

Breaking Barriers through Law: A Constitutional Perspective on Menstrual Health Rights in India

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ABSTRACT

Menstrual health is more than just a health issue. It is a matter of human dignity, equity, and justice. Yet, in India, the absence of clear legal protections perpetuates stigma, discrimination, and systemic barriers. Despite the Indian Constitution's promises of equality, non-discrimination, and the right to live with dignity under Articles 14, 15, and 21, menstruators in workplaces and public spaces face persistent challenges. This paper adopts a doctrinal approach to analyse menstrual health through the lens of the Indian Constitution. By examining key case laws and constitutional jurisprudence, it highlights the disconnect between legal ideals and the lived realities of menstruators. The absence of menstrual leave provisions, inadequate workplace hygiene infrastructure, and lack of awareness initiatives are revealed as critical gaps that violate constitutional values and hinder India's progress toward achieving Sustainable Development Goals, particularly SDG 3 and SDG 5. This research reframes menstrual health as both a constitutional and human rights issue, bridging the gap between legal theory and advocacy. The study contributes to the broader movement for reproductive justice and equality, advocating for a future where menstrual health is embraced as a fundamental right essential to dignity and gender equity.

1. Introduction

The discourse surrounding menstrual health in India has predominantly remained confined to health and hygiene narratives, overlooking its fundamental constitutional dimensions. This paper challenges the conventional framing by positioning menstrual health as a constitutional imperative rather than merely a welfare concern. Despite India's robust constitutional framework guaranteeing equality (Article 14), non-discrimination (Article 15), and dignified life (Article 21), millions of menstruators continue to face systematic violations of their constitutional rights through workplace discrimination, educational barriers, and social exclusion.

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The significance of this constitutional perspective becomes evident when examining the stark statistics: 23 million girls drop out of school annually when menstruation begins, and only 58 percent of women have access to hygienic menstrual management (Ministry of Health and Family Welfare, 2021). These figures represent not merely public health failures but constitutional violations that demand legal remedies and judicial intervention.

This paper argues that the current legal framework suffers from what can be termed a 'constitutional disconnect' whilst the legal ideals exist within our constitutional text, enforcement mechanisms remain absent or inadequate. Through doctrinal analysis, this study demonstrates that menstrual health rights require explicit constitutional recognition and comprehensive legislative reform to transform India's approach from welfare-based interventions to rights-based guarantees.

2. Literature Review

A landmark resolution on Menstrual Health Management, Human Rights and Gender Equality was adopted at 56th Session of the UNHRC held in Geneva from 18th June 2024 – 12th July 2024; it calls for “*Menstrual health is fundamental Human Rights*”. Another United Nations Population Fund's 2024 report on integrating menstrual health with sexual and reproductive health rights provides updated international framework that strengthens constitutional arguments presented in this study. This recent international perspective demonstrates growing recognition of menstrual health as fundamental rights issue, supporting this paper's constitutional reframing approach.

Recent scholarship has significantly advanced menstrual health discourse. Babbar et al. (2022) established menstrual health as both a public health and human rights issue, providing contemporary framework for constitutional analysis. Salim and Salim (2021) specifically examined menstrual hygiene rights within Indian constitutional context, though their analysis focused primarily on Article 21 without comprehensive examination of Articles 14 and 15. Contemporary research by Jalan et al. (2020) explores sociological dimensions of menstrual stigma, providing important context for understanding constitutional violations' social manifestations. Their findings on workplace discrimination patterns directly support this paper's constitutional equality arguments under Article 14. Recent developments in SDG implementation, particularly Sommer et al.'s (2021) comprehensive analysis of menstrual health's role across multiple SDGs, provide updated framework for understanding constitutional obligations within international development contexts.

Recent legal scholarship has begun to address this gap. Constitutional law experts have examined the implications of the Sabarimala judgment, noting its potential for broader menstrual rights discourse (Baxi, 2019). Similarly, reproductive rights scholars have argued for recognizing menstrual health within existing constitutional frameworks (Krishnan, 2020).

International literature provides valuable precedents. Studies by Hennegan et al. (2019) have demonstrated the global scope of menstrual equity issues, establishing that menstrual health challenges transcend geographical boundaries and require human rights-based approaches. The Scottish Parliament's decision to provide free menstrual products and Japan's long-standing menstrual leave policies offer important comparative perspectives for India's constitutional framework (Scottish Parliament, 2020; Ministry of Health, Labour and Welfare, Japan, 1947).

The existing literature on menstrual health in India has primarily focused on public health perspectives, with limited constitutional analysis. Scholars such as Garg et al. (2017) have examined menstrual practices and health outcomes, noting that India's move towards menstrual

hygiene faces significant challenges in rural contexts where traditional practices persist. Meanwhile, international studies by Sumpter and Torondel (2013) have explored the connection between menstrual hygiene management and education, demonstrating global patterns of educational discrimination.

This paper builds upon existing scholarship by providing a comprehensive constitutional analysis, thereby bridging the gap between legal theory and constitutional jurisprudence in India.

3. Materials and Methods

This study employs a doctrinal legal research methodology, involving systematic analysis of constitutional provisions, particularly Articles 14, 15, and 21 of the Constitution of India, along with relevant case law including the landmark Sabarimala judgment (*Indian Young Lawyers Association v. State of Kerala, 2018*). The study examines legislative frameworks, policy documents, and judicial precedents to understand the current legal landscape governing menstrual health rights.

The theoretical framework integrates constitutional law principles, human rights theory, and reproductive justice scholarship. Primary sources include constitutional provisions, Supreme Court and High Court judgments, parliamentary debates, and legislative enactments. Secondary sources comprise academic articles, law journal publications, government reports, and comparative constitutional law studies from other jurisdictions.

The analysis follows established doctrinal research principles, examining legal texts, judicial interpretations, and legislative developments to identify gaps in constitutional protection and propose legal reforms grounded in established jurisprudential principles.

3.1 Case Study Selection Criteria

The study employs purposive sampling for case law selection, focusing on landmark constitutional judgments that establish precedents relevant to menstrual health rights. Primary cases include:

1. *Indian Young Lawyers Association v. State of Kerala (2018)* - for menstruation-based discrimination analysis
2. *Maneka Gandhi v. Union of India (1978)* - for substantive equality interpretation
3. *Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)* - for dignity jurisprudence
4. *Consumer Education and Research Centre v. Union of India (1995)* - for healthcare rights framework

3.2 Analytical Framework

The doctrinal analysis employs a three-tier approach:

1. Textual analysis of constitutional provisions
2. Interpretive analysis through judicial precedents
3. Gap analysis identifying enforcement deficiencies

3.3 Limitations

This study acknowledges limitations in the absence of empirical data collection through interviews with legal practitioners, judges, or affected individuals. Future research incorporating qualitative methodologies could provide deeper insights into practical implementation challenges.

4. Results

4.1. Constitutional Framework Analysis

4.1.1 Article 14: Right to Equality

Article 14 of the Indian Constitution guarantees that "*the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*" This fundamental right forms the cornerstone of India's commitment to equality. However, in the context of menstrual health, systematic inequalities persist that violate this constitutional guarantee.

The absence of menstrual leave provisions in Indian labour law creates unequal treatment between menstruators and non-menstruators in workplace environments. While some private companies have voluntarily introduced menstrual leave policies, the lack of statutory protection means millions of women face disadvantage in professional settings. This differential treatment based on biological functions constitutes a clear violation of Article 14's equality principle.

The Supreme Court's interpretation in *Maneka Gandhi v. Union of India* (1978) established that equality encompasses both formal equality and substantive equality. Applied to menstrual health, this principle demands that mere formal equal treatment is insufficient; the state must address structural barriers that prevent equal participation. When workplace infrastructure lacks basic amenities for menstrual hygiene management, constitutional equality remains theoretical rather than practical.

4.1.2 Article 15: Prohibition of Discrimination

Article 15 explicitly prohibits discrimination on grounds of sex, stating that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." The provision's inclusion of sex-based discrimination makes it particularly relevant to menstrual health rights.

Menstruation-based exclusion from religious spaces, as highlighted in the Sabarimala case, represents direct sex-based discrimination prohibited under Article 15. The Supreme Court's 4-1 judgment striking down age-based entry restrictions established crucial precedent that menstrual status cannot justify discriminatory treatment (*Indian Young Lawyers Association v. The State of Kerala, 2018*). Beyond religious contexts, menstruation-based discrimination occurs across educational institutions, workplaces, and public spaces. When schools lack adequate menstrual hygiene facilities, forcing girls to miss classes or drop out entirely, this constitutes discrimination that violates both Article 15 and the Right of Children to Free and Compulsory Education Act, 2009.

4.1.3 Article 21: Right to Life and Personal Liberty

Article 21 guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law." The Supreme Court's expansive interpretation of

this article to include the right to live with dignity makes it central to menstrual health discourse.

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (1981), the Court held that Article 21 encompasses the right to live with human dignity. The practice of menstrual seclusion forcing women into isolation during menstruation directly violates this dignified life guarantee. Similarly, inadequate access to menstrual hygiene products and facilities compromises personal liberty by restricting movement and participation in daily activities.

Healthcare access, recognized as part of Article 21 in *Consumer Education and Research Centre v. Union of India* (1995), encompasses menstrual health services. The constitutional right to health includes access to comprehensive menstrual health education, products, and healthcare services. Current gaps in these areas represent constitutional violations requiring immediate remedy.

4.2 Case Law Analysis: The Sabarimala Temple Precedent

The 2018 *Sabarimala* judgment represents a watershed moment in Indian constitutional jurisprudence regarding menstrual health rights. In *Indian Young Lawyers Association v. The State of Kerala* (2018), the Indian Supreme Court's constitutional bench delivered a landmark 4:1 verdict that fundamentally transformed legal understanding of menstruation-based discrimination.

Justice D.Y Chandrachud's observation that "*the physiological characteristics of women, like menstruation, have no significance or bearing on the entitlements guaranteed to them under the constitution*" established a crucial constitutional principle. This statement rejected essentialist arguments that seek to justify discrimination based on biological functions, affirming that constitutional rights cannot be denied on grounds of menstrual status.

The judgment's constitutional significance extends beyond religious freedom to encompass broader equality rights. By striking down *the Sabarimala temple's* age-based entry restrictions (which effectively excluded menstruating women), the Court established that menstruation cannot justify differential treatment in any sphere of public life.

Then *Chief Justice Dipak Misra's* majority opinion emphasized that religion cannot be a cover to deny women the right to worship, establishing that practices not essential to religion are not constitutionally protected. The dissenting opinion by *Justice Indu Malhotra*, emphasizing religious freedom and essential practices doctrine, highlights ongoing tensions between individual rights and community practices. However, the majority opinion's constitutional framework provides strong precedent for challenging menstruation-based discrimination across contexts.

4.3 Current Legal Challenges and Legislative Gaps

India's current legal framework demonstrates significant inadequacies in protecting menstrual health rights. The Maternity Benefit Act, 1961, while providing maternity leave, does not address menstrual health needs. Similarly, the Factories Act, 1948, mandates basic facilities for women workers but lacks specific provisions for menstrual hygiene management.

4.3.1 Labour Law Inadequacies

The absence of statutory menstrual leave provisions creates workplace inequalities that violate Article 14's equality guarantee. While states like Bihar have introduced menstrual leave policies through executive orders, national legislation remains absent. This patchwork

approach creates unequal protection across jurisdictions, violating the constitutional principle of uniform fundamental rights.

4.3.2 Public Health Policy Gaps

The National Health Policy, 2017, mentions menstrual hygiene but lacks implementation frameworks with constitutional backing. School health programs address menstrual awareness but fail to recognize menstrual health as a fundamental right requiring guaranteed access to products and facilities.

4.3.3 Anti-discrimination Mechanisms

Despite constitutional prohibitions against sex-based discrimination, specific legal remedies for menstruation-based discrimination remain limited. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, does not explicitly address menstrual discrimination, creating enforcement gaps.

4.3.4 Judicial Limitations

Beyond the Sabarimala judgment, Indian courts have not systematically addressed menstrual health as a constitutional issue. Public interest litigation focusing on menstrual rights remains limited, suggesting need for strategic legal advocacy to utilize constitutional precedents established in other contexts.

5. Discussion

5.1 International Comparative Analysis

International precedents provide valuable insights for India's constitutional approach to menstrual health rights. Japan's menstrual leave policy, established through the Labour Standards Law, 1947, demonstrates long-standing recognition of menstrual health in labour legislation. The policy allows women to take unpaid leave during menstruation, acknowledging biological differences while maintaining workplace equality.

South Korea's paid menstrual leave policy, implemented through Labour Standards Act amendments, offers a more progressive model, providing economic support alongside accommodation for menstrual health needs. This approach recognizes that true equality may require differential treatment to address biological realities, aligning with substantive equality principles established in Indian constitutional jurisprudence.

Scotland's Period Products (Free Provision) (Scotland) Act, 2021, represents the most comprehensive legislative approach, providing free access to menstrual products as a matter of legal right. This framework aligns with constitutional principles of equality and dignity by removing economic barriers to menstrual health management.

The United Nations Human Rights Council's recognition of menstrual health as a human right provides international legal foundation for domestic constitutional arguments. The UN's emphasis on dignity, non-discrimination, and healthcare access aligns with Articles 14, 15, and 21 of the Indian Constitution, creating synergies between international human rights law and domestic constitutional provisions.

5.2 Sustainable Development Goals Alignment

India's commitment to achieving Sustainable Development Goals (SDGs) creates additional constitutional imperatives for menstrual health reform. SDG 3 (Good Health and Well-being), SDG 4 (Quality Education), SDG 5 (Gender Equality), SDG 6 (Clean Water and Sanitation), and SDG 8 (Decent Work and Economic Growth) are all directly impacted by menstrual health policies.

The constitutional framework provides domestic legal foundation for India's international SDG commitments. Article 51 of the Indian Constitution directs the state to "*foster respect for international law and treaty obligations*," creating constitutional basis for implementing SDG targets related to menstrual health.

Current inadequacies in menstrual health policy hinder India's progress toward these critical SDGs. Addressing menstrual healths as a constitutional right rather than a welfare issue aligns domestic legal frameworks with international development commitments, creating synergies between constitutional compliance and SDG achievement.

5.3 Legislative Reform Recommendations

5.3.1. Immediate Constitutional Integration:

The constitutional analysis reveals urgent need for legislative reforms that explicitly integrate menstrual health rights within existing legal frameworks:

5.3.2 Labour Law Amendments

The Industrial Relations Code, 2020, should incorporate mandatory menstrual leave provisions alongside workplace infrastructure standards. These amendments should recognize menstrual health accommodation as an equality requirement under Article 14 rather than special treatment, following substantive equality principles established in constitutional jurisprudence.

5.3.3 Public Health Policy Reform

Comprehensive public health legislation should include menstrual health provisions, ensuring access during all circumstances. Constitutional right to health under Article 21 demands such comprehensive coverage that addresses menstrual health as essential healthcare rather than optional service.

5.3.4 Anti-discrimination Framework

New legislation specifically addressing menstruation-based discrimination should be enacted, providing legal remedies and enforcement mechanisms similar to existing anti-discrimination laws. This framework should cover educational institutions, workplaces, and public spaces while establishing clear penalties for violations and accessible redressal mechanisms.

5.4 Indian Constitutional Amendment Considerations

While existing constitutional provisions provide foundation for menstrual health rights, explicit constitutional recognition could strengthen legal protections. A potential amendment to Article 21 could specifically mention menstrual health as part of dignified life, similar to environmental rights recognition through judicial interpretation and subsequent constitutional development.

Such constitutional amendments would require broad political consensus but could provide unambiguous legal foundation for menstrual health rights, eliminating interpretive challenges and strengthening judicial enforcement.

6. Conclusions

This research demonstrates that menstrual health represents a fundamental constitutional issue requiring immediate legal and policy intervention. The persistent gap between constitutional promises of equality, non-discrimination, and dignified life, and the lived realities of millions of menstruators in India, constitutes what this paper terms 'constitutional disconnect' demanding urgent remedy through legislative, judicial, and policy interventions.

The doctrinal analysis reveals that Articles 14, 15, and 21 provide robust foundation for menstrual health rights, while the *Sabarimala judgment* establishes crucial precedent for challenging menstruation-based discrimination across all spheres of public life. However, legislative frameworks, policy implementation, and judicial activism remain inadequate to ensure constitutional compliance in menstrual health contexts.

The international comparative analysis and SDG alignment demonstrate that constitutional recognition of menstrual health rights aligns with global best practices and India's international commitments while strengthening domestic constitutional implementation. Countries like Scotland, Japan, and South Korea provide legislative models that could address India's constitutional gaps through comprehensive rights-based frameworks.

This paper's central contribution lies in reframing menstrual health from a welfare issue to a constitutional imperative. This shift in perspective demands legislative reforms, judicial activism, and policy interventions grounded in constitutional principles rather than charitable approaches that perpetuate rather than challenge existing power structures.

The recommendations for constitutional integration of menstrual health rights through labour law amendments, public health policy reform, and anti-discrimination frameworks provide practical pathways for addressing constitutional violations. Future research should examine specific implementation challenges, develop constitutional litigation strategies, and explore intersections between menstrual health rights and other constitutional guarantees including privacy, autonomy, and cultural rights.

India's progress toward becoming a truly equal society depends on recognizing menstrual health as the fundamental constitutional right it represents. The legal foundation exists within our constitutional text the urgent task is ensuring its implementation through legislative reform, judicial activism, and societal transformation that honours Indian constitutional commitments to equality, dignity, and non-discrimination for all citizens regardless of biological characteristics or gender identity.

References

- Babbar, K., Martin, J., Ruiz, J., Parray, A. A., & Sommer, M. (2022). Menstrual health is a public health and human rights issue. *The Lancet Public Health*, 7(1), e10-e11. [https://doi.org/10.1016/S2468-2667\(21\)00212-7](https://doi.org/10.1016/S2468-2667(21)00212-7)
- Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 922 (Supreme Court of India 1995).
- Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746 (Supreme Court of India 1981).
- Government of India. (1948). *The Factories Act*. Ministry of Labour and Employment.
- Government of India. (1961). *The Maternity Benefit Act*. Ministry of Labour and Employment.
- Government of India. (2009). *Right of Children to Free and Compulsory Education Act*. Ministry of Education.
- Government of India. (2013). *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*. Ministry of Women and Child Development.
- Government of India. (2017). *National Health Policy 2017*. Ministry of Health and Family Welfare.
- Government of India. (2020). *Industrial Relations Code*. Ministry of Labour and Employment.
- Government of Scotland. (2021). *Period Products (Free Provision) (Scotland) Act*. Scottish Parliament. <https://www.legislation.gov.uk/asp/2021/1>
- Gujarathi, J., & Asokan, V. (2021). A systematic review study of contemporary and historical perspective of menstrual practices across cultures. *GAP Interdisciplinarity*, 4(4), 31-37.
- Hennegan, J., Winkler, I. T., Bobel, C., Keiser, D., Hampton, J., Larsson, G., & Mahon, T. (2019). Menstrual health: A definition for policy, practice, and research. *Sexual and Reproductive Health Matters*, 27(1), 1640056. <https://doi.org/10.1080/26410397.2019.1640056>
- Indian Young Lawyers Association v. State of Kerala*, (2018) 8 SCC 1 (Supreme Court of India 2018). Retrieved from <https://indiankanoon.org/doc/163639357/>
- Jalan, A., Baweja, H., Bhandari, M., Kahmei, S., & Grover, A. (2020). A sociological study of the stigma and silences around menstruation. *Vantage: Journal of Thematic Analysis*, 1(1), 47-65. <https://doi.org/10.52253/vjta.2020.v01i01.06>
- Japan. (1947). *Labour Standards Law*. Ministry of Health, Labour and Welfare.
- Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (Supreme Court of India 1978).
- Ministry of Health and Family Welfare. (2021). *National Family Health Survey-5 (2019-21)*. Government of India.
- Salim, D., & Salim, K. (2021). Ensuring right to menstrual hygiene and health in India: A microcosm of right to life. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3962311>
- Sommer, M., Torondel, B., Hennegan, J., Phillips-Howard, P. A., Mahon, T., Motivans, A., Zulaika, G., Gruer, C., Haver, J., Caruso, B. A., & Monitoring Menstrual Health and Hygiene Group. (2021). How addressing menstrual health and hygiene may enable progress across the Sustainable Development Goals. *Global Health Action*, 14(1), 1920315. <https://doi.org/10.1080/16549716.2021.1920315>

South Korea. (1997). *Labour Standards Act*. Ministry of Employment and Labor.

Sumpter, C., & Torondel, B. (2013). A systematic review of the health and social effects of menstrual hygiene management. *PLOS One*, 8(4), e62004. <https://doi.org/10.1371/journal.pone.0062004>

United Nations. (2015). *Transforming our world: The 2030 agenda for sustainable development*. United Nations Publishing.

United Nations Population Fund. (2024). *Integrating menstrual health and sexual and reproductive health and rights*. UNFPA India. Retrieved from <https://india.unfpa.org/en/publications/integrating-menstrual-health-and-sexual-and-reproductive-health-and-rights>