



MENSTRUATION LAWS

By *Yogesh Kumar*

From *Army Institute of Law, Sector-68, Mohali*

Abstract

Menstruation is a natural process which is seen as a taboo in most of the world. Fighting for the cause of menstruation related issues is primarily seen as a first world cause. Women suffer gravely due to this mind-set especially in developing and under developed nations. Secular states which are truly secular make their women suffer less. Women of the theocratic nations suffer the worst at the hands of religion as practises are associated with periods to make them worse. People in India are living almost as if it were different realms all together, the modernist of the lot living with people of the most ancient views. India and its people are at the dawn of a new chapter of freedom for women.

Women miss out a lot because of periods. Islamic countries have their laws that confine a lady forever. Periods have travelled a long legal path in many parts of the world. In countries like Indonesia, Korea and Japan women are entitled to menstrual leaves some being even paid; the acts being almost as old as India itself. Some nations have gone even to the extent of considering Pre-Menstrual Syndrome as a defence to Criminal Offences. From cheaper and free menstrual hygiene related items to established criminal theories. Nations are realising the importance of women and related issues and are tackling them with an ease. It is high time that India learns from these forward looking legislations and kills the taboo of periods right in time.

The paper seeks to talk about all kinds of menstrual laws and to establish what the need of publicising periods is. It shall seek to layout the order of the day. By way of this, the paper aims at promoting menstrual hygiene and strengthening women. Above all the paper is for celebrating women and to give them their long due credit.

Menstruation laws

Introduction

In the Oxford Dictionary Menstruation is defined as “the discharge of blood and of fragments of endometrium¹ from the vagina at intervals of about one month in women of child-bearing age. Menstruation is that stage of the menstrual cycle during which the endometrium, thickened in readiness to receive a fertilized egg cell (ovum), is shed because fertilization has not occurred”.¹ Even though Menstruation or periods as they are usually called have been around since the beginning of time, they remain a taboo. Menstruation is one of the most important topics of women health and upliftment. In fact, it is the most basic of all issues related to women. It needs more impetus and more encouragement. Governments need to advertise and publicise the need of doing away with this taboo.

General statics

Periods change the life of a female. In many a cases they can be the defining point of a female’s femininity. Islamic families in some countries mandate a female to be under strict purdha¹ for the rest of their lives after menarche. Certain pockets of the world can be worse in this matter. In Nepal, for an instance there is a social custom called Chhaupadi. Chau means menstruation in the Rawte dialect of Achham and padi means



woman. It is a social tradition in the western part of Nepal for Hindu women which forbid a woman from participating in normal family activities during menstruation because they are considered impure. UNICEF organised a survey and some 44% women responded that they had to observe this ritual when they had their first period.¹

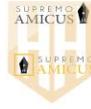
The taboo about talking about periods even with your own parents only adds to more problems. A survey conducted in Rajasthan and Uttar Pradesh reveals that some 56 % and 66% of women respectively had no clue about menstruation prior to menarche (when a female has her first period.)¹ The same survey revealed that 89 % ladies use clothes or rags to absorb the blood and some 11% even share menstrual clothes and rags. While a 27% don't use anything at all.¹

Religion attaches superstitions to periods which range from keeping the females out of the sight of the non-menstruating, not being allowed to eat certain things or not bathe. A study conducted by the ministry of education and public health of Afghanistan revealed that a 70% of the women are not allowed and don't bathe on their period.¹ Major religions of the world see periods as a negative thing. In Hinduism, a menstruating female is despised and is not seen any less than a witch of sorts. Rampant discrimination related to periods has become so wide that men are demanding machines to check if the females entering the temples are bleeding or not is a regular thing.¹ Hinduism doesn't allow menstruating females to undertake religious ceremonies. In Islam, a menstruating woman is considered ritually impure. She is supposed to discontinue certain forms of worship, e.g. the five daily prayers, fasting during Ramadan (she fasts for an equal number of

days later) or visiting a mosque. She is also not allowed to touch the Quran (recitation is allowed but no physical touch of the Qur'an can recite it a recent adaption, or from memory, or read it from a computer)¹. She is not allowed to have sex. In Christianity as well, the case is similar. The Old Testament of the Bible indicates that a menstruating woman is impure, and that most things she touches become impure¹. If a man touches her bed during this period he also becomes unclean.¹

Sanitary Protection: Every woman's health right', a study conducted by A C Nielsen and reviewed and endorsed by the community development organization Plan India, reveals that only 12% of India's 355 million menstruating women use sanitary napkins. Almost a quarter of adolescent girls in the age-group 12-18 drop out of school after they begin menstruating because of inadequacy of menstrual protection like sanitary napkins; those who are in school absent themselves for an average of 5 days per month.¹ Women who can't afford such menstrual protection resort to old clothes, newspapers, husks and even mud.

Hence, it is very important that every nation across the globe promotes menstrual hygiene as it is directly related to women empowerment and gender equality. It will lessen the school dropout rates, increase literacy rates and lessen the economic burden arising out of diseases caused by poor menstrual sanitation. This shall lead to healthier and happier families. Herein after the paper shall deal with all that is legal and deals with periods.



Menstrual leaves

Some nations have taken this race of progressive menstrual legislation ahead by making laws that grant a female employee with a paid holiday for a day or two while she is menstruating. Menstrual leaves as a piece of legislations divide the common people into debate whether it is a sexist law or not. The Indonesian labour law lays down provisions for a paid holiday for the first two days of “those days of the month”.¹ Similarly the champion of the menstrual leave, Japan also provides such a leave.¹ Article 71 of the Labour Law in South Korea provides for a menstrual leave for 1 day.¹ Taiwan allows a day of leave (with an amendment now of 3 days) with half of the day’s wages.¹ Similar bills have been discussed in various countries like Russia, Santiago etc. It is debated that menstrual leaves are good to keep employees not only happy but also safe. It increases the productivity of the employees. It is criticized for being sexist and discriminatory as against men. However, menstrual leaves are the new thing now. Feminist groups are fighting for this right. Even companies have started giving such holidays. Coexist is a British company that has become the first to do this in Britain.¹ Nike by a memorandum of understanding also provided for this right.¹

Periods and crime

A study published in 1945 which was based on the presidential address to the American Association of Obstetricians, Gynaecologists, and Abdominal Surgeons, by W. R. Cooke said that according to a Parisian prefect of police 84% of all the crimes of violence committed by females are

perpetrated during the premenstrual and early menstrual phases of the cycle.¹

“The Mood Swings of Women” is one of the earliest literatures about periods and was written down by a Greek Philosopher poet From Semonides.¹ Periods and crime are related to each other. Symptoms reported to crop up near the onset of menstruation have been jointly termed the "premenstrual syndrome"; they include corporal symptoms such as stomach cramps and back pain as well as various psychosomatic symptoms such as gloominess, anxiety, and irritability.¹ The study of 1945 was not the only one, another one published in 1894 by Lombroso (and Ferrero) formed the base of the biological deterministic theory of female criminality. They found that out of 80 women arrested for 'resistance to public officials', 71 were menstruating.¹ Established legal theories across the world accept that women are prone to violence while menstruating or just before it.

Check in 1953 was the first one to suggest that defending lawyers should relate offence of the female with her periods, but no one really listened to what he had to say. Wallach and rubin then in 1972 wrote about the same thing.¹ Since then a lot of research has been to establish the same.

Flowing out of this, PMS has also been used as a legal defence in the court. It began with *Regina v. Craddock*.¹ In this case, Craddock with 45 prior convictions was charged with stabbing a fellow barmaid in the heart thrice causing her death. Doctor Katharina Dalton, the most prominent advocate for the defence of PMS; established that Miss Craddock had been suffering from PMS and was convicted under diminished liability thereof.¹ Miss Craddock was found guilty of manslaughter



on the basis of diminished responsibility and sentenced to three months' probation.

After this eyebrow raising case, Doctor Katharina Dalton fought the case of *R v. English*.¹ The facts of the case were that Miss Christine English after a quarrel with her lover crushed him to death against a utility pole using her car. Miss English was granted a conditional discharge on the condition that she received progesterone therapy due to the excellent advocacy skills of Doctor Dalton.

This defence has arisen from the defence of insanity which is based on the M'Naghten rules which necessitate that, at the time of the crime, the accused "was labouring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."¹ These defences are not only limited to Britain but have also been used in Canada¹, France¹ and the US.¹ In the US the defences have been negated by the court of appeals.¹

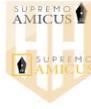
Such defences have a debate arising out of them whether or not these are sexist in nature and promote gender distinction. This only depicts how short we fall, how the rest of the world is doing the unthinkable. In India we haven't been able to get people to talk about periods and other countries are coming up with historical criminal theories on periods.

Government schemes

The Indian government is also catching up pace with the rest of the world by declaring for reforms. Though, it does not include any kind of legally accepted criminal defence of PMSing or declaring a menstrual leave for all female employees. In December 2015,

the ministry of rural development and drinking water and sanitation, of Government of India acknowledging the hardships faced by women during periods¹, released national guidelines on Menstrual Hygiene Management.¹ The guidelines were launched under the Swachh Bharat mission (Clean India mission.) The guidelines set down a number of goals to be achieved and delegate the power of generating more awareness. It also fixes what all should a female must know about periods. It conducts little surveys, conducts workshops on safe disposal of sanitary pads.

The union health ministry has put the biggest step forward by bringing up a ₹150-crore scheme to boost the access to and use of sanitary napkins to adolescent girls in rural areas. Under the scheme a pack of 6 sanitary napkins is provided under the NRHM's brand 'Freedays'¹. These napkins are sold to the adolescents girls at Rs. 6 for a pack of 6 napkins in the village by the Accredited Social Health Activist (ASHA).¹ It is nice to notice that even though these schemes were launched under the congress regime these have not been done away with and are still continuing. These schemes are also being followed in schools¹. Steps have also been taken to do away with VATs of sanitary hygiene items.¹ Such steps are great on the part of the government.



Conclusion

The death of this taboo shall be written by the glorious hands of awareness. As Harold Laski said “Eternal vigilance is the price of liberty,” the government needs to safeguard these rights of the people by making the people aware. The major setback of any governmental action is always due to the lack of awareness amongst the people. The government also needs to come out to be secular and stop all who are misusing religion. The judiciary should also not be shy to not touch topics of religion and should come out in the favour of equality when in context to females entering temples.

Such steps shall open up the people and they shall understand that menstruation is a natural and healthy process which needs a little compassion of the general population.

The research paper has touched upon unusual kind of ideas, but the point is not to suggest the use of PMS as a legal defence to murder. But it definitely does mean that the Indian society needs to open up when in context to such taboos. Menstrual leave is a beautiful concept and if provided to the daily wage working ladies, it might prove to be a boon for them all. This will not only keep the women happy but also increase the productivity rate of the workers bringing profits to the employers.

The steps being undertaken to help in the present case by the Indian government are commendable. The government truly understands Pads and Tampons are no luxury and that the percentage of ladies who have an access to these must increase. Indian government should cut the tax on all kinds of things related to sanitary hygiene until if they cross a certain price and exceed to be a luxury, for which of course the government must put a cap. Sex education is another

very important topic that needs to be touched upon in schools so as to open up and prep young ladies and lads for the future. This will make these people better citizens who are more compassionate and understanding. People on an individual basis also need to open up and understand how ordinary periods are.

