

## Women and Freedom of Speech: Considering Gender Equality in Freedom of Speech

Mannat Dhillon

Student of Political Science at Lady Shri Ram College, Delhi University, Program Manager at Youth for Peace International, India

Corresponding author: dhillonmannat4@gmail.com

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### ABSTRACT

The ideals of freedom of speech and equality are both essential for a democratic, liberal society. The power relations that prevail greatly affect the dominant discourse and ideology in the society, and the extent of freedom of speech and expression given to different groups conversely affects the power relations in the society. Gender is one of the major areas where power relations have played a significant role. The patriarchal culture has perpetuated ways of thinking which assume male dominance as natural, and violence towards women as a legitimate expression of this dominance. The violence here does not have to be looked at in its narrow sense of physical violence, but in its broader sense of physical, emotional and psychological violence. It would translate as taking into account the 'power' women as a group have to make changes in their society. A prerequisite for making such changes that challenge the status quo, is being heard- and being heard as individuals who have a legitimate authority to speak. Even though the world has come a long way, and women have more rights and freedom than they did a few centuries ago, the freedom at best remains hypocritical- prescribed in theory, but not practiced in actuality. This paper takes the freedom of speech and expression as one of the significant areas where the freedom of women is at best limited and attempts to understand what it means for the gender power relations in society. It also seeks to recognize the reason why this pattern is so difficult to break. The paper is accordingly divided into two subsections: 'Gender and Speech' which traces the relation between women and speech in the context of a gender unequal society; and 'Speech and Law' which examines the role political legitimization plays in carrying forward the status quo.

**Keywords:** Gender and Speech, violence, women, Speech and Law

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### Gender and Speech

Historically, western society's views regarding women have been influenced by Judeo Christian cultural beliefs, Greek philosophy and the Western legal values: all of which assumed male superiority and the domination resulting from it natural, and violence against women as a natural expression of the male dominance. (Fox, 2002) Author Vivian C. Fox in one of his works "Historical Perspectives on Violence against Women" traces the basic values and beliefs which gave rise to patriarchy. The Hebrews, according to him had the most prominent

patriarchal system. Their theology carved out a very masculine picture of 'God' who was omnipresent, omnipotent, just, good, compassionate and merciful. Added to this were the religious beliefs such as Eve being formed from the ribs of Adam, which would remain the predominant views, for thousands of years to come. Another depiction of Eve is as the temptress, who seduced Adam into sharing the forbidden fruit- according to Genesis Midrash "For wasn't she created at the same time as Satan?" (Fox, 2002) The result is very accurately put as follows:

*"The serpent became an emissary of Satan, sent to*

*seduce Eve. Indeed, the more Eve and consequently all women were associated with serpent and sin, the greater the need grew to control, subdue, and dominate them. Eve came to be regarded as representative of her sex, weak, and lustful: thus penalty and protection dictated that all women subjugate themselves to wiser and superior male figures.” (Fox, 2002)*

Many narratives that show such an attitude of natural subordination have been discussed by Mary Beard in her book ‘Women and Power’. The earliest account she discusses is that of Penelope’s subordination in Homer’s epic work- Odyssey. Once Penelope- wife of Odysseus who is on a war- asks a bard singing about the difficulties the Greek heroes are facing, to sing something more positive. She is immediately interrupted by her now matured son Telemachus: “Mother go back up into your quarters, and take up your own work, the loom and the distaff... speech will be the business of men, all men, and of me most of all; for mine is the power in this household.”<sup>2</sup> (Beard, 2017) And Penelope, no questions asked, goes back to her quarters.

Mary Beard also makes a remarkable observation that whenever women were allowed to speak in public, it was usually to speak as victims and martyrs, prefacing their own death- in a well known story from early history of Rome, the virtuous Lucretia, raped by the brutal prince of the ruling monarchy, was given a speaking part solely to denounce her rapist and announce her own suicide. (Beard, 2017) In other stories, to prevent such a denunciation, the tongue of raped Princess Philomela in Ovid’s Metamorphoses and that of Shakespeare’s Lavinia was simply cut out by their rapists. The only other occasion where women could legitimately speak was in extreme circumstances to defend their own sectional interests i.e. of other women, but couldn’t speak for men or the community as a whole.

Practices like ‘coverture’ according to which the wife was a property of her husband, and ‘husbandly’ or ‘marital chastisement’ according to which husband had the right to reprimand by way of inflicting verbal and/or physical pain on wife and therefore

control her behavior if he feels she has ‘misbehaved’, were a result of such patriarchal belief systems. One interesting and rather torturous practice was that of punishment by ‘scold’s bridle’. This device was an iron muzzle in an iron framework that enclosed the head. A bridle-bit was projected into the mouth and pressed down on top of the tongue. A spike prevented any talking since any movement of the mouth could cause a severe piercing of the tongue. This contraption was mostly inflicted on female transgressors whose speech was deemed riotous or troublesome, and the instrument had the effect of preventing such gossips or scolds from speaking, and also humiliating them.

Thus one can observe that public speaking and oratory, in particular, wasn’t something that women would do; these were the exclusive practices and skills of men that defined masculinity as a gender. Women were, in general, not just stopped from speaking, but they also weren’t considered fit and smart enough to speak in public. This can be seen, for example, in Aristophanes’ devotion of a whole comedy to the ‘hilarious’ fantasy where women might take over running the state. (Beard, 2017) The construction of the ‘voice of authority’ along with that of knowledge, expertise, and power was masculine at best, with no place for women.

Such ideologies have also been carried to the modern times. This is evident whenever one witnesses the biased and disproportionate amount of criticism faced by women especially in the public domain, as compared to their male counterparts- be it the abusive content like rape threats that women in power (and women who strongly express their opinions) face on social media, or be it women facing unequal treatment in their places of work where they are expected to act according to patriarchal standards (which usually means ‘speak less’ amongst other things). Mary Beard highlights one such instance when the Labour MP Diane Abbott and the Tory Boris Johnson, both gave disastrous radio interviews. Johnson’s mistakes were reacted to as one time mistakes, concluding that he ought to concentrate and get a better grip of his matter. On the other hand, Abbott was ridiculed as a ‘numpty’, ‘fat idiot’, and a ‘bone-headed stupid’,

concluding that she isn't fit to be in the position she holds. Such a dissimilarity in treatment was also seen during the recent US presidential elections, where as a part of campaigning Hillary Clinton's face was photo-shopped onto Medusa's decapitated head- which is considered as the nastiest cultural symbol of opposition to women's power.\*This as Beard explains was such a normal sight that one could buy t-shirts and mugs with Medusa- Hillary heads and the logo 'Trump'.

*\*Medusa's story interestingly, also talks about gendered violence. Medusa was earlier a beautiful women raped by Poseiden, who then as a 'punishment' was transformed into a deadly creature with the power to turn anyone who looked directly at her into stone. It was then for the 'hero' Perseus to kill her.*

Fox gives an explanation of such a continuation of patriarchal ideologies and expectations even after the feminist activism of 18<sup>th</sup> and 19<sup>th</sup> centuries, that in theory liberated women from subordination; however, in actuality the masculine patriarchal psyche persisted. The predominant ideologies in this period placed women in theoretically equal, but separate spheres from men. Women were thus equal to men in terms of their physical activities, education, politics etc., but at the same time they were morally different with special female moral delicacy. Thus, "as hierarchy in America became increasingly discredited, a husband's exemption from liability for marital rape (simultaneously) became more acceptable." (Fox, 2002) This can be understood keeping in mind the 'men will be men' rationale. The new liberal paradigm therefore, provided a special sphere to women, which was equal to that of men, but the unequal constraints on education, personal, public and political life continued. 'Difference from men' still meant inferiority. The cultural psyche of male superiority continued allowing for their dominance in all areas except those delineated as female. This was the new interpretation of equality and women remained subject to their husband's demonstrations of power and even physical control.

However, one also has to go deeper and examine why this new interpretation of equality- where

women are only theoretically free- has remained existent for so long. What is it that gives legitimation to this inequality?

## Speech and Law

Vivian C. Fox also explores Gerda Lerner's works which explain the establishment of patriarchy with the rise of militarism: 'Patriarchal bargain' was the practice of supplying sex and housekeeping services -by women of the losing clan to their male captors- in exchange of protection (even if it meant enslavement) for themselves and their offsprings. Lerner argues that once justification of dominance is institutionalised in "custom, law, and practice, it is seen as natural and just" by those dominated as well. (Fox, 2002)

A similar argument is put forward by Catherine A MacKinnon in her book 'Only Words'. MacKinnon in her book discusses about the relation between equality and freedom of speech. Both are equally important in a democratic, liberal society; and it is equally important for these ideals to work together.

However they are not often considered together. For instance, issues like high illiteracy levels among girls is considered as a matter of inequality, without the recognition of the 'silence' it entails. Similarly, issues like hate speech and pornography are considered solely under the freedom of speech paradigm, and not seen in terms of the inequality they might promote. As a result, "Both bodies (equality and free speech) show virtually total insensitivity to the damage done to social equality by expressive means and a substantial lack of recognition that some people get a lot more speech than others. It thus protects the speech of inequality, meaning whenever inequality takes an expressive form, and without considering equal access to speech as central to any equality agenda." (MacKinnon, 1993)

What it amounts to, according to her is "equality unspeaking and speech unequal". This relation between speech and equality needs to be recognized as "in the absence of these recognitions, the power of those who have speech become(s) more and more exclusive, coercive, and violent (and) more and more legally protected.

The force of the 'new interpretation of equality' thus, one can say, is based in what is institutionalized and legally protected.

The way such institutionalization has come into being can be explained as follows, borrowing from MacKinnon's writing on the subject of pornography:

Freedom of expression affects equality and vice-versa; but without recognizing this, pornography is often allowed as a medium of expression for its 'entertainment value'. Given this leverage and also that society in general prefers not to ban one form of expression- as it may lead to banning others thus hindering the search for truth and adding to it "if we can't have this, what can we have?" argument,- the standard to judge its obscenity becomes less and the community standards towards pornography become more tolerable. In such an acceptance, the influence of the powerful- in this case men- also needs to be recognized. As pornography spreads to new markets, it becomes more and more intrusive and aggressive. As it gets the support of legitimate forums, it makes the abuse of women more and more invisible, and instead makes it visible as sex. Consequently, drawing a line between sex and violence keeps on getting more and more difficult. Pornography thus hurts women and their equality; moreover such a law is placed in the hands of those who have little interest in stopping the abuse. "(The speech, too, is accordingly defined,) and is then transformed into political speech: the excluded and stigmatized 'ideas' we love to hate. It amounts to protecting what pornography says and ignores what it does, or alternatively, protects what pornography says as a means of protecting what it does." (MacKinnon, 1993) Pornography- depicting subordination of women tends to perpetuate subordination, and leads to sex-based discrimination and violations of equal rights of women. MacKinnon rightly observes that the speech test that is used in child pornography is not used in adult pornography: if the harm of speech outweighs its value, it must be restricted by properly targeted means. Such a treatment of the issue of pornography only reflects the patriarchal mindset which has persisted only because of similar institutionalizations of gender inequality.

Another aspect that helps retain this inequality can be seen in how the law of libel (defamation) generally works. The law of libel is especially insensitive to the concerns of social inequality, and helps as a justification for the speech of the powerful. The standard of truth while considering the speech of the powerful becomes relaxed- in the sense that it is considered tacit, while it is high for the powerless. "The resulting law of libel has had an effect of licensing the dominant to say virtually anything about subordinated groups with impunity while supporting the media's power to refuse access to speech to the powerless, as it can always cite fear of a libel suit by an offended powerful individual. The situation is exacerbated by the fact that it is subordinated groups who are damaged by group defamation and mostly the privileged who can make credible threats to sue even for true statements that make them look bad" (MacKinnon, 1993). In effect, this gives more power of speech in the hands of the powerful, that is men in terms of gender relations, and government officials where law-making is concerned, who are also mostly men. On the other hand, there is a sense of uncomfortableness in challenging the status quo- the existing distribution of power, and any voices of dissent are silenced by way of refusing to publish such uncompromised expressions, abuse and so on. Thus it may not be a surprise why feminism which simply talks about gender equality, still holds a negative image in the minds of many.

## CONCLUSION

In conclusion, gender equality, speech and law are inherently inter-related. The relationship between speech and equality needs to be recognized more prominently. It is important to draw a correlation between the two aspects with special focus on gender as well. Gender inequality is seen to result in an unequal speech especially in the public domain, and this unequal public speech reinforces the status quo of gender discrimination. The Law of the land, too, influenced by such unequal speech, plays a legitimizing factor for the inequality, and helps in maintaining the status quo. The culture of unequal speech needs to be recognized wherever



it is prevalent, and needs to be tackled with the support of legal and institutional methods.

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