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Beyond Sabarimala: Reading Menstrual Justice into the Indian Constitution

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ABSTRACT

*Menstruation in India has been framed principally as a matter of hygiene and sanitation, captured by the policy vocabulary of menstrual hygiene management. That framing leaves unanswered a set of questions that are properly constitutional: State-endorsed menstrual exclusion from public temples, the statutory omission of menstruation from labour law, forced hysterectomies performed on disabled menstruators as a mode of menstrual management, and the exclusion of transgender menstruators from a policy vocabulary of 'women and girls.' Building on the menstrual-justice scholarship of Johnson and its Indian and Global South reworkings, this article argues that while that literature has done the conceptual work, it has not developed the doctrinal-legal scaffolding the Indian Constitution makes available. Reading Articles 14, 15, 21, and 25 together, and drawing on the Supreme Court's substantive-equality and dignity jurisprudence, the Sabarimala judgments, and *Jaya Thakur v. Union of India*, the article traces the shape of an emerging Indian menstrual-justice jurisprudence and sets out three priorities for its doctrinal development.*

Keywords: *menstrual justice, Indian Constitution, Sabarimala, substantive equality, Article 21, bodily autonomy, transgender menstruators, disability rights, forced hysterectomy, menstrual hygiene*

I. INTRODUCTION

Menstruation has been treated, in Indian research and policy, primarily as a hygiene and sanitation concern. The dominant programmatic vocabulary of menstrual hygiene management (MHM) frames the menstruating body as a site for the application of products, infrastructure, and information. That vocabulary is administratively useful and clinically defensible, but it leaves untouched a set of questions that the Indian Constitution is positioned to answer. Why does the State endorse menstrual exclusion from public temples through judicially engaged customary law? Why does the Maternity Benefit Act 1961 omit menstruation entirely? Why are disabled menstruators in Odisha subjected to forced hysterectomies as a method of menstrual management, and where in the Constitution does that practice find or fail to find justification?

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Why does the Indian policy vocabulary of 'women and girls' systematically exclude transgender menstruators at the level of the statute? These are not hygiene questions. They are constitutional questions.

A growing body of scholarship in India and elsewhere has begun to reframe menstruation through the vocabulary of justice rather than hygiene.¹ Margaret Johnson's 2019 articulation of structural menstrual injustice, developed in the United States legal context, has been extended and reworked from Indian and Global South perspectives by Manorama and Desai, who ground menstrual justice in the everyday experience of Indian women across the life course;² by Tibrewala, who develops a structural-intersectionality account focused on transgender, intersex, non-binary, and disabled menstruators;³ and by Amery and colleagues, who propose Global South categorical additions to Johnson's framework, including mental health, security, environmental injustice, and state power.⁴ Across these contributions, the analytic move is consistent: menstrual experience is reframed from a private hygienic concern to a structural justice concern.

This article makes a specific further move. It argues that the existing Indian menstrual-justice scholarship has done the conceptual work but has not yet developed the doctrinal-legal scaffolding that the Indian Constitution makes available. A recent scoping review of the Indian menstrual-justice literature found that, of fifteen sources mapped, ten engaged some legal or rights framework, but only two engaged Indian statutes and policy in sustained doctrinal depth, and none developed a constitutional argument in any depth.⁵ The Sabarimala judgments and *Jaya Thakur v. Union of India* contain interpretive resources that, read together, point towards a recognisable menstrual-justice doctrine, but the doctrine remains implicit. The Court has done some of the work without naming it as such, and Indian legal scholarship has not yet brought the threads together.

The argument proceeds as follows. Part II situates the menstrual-justice turn and its Indian variants, distinguishing them from the policy vocabulary of menstrual hygiene management.

¹ Margaret E. Johnson, *Menstrual Justice*, 53 U.C. DAVIS L. REV. 1 (2019).

² Sowmya Manorama & Radha Desai, *Menstrual Justice: A Missing Element in India's Health Policies*, in THE PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES 511 (Chris Bobel et al. eds., 2020).

³ Mansi Tibrewala, *Transgender Persons and Structural Intersectionality: Towards Menstrual Justice for All Menstruators in India*, INDIAN J. MED. ETHICS (advance online publication 2024).

⁴ Fran Amery et al., *Developing the Menstrual Justice Agenda: Insights from a Mixed Method Study in the Mid-Western Region of Nepal*, 31 SEXUAL & REPROD. HEALTH MATTERS 2204025 (2023).

⁵ A recent scoping review of the Indian menstrual-justice literature (forthcoming) identified that, of fifteen included sources, ten engaged a legal or rights framing but only two (Bhandari, and Manorama and Desai) engaged Indian statutes or policy in sustained doctrinal or policy-analytic depth, and none developed the constitutional argument in any depth.

Part III sets out the empirical predicate, namely the documented harms to which the constitutional argument must respond. Parts IV through VII develop the doctrinal argument under each of the four constitutional provisions: Article 14 and substantive equality, Article 15's non-discrimination and protective-discrimination clauses, Article 21's dignity and bodily-autonomy jurisprudence, and Article 25's religious-freedom limits as developed in *Sabarimala*. Part VIII reads the four threads together and articulates the shape of an emerging Indian menstrual-justice jurisprudence. Part IX concludes with three priorities for doctrinal development.

Three clarifications about what this article does and does not attempt are in order. First, the article is doctrinal and normative, not empirical. Empirical claims about menstrual experience in India are drawn from the existing literature, principally the scoping review referenced above and the studies it maps. The article's contribution is constitutional rather than evidentiary. Second, the article does not claim that menstrual justice is reducible to constitutional argument. The scoping review's findings are clear that menstrual injustice in India is structured by stigma, taboo, infrastructural deprivation, and policy bifurcation, all of which require non-constitutional responses. Constitutional analysis is necessary but not sufficient. Third, the article does not propose new constitutional doctrine *ex nihilo*. The *Sabarimala* and *Jaya Thakur* judgments have already begun the doctrinal work; this article reads them carefully and proposes how the Court's interpretive moves should be developed.

II. THE MENSTRUAL-JUSTICE TURN AND ITS INDIAN VARIANTS

The legal-scholarly articulation of menstrual justice is conventionally traced to Margaret Johnson's 2019 article in the *U.C. DAVIS LAW REVIEW*, which developed a framework of structural menstrual injustice grounded in United States anti-discrimination doctrine.⁶ Johnson's intervention reframed menstruation from a private hygienic concern to a public-law concern, identifying the State, employers, schools, and prisons as actors whose policies on menstrual products, leave, accommodation, and dignity were properly evaluated through equality and liberty frames rather than through the sanitation frame. The move was generative: within five years, a body of menstrual-justice scholarship had developed in jurisdictions across the Global North, accompanied by litigation on menstrual-product access, menstrual leave, and the menstrual experience of incarcerated persons.

Indian and Global South scholarship has both adopted and reworked the Johnson framework. Manorama and Desai's 2020 articulation, published in the *PALGRAVE HANDBOOK OF CRITICAL*

⁶ Johnson, *supra* note 1.

MENSTRUATION STUDIES, argued that menstrual justice in India must be 'a non-reductionist approach to women's health that goes beyond the narrow confines of fertility and menstrual health' and must be 'derived from the everyday experience of menstruation in India's sociocultural, religious, and political conditions.'⁷ The argument was deliberately non-derivative. Indian menstrual injustice, on their account, is produced by structures (caste, religious-cultural taboo, life-stage compartmentalisation of women's health, and the policy invisibility of pre-menarche and post-menopause menstrual experience) that the United States legal formulation was not designed to capture. The Indian framework had to be built from the Indian situation outward.

Tibrewala's 2024 contribution extends the framework along the axis of structural intersectionality. Drawing on Kimberle Crenshaw and Indian critical caste scholarship, Tibrewala argues that the dominant Indian menstrual-policy vocabulary ('women and girls,' 'adolescent girls,' 'mothers and daughters') operates through universal categories that systematically exclude menstruators positioned outside the cisgender, dominant-caste, able-bodied template.⁸ The exclusion is documented at the level of the statute itself: the Jan Aushadhi Suvidha Sanitary Napkin scheme and the Rashtriya Kishor Swasthya Karyakram address 'adolescent girls and women,' rendering transgender menstruators not merely under-served but constitutively absent from the policy frame. Tibrewala further documents that NFHS-5 data show that 86 per cent of dominant-caste menstruators access hygienic methods, as against 75 per cent of Scheduled Caste and Scheduled Tribe menstruators and 78 per cent of Other Backward Class menstruators; that 77 per cent of menstruators with disabilities in Odisha struggle to wear napkins properly; and, most starkly, that disabled menstruators face forced hysterectomies and sterilisations as menstrual 'management.'⁹ Each of these claims is constitutionally consequential, and each is presently under-engaged in Indian constitutional scholarship.

Amery and colleagues, working from Nepalese fieldwork, propose four categorical additions to Johnson's framework drawn from Global South evidence: mental health, security and personal safety, environmental injustice, and state power and law.¹⁰ Their additions are framed as additions to a legal framework, but they are equally legible as additions to the constitutional grounds on which menstrual-justice claims may be brought. State endorsement of menstrual exclusion through customary religious law is a state-power claim. Forced hysterectomy on

⁷ Manorama & Desai, *supra* note 2, at 511.

⁸ Tibrewala, *supra* note 3.

⁹ *Id.*

¹⁰ Amery et al., *supra* note 4.

disabled menstruators in state-run residential institutions is a state-power and bodily-integrity claim. Each finds its constitutional purchase in the Indian context under provisions that have not yet been read in the menstrual-justice register.

Two methodological points follow. First, an Indian menstrual-justice doctrine must be built outward from Indian constitutional materials rather than transplanted from the Johnson framework. The doctrinal sources are Articles 14, 15, 21, and 25; the interpretive resources are the Supreme Court's dignity and substantive-equality jurisprudence; and the empirical materials are the documented harms catalogued in the existing literature. Second, the Indian doctrine must explicitly engage the structurally excluded menstruators identified by Tibrewala. A menstrual-justice doctrine that re-inscribes 'women and girls' as its operative category would reproduce the very exclusions the framework exists to remedy. This article's argument is constructed accordingly.

III. THE EMPIRICAL PREDICATE: DOCUMENTED HARMS REQUIRING CONSTITUTIONAL RESPONSE

Doctrinal argument requires a factual predicate. Constitutional rights claims do not float free of the harms they remedy; the rights-grounding move requires identifying the specific menstrual experiences whose constitutional status is in question. This Part sets out the empirical predicate, drawn from the Indian menstrual-justice literature mapped in the recent scoping review. The harms are real, documented, and quantitatively substantial.

A. Religious-cultural exclusion

Menstrual exclusion from public religious spaces is the most jurisprudentially familiar of the Indian menstrual-justice questions, and Sabarimala has structured the legal terrain. But menstrual exclusion is not limited to Sabarimala. Ganguly and colleagues' fieldwork in Paschim Medinipur reports that 81.37 per cent of adolescent girls face at least one menstrual restriction, with restrictions on religious participation at 56.5 per cent and on touching food at 55.9 per cent.¹¹ The gap between imposition and personal endorsement is wide: hair-washing restrictions are imposed on 80.4 per cent but personally supported by only 8.7 per cent, indicating external enforcement rather than internalised belief.¹² Restrictions are significantly higher (93.2 per cent) on girls experiencing menstrual problems than on those without (41.4 per cent) (chi-square

¹¹ Madhabi Ganguly et al., *Exploring Menstrual Taboos, Myths and Restrictions in Paschim Medinipur District of West Bengal, India*, 23 DISCOVER PUB. HEALTH 230 (2026).

¹² *Id.*

= 101.763, $P < 0.001$), indicating that taboo intensifies in proportion to need.¹³ These are not, in the main, voluntary religious practices freely chosen by the individuals subjected to them. They are imposed, and they are imposed disproportionately on those for whom the menstrual experience is already most difficult.

B. Workplace and statutory omission

The Factories Act 1948 and the Maternity Benefit Act 1961, the two principal Indian statutes addressing women's working conditions, omit menstruation entirely.¹⁴ Bhandari's 2025 analysis in the INDIAN JOURNAL OF GENDER STUDIES documents this omission and proposes statutory reform, whether dedicated menstrual-leave legislation or an amended Maternity Benefit Act expanded to a 'Maternity and Menstruation Benefit Act' with extension to the unorganised sector where most Indian women work.¹⁵ Bihar's longstanding menstrual-leave provision and Kerala's school-level provisions are state-level departures from a national silence. The constitutional question is whether the central statutes' omission of menstruation is a permissible legislative choice or a constitutional infirmity, a question that has not been litigated in those terms.

C. Infrastructural deprivation

Material deprivation in menstrual contexts is well documented. Garg and colleagues' study of Delhi urban resettlement colonies found that 84.4 per cent of adolescent girls used only disposable pads, but that 27.7 per cent reported difficulty buying pads, primarily for financial reasons (62.3 per cent) and shame (47.6 per cent); the adjusted odds of pad-only use were significantly higher for school-attending girls (OR 2.4), Hindu girls (OR 1.9), and girls educated to ninth standard or higher (OR 1.5).¹⁶ Vogel and colleagues frame the question through a sanitation-insecurity lens: approximately 70 per cent of women in Delhi slums cannot afford sanitary pads and use old cloth; 90 per cent of rural Indian women use clothing items as absorbents; and even menstrual products at five to twelve rupees remain unaffordable for the 800 million Indians living on less than two dollars a day.¹⁷ Pandey and colleagues' Vishakhapatnam slum study identifies private schooling, smartphone availability, household income, and respondent's education as significant predictors of menstrual-hygiene awareness in

¹³ *Id.*

¹⁴ Factories Act, No. 63 of 1948, INDIA CODE (1948); Maternity Benefit Act, No. 53 of 1961, INDIA CODE (1961).

¹⁵ Anuja Bhandari, *Efficacy of Menstrual Leave in the Workplace: Law and the Changing Discourse on Gender in India*, 32 INDIAN J. GENDER STUD. 7 (2025).

¹⁶ Suneela Garg et al., *Menstrual Hygiene Management and Its Determinants among Adolescent Girls in Low-Income Urban Areas of Delhi, India: A Community-Based Study*, 13 OSONG PUB. HEALTH & RES. PERSP. 273 (2022).

¹⁷ Wendy Vogel, Christina D. Hwang & Sungwoo Hwang, *Gender and Sanitation: Women's Experiences in Rural Regions and Urban Slums in India*, 12 SOCIETIES 18 (2022).

logit regression.¹⁸ The pattern across these studies is consistent: material constraint, infrastructural deficit, and informational asymmetry distribute menstrual vulnerability along gradients of class, schooling, religion, and geography. The constitutional question is whether the State's failure to ensure menstrual-product access and dignified menstrual infrastructure, in schools, workplaces, and public institutions, engages Article 21.

D. Policy invisibility of trans and disabled menstruators

As discussed in Part II, the dominant Indian menstrual-policy vocabulary addresses 'women and girls' and thereby renders transgender, intersex, and non-binary menstruators not merely underserved but constitutively absent from the policy frame.¹⁹ The exclusion is constitutional, in the precise sense that *National Legal Services Authority v. Union of India* established the legal recognition of transgender persons and the State's correlative obligations,²⁰ and the menstrual-policy frame's failure to address transgender menstruators is in tension with the NALSA holding. Disabled menstruators face a related but distinct problem: 77 per cent of menstruators with disabilities in Odisha struggle to wear napkins, but the more serious documented harm is the practice of forced hysterectomies as menstrual 'management.'²¹ Forced gynaecological intervention on disabled persons, performed in significant part to relieve caretakers of menstrual-management burdens, engages Article 21's bodily-integrity jurisprudence at the most basic level. The fact that this practice continues, and that no constitutional litigation has been brought to challenge it in the menstrual register, is a measure of the doctrine's underdevelopment.

IV. ARTICLE 14 AND SUBSTANTIVE EQUALITY: THE UNEQUAL DISTRIBUTION OF MENSTRUAL VULNERABILITY

Article 14 of the Indian Constitution provides that the State shall not deny to any person 'equality before the law or the equal protection of the laws.' The classical reading of Article 14, descending from *State of West Bengal v. Anwar Ali Sarkar*,²² treated the provision as primarily a guarantee against arbitrary legislative classification: a law was Article-14-compliant if its classification rested on an intelligible differentia with a rational nexus to the legislative purpose. The classical reading produces a formal-equality doctrine. It is also a doctrine under which menstrual-justice claims will largely fail, because formal equality between menstruators and

¹⁸ Gunjan Pandey et al., *Healthy Menstruation: Myth or Reality? Insights into Urban Slums of Vishakhapatnam City, India*, 15 J. WATER SANITATION & HYGIENE FOR DEV. 274 (2025).

¹⁹ Tibrewala, *supra* note 3.

²⁰ *National Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).

²¹ Tibrewala, *supra* note 3.

²² *State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75 (India).

non-menstruators is precisely what the menstrual-policy frame already delivers, in the form of equal access to public toilets and equal application of school rules, and those formally equal applications are what produce the substantive inequities the menstrual-justice literature documents.

The interpretive shift that makes Article 14 doctrinally useful for menstrual justice is the move from formal to substantive equality. That move has been underway in the Court's jurisprudence for decades and was articulated in *Navtej Singh Johar v. Union of India*,²³ where Article 14 was read alongside Article 15 to ground the decriminalisation of consensual same-sex sexual acts; in *Joseph Shine v. Union of India*,²⁴ striking down the adultery provision; and most pointedly in the Court's developing jurisprudence on indirect discrimination, including *Lt. Col. Nitisha v. Union of India*,²⁵ where the Court explicitly recognised indirect discrimination as a constitutional concept under Article 15 and, indirectly, through Article 14.

Substantive equality, on the developed reading, requires the State to attend not only to facially neutral classifications but to facially neutral policies that produce systematically unequal outcomes for persons differently situated. The menstrual-policy frame is a paradigm case. A national menstrual-hygiene policy that distributes sanitary napkins equally to all government schools is formally equal, but its substantive impact is systematically unequal: in schools without functioning toilets, privacy, disposal infrastructure, or willing and trained female staff, the napkins do not remedy the menstrual experience and may not even be used. Garg and colleagues' Delhi data, Ramaiya and Sood's Uttar Pradesh data, and Pandey and colleagues' Vishakhapatnam data each, in different ways, document that the same notional policy produces systematically different menstrual experiences depending on the recipient's caste, class, religion, schooling, and geography. That is exactly what substantive equality is designed to identify and remedy.

Three Article 14 arguments follow. First, the State's menstrual-policy choices are subject to substantive-equality review; that is, courts evaluating menstrual-policy claims under Article 14 must attend to substantive outcomes, not only to formal classification. Second, where a menstrual-policy choice produces systematically unequal outcomes for menstruators positioned along axes of caste, class, gender identity, or disability, that policy is presumptively constitutionally infirm and requires justification grounded in a compelling state interest with proportionality analysis. The proportionality framework articulated by the Court in *Modern*

²³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

²⁴ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

²⁵ *Lt. Col. Nitisha v. Union of India*, (2021) 15 SCC 125 (India).

*Dental College & Research Centre v. State of Madhya Pradesh*²⁶ and applied in *K.S. Puttaswamy v. Union of India*²⁷ is the appropriate analytic structure: legitimate aim, suitability, necessity, and balancing. Third, and most consequentially for the policy frame, the omission of menstruators from a policy frame is itself an Article 14 question, because non-recognition is a form of unequal treatment that the substantive-equality doctrine reaches. The omission of transgender menstruators from the Jan Aushadhi and RKSK schemes is not merely a policy gap; it is a substantive-equality concern under Article 14 read together with NALSA's Article 15 holding.

V. ARTICLE 15 AND THE LIMITS OF UNIVERSAL CATEGORIES

Article 15(1) provides that the State shall not discriminate against any citizen on grounds 'only of religion, race, caste, sex, place of birth or any of them.' Article 15(3) permits the State to make special provisions for women and children. These provisions ground the most direct constitutional engagement with sex- and gender-based discrimination, and they are the natural home for menstrual-justice claims that operate through the sex/gender axis. They are also the provisions whose received reading most needs reconsideration in the menstrual-justice context.

The received reading of Article 15(1), descending from *Air India v. Nergesh Meerza*,²⁸ *Anuj Garg v. Hotel Association of India*,²⁹ and developed substantially in *Joseph Shine* and *Navtej Singh Johar*, has moved from a formalist anti-discrimination reading toward a substantive reading attentive to stereotype, gender-role enforcement, and indirect discrimination. The Court has been willing to identify gender-role enforcement and stereotype-based reasoning as forms of Article 15(1) discrimination even when the impugned law or practice is formally neutral or even formally protective. This is doctrinally important for menstrual justice because most of the harms documented in Part III operate through stereotype and structural enforcement rather than through facial discrimination.

The doctrinal move that menstrual justice particularly requires is the explicit naming of menstrual exclusion as sex- and gender-based discrimination under Article 15. The point may seem obvious: menstruation is sex-linked, and exclusion from public spaces, food preparation, and religious participation on menstrual grounds is sex- and gender-based discrimination. But the constitutional articulation has not been made cleanly. In *Sabarimala*, *Indu Malhotra J.* in dissent took the position that judicial review of religious-customary practices should be

²⁶ *Modern Dental Coll. & Research Ctr. v. State of M.P.*, (2016) 7 SCC 353 (India).

²⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

²⁸ *Air India v. Nergesh Meerza*, (1981) 4 SCC 335 (India).

²⁹ *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1 (India).

limited;³⁰ the majority opinions held that the exclusion of menstruating women from Sabarimala violated Article 25(1) read with Articles 14 and 15(1), but the Article 15(1) reasoning, while present, was not the principal doctrinal anchor. Chandrachud J.'s concurrence went further than the other majority opinions in characterising the exclusion as engaging Article 17's prohibition of untouchability, a move whose implications for menstrual-justice doctrine have been insufficiently explored.³¹

Article 15 also presents a structural challenge that Tibrewala's intersectional argument makes unavoidable. The provision protects against discrimination on grounds 'only of ... sex,' which the Court has interpreted to include gender identity through NALSA. But Article 15(3)'s protective-discrimination clause is framed in terms of 'women and children,' and the entire constitutional discourse around women's protective discrimination has used 'women' as its operative category. A menstrual-justice doctrine that mobilises Article 15(3) for menstrual leave, menstrual-product provision, and menstrual-friendly infrastructure must answer whether 'women' in Article 15(3) is to be read as 'persons assigned female at birth,' as 'persons who identify as women,' as 'menstruators,' or as some combination. The NALSA holding suggests that an inclusive reading is constitutionally required, but the menstrual-policy frame as it currently stands does not reflect that inclusion. The doctrinal task is to read Article 15(3) consistently with NALSA, developing a menstrual-justice jurisprudence that names menstruators rather than only women, without forfeiting the protective-discrimination logic that makes Article 15(3) useful in the first place.

Three Article 15 arguments follow. First, menstrual exclusion from public spaces, food preparation, employment, and religious participation is sex- and gender-based discrimination under Article 15(1) and should be explicitly named as such in litigation and doctrinal scholarship. Second, the State's affirmative menstrual-policy obligations under Article 15(3) extend to all menstruators, including transgender and non-binary menstruators, and not only to cisgender women. Third, the dominant policy vocabulary of 'women and girls' is constitutionally inadequate and must be revised to reflect the inclusive reading of Article 15 that NALSA requires.

VI. ARTICLE 21 AND THE CONSTITUTIONAL STATUS OF MENSTRUAL EXPERIENCE

Article 21 provides that 'no person shall be deprived of his life or personal liberty except according to procedure established by law.' The provision has carried the substantive weight of

³⁰ Indian Young Lawyers Assn. v. State of Kerala (Sabarimala), (2019) 11 SCC 1 (India) (Malhotra, J., dissenting).

³¹ Sabarimala, (2019) 11 SCC 1 (India) (Chandrachud, J., concurring).

much of Indian constitutional rights jurisprudence since *Maneka Gandhi v. Union of India*,³² and its expansion to include dignity, bodily autonomy, privacy, health, and a clean environment has structured the Court's responses to a wide range of contemporary questions. Article 21 is the constitutional provision most consequential for menstrual justice, both because the documented harms most directly engage life, dignity, and bodily integrity, and because the existing Article 21 jurisprudence is doctrinally most ready to absorb the menstrual-justice claim.

The doctrinal resources are several. *Common Cause v. Union of India*³³ articulated dignity and bodily autonomy in the end-of-life context. *Justice K.S. Puttaswamy (Retd.) v. Union of India* established privacy as a fundamental right under Article 21, with explicit attention to the body as a site of constitutionally protected autonomy.³⁴ *Suchita Srivastava v. Chandigarh Administration*³⁵ addressed reproductive autonomy and the bodily-integrity claims of women with disabilities, a holding with direct implications for the forced-hysterectomy practice documented in Part III. And *Jaya Thakur v. Union of India*,³⁶ the first Indian Supreme Court order to engage menstrual products as a constitutional question, directed the Union and State Governments to formulate a uniform national policy on free sanitary pads in schools, grounding the direction in the right to education and the dignity of menstruating schoolgirls.

Jaya Thakur deserves particular doctrinal attention. The matter was brought in the public-interest jurisdiction, sought directions on a specific menstrual-product-access question, and produced a remedial order rather than a fully reasoned constitutional opinion. But the doctrinal posture of the Court's direction is significant. The Court accepted, without extended argument, that menstrual-product access in schools engages the constitutional rights of menstruating students; that the absence of such access in some states while others provide it produces an unequal experience that the Constitution does not tolerate; and that the State has affirmative obligations to remedy the situation through coordinated policy.³⁷ The order is an interpretive move. It treats menstruation as a question of constitutional concern and treats the State's failure to address it as a constitutional question. The doctrinal task is to articulate what was implicit in the order, developing the Article 21 jurisprudence that *Jaya Thakur* began.

Three further Article 21 arguments follow. First, menstrual experience is constitutionally protected under Article 21 as an aspect of dignity, bodily autonomy, and privacy. Menstrual

³² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

³³ *Common Cause v. Union of India*, (2018) 5 SCC 1 (India).

³⁴ *Puttaswamy*, *supra* note 27.

³⁵ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 SCC 1 (India).

³⁶ *Jaya Thakur v. Union of India*, 2023 SCC OnLine SC 433 (India).

³⁷ *Id.*

exclusion from public spaces, restrictions on bodily movement during menstruation, and the imposition of menstrual taboos are not merely sociocultural practices; they engage Article 21's dignity guarantee. Second, the State has affirmative obligations under Article 21 to ensure menstrual-product access, dignified menstrual infrastructure (toilets, privacy, and disposal), and menstrual-health services as preconditions for the meaningful enjoyment of the right to life. *Jaya Thakur* is the first step of an analysis that needs to be extended to workplaces, public institutions, and custodial settings. Third, and most urgently, forced hysterectomies on disabled menstruators violate Article 21 read with *Suchita Srivastava's* reproductive-autonomy holding and require immediate doctrinal articulation and remedial litigation. The practice's continuation, undocumented in mainstream constitutional litigation, is a measure of how under-developed Indian disability-rights jurisprudence remains in the menstrual context.

VII. ARTICLE 25 AND THE LIMITS OF COMMUNITY: SABARIMALA AND WHAT CAME AFTER

Article 25 guarantees freedom of conscience and the free profession, practice, and propagation of religion, subject to public order, morality, health, and the other provisions of Part III. The provision has structured Indian constitutional engagement with menstrual exclusion through religious-customary practice, and the Sabarimala judgments, *Indian Young Lawyers Assn. v. State of Kerala*³⁸ and the subsequent review reference in *Kantaru Rajeevaru v. Indian Young Lawyers Assn.*, are the central interpretive moments.

Sabarimala held, by a four-to-one majority, that the exclusion of menstruating women aged between ten and fifty from the Sabarimala temple violated Article 25(1) and was inconsistent with Articles 14, 15, and 17. The reasoning was multiple. Misra C.J.I. and Khanwilkar J. held that the exclusion was not an 'essential religious practice' protected against constitutional scrutiny. Nariman J. emphasised that Article 25(1)'s guarantee of equal religious freedom required that menstruating women be permitted entry. Chandrachud J.'s concurrence, the opinion most consequential for menstrual-justice doctrine, went further: he held that the exclusion engaged Article 17's prohibition of untouchability, characterising menstrual exclusion as a form of stigmatisation comparable to caste-based untouchability and constitutionally prohibited as such.³⁹ Malhotra J.'s dissent argued that judicial review of religious-customary practices should be limited and that the Court should defer to community self-determination.⁴⁰

³⁸ Sabarimala, (2019) 11 SCC 1 (India).

³⁹ Sabarimala, (2019) 11 SCC 1 (India) (Chandrachud, J., concurring); see also id. (Misra, C.J.I., & Khanwilkar, J.); id. (Nariman, J., concurring).

⁴⁰ Sabarimala, (2019) 11 SCC 1 (India) (Malhotra, J., dissenting).

The Sabarimala judgments have been the subject of substantial scholarly comment, much of it focused on the essential-religious-practice doctrine and its limits. The menstrual-justice analytic angle has been less developed. Three observations are doctrinally important. First, Sabarimala established that menstrual exclusion can be constitutionally evaluated: religious-customary practice is not insulated from rights review when the practice engages equality, dignity, and non-discrimination. This is a foundational holding for menstrual-justice doctrine. Second, Chandrachud J.'s Article 17 move is interpretively significant beyond Sabarimala. If menstrual exclusion is a form of stigmatisation comparable to untouchability, then the Article 17 prohibition reaches menstrual-exclusionary practices beyond temple entry, including workplace exclusions, food-preparation exclusions, and the menstrual taboos documented in Part III. The Article 17 reading has not been developed in subsequent litigation in this register, and the doctrinal opportunity remains open. Third, Sabarimala is doctrinally limited. The judgment addresses one practice in one temple. The general question, whether menstrual exclusion as a structural feature of Indian religious-cultural life is constitutionally permissible, was not before the Court and was not decided. The Sabarimala holding is necessary but not sufficient for the menstrual-justice doctrine the Constitution makes available.

The Article 25 argument in the menstrual-justice register is accordingly less about Sabarimala itself than about Sabarimala's interpretive afterlife. The Court has held that menstrual exclusion is justiciable, that it engages dignity and equality, and (in Chandrachud J.'s concurrence) that it may engage Article 17. The doctrinal task is to read that holding for what it commits the Court to in subsequent cases: workplace menstrual exclusion, the menstrual taboos documented in fieldwork across India, and the religious-cultural exclusions that operate outside formal temple architecture in the everyday lives of menstruators. Sabarimala began a doctrine; the doctrine has not been completed.

VIII. READING THE DOCTRINE TOGETHER: AN EMERGING INDIAN MENSTRUAL-JUSTICE JURISPRUDENCE

The argument of Parts IV through VII has been that each of the four constitutional provisions, Articles 14, 15, 21, and 25, contains interpretive resources for menstrual-justice doctrine, and that the Supreme Court has begun the doctrinal work without consolidating it. This Part reads the four threads together and articulates the shape of an emerging Indian menstrual-justice jurisprudence.

The first observation is that the four provisions operate as a doctrinal whole, not as alternatives. The menstrual-justice claim against forced hysterectomies on disabled menstruators is

simultaneously an Article 21 bodily-autonomy claim (drawing on *Suchita Srivastava*), an Article 14 substantive-equality claim (the practice operates only on a particular class of menstruators, structured by disability and institutional residence), and, given that the practice is performed in part to reduce caretaker burden, an Article 15(2) claim against discrimination on the ground of disability read with the inclusive Article 15 jurisprudence that NALSA established. The menstrual-justice claim against the policy vocabulary of 'women and girls' is an Article 14 non-recognition claim, an Article 15 indirect-discrimination claim, and an Article 21 dignity claim. The menstrual-justice claim against the statutory omission of menstruation from the Maternity Benefit Act is simultaneously an Article 14 substantive-equality claim and an Article 15(3) protective-discrimination claim. Each documented harm finds its constitutional purchase across multiple provisions, and the doctrine is most coherently developed by reading the provisions together rather than choosing among them.

The second observation is that the doctrine is held together by the substantive-equality and dignity strands of the Court's contemporary jurisprudence. Substantive equality, the move from formal classification analysis to attention to outcomes and indirect discrimination, is what makes Article 14 doctrinally useful for menstrual justice, and the same move shapes the contemporary Article 15 reading. Dignity, read through the *Puttaswamy* privacy holding, *Common Cause's* autonomy reasoning, and the Court's developing bodily-integrity jurisprudence, is what makes Article 21 doctrinally useful. Together, substantive equality and dignity are the interpretive backbone of an Indian menstrual-justice doctrine. Where the existing scoping-review literature on Indian menstrual justice has emphasised lived experience, structural intersectionality, and policy critique, the doctrinal task is to articulate how the Court's substantive-equality-and-dignity jurisprudence can absorb and respond to those substantive claims.

The third observation is that the doctrine, read in this consolidated form, makes specific demands on Indian menstrual policy. A national menstrual policy that addresses 'women and girls' is constitutionally inadequate after NALSA. A national menstrual policy that distributes products without ensuring infrastructural conditions for dignified use is constitutionally inadequate under the substantive-equality reading of Article 14. A statutory regime that omits menstruation from the labour-rights framework is constitutionally suspect under Article 15(3) read with Article 14. The continuation of forced hysterectomies on disabled menstruators in state-supervised institutions is, on a serious reading of Article 21 with *Suchita Srivastava*, constitutionally indefensible. None of these claims has been made in constitutional litigation in those precise terms. Each is doctrinally available.

The fourth observation is that the doctrine, as read here, both draws on and extends the existing Indian menstrual-justice scholarship. The structural-intersectionality move from Tibrewala maps onto Article 15's inclusive reading and Article 14's substantive-equality requirement. The life-course and policy-critique move from Manorama and Desai maps onto Article 21's developing health-and-dignity jurisprudence. The Global South categorical additions from Amery and colleagues, namely mental health, security, environment, and state power, find their constitutional homes across the four provisions: mental health under Article 21, security under Article 21 read with Articles 14 and 15, environment under Article 21's environmental-rights jurisprudence, and state power under Articles 14, 15, and 25 read together. The doctrinal articulation, in other words, does not replace the conceptual articulation; it equips it with the legal scaffolding the Indian constitutional context makes available.

IX. CONCLUSION: THREE PRIORITIES FOR DOCTRINAL DEVELOPMENT

Indian constitutional law contains the doctrinal resources for a menstrual-justice jurisprudence. The Supreme Court has begun the doctrinal work, in *Sabarimala* on Article 25 and Article 17, in *Jaya Thakur* on Article 21, in *Suchita Srivastava* on bodily autonomy with implications for disabled menstruators, and in *NALSA* on the inclusive reading of Article 15, but the work remains unconsolidated. The Indian menstrual-justice literature has done the conceptual labour but has not yet developed the constitutional scaffolding. This article has argued that the four provisions read together ground a recognisable menstrual-justice doctrine, structured by substantive equality and dignity, capable of responding to the harms the empirical literature has documented.

Three priorities for doctrinal development follow. First, the substantive-equality reading of Article 14 should be explicitly applied to menstrual-policy choices, with proportionality analysis on policy structures that produce systematically unequal outcomes for menstruators positioned differently along caste, class, gender-identity, disability, and geographic axes. Second, Article 15 should be read consistently with *NALSA* in the menstrual context: the protective-discrimination provisions in Article 15(3) extend to all menstruators, not only to cisgender women, and the dominant policy vocabulary of 'women and girls' is constitutionally inadequate. Third, Article 21's dignity-and-bodily-autonomy jurisprudence should be extended into the menstrual context with three specific priorities: the State's affirmative obligation to ensure menstrual-product access and dignified infrastructure (following *Jaya Thakur*), the constitutional prohibition on forced hysterectomies as menstrual management (following

Suchita Srivastava), and the recognition of menstrual experience as constitutionally protected under the dignity-and-autonomy guarantee.

Whether the Court will develop the doctrine in this direction depends on litigation that the Indian bar and the Indian menstrual-justice movement have not yet brought in these precise terms. The doctrinal availability of the argument is one thing; its mobilisation is another. The argument of this article is that the doctrinal resources are present, that the Court's existing jurisprudence has already done some of the necessary work, and that the systematic articulation of an Indian menstrual-justice jurisprudence under Articles 14, 15, 21, and 25 is a legitimate and overdue task for Indian constitutional scholarship. The literature mapped in the recent scoping review identifies the absence of this constitutional argument as a central gap. This article has attempted, in outline, to fill it.
