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The Jurisprudence of Blood and Dignity: Deconstructing the Nexus between Article 21 and Menstrual Health



Anju C. J.
Advocate, Thrissur

Menstruation has traditionally been treated as a hidden matter, governed by social norms rather than legal systems. But the historic Supreme Court decision of *Dr. Jaya Thakur v. Union of India and Others*[1], menstrual health has been officially elevated from a policy goal to a non-negotiable fundamental right. The judgment addresses the critical intersection of menstrual hygiene management, the right to education, and human dignity. And Court observed that, menstrual health was linked to the right to privacy and the autonomy to make choices about one's own body. The Supreme Court's interpretation of Article 21 to include the right to manage menstruation in a dignified manner has challenged the social morality that has traditionally treated menstruation as a taboo.

The shades of menstruation are the varied and sometimes discriminatory experiences of menstruating women in India, which are determined by factors of caste, class, and geography. While menstruation is a constant in nature, menstrual poverty is a failure of the socio-legal system. The Supreme Court decision is the culmination of a judicial development where the right under Article 21, which was perceived as a negative right against state action, has now evolved into a positive right to dignity. The Court, headed by Justices J. B. Pardiwala and R. Mahadevan, held that menstruation is a natural biological process that has been grossly abused as a means of structural discrimination. When a girl is compelled to leave school or is made to feel ashamed because of the absence of toilets and sanitary pads, she is essentially being charged a biological tax. The Court held that the right to autonomy over one's body is the essence of Article 21. The State's failure to provide MHM infrastructure is an implicit limitation on the freedom of movement of girls, which is violative of their basic rights.

Dignity is not a mere rhetorical device; it must be accompanied by real conditions. The Court established the connection between menstrual health and the Right to Privacy[2]. Privacy during menstruation is the key to preserving dignity. The decision holds that schools are obliged to have separate toilets and MHM Corners. Without them, the Right to Life is a mere illusion for millions of people. By establishing that the state possesses a positive obligation to not only protect but actively facilitate a dignified existence, the Court has provided a robust legal basis for addressing menstrual health.

When applied to the context of menstrual hygiene, this jurisprudence

1. 2026 KHC 6077 : 2026 INSC 97 : 2026 (1) KHC SN 32 : 2026 KHC OnLine 6077.
2. 2017 KHC 6577 : (2017) 10 SCC 1 : 2017 (4) KHC SN 21.

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suggests that the State's failure to provide adequate sanitation and products is not merely a policy omission, but a violation of the constitutional vision of a humane and compassionate society. If, as the Court notes, dignity can neither be given nor taken away, then the biological process of menstruation cannot be allowed to diminish an individual standing in the eyes of the law. Consequently, the provision of menstrual hygiene management becomes a necessary step in realization of justice, ensuring that the individual remains the centre of the constitutional promise.

In the seminal case of *Common Cause v. Union of India*[1]; Justice Dr. D. Y. Chandrachud observed that, "the inherent value which sanctifies life is the dignity of existence". This judicial philosophy posits that life is not merely a biological state but qualitative experience. When applied to menstrual health, this suggests that the state of living for millions of menstruating individuals is intrinsically tied to their ability to manage a natural biological process without shame, pain or social exclusion. If, as the Court suggests, life is truly sanctified when it is lived with dignity, then the lack of access to menstrual hygiene management measures represents a direct antagonism to the sanctity of life.

The judgment emphasizes that liberty and autonomy are essential attributes of a life of substance (*Common Cause, Para 438*). For a menstruating individual, autonomy manifests as the ability to determine the treatment and care they receive for their bodies. When systemic poverty or cultural restrictions deprive an individual of menstrual hygiene, their liberty to participate in education, work, and public life is curtailed. Justice Dr. D. Y. Chandrachud noted that dignity ensures life does not despair as it ebbs away; similarly, dignity must ensure that life does not despair during its recurring cycles. A life of substance requires that the "control over pain and suffering" mentioned in the context of end-of-life decisions be extended to the monthly reality of menstrual health management.

The morality often dictates that menstruation should be managed in hushed whispers. This silence leads to a lack of information and resources. However, Constitutional Morality demands that individual rights trump social prejudices. The Supreme Court has now mandated that menstruation be treated as a public health reality rather than a private shame. This is reflected in the Court's directive to include menstrual health in the curriculum for both boys and girls. While the Court can mandate infrastructure, the fulfillment of constitutional morality requires a societal shift. The judgment emphasizes that the role of men is crucial. By educating boys and male teachers about the biological reality of menstruation, society can dismantle the environment of invasive questioning and harassment that often leads to girls dropping out of school.

The evolution of Indian constitutional jurisprudence, particularly the expansive interpretation of Article 21, necessitates a paradigm shift in how Menstrual Hygiene Management is perceived from a private biological concern to a fundamental human right. As established in *Common Cause v. Union of India*, the right to life is inseparable from the dignity of existence. When this is viewed

1. 2018 KHC 6177 : (2018) 5 SCC 1 : 2018 (2) KHC SN 14.

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alongside the holistic definition of health encompassing physical, mental, and social well-being, it becomes evident that the deprivation of safe, effective, and affordable MHM measures constitutes a violation of the right to a meaningful life.

The judicial insights from *Lakshmi Kant Pandey v. Union of India*[1] and *Independent Thought v. Union of India*[2] reinforce this conclusion through three critical pillars. The child as a national asset; if children are the supremely important national asset, then the State's failure to provide menstrual infrastructure in schools is an act of national self-sabotage. The physical and mental health of the nation is determined by the manner in which its children are shaped. Therefore, MHM is not just a health issue; it is a developmental necessity. The right to grow; as held in *Independent Thought*, a girl child's right to health includes the right to grow into a healthy woman. This growth is hindered when menstruation becomes a barrier to education. When a girl is forced to drop out or miss school due to a lack of MHM facilities, her right to live a dignified life as a woman is preemptively violated. Substantive equality and additional support; the Constitution does not merely demand formal equality; it requires the State to provide additional support to address the inherent biological vulnerabilities and social disadvantages faced by the girl child. Providing free sanitary napkins, private changing rooms, and incinerators in schools is not a charity; it is the additional support mandated by Article 15(3) to ensure she can pursue education on equal footing with her male peers.

Finally, menstrual health is the connecting link between the biological reality of a girl and her constitutional ambitions. Denying an adolescent school-going girl her MHM is to deny her agency, her education, and her dignity. Thus, the State's duty to ensure comprehensive MHM is not merely optional but is the direct consequence of the Right to Health and the Right to Education, both of which lie at the foundation of Article 21. A civilized society must ensure that life does not despair of dignity at any point, and that the morning of a girl child's life brings with it a day of empowerment and equality.

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1. 1984 KHC 616 : (1984) 2 SCC 244.
2. 2017 KHC 6719 : (2017) 10 SCC 800 : 2017 (5) KHC SN 7 : 2017 (2) KLD 727.

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