

MENSTRUAL HEALTH AS A PART OF THE RIGHT TO LIFE UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION

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ABSTRACT

Menstrual health is a fundamental but a neglected aspect of women's health and human rights in India. Although menstruation is a natural biological process, deep-rooted socio-cultural taboos, lack of awareness, inadequate sanitation facilities and poor access to affordable menstrual hygiene products have resulted in systemic discrimination against menstruating persons. This article discusses that menstrual health is constitutionally protected under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. Through progressive judicial interpretation, Article 21 has evolved to encompass the right to health, dignity, privacy, education, livelihood, and a clean environment. By analyzing constitutional provisions, landmark judicial precedents, Directive Principles of State Policy, international human rights obligations, and contemporary policy initiatives, this article establishes that menstrual health is not merely a welfare concern but an enforceable constitutional right integral to the right to life with dignity.

Key words: Menstrual health, Article 21, Constitution

1. INTRODUCTION

Menstruation is a biological process experienced by nearly half the population for a significant part of their lives. Despite its universality, menstruation remains one of the most stigmatized and silenced subjects in Indian society. Cultural taboos surrounding menstruation manifest in various forms—restrictions on mobility, exclusion from religious and social spaces, denial of education, lack of workplace accommodations, and inadequate access to sanitation and hygiene facilities.

According to multiple studies, a significant percentage of menstruating women and girls in India lack access to safe and hygienic menstrual products. Many are forced to use unhygienic alternatives such as cloth, ash, or sand, exposing them to infections and long-term reproductive health issues. Adolescent girls frequently miss school during menstruation due to lack of toilets, water facilities, or fear of stigma, contributing to high dropout rates.

While the Indian Constitution does not explicitly mention menstruation or menstrual health, it enshrines a broad framework of fundamental rights that, when interpreted purposively, encompass menstrual health. **Article 21**, which guarantees the right to life and personal liberty, has been judicially expanded to include various socio-economic rights essential for a dignified existence. This article seeks to demonstrate that menstrual health is inseparable from the constitutional guarantee of life under Article 21.

2. EVOLUTION OF ARTICLE 21: FROM NEGATIVE LIBERTY TO POSITIVE RIGHTS

Article 21 of the Indian Constitution provides:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

In the early years, Article 21 was interpreted narrowly, particularly in *A.K. Gopalan v. State of Madras*, where the Court adopted a formalistic approach. However, this interpretation underwent a radical transformation after the landmark judgment in *Maneka Gandhi v. Union of India*.¹ The Supreme Court held that the procedure established by law must be “just, fair and reasonable,” thereby introducing substantive due process into Indian constitutional law.

Post-*Maneka Gandhi*, Article 21 emerged as the heart of the Constitution. The Court clarified that “life” does not merely mean animal existence but includes the right to live with human dignity, free from exploitation and deprivation.² This expanded understanding paved the way for recognizing several derivative rights essential for a dignified life, many of which directly relate to menstrual health.

3. MENSTRUAL HEALTH AND THE RIGHT TO HEALTH UNDER ARTICLE 21

3.1 Recognition of Health as a Fundamental Right

The Supreme Court has consistently held that the **right to health** is integral to the right to life. In *Consumer Education and Research Centre v. Union of India*, the Court observed that health is a fundamental human right and that access to medical care is essential for a meaningful life.³

Similarly, in *State of Punjab v. Mohinder Singh Chawla*, the Court held that the right to health is a fundamental right under Article 21 and that the State has a constitutional obligation to provide adequate medical facilities.⁴

3.2 Menstrual Health as an Essential Component of Health

Menstrual health goes beyond access to sanitary pads. It includes:

- Access to clean water and toilets
- Safe disposal mechanisms
- Accurate menstrual health education
- Diagnosis and treatment of menstrual disorders

The absence of these facilities disproportionately affects women from rural areas, urban slums, prisons, schools, and workplaces. Poor menstrual hygiene leads to urinary tract infections, reproductive tract infections, infertility, and mental health issues such as anxiety and shame.

Failure of the State to address menstrual health concerns amounts to a violation of the right to health under Article 21. Since Article 21 imposes positive obligations, the State cannot evade responsibility by treating menstrual health as a private or personal issue.

4. MENSTRUAL HEALTH AND THE RIGHT TO LIVE WITH HUMAN DIGNITY

4.1 Dignity as the Core of Article 21

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court held that the right to life includes the right to live with dignity and all that goes along with it, such as adequate nutrition, clothing, shelter, and facilities for reading and expression.⁵

Human dignity has been repeatedly recognized as the foundation of fundamental rights. Any condition that forces individuals to live in humiliation, degradation, or indignity violates Article 21.

4.2 Menstrual Stigma and Violation of Dignity

Menstrual stigma manifests through discriminatory practices such as:

- Forcing women to isolate during menstruation
- Banning entry into temples or kitchens
- Public shaming of menstruating girls in schools
- Denial of sanitation facilities

Such practices reduce menstruating persons to second-class citizens and strip them of their dignity. The inability to manage menstruation safely and privately forces women to endure shame and humiliation, which is incompatible with the constitutional guarantee of dignity under Article 21.

5. MENSTRUAL HEALTH, PRIVACY, AND BODILY AUTONOMY

5.1 Right to Privacy under Article 21

In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court unanimously recognized the **right to privacy** as a fundamental right under Article 21.⁶ The Court emphasized that privacy includes bodily integrity, decisional autonomy, and personal choice.

5.2 Menstruation as a Private and Bodily Matter

Menstrual health is deeply personal and directly linked to bodily autonomy. Lack of private toilets, changing rooms, and disposal facilities in schools, workplaces, and public spaces forces women to compromise their privacy. In many cases, girls are required to disclose their menstrual status to teachers or employers, violating their right to privacy.

Any system that compels women to manage menstruation in public view or without adequate privacy infringes upon their constitutional right to bodily autonomy under Article 21.

6. IMPACT OF MENSTRUAL HEALTH ON THE RIGHT TO EDUCATION

6.1 Right to Education under Article 21A

The Supreme Court in *Mohini Jain v. State of Karnataka* held that the right to education flows directly from the right to life.⁷ This principle was later constitutionally recognized through Article 21A.

6.2 Menstrual Health as a Barrier to Education

Lack of menstrual hygiene facilities in schools is a major cause of absenteeism among adolescent girls. Many schools lack:

- Separate toilets for girls
- Water supply
- Disposal facilities
- Menstrual awareness programs

As a result, girls miss classes during menstruation or drop out altogether. This effectively denies them their right to education, making menstrual health a constitutional issue rather than a mere administrative concern.

7. MENSTRUAL HEALTH AND THE RIGHT TO LIVELIHOOD

In *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court recognized the right to livelihood as part of the right to life under Article 21.⁸

Women working in unorganized sectors often lack access to toilets, rest areas, or menstrual leave. This results in absenteeism, loss of wages, and forced withdrawal from employment. Without workplace accommodations for menstrual health, women's right to livelihood is indirectly violated.

8. DIRECTIVE PRINCIPLES OF STATE POLICY AND MENSTRUAL HEALTH

Though non-justiciable, the Directive Principles guide the interpretation of fundamental rights.

- **Article 39(e)**: Protection of health of workers
- **Article 42**: Just and humane conditions of work and maternity relief
- **Article 47**: Duty of the State to improve public health

In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court held that Directive Principles must inform the interpretation of fundamental rights.⁹ Thus, menstrual health obligations gain constitutional strength through a combined reading of Articles 21 and DPSPs.

9. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

India is a signatory to:

- CEDAW
- ICESCR
- Convention on the Rights of the Child

These instruments recognize the right to health, dignity, and gender equality. In *Vishaka v. State of Rajasthan*, the Supreme Court held that international conventions consistent with fundamental rights can be read into domestic law.¹⁰

Menstrual health, being central to women's health and equality, must be protected in light of India's international commitments.

10. JUDICIAL TRENDS AND POLICY DEVELOPMENTS

Indian courts have increasingly acknowledged menstrual health concerns in cases involving:

- Prisoners' rights
- School sanitation
- Women's workplace conditions

Government initiatives such as menstrual hygiene schemes and tax exemptions on sanitary products indicate growing recognition, but constitutional backing under Article 21 is essential for enforceability.

11. CONCLUSION

Menstrual health is an inseparable component of the right to life under Article 21. The constitutional guarantees of health, dignity, privacy, education, and livelihood remain incomplete without addressing menstrual health. Treating menstruation as a constitutional

issue rather than a social taboo is essential for achieving substantive gender equality. The State has a constitutional obligation to ensure access to menstrual hygiene products, sanitation facilities, education, and stigma-free environments. Recognizing menstrual health as part of Article 21 is not judicial overreach but constitutional necessity. Only then can the promise of a dignified life for all truly be realized.

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