

## **Of fairer sex and 'straight' ideology**

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The sexuality debate and the issue of same-sex marriages is a developing area of family law in various jurisdictions abroad. In December 2005, the South African constitutional court declared the absence of a facility to allow same-sex marriages as offensive to the country's constitution because it amounted to a denial of equal protection under the law. The result was the adoption of legislation in November 2006 allowing same-sex couples to be able to marry. In Canada, the Canadian Supreme Court held that the existing common law definition of marriage which is confined to 'union for life between a man and a woman' could no longer stand because it offended against the Canadian Charter of Rights and Freedoms that guarantees equality irrespective of sexual orientation. The result was that the same-sex marriages were legalized federally in Canada in July 2005. Even before that, Spain, a country with a high percentage of Catholics, became the third country in the world to pass legislation legalizing same-sex marriages, the first two being Holland in 2001 and Belgium in January 2003.

The issue has arisen in our part of the globe with the episode of Shumail Raj and Shahzina Tariq. There are no reliable figures of homosexuals in Pakistan but the issue is certainly not the first of its kind although it is probably the first one to hit the attention of the media after Justice Khawaja Muhammad Sharif of the Lahore High Court sent the same sex couple to separate jails for three years on perjury charges. The couple has avowed that they are not homosexuals but rather share a passionate bonding with each other provoked by, what the same-sex couple regards, a non-discursive and profoundly negating ritual of arranged marriage. The implications of this inferno are rooted in the censorial, negative power of patriarchal violence that is so adamantly embedded yet conveniently denied.

Individual autonomy, independence, self-sufficiency, self-rule, freedom and self-determination are laudable aspirations for any society that regards the welfare of individuals seriously. These fundamental values have been discussed by many influential legal and moral philosophers from John Locke to Kant to Rawls. The “self” that often desires to be autonomous, is socially constructed. It is a hybrid of culture, tradition, religion, morals, and power. When this “self” takes the form of a female gender, particularly in our country and those others that share similar cultural values and traditions, this social construct becomes an amalgam of all the above but most importantly patriarchy, and to some extent, misogynist experience. Women like men are autonomous individuals but women’s independence is marginalized due to the negativity of a genre of patriarchal power unleashed in our legal space.

Although many philosophers assume that to be human is to be in some sense autonomous, women are far from being autonomous. In fact they are profoundly relational. The degree of autonomy is usually measured by the amount of choice and power that one has. Power and choice are necessary for the exercise of real autonomy. However, due to the biological, reproductive role of women, they are largely rendered non-autonomous.

When a woman is pregnant, her physical being embraces the embryonic life of another, and thus she experiences a shared physical identity with herself and her fetus. Robin West, a prominent feminist of this era, takes on this stance to explain the counter-autonomous experience of women. When a woman shares her physical identity with another life developing inside her, her autonomy is largely undermined. When she becomes a mother and shares the emotional and psychological bond with her infant, her autonomy becomes tied to the infant once again. Because women are burdened materially with the dependency of the fetus upon them (although no doubt they are emotionally and psychologically enriched with this bond) they tend to rely more on relationships with others from whom they can derive the material strength and power to nurture the infant who ultimately depends on them. Thus a

woman's biological role is inherently counter-autonomous.

However, it is not only the biological aspect of a woman's physical being that makes her non-autonomous, it is also the social, political and legal victimization caused by the pervasive patriarchal institution, the compulsory heterosexuality, the institution of arranged marriage, forced romance, and the censorship in many cultures that gives birth to and nurture woman to woman bonding and redirect the young girl's emotional and sentimental identification toward men. This construction of the woman bond is thus largely the result of pervasive and universal institution of patriarchy that trivializes women, suppresses them, and ultimately some emotionally weaker ones seek refuge by unionizing with the same-sex. Patriarchy is like a Trojan horse which brings with it the evils of dehumanization of women, subordination, objectification, sexism and it marginalizes, trivializes, silences and threatens their existence in this patriarchal world.

There is considerable potential in this theory if one is inquisitive to delve into the whole sexuality debate and dig out the reasons for some people's so-called "deviant" behaviour. From the diagnosis of homosexuality as a psychological disorder in 1970's, to it being considered a disease, then a mere perversion, then 'paraphilia' or the sexual disorder, a 'third sex', and finally the present classification as a separate sexual orientation, we have been confronted with various theories and explanations by sexologists and psychologists regarding homosexuality.

In our country, by accepting the monopolizing wisdom of our ancestors and showing our indifference to delve into the intricate details pertaining to custom, tradition, and the laws of heaven, we have buried the spirit of questioning. The awareness and an attempt to find a rational eye in every decision, doctrine, and dogma at the bare minimum flourish debate, and promote speech and expression. If we are not scared of losing our religious and social significance by debating publicly issues of sexual orientation, gender and sexuality, questioning our beliefs will lead to

more clarity and less confusion rather than what some of us perceive to be sacrilegious.

The aim of free speech, as enshrined in Article 19 of our constitution, is to protect a marketplace of ideas. Avoiding the suppression of the exchange of ideas and chilling speech forms an integral part of the individual's right to freedom of expression. If one assumes arguably that law is a form of a social control and crime is 'a revolt against the social order', as Nietzsche put it, the judiciary and officials who apply sanctions whenever this social order is breached would obviously act in ways that reinforces the 'norm' or the status-quo, which is largely homophobic. The logical conclusion of concentrating more power in the state apparatus to chill speech regarding sexual orientation is to reinforce this homophobia.

Perhaps the most powerful weapon in the state's arsenal is to declare these 'deviants' as criminals since they act in a way that goes against the conformity with the herd. However, legislative or judicial suppression might not be the right or the only answer to the popular philosophy which stigmatizes homosexuals as "deviant" when they dare to come out of the closet. We really need to find avenues and forums to discuss, without anxiety, fear or contempt for homosexuals, the present heterosexual hegemony and the 'straight' ideology with a focus on "more speech" through education and media.

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**P.S.**

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