

STIGMATIZED MENSTRUATION AND GST: A CRITICAL APPRAISAL

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ABSTRACT

It is very unfortunate that in many parts of the globe women are not free to talk about their periods in public till date. In various rural and underdeveloped areas women have been forced to feel ashamed about their periods and there is enormous social stigma surrounding menstruation, marking females out as impure. Menstruation is a biological phenomenon and a menstruating woman has no control over her periods. Sanitary napkins are basic need of every menstruating woman. For the protection of her overall health and enjoyment of her right to live with dignity free access to sanitary napkin is crucial. It is the duty of the Government of India to make gender sensitive budgeting, along with the duty to protect rights and freedoms of individuals. In Indian democracy, 12% rate of GST (Goods and Service Tax) on sanitary napkin is derogatory to the Constitutional mandate of justice, equality and non-discrimination. Taxing a woman for using sanitary napkins is more likely taxing her for being a woman and this is ex-facie discriminatory and unconstitutional akin to a human rights violation. In this paper the researcher has made an attempt to analyse the stigma associated with menstruation in the light of current GST regime, and has put forwarded some suggestions emphasising women's right to health and sanitation amongst other.

Key Words: Constitution of India, GST, Human Rights, Menstruation, Women.

1. Introduction

"Stigma around menstruation and menstrual hygiene is a violation of several human rights, most importantly of the right to human dignity."¹

- Jyoti Sanghera²

The menstruation has been stigmatized in our society for long back compromising the well-being and contributing to women's lower social status. Now various human rights activists and feminists groups have started raising their voice seeking menstruation justice to women. It seems that in India, Government controls the health, happiness and life of women and thus make them pay for their periods. Most recently In *Zarina Khan vs. Union of India & Anr*³, the petitioner filing a PIL before Hon'ble High Court of Delhi challenged the high rate of 12% Goods and Services Tax (GST) imposed by GOI on sanitary napkins stating that as unconstitutional and illegal. In another case, *Setu Niket vs. Union of India & Ors*⁴, Delhi High court issued notice to Central Government, Delhi Government and three municipal agencies, seeking their response to the matter raised by the petitioner regarding a National Level Policy to establish a mechanism to provide education, sensitization and ensure availability of menstrual hygiene products such as sanitary napkins to adolescence girls in schools. These two cases

¹ Every woman's right to water, sanitation and hygiene (March 14, 2014) available at <http://www.ohchr.org/EN/NewsEvents/Pages/Everywomansrighttowatersanitationandhygiene.aspx> (last visited on July 10, 2017)

² Chief of the UN Human Rights Office Economic and Social Issues Section

³ *Zarina Khan v. Union of India & Anr.* W.P. (C.) NO. 6034 OF 2017

⁴ *Setu Niket v. Union of India & Ors.* W.P. (C.) 2017

brought many questions to the frontline. In a democratic country like India, where the basic law of the land is designed on principle of equality, fraternity, justice and integrity; where the Right to Equality (Art. 14), Right against Non- Discrimination (Art 15), Right to Life with Dignity (Art 21) are recognised as fundamental right of every individual, how far 12% rate of GST on sanitary napkin is justifiable? Where the judiciary made its activist stance to make these rights, engrafted in the Constitution of India, evocative in several instances, does not it sound awkward when the peoples' representatives, our own Government so cunningly undermines the female gender and their basic monthly needs by cashing in on our monthly periods? Are we still standing in that orthodox Indian society where birth of a female child is considered as a sin? Do we still think that menstruating women are impure? Is it not normal to have our monthly flow? Or we have to pay monthly tax to the Govt. just because of being a woman?

Government of India is not only duty bound to protect the right to health of individual and to enact gender sensitive legislation under the constitutional mandate, but being a signatory of Addis Ababa Action Agenda, it has duty towards gender sensitive budgeting as well. Moreover, India having adopted the Sustainable Development Goals of the United Nations should be unconditionally driven towards achieving gender equality, good health and well-being, sanitation and reduced inequalities.⁵

In this paper the researcher is analysing the stigma associated with menstruation in the light of current GST regime, and has put forward some suggestions emphasising women's right to health and sanitation amongst other.

2. Background

Sanitary napkins are indispensable for a woman's right to live with dignity and freedom, and for the protection of her overall health.⁶ Menstruation is a biological phenomenon for all women attaining puberty⁷ and a menstruating woman cannot command her periods. It is natural part of the reproductive cycle in which blood from the uterus exits through the vagina. It is a natural process that first occurs in girls usually between the age of 11 and 14 years. A woman should expect to menstruate at least 450 times during her lifetime. So, every menstruating woman who has access to sanitary napkins would pay taxation to the Government on purchasing sanitary napkins at least 450 times.⁸ Thus, taxing a woman for using sanitary napkins is more likely taxing her for being a woman and this is ex-facie discriminatory and unconstitutional akin to a human rights violation.

It was estimated that out of more than 355 million menstruating women in India, approximately 88% have no access to sanitary napkins in India. As per a detailed Report by the Citizen Bureau published on 31st May 2016, around 20% girls drop out of School on reaching the age of puberty. As per a Report of UNICEF India, the unavailability of sanitary pads is also one of the major reasons for dropout from Schools.⁹

3. Menstruation as a Social Taboo

Its' not only in 17th or 18th century, but today as well in the rural areas women have been forced to feel mortified about their periods. In some cultures and religions, there is immense social stigma surrounding menstruation - it marks females out as being unclean, and untouchable, leaving women to

⁵ Taxing sanitary pads is akin to violation of human rights, Z BUSINESS, May 29, 2017, available at <http://www.zeebiz.com/india/opinion-taxing-sanitary-pads-is-akin-to-violation-of-human-rights-16824> (last visited on July 15 2017)

⁶ Zarmina Israr Khan v. Union of India & Anr. W.P. (C.) NO. OF 2017

⁷ Zarmina Israr Khan v. Union of India & Anr. W.P. (C.) NO. OF 2017

⁸ *Supra* Note 5

⁹ *Supra* Note 4

feel isolated and excluded.¹⁰ In Poor families, where daily bread and butter is a high matter of concern, women cannot even think of going to school or work because of poor sanitation, lack of sanitary protection and yet again, more stigmas associated with having a period.¹¹

Menstrual blood is considered as tribal identity of womanhood because of the fact that it's only women that menstruate and not men. Society shows different attitude towards a girl on her attaining menarche, treating her as 'grown up', urging her to act 'ladylike' and so on, thus symbolising menarche as a curtailment of one's right to freedom of behaviour and happiness; marking girls and women as different from the normative and privileged male body.¹²

Furthermore, if people hold cultural beliefs that the menstrual cycle causes women to be physically (menstrual phase) or mentally (premenstrual phase) disordered, and then the stigma of menstruation also marks women as ill, disabled, out-of control, unfeminine, or even crazy¹³. In some cultures menstrual blood has also been considered perilous—both magical and poisonous.

Advertisements for menstrual products have also played an important role in transmitting the taboo by emphasizing secrecy, avoidance of embarrassment, and freshness. Allegorical images, such as flowers and hearts, and blue rather than reddish liquid, have been used euphemistically to promote secrecy and delicacy¹⁴. With the invention of panty-liners, advertisers began to tell women to use their products every day so that they can feel "confident" that they will always be "fresh" and untainted.¹⁵

In 1988 for the first time Sanitary napkins were commercially manufactured. Prior to that women used traditional methods such as old rags, husks, dried leaves, grass, ash, sand or newspapers etc. Belted sanitary napkins were replaced by absorbent disposable pads in 1980's. However, even at this juncture, a sanitary napkin seems to be a luxury product limited to privileged women who have money and access to pad. In 2017, almost 88% of Indian women are still using traditional methods during their period.¹⁶ Use of these materials is highly unsafe, resulting poor health of women including numerous sexual diseases. It has been found that the root cause of approximately 70% of all reproductive diseases in India is poor menstrual hygiene. Poor health of a woman is not only hampers the child bearing capacity of a women, it also holds back the nation's economic wellbeing.

4. Public Interest Litigation (PIL): a Weapon to get Menstrual Justice

A citizen contributes a great deal to the economy by paying taxes. Women can contribute to the country's growth in ways better than paying taxes on their menstrual cycles. Not only should sanitary pads be exempted from taxation, but classified as an essential commodity further subsidized by the Government, in the interest of hygiene and health.¹⁷

¹⁰ Martha Salhotra, *Free Periods: Making Sanitary Products Free is a Basic Human Right*, HUFFPOST, (July 06, 2016), available at http://www.huffingtonpost.co.uk/martha-salhotra/free-sanitary-products-tampon-tax_b_10833570.html (last visited on July 15, 2017)

¹¹ *Id.*

¹² Ingrid Johnston-Robledo & Joan C. Chrisler, *The Menstrual Mark: Menstruation as Social Stigma*, SEX ROLES (August 20, 2015) available at https://www.researchgate.net/publication/225143159_The_Menstrual_Mark_Menstruation_as_Social_Stigma (last visited on July 16, 2017)

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Supra* Note 5.

¹⁷ *Id.*

In *Zarina Israr Khan vs. Union of India & Anr*¹⁸, the petitioner filing a PIL before hon'ble High Court of Delhi challenged the high rate of 12% Goods and Services Tax imposed by GOI on sanitary napkins stating that as unconstitutional and illegal. The Goods and Services Tax ('GST'), enforced on July 1, 2017, is a unified Indirect Tax across the country on goods and services. It is the sum of all the indirect taxes that were levied at each stage separately by the Union government and States at varying rates, earlier in the country. At present Tax regime, GST on goods and services have been classified into seven ('7') broad brackets with differential rates of nil rate, 0.25% rate, 3% rate, 5% rate, 12% rate, 18% rate and 28% rate. The items that have been exempted from the imposition of GST does not include sanitary napkins which is a basic requirement for every woman attaining puberty, but kajal, kumkum, bindis, sindur, alta, plastic and glass bangles, hearing aids, passenger baggage, puja samagri of all kinds, and all types of contraceptives, including condoms. And to our utter surprise Sanitary napkins have in this regard been grouped with toys, leather goods, roasted coffee, mobile phones and processed foods amongst others items, all of which are subjected to a GST rate of 12%.

In *Setu Niket vs. Union of India & Ors.*¹⁹, the petitioner filing a PIL in Hon'ble Delhi High Court contended that Article 21 guarantees right of a decent and civilized life and right to live with dignity, whereas failure to provide conducive environment for education and access to basic necessities such as sanitary products and clean environment is an impediment to protection guaranteed under Article 21. Right to Education is a fundamental right under Art 21-A of the COI and the girl child cannot be deprived of the same due to natural biological reasons. It is the duty of the Govt to ensure that no child is prevented from pursuing and completing the elementary education for any reason whatsoever. The State fails in its responsibility to provide education to the girl child when she has to drop out of school after entering the age of puberty due to certain biological changes in the body and due to lack of sanitary products and the inability (due to lack of education or financial constraints) of her guardians. It is imperative that children of the age group of 10-14 years are sensitized about menstrual hygiene and every possible effort to help the girl child in continuing her education be made by the State.

In pursuant of the petition Delhi High court issued notice to Central Govt, Delhi Govt and three municipal agencies, seeking their response to the matter raised by the petitioner regarding a National Level Policy to establish a mechanism to provide education, sensitization and ensure availability of menstrual hygiene products such as sanitary napkins to adolescence girls in schools.²⁰

5. Concluding Observation and Suggestions

The American artist Vanessa Tiegs and the German artist Petra Paul are known for collecting their menstrual flow and creating beautiful and captivating piece of art. And to do so with nature's most stigmatized fluids is shocking and idiotic for the public at large. One journalist (Heath 2007) wondered whether Tiegs' work should more properly be called as art or a biohazard. But they seem to create awareness or most importantly posing a question for all that why this natural process or natural blood is so irritating or disgraceful. It is not suggested that the menstrual cycle should be celebrated or announced publicly, however, we do believe that the menstrual stigma is perpetuated indirectly through silence. Menstruation is typically avoided in conversation except under certain circumstances (e.g., in private with female friends and relatives, in a health education or biology class, in a doctor's office). If

¹⁸ W.P. (C.) 2017

¹⁹ W.P.(C) 2017

²⁰ *PIL For Sensitizing Girls About Menstrual Hygiene, Free Sanitary Napkins In Govt Schools, Delhi HC Notice To Centre, Delhi Govt, MCD's*, LIVE LAW NEWS NETWORK (July 18, 2017) available at <http://www.livelaw.in/pil-sensitizing-girls-menstrual-hygiene-free-sanitary-napkins-govt-schools-delhi-hc-notice-centredelhi-govt-mcdfs-read-petition/> (last visited July 18, 2017)

menstruation were discussed more openly, it might be easier for girls and women to acknowledge the positive aspects of menstruation.

Now, the time has come to give an end to all the social dramas related to menstruation. Menstruation is neither a crime nor a stigma; it is a process of women body. In her classic, playful essay Gloria Steinem (1978) imagined that, if men could menstruate, menstruation would become an enviable, boastworthy, masculine event. She suggested, for example, that “sanitary supplies would be federally funded and free” (p. 110). Her essay helps readers to understand that menstruation, as a biological, cultural, and political phenomenon, is only a “problem” because women do it.

The right to access and use sanitary napkins is a fundamental human and constitutional right for all women. By imposing 12% rate of GST on sanitary napkins the Govt. has significantly compromised this right for Indian women. This is not at all worthy of any credit and most importantly violation of Article 14, 15 and 21 of Constitution of India. Providing free sanitary pads would also ensure lesser vulnerability to various diseases related to menstrual hygiene and would also make children understand that menstruation is in no way a social taboo. So it is highly required that the judiciary should consider this matter seriously and direct the Government to take necessary measures making this Right to have Sanitary Napkins enjoyable by every Indian women. Also, NGOs, social groups and civil society members should take some initiatives to bring awareness about using a sanitary pad in every household, without leaving any woman behind. Together, we should try to create a comfortable place for every menstruating woman where they even feel proud about menstruating and using safe sanitary napkins, as an inalienable right.