

Menstrual Health in India: A Critical Analysis of Constitutional Protection and Supreme Court Intervention

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Women's rights to equality, health, and dignity depend on menstrual health. Although the Indian Constitution does not specifically recognise the right to health as a fundamental right, judicial interpretation has extended Article 21 to encompass the right to life and personal liberty. This article examines the constitutional framework governing women's right to menstrual health, focusing on Articles 14, 15, 21, 39, and 42. It assesses the socio-legal obstacles that still stand in the way of the Supreme Court's recent recognition of menstrual health and hygiene as a constitutional right. The lack of a consistent legal framework, social stigma, poor sanitation facilities, and restricted access to reasonably priced menstrual products are among the topics covered. The study promotes comprehensive legislation and policy reforms that are gender-responsive and rights-based.

Keywords: Women, equality, right to health, menstrual health, policy reforms

Introduction

To survive in this world, humans need more than just mere animal existence. Good health is essential for a high quality of life; it includes mental, physical, and social well-being. Without it, one cannot stay productive or live a dignified and fulfilling life. A healthy individual is better able to think clearly, work efficiently, and contribute meaningfully to society. One of the most important human rights is the right to health. In India, the right to health is not explicitly recognised as a fundamental right in the Constitution, but Article 21 has been interpreted to include it.¹ The right to health is essential to achieve social and economic justice and to build an equitable and progressive society.

In this context, women's health rights require special attention given their distinct biological and physiological anatomy. From childhood to old age, a woman undergoes many changes in her body. When puberty hits, her body changes drastically, which leaves a big impact on her mental and social well-being. Menstrual cycles are among the main changes a woman experiences during this period. This has a threefold impact on a female: biological, psychological, and social.

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Period cramps, anaemia, heavy bleeding, nausea, fatigue and pain are some of the common symptoms that a woman faces biologically. Psychologically, due to hormonal changes, she faces premenstrual syndrome (PMS), which includes symptoms such as mood swings, anxiety, stress, and even depression. Some women face Pre- Menstrual Dysphoric Disorder (PMDD), which is an even more intense form of PMS.² This obstructs their daily life functioning, emotional stability and concentration. Further, their mobility, participation in daily activities and access to hygiene facilities are confined due to social stigma and taboos surrounding menstruation. Access to sanitary products is restricted in many communities due to limited knowledge, poor sanitation, and financial constraints. Women's dignity and right to health are eventually impacted by this, which also perpetuates gender inequity and has an influence on physical health. Their rights to employment and education are also impacted.

The Supreme Court of India has recently recognised Menstrual Health and hygiene as a fundamental right under Article 21. However, to date, there is no legislation to regulate menstrual health in educational institutions, workplaces, etc. In this paper, we will first discuss the right to health of women under the Constitution of India. Secondly, we will discuss the socio-legal challenges to menstrual health in India. Further, we will critically analyse the Supreme Court's stance on menstrual health in light of recent judgments. In conclusion, we will present our suggestions and comments.

Constitutional mandate for women's right to health

The Constitution of India does not provide an explicit provision for the protection of individuals' right to health. However, through judicial interpretation, the Supreme Court of India has held that Article 21 includes the right to health.³ The Court held that the right to live with dignity includes protection of workers' health, drawing sustenance from the Directive Principles, such as Articles 39 and 42. Occupational health protection also falls under the right to health as a fundamental right under Article 21 of the Constitution. Initially, the discussion was limited to the right to health in general; there was no special mention of women's right to health.

However, under Article 14 and Article 15(3) of the Constitution of India, the State is authorised to take affirmative action to address gender-based disparities in healthcare access. The Directive Principles, especially Articles 39(e) and 39(f) of the Constitution of India, require the State to protect the health and strength of individuals, especially workers, and to ensure that children and youth grow in a healthy, dignified environment free from exploitation and neglect. Further, Article 42 of the Constitution of India obligates the State to ensure health, strength, and maternity relief for women. The aforesaid provisions create a constitutional mandate to protect and promote women's health as an essential component of the right to life.

In Air India v. Nergesh Meerza and Others, the Court held that air hostesses constitute a different class due to the nature of their work and other factors, such as health, and that making special provisions for them does not violate Article 14 of the Constitution of India. This is one of the first cases in which the Court widened the scope of women's rights.

Later court decisions strengthened this rights-based approach by recognising that a person has control over their own body and the freedom to make personal choices as essential to their right to life and liberty.⁴ The Court affirmed that privacy includes bodily integrity and decisional autonomy, principles that directly inform reproductive and sexual health rights.

Before the recent Supreme Court judgment, there was no recognition of women's right to

menstrual health. In *Jaya Thakur v. Union of India*, the Supreme Court took an important step by recognising menstrual health as a constitutional right, linked to dignity, equality, and the right to life of women.⁵ The Court noted that women's and girls' health, education, and general well-being are negatively impacted by their lack of access to menstrual hygiene facilities and supplies. It underlined that menstrual health is not just a policy issue but also a component of the fundamental rights protected by Article 21 of the Indian Constitution and the equality principles outlined in Article 14 of the same document. The ruling urged the State to take decisive steps to ensure awareness, adequate sanitation, and the availability of sanitary items, particularly in public institutions such as schools. This case illustrates a shift toward a rights-based perspective, recognising menstrual health as a crucial step toward guaranteeing women's equality and dignity in society.

Socio-legal challenges to women's menstrual health in india

Menstruating women in India face different socio-legal challenges from their teenage years to old age. During adolescent years, girls often face social stigma around this topic, lack of awareness and inadequate sanitation in school, which impacts their right to education. They are not taught about the process of menstruation and how to deal with it in schools, especially in rural areas, due to which girls drop out of school. Discussions and awareness of the topic are also not common practices. Even the mothers hesitate to discuss the subject. Due to this, children struggle physically, psychologically and health-wise. In the end, they deal with it all by themselves. Proper care is not provided to them even in schools, as teachers don't educate them. This leads to gaps in their education due to absences, which in turn leads to dropping out of school. A study showed that nearly 40 per cent of the school-going girls out of 600 that were studied did not attend classes during their menstrual periods.⁶ Social taboos and silence around menstruation further create feelings of shame and confusion.

In adulthood, especially at workplaces and educational institutions, women face challenges such as a lack of menstrual leave policies, inadequate sanitation facilities, and workplace insensitivity, which affect their dignity and equality guaranteed under Article 14 of the Constitution of India. They also go through a lot of hormonal changes during the phase of menstruation, which leads to anxiety, depression and stress. These mental complications require special care, which makes it even more important to have menstrual leave and other menstrual facilities.

Although menstruation is a natural process, in India, due to social stigma, women are considered impure. Socially, due to many conservative practices, menstruating women are often prohibited from participating in religious activities, entering kitchens, or engaging in social gatherings. These restrictions are rooted in notions of impurity and reinforce gender-based discrimination, limiting women's autonomy and dignity. And due to this, such practices not only marginalise women during a natural biological process but also contribute to feelings of shame, exclusion, and reduced self-worth. These profoundly ingrained social conventions continue to influence the lived realities of menstruating women in various societal segments, notwithstanding constitutional promises of equality and dignity.

Access to safe menstrual products is further hampered by financial constraints, especially for women working in the unorganised sector. Women are frequently neglected in healthcare systems at later phases of life, such as perimenopause and menopause, because legal and policy frameworks rarely meet their unique demands.

Across all stages, the absence of comprehensive menstrual health legislation and weak implementation of existing policies reflect a gap between constitutional guarantees under Article 21 of the Constitution of India and the lived realities of women. This highlights the need for a more inclusive, life-cycle-based legal approach to menstrual health.

Although there are rules, regulations, and policies, such as keeping sanitary napkins and other sanitary products clean and separate, and providing clean, separate washrooms for women at educational institutes and workplaces, these rules and regulations are not properly implemented. Often, working women and female students face embarrassing situations due to these shortcomings.

Only 77 per cent of women use hygiene products during the menstrual period. One-fourth of the female population aged 15-24 is still deprived of hygiene products.⁷ To facilitate women's right to Menstrual health, multiple steps need to be taken, such as ensuring the availability of affordable sanitary products, improving hygiene and sanitation, providing healthcare services, implementing menstrual leave, and promoting education and awareness. Although the various Indian states have provided menstrual leave to women, the efforts are mostly scattered. There is no uniformity in the menstrual leave policies. Karnataka became the first Indian state to implement a menstrual leave policy across both the public and private sectors.⁸ The policy ensured one day of menstrual leave per month for all women. In 1992, the Government of Bihar issued a notification granting 'Special leave' of 1 day per month to female employees working in state-owned establishments.⁹ In Kerala, an order was issued regarding the attendance policy for female students at Industrial Training Institutes and Universities, revising it to 73 per cent to include menstrual leave. In Odisha, the Department of Finance issued a memorandum allowing 10 additional casual leaves for women government employees. The High Court of Sikkim granted 2-3 days' menstrual leave to the Registry's female employees, subject to the permission of the High Court's medical officers.

The Supreme Court in 2018¹⁰ upheld the fundamental right to equality of menstruating women and allowed them to enter the Sabrimala temple. The court observed that "Women have a constitutional entitlement that their biological processes must be free from social and religious practices, which enforce segregation and exclusion. Notions of 'purity and pollution', which stigmatise individuals, can have no place in a constitutional regime".

Hence, the court also considered that menstruation should not be a barrier to the growth of a woman's life. Therefore, it is the duty of the State to enact legislation on menstrual health to protect women's Constitutional rights.

Supreme court on menstrual health

Indian constitutional law has advanced significantly with the Supreme Court's recent acknowledgement of menstrual health and Women's physical health; access to school, participation in the workforce, and dignity have all suffered due to a lack of reasonably priced sanitary products, poor sanitation infrastructure, and deeply ingrained cultural taboos, especially in economically disadvantaged and marginalised groups.¹¹

The case originated in a public interest litigation seeking to establish a consistent, national policy to guarantee the supply of free sanitary napkins and the provision of sufficient sanitary facilities in educational establishments. The petitioners said that the State had violated their fundamental rights to equality, education, life, and dignity by failing to address menstrual hygiene. Additionally, they contended that obstacles associated with

menstruation disproportionately hinder girls' access to healthcare and education, strengthening systemic gender inequality and eroding important constitutional safeguards. The Supreme Court accepted these arguments and ruled that, under Article 21, menstrual health is a fundamental aspect of the rights to life and individual liberty. The Court stressed that the denial of basic menstrual hygiene services compromises women's bodily integrity and self-respect, and that dignity is a fundamental constitutional value. In recognising menstrual health as an element of constitutional protection, the Court affirmed that access to hygienic menstrual products and sanitation facilities is not a matter of charity or welfare discretion, but a legally enforceable entitlement grounded in constitutional norms. Significantly, the Court linked menstrual health to the right to education under Article 21A, noting that the absence of adequate sanitation facilities and menstrual hygiene support in schools contributes to absenteeism, dropout rates, and diminished academic performance among girls.¹² According to the Court, women's health, economic independence, and social participation will all suffer in the long run as a result of this educational exclusion.

In terms of relief, the Court issued directions to the Central and State Governments to ensure the provision of free sanitary products to school-going girls, establish gender-segregated, hygienic sanitation facilities in all educational institutions, and implement awareness and sensitisation programs to destigmatise menstruation.¹³ To ensure efficient execution and accountability, the Court underscored the need for interdepartmental collaboration among the authorities for women's and children's development, education, and health.

While *Dr. Jaya Thakur v. Union of India* is widely appreciated for recognising menstrual health as part of constitutional rights, it is not free from criticism. One significant issue is that the ruling remains primarily declaratory, highlighting rights and dignity without establishing specific, legally binding enforcement rules. The Court runs the risk of creating a gap between recognition and actual access by primarily leaving the matter to policy discretion, particularly for women in marginalised and rural communities.

Further, the structural and financial obstacles that limit access to sanitary facilities and menstrual hygiene products are not adequately addressed by the ruling. The ruling's practical impact is diminished by the lack of a clear accountability mechanism, despite the importance of issues like affordability, distribution, and infrastructure. The Court also takes a somewhat protective stance from a socio-legal standpoint, emphasising welfare over fully addressing menstruation as a substantive equality issue.

Additionally, although the ruling aims to dispel stigma, it does not seriously question the ingrained patriarchal norms and cultural taboos that contribute to menstrual discrimination. Legal recognition, by itself, might not have much transformative impact if these underlying social attitudes are not addressed. Therefore, even though the case is a step in the right direction, future policy changes and more robust enforcement measures will be crucial to its success.

The Supreme Court's division bench recently dismissed a PIL seeking paid menstrual leave for working women. The court believed that providing paid menstrual leave would deter employers from hiring women, as it would negatively affect the business's performance. It will therefore be detrimental to the working woman. The Chief Justice of India expressed concern that this might prevent employers from assigning tasks to female employees and that even in the judicial services, a female judge might not be assigned to a regular trial. The bench denied the PIL, hesitant to grant working women paid menstrual leave. While there is some validity to this concern, the total rejection ignores the more fundamental

structural issues about women's health and working conditions.

Menstruation is a biological condition that can have a major impact on well-being and productivity; it is not a choice. Instead of addressing employer bias, the concern that protective measures will result in discrimination places the burden on women. A more balanced approach can be seen in international practices. Menstrual leave is legally recognised in countries such as South Korea, Indonesia, and Japan without discouraging women from working. The Court could have developed a sophisticated framework that protects both equality and health rather than dismissing the plea. The decision runs the risk of sustaining informal discrimination, where women may still experience hiring bias without any legal protection or assistance for their health needs, by viewing menstrual leave as a potential disadvantage rather than a necessary accommodation.

Suggestions

Although the Supreme Court has recognised the right to menstrual health and hygiene, it has taken a step back from legalising menstrual leave policies, citing employment and logistical difficulties. Considering this, we make recommendations and suggestions that lawmakers can implement and consider. Firstly, flexible working options, including work-from-home arrangements, should be introduced for working women. The new labour code provides for work-from-home for women, but only after maternity leave, at the employer's discretion.¹⁴ There is no provision for menstrual health and leave in the new code. The government missed the opportunity to implement the same. While the Court has expressed worry that mandatory menstrual leave may reinforce gender stereotypes, adaptive workplace policies can provide relief without affecting employability. Such measures will align with the principle of substantive equality, which requires differential treatment to address biological realities. Secondly, there can be an increase in the number of medical leaves or casual leaves for female employees to accommodate menstrual health-related concerns like period cramps, stress, anxiety, depression and other unwarranted symptoms. These conditions significantly affect women's productivity and well-being. The institutions can add the number of leaves in favour of women without affecting the overall leave policies. The failure to give time to deal with the menstrual issues perpetuates hardships.

Attendance requirements in educational institutions must also be made reasonable. The Supreme Court acknowledged that forced absenteeism due to lack of menstrual facilities or physical discomfort undermines equal access to education and violates dignity. Hence, attendance shortages arising from menstrual health issues should not affect overall attendance percentages, nor should they prevent girls from appearing in exams, etc. Instead, remedial classes can be introduced for female students who missed their classes due to menstruation-related problems. With this in mind, awareness-raising sessions should be held in schools for both male and female students to explain menstruation and sanitary hygiene. It is important to train teachers to be sensitive to female students. This guarantees that biological processes do not result in structural disadvantages in education.

Additionally, free sanitary napkins must be provided everywhere, in accordance with court orders, especially in public institutions such as schools. The Court has made it clear that menstrual hygiene is a constitutional right rather than a matter of charity, which requires state accountability. As a result, all establishments that have women present must provide sanitary products at no or minimal cost. Furthermore, it is necessary to ensure sufficient restroom infrastructure, including hygienic, separate restrooms, a water supply, and secure

disposal methods. One of the main reasons why teenage girls drop out of school and face health risks is the lack of such facilities.

Protection for privacy and dignity must be rigorously upheld. The constitutional guarantees of equality and dignity are violated by stigma, surveillance, or discriminatory practices related to menstruation in workplaces and educational institutions. The Court stressed that menstruation-related stigma and stereotypes directly violate fundamental rights. To improve accessibility, especially for economically disadvantaged groups, economic reforms such as lowering or eliminating sanitary product taxes are required. This will align fiscal policy with constitutional commitments to equality and health. All things considered, these suggestions mark a shift from formal recognition to substantive enforcement, ensuring that menstrual health is incorporated into the broader conversation about public health, gender justice, and constitutional morality.

Overall, these recommendations demonstrate that merely acknowledging menstrual rights in theory is insufficient. Only when these rights are appropriately applied in daily life, guaranteeing that women and girls can live with dignity, good health, and equal opportunities in all spheres of society, will real change occur.

Conclusion

In conclusion, menstrual health in India is an issue of equality, dignity, constitutional justice, and hygiene. The lived experiences of menstruating women, particularly in rural and marginalised communities, reveal a persistent gap between law and reality, despite the Constitution's promises of equality, nondiscrimination, and the right to live with dignity under Articles 14, 15, and 21. The socio-legal issues of stigma, lack of access to sanitary products, and family silence still threaten these guarantees. In this regard, the Supreme Court of India's recent position represents a lost opportunity to take a more revolutionary approach to gender-sensitive rights. Only when we take a more pragmatic, all-encompassing approach that incorporates improved legislation, proactive government support, appropriate education, and societal awareness will real change occur. Making menstrual products is one of the recommendations in this article. In the end, menstrual justice can be achieved only when we break long-standing taboos and make sure that constitutional rights are actually experienced in the daily lives of all menstruating individuals in India.

Statements and Declaration : The authors declare that the manuscript is their original work and all authors have contributed to and approved the final version of the manuscript. Necessary permissions and approvals, wherever required, have been obtained from the concerned institutional authorities. They affirm that the information and references used in this manuscript have been duly acknowledged and that the work complies with the ethical standards of academic research and publication.

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