



A Curated Conspectus of the Life, Love, Law,
Literature and Laughter of Albie Sachs

THE DANIELS CASE – VIDEO TRANSCRIPT

CHAPTER: RELIGIOUS PATRIARCHY, APARTHEID AND COLONIALISM

THANDI MATTHEWS

The next case we are going to speak to is the Daniels Case. For me, a very profound case. It brings together, gender and religion, but also demonstrates not only how religion reproduces patriarchy, but religion in conjunction with apartheid and colonialism - the triple yoke you spoke to earlier - reproduces various forms of oppression.

I just want to read you a quote that's been very powerful for me that comes from Harksen versus Lane where you say, 'there are areas where to homogenise is not to equalise, but to reinforce social patterns that deny the achievement of equality.'

This case had to do with a Muslim widow who had inherited a house prior. When she got remarried, the state, at the time - because her husband was presumed to be the breadwinner - puts the house in his name, even though she has inherited this house. Then, he dies and now she has to fight over a house which she had inherited through her own lineage. Can you speak to us about the tensions that emerged in that case?

CHAPTER: 'SORRY, MADAM, YOU ARE NOT THE SPOUSE'

JUSTICE ALBIE SACHS

Regulations are regulations, if you're working for the city council. And the regulations said that if the registered owner of the house, who is now her second husband, dies, then the spouse inherits. Sorry madam, but you're not the spouse. You weren't legally married, you were married only by Muslim rites, and our courts have said for a long time, Muslim marriages aren't real marriages because they are potentially polygamous. So, following the law, you're out, and we've got to give this house to someone else. Now, it's so manifestly unjust. It's a kind of entrenched patriarchy, if you like, that you get from hard-hearted councils that like rules and regulations that are easy to apply, and *'there's*

nothing wrong with it because the man's the head of the household. What's the problem? She can get another husband.'

CHAPTER: RESTORING THE MEANING OF THE WORD 'WIFE'

For someone like myself it's profoundly shocking, and I'm thinking now how do we approach it? Do we have to knock down the regulation that says the wife inherits because she's not legally the wife? I think: But she is the wife. Everybody calls her the wife; the community regards her as a wife; she and her husband regarded themselves as husband and wife, married according to Muslim custom.

So, we are not changing the meaning of the word wife, we are restoring it from its appropriation by a Christian hegemonic approach that the marriage is not a real marriage. So, all it requires is a proper interpretation of the word 'wife'. It doesn't require striking down and getting a new law that says Muslim marriages have to be recognised. And I thought that was more direct, simpler and historically more correct, to actually overturn the decisions of these old Cape judges that were so embedded with that combination of patriarchal and Christian hegemony.

And maybe having grown up in Cape Town with quite a heterogenous community; very large Muslim community, descended from enslaved people; quite a big Jewish community; exiles from Europe with different religious beliefs and so on, coming at different stages; Rastafari, quite a strong presence; that diversity of religion is part and parcel of Cape Town. A very positive aspect of its cosmopolitan, seaport history and character.

CHAPTER: DIFFERENT OPINION, SAME OUTCOME

My colleague Dikgang Moseneke disagreed. He didn't disagree with the outcome - he said it was manifestly unfair - but the word 'wife' has been treated by the courts in a way that's unconstitutional now, but that's there, that's the law. So, we have to strike it down as being unconstitutional. But in the meanwhile, allow her to stay on in the house while the law is being rectified to allow for recognition of Muslim marriages. He thought maybe that's more powerful in support of Muslim marriages.

I thought my approach, in a way, was more powerful than his, but it's not a tussle. The outcomes were the same. And it's just one of those examples of what appeared to be minor routine municipal activities in administration that... it's horrible, it had been her house, she's grown up there, she's lived there, she's borne children there, had two husbands there. The attachment was so strong and to say, *'...you're out because your marriage wasn't a marriage that would have been recognised in the law before,'* to me, was absolutely untenable.

CHAPTER: A NON-SEXIST CONSTITUTIONAL VISION AND MANDATE

I think it's the first time that I rectified, if you like, a law simply by interpretation. Not by changing the wording, knocking it out and replacing it. But I felt, we are now Judges of the Constitutional Court with a completely different vision and mandate that comes from the preamble and the core values of the Constitution. It's a non-sexist society we want. In a non-sexist society you can't say this woman has to give up that house because she wasn't the legal spouse of the man she married, who was registered, because he was a man, as the owner.

I like to think that practice has changed now and that the position of women succeeding after the death of their husbands, if the house is registered in their names, is just taken for granted and is much easier. It's often that these are not huge dramatic things, they don't capture newspaper headlines, but they can affect hundreds and hundreds of people. And if necessary, the courts have to be there to ensure that the principle of non-sexism is applied in practical life in meaningful ways for people who've been subjected to forms of patriarchal domination that are quite unacceptable.

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