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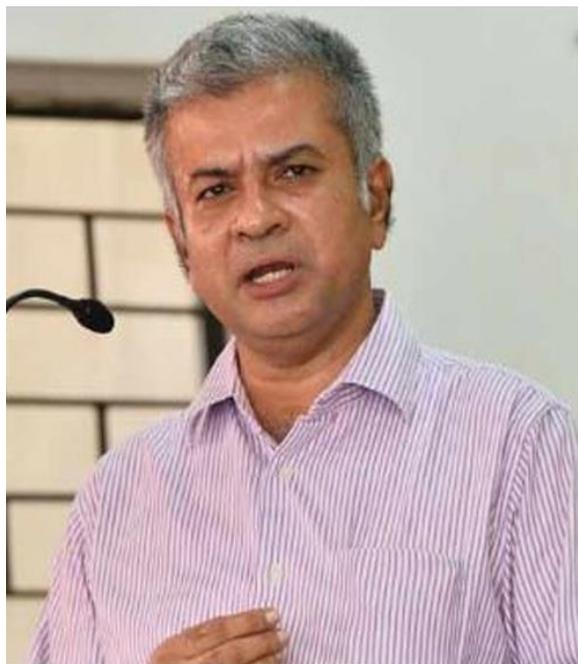
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E.MBA, LL.M, Ph.D, PGDSAPM

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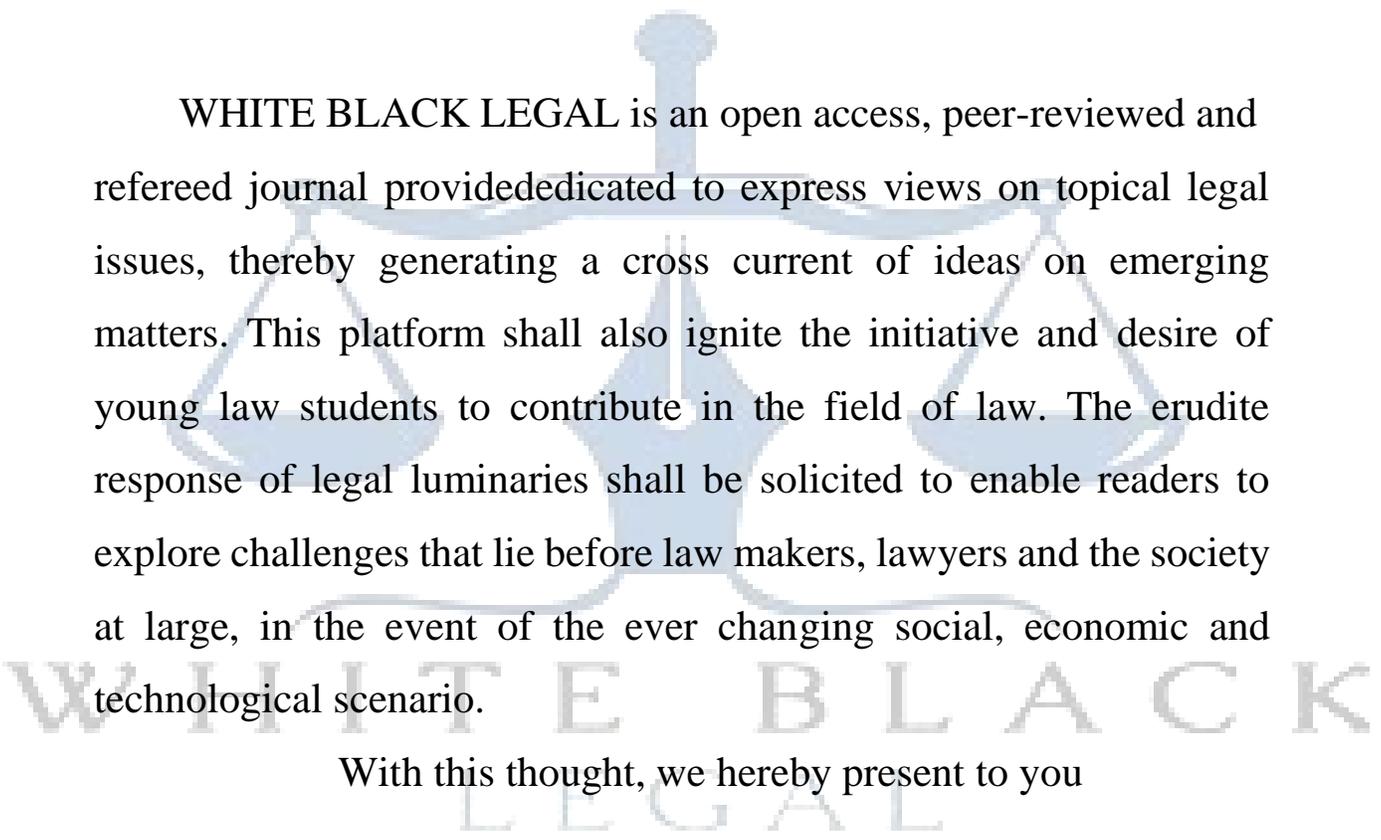
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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **MENSTRUAL HEALTH AND LAW IN INDIA**

AUTHORED BY - MIRUTHULA A & AMRUTHA K,  
Student at Sastra Deemed University, Thanjavur – School of Law

## **Abstract:**

Period health is truly one of the most important aspects of gender equality and human rights in India. The Constitution of India guarantees the right to equality and dignity.<sup>[1]</sup> Despite the same, there exists legal gaps, misinformation and cultural stigma that have led to silence around the discussion of period health. The importance of menstrual health and law in India is to be examined in this article by analyzing constitutional provisions, judicial intervention, schemes by the government, and the debates around menstrual leave. Plus, the issues of period poverty, marginalization and structural barriers are also discussed. The article proposes reforms centered on equality, dignity and accessibility for all menstruating persons in India by using comparative international frameworks.

## **Introduction:**

Women and girls make up half the population of India. Menstruation is a natural, biological process and yet continues to be surrounded by stigma, discrimination and silence. Menstrual health is often overlooked when discussing the aspect of human rights and gender inequality in India. The number of women who menstruate in India amounts to over 355 million, but a large proportion still face substantial barriers to maintaining menstrual hygiene with comfort, safety, and dignity. A girl in Bihar may still be using old cloth as pads cost ₹50 and her family earns only ₹250/day.<sup>[3]</sup> This is an important concern that needs to be looked into. We can not only address the health concerns of women but also sanitation and reproductive rights by ensuring hygienic menstrual management, as it is central to upholding women's dignity and well-being. Misguided cultural beliefs and traditional practices continue to marginalize menstruating girls and women, and thus ultimately reinforce gender inequality and denying their basic rights. By having a proper understanding of proper use of sanitary products and hygienic practices, menstruation can be managed safely. We need to promote open conversations about menstruation and also ensure that

people across all regions have access to accurate information.

### **Understanding Menstrual Health:**

Menstrual health means “a state of complete physical, mental, and social well – being and not merely the absence of disease or infirmity, in relation to the menstrual cycle”.<sup>[4]</sup>

In 2021, the Global Menstrual Collective established a comprehensive definition of menstrual health.<sup>[4]</sup> New indicators have been incorporated into household surveys for national and global monitoring of water, sanitation, and hygiene (WASH).

UNICEF identifies seven essential needs: awareness of menstruation before menarche, access to menstrual materials, availability of sufficient menstrual materials, access to a private place to change menstrual materials at home, no trouble in participating in activities during menstruation, such as school, work and social activities, the ability to manage menstruation-related pain effectively, and comfort in seeking help from healthcare providers for menstrual problems.<sup>[5]</sup>

The UNICEF ‘Guidance on Menstrual Health and Hygiene’ provides a comprehensive framework for designing and supporting programs relating to Menstrual Health and Hygiene (MHH).<sup>[5]</sup> The guidance recognizes MHH as essential in achieving global objectives in education, health, and gender equality, and frames it within the broader context of human rights and the Sustainable Development Goals (SDGs). The guidance also outlines UNICEF’s commitment to advancing MHH.

UNICEF notes 1) that social support is necessary for ending discrimination and menstrual stigma, 2) we must ensure that girls and women learn to manage menstruation properly, 3) facilities and services includes providing gender-responsive WASH facilities (Water, Sanitation and Hygiene), 4) proper menstrual materials and supplies ensuring that there is access to appropriate and affordable menstrual materials and supportive supplies.<sup>[5]</sup>

A World Health Organization (WHO) statement given during a Human Rights Council panel discussion on June 22, 2022<sup>[6]</sup> asserted that Menstrual Health must be recognized as a fundamental

health and human rights issue, rather than merely a hygiene concern. The WHO recommends: menstruation to be recognized as a multidimensional health issue encompassing physical, psychological, and social aspects, it is to be ensured that menstruators have access to accurate information, sanitary products, adequate facilities, and empathetic care, and there should be integration of these needs into sectoral plans and budgets.<sup>[6]</sup>

Also, the WHO encourages governments to move beyond improving product access to normalize menstruation, break the associated silence and stigma, and include it in broader sexual and reproductive health responses, especially during humanitarian crises.

### **Constitutional provisions related to menstrual health in India:**

The Constitution of India lacks any direct clause for any provision regarding menstrual health but it guarantees the right to equality, dignity and health. The constitutional framework recognizes that women are in need of specific protections, who might otherwise be vulnerable.

#### Article 14:

Article 14 of the Indian Constitution states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

This Article directly applies when it comes to menstrual health. Gender – based discrimination against women is very rampant and impacts women’s physical and mental well – being. Inadequate access to menstrual facilities and products and neglect of menstruation related needs creates unequal conditions that hinder the participation of girls in education, employment, and public life. If we failure to address menstrual health needs, it would amount to discrimination as it does not account for gender-specific realities. It must be ensured by the State that every menstruating individual has proper access to hygiene products, sanitation infrastructure, and awareness programs. Menstrual health, therefore, is not merely a welfare issue but a constitutional mandate in order to ensure equality and dignity.

In the landmark case of *Indian Young Lawyers Association v. State of Kerala*, it was held by the Supreme Court that women should not be denied entry into temples on the sole basis that they are menstruating as it violated the principles of equality and dignity under Articles 14, 15, 17, and 25.

<sup>[7]</sup>

### Article 15:

Article 15(1) states that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them”.

The inclusion of the term “sex” clearly indicates that the framers of the Constitution intended to address the marginalization of women. Discrimination on the basis of sex is not just based on biological differences but also extends to practices that treat women unequally and impose disadvantages on them.

Article 15(2) states that citizens shall not be subject to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, place of birth with regard to public facilities such as shops, education, and places of public resort. Barring women from entering temples or educational institutions violates this guarantee.

Article 15(3) empowers the State to make special provisions for women and children. Menstrual leave policies, free sanitary product distribution programs and menstrual awareness campaigns are examples of such provisions.

### Article 21:

This Article states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The Supreme Court has ruled that the right to life is not restricted to mere animal existence but the right to live with dignity. The Right to Health is recognized under Article 21 which indicates that inadequate access to menstrual facilities is a violation under Article 21.

The case of *Paramananda Katara v. Union of India* recognizes the obligation of the State to improve public health.<sup>[8]</sup>

The dignified existence of menstruators is violated when they are denied access to clean sanitation facilities and infrastructure. The right to dignity under Article 21 includes prevention of discrimination towards women in the name of traditions and customs and freedom from societal stigmas and taboos surrounding menstruation. Adequate access to menstrual products and infrastructure also comes under the wider ambit of right to life guaranteed under Article 21.

### Article 47:

This Directive Principle of State Policy implies the duty of the State to raise the level of nutrition

and the standard of living and to improve public health. Though this principle cannot be enforced, there is a moral obligation on the State to take measures for menstrual health management and frame policies for women for providing them with public health facilities. The 3 key ideas of Article 47 – nutrition, standard of living and public health directly relate to menstrual health and thus must be ensured by the State for the purposes of social welfare and justice.

### **Government schemes and policies on menstrual hygiene:**

1. Menstrual Hygiene Scheme:

This scheme was launched under the Ministry of Health and Family Welfare for the promotion of menstrual hygiene among adolescent girls in the age group of 10-19 in rural areas. The main objectives of this scheme are as follows:

To increase awareness on Menstrual Hygiene among adolescent girls.

To increase access to and use of high-quality sanitary napkins to adolescent girls in rural areas.

To ensure safe disposal of sanitary napkins in an environmentally friendly manner.<sup>[9]</sup>

2. Rashtriya Kishor Swasthya Karyakram:

The RKSK came from the Ministry of Health and Family Welfare to reach out to adolescents with special focus on marginalized groups. This scheme with reference to menstrual health includes counseling of adolescent girls on puberty and Menstrual Hygiene Management.<sup>[10]</sup>

3. Beti Bachao Beti Padhao: Though this scheme was not originally meant to deal with menstrual health, it has focus on creating awareness about menstrual hygiene and use of sanitary napkins.<sup>[11]</sup>

4. Swachh Bharat Abhiyan: The Ministry of Drinking Water and Sanitation created National Guidelines for Menstrual Hygiene Management for creating awareness on MHM in rural areas. These guidelines form an important part of the behavioral change programs on sanitation and hygiene.<sup>[12]</sup>

5. The Department of School Education and Literacy implemented runs a program called ‘Samagra Shiksha’, under which projects addressing menstrual health and hygiene are sanctioned in the state – level.<sup>[13]</sup> These include installation of sanitary pad vending machines, incinerators, and awareness programs which aims at promoting hygienic practices among school girls. The Ministry of Women and Child Development administers the Scheme for Adolescent Girls (SAG), one of whose key components focuses on

improving the health and nutritional status of adolescent girls while encouraging their re-enrollment in formal education.<sup>[14]</sup>

### **Menstrual Leave Laws and the Policy Debate:**

The Menstrual Leave Laws and the policies surrounding the same remain among the most controversial and highly debated topics in India.

Menstrual leave is a type of leave where girls are given the option of taking paid or unpaid leave due to their inability to attend to work.

Paid menstrual leaves can enhance workplace participation and improve gender inclusivity.

Advantages of bringing menstrual leave laws:

Menstruation is a biological process that women experience each month. With it comes a lot of physical and emotional distress. During their menstrual cycles, women go through physical pain, fatigue and emotional fluctuations. Acknowledging menstrual leave promotes a healthy and gender – inclusive work environment. Girls are discriminated against in the name of culture norms. The social stigma and taboo surrounding menstruation can be reduced by promoting menstrual leave. It creates a positive environment encouraging clarity and openness to discuss the problems endured by women and ensure acceptance and awareness in professional settings. Discomfort faced by women during menstruation can result in their reduced participation and absence in work. Providing paid menstrual leave gives a choice to women to opt for the same if they face severe pain and can thus reduce overall absenteeism and prevent them from taking unplanned sick leaves for menstruation related issues. Productivity can be improved in the workplace when women are given the opportunity to rest and recover from their periods. They are likely to be more productive and concentrated when they are back at work. Acknowledging period health as a valid issue can enhance general health and convenience of women workers, which can ultimately result in greater job satisfaction and retention. Menstrual leave can contribute to a better work life balance as it helps women manage their professional responsibilities without compromising their health needs.

### Arguments against menstrual leave:

1. One of the most important arguments against providing for menstrual leaves is regarding the gender bias associated with it. If these policies are not put in place with real care, it might lead to strengthening of old gender biases and stereotypes. It can lead to more discrimination against women in employment, promotions and other career advancements.
2. There is a possibility of negative beliefs or stigma involved in the taking of menstrual leave. This can lead to discouragement among women to opt for this kind of leave.
3. The employers can experience difficulties in framing work schedules and maintaining business continuity especially in organizations with lesser number of employees or where the workplace is mainly driven by women.
4. Menstrual leaves need to be properly funded. If not, it could raise the overall cost of hiring women.
5. Menstrual leave policies might not reach everyone they should. Women working in informal sectors often get left out of the benefits entirely.

There is no law governing menstrual leave in India and also there is no centralized guidance for 'paid menstruation leave' in India.

Draft Menstrual Hygiene Policy 2023: It recognizes the need to tackle the problem of gender discrimination and make an enabling working environment which is supportive of menstrual leaves and work from home arrangements.<sup>[2]</sup>

The Right of Women to Menstrual Leave and Free Access to Period health Products Bill, 2022: A private member bill that seeks to introduce paid menstrual leave of three days in any government - registered establishment.<sup>[15]</sup>

At the state level:

Bihar: In 1992, the Bihar government brought in a rule that provided female workers with two days of paid leave every month for reasons related to menstruation.<sup>[16]</sup>

Kerala: In 2023, the government of Kerala gave period leave to female students in all the state universities falling under the Department of Higher Education.<sup>[17]</sup>

Karnataka: The Menstrual Leave Policy 2025, which gives women employees throughout the state one paid leave day each month, has been conditionally approved by the Karnataka Cabinet.<sup>[18]</sup>

Although this policy has been authorized, it is still in effect until the official government notification is issued. This is to support workplace inclusion and protect the welfare of female employees. Women who work in government offices, the apparel industry, multinational corporations, IT businesses, and other private sector organizations throughout the state are covered by the policy.

### **Judicial Intervention:**

The Supreme Court of India has not directly given any rule on the Menstrual leave policies, but it has affirmed the right to health and dignity under Article 21 of the Indian Constitution which talks about right to life and personal liberty.

There are few case laws which directs the Government to grant menstrual leave to women.

In the case of *Shailendra Mani Tripathi v. Union of India*<sup>[19]</sup>, it was held that the jurisdiction under Article 32 of the Constitution of India has been invoked for directing the Union Government, the States and the Union Territories to implement policies for the grant of menstrual leave to women under the Maternity Benefit Act, 1961.

Very recently, the Supreme Court has asked the Central Government to frame a model policy on menstrual leave for female employees. Now it is within the realm of the Central Government to bring a Central Legislation which provides menstrual leave for women employees.<sup>[20]</sup>

### **Period Poverty - A Legal and Social Challenge:**

Period poverty means the many struggles women encounter in accessing or paying for menstrual products. It is also used to describe the absence of knowledge regarding the topic. This further entrenches ancient traditions, customs and dogmatic ideology surrounding periods.

According to statistics, a fifth of girls end up missing school each year due to inadequate access to sanitary products.<sup>[21]</sup> For those who remain in school, 40% are forced to miss classes on their period days<sup>[21]</sup> that drastically affects their studies.

Menstruation is still considered a taboo and 'dirty' in most areas and misinformation regarding the

topic is widespread. All such issues are further worsened due to the financial limitations faced by women belonging to poor families.

Statistics indicate that nearly 22% of Indian women continue to wear menstrual clothes during their periods.<sup>[21]</sup> Even products such as tampons are used only by approximately 1.7% of women.<sup>[21]</sup> The usage of sanitary napkins is found to be positively correlated with the income level of families. In the poorest households, only about 53% of women have hygienic sanitary products.<sup>[21]</sup>

There are no decent toilet facilities, sanitary materials or water. Most government schools lack toilets. The issue for so many teenage menstruators is compounded by the absence of sanitary facilities. There can be schools with more than 200 girls still lacking proper toilets and clean water facilities.

It is indicated that women who have had more than 12 years of education are most likely to practice hygienic means during menstruation.<sup>[21]</sup>

Lack of awareness regarding menstruation is also one of the reasons for the same. All of these realities demonstrate the severity of the issue of period poverty in India. It is directly connected with the affordability of individuals, the public infrastructure, education, and awareness about the issue in the society.

This can be prevented by challenging the existing taboo, encouraging conversations around women menstruation, bringing policy changes and promoting sustainable alternatives.

### **Barriers faced by Rural Communities:**

Injustices to women come in various ways, ranging from restricted availability of menstrual products to entrenched stigmas and taboos around menstruation.

Most rural communities lack even basic shops, and hence women are unable to buy sanitary napkins. Also, the products are very costly when compared to the rural household's average

income and women are often compelled to use cloth, rags, and other unsafe materials. Not only does this carry very serious health risks, including infections and fertility issues, but also adds to discomfort and decreased life quality during menstruation.<sup>[22]</sup>

Menstrual education is often scarce or just entirely lacking in rural areas. Cultural values can render menstruation a forbidden topic, keeping it away from open communication and a barrier to knowledge. Lack of information can lead to unsafe hygiene and enhance feelings of shame and fear about menstruation. It is viewed by many in rural areas as something dirty or unclean. The customs and practices not only intensify the perception that menstruation is something to be ashamed of but also restricts women's social, educational, and economic opportunities.<sup>[23]</sup>

The inability to handle menstruation efficiently may result in school absenteeism among girls, which contributes to increased dropout rates and lower levels of education. For women, menstrual problems can result in loss of workdays, directly reducing their earnings and financial independence.

Rural health facilities usually rarely have enough resources and trained staff to deliver quality reproductive and period health care. Also, for those in rural settings, insufficient clean water and sanitation facilities render it difficult to take care of menstruation in a clear manner. In addition to presenting health hazards, these conditions also cause menstruation individuals to suffer from anxiety and stress.

To fight against these injustices, it is important to get involved with the local communities and empower them and enable them to drive change.

### **Comparative Legal Perspectives:**

These global models show varied approaches:

1. Spain:

Spain became the first European country to come up with an official menstrual leave policy. According to the bill passed by the Spanish parliament, women in the country will be permitted to take three days of sick leave “in case of incapacitating menstruation”.<sup>[24]</sup>

2. Indonesia:

Indonesia has operated under a menstrual leave policy since 1948. The policy was re-established in 2003 according to the Labour Act No.13. The policy of the country offers women the right to get two days off each month during menstruation.<sup>[24]</sup>

3. Japan:

Japan's menstrual policy began in 1947. The policy states that women will receive a day off when they are menstruating.<sup>[24]</sup>

4. South Korea:

South Korea menstrual leave law was established in the year 2001. According to the policy, women should be given a day off every month during their menstruation.<sup>[24]</sup>

5. Taiwan:

In Taiwan, the menstrual leave policy is granted by The Gender Equality in Employment Law of Taiwan. The law became available in 2002. The policy grants three-day leave for women on a half-salary.<sup>[24]</sup>

6. Vietnam:

Decree 145/2020 provides minimum 3 days per month of negotiated leave and 30 minutes daily breaks that are not fully paid.<sup>[25]</sup>

7. Zambia:

According to the policy, one day leave is given to women employees, once a month during menstruation. The policy came into operation in the year 2015.<sup>[24]</sup>

### **Recommendations for Legal Reform in India:**

1. Adopt menstrual education for all kids before puberty.
2. Offer free or subsidized sanitary products through schools.
3. Upgrade WASH facilities with gender - separated toilets and waste management.
4. Drive awareness campaigns through mass media and community intervention.
5. Provide support for sustainable options such as menstrual cups and cloth pads.
6. Incorporate menstrual rights in reproductive and public health legislation.
7. Mobilize corporate and NGO partnerships for rural outreach on menstruation. <sup>[5][6]</sup>

## Conclusion:

Period health is a core piece of equality, dignity, and human rights. Articles 14, 15, and 21 of the Constitution form a basis for the same, but recurring stigma, weak infrastructure, and policy weaknesses still impede menstrual equity. Government schemes such as the National MHM Guidelines, Samagra Shiksha, and the Scheme for Adolescent Girls represent advancements, but issues like period poverty and social exclusion persist. There needs to be a rights – oriented strategy that provides access to information, products, and enabling environments. Menstrual hygiene needs to be normalized through awareness, inclusion, and legal transformation in order to turn it from a cause of stigma to an issue of empowerment and equality.

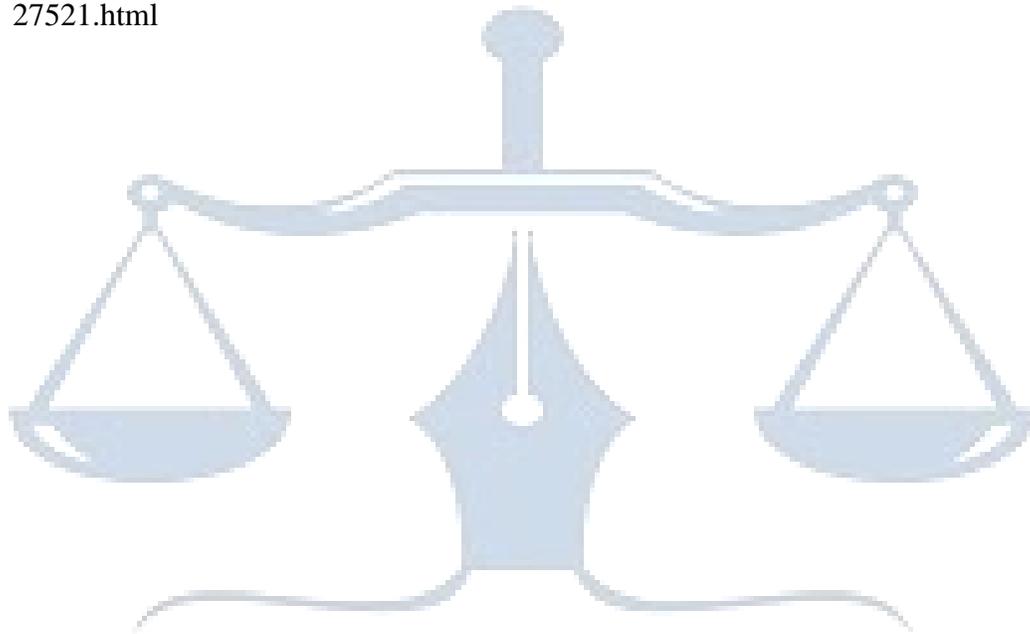
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