

GENDER SENSITIVITY AND THE
INHERITANCE ACT OF THE BAHAMAS
1833

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ABSTRACT

The motivation for this paper stemmed from the realization that discrimination against women in The Bahamas still exists, is being continually perpetuated and, in fact, is institutionalized by the law which should enforce justice for all. Against the backdrop of preparation for the 1995 United Nations Conference on Women, a closer look is taken at gender discrimination in The Bahamas by examining the Constitution and the Inheritance Act of 1833.

The assumption that institutionalized patriarchy gives rise to gender discrimination guides the analysis. The origins of male domination and the reasons for its perpetuation are discussed as well as obstacles to the passage of the draft Inheritance Bill (1983). It is recommended that inequities arising from an inbuilt structure of a male dominated society be addressed by legislation that will ensure equity and social justice for all. Finally, it is suggested that the draft Inheritance Bill (1983) with modifications to some provisions has the potential to accomplish this.

INTRODUCTION

During September 1995, delegates from 185 member countries around the world will converge on Beijing, China, for the Fourth United Nations Conference on Women. As the conference date rapidly approaches, The Commonwealth of The Bahamas, like other participating countries will complete its assessment as to how many of the recommendations of former conferences have been implemented to impact on women, bringing changes that empower them in positive ways. In other words, an attempt will be made to determine how much that has been mandated by the United Nations and other bodies has been realized and is making significant differences in the lives of women and their families.

The independent nation state of The Commonwealth of The Bahamas is home to just over a quarter million persons of whom females constitute approximately 51 percent of the total population. Women in The Bahamas contribute significantly to the well being of the nation in many areas and aspects of national life. During the decades of the seventies and eighties, they achieved commendable socio-economic

gains. These periods have been notable for an increase of their numbers in the working population (by 25.2%) and in professional fields (by 65%) but particularly for their penetration of traditionally male dominated fields of work (Unpublished Draft Policy Statement on Women in The Bahamas.)

Yet, in spite of these socio-economic gains, economic parity is not evident. "Women by virtue of their gender, experience discrimination in terms of denial of equal access to the power structure that determines developmental issues. They are limited in their access to those economic measures that would improve women's ability to earn income, achieve economic self-reliance, inherit, own and dispose of property and have access to credit" (Draft - A National Report on The Status of Women In The Bahamas, 1994).

The Bahamas as a signatory to CEDAW (The Convention on The Elimination of All Forms of Discrimination Against Women) subscribes to the principle contained in Article 15, Part IV, No. 1 which "accords to women equality before the law". Yet on examining The Inheritance Act 1833, which is still on the Statute books of The Bahamas, it is clear that it fosters a patriarchal norm giving rise to an inequitable share of rights to land and economic status and is unjust to women and children.

This Act needs to be abolished and replaced with new legislation that will ensure a more equitable share of rights to property for women and greater care and maintenance for all children. When this is accomplished, it should give rise to greater self-actualization and empowerment for women, diminishing their economic vulnerability and society's burden to provide for their sustenance. Economic empowerment and equal opportunity before the law can only enhance the Bahamian woman's impact and contribution to the nation as a whole.

THE CONSTITUTION AND THE INHERITANCE ACT OF 1833

The Constitution of The Commonwealth of The Bahamas as the Supreme Law of the Land (enacted 1973) seeks to uphold and give constitutional guarantees which protect various human rights of citizens. In fact, Article 2(b) of the constitution which deals with rights and freedoms, prohibits the passage of discriminatory legislation on the grounds of race, place of origin, political opinions, colour or creed. The exclusion of sex from this list implies that such discrimination is allowed in legislation. More pointedly, Article 2b(4)(c) of the Constitution expressly exempts from the rules against discriminatory legislation "with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law." These are issues that directly affect women and which clearly show gender biases.

These two articles strongly suggest the need for constitutional amendment to bring parity to the fore for women. Section 7 of the Article of the Inheritance Act Chp. 99 also vividly illustrates gender bias and the notion of entrenched patriarchy still at work in the legal system in The Bahamas. It states:

None of the Maternal Ancestors of the Person whom the Descent is to be traced, nor any of their descendants shall be capable of inheriting until all of his Paternal Ancestors and their Descendants shall have failed, and also that no Female Paternal Ancestor of Such Person, nor any of her Descendants, shall be capable of inheriting until all his Paternal Ancestors and their Descendants shall have failed; and that no Female Maternal Ancestor of such Person, nor any of her Descendants, shall be capable of inheriting until all of his Male Maternal Ancestors and their Descendants shall have failed."

From the foregoing it may be seen that because the laws of The Bahamas are based on the English law of primogeniture, the Inheritance laws place the woman at a distinct disadvantage economically should her husband die intestate. This law states that should the husband die without leaving specific instructions in a will, the property would devolve automatically to the male heir of the family who inherits everything. This law further exhausts every possible male connection to the property before the matrilineal line is considered. As such, it fosters and perpetuates the notions inherent in patriarchy in a most serious and effective manner.

In The Bahamas as in many of the former colonies of Britain, many laws were inherited from The Westminster System and are still in force even when some of them have been repealed or amended in the United Kingdom. How is it then that this particular law and others remain on the Statute books of The Bahamas? It is posited that several factors contribute to this state of affairs: cultural acceptance of the domination of males as a given way of life; lack of engendered education; the legal jargon of the law and the highly religious nature of The Bahamian people. Alternatively, it may well be that patriarchy is a system of male dominance which has been inherited as a part of the total colonial heritage.

ORIGINS OF MALE DOMINANCE AND REASONS FOR ITS PERPETUATION

Engles (1942 & 1962) in his discourse in Origin postulates three principal forms of marriage which correspond broadly to the three stages of human development: for the period of savagery, group marriage; for barbarism, pairing marriage; for civilization, monogamy.

The significant characteristic of monogamous marriage was its transformation of the nuclear family into the basic economic unit of society, within which a woman and her children became dependent upon an individual man. Arising in conjunction with exploitative class relations, this transformation resulted in the oppression of women that has persisted to this day. As a corollary to, or symptomatic of this transformation, the reckoning of descent was changed from "mother right" to "father right". The political and legal implications of this vis-a-vis the status of women were tremendous.

Miller (1991) posits that patriarchy is not genetic but acquired and thus, he dismisses all of the existing single explanations pertaining to the creation of patriarchy as not being sufficiently comprehensive. According to Miller, "because it was so deeply embedded in the culture of all groups (men and women), patriarchy is regarded as natural and wholesome". Thus it seems that without enlightenment about gender, men and women have clung dutifully to this notion of male dominance handed down in every conceivable form and medium.

The system of male domination is insidiously strengthened and reinforced not only through cultural but also religious norms and practices. The Church itself is recognized as having inherited from Judaism and Jewish values much of its patriarchal character. Paul while accepting women as deacons and fellow workers, argues from his own traditionally Jewish conception of a monistic, masculine God for a divinely ordained hierarchy of social subordination: as God has authority over Christ, he declares, citing Genesis 2-3, so man has authority over Women.

In The Bahamas, there are many churches most of which are pastored by men who promote by example and precept messages of male domination. Certainly the messages of male domination are incalculated into the psyche of Bahamian women who normally constitute three-quarters of the congregation.

The domination of women because of precepts taught operates not only in the religious arena but extend to other spheres of life. For example, many women feel that because the man is the head of the home, they do not have the right to express their opinions. In the economic sphere, many banks approached by women for loans, still require the husbands' signature before approving the loan. These examples illustrate how pervasive the religious precepts can be in making women feel inferior and dependent on men.

As well, the education system does little to relate to the culture and needs of women, a fact recognized in the National Draft Policy Statement On Women In The Bahamas. It is lacking in affirmation and enhancement of the self-esteem of women nor does it prepare them adequately for employment. It is ironic that many teachers

are women who ultimately teach and prepare those who will eventually take power and continue to keep women contained and accepting of the status quo.

A deficient education also deprives women of the skills needed to confront the system and fight for their legal rights. Will they dare to challenge laws which they cannot understand because of obfuscation caused by legal jargon. A legal system comprised of slightly more than twice as many men as women undoubtedly has more than a little to do with the persistence of gender inequality in The Bahamas.

THE INHERITANCE BILL (1983) AND OBSTACLES TO ITS PASSAGE

In viewing the draft for the Inheritance Act of The Bahamas, 1983, the first thing of note was the abolition of the existing rules of descent (i.e. primogeniture), curtesy and dower. The rules as to distribution of the intestate's estate (clause 35) vary depending upon who survives the intestate. Accordingly, distribution of the estate is made in proportionate values among the surviving spouse and issue, preference being given to relations of the whole blood, or relatives of the intestate "per stirpes" that position which their parent would have inherited had that parent survived the intestate (clause 36).

Of particular interest is Part V, Subsection V, which states that if there are no persons to inherit, the residuary estate escheat to the government in accordance with the Escheat Act. Part V of the proposed bill is not very clear cut in its definition of dependents who would now inherit and it still allows for common law unions and illegitimate children to be discriminated against, unless proof could be given as to the person being supported by the deceased before his death. In this context, "child", "dependent" and "father" are given particular definitions (These definitions maybe referred to in the notes at the end of this paper.)

This same section, Part V, Subsection 44(1) states that "where an intestate dies leaving a dependent on the grounds that the law relating to intestacy does not make provision for the maintenance of such dependent, make an order providing for such maintenance to be made out of the intestate's estate as it (the Court) thinks fit, having regard to any benefits to which the person by or on whose behalf the application is made is entitled under any other enactment on the death of the intestate".

The proposed bill undoubtedly has some good provisions, in that it would abolish primogeniture, and there would be some parity in the distribution of property for the surviving spouse. However, this particular subsection seemed to sound the death knell of the bill as the provision regarding dependents touched on two very delicate issues in Bahamian society - illegitimacy and "sweethearting". The latter being the quite common practice of married men to have another woman "on the side."

Firstly, as regards the current discrimination against the illegitimate child, the main legal disadvantage arises from the mother's limited rights to claim maintenance or child support. The fact is that in law as it now exists, the "bastard" child cannot inherit anything unless there is proof of paternity (i.e. the father making it legal by an affidavit, judged by the courts to be father (putative father) or through registration.)

Under the newly drafted bill, the illegitimate child's status is the same, however, if the child or its mother can prove to the court that there was some form of maintenance prior to the death of the person, then as a dependent he or she can make a claim. Child maintenance normally becomes the responsibility of the mother and the amounts now received from the father through the courts are negligible. (It is interesting to note that under Trinidad and Tobago's laws that the concept of illegitimacy has been abolished and that all children have equal status). In The Bahamas, such provision was excluded even in the proposed draft bill.

Secondly, the provision (44)1 Bill which provides for applications from dependents can include anyone who was being maintained by the deceased before his death once reasonable proof is provided to the court. The court can then determine how to distribute the estate. This means that a "girlfriend", "sweetheart" or brother can apply to seek compensation from the estate.

In The Bahamas, as many married women are the ones who normally pay the mortgage on the matrimonial home and many possessions are acquired jointly, their emotional response elicited by the provision was predictable. The idea of having others benefit from the fruits of their toil did not sit well with many women, particularly where the recipient would be a sweetheart.

The men on the other hand who seldom make provision for "outside" families, are concerned only that their legal families are cared for after their deaths. At the same time, the Parliament is dominated by men who were not prepared to risk female electoral support in an election year and thus, the bill was shelved. Implicit in this bill was the condoning of adultery and thus, in a sense, Bahamian men could "have their cake and eat it too." At the same time, the matter of common law unions (not legally recognized) was not addressed at all, even though they are often times more stable than legalized unions.

CONCLUSION

The failure met by the proposed Inheritance Bill (1983) suggests the need for a better understanding of gender issues by the entire Bahamian population. This is important if the constitution is to be amended to reflect gender equity in the areas where discrimination against women still exists as in the Inheritance Act, for this can

only come about by a referendum in which two-thirds of the Parliament must agree.

It is imperative that Bahamian males who dominate in Parliament see the need for the law to reflect the times. Policymakers in The Bahamas have indicated a commitment to recognizing gender equity before the law by subscribing to the principles of CEDAW and by promising Bahamian women equal rights to property in Manifesto '92. They must live up to these statements on women by pursuing the following courses of action:

1. Implementing policies re gender equity put forward by the U.N. and the Bahamas Government;
2. Coordinating a widespread educational campaign to sensitize men and women to issues of gender;
3. Having Parliament resume dialogue on the draft bill;
4. Mobilizing of The Bahamas Bar Association to act as a pressure group to advocate for change in the laws.

Finally, if the eventual passage on more equitable legislation is to be realized, the women of The Bahamas will have to unite, understanding that together they are a force to be reckoned with.

Notes

DEFINITIONS FROM THE DRAFT INHERITANCE BILL (1983)

"Child" means a person-

- (a) under the age of eighteen years; or
- (b) who, having attained the age of eighteen, but not the age of twenty-three, is either receiving full-time instruction at an educational establishment or undergoing training for a trade, profession or vocation in such circumstances that he is required to devote the whole of his time to that training; or
- (c) who, because of some mental or physical disability, is incapable of maintaining himself or herself;

"Dependent" in relation to a person who dies intestate means-

- (a) where the deceased being the father or mother of a child born out of wedlock, such child as was wholly or partially dependent upon the income of, or was living with, the deceased at the time of his or her death;
- (b) where the deceased being a person born out of wedlock, the father of such person as was wholly or partially dependent upon the income of, or was living with, the deceased at the time of his or her death;

- "Father" means, in relation to a person born out of wedlock, a person who has-
- (a) been adjudged by the court or a magistrate's court to be the father or putative father, or
 - (b) acknowledged himself to be the father under section 14 of the Births and Deaths Registration act, or
 - (c) by affidavit sworn before a Justice of the Peace or a notary public or by other document duly attested and sealed, together with a declaration by the mother of the child contained in the same instrument confirming that the person is the father of the child, admitted paternity, but such affidavit or other document shall be of no effect unless it has been recorded in the Registrar General's Department".

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