



FEMINIST THINKING- NO ALTERNATIVE TO THIS ALTERNATIVE!

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G D Anderson has beautifully put what women all over the world have been trying to say all this while- “Feminism isn’t about making women stronger. Women are already strong. It’s about changing the way the world perceives that strength.”

In fact, it has to be understood that we need women at all levels, including the top, to change the dynamic, reshape the conversation, to make sure women’s voices are heard and heeded, not overlooked and ignored. As more and more is being spoken about feminism today, it is being felt that fighting for women’s rights is too often becoming synonymous with man-hating! This thinking needs to be curtailed at once. What we actually need to do is to stop teaching the girls to shrink themselves, to make themselves smaller. We keep saying to the girls that you can have ambition but not too much, that you should aim to be successful but not too successful else you will threaten the man!

As more and more is being said for equal representation of women in today’s world, the remarks made by some, especially men, go a long way in shortening the way to women empowerment. The Supreme Court judge, Justice DY Chandrachud, who is in line to become the next Chief Justice of India, recently while addressing a group of young law students, advised them to incorporate ‘feminist thinking’ in the way they deal with law. He also pitched for a more inclusive and accessible legal profession and asked the students to strive

hard to achieve this. The Judge was candid enough to say that- “Initially, I viewed the matters where women were often subjected to the worst of crimes and violations from a straightjacketed perspective, but sitting with a colleague who had more diverse exposure to realities of gender gave me the necessary feminist perspective.” This statement goes a long way in showing how the thought process pertaining to the role of women in the society at large is changing. Law plays a vital role in shaping the way the common man thinks. Justice Chandrachud also went on to say that we all have a lot to learn in terms of how we perceive law and apply social experiences. The judiciary has time and again been accused of falling into gender stereotyping. There have been judgements where the judges have passed certain remarks while giving judgements that were beyond their scope or jurisdiction. Even internationally, the harbouring of prejudices by courts while considering cases involving violence against women have been held to be abhorrent.

While Justice Chandrachud has encouraged all law students to learn and incorporate ‘feminist thinking’ in the way they deal with law, there is still a lot of debate on what feminist thinking is all about. At its core, feminism is the belief in full social, economic, and political equality for women. Feminism largely arose in response to Western traditions that restricted the rights of women, but feminist thought has global manifestations and variations.

Quite simply put, feminism is about all genders having equal rights and opportunities. It's about respecting diverse women's experiences, identities, knowledge and strengths, and striving to empower all women to realise their full rights. Even though feminism advocates for women's rights and gender equality, it needs to be understood that feminist theories are not only restricted to women's issues, but also promote power-sharing, leadership, and collaborative work in order to establish respect and acceptance for diversity amongst all members of the society. In reality, feminism strives for equality of the sexes, not superiority for women. And one of the main aims of feminism is to take the gender roles that

have been around for many years and deconstruct these to allow people to live free and empowered lives, without being tied down to 'traditional' restrictions. Gender equitable societies are healthier for everyone. As feminism challenges restrictive gender norms, improvements in women's access to health care, reproductive rights, and protection from violence have positive effects on everyone's life expectancy and well-being, especially children. A happy woman means a happy family which in turn ensures a happier nation. Feminist thinking teaches us all, especially, how to love justice and freedom in ways that foster and affirm life. Incorporating this feminist thinking in the way we deal with our law shall ensure that we are more empathetic while we contemplate an issue.

Over a long period of time, feminists have believed that history was written from a male's perspective and hence does not reflect a female's role in making history and structuring society. Having been written from a male's perspective, feminists also claim that history has a bias in the concepts of human nature, gender potential and social arrangements and even the language, logic and the structure of the law are male-created and hence reinforce male values. This patriarchy is further perpetuated by presenting male characteristics as a norm and female characteristics as a deviation from the norm. The main argument of the feminists is that the belief that says that the biological make-up of men and women is so different that certain behaviour can be attributed on the basis of sex is completely wrong. The feminists claim that gender is social construct and it is the society that has set false standards for everyone to follow- standards that tell us what a male and female can do and what they cannot.

All said and done, feminism and the feminist thinking is both a movement and a mode of inquiry. Feminism in its true form embraces justice for all and seeks to ally itself with rights-based movements. Feminist thinking in law will impact feminist theories and vice versa. While incorporating feminist thinking in

law, we will need to ask the women questions that are designed to expose how the substance of law may silently and without justification submerge the female perspective. We also need to make legal decision making more sensitive to the features of a case that is not already reflected in any existing legal doctrine and finally we will need to raise consciousness by testing the validity of accepted legal principle through the lens of the personal experience of those who are directly affected by those principles.

This seemingly impossible task can be done by uncovering implicit male-bias in neutral legal standards and by placing a high value on women's experiences. An effort in the direction of incorporating feminist thinking in law was made by the Women's Court of Canada which published a series of six "shadow' judgments," that were basically rewritten opinions of the Canadian Supreme Court interpreting the Canadian Charter of Rights and Freedoms from a feminist perspective. These go to show that it is possible that cases are decided differently if informed by the feminist perspective. The rewritten feminist judgments in fact, concretely demonstrate that the development of the law or the outcome of a lawsuit is not inevitable or predetermined, whether one is talking about constitutional interpretation or statutory analysis.

“Any particular feminist judgment is "not a work of academic fiction . . . Rather, it is better seen as an alternative history, an exercise in the 'art of the possible.'" By using only the facts that were established and the precedents in effect at the time of the original decision, the shadow opinion writers demonstrate that the perspective of the deciding judge is a key factor throughout the reasoning process. A feminist judge is more likely to make decisions within context, to take into account detailed individual facts about a case, and to consider more broadly how the decision will impact women and other historically disadvantaged groups. This is not to say that all feminist judges will reach the same conclusion; rather,

feminist judges are likely to bring a particular set of sensibilities to the decision-making process. In fact, such was the impact of these shadow judgements that in the words of one of the judges who participated in the project, reading the rewritten judgments should be a "chastening experience for any judge who believes himself or herself to be both true to their judicial oath and a neutral observer of the world."

Incorporating feminist thinking into law is not an easy fiat primarily because the language of legal decision making is both substantively and linguistically male. Before the phrase "sexual harassment" entered the legal lexicon, for example, there was no word for the distinctive harm that women were experiencing in the workplace-and if the body of legal doctrine contains no word for an injury or a wrong, the law cannot and will not recognize what happened as a harm. It was only after a long battle and debate that the law was finally settled on this issue and an amendment took place that recognised sexual harassment as an offence.

There is no doubt that incorporating feminist thinking in law can bring about different reasoning and results than those that occurred in the past. In fact, it will not be wrong to say that a feminist approach in judicial decision-making brings about fair resolution of disputes and advances the cause of justice. It shows in the best possible way how by widening ones outlook, remarkable changes can be accomplished and the march towards an equal world can be made.

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