



MENSTRUAL HEALTH: FROM TABOO TO A FUNDAMENTAL RIGHT

Mohammad Ali Ibrahim*

ABSTRACT

Menstruation in India has been limited to the domestic, quiet, stigmatised, and socially clumsy in life for decades. Rather than it being viewed as a sequential process of natural biological with enormous health and social implications, it has been viewed as a matter of shame, particularly in families and at school, among other social institutions. The consequences of this silence have been very serious because it has put menstruating people in danger of their health, denied them access to education, and even humiliated them. The inadequacy of proper menstrual hygiene facilities, low-quality supplies and adequate information has affected girls and women, especially in the marginalised communities and made menstruation a structural inequality and exclusion factor in engaging in the societal life. Menstrual health and hygiene in India is traditionally a concern that has been placed in the privacy domain, where it has been stigmatised, silent, and a socio-cultural taboo. This marginalisation has had grave effects, especially on the girls and women in the economically and socially underprivileged communities, which have affected their health, education, dignity and involvement in public life. Menstruation has been a structural source of inequality, although it was a natural biological process, because of poor infrastructure, ignorance, menstrual poverty, and discriminatory social practices. The paper supports the view that discretionary policies have not achieved consistency in access and accountability through exploring menstrual poverty, social stigma, and restrictions of scheme-based welfare strategies. It argues that the rights-based model enforces an obligatory constitutional status on the State, allowing judicial realisation and upholding dignity, equality, and bodily autonomy. The paper concludes that menstrual health should be acknowledged as the right to substantive equality, social justice and the transformative vision of the Indian Constitution.

*LLB, FIRST YEAR, AMITY UNIVERSITY, NOIDA.

Keywords: Menstruation, Health, Hygiene, Taboo.

INTRODUCTION

In India, menstruation has been confined to the domestic, silent, stigmatised, and socially awkward aspects of life for decades. Instead of it being perceived as a successive natural biological process with great health and social consequences, it has been perceived as an issue of shame- especially in families, schools and other social institutions. This silence has caused grave effects, such as putting menstruating people at risk of their health, denying them access to education, and even humiliation. The lack of proper menstrual hygiene infrastructure, cheap supplies, and proper information has impacted particularly girls and women in the marginalised communities, making menstruation a structural tool of inequality and exclusion in participating in societal life.

A constitutional change has, however, been witnessed in this approach. In *Dr Jaya Thakur v. The Supreme Court of India* declared menstrual health and hygiene as part of the right to life in the 21st provision of the Constitution under the Government of India and Ors. The Court reiterated that Article 21 does not limit itself to survival but also includes the right to live with dignity, health and self-respect. The judiciary made this broad interpretation of menstrual health to help the discourse discontinue being discussed through the prism of welfare and charity, and presented it rather as a subject of constitutional rights to be enforced.

UNDERSTANDING MENSTRUATION

Menstruation, or period, refers to the shedding of the uterine (womb) lining in a person every month. The body is ready to have a potential pregnancy by enriching the uterine wall (endometrium) every month, but if pregnancy does not occur, this lining is removed by the body, leaving through the vagina as a combination of blood and tissue. This is a typical 21-35-day cycle that will start at puberty (menarche) and will end at menopause, typically at the late 40s or early 50s. To manage this biological process of menstruation, a girl should have sanitary pads or clean cloth materials, should be able to replace these materials in a secluded place at the time they need to do so, should have access to soap and water to wash the body and used cloth and have a means to dispose of used products hygienically. Lack of proper hygiene may lead to medical life threats, like using dirty materials (like old rags, ash or sand) or wearing sanitary material that is longer than required, which may result in Reproductive Tract Infections (RTIs) and Urinary Tract Infections (UTIs). Infertility or complications during the pregnancy

process are associated with chronic infections due to poor hygiene and are related to pelvic inflammatory disease. Toxic Shock Syndrome (TSS) is a rare but life-threatening bacterial condition that can result if the tampon is left in too long, resulting in mismanagement.

Although menstruation is an inherent biological phenomenon, it is only the extent of menstrual health that can enable one to control it safely and also with dignity. Menstrual health is no longer in the mere provision of sanitary products but in the holistic condition of physical, mental, and social well-being insofar as the menstrual cycle is concerned. It encompasses access to truthful information, water and sanitation amenities, privacy and supportive social settings that are devoid of any form of stigmas or discrimination. Health, psychological, educational, and social participation are the main aspects of menstrual health that have a direct effect on health outcomes. Without these facilitating conditions, menstruation stops being a controllable biological process and, instead, it becomes a source of pain, exclusion, and shame.

MENSTRUAL POVERTY

Period poverty, or menstrual poverty, is a global health crisis that has never been given significant attention. This is defined as the lack of access to menstrual supplies, education and sanitation amenities.¹ There are direct health, educational and economic effects of menstrual poverty, where girls can be out of school, women out of work, and the lack of safe WASH provision can pose more risk of infection and compound gender inequalities. Menstruation is also a poverty-influenced experience that affects many millions of menstruators, especially those who form an economically weaker segment. Sanitary products in the context of low-income households are usually at the expense of other basic spending like food, housing and health. Consequently, menstruators can be motivated to use unsafe methods like old cloth, ash, paper or leaves, which risk becoming infected and causing a long-term complication of the problem with reproductive health. The cost of menstruation is extremely high among families which lack a regular income, and menstruation is therefore a regular and inevitable cost.

In India, a huge study revealed that only 12% of menstruating women used sanitary pads, and 70% of women cited cost as a significant reason why they could not use them. As a non-essential good, the Goods and Services Tax (GST) regime that was established in 2017 initially imposed a tax on sanitary napkins. This ruling had a more skewed impact on economically

¹ Hafiz Jaafar, Suraya Yasmin Ismail, Amirah Azzeri, 'Period Poverty: A Neglected Public Health Issue' <https://pmc.ncbi.nlm.nih.gov/articles/PMC10372806/>

marginalised menstruators who already had limited finances. Moving the civil society movement called Lahu Ka Lagaan (blood tax) gathered the opinion of people to oppose the taxation of menstrual products because they believed that the taxation of menstruation was equal to the institutional discrimination of women and menstruators.² Sanitary napkins were exempted from GST following prolonged advocacy and pressure by the people in 2018. Although this policy change removed an official financial barrier, it did not completely deal with affordability and access to marginalised communities, especially in rural and informal urban settlements. Even the availability of menstrual products is not enough without proper infrastructure, especially water, sanitation and hygiene facilities (WASH). Menstrual health management involves the use of clean water to wash, the use of private and safe toilets to change, and dignified means of disposing of the used menstrual products. Nevertheless, infrastructural inadequacies have become common in institutions, offices and in the streets, particularly in the economically underprivileged areas.

SOCIAL STIGMA AND CULTURAL BARRIERS

Social stigma surrounding menstruation is deeply rooted in biological determinism—the flawed belief that a person’s biological characteristics should determine their social, economic, and legal status. Although menstruation is a natural process, it remains surrounded by deep-rooted social stigma and cultural barriers. Many studies reveal that as soon as women start menstruating, their mobility and conduct are restricted due to the myths, misconceptions, superstitions and cultural and religious taboos, as they are considered to be impure and unclean and thus are subjected to restrictions on mobility, food, religious practices, and social interaction. They are expected to seclude themselves during this time and

The silence around this menstruation forces young girls to experience this natural process with shame, fear, confusion and often without proper knowledge and support. This stigma discourages open discussion, prevents access to proper menstrual products and facilities, and reinforces gender-based discrimination. Even those who have access to resources are restricted from moving freely because of their culture. Therefore, addressing menstrual health, though important, there also has to be a fundamental shift from societal attitudes that normalise menstruation as a matter of health rather than shame.

² theprint.in/economy/ending-lahu-ka-lagaan-gst-council-scraps-the-tax-on-sanitary-napkins/86557/

IMPACT ON EDUCATION

Education is a basic human right that must be available to everyone, as it leads to the full and holistic development of human beings. It is a stepping stone towards realising other human rights. Education is an integral part of the dignity of a child. It is a right, not a charitable concession. It promotes the physical and cognitive development of a child. It also contributes to the realisation of the full potential of an individual. Most importantly, it shapes a person's sense of identity and affiliation.³

Poor menstrual hygiene practices and lack of awareness significantly add to health complications in the form of abnormal abdominal pain, urinary tract infections, and increased absenteeism among school-going girls. The loss of education limits a girl child's opportunities for participation and representation in society, restricts her from challenging social hierarchies, and impedes her growth and development, thus basic services and infrastructure necessary for managing menstrual hygiene—such as access to sanitary products, clean water, private toilets, and proper disposal facilities—directly affect girls' ability to attend school regularly. Consequently, menstruation becomes a structural barrier to education, disproportionately impacting girls from marginalised and resource-poor communities.

In India, 23 million women drop out of school every year when they start menstruating. For decades, menstruation has been regarded as taboo in public institutions, particularly in schools. One of the major reasons underlying this issue is the lack of awareness, for instance, in many rural areas, a girl's first menstrual cycle is often perceived as a marker of readiness for marriage and motherhood, rather than as a natural biological process. Indian Council for Medical Research's 2011-12 report stated that only 38 per cent of menstruating girls in India spoke to their parents about menstruation.⁴ A lot of parents themselves had no idea what menstruation was, how to explain it to their daughter, or what behaviours qualified to manage menstrual hygiene.

Moreover, most of the schools were never prepared to handle the issue of menstrual health and hygiene, especially in the rural setting.⁵ Shame, risk of menstrual leakage and the fear of teasing

³ <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/dr-jaya-thakur-v-government-of-india18873/>

⁴ <https://swachhindia.ndtv.com/womensday-2020-swasth-india-health-problems-faced-by-women-india-42105/>

⁵ <https://swachhindia.ndtv.com/23-million-women-drop-out-of-school-every-year-when-they-start-menstruating-in-india-17838/>

or being mocked based on the threat of leaking during the menstrual period of the month usually scare girls away from going to school during this time of the year. Most girls, even in the classroom, cannot concentrate because of the physical discomfort and the stress they experience, which has a negative influence on their grades. The silence that the stigma associated with menstruation creates further stifles the voice of the girls and restricts their role in the classroom, as well as bolstering a hostile learning atmosphere that discourages not only a sense of confidence but also academic performance. This is a blatant violation of Article 21A, which not only provides access to a school but also an active participation in the education process.

JUDGEMENT ANALYSIS

One significant constitutional basis of the acknowledgement of menstrual health as a key right is the reading of the Supreme Court of Articles 21 and 14. In the landmark judgement of *Maneka Gandhi v Union of India*, the judgment of landmark, denied a limited and formalistic interpretation of the right to life and believed that it does not mean the right to life but the right to live with dignity as a human being. This decision reversed the narrow interpretation which was taken in *A.K. Gopalan v. State of Madras* and brought a broader interpretation of Article 21. The Supreme Court, over the years, has made several unenumerated rights fall under the same category of rights to life, and the rights to health, privacy, and dignity. This jurisdictional perception of menstrual health and hygiene is a direct result of such a jurisprudence, and since the refusal to provide safe, hygienic, and private conditions in managing menstruation exposes the menstruating persons to health hazards, indignity, and social marginalisation, hence violating the core values of Article 21.

The same perception is also supported by the provisions in the recent case *Justice K.S. Puttaswamy v. Union of India*, in which the Court upheld bodily integrity and decisional autonomy as fundamental elements of personal liberty. It held that having a safe and dignified way of handling their menstrual cycle is an assertion of bodily control; lack of basic amenities like toilets, availability of menstrual-related materials, availability of clean water and available means of decent disposal of the menstrual products, is a denial of the autonomy of the body.

Furthermore, Article 14 has always allowed the Supreme Court to appreciate the fact that equality does not insist on receiving the same treatment under the unequal realities. When inequalities are treated equally, structural disadvantage is likely to be perpetuated. Article 14,

therefore, represents the principle of substantive equality, which allows different treatment to deal with the inequalities. Any formal understanding of Article 14, in which menstruating individuals are regarded in the same way as other people, does not explain the biological difference and the existing social stigma of menstruation. Substantive equality demands the State to take positive steps, including having sanitary products, proper sanitation facilities and menstrual health awareness campaigns. These actions do not constitute special treatment, but rather the corrective actions to put menstruating individuals on par with others in the enjoyment of basic rights.

Apart from recognising Menstrual Health and Hygiene as fundamental right, the court in this judgment interpreted Section 3 of RTE Act (Right of Children to Free and Compulsory Education Act, 2009) that said the right of child to free and compulsory education; here, the word free does not mean to forego the tuition fees alone but has the meaning of to remove any barrier of finances that can stand in the way of children attending schools. Consequently, the free right to sanitary pads is a legal right to guarantee that education is free. It was ordered by the court that they should ensure that all schools are fitted with separate boy and girl toilets, Oxo biodegradable sanitary pads should be made available to students, Menstrual Management Corners should be provided and equipped with spare innerwear, spare uniforms, disposal bags and other materials required. It also instructed the National Council of Educational Research Training (NCERT) and State Council of Educational Research Training (SCERT) to ensure that they have included gender-responsive curricula, especially menstruation. Every District Education Officer (DEO) is now obliged to make such yearly inspections, and more importantly, anonymous responses of students must be taken with the view to making sure that the toilets are functional and pads are available. In the case of the private schools, the Court gave an indication that failure to comply with these MHM standards may result in deregistration because they are now mandatory norms under Section 19 of the RTE Act.

The court pointed out expressly that menstruation is not a discussion to be held in low tones. It required the male students and teachers to be sensitized on the biological truth of periods. The goal behind this was to prevent invasive enquiry or harassment of menstruating students to maintain the school environment as psychologically, rather than being physically, prepared.

SHIFT FROM WELFARE ENTITLEMENT TO CONSTITUTIONAL OBLIGATION

Earlier, we had been addressing menstruation largely through a welfare-oriented approach. Several schemes promote menstrual hygiene, but the implementation at the ground level is a challenge, especially in rural areas. Welfare measures—such as the distribution of free or subsidised sanitary pads—are typically implemented through government schemes that are discretionary, temporary, and dependent on budgetary priorities and political will. As a result, access to menstrual health services remained inconsistent, uneven, and vulnerable to withdrawal or poor implementation.

This is what the *Dr Jaya Thakur* judgment and the evolution of Article 21 have achieved. Now it allows menstruating persons to seek judicial enforcement of their entitlements rather than relying on discretionary welfare schemes. For instance, a girl may approach the High Court under Article 226 or the Supreme Court under Article 32 by filing a writ petition to demand access to basic menstrual hygiene facilities—such as functional toilets, clean water, sanitary products, and safe disposal mechanisms—as a matter of fundamental right under Article 21.

The welfare-based approach that the State has taken to menstrual health has failed to produce consistent and effective results to a great measure. Various government programs to give out free or subsidised sanitary products have been hampered by high rates of poor implementation, underfunding, sporadic supply networks, and no monitoring, especially in rural and marginalised areas. As an example, although schemes like the Menstrual Hygiene Scheme and Swachh Vidyalaya Abhiyan have been put in place, various reports have reported the lack of toilets, water and disposal systems in government schools. On the same note, the introduction of the Goods and Services Tax on sanitary napkins until 2018, by factoring in the non-essential goods, showed that the State considered menstruation a welfare issue and not a necessity, which unfairly taxed economically disadvantaged menstruators. These instances indicate that the welfare programs, being policy-based and discretionary, are very uneven and ineffective in guaranteeing universal coverage. On the other hand, viewing it as a fundamental right, placing the responsibility on the State as a constitutional duty to have proper facilities, accountability, and prevent retrogression. This change in welfare to rights means that menstrual health is no longer left to administrative goodwill but is based on constitutional provisions of dignity, equality and health.

CONCLUSION

Menstrual health and hygiene can no longer be relegated to the margins of policy discourse or treated as a matter of discretionary welfare. As the paper states, menstruation overlaps with the constitutional ideals of dignity, equality, education, autonomy with the body, and health. The deep-rooted stigmatisation of menstruation, economic poverty, lack of infrastructure and the silence of society have historically turned a natural biological process into an engine of structural marginalisation, especially for girls and women belonging to the marginalised communities. The Supreme Court, by perceiving the Menstrual Health and Hygiene as a part of the Right to Life and Personal Liberty under Article 21, subject to Articles 14 and 21A, has brought about a massive constitutional change of the charity-based government to a rights-based entitlement. This constitutional acknowledgement holds a positive and binding duty on the State to provide menstruating individuals the chance to manage their menstrual cycles in a secure, private and dignified way.

Thus, mere availability of clean materials is not enough, but the establishment of the conditions that will enable participation in a meaningful way in the public, educational and social life, which is the development of infrastructure, education and social change. The perpetual dependency on welfare schemes is characterised by a lack of consistency in funding, poor

Ultimately, the concept of menstrual health as a right is not only a public health intervention, but a constitutional obligation to substantive equality, human dignity and social justice. It is only when menstruation is normalised as both a subject of the public and constitutional concern and not repressed as an individual issue of shame that the decoding promises of the Indian Constitution can be actualised in their fullest meaning.