

Right to Menstrual Hygiene As a Perspective of Right to Life: The Position of Young Girls in the Union Territory of Jammu and Kashmir and the Impact of Poverty on the Enjoyment of This Right Including their Right to Education

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Abstract- 'Right to Life' is one of the most fundamental and essential human rights as recognized by the Universal Declaration of Human Rights, a document which has set forth and reclaimed human dignity and certain inherent equal rights. Along with this, 'Right to Education' is another such guarantee that helps in instilling a sense of consciousness in one's personality and is a basic constituent of 'Right to Life'. Menstrual hygiene, its management and rights attached to it are an inseparable component in the lives of females. However, young girls coming from poor financial backgrounds suffering the brunt of illiteracy and poverty experience the damaging effects of social taboos relating to menstruation on their overall personalities. The present research paper analyses the present status of young girls when it comes to menstruation, menstrual management practices adopted by them, kinds of hazardous materials they have to use to regulate the flow of menstrual blood due to lack of sufficient financial resources and various health complications arising due to the same. This research also seeks to study the co-relation that exists between Right to Menstrual Health and Right to Life. A recently decided domestic case law on Menstrual Hygiene and Right to Education has also been referred and discussed for the present study.

Keywords: Menstrual Hygiene, Menstrual Management materials, Right to Health, Right to Education, Human Rights, The Universal Declaration of Human Rights.

I. Introduction

In a civilised society the enjoyment of basic rights, especially human rights, are a fundamental necessity. These rights form the core and a basis for the existence of a human being in such community. Every individual, irrespective of his or her gender identity, age group and other factors, is entitled to enjoy such foundational rights. Such entitlements, which have been granted to human beings, owe their genesis to nature itself as these rights are also called as 'natural rights' thus depicting the coming into operation of the same from the very birth of a person.

Today, human rights are recognised as the ultimate building blocks of a complete human personality and the same has been provided an international acknowledgement by the Universal Declaration of Human Rights which is regarded as one of the most paramount human rights documents in the world.

There are various rights which are essential for a human for his or her absolute development as a contributing member of a given society. Right to education, right to health, right to livelihood, right to have a family, right to privacy, right to a decent standard of living etc. constitutes some crucial human rights. Among them, Right to Menstruation is one such human right which is as fundamental as any other for a proper and healthy advancement of a woman, in terms of both physically as well as emotionally. This right emerges from an elemental phenomenon in lives of women and girls, that is menstruation, and the same being a human right needs to be further understood in the light of other basic rights, for instance, right to life and right to education.

II. Right to Menstrual Hygiene is a Human Right

A woman's right to menstrual hygiene is a universally recognized human right¹ and the same has an interrelationship² with certain other rights, for instance, *right to health*³, *right to non discrimination*⁴, *right to life and liberty*⁵, *educational rights*⁶ including *rights related to her employment*⁷. All these diverse natural entitlements have a direct relation with her right to menstrual health and hygiene and the latter gets impacted due to exercise or non exercise of the former.

The Universal Declaration of Human Right (UDHR), a landmark international document concerning recognition of human rights and inherent dignity of individuals⁸, has resulted in the adoption of numerous human rights conventions and treaties around the world declaring and affirming certain freedoms of human beings as inalienable in nature and focusing on their inherent dignity⁹. The document in its preamble¹⁰ has unequivocally expressed that in order to achieve peace and justice in the world in a true sense *two essential requirements* needs to be fully realized, *firstly*, the inherent dignity of individuals and *secondly*, the inalienable and equal rights of all human beings without any discrimination¹¹. Not only this, there are various provisions in the Declaration that

reaffirm and proclaim basic indispensable human rights and they, today, are taken as a cardinal foundation for building up of an equal and a peaceful world.

The Universal Declaration of Human Rights in *article 3* has expressed the proclamation of one of the paramount human rights of a person “*Right to Life*” among other rights like *Liberty and Security*¹².

Article 23 of the above document clearly mentions another important right, ‘*Right to Work*’ which can be properly implemented, besides through other measures, by taking into consideration and realizing a woman’s right to menstrual health. If she enjoys proper and sufficient utilization of safe menstrual management materials at her disposal it is only then that she can exercise her human right of employment efficiently.

Article 25 speaks of ‘*Right to Health*’ and of a standard of living sufficient for the comfort and welfare of a person and his or her family. This right further encompasses within its scope a woman’s rights to proper menstrual health and hygiene and to use safe menstrual management materials during menstruation.

Further, *article 26* deals with ‘*Right to Education*’ and its objective of attainment of complete nurturing of a human being and thus achieving reverence for human freedoms and rights. Again, a menstruating female, belonging to a poor economic background, can enjoy exercise of this very right in a true sense only if she has easy access to reliable and healthy menstrual management materials during menstruation to manage menstrual flow so that she can complete her basic education in educational institutions with less chances of dropping out of educational institutions when menstruating thus reaching her complete human capabilities and leading a dignified life.

However, not all women and girls in the world are privileged enough to enjoy such basic amenities. There are many case scenarios where these females coming from economically impoverished backgrounds have to, in most deprived cases, depend on certain materials that they can find in order to manage menstrual flow that can ultimately endanger their own lives.

III. Materials used by economically weaker females during menstruation

Out of around 336 million women in India who menstruate, it has been found that 121 million of them use sanitary napkins as an effective material for menstrual management during menstruation¹³ and the same approximately makes up to only 36 percent of their population in the country. This means that only 36 percent of women in India who are literate and come from economically good backgrounds have access to modern and safe materials for menstrual management, for instance, *sanitary napkins* and they adopt the same. However, the remaining 64 percent of women in the nation who, owing to poverty and in majority of the cases due to illiteracy, do not have access to such safe menstrual management materials. Thus, it becomes essential to know as to the kinds of materials they have to depend on during menstruation.

The majority of the menstruating women in India belong to poor economic backgrounds which indicates that they, due to period poverty (a situation where poor women are practically restrained to afford menstrual management products due to their economic constraints and because of the same a financial pressure gets imposed on them by values for various necessary menstruation related items such as panties, sanitary pads etc¹⁴.) are unable to afford safe menstrual management materials like sanitary napkins and therefore they are forced, due to economic constraints, to depend on and to adopt certain other alternatives to manage blood flow as dangerous as *husk, rags, leaves, mud, soil*¹⁵ and similar materials that can genuinely prove to be hazardous to their health. Using such substances that are not actually designed for the purposes for which they are being used by these poor women can have serious health consequences that sometimes can, unfortunately, be long lasting. And in most serious scenarios the impact of the health consequences, due to applying of the above mentioned dangerous substances to the body in the hope that these materials can in some way help in absorbing the menstrual blood, can turn out to be grave and penetrating enough to affect the mental health of these poor women.

Serious health complications caused by the use of unsafe menstrual management materials and its impact on mental health on 64 percent of women in India who have to depend on such materials

The unsafe materials for managing menstrual flow, as discussed above, can turn out to be extremely risky and fatal to an extent that the users of such materials are exposed to contracting various vicious and dangerous infections such as reproductive tract infections, hepatitis B infection, yeast infections, urinary tract infections including cervical cancer¹⁶ which in worst cases can also badly affect her reproductive health and lead to other severe health complications.

The use of these hazardous materials by poor women during menstruation also has a negative impact on the mental health of the menstruator. In a research¹⁷, it has been found that, due to poverty, women who did not have access to a decent and a safe menstrual management material during menstruation, in all probability, underwent depression in their lifetimes and the impact of which ranged from *moderate to severe*.

This clearly indicates that, because of the non-availability of enough economic resources in their families and due to the required utilization of unsafe and hazardous materials by them during menstruation, these 64 percent of poor women and girls in India have to suffer from critical health complications, not only physical but also mental.

The above scenario being grave and for the purpose of studying the co-relation between menstrual health and the right to life the present matter should be studied in the light of the understanding of *article 21* of the Constitution of India.

IV. Article 21 of Constitution of India, the Heart of it

Part III of the Constitution of India, which is the world’s lengthiest constitution, dealing with ‘*Fundamental Rights*’ is rightly described as the country’s *Magna Carta*¹⁸ and the same guarantees a wide range of basic and inalienable rights to the people thus acting as an element in the revered document which preserves their lives and liberties. Article 21, described as *the heart of the Indian Constitution*¹⁹, guarantees to all the persons, which obviously includes women, found within the territory of the country a *Right to Life*, one of the foundation head of our laws²⁰.

Article 21 of the Indian Constitution declares that *“no person shall be deprived of his life... except according to procedure established by law.”*

‘Decency’ and ‘Comfort’ applies equally for menstruating women

The Right to Life, apart from a mere animal existence, includes the implementation of this right into the faculties of a human being²¹ through which one can fully enjoy his or her life with all the required basic necessities and amenities including ‘decency’ and ‘comfort’ of a rational degree²². Speaking of ‘decency’ and ‘comfort’, two of the most important ingredients that supply the fundamental human right of right to life with a meaning, these are the foundational necessities that are applicable equally in the lives of women, more specifically, menstruating women. They have an inherent right when it comes to enjoyment of their lives with a reasonable degree of comfort and decency attached to their Right to Life when they menstruate.

It should be noted that ‘Right to Life’ also includes other equally essential as well as corresponding rights like ‘Right to live with human dignity’²³ further including in its reach rights like ‘right to adequate nutrition’ and ‘right to clothing’²⁴ and, therefore, in order for a female to have an availability of sufficient and proper menstruating management materials at her disposal during her menstrual cycle, *living with dignity* is also counted as one of her essential fundamental human rights.

Right to Education of poor young girls is getting affected in the Union Territory of Jammu and Kashmir due to poverty and their use of improper menstrual management materials

Right to a proper and complete education is also a part of article 21 of the Indian Constitution. Since article 21 talks about one’s Right to Life, the same further covers one’s right to get complete education with proper facilities and it is an essential and a foundational aspect of a person’s life. The Supreme Court of India has upheld that *“The Right to life is the compendious expression for all those rights which the court must enforce because they are basic to the dignified enjoyment of life. The Right to education flows directly from right to life”*²⁵.

Thus, right to education is essential for the absolute enjoyment of a person’s life, including that of women and girls. They, thus, are no exception to the enjoyment of the same and are equally entitled to cherish the said right.

However, the ground reality holds a divergent view than the philosophical standpoint. A recent case law²⁶ needs to be studied in order to understand the actual scenario on right to education of young girls who menstruate and residing in the Union Territory of Jammu and Kashmir. Poverty and insufficient awareness on menstruation and its management among girls and in the society, unfortunately, has become the norm and females are not being able to exercise their ‘Right to Education’ effectively.

Poverty, including period poverty, and the deficient awareness among young girls, belonging to poor economic backgrounds residing in the Union Territory of Jammu and Kashmir, on the subject of menstruation and its management, is severely affecting the normal course of events in their lives as they are either dropping out of their schools on reaching puberty or are missing on their regular classes on the same ground. This shows deleterious effects on the development of their overall personalities, thus constraining them from being active and fully contributing in the affairs and development of the society.

In the present case law, the Hon’ble court of law addressed the miseries of young girls coming from poor economic backgrounds who have to unwillingly drop out of schools on the onset of menstruation, a natural process in the biology of females. These girls, the court held, are not enlightened enough on an important subject of menstruation neither are they educated by their parents, on the same subject, due to the rampant prevalence of social taboos attached to this matter. Thus, due to factors like restrictive awareness on the subject of menstruation and its management including the existence of poverty and illiterate, they are forced by these circumstances to adopt unhealthy and unsafe hygienic practices, which includes using unsafe menstrual management materials, especially during menstruation which ultimately results in their health to get deteriorated with the occurrence of obstinacy and consequently they drop out of schools not being able to enjoy their fundamental right to education completely. Moreover, the twisted social norms also have a good hold on the development of these poor young girls right from the time they reach puberty as they are taught by their families and other social members to discontinue further education, to stay at home and to learn to do house chores.

Therefore, if these young girls are unable to go to school regularly due to the above mentioned factors causing them to remain uneducated and not being able to exercise their essential, basic and fundamental human right to education and thus to limit the powers of their human potentials, then this clearly suggests that they automatically do not get to enjoy their fundamental human right, Right to Life which has been considered as the ‘Heart of Fundamental Rights’²⁷ in the Constitution of India.

V. Suggestions

The Right to life has not only been recognized as a fundamental human right by the Constitution of India, but the same has been considered and reaffirmed by most of the International Conventions and Protocols including the *Universal Declaration of Human Rights*, a landmark international document declaring and protecting basic human rights around the world²⁸ and which has acted as a blueprint for the adoption of several international human rights documents applicable universally and regionally²⁹ as well. Therefore, it becomes naturally important that each and every human being should be able to practice and enjoy his or her basic human rights to lead a dignified and a healthy life.

The menstruating young girls who, due to poverty, are forced to use unsafe and unhealthy menstrual management materials during menstruation and who remain unaware due to illiteracy about the safe hygiene practices to be exercised, especially during menstruation, needs equally valuable attention. There are certain educative and awareness measures that needs to be undertaken by the authorities, organizations and by common people, for the impactful development of both the society and females, on this subject and thus using better and reliable menstrual materials, that women belonging to economically weaker sections can make the best of during those days, that can ultimately lead them to lead a healthier and a dignified life.

Measures that can be undertaken are as follows :

Disowning Social Taboos: Social Taboos are the perceptions and beliefs that people of a certain community hold among their group irrespective of its scientific standing. Similarly, there are various taboos prevalent in our society relating to menstruation that unreasonably, unjustly and unfairly debar and restrict menstruating women from exercising certain everyday common practices or from doing certain things as these are regarded by the society as unethical and, in most cases, impure. Most common of these restrictions range from *barring the entry of females in kitchen in their own houses when they menstruate; not allowing them to touch food items like pickles* as it is considered that the same will get dirty and will rot if it is touched by them while they menstruated; *barring them from entering a sacred place in the house as it is believed that the same will make the place unholy; barring and separating them from living in the same house where other members are living for the time they menstruated.*

It is ironical that these kinds of ugly social taboos are still in place today and are being practiced fully in rural areas where people are less educated and poor. Such taboos are required to be disowned by the practitioners in order that the menstruating females can live their lives with dignity and respect and for unlocking and achieving these purposes the key is sufficient education.

Education on menstruation: Education helps in creating a strong foundation for a man's life. It is the only weapon by which superstitions can be dispelled and light can be generated. In order to create awareness on menstruation including its proper regulation by women through the use of safe menstrual management materials and to shun unjust and barbaric superstitions, imparting of proper education in society and among young girls belonging to poor economic background is the need of the hour.

The society needs to understand that menstruation is a natural process in the biology of a woman and that it is absolutely normal and that the females have all the rights available to them even when they menstruate.

The menstruating young girls also needs to understand that they have every right to live and enjoy their lives as they like even during those five to seven days. It also needs to be taken into consideration that, while executing on this step, young girls be made exposed to the fact that menstruation is a natural and a normal phenomenon which occurs regularly every month. Along with this the biology behind this phenomenon also needs to be shared with them as this exercise will gradually help them in normalizing menstruation as a part of their life.

And for this purpose, the educational institutions need to make an initiative in this regard. Schools, especially in rural areas, need to include within their curriculum educational materials on the subject of menstruation and its management and the same should be taught in classes. This will aid young girls to familiarize themselves with the same and a conception of normalcy will develop in their minds about menstruation, leading them to eventually attend their schools on a regular basis without them dropping out or skipping their classes.

In such a way, the spread of education will soon bring into existence a whole new generation of young minds in our society away from all the possible rudimentary thought processes and practices capable of stifling one's human rights thus ultimately ringing a new dawn of updated society, devoid of taboos.

Role of Non Governmental Organizations: The NGOs also have an impactful role to play in creating enlightenment and in assisting communities and group of people to get over certain hardships by distributing among them essentials and other necessities. These organizations can initiate certain measures focusing on addressing the issue of practices of unsafe menstrual hygiene behaviors by the young girls and providing adequate redressal to them for the same. These organizations can also enter into partnerships with leading brands working for menstrual management material and these can be distributed free of cost to the beneficiaries.

Government's policies: The governments can also pass certain policies and programmes concerning menstruation and its healthy management. The same can have a positive impact on females and through this they can receive assistance and guidance by the endeavors of the government.

VI. Conclusions

To obtain highest level of human personality and dignity one needs to be aware of his or her rights, specifically human rights as they help an individual to reach his or her true potential by providing meaning and purpose into one's life.

Human rights like Right to Life and Right to Education are such rights. Right to a life is the most fundamental of all rights even recognized and endorsed by the world's internationally known document for human rights, Universal Declaration of Human Rights. The declaration recognizes equal and inherent rights of every individual to enjoy all human rights keeping aside unnecessary distinctions. Women in general and young girls, belonging to poor economic background, in particular have right to exercise and equally enjoy all the basic and essential rights declared by the international document just like their male counterparts.

Insufficient financial resources of young girls should not come in their way towards leading fulfilling lives. Awareness can be spread, among them, on the subject of menstruation and its management as well as in society as a whole so that the latter can become free of unwanted social taboos attached to menstruation that are constraining females from attaining their true selves.

Thus, if human rights are meant to be exercised globally by every individual equally then that clearly means that menstruating young girls also are equally entitled to all those rights that are enjoyed by their counterparts because as expressed in the preamble of the Universal Declaration of Human Rights that recognizing every human's inherent dignity and equal rights is the bedrock for peace and freedom in the world.

REFERENCES:

1. The Universal Declaration of Human Rights, 1948, art. 25.
2. Menstrual Hygiene Rights are Human Rights. Period, available at: <https://bit.ly/3bNH46i> (last visited on July 26, 2023).

3. *Supra* note 1.
4. The Universal Declaration of Human Rights, 1948, art 7.
5. The Universal Declaration of Human Rights, 1948, art 3.
6. The Universal Declaration of Human Rights, 1948, art. 26.
7. The Universal Declaration of Human Rights, 1948, art. 2.
8. The Universal Declaration of Human Rights, 1948, Preamble.
9. The Universal Declaration of Human Rights, available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on, July 26, 2023).
10. “Whereas... of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”
11. *Supra* note 8.
12. The Universal Declaration of Human Rights, 1948, art 3 states “Everyone has the right to life, liberty and security of person.”
13. Menstruation hygiene day facts: only 36% of women in India use sanitary pads during periods, available at: <https://www.swachhindia.ndtv.com/menstrual-hygiene-day-facts-26-percent-use-sanitary-pads-periods-34309/> (Last visited on July 26, 2023).
14. Menstruation and Human rights: Frequently Asked Questions, available at: <https://www.unfpa.org/menstruationfaq#:~:text=Period%20poverty%20describes%20the%20struggle,burden%20posed%20by%20menstrual%20supplies> (Last Visited on July 28, 2023)
15. Why india must battle the shame of period stain, Available at: <https://www.bbc.com/news/world-asia-india-52830427> (last visited on July 29, 2023).
16. *Supra* note 8.
17. Lauren F. Cardoso, Anna M. Scolese, Alzahra Hamidaddin and Jhumka Gupta, “Period poverty and mental health implications among college aged women in the United States” BMC Women’s Health (2021).
18. M Laxmikanth, *Indian Polity For Civil Services Examinations* 7.26 (McGraw Hill Education India Pvt Ltd, New Delhi, 4th edn., 2013).
19. I.R Coelho V. State of Tamil Nadu, AIR 2007 SC 861.
20. Prof. N. Kumar, *Constitutional Law of India* 305 (Allahabad Law Agency, Haryana, 8th Edn., 2014).
21. Sunil Batra V Delhi Administration, AIR1980 SC 1579.
22. *Supra* note 19 at 307.
23. Francis Coralie Mullin v. Union Territory of Delhi, AIR 1981 SC 746.
24. Ibid.
25. Miss Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
26. Court on its own Motion v. Government of India and Others on December 8, 2020.
27. Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others, AIR 1993 SC 2178.
28. *Supra* note 9.
29. Ibid.