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Menstrual Health and Rights: Human rights perspective

Abstract

This paper attempts to develop an understanding of the various nuances surrounding menstrual health and how the present position legally as well as socially continues to deprive it to be treated as a human right. The topic has been briefly studied and commented upon in light of the Indian constitution as well. As what may seem natural and manageable comes with personal yet pertinent issues that need immediate attention as the topic has been in the backburner for long enough and debates and conversations around it are continually shunned.

Introduction

The contemporary law covers a wide array of subjects concerning the human population at large but fails to directly address the tabooed topic of menstrual health. Menstruation or periods as we understand it is a natural biological phenomenon yet its nature makes it a women specific issue. However, regardless of its nature conversations around menstruation are abysmally low. There is no law internationally or even domestically that specifically addresses the various dimensions that are associated with menstruation like access to menstrual products, period education, menstrual leaves, period pain and medical conditions associated etc. The most important question is do we consider menstrual health as part of the broader spectrum of the concept of good health. We can go on to address all dimensions of health including physical, psychological or emotional health but menstrual health is not even considered or acknowledged to be a part of the same. Moreover, when the process of menstruation itself is physiologically innate, why can't we link it to human rights? When menstruation is an intrinsic element of being a woman, why can't we treat it as a human right? It ought to be a human right, even if women specific.. Menstruation is not just a natural process but the taboo and stigma around it has caused us to ignore and remain in oblivion to the repercussions and negative effects it can have on the quality of ones's life. Although we cannot do anything to avoid it, we can have public discourse and legal frameworks to ease the burden a woman carries when she is menstruating. A woman should have the right to sound menstrual health is a human right because of the fact that she is a woman. Menstrual rights do

not need a separate framework in dealing with it but finds it linked to so many constitutionally recognised fundamental rights. To at least provide an impetus to the understanding of the issue, I've attempted to draw an analogy in the various constitutional rights and the human rights covering menstrual health.

- Right to hygiene: Access to water and sanitation facilities is one of the most important sustainable development goals and is directly linked with the quality of health and life of an individual. This is equally important for a menstruating woman as lack of basic facilities like water or sanitation facilities or lack of toilets can make her susceptible to various infections and can be breeding grounds for diseases. The dearth of such resources also leads to young girls absenting themselves from their school or even dropping out altogether. Moreover, there must also be proper access to as well availability of feminine products just as is the case with other basic commodities. Even presently, many women mostly in villages and in rural areas resort to traditional methods of dealing with their periods which are not only life threatening and harmful but also goes against the equity of the benefit of the consumerism.
- Right to health: As has been clearly recognised under article 21 and forms a very important sustainable goal as well, right to health also includes within its ambit right to be treated in times of pain and discomfort, or to get checked medically for signs of underlying conditions. There is a growing trend among menstruating girls who often feel hesitant to talk about their pain which often at later stages gets linked to serious medical conditions. Since, it's a personal issue, nobody wants to talk about it and menstrual health is denied. Hence, it is important to treat a woman's menstrual health at par with the other aspects of physical health and the work towards advancing health goals in terms of proper infrastructure, medical stock and awareness must be inclusive.
- Right to education: This right manifests itself in Article 21A of the constitution. Moreover, the right has further been strengthened and given life by the Right to Education Act, 2009. In drawing a link between the education and menstrual rights, we need to understand that in order to avail the former fully, proper access to toilets in schools and proper medical aid is important, It is often seen that girls as soon as they hit puberty drop out of schools lest managing the new cycle of their life. Their right to be sent to schools gets hit by the new issue they are to manage every month. Adding to that is the excruciating pain they some of them have to deal with while also managing their attendance levels. Why not introduce laws in Colleges and universities where young girls face problems of attendance shortage? In furthering the education of girls, they must also be protected from sexual vulnerability.
- Right to non discrimination: Many women of reproductive ages also find themselves socially excluded from places of religious worship or are forbidden from entering into kitchens or cooking for their families or taking a shower for reasons that are nothing short of being absurd. This directly hits the Articles 14 and 15 of the constitution in terms of the right to be not socially excluded from social or religious spaces.

In the international arena, the issues surrounding menstruation have not been directly discussed and confronted. It doesn't even find its mention in the list of sustainable development goals. It can be accommodated as a sub subject or derivatives of the primary subjects but why not address it directly? It is a shunned topic socially, but has no excuse to be so politically or legally. The statement issued by the WHO in June [2022](#), "WHO calls for menstrual Health to be recognized, framed and addressed as a health and human rights issue, not a hygiene issue" (*WHO statement on menstrual health and rights, 2022*) clearly signifies that even in the 21st century menstrual health is not openly recognised as a global issue needing attention but only a personal one the brunt of which women can deal on their own. This is not to deny or discredit the extensive and commendable work that has been done by various organisations at grass root levels like the UNFPA or WHO by engaging debates about the subject and volunteering for sanitary product distribution drives but the problem lies in the legislative vacuum that exists in the global arena. Menstruation is a natural process and there is nothing we can do to reverse the process but there stems some problems from it which need attention; even at the global level because the problems surrounding it are huge and have far reaching consequences. However, in a first of its kind, in June 2022, human rights council resolution pushed for a panel discussion on menstrual hygiene management, human rights and gender equality wherein it was acknowledged that *"women and girls who menstruate continue to face barriers in the realization of their menstrual health deeply rooted in stigma and harmful stereotypes regarding menstruation, reinforcing patriarchal and discriminatory systems and societies and resulting in denial of their human rights an further gender equality"*.¹ Even in the country we live in, we have no uniform or state law (barring a few school/university bye laws) that provide for menstrual leaves. The leave is not only nonexistent hut faces strong opposition from parliamentarians who push in one or the other argument to not introduce law for it. Indeed, granting or formulating policies of menstrual leaves can have the potential for breeding bias against women in the corporate sector owing to financial aspects but that should be termed as a corporate problem. If they are so worried about retaining and protecting the employment of women in the corporate sector, why not introduce it in the government institutions wherein budgetary or financial constraints are hardly thought of during the process of recruitment. Why not introduce laws in Colleges and universities where young girls face problems of attendance shortage? Interestingly, there are several established companies that have refused to be oblivious to the ordeal of the women folk during their menstrual cycles and have made progressive efforts in providing for paid menstrual leaves. They include Australian pension fund Future Super, Indian food delivery start-up Zomato, and French furniture firm Louis which give respectively six, 10 and 12 extra days. On its website, Los Angeles-based astrology company Chani also offers "unlimited menstrual leave for people with uteruses". (*news, 2023*).

Issues of Concern:

- I. Menstrual leave: As far as menstrual leaves are considered, at present there are very few countries including Spain.ⁱⁱ, Indonesia, Japan , South Korea , Taiwan , Zambia that have proper laws providing for paid menstrual leaves under labour laws initiatives. Interestingly, the Japanese law providing for menstrual leave dates back to 1947ⁱⁱⁱ which show the inclusivity and early concern for women rights among the law makers. But it is surprising to see that global debate around granting women paid menstrual leaves is greatly tilted against it. The number of countries having such laws is still very low and even if the initiative is taken to bring in such inclusive laws, it is met with a great deal of criticism and opposition. In India, there are very few organisations and universities which offer menstrual leave. Just like there is no hesitation in allowing paid sick leaves generally, what stops an employer or state in considering allowing menstrual leaves? The said reality is that in a country like India, the issue of menstruation vis- a-vis providing menstrual leave and other relate aspects have been pushed for deliberation and discussion to the government department of women welfare and children. Adding to the grim state of affairs, the concerned ministry in its recent statements have expressed their stark indifference towards understanding and acknowledging the issues surrounding menstruation by stating that *“As a menstruating woman, menstruation is not a handicap, it’s a natural part of women’s life journey.* Though menstruation is a natural bodily process but the discomfort and life disrupting conditions associated with it are experienced variedly by a large chunk of the menstruating populace meaning that not all women experience their cycles in the same way. For some women it does equal to a handicap when unable to get out of the bed or retain consciousness. Though the symptoms do not persist throughout the cycle but our law makers more so women cannot remain oblivious and indifferent to the debilitating experiences that some women have to go through during their cycles. Thus, it is impractical to view all women against themselves and their opposite gender from the same lens in terms of expecting productivity.
- II. Period poverty: we may not believe it to be true but period poverty is still a fact in third world countries. Period poverty can be defined as the lack of access to safe and hygienic menstrual products during monthly periods and inaccessibility to basic sanitation services or facilities as well as menstrual hygiene education.^{iv} The problem lies not just in the availability of such products but also accessibility. We can have products available in the market and yet still not accessible to women folk due to high prices which is owed to the “Pink tax”. The price factor exacerbates the problem as many people (including house heads) may not even consider menstrual products as an essential item since not used by everyone and would conveniently tick it off the list of essentials. Women are left at the mercy of their own savings when it comes to buying pads or other period related products. Within the four walls of our home, how often do we see mention of pads in our day to day conversations let alone being a priority on our shopping list? We still have Nations like India, South African countries and others where menstruating women still don't have access to proper menstrual products. They still resort to the use of traditional coping methods that come with their own risk to women's health. This can be attributed to costly products, high pink

tax, etc. There are countries like Mexico, India, Brazil where feminine hygiene products are considered as luxury products and non essential. Oftentimes, young girls and women have to set budgets and save up money from their pocket money to buy period products. Studies in Kenya, for example, have shown that some schoolgirls have engaged in transactional sex to pay for menstrual products (*unfpa, 2022*). Even in India, rural women still use traditional means to deal with their periods which not only is unhygienic but can also prove to be fatal for the life.

- III. Lack of awareness: Menstruation is synonymous with a varied number of phrases. It's often used in common parlance with code words like "that time of the month", "the aunt flo", "on rag", "code red" etc. How often do we speak about periods openly in social groups? Some of us can be fortunate enough to initiate conversations around periods in our social circles without the fear of being frowned upon or shamed but the synonyms associated with it itself is a testament to the fact that it is still a shunned topic. It cannot even be talked about by the name it has been ascribed. We don't discuss how and why it happens to our daughters who then inherit this shame and are deprived of the much needed awareness that one needs. They often go about dealing with their menarche (first period) without telling anyone and fail to get the guidance on how to effectively deal with it. According to a study conducted in an urban slum in Bijapur, it was revealed that 81.58% of the participants were lacking knowledge about menstruation before menarche^v it is not even acknowledged or openly recognised to be existent let alone be addressed as an issue. Even in educational spaces, teachers shy away from teaching such topics which are of importance to both men and women. Rights can only be ensured when the narrative around menstruation is discussed and encouraged.
- IV. Stigmatisation: The whole narrative around menstruation is wrapped up with taboos and unrealistic and absurd myths lacking any scientific backing. In many cultures, young menstruating girls are restricted from entering kitchen, or handling food or even entering religious spaces till the time their "impurity" goes away, often forgetting that it is this very impurity which is the cradle of human life. Many times young girls are conditioned to believe that they cannot take baths or else they would become sterile or cannot have certain foods like pickles, tamarind or curd during their menstrual cycle. In western Nepal, the tradition of *chhaupadi* prohibits women and girls from cooking food and compels them to spend the night outside the home, often in a hut or livestock shed. In one rural community in Ethiopia, the taboos about vaginal bleeding led not only to women and girls being exiled from the home during menstruation, but also during childbirth and postpartum bleeding.^{vi} In some cultures, women dispose off their clothes used during their period of menstruation so as to prevent them getting used by evil spirits.^{vii} These practices are not only unbelievably absurd but are also dangerous for the life and safety of the women having been subjected to such seclusions.

Conclusion

I'm hopeful that by now I've been able to provide some insights into the understanding of menstrual rights from the prism of human and constitutional rights, although, the idea is clear but the response of the world leaders or even national leaders to such problems has been unclear. It is easy to interpret the concept of menstruation as being a part and parcel of the umbrella term of "general health and well being" but the question remains that what the state is doing as response to it or how much attention is being paid to it. What laws are here to ensure sound menstrual health? What resources and facilities are being provided? How is the stigma removed? At the domestic level, we do have some scattered laws in corporate spaces like Zomato or Byjus which have taken the lead in offering limited paid menstrual leaves yearly or monthly; even one of India's oldest law firm Khaitan & Co has introduced menstrual policy for its women employees in 2023^{viii} and so has NLIU Bhopal which has rolled out an all encompassing menstrual leave policy, extending its coverage to all students, including women and trans women enrolled in various academic programs^{ix}. But the need of the hour is to have a uniform legislative policy on menstrual rights. More work is needed to address the various concerns related to menstruation. Women form a substantial portion of the population and neglecting their core rights can result in deviation from the path of progression.

ⁱ UN Human rights council resolution A/HRC/Res/47/4 on menstrual hygiene management, human rights and gender equality

ⁱⁱ news, w. (2023, Feb 16). *The global push for paid menstrual leave as Spain brings in law*. Retrieved December 27, 2023, from ndtv.com: <http://www.ndtv.com>

ⁱⁱⁱ Labour law standards [law no. 49 of 7 April 1947] <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/277>

^{iv} Carneiro MM. Menstrual poverty: enough is enough. *Women health*. 2021. [PubMed]

^v Udgiri R, Angadi MM, Patil S, Sorganvi V. Knowledge and practices regarding menstruation among adolescent girls in an urban slum, Bijapur. *J Indian Med Assoc*. 2010 Aug;108(8): 514. PMID:21404748

^{vi} unfpa. (2022). *Menstruation and Human Rights- Frequently asked questions*. unfpa.

^{vii} UNICEF. Bangladesh: Tracking menstrual hygiene taboos. Sanitation and Hygiene case study No. 10.2008. <http://www.unicef.org/wash/files/10> case study 4web.pdf

^{viii} Singh R. Khaitan & Co introduces menstrual leaves for its employees. *Bar and Bench*. <http://www.barandbench.com/news/khaitan-co-menstrual-leave-policy>

^{ix} Indulia B. NLIU Bhopal introduces menstrual leave policy.

<http://www.scconline.com/blog/post/2024/02/27/nliu-bhopal-introduces-menstrual-leave-policy>