

LEGALFOXES LAW TIMES

SUSTAINABLE MENSTRUATION – A NEW INTERPRETATION OF ARTICLE 21

By ANJUSREE P L

INTRODUCTION

India is the seventh largest country in the world and has second place in population. As per the report of 2019 India has population of 1.37 Billion or 1,369 Million and a population growth rate of 1.08%. So, the problems associated with a highly populated Nation such as poverty, scarcity, environment degradation and unemployment can be found in India too. Among this population the 48.20% population is of women. A woman alone can produce nearly seven thousand two hundred plastic waste to the environment only during her menstruating period. Hence, in case of India 355 millions of plastic waste is introduced to our environment only by the menstruating women. An ordinary woman may use 10 to 15 pads during her one menstruation and the disposal of these pads are not carried on in a scientific manner. The fact is that, even though India is a developed nation, menstruation is still a sin and secret in India. Then how could we talk about pads, usage of pad and disposal of pads? If this secrecy continues what will be the future of our women and nation? As per Article 21 of the Constitution of India no person shall be deprived of his life and personal liberty except the procedure established by law. The term life includes the right to privacy, right to live in a pollution free environment and the right to health. Hence, we can find a new dimension to Article 21 in relation to the term 'sustainable menstruation'.

OBJECTIVES OF THE RESEARCH

1. Recognize the health issues and environment degradation arising out of the usage of sanitary napkins.
2. Find a solution for the health issues associated with the usage of sanitary napkins.
3. Analysing the Right to life of a menstruating women under Article 21
4. Identifying the benefits of sustainable menstruation

MENSTRUATION AND SANITARY NAPKINS

Menstruation is a normal vaginal bleeding which is the part of a women's menstrual cycle. Menstruation is associated with pre- menstrual symptoms or PMS such as headache, backpain, stress, irritability or moodiness etc. Because of these symptoms most of the women were incapable of manage all their works during the periods. So, the innovation of sanitary napkins

was a greatest relief for the women. They felt more liberated, empowered and confident without knowing the health problems awaits them. Before understanding the health issues related to sanitary napkins, one should know the process of manufacturing and contents of the same. In fact, the chemical contents of the pads are not disclosed in its pack. The part inside the pad, which looks like cotton and absorbs blood is made up of the waste paper and wood pulp. That part looks white, clean, hygienic and believed to be cotton. The cottonlike part is then bleached with chlorine for the white colour and thereby retain the by-products of bleaching. The part of sanitary napkins which touches the most sensitive part of women is made up of plastic and it is coloured. Dioxins and trihalomethane are the residue and by-products of bleaching.

Dioxin is a highly poisonous chemical compound which is 130 times poisonous than cyanide and 900 time poisonous than arsenic. It is considered to be the most poisonous chemical which was made by human. International Cancer Research Centre recognized dioxin as the first-class cancer-causing agent to human or the number one carcinogen. As per the reports of World Health Organization, dioxin are mainly the by-products of industrial processes but can also result from natural processes such as volcanic eruption and forest fires. Dioxins are the unwanted by-product of a wide range of manufacturing processes including smelting, chlorine bleaching of paper pulp and the manufacturing of some herbicide and pesticide.¹ Dioxin was banned in 2001 because it causes cancer in ovaries, uterus, bladder and breast. The Endometriosis Association in America correlates the high incidence of endometriosis to dioxin in the sanitary napkins. Hence the fact is that, sanitary napkins contains a silent hazard that can explode- dioxin. According to the Director of National Institute for Environmental Sciences, DR. Linda Birnbaum, dioxin can interfere with the basic process of body, cause effect on skin, immune system, cardiovascular system, endocrine system and nervous system.

In fact, 90% of the gynec problems are the side effect of sanitary napkins. The usage of sanitary napkins causes itchiness, soreness, dryness and all kinds of short-time and long-time disorders. Besides the ill effects of dioxin, napkin paper contains unnoticed microorganisms which can cause infections. A woman may use 10 to 15 pads in one menstrual cycle and using an average of 15000 pad during her life time. So, she taking this risk from her menarche to menopause, i.e., 20% of her life time. Most of these sanitary napkins have no protection against bacterial colonization and the external rayon surface has the potential to trigger allergic reactions. For an average woman, it is not just one exposure, but 500 menstrual cycle, 2500 menstrual days susceptible to hazardous toxin.

After effects of using sanitary napkins are;

- ◆ Cancer
- ◆ Endocrine Disruption
- ◆ Reproductive impairment
- ◆ Infertility

¹ Dioxin and their effects on human health, Fact Sheet no. 223, May 2010

- ◆ Hormonal imbalance
- ◆ Birth defects
- ◆ Multiple menstrual disorders
- ◆ Kidney damage
- ◆ Metabolic disfunction

Cancer may be of various kinds such as

- ◆ Cervical cancer
- ◆ Ovarian cancer and cyst
- ◆ Vulvar tumour
- ◆ Uterine fibroids

Besides these long-term health issues, such other short-term health issues are there

- ◆ Urinary tract infection
- ◆ Genital warts
- ◆ Itchiness caused by chemicals
- ◆ Irregular menstruation
- ◆ Leukorrhea
- ◆ Red rashes and bad odour discharges

Not only the usage of the sanitary napkin but also its disposal can cause such health problems along with environment degradation. Sanitary napkins contain more plastic which cannot be degraded for 500 years. This indicates that all the sanitary napkins produced till today are still remains there in the surface of the earth. As the pads are non-disposables, it cannot be disposed. Then how to dispose the used pads? Whether it can be flushed to the toilet? No, it cannot be flushed in toilet. Because, if we flush the used pads in the toilet it will expand by continuously absorbing water as it contains poly acrylate jells. Poly acrylate jells are tiny beads which expands on absorbing water. As a result, the drainage will be blocked, affect the hygiene and it may cause water borne diseases. Then, whether it can be burned? Absolutely no. By burning the used sanitary napkins dioxin will be released which is the leading cause of cancer. Depending upon the intensity and duration of dioxin exposure the health issues up to death can be caused. Similarly, if the sanitary napkins dump in any water bodies such as lake, river or ocean it will cause the destruction of a large amount aquatic organism and thereby cause water pollution. As these are plastic wastes it can change the structure of soil and reduce and destruct the fertility of soil. In one hand or the other it may result in soil pollution, water pollution or air pollution. Besides the dilemma of pollution, some unknown health issues are associated with the disposal of sanitary napkins. The waste pickers separate out the used napkins from recyclable items by hand, exposing themselves to micro-organisms like E-coli, salmonella, staphylococcus, HIV and pathogens that causes hepatitis and tetanus. Hence, the point is that, in general, sanitary napkin is a great threat to the menstruating women's health as well as the public health.

RIGHT TO HEALTH AND RIGHT TO LIVE IN A POLLUTION FREE ENVIRONMENT

Article 21, Right to life and personal liberty has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws. By virtue of Article 21, “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” The Supreme Court has asserted that in order to treat a right as a Fundamental right, it is not necessary that it should be expressly stated in the Constitution as a Fundamental Right. Political, social and economic changes in the country entail the recognition of new rights. The law in its eternal youth grows to meet the demands of the society.² The term life consists of a wide range of meanings. When we analyse the scope of the term life in Article 21, it does not mean merely animal existence but living with human dignity Hence the Supreme Court has given a wide interpretation of Article 21 by expanding the scope of right to life. In *Francis Coralie v. Administrator, Union Territory of Delhi*³ the Supreme Court observed that;

“But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it, viz, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and the facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human being. Of course, the magnitude and contents of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.”

Hence the term life includes all those aspects of life which is necessary to make a meaningful, complete and worth living of life. The Supreme Court also tried to interpret the right to life along with international charters of human rights. As part of the creative interpretation of Article 21, the court imposed certain duties and positive obligations upon the state for ensuring to the individual a better enjoyment of his life and dignity. It includes the maintenance and improvement of public health and improvement of environment. In *Chameli Singh v. State of Uttar Pradesh*⁴ the Supreme Court observed that the life in a decent and civilized society includes the right to food, water and decent environment. The court, thus observed in this connection;

“In any civilised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live

² M P JAIN, CONSTITUTIONAL LAW OF INDIA 1207 (8th ed. LEXISNEXIS 2019).

³ A.I.R 1981. S.C. 746.

⁴ A.I.R. 1996. S.C. 1051.

guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic Human rights known to any civilized society”⁵

As the Supreme Court has introduced a qualitative concept to Article 21, whatever promotes quality of life falls within the parameters of Article 21. To reach such a dignified life the Supreme Court in a display of judicial activism has integrated Article 21 with a number of Directive Principles of State Policy. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.⁶ Hence the disposal of sanitary napkin should be taken as a serious issue by the states and thereby adopt some machineries to control the environment degradation arising out of the disposal of sanitary napkins. As the assertion of the Supreme Court, it is not necessary that the Constitution should expressly recognise a right as fundamental right to entertain that particular right. By expanding the scope of Article 21, the court recognized various right as fundamental rights which came under the purview of Article 21. It includes right to livelihood, right to privacy, right to medical care, right to health and right to live in a pollution free environment. The Supreme Court has emphasized in *Vincent v. Union of India*⁷ that a healthy body is the very foundation of all human activities and developments. The court has observed that

“...maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority-perhaps the one at the top.”

The right to health is an important aspect in the Constitution of India which falls under the purview of Article 21. But the fact is that, even there is a fundamental right of right to health, the menstruating women are impliedly deprived of their right to health. They are losing their health only for the reason that they are bleeding. The serious life threats caused by the sanitary napkins are still continuing and there is no such effective provision for the protection of the health of a menstruating woman. The diseases such as cancer, endocrine disruption, kidney damage, metabolic dysfunction, etc are associated with the usage of sanitary napkins. As the sanitary napkins are the mostly suggested and most commonly using method to remain hygienic, it is the clear violation of right to health of a women. The terrifying fact is that the number carcinogen is the main residue of sanitary napkins. There should be such serious medical examination and certification for the sanitary napkin on the ground that, the unmedical pads can cause serious health issues in the menstruating women. For an ordinary woman, she is suffering the pain and uncomfortable situation for 20% of her life. So, this should come to an end and protect the women from these dangerous side effects of sanitary napkins.

⁵ *Ibid* at 1053.

⁶ *supra* note 2.

⁷ A.I.R. 1987 S.C. 990.

Along with the impact on menstruating women's health, the sanitary napkins are a threat to the health of general public as a whole. The right to live in a pollution free environment and improvement of environment is also envisaged under Article 21. The Supreme Court has pointed out that two salutary principles governing environment are principle of sustainable development and precautionary principle. The expansive interpretation of 'life' in Article 21 has led to the salutary development of an environmental jurisprudence in India. Although a number of statutes have been enacted with a view to protect environment against pollution, and administrative machinery has been put in place for the purpose of enforcement of these statutes, the unfortunate fact remains that the Administration has done nothing concrete towards reducing environmental pollution.⁸ The right to live in a healthy environment is an internationally recognized essential. Any disturbance of the basic environment elements, namely, air, water and soil, which are necessary for life would be hazardous to life within the meaning of Article 21 of the Constitution. Hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment.⁹ The word environment has a broad spectrum and within its ambit fall "hygienic atmosphere and ecological balance". The state is thus obliged to maintain hygienic environment and ecological balance. Article 21 protects right to life as a fundamental right, and encompasses within its ambit enjoyment of life and right to life with human dignity, protection and preservation of environment, ecological balance free from the pollution of air and water, without which life cannot be enjoyed.¹⁰ As any form of disposal of sanitary napkins leads to environmental degradation and pollution, Article 21, right to life of the public is also violated.

SUSTAINABLE MENSTRUATION- AN ALTERNATIVE

Even in the 21st century feminine hygiene is not openly discussed, not even between women. Then how to convey the necessary and shocking knowledge regarding the usage of sanitary napkins? One in five girls dropping out from school when they have periods. This situation is caused because of the lack of protection and short time impact of sanitary napkins. Besides the health issues arising out of the usage of sanitary napkins, the environment degradation is also a serious matter. According to Plastic Waste Management Rules 2016, plastic manufacturers and retail establishment that use plastic are legally bound to collect the plastic waste. This responsibility imposed on the manufacturers are termed as Extended Producers responsibility. But in case of India, the plastic waste arising out of sanitary napkins are a serious threat to the environment as it produces dioxin and causes degradation. There is no need to fall as prey to the harmful toxins of sanitary pads when there are healthy remedies are available. The only way to avoid the impacts of sanitary napkin in the health of women, public health and a healthy environment is achieving sustainable menstruation.

⁸ *supra* note 2.

⁹ *State of MP v. Kedia Leather & Liquor Limited*, (2003) 7 S.C.C. 389.

¹⁰ *supra* note 2.

Sustainable menstruation is the practices where environment friendly alternatives to menstrual products are used, which do not produce waste. The problems associated with sanitary napkins such as the production of toxic chemicals leaching the soil, strong and harsh odours, ground water pollution, diseases, respiratory harm and allergy are absent in sustainable menstruation. India is a highly populated country where the implementation of sustainable menstruation is necessary. In order use the waste arising out of menstruation, the menstrual blood can be used as a healthy fertilizer for the soil and provides nutritious environment for plants and shrubs to grow in. In sustainable menstruation uses, reusable, low energy menstrual products such as cup, clothes, period panties etc. Organizations such as 'Saathi Pads' and 'Eco Femme' provide employment which generating livelihood for these women which allow them access good and sustainable menstrual care. Most sustainable products are initiated through rural livelihood management industries, where menstrual health and a pollution free, hassle free environment for these women is possible and implemented. The environment benefits of these sustainable menstrual products create a significant, applaudable and positive impact on the planet where every women's contribution to this transition from disposable to sustainable menstrual product matters.

SUSTAINABLE MENSTRUAL PRODUCTS

- ◆ Menstrual cups
- ◆ Cloth pads
- ◆ Organic pads
- ◆ Anion pads
- ◆ Period panties

One menstrual cup can be used for 10 years. These sustainable products are considered to be a miracle of waste management and it does not contain any chemicals. Other benefits of these products are;

- ◆ Comfortable
- ◆ Money saver
- ◆ Leak proof
- ◆ Easy to wash
- ◆ Hypoallergic

HYPOTHESIS

1. The usage and disposal of sanitary napkins causes various disorders to the human body which includes cancer, infertility, kidney damage and endocrine disruption and environmental degradation which includes air pollution, water pollution and soil pollution.

2. The term life under Article 21 has a wide scope and it includes the right to health and right to live in a pollution free environment. The usage and disposal of sanitary napkins clearly violates these two fundamental rights.
3. Sustainable menstruation is the only way to overcome the ill effects of sanitary napkins as it is an environment friendly method.

CONCLUSION

It is high time to switch into sustainable menstruation. India is a highly populated country where the implementation of sustainable menstruation is necessary. In spite of the existence of legal provisions such as Article 21, a large number of women still suffers only because of their menstruation. Like men women also have the right to life. The term life includes the right to privacy, right to live in a pollution free environment and the right to health. It is a shocking fact that the usage and disposal of sanitary napkins can deprive all these rights at once. The only remedy to address the ill effects of sanitary napkins is sustainable menstruation. Sustainable menstruation is the practices where environment friendly alternatives to menstrual products are used, which do not produce waste. In order use the waste arising out of menstruation, the menstrual blood can be used as a healthy fertilizer for the soil and provides nutritious environment for plants and shrubs to grow in. In sustainable menstruation uses, reusable, low energy menstrual products such as cup, clothes, period panties etc. Through the implementation of sustainable menstruation Article 21 can be interpreted with new meanings.



LEGAL FOXES

"OUR MISSION YOUR SUCCESS"