which orders all believers to always uphold justice and truth for God's sake, to be fair witnesses, and to be prohibited from criticizing a people so that hatred causes people to act unfairly. So, based on the verse above, it can be understood that the principle of justice applies universally to all human beings, whether Muslim or non-Muslim, male or female. In some aspects, the position of women and men is the same. Inequality in religious and social reality must be faced wisely. The concept of trust provides the actual role and process of equality between women and men, even though there are limitations in social reality. The idea of gender equality in such a way has received a rejection from many classical scholars arguing QS. al-Nisâ: 34, which states that men are leaders over women, because Allah has exalted some of them (men) above some others (women) and because they (men) have spent part of their wealth. Based on this verse, the concept of the relationship between men and women is often assessed by many as something that is *qath'iy*, clear, firm, certain, and unchangeable, so that it is close to new *ijtihad*. All interpretations that are different from things that are already common are considered wrong, contrary to standard teachings and also the *qath'iy*. Every human being, both male and female, is endowed by Allah with the same mind, spirit, and potential, the only differences being the limbs and gender. Allah places men and women as equal following the principles of the Qur'an which shows its egalitarian views. These principles include justice,

equality, independence, and respect for the rights of others regardless of who they are, when, and where they are. This principle has been regulated in the verses of the Qur'an and must become the basis of thought, and views in studying particular verses of the Qur'an. Husein stressed that when understanding a verse that was revealed in a situation of course it cannot be separated from the community's background and must be seen as a guide in efforts to realize the principles of law enforcement.

Analysing from the above point of view according to Husein, gender injustice was as a result of religious life, and the existence of gender inequality among religious people is majorly caused by gender bias individual when interpreting the holy books, this is also applicable to other religious counterpart. One of the various ways to eliminate subordination to woman is through a hermeneutic feminist approach to interpreting verses of the holy books, which is needed to minimize the occurrence of gender biased interpretation of the holy books. For comprehensive annihilation of women marginalization is for state law backed by the constitution to integrate customary laws, religious and traditional rights if it is not repugnant to natural justice, equity and good conscience, to create gender equality in Africa.

Gender Inequity in African Inheritance Systems

The African decent have diverse views of inheritance and kinship, which differs from place to place. For Michael Carter gender justice means that men and women must not be subjected to fixed roles, subordination, marginalization, or violence (2014:242-263), and according to Sharma and Sharma, who identified four indicators of gender equity: (1) access; (2) participation; (3) control; and (4) fair and equitable benefits. In this context, awareness of the need for gender equity is influenced by social and cultural constructions that distinguish between the sexes and their specific roles and responsibilities (2009:64-67). Eduardo Bericat notes that gender equity is necessary to address the gendered structural inequalities that exist within society. (2012: 1–28). Inheritance systems are part of the traditional customs that remain practiced around the world. According to Febriawanti and Mansur, inheritance systems are those systems that ascertain the legitimacy of heirs and manage the division of assets (wealth, property, and knowledge) amongst them. Cooper remarks that inheritance systems may be divided into bilineal (along both maternal and paternal lines) and unilineal ones (solely along paternal ‘patrilineal’ or maternal ‘matrilineal lines’). The African inheritance systems sometimes are equal inheritance rights for men and women. Amongst the African inheritance systems diverse mechanisms are used to divide assets between heirs, this often results in inequity because of diverse understandings of inheritance law families tend to divide their assets as they pleases, which consequently, most heirs feel the assets have not been distributed fairly among them. Meanwhile, in some cases, people believe

that division of the inheritance must provide sons more shares than daughters. In another case, the division of daughters is greater than sons. Some believe that the eldest son gets a larger share of the inheritance than his siblings, while another part says that the youngest child is the one who gets a larger share of the inheritance than his siblings. Furthermore, other people say that children who are most meritorious to their parents will be given a larger share of the inheritance than other siblings. Most of the African societies are religious in nature; however, they have continued to adhere strictly to customary values, traditions and religions of their respective societies. Occasionally, the division of assets follows customary laws that are not found in their various religious teachings. The principle of justice in some African inheritance law entails that there must be a balance between the rights acquired in the inheritance and obligations or burdens of life that must be borne/fulfilled among the heirs; Hence, the meaning of justice in some African inheritance law is not measured by similarity of levels between experts, but by size of the burden or responsibility assigned to them, in terms of general condition of society (2022:468). If it relates to Amir Syarifuddin's definition of justice as quoted by A.S. Assad, S.Z. Qudsy, B. Hasyim, M.T. Badollahi, A.W. Haddade,

A balance between rights and obligations and a balance between what is obtained and needs and uses, or a balance between the burdens and responsibilities of equal heirs, then justice will be reflected in the implementation of the distribution of inheritance according to Islam. The ratio of 2:1 applies not only between boys and girls, but also between husband and wife, between fathers and mothers,

and between brothers and sisters, all of which, when studied and analyzed in depth, reveal profound insight. Men, as opposed to women, are accountable for the maintenance of their families in Muslim society. If the woman is still a girl and unmarried, she becomes the responsibility of her parents, guardian, or brother. In contrast, once a woman is married, her relocation falls under her husband's obligation. (2022:469)

Studies of gender equity have developed models that make it possible to investigate the inheritance issues amongst the African inheritance system, but despite their efforts the issue of land inheritance has continued to be dictated by customary law that excludes women right from property ownership and their inability to land ownership inheritance has undermine their economic opportunities and this leads to feminization of poverty across many of these developing regions of the world.(Agarwal:2003 and Kabeer:2016).

Female Inheritance Right In Africa (A Case Study Of East Africa)

Recently, there have been reforms in inheritance laws across many developing African countries to improve gender equality in inheritance distribution. In many traditional societies in Africa, land inheritance continues to be controlled by customary law which excludes women in any form of assert inheritance. According to J. Ajefu, E. Uchenna, N. Singh and S. Ali in their article titled

Women's inheritance rights and child health outcomes in Kenya notes that prior to 1981, there were four separate systems of inheritance: traditional African, civil/Christian, Muslim and Hindu. Kameri Mboti observes that almost all the ethnic groups in Kenya restrict women from inheriting landed properties from their parents and deceased husbands. Kameri Mboti further notes that Islam inheritance on the other hand was governed by the principles enshrined in the Koran.

Only one-third of the deceased's estate can be dealt with by will. The remaining two-thirds is allocated by intestacy rules laid down in the Koran, with fixed shares for specific heirs. A wife receives one-fourth of her husband's estate, women in polygamous marriages receive one-eighth if they are childless. What is left is divided between sons and daughters in such a way that sons receive twice as much as daughters of their father's property.....

Kenya provides a compelling context to analyse the outcome of inheritance rights in Africa, because the constitution embraced legal pluralism and recognised the applicability of *custo mary* and Islamic law. In 1981, a law was passed which aim was to implement a uniform code of inheritance in the country, and it consolidated all the four systems of inheritance into one uniform statute that applies to all Kenyans. The above law was rooted in western jurisprudence and it established equal inheritance rights for both female and male children on their parent's property whether married or unmarried. For Mutongi (2007), while

the law was non-discriminatory in terms of treatment of the children of the deceased, there remained vestiges of discriminatory practices in terms of treatment of the spouses. For instance, when the surviving spouse is a woman, her interest in the property is invalidated if she remarries, whereas a surviving husband maintains his interest upon remarriage.

Furthermore, between the period of 1981 and 1990, there were intense protest by Muslims who regarded the Law of Succession Act as it repudiated on the constitutional provision of freedom of worship and religion in their constitution, sequel to the agitation the then government gave in to the pressure mounted by the Muslim community in 1990. The Succession Act was amended by statute to exclude application to Muslims. Since then, inheritance law has remained a contentious issue in Kenya. The response to demand given to Muslim population has made it difficult to implement inheritance laws on a uniform basis. The outcome of this has resulted in less-thanoptimal outcomes in the area of equitable property rights for women. There is no official data/quantitative evidence available on the enforcement of the Land Succession law and asset ownership by Kenyan women before and after the reform. However, some qualitative field-based assessments have revealed that this legislation suffers from a number of enforcement problems, as well as strong opposition to women's asset ownership rooted in local customs and traditions according to Cooper (2011).

Conclusion And Recommendation

Gender role on inheritance law is one of the arrangements that are quite complex and frequently causes us problem in our daily life activities, because inequitable distribution of inheritance frequently results in disagreement among relatives, that are subsequently settled in court when one party feels aggrieved. The major causes of this unfairness is that many indigenous communities in Africa continue to practice their traditional inheritance system, which their culture and religious affiliation promotes, against the testament/wills law of the deceased that is ought to be protected by those indigenous community, and backed by a state law which will protect it through the philosophies of African culture and religious practices of those communities that are not repugnant to natural justice, equity and good conscience. The traditional and religious preservation is very important because this forms the nucleus and foundation of our African identity, but not to the detriment of a particular sex (female), because globalization and modernity has truncated this outdated process of female marginalization on inheritance with will or testament to back it up, and has reawakened the spirit of consciousness of the female due to the degenerating and inhumane treatment melted out on them during division of assets in their families. Despite the developmental processes ongoing in Africa, some communities in Africa still do not regard women on the issue of inheritance even

when there is a will/testament to back it up, on this backdrop the research recommends that, there should be a strong legal reforms by the rulers of all African nations aimed to give women equal rights in the matter of inheritance backed up by their various constitutions in Africa to strengthen their various state law on how to blend and integrate with their customary law and its inherent religious/traditional rights that are not repugnant to natural justice, equity and good conscience, to create gender equity on inheritance and also special attention on mainstreaming gender sensitive initiatives, publicizing and educating the women in remote communities about the existence of such state law backed by the constitution, because majorly this issue of female marginalization especially on land inheritance is mostly experienced by them. The research also recommends that the major concern of Africans should be focused on how to control the influx of one culture/religious activities into another to avoid and avert cultural crisis (for example on the issue of land inheritance upon marriage by a woman who marries from another tribe that is not of her birth tribe, and her husband decides to relocate and settle with her in her birth tribe because of the land she inherited). In conclusion, the female inheritance in Africa is in transition stage, moving from discriminatory customary practices to constitutional equality, which is evident in West Africa (Nigeria). Supreme Court ruling and constitutional provisions of Nigeria (section 42) now override prohibiting women from inheriting land or property from fathers and husbands to granting them female rights to inherit.

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