

"Women: An Object of Socio-Legal Grafting"

Dr. Shilpa Khatri Babbar

ABSTRACT

Judicial Activism has not been palatable to many but there is no denial that it has brought about a paradigmatic change from 'rule-specific laws' to 'rights-specific laws' thereby successfully advancing human rights jurisprudence. Exemplifying this sensitively aggressive side of the courts and the judges are a series of dynamic judgements and positive actions which have enabled the dominated and oppressed to break the fetters of immanence, and made transcendence, at least legally accessible to them. This article is an effort to highlight the role of judges as social engineers taking strides towards gender justice. But the author maintains that a structural renaissance is required to bring about gender equity and make empowerment consequential.

Keywords : Domination, judicial activism, oppression, power, transcendence

Introduction

Under the garb of patriarchy, everyday life of women is throttling, limping forward, and bleeding with the pain of generations deep wounds. Sociologically speaking, it is believed that gender roles, unlike sex, are mutable, that is, they can be changed. But the plight of majority of women, in India, has been and continues to be immutable, unchanging, a status quo. They are denied an access to the 'elitist' choices of life like education, employment, property and opportunity to participate in social and political life, on an equal footing with men. The Global Gender Gap Index¹ (GGGI) while ranking countries on the size of their gender gap between women and men placed India in the bottom ranks in the regional rankings.

Speaking from a sociological perspective, the social practices undermining the education of women (female literacy rate according to the 2011 census is 65.46 percent whereas male literacy rate is 82.14 percent)², their non-involvement in economically lucrative processes (women occupy only 9 percent of senior managerial positions)³, lack of protection in the informal sector (females constitute more than 90 percent of the total marginalised workers)⁴, female foeticide (sex ratio being 940 females for

every 1,000 males), the practices of child marriage, dowry harassment, dowry death (one in every four hours) increasing number of rape (five in every three hours) and molestations (ten in every three hours) have all been mechanisms to oppress women and thereby denying them transcendence.

This cultural denial is neither legally enshrined nor has it been spiritually ordained but it is the 'responsible' few who, claiming to be the guards of the patriarchal structures, have declared it to be so. This has led to an undeniable difference in the collective as well as the individual life of the two genders. In this article, their "differentness"⁵ in terms of their different social credits and social liabilities has been traced to their differing accessibility to 'power'.

The classical understanding of power as given by Max Weber⁶ is the ability of a person to exercise his will on the other, despite resistance. Iris Marion Young, widens the horizons of this understanding and visualizes power/domination not merely as an individual imposing his will on the other but rather as a structural condition which prevents women from participating in actions which are 'remunerative whether materially or non-materially'. This domination through the pedals of