

“My Period is taxing, but it need not be taxed”

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Abstraction

Period positivity is the need of the hour and along with that affordable quality hygiene products are to be ensured for every pre-pubescent girl in each corner of the world. Taboos, stigma and lack of awareness regarding the subject has slowed down this process considerably. Religious texts governing the lives of ancient humanity do not help the cause. Neither do the shackling clutches of period poverty in lack of clean water, disposal, waste management and other sanitary requirements. There comes the question of quality in cheaper sanitary products, which maybe an improvement over rags, sawdust, or discarded cloth, but is still not hygienic. Capitalisation of the period movement has only reinstated more gender roles and worked in favour of sexism. Eradication of period poverty has become the essential need. A progressive law to be made in this backdrop is the paid menstrual leave, which is found in countries like Indonesia, South Korea, Japan etc. There are pros and cons to every law passed; while some argue that it would prevent employers from inculcating more female employees in the workforce, others think that this law is of great importance and much awaited. As an alternative solution, menstrual flexibility may be suggested. Then comes the barriers of taxation. The tampon tax, also known as the pink tax is rampant in countries like US and surprisingly, a nation in the grip of taboos and superstitions like India has taken a big step in eradicating tax on menstrual hygiene products. The period movement has come a long way from being constricted in hushed whispers to being discussed in the hallowed books of legislature. There are still more obstacles to overcome and a long way to go.

Keywords: Period poverty, Capitalisation, Quality of products, Paid menstrual leave, sexism, Tampon tax,

Introduction

“Menstrual blood is the only source of blood that is not traumatically induced. Yet in modern society, this is the most hidden blood, the one so rarely spoken of and almost never seen, except privately by women.” – Judy Grahn.

Why is it that the most natural fluid in our body, that perpetuates our existence and is directly responsible for creation of new life stigmatized and called out as impure and unholy when it comes out intermittently from a woman’s body, and yet is symbolized as marking valour and lauded when it is shed by a man in injury, disease, or battle? The supposed clandestine nature of this recurrent occurrence stems from a lack of awareness of not only the rural society but a large chunk of the urbane as well. In this era of changing principles, redefining obsolete

values, it is about time talk arose louder about breaking the social shackles around menstruation.

Research Questions:

- 1) Is menstruation really a taboo? If so, what is the role of religion in making it thus?
- 2) What is 'period poverty'? Is quality compromised on account of period hygiene products being tax free?
- 3) Is paid menstrual leave reinstating sexism and gender norms?
- 4) What is the position of countries regarding tax free menstrual hygiene products?

Objectives:

- 1) To discuss the origin of taboos regarding menstruation,
- 2) to draw attention to the lack of facilities and pros and cons of paid menstrual leave
- 3) to understand the importance of making menstrual hygiene products like tampons or pads tax free

Specific research methodology used: There are 2 kinds of research methods:

Doctrinal research method which is based on books, journals, articles, case laws etc. It is also called library based research.

Non-doctrinal research method which is based on field survey, interviews etc. It is time consuming and expensive method of research.

Researchers have adopted doctrinal method for present research as research is based on books, journals, articles etc.

Scope: The scope of this research is to analyze the reasons behind menstruation being a hushed topic that went, by far, without acknowledgement. The present study also covers the general idea behind period poverty and capitalisation of the period market, the pros and cons of paid menstrual leave and tax free menstrual hygiene products.

CHAPTER 1

Why is Menstruation considered as taboo?

Menstruation is a natural process occurring in females of reproductive age group, usually from 15-45. However natural it may seem; it is surprising that menstruation is riddled with taboos and superstitions across larger parts of the world.

Euphemisms serve a purpose. They give us certain terms to discuss about things that are viewed as socially unthinkable. The impact of typical menstrual taboos is clear: they can

prompt noteworthy difficulties in menstrual administration, unfriendly contraceptive wellbeing results, social alienation, malady, and even demise.

Menstrual taboos are found in the Quran:

“go apart from women during the monthly course, do not approach them until they are clean” ,

...the Bible:

“...in her menstrual impurity; she is unclean... whoever touches...shall be unclean and shall wash his clothes and bathe in water and be unclean until evening” Leviticus 15

...and in the first Latin encyclopedia (73 AD):

“Contact with [menstrual blood] turns new wine sour, crops touched by it become barren, grafts die, seed in gardens are dried up, the fruit of trees fall off, the edge of steel and the gleam of ivory are dulled, hives of bees die, even bronze and iron are at once seized by rust, and a horrible smell fills the air; to taste it drives dogs mad and infects their bites with an incurable poison.”

The creation of menstrual taboos took place independently and repeatedly across different peoples.

Freud said it was our fear of blood

Allan Court argued that the taboo began, in part, because early humans found menstrual blood to be soiling (or, as he put it in 1963, having “a depressive effect on organic materials”)

Anthropologist Shirley Lindenbaum theorized in 1972 that taboo was a form of natural population control, limiting sexual contact with “pollution” stigma.

In 2000, Historian Robert S. McElvaine coined the term *non-menstrual syndrome* or NMS to describe the reproductive envy that led males to stigmatize menstruation, and to socially dominate women as “psychological compensation for what men cannot do biologically”

Judaism

The Jewish code of law, Halakha, focuses exacting fundamentals regulating each piece of the step by step lives of Jews, including their sexual lives; Jewish law expressly denies in reality any physical contact among people in the midst of the hours of period and for seven days from that point on. This joins passing things between one another, sharing a bed (most couples have two separate beds, which can be isolated by pulling in the midst of Niddah), sitting together on a comparative cushion of a parlour seat, eating clearly from the mate's pieces, smelling her aroma, seeing her articles of clothing (whether or not it has been worn), or checking out her sing.

According to stipulated custom, an Orthodox Jewish spouse is responsible for submerging in the Mikvah, the custom shower, after these 2 weeks; This entire time span, from the soonest beginning stage of the "draining days", until the completion of the 7 "clean days", when the lady submerges herself in the custom shower, is known as the "Niddah (generally unclean) period". The reason for these "Laws of Family Purity" is that menstrual blood (portrayed as the uterine covering) is considered formally unclean (Guterman, Mehta and Gibbs, 2007).

Christianity

Western human advancement, dominantly Christian, has a past loaded up with menstrual taboos. In early Western social orders, the menstruating lady was acknowledged to be perilous and social repressions were set upon her; truth be told, the British Medical Journal, in 1878, stated that a lady on her menses would make bacon spoil. Morrow's investigation as referred to in Guterman, Mehta and Gibbs (2007) proposes that Russian Orthodox Christians have confidence in menstrual taboos, additionally, menstruating ladies should live isolated in a little hut and in the midst of this time, they are not allowed to go to house of prayer organizations, can't have any contact with men, and may not contact crude or new nourishment. Bleeding ladies are moreover thought to bother and rebuff fish and entertainment. The air enveloping a lady on her menses is acknowledged to be especially tainting to youthful trackers; in the event that a tracker attracts adequately close to a lady to contact, at that point all animals will have the ability to see him and he won't have the ability to pursue them. While Western Christian gatherings are less dubious, some relic of negative mentality toward bleeding ladies remains.

Islam

In Muslim social orders, "tainted" (i.e., bleeding) ladies are to be kept at a distance from men. These laws are recovered from the Qur'an, which peruses, "They question thee (O Muhammad) concerning monthly cycle. Let's assume it is a sickness so let ladies alone at such occasions and go not into them till they are washed down. What's more, when they have filtered themselves, at that point go unto them as Allah hath urged upon you". Islam doesn't consider a discharging lady to have any kind of "infectious uncleanness" (Azeem, 1995). The Islamic law sees feminine cycle as unclean for strict capacities only. There are two essential forbiddance put upon the discharging lady. To start with, she may not enter any blessed spot or mosque. They are not allowed to prepare nourishment, and must keep detached utensils. Ladies may not go into the pooja room (the supplication room inside each home) and may not enter the sanctuary. Ladies may not mount a horse, bull, or elephant, nor may they drive a vehicle. Ferro-Luzzi (1980) in like manner found distinctive nourishment limitations in the midst of month to month cycle, including fish and meat. Specifically, feminine cycle is to be a private event. There is a strong taboo against period being made known in an open circle.

Buddhism

In Taiwan, Buddhists described menstruating women as contaminated, and confined them with taboos; Women were shown that their menstrual periods were a perilous weakness. Menstrual blood itself was seen as "dirt" or "toxic substance".

Japanese Buddhism, specifically, has been described as a tireless hostile to feminist attitude. Buddhist sacred texts express that all human bodies, male and female alike, are defective and are releasing unsanitary substance. While credible Buddhist sutras don't unequivocally say the female body is dirtied, many still victimize women on account of their period. Some normal taboos incorporate women being prohibited from taking part in society customs, and that they should evade sanctuaries. Menstruating women can not ruminate (however a few ladies do, as they feel especially "associated"), nor would they be able to have contact with priests. They can't partake in functions, for example, weddings.

Amid monthly cycle, women are thought to lose Qi. Qi, likewise normally spelled chi, is accepted to be a piece of everything that exists, as in "life drive", or "profound vitality". There is additionally a Buddhist conviction that ghosts eat blood; a bleeding woman, then, is thought to draw in ghosts, and is in this manner a danger to herself as well as other people.

Hinduism

Hinduism considers the to be menstruating ladies as "unclean", or "dirtied". Undoubtedly, month to month cycle is implied in a couple of spots as a "curse". The polluting influence bears just in the midst of the menses, and terminations rapidly starting there in the midst of their menstruation, ladies must go out, and live in a little house outside the town. They should rest, and do no work; they can not brush their hair or wash. They are not allowed to partake in the Naulas, or standard water springs. At the end of the day, menstruating ladies don't have access to water when they require it for individual needs. They are not allowed to prepare nourishment, and must keep separate utensils. Ladies may not go into the pooja room (the supplication room inside each home) and may not enter the sanctuary. Ferro-Luzzi(1980) in like manner found diverse nourishment limitations in the midst of month to month cycle, including fish and meat. Specifically, feminine cycle is to be a private event. There is a strong illegality against period being made known in an open circle (Apffel-Marglin's investigation as referred to in Guterman, Mehta and Gibbs, 2007).¹

Apart from religious narrow-mindedness, instances can be found of strange practices during menstruation in several geographical corners.

The word "menstruation" is derived from the Latin word 'menstruus' which means "monthly". It bears resemblance to the Old English word 'monadblot', which means "month blood."

¹ Guterman, Mehta and Gibbs, 2007

And in the Middle Ages, medical texts used the euphemism "to bring on the flowers" to describe menstruating. For people in medieval Europe, menstrual blood, despite being the "curse of Eve", was seriously powerful, dangerous and possibly healing at the same time.

Hildegard von Bingen, the female nun who published music, poetry and medical texts, thought period blood was a cure for leprosy. It was held responsible for both causing and curing leprosy.

Folk magic claims that mixing a drop of menstrual blood in a person's food ensures that the consumer's love and devotion has been there for centuries. A maid in Hong Kong was charged in 2009 for adding her own menstrual blood into her employer's soup in order to improve their relationship.

In parts of South India, a girl's first period is welcomed through a coming of age ceremony called Ritusuddhi.

CHAPTER 2

Period Poverty

2.1 Definition

“Meeting the hygiene needs of all adolescent girls is a fundamental issue of human rights, dignity, and public health.”

-Sanjay Wijesekera, former UNICEF Chief of Water, Sanitation and Hygiene²

Period poverty denotes much more than just the lack of access to sanitary products for a whole strata of women. High costs and less affordability of pads or tampons is surely a great barrier to menstrual equity but its cultural and socio-economic connotations are much more than just that. Women facing hardships in life, be it economically under the line of affordability of expensive period products; or running landless away from home as refugees; women in low income employment, or homeless women. Period poverty marks the societal undertones of the hushed acknowledgement regarding the subject. Mounting tax rates and lack of cultural acceptance, infrastructure, disposal facilities, availability and knowledge defines the general aspect of period poverty. It affects the daily life of women greatly, resulting in absenteeism and dropping out from schools for resource-poor countries, being on constant alert for stains and stigma, being forbidden to enter kitchens, perform religious rites and what not.

2.2 Position of various countries

52 percent of women and girls worldwide are of reproductive age. Around the world, an estimated one in ten young women are unable to afford adequate protection for their recurrent monthly woe. 12 percent have been forced to improvise with devices like rags, wool, tissue

² Period Poverty: Everything you need to know, by Erica Sanchez and Leah Rodriguez

paper or discarded cloth that are not effective, highly unhygienic and unsafe. These may have dire consequences for their health and reproduction.

According to World Health Organization (WHO) research in the former Yugoslav Republic of Macedonia, 90 percent of female students in rural areas do not visit school for four or five days while on their period.

In the UK, a reported 137,700 girls have missed school due to period poverty. They risk falling 145 education days behind male counterparts. The WASH Poverty Diagnostics showed that 25 percent of women in Nigeria lack adequate privacy for menstrual hygiene management.³ In Egypt, more than One third of girls in an urban secondary province say that they stay a home at least once every month because of menstruation. In Amhara Province in Ethiopia, more than half of female students reported being absent during their menses and those who were present showed distractive tendencies, lack of participation for fear of stains and being made fun of. Absenteeism appears to be closely related with lack of privacy, lack of infrastructure like proper sanitation and availability of cleaning water as well as lack of disposing facilities of menstrual napkins at schools.

According to India's National Family Health Survey, more than 40% of Indian women aged 15 to 24 do not have access to sanitary products during their period. Only 54 percent of schools in India have a separate and usable girls' toilet. In a study of schoolgirls in India 65.7 percent of homemade cloth users reported uro-genital infections while 12.3 percent of sanitary napkin users had the same maladies in comparison.⁴

Knowledge about menstruation and menstrual hygiene tends to be more in females who are educated and are city dwellers than those living in rural areas. Similarly, in resource-poor countries, more number of women are not aware or equipped enough to deal with this monthly woe. Not only country specific, but evidence has been found of girls studying in private schools, usually catering to the rich, in urban neighbourhoods who use commercially produced sanitary napkins more and they are properly trained on how to use it in comparison with their rural counterparts. Recently initiative has been taken to implement proper facilities in schools, colleges and workplaces and to provide period products for free in said establishments.

2.3 Quality compromise in tax free sanitary products

March, 2019 brought the spirited #MyAlwaysExperience campaign to Kenya. Women called for a boycott of Always sanitary towels, accusing the manufacturer, Proctor & Gamble, of supplying the African market with substandard products. Their experiences ranged from

³ Month After Month: Period Poverty, News, International Federation of Gynecology and Obstetrics news, Women's Health & Rights

⁴ Menstrual Hygiene Management in resource-poor countries, by Anne Sebert Kuhlmann, Kaysha Henry and L. Lewis Wall

rashes, itchiness, bad smell and discomfort. The campaign showed the power of voices to stand up to the injustice of low-quality menstrual products.⁵

With problems come solutions, and with recurrent problems such as this, solutions, if not permanent, started coming up as well. Demand arose of making sanitary products tax free. But before that they had to be termed as 'essential' items, not 'luxury' items and have to be categorised under 'health', not 'miscellaneous'. The 12.5 percent tax which was prevalent on sanitary pads in India was scrapped. However, it brought other problems. Question arose regarding quality issues as low cost made-in-India menstrual hygiene product companies became slowly popular. Some of these claim to have hygienic and safe reusable cloth pads but their quality is highly debatable. And in the absence of any quality checks, like in the case of a drug, these companies are allowed to flourish. In most regulated drug markets, feminine hygiene products like sanitary pads or tampons have to pass their drug regulator's muster.⁶ Quality and standard of products is the next big step towards menstrual hygiene.

"India is one of the countries with the highest rates of cervical cancer (it accounts for almost 23% of all cancers in Indian women, with only breast cancer being higher at 27%). Studies show a direct link between HPV infections (cause for cervical cancer) and poor menstrual health, so I want to lobby to the government to treat this as a drug or a medical device so that it is well regulated," we directly quote Sahil Dharia, founder of Soothe Healthcare, one of the new entrants in the low-cost sanitary napkin manufacturing space. "It is idiotic that such an essential product does not have stringent quality checks," he added.⁷

2.4 Capitalization

Question arises, is menstruation political? Is it a business? The answer might come, what isn't?

Recently, a Netflix documentary 'Period: End of Sentence' depicting the struggle of Indian women and their quiet sexual revolution won the Academy Award for the best documentary (short subject). Then came the books on periods, educative and crisp. What used to be a hushed shameful occurrence is being discussed in the hallowed halls of Congress now. We came a long way from the days of using period blood in potions and the days of denoting it as impure, especially in countries like India.

But then came about the 'period industry' making profits out of it, showing colourful advertisements of women climbing mountains and achieving greatness on their periods. The ads are of non-inclusive nature in a way that they fail to show that females are not the only ones who bleed monthly, that non-binary and transgender people also do. Reinstating gender roles, women being in constant fear of stains, showing blood as a blue liquid do not do much

⁵ Menstruation: 10 bloody big wins for periods in 2019(so far) by Terry Harris 28, 2019

⁶ Why the debate on menstrual health in India needs to go beyond pad tax, by Divya Rajagopal, The Economic Times

⁷ Sahil Dharia, founder of Soothe Healthcare

against spreading awareness, if not to diminish the progress of the period positive movement. Commercializing has only hampered the revolution to serve the purpose of money minded capitalists.

CHAPTER 3

Paid menstrual leave

3.1 Need

Menstrual leave is a type of leave where a woman has the option to take paid leave from her employer, if she is menstruating and is unable to go to work because of this. The concept of menstrual leave supposedly started in Japan in the early 20th century.

A woman has to go through painful cramping, backache, headache, moodiness, fatigue, bloating and many more problems in the days of their menstrual cycle, and coming to work in this condition proves to be a harrowing experience for them. Working with such physical and mental imbalances in those days not only affects the women's health, but it also has a negative impact on their work productivity.

For the formulation of any policy, pros and cons must be taken into consideration for its effective implementation, and the same goes for the menstrual leave policy. The critics argue that implementation of such policy will not benefit the women employees, rather it will prejudice the employers against hiring women in their firms. Contentions are also being made that menstrual leave is discriminating in nature and can degrade the very spirit of gender equality. Some people also highlight the fact that undue advantage of such facility can be taken easily by faking pain, sickness etc. The critics say that the preconceived notion that women are weaker than men might prove to be true if the menstrual leave policy is implemented. Some also believe that such policies couldn't work in developing countries like India, where there is already a lack of gender justice and can widen the gap between the rich and poor.

India

Though there are no law that govern menstrual leave in India but recently in 2017 there was a bill introduced in the parliament regarding the paid menstrual leave and since then this has been in discussion but there has been no confirmations regarding the legalization of the bill.

3.2 Constitutional perspective

Women are biologically different from men and menstrual leave is unquestionably an equitable approach. But, menstrual leave is contended to be discriminatory which permits the women employees to avail more leave than their male counterparts.

It is further argued that the concept of menstrual leave goes against the constitutional right to

equality. Article 15(1) of the Constitution of India prohibits the state from discriminating any citizen on the grounds of religion, race, caste, sex, place of birth or any of them.

However, Article 15(3) empowers the state to make special provisions for women and children which is an exception to the general rule laid down in the Article 15(1). This protective discrimination is a necessity to maintain social equity where there has been a history of discrimination against women.

Government of Andhra Pradesh Vs P B Vijayakumar (1995)⁸

This case states that “special provision for women” in Article 15(3) means the provisions which the state may make to improve women’s participation in all activities under the supervision and control of the state can be either affirmative action or reservation. Even in the article 14 of the Indian constitution which states equality before law and equal protection before law grants positive discrimination that is granting special laws for women and children .

Article 42 of the Constitution envisages that the state shall make provision for securing just and humane conditions of work and maternity relief. . Furthermore, when the women’s rights legislations like the Maternity Benefit Act have further advanced the idea of gender equality, gender inclusiveness and gender sensitization, why not another biological process called menstruation! It is also pertinent to note that maternity is a choice while menstruation is an inescapable monthly biological process.

3.3 Question of Fairness

It is inequitable to merge menstrual leaves with sickness leaves because menstruation is not an illness but an inevitable biological process that is painful for most women. In a research paper by Jyothsna Latha Belliappa⁹ the author focuses on alternative solutions to uphold the principles of equity without compromising on non discriminatory ideals by a feasible move of ‘menstrual flexibility’¹⁰. This concept was proposed by Australian menstruation researcher Lara Owens who argues that the policy allows women to work according to the natural rhythms of their bodies. It is less likely to provoke resentment amongst men or inhibit recruitment of women. Menstrual flexibility ensures that women may take leave during their period only if they make up for that time on other days. This can be made gender neutral in a way that even men could take sick leaves or such if they can compensate for the lost time later. However it is to be noted that wellness leave for both men and women should depend upon their role and nature of work. The author also suggests that by providing a fixed number of wellness leaves per year, employers can respect employees’ privacy as well as their right to leave.

⁸ 1995 AIR 1648, 1995 SCC (4)520, JT 1995 (7)489, 1995 SCALE (3) 613

⁹ Menstrual Leave Debate: Opportunity to Address Inclusivity in Indian Organizations by Jyothsna Latha Belliappa

¹⁰ Lara Owens, 2016

3.4 Comparison with other countries

In Indonesia, women have an explicit right of two days of menstrual leave per month under the Labour Act of 1948.¹¹

In South Korea, female employees have the right to menstrual leave according to the Article 71 of the Labour Standards Law¹². They are ensured additional pay if they do not take the menstrual leave that they have entitlement to.

In Japan, Article 68 of the Labour Standards Law states “When a woman for whom work during menstrual periods would be specially difficult has requested leave, the employer shall not employ such woman on the days of the menstrual period.”¹³ Japanese law however ensures that a woman may take a day off if she is going through painful menstruation but the companies are not required to pay extra leave or added pay for those who decide not to take the leave.

In Zambia, Africa, the revised employment law grants all women menstrual leave of one day each month. It is termed as ‘Mother’s Day’ and it is quite a progressive law. There are arguments against it that it is widely misused but there has always been contradictions to every big step in legal as well as social history.

In Britain, a small Bristol based non-profit company was experimenting with flexible work hours for menstruating employees.

In Europe, currently, there is no country with a national menstrual leave policy. WHO European policy framework, Health 2020 as well as EU member states are going to address the health and safety issues affecting women.

CHAPTER 4

Tax free hygiene products

A large chunk of the society is deprived due to lack of affordability to use quality hygiene products for the monthly woes. Ignorance and shame ensure that they don’t even reach out for better solutions. While raising awareness may encourage free talk on the subject the problem remains on how to afford the costly and non-reusable sanitary napkins.

4.1 Need

The need arises especially in poverty stricken countries, where resources available to the masses is less and stigma is more. Sanitary products become out of reach for most women when they are termed as ‘luxury items’ having more tax constraints. While developed countries are fighting the battle to make the hygiene products tax free, the third world

¹¹ Government of Indonesia, Labour Act

¹² International Labour Organisation. “National Labour Law Profile: Japan”

¹³ International Labour Organisation. “National Labour Law Profile: Japan”

countries have been squeamish about taking the step towards eradicating superstition and promoting knowledge regarding this issue. Since GST was announced in 2000 there has been an ongoing struggle for 18 years to classify hygiene products as essential items and not in luxury item list so as to be exempted from GST. However, surprisingly, some third world countries such as India have removed taxes on female hygiene products while states in the developed nation of US have not.

4.2 Comparison with other countries

Most state and federal laws in the United States no longer contain sex-based classifications. Women can serve on juries.' Women can obtain credit cards in their own names. Women have an equal right to be appointed as an administrator of a decedent's intestate estate. Female military personnel receive the same dependency benefits as male military personnel do. Female and male athletes have the right to equal opportunity to participate in sports at federally-funded educational institutions.' For the most part, overt discrimination has been eliminated from the law in the United States and other western democracies. Notwithstanding this sea change in the law over the last fifty years, however, pockets of legally sanctioned discrimination still exist in the structure or application of some laws. A law may appear to be neutral on its face, but have a disparate impact on one sex.

Sales tax as gender discrimination

Unlike in India, in the United States (and Australia), there is a federal Constitution and each state has its own constitution. The Fourteenth Amendment to the United States Constitution and its state-constitution counterparts provide that the government may not deny to any person the "equal protection of the laws." In 1976, the Supreme Court of the United States ruled in **Craig v. Boren**¹⁴ that sex-based classifications must be substantially related to an important governmental purpose.

The US protections are similar to the ones provided by the Constitution of India under Articles 14 and 15. The US and India share constitutional commitments to protections against discrimination on the basis of sex.

In translating the United States Supreme Court precedents to the tampon tax imposed by thirty-five US states, note that the US state sales tax statutes are gender-neutral on their face. In each of thirty-five jurisdictions that have a tampon tax, sales tax applies to all sanitary pads and tampons, regardless of gender of the purchaser. Professor Waldman argues, however, that the sales tax on tampons and pads nevertheless functions as a tax on women because the products are so uniquely linked to the female body. As such, the tampon tax violates both US federal and the state constitutional prohibitions against denial of equal protection. Prior to India's elimination of the GST on menstrual hygiene products, similar constitutional claims might have been raised under the Constitution of India.

¹⁴ 429 US 190 (1976)

Most women will menstruate for almost 40 years of their life. Practically speaking, this means that the average woman spends roughly 6.25 years of her life menstruating. Men do not menstruate; women (or persons such as some transgender men, who may have certain anatomical factors associated with women) do. Note that the closest analogous male-only product might be erectile dysfunction drugs, and those drugs are not subject to state sales tax in the US. The closest analogous unisex product might be bandages or gauze, and those products escape state sales taxation. By not exempting menstrual hygiene products from sales tax, then, some US states engage in gender discrimination. For that reason, all US jurisdictions should repeal the tampon tax, just as India repealed its GST on menstrual hygiene products. India has shown the world that tax policy can be used to move closer to a nation's highest aspirations for gender equity.

4.3 Human rights claims

Other possible sources for legal challenges to the tampon tax are international treaties. Although not a treaty itself, the UN Universal Declaration of Human Rights was adopted in 1948 by forty-eight countries including many in South America and Europe, as well as India and the United States. The UN Declaration provides: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." The principles of the UN Declaration are implemented through treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Each of the implementing treaties prohibits discrimination and elaborates on the contours of particular rights, such as the rights of women to be free from discrimination and to equal protection under the law. India has ratified all of the core human rights treaties, and the repeal of the GST on menstrual hygiene products is consistent with India's commitment to non-discrimination on the basis of sex.

Unlike India, the US has not ratified several important treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women. Given the general hostility of US domestic courts to relying on or even referring to international treaties, it may be difficult for tampon tax reformers to use international law as source for their challenges, although reformers in other jurisdictions might have greater success.

Conclusion

By leaps and bounds, India has come a long way in ensuring menstrual equity. To be perfectly candid, it is not impractical to hope that soon the world will follow the example and we can make a better society with deserved rights, acknowledgements and eradication of sexism and stigma.

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