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***Ukuthwala* custom: exploring African epistemologies to solve some societal problems**

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Abstract: This paper seeks to explore the African cultural epistemologies behind the custom of *ukuthwala* and find out its potential whether it is still relevant in our modern society. The paper finds out that it is still relevant and can solve the following individual circumstances, namely: (a) to fast track marriage negotiations where timing is an issue, (b) when a woman is faced with a dilemma of having met a man she truly loves more than the current lover in her life, (c) to speed up marriage negotiations in response to peer pressure, (d) to force the hand of parents if the suitor is too poor to afford lobolo, (d) to circumvent parental opposition to the match. The above shows the beauty of the practice of *ukuthwala* and that it does not constitute a violation of human rights if there is an agreement. However, the influence of colonialism led to the distortion of many indigenous cultures and ways of life. The negative forms of *ukuthwala* that does not involve the consent of a woman is a violation of human rights. Any culprit will be punished severely and is prone to the criminal charges of rape, human trafficking, and assault.

Keywords: *ukuthwala*, African cultural epistemologies, human trafficking, rape, and assault

Introduction

The word *ukuthwala* has many connotations in Zulu. The first meaning of *ukuthwala* refers to the wearing of something on the head for numerous purposes either hat for the purpose of protection from the sun or decoration purposes. Headdress is worn by an engaged or married woman as a sign of respect for her in laws. The second meaning of *ukuthwala* refers to an act of putting something on the head to avoid carrying it by hand, for example if a girl is instructed to go and fetch firewood, she can decide not to carry it by hand but to carry firewood with her head. The third meaning of *ukuthwala* refers to the practice of acquiring supernatural powers that enables one to become rich, powerful and have more dignity within the community. In this practice a person usually approaches a traditional healer who will provide some medication and oversee the completion of certain rituals to acquire riches and power. The fourth meaning of *ukuthwala* refers to an irregular way of initiating marriage negotiations and this study intends to deal with the fourth meaning of *ukuthwala*. The regular way of initiating a customary marriage begins by courtship whereby a man courts a woman to be in love with him. If he finally succeeds in developing a romantic relationship with a woman, then there are numerous cultural practices that must be adhered to such as the sending of emissaries to the bride's family for the purpose of initiating marriage negotiations, the payment of *lobolo* and so forth. It is beyond any doubt that there are many standardized ceremonies that are linked to customary marriage, and this is aptly captured in one of the requirements of a customary marriage. Section 3 of the Recognition of Customary Marriages Act 120 of 1998 provides that "a marriage must be negotiated, entered into or celebrated in accordance with customary law." The wording of the above section was crafted wisely with the intention of accommodating many standardized cultural practices that must be followed during negotiations and during the celebration of a marriage. In addition to normal or regular ways of initiating a marriage there are also irregular ways that do not follow the standardized cultural practices (Van Tromp 1947, 68).

Ukuthwala is defined by Bekker and Koyana as follows:

The intending bridegroom, with one or two friends, will waylay the intended bride in the neighbourhood of the home, quite late in the day, towards sunset or at early dusk, and they will "forcibly" take her to the young man's home. Sometimes, the girl is caught unaware, but in many instances, she is "caught" according to the plan and agreement. In

either case, she will put up a show of resistance to suggest to onlookers that it is all against her will when, in fact, it is hardly ever so (Koyana and Bekker 2007, 139; Koyana 1980).

The reading of the above shows that a woman is aware of *ukuthwala* and that it will eventually lead to a marriage but decide to put up some form of fake resistance. Bekker and Koyana makes it clear that resistance is usually a feigned one by arguing that “the girl, to appear unwilling and to preserve her maidenly dignity, will usually put up a strenuous but pretended resistance for more often than not, she is a willing party” (Bekker 1989, 98). The practice of *ukuthwala* incorporated some safeguards against the practice, for example, after taking away the girl to the intending bridegroom’s family, the groom’s family is expected to immediately send emissaries to the bride’s family and tell them *funelani nganeneno* (your daughter is with us) and we intend to commence marriage negotiations. The bridegroom’s family is expected to indicate what amount of cattle they propose to pay and by when (Bennett 2004, 212; Bekker 1989). Sexual intercourse is not permitted until both families have reached an agreement during marriage negotiations and it is culturally offensive for a suitor to have sexual intercourse while marriage negotiations are still in progress. This is aptly captured in the words of Bennett when he argued that:

The custom of *thwala* did not contemplate sexual intercourse, at least not until the girl’s status as a bride had been duly fixed. Traditionally, as soon as she arrived at the suitor’s homestead, she would have been placed under the care of the woman in his family. If the suitor were to have sex with her, he would be required to pay seduction damages in addition to *lobolo* cattle (Bennett, 2010, 03).

The reading of the above shows that the practice was not meant to encroach upon human rights of women but to serve some societal good. For so many years we have been made to view the world and solve its problems while wearing western spectacles. Now the problems that are facing our contemporary world require people who will begin by emancipating themselves from the shackles of mental slavery that were imposed by our colonial past. The first part of this paper intends to investigate the African cultural epistemologies behind *ukuthwala* custom and find out what societal problems that can be solved by the continuation of the cultural practice. In recent years there were many reports in the news media about the prevalence of the practice of *ukuthwala* and it appeared that it metamorphosed to something else. Now some people are abusing *ukuthwala* to marry off young girls to older men for financial gain and this necessitates the balancing of *ukuthwala* with the human rights of girls. So, the second part of the paper will discuss the balancing of *ukuthwala* custom with human rights.

African Epistemologies Behind *Ukuthwala* Custom

It is not easy to measure the damage instigated by the colonial project. It misrepresented many things including people, knowledge and so forth. This shows beyond any doubt that colonialism had a deliberate effort to “erase the historical, intellectual, and cultural contributions of Africa and other parts of the ‘non-western’ world to our common humanity” (Molefe 2016, 30). This is what Brown and Moyo refer to as “Black epistemicide”, they unpack three aspects coloniality of power, coloniality of knowledge, and coloniality of minds (Brown and Moyo 2023, 17). "Coloniality of power" unveils the biases embedded in Eurocentric narratives, urging us to dismantle such negations. "Coloniality of minds" sheds light on the distortions inflicted upon African thought processes. Lastly, "Coloniality of knowledge" prompts us to unveil and rectify the erasures and silences regarding African contributions. As already mentioned earlier, the aim of this paper is to find out what *ukuthwala* custom can contribute to resolving our societal problems. The South African Law Reform Commission (SALRC) observed that *ukuthwala* custom was used to resolve the following societal problems (SALRC 2014):

To accelerate marriage negotiations where timing is an issue

According to the African epistemologies sexual intercourse is not permissible amongst the unmarried persons and this runs like a golden thread across SADC region (Gluckman 1935, 255). This disapproval of sexual intercourse outside the confines of wedlock is reflected by the practice of numerous customs that are used as a safety valve against seduction. This includes customs such as *ukusoma*, virginity testing and seduction damages (Dlamini 1984, 28; Ngema 2022, 167). If a man impregnates an unmarried maiden, he is expected to pay seduction damages as punishment for his wrongdoing. As mentioned earlier, sexual intercourse outside marriage is prohibited and sexual intercourse that is followed by pregnancy is a punishable offence. To avoid shame and disgrace, the family of the male person who impregnated the girl usually resorted to the cultural practice of *ukuthwala* to fast-track marriage negotiations before the community knows about the pregnancy. It is also noted that to avoid shame associated with pre-marital pregnancy parties are sometimes forced to get married to each other. Mwambene noted that in Malawi forcing a young woman to marry after a man has impregnated her is maintained because “it helps expose men who often refuse to marry women for whose pregnancy they are responsible” (Mwambene 2008,197).

Woman faced with a dilemma of having met a man she truly loves

For a start, it is of crucial importance to mention that culturally men need to be dignified and have prestige in the community to be able to attract maidens during courtship. Men earn dignity and respect from the maidens if they conduct themselves in a particular way. For men to be attractive to maidens, they must have *ugazi* (charm to attract women), they must be clean and in good health (*amagcokama*), they must have creative skill in music, dance, and talks those centers around aesthetic appearances (*amagagu*), they must be brave (*amaqhawe*) and they must have possessions (Msimang 1975) and means to defray expenses. It is possible for a maiden to fall in love with a man and before she gets married to him, she realizes that she loves another suitor far more than her current lover. According to the Zulu people *intombi iqoma kanye* (a lady supposes be engaged once). However, it was not completely forbidden for a lady to terminate a romantic love affair with her lover and be engaged to another man, but it was discouraged (Nyembezi and Nxumalo 1995; Nkosi and Buthelezi 2013, 168). One of the factors that can influence a woman to change her mind about her existing love relationship is that traditionally *indoda yindoda ngezinkomo zayo* (a man is a man because of his resources). A man with resources to defray lobolo expenses is more attractive than a man who cannot be able to afford it.

To accelerate negotiations in reaction to peer pressure

In a traditional society marriage is viewed as the only acceptable way of creating the family and the traditional society did not offer any arrangements to spinsterhood, and it is a disgrace to be unmarried for a man or woman who has reached a marriageable age (Van Tromp 1947,28). The SALRC observed that one of the reasons that led to the cultural practice of *ukuthwala* is “to speed up marriage negotiations in response to peer pressure on either the girl or the boy to get married (with such pressure usually affecting girls more than boys).” If a man has been engaged with a female person for a prolonged period without any attempt to take the relationship to another level by starting lobolo negotiations, such a female person may be encouraged by her peers to leave her lover because he is not serious enough and they can tell her categorically clear that your lover is just wasting your time (Nkosi and Buthelezi 2013, 168). After ceasing the existing relationship, a woman can partake on *ukubaleka* and *ukubaleka* is defined as a reverse of *ukuthwala* where a woman leaves her lover who was adamant to pay *lobolo* and elopes to the family home of one of her suitors that she fell in love with out of her own volition, thereby pressurizing him to defray *lobolo* expenses to live together as husband and wife.

To force the hand of the parents if a boy is too poor to afford lobolo

Common sense dictates that the dignity of a man might be encroached upon if he would be forced to pay a huge amount of lobolo and is likely to make it difficult for him to tie a marriage knot (Posel & Rudwick, 2011; Ngema 2012, 41). Research shows that some families tend to charge a huge amount of lobolo if their daughter is a professional than in a situation where she merely matriculated. It becomes difficult to pay *lobolo* for a poor man and the traditional society made it possible for such man to force the hand of the parents through the practice of *ukuthwala*, if he is too poor to pay *lobolo* (Van Tromp 1947, 66). This is in line with the African philosophy of *ubuntu*. *Ubuntu* is an African philosophical concept which highlights the interconnectedness of humanity and underscores the significance of community and compassion. It advocates for a human rights framework grounded in principles of solidarity, mutual respect, and the acknowledgment of every individual's inherent dignity within the broader context of community welfare (Adoga 2023, 04).

To circumvent parental opposition to the Match

Some parents are too controlling to such an extent that they even dictate who ought to fall in love with their children. It goes without saying that every good parent will always want the best for his children but too much interference in the intimate affairs of their children might be harmful. Sometimes the wishes of the parent conflict with the desires of the children. Parents might have an ideal wife or husband for their child but only to find out that their son or daughter is in love with someone else who is not the choice of the parents. *Ukuthwala* was used as a strategy to counter the extreme parental authority. Under the later mentioned situation, *ukuthwala* was devised as an optional “safety valve” against parental authority that is too extreme. In such situations, the lovers conclude that they will accomplish their dream of getting married to each other through *ukuthwala* so that their parents will have no choice but to accept their wishes.

As discussed above, it is beyond any doubt that African cultural epistemologies behind the custom of *ukuthwala* were devised to serve some societal good and such wisdom behind *ukuthwala* is still relevant in our contemporary society. It is so unfortunate that far too less has been said about the great African wisdom behind the practice of *ukuthwala*

and we hear much about its criticisms. The following section will address such criticisms and discuss its legal regulation and assess whether it is in line with human rights.

Balancing *Ukuthwala* Custom with Human Rights

Ukuthwala custom is divided into three forms, namely:

- a. Where there is collusion between the bride and groom's family without the girl's knowledge.
- b. Where neither the girl nor her family was aware of the *ukuthwala*.
- c. Where there is an agreement between the lovers that they will marry through *the ukuthwala*.

The already argued before, the third form of *ukuthwala* that involves the agreement between the parties is not at odds with the violation of human rights. However, the other forms where there is no consent from the girl are in violation of human rights. It is practiced by men who have no charm to attract women and are in fact rejected by women. These men are labeled as *izishimane/izigwadi* (*izishimane* is a derogatory term used to label a man who lack skills to woo women during courtship and are rejected by women). *Izishimane* abuse the custom of *ukuthwala* to pursue their criminal activities (Msimang 1991, 228). The lack of skills to attract women during courtship makes some men to resort to some diabolic means to attract women. They use a concoction of herbs mixed with some animal parts to make a woman cry out hysterically and run like a mad woman to the homestead of the man to present herself as a bride ready to be betrothed (Nkosi and Buthelezi, 2013, 164). A decade ago, *ukuthwala* was reported in the news media as a custom that took a completely different turn from its original purpose and ended up being abused by some men to further their selfish desires under the camouflage of culture. The abhorrent forms of *ukuthwala* have a strong likelihood of violating many rights of girls such as the right to education, human dignity, equality, freedom and security of the person, right to health, just to name but a few. This has prompted the Gender Directorate to request the SALRC to investigate the custom of *ukuthwala* and assess the possibility of enacting legislation that will regulate it. After careful consideration of numerous factors, the SALRC was against the enactment of legislation to regulate *ukuthwala* because that would amount to the codification of a practice that was not regular in the first place. As it stands, there is no legislation that regulates *ukuthwala* custom, but the judiciary has already come up with a landmark judgment on the issue of *ukuthwala*. In the case of *S v Jezile* it appeared that *ukuthwala* is abused and this is clearly reflected in the facts of the case. A 28-year-old young man (Appellant) left his humble abode in Philippi (Cape Town) to his home village in the province of Eastern cape during the December holidays of year 2009 with the main intention of finding a suitable wife for himself. His ideal maiden that he wanted to take as a wife is aged between 14 years and 16 years because of the fear that those who are above that age cap might have children already. In January of 2010 the Appellant saw a 14-year-old young girl (complainant) who was doing grade 7 at her local primary school at the time and he saw her as an ideal wife who is likely to be a virgin. The appellant was seeing the complainant for the first time (they were strangers to each other) and he proceeded with her family to commence *lobolo* negotiations on the very same day he met her. The complainant lived with her maternal grandmother, other siblings and her mother who works in the nearby village. The appellant paid an amount of R 8000 as a *lobolo* to the grandmother and on the following day she was summoned to a family meeting where she was told that she is getting married to another village and no one cared about acquiring her consent. She was subsequently married to the appellant against her will and was abused sexually and was bitten if she refused to obey the appellant. In terms of customary law, a suitor is not allowed to have sexual intercourse with the girl, but she was placed under the care of an elderly woman from the suitors' family (Ngema 2010, 84). She later managed to escape from the custody of the appellant and reported the matter to the police. Appellant was charged with numerous counts of criminal offences such as rape, assault with an intent to do grievous bodily harm and rape. He was punished with 22 years behind the bars for rape, human trafficking, and assault. This judgment is highly commendable because it puts the perpetrator in his rightful place but there is still more to be done to fight against the abuse of *ukuthwala*. A lot of public education is still necessary, especially in the affected areas where the practice is still prevalent. Education will arm young girls with the relevant information about their rights to bodily integrity and that no one has a right to marry them without their own free will and volition.

Conclusion

As already mentioned earlier, the aim of this study is to explore the African cultural epistemologies behind the practice of *ukuthwala* and find out whether it has got anything to contribute to resolve some of our current societal problems. *Ukuthwala* custom is still relevant and has the potential to solve some of the individual circumstances that are faced by the lovers, namely: (a) to fast-track marriage negotiations where timing is an issue. This usually happens when the woman gets pregnant outside the confines of wedlock and agree with her suitor that they will use *ukuthwala* to get married to each other as soon as possible before the pregnancy become visible for everyone to see. (b) It is also used where a woman is already engaged with a man, but she finds a new one who she loves more than the current boyfriend.

So, it permitted a woman to have a change of mind about her suitor. (c) It was also used to speed up marriage negotiations in response to peer pressure. If a man has been in a love relationship with a woman but is not saying anything positive about when he is going to pay lobolo for her. Traditionally, it is believed that a woman's beauty depreciates with age and the more she delays getting married, it increases her chances of spinsterhood. She was permitted to make a change of mind and leave a man who is wasting her time. (d) It was also used as a safety valve against too much parental authority. This is when parents want to dictate everything about the love affair of their children, choosing for them whom to marry and so forth. *Ukuthwala* was a strategy in the hands of lovers to solve their individual personal circumstances. (e) It was also used as a strategy to force the hand of parents if the suitor is too poor to afford *lobolo*. This is in line with the African philosophy of *ubuntu* which emphasizes compassion to one another. So, there is a great African wisdom behind the practice of *ukuthwala* and it is a strategy to resolve individual problematic circumstances. However, little is said about the wisdom behind *ukuthwala*, and academic literature focuses more on the abhorrent forms of *ukuthwala*. As already argued the cultural practice of *ukuthwala* remained not statutorily regulated for a long period of time and it is still not yet regulated by legislations dealing with customary law and other pieces of legislation. This had an immense contribution to the popularity of the abhorrent forms of *ukuthwala* and its abuse under the name of culture. The situation regarding the regulation of the cultural practice of *ukuthwala* has been ameliorated by the case of *s v Jezile*. The latter mentioned case brought about the development on the abuse of the cultural practice of *ukuthwala* and convicted the culprit for rape, kidnapping, human trafficking, and assault with an intent to do grievous bodily harm. This paper cautions that the case of *Jezile* has not adequately addressed many problems that surround the application of the cultural practice of *ukuthwala*. A need for public education is necessary to teach our rural communities about it and how to protect and care for the victims of the cultural practice.

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