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TACKLING PERIOD POVERTY: A COMMENTARY ON SCOTLAND'S FREE PERIOD

PRODUCTS BILL

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ABSTRACT

Menstruation is a natural phenomenon experienced by every woman in her lifetime. Maintaining menstrual health and hygiene is of utmost importance. However, this luxury is not available to every female. Period poverty results in a lack of access to safe and hygienic menstrual products. This, in turn, creates several other issues which ultimately affect women's rights to health, education, work and dignity.

On 24th November 2020, Scotland unanimously passed The Period Products (Free Provision) (Scotland) Bill which aspires to provide period products free of charge universally to persons living in Scotland. With this, Scotland becomes the first country in the world to strive for the abolishment of period poverty and to guarantee menstrual equity.

The given legislative commentary seeks to analyse the various provisions of the law to determine its positive impacts. The Bill's Policy Memorandum is appraised to shed light on the rationale behind the introduction of the Bill. Further, the commentary evaluates how such a law is in keeping with Scotland's commitments under international human rights law. Finally, it describes how this law is not only beneficial legally but also socially, and encourages other nations to take a similar step to further the cause of women's rights and empowerment.

INTRODUCTION

Stigmatisation concerning menstruation has been observed since time immemorial. It is paradoxical how motherhood is glorified; yet menstruation, a phenomenon that is linked to motherhood and fertility, is frowned upon.² Menstruation is much more than a mere

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² Archana Patkar, *Celebrating Womanhood: Break the Silence!* 20 (Water Supply and Sanitation Collaborative Council ed., 2013), [www.wsscc.org/sites/default/files/content/Research article files/mhm - celebrating womanhood final](http://www.wsscc.org/sites/default/files/content/Research%20article%20files/mhm%20-%20celebrating%20womanhood%20final.pdf)

physiological process; it tends to affect a woman's physical and social well-being as well. Conversely, how a woman deals with menstruation depends on various socio-economic factors like the financial ability to purchase menstrual products. That every woman bleeds is a truth universally acknowledged; however, access to hygienic period products is not unconditionally granted.

Period poverty has been defined as the lack of access to safe and hygienic menstrual products.³ Most women belonging to low-income backgrounds face this issue globally. Financial constraints, along with the increased costs of pads, tampons and pain medication, prevent women from being able to purchase these materials. Period poverty has a severe impact on several human rights. It affects women's right to health and dignity, and harms their educational and economic opportunities. All this, in turn, perpetuates discrimination against them in society.⁴

Amidst the coronavirus pandemic last year, Scotland took a major step to tackle this issue. On 24th November 2020, the Scottish Parliament unanimously passed *The Period Products (Free Provision) (Scotland) Bill* ('the Bill'), which aims to provide period products free of charge.⁵ Thus, Scotland became the first country in the world to take such a historic step in order to end period poverty. The following legislative commentary aims to analyse the different provisions of this law. Moreover, it seeks to argue how such a Bill conforms to and upholds international human rights law standards, and should be enacted by other nations as well to further the cause of women empowerment.

report.pdf.

³Menstruation and human rights- Frequently asked questions, UNITED NATIONS POPULATION FUND (May 2020), <https://www.unfpa.org/menstruationfaq#Period%20Poverty>.

⁴Kerina Tull, *Period poverty impact on the economic empowerment of women*, KNOWLEDGE, EVIDENCE AND LEARNING FOR DEVELOPMENT HELPDESK REPORT (Jan. 23, 2019), https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14348/536_Period_Poverty_Impact_on_the_Economic_Empowerment_of_Women.pdf?sequence=3.

⁵Megan Specia, *Tackling 'Period Poverty,' Scotland Is 1st Nation to Make Sanitary Products Free*, THE NEW YORK TIMES (Nov. 24, 2020), <https://www.nytimes.com/2020/11/24/world/europe/scotland-free-period-products.html>.

I. THE RATIONALE BEHIND THE BILL

The Bill was introduced in the Scottish Parliament by Monica Lennon MSP, a member of the Parliament.⁶ As per the Policy Memorandum ('Memorandum') that was prepared, the main purpose of the Bill is to provide period products free of charge on a universal basis.⁷ The Memorandum explains in detail how period poverty has a grave impact on the health and well-being of menstruators. It can force menstruators to use period products longer than it is recommended, which can result in infections.⁸ Prior health conditions like endometriosis or polycystic ovary syndrome that lead to heavier or irregular periods make such products an indispensable necessity.⁹ According to a survey conducted by Plan International in the United Kingdom, one in seven girls faced difficulty in affording period products, while one in ten girls were unable to afford them.¹⁰ The problem becomes even more glaring when the stigma attached to menstruation is taken into account, which made 48% of girls aged between 14 and 21 years embarrassed by their periods.¹¹

In light of these circumstances, the Bill aims to provide access to period products in educational institutions as well as public service bodies like hospitals.¹² Further, only minimal information is required to gain access to these products, like the person's name and the first part of their postcard,¹³ which protects menstruators' right to privacy. The Memorandum suggests some innovative ways like postal delivery as an alternative to collecting these products in person that can have a wider reach in rural areas as well.¹⁴ Hence, the Bill seeks to achieve equal opportunities in order to protect and promote the human rights of all menstruators, regardless of age, gender, disability and financial backgrounds.¹⁵ It is also expected to improve social capital¹⁶ and good governance.¹⁷

⁶Claire Diamond, *Period poverty: Scotland first in world to make period products free*, BBC (Nov. 24, 2020), <https://www.bbc.com/news/uk-scotland-scotland-politics-51629880>.

⁷Period Products (Free Provision) (Scotland) Bill Policy Memorandum, paras. 4, 5 [hereinafter *Policy Memorandum*].

⁸*Id.*, para. 8

⁹*Id.*, para. 9

¹⁰*Plan International UK's Research on Period Poverty and Stigma*, PLAN INTERNATIONAL UK (Dec. 20, 2017), <https://plan-uk.org/media-centre/plan-international-uks-research-on-period-poverty-and-stigma>.

¹¹*Id.*

¹²Policy Memorandum, *supra* note 6, para. 59.

¹³*Id.*, para. 39

¹⁴*Id.*, para. 42

¹⁵*Id.* at 17-18.

¹⁶*Id.*, para. 87.

¹⁷*Id.*, para. 95.

II. AN ANALYSIS OF THE PROVISIONS OF THE BILL

Section 1 reflects on one of the most important features of the Bill. It creates an obligation upon local authorities to ensure free access to period products for all those in need.¹⁸ Bestowing accountability upon local authorities, like the municipalities, is beneficial because of the wider reach that these institutions have. They are also the first set of governments who are closest to the people, which enables them to exercise their power effectively. This creates a greater chance for proper implementation of the law in reality, as opposed to a law that merely exists on paper. Further, Section 1(2) states that such period products are to be “*sufficient according to the person’s needs*” while in Scotland. This leeway guarantees that: (a) there is no minimum limit on the number of products to be given to an individual; and (b) these products can include anything, ranging from pads to tampons to pain medication, that can provide relief to a woman. Section 1(3)(a) also allows another person to obtain such products on behalf of the designated person.

Next, Section 5 obliges education providers (including higher educational institutions)¹⁹ to provide free access to period products to all pupils and students during their entire course of education.²⁰ This provision is extremely essential as it encourages girls and women to attend educational institutions, notwithstanding the hindrance posed by menstruation. It has often been observed that in addition to the physical pain and discomfort experienced during periods, lack of sanitary products and pain medication also forces girls to stay at home during their cycle.²¹ Fear of menstrual accidents and inadequate facilities can prevent them from fully participating in school activities.²² Against this background, Section 5 is a blessing in disguise. It motivates menstruators to attend school regularly by assuring access to free period products while at school. This can go a long way in encouraging women’s education and alleviating the embarrassment and discomfort caused by menstruation.

Section 6 of the Bill makes it mandatory for specified public service bodies to provide free period products to persons within their premises. Furthermore, if such a public service body operates from multiple sites, then all these different locations need to provide access within

¹⁸Period Products (Free Provision) (Scotland) Bill 2020, § 1(1).

¹⁹*Id.*, § 5(4)(ii).

²⁰*Id.*, § 5(5).

²¹Mariana de la Roche Wills, *Just how much can menstruation affect girls’ education?*, APOLITICAL (June 17, 2020), https://apolitical.co/en/solution_article/just-how-much-can-menstruation-affect-girls-education.

²²*Id.*

their respective premises.²³ This provision is vital since it largely dispenses with problems related to menstruation during employment. Not only does this warrant that menstruators do not take any sick leaves (paid or unpaid) which may negatively affect their work-life,²⁴ it also creates a safe space that would tend to normalize conversations surrounding menstruation at the workplace. Needless to say, this positive environment can encourage more and more women to have satisfactory professional careers, leading them to be independent.

An interesting feature of the Bill is mentioned in Section 6A, which states that all free period products should be obtainable reasonably and in a manner that respects the dignity of those who seek them.²⁵ Further, there should be reasonable choices available for different types of products.²⁶ The presence of this Section indicates the farsightedness of the Scottish government in devising a law which would be independent of possible ambiguities. It is a testament to their commitment to respect and protect human rights and freedoms of menstruators,²⁷ and to ascertain that this law does not fall short of its actual purpose during execution.

The rest of the Bill deals with technical aspects, including rules and regulations pertaining to implementation. Guidance is to be provided by the Scottish Ministers to the local authorities, education providers and specified public service bodies to carry out their functions in an efficient manner under the Bill.²⁸ The Bill also makes it mandatory to consult users of these free products about which kind of period products can be acquired free of charge and how they ought to be acquired, along with the ways in which these products should be distributed.²⁹ The beauty of this law is the inclusivity it seeks to achieve, by aspiring to give free period products not only to cisgender females, but also to transgender women, non-binary women, etc. Hence, every provision of the Bill talks about providing these products to “*persons who require them*”.³⁰ Finally, the executive authorities are mandated to give

²³Period Products (Free Provision) (Scotland) Bill 2020, § 6(1B).

²⁴Marni Sommer et al., *Managing menstruation in the workplace: an overlooked issue in low- and middle-income countries*, International Journal for Equity in Health (2016), <https://equityhealthj.biomedcentral.com/track/pdf/10.1186/s12939-016-0379-8.pdf>.

²⁵Period Products (Free Provision) (Scotland) Bill 2020, § 6A(a).

²⁶*Id.*, § 6A(b).

²⁷ Inga T. Winkler & Virginia Roaf, *Taking the Bloody Linen out of the Closet: Menstrual Hygiene as a Priority for Achieving Gender Equality*, 21 CARDOZO J.L. & GENDER 1 (2014) [hereinafter *Winkler & Roaf*].

²⁸Period Products (Free Provision) (Scotland) Bill 2020, § 6B.

²⁹*Id.*, § 6D.

³⁰*Id.*, § 1(1), § 5(1), § 6(1), § 6D(4).

information to the public, about the matters falling under the Bill, thus making them accountable to the people at large.³¹

III. ADHERENCE TO INTERNATIONAL HUMAN RIGHTS LAW

Menstrual hygiene is a crucial human rights issue.³² Consequently, aspects related to menstrual health are inextricably linked to and impacted by period poverty. Elemental international human rights treaties and documents deal with the issue of menstrual hygiene in varying degrees. While this topic may not be the focal point of these conventions, it is definitely an essential underlying right given proper interpretation.

Since menstruation is an important physiological process, protecting menstrual health comes within the ambit of the ‘right to health’. Article 12 of the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’) recognizes the right of everyone “to enjoy the highest attainable standard of physical and mental health”.³³ General Comment No. 14 on the right to health specifies that this right includes enjoyment of necessary facilities, goods and services that can help one in attaining the highest possible standard of health.³⁴ The document also establishes the ‘availability, accessibility, acceptability and quality’ framework to provide access to such health-related goods and services that one may require.³⁵ A special focus on women’s right to health confirms the obligation of states parties to take adequate steps in order to promote this right.³⁶ Further, General Comment No. 22 addresses the duty of states parties to remove social misconceptions, prejudices and taboos related to menstruation so as to not obstruct women’s right to sexual and reproductive health.³⁷

The Convention on the Elimination of All Forms of Discrimination against Women (‘CEDAW’) is a principal international treaty that addresses women’s rights and gender equality. Like ICESCR, it also obliges states parties to take all measures to ensure equality in

³¹*Id.*, § 7.

³²Winkler &Roaf, *supra* note 26.

³³International Covenant on Economic, Social and Cultural Rights art. 12(1), Jan. 3, 1976, 999 U.N.T.S. 3 [hereinafter *ICESCR*].

³⁴UN Committee on Economic, Social and Cultural Rights, *General comment no. 14, Article 12, Right to health*, Aug. 11, 2000, E/C.12/2000/4, para. 9.

³⁵*Id.*, para. 12.

³⁶*Id.*, para. 21.

³⁷UN Committee on Economic, Social and Cultural Rights, *General comment no. 22, Article 12, Right to sexual and reproductive health*, May 2, 2016, E/C.12/GC/22, para. 48.

access to health care services to preserve women's health.³⁸ In General Recommendation No. 34, states were advised to create conditions to enable rural women and girls to practice menstrual hygiene and access sanitary pads.³⁹ General Recommendation No. 36 commented on women's right to education being affected due to lack of information on menstrual issues which resulted in reduced school participation.⁴⁰

Since the United Kingdom has ratified the ICESCR⁴¹ and CEDAW,⁴² Scotland observes and implements these treaty rights.⁴³ In the present case, the Bill demonstrates Scotland's commitment to duly safeguard menstrual health and prevent period poverty. Insufficient menstrual hygiene creates a host of problems, some of which have serious ramifications on women's physical and mental health.⁴⁴ Guaranteeing 'menstrual equity' by making period products universally accessible plays a vital role in protecting women's health. Not only this, but such menstrual equity also tackles other human rights affected by period poverty⁴⁵ like the right to dignity,⁴⁶ right to education,⁴⁷ right to work⁴⁸, right to non-discrimination⁴⁹ and gender equality.⁵⁰ Hence, the comprehensiveness of the Bill should be applauded for its conformity with international human rights law standards in defending women's rights and promoting empowerment.

³⁸Convention on the Elimination of All Forms of Discrimination against Women art. 12(1), Sept. 3, 1981, 1249 U.N.T.S. 13 [hereinafter *CEDAW*].

³⁹UN Committee on the Elimination of Discrimination against Women, *General recommendation no. 34 on the rights of rural women*, Mar. 4, 2016, CEDAW/C/GC/34, para. 85(b).

⁴⁰UN Committee on the Elimination of Discrimination against Women, *General recommendation no. 36 on the right of girls and women to education*, Nov. 16, 2017, CEDAW/C/GC/36, para. 30.

⁴¹*Ratification Status for United Kingdom of Great Britain and Northern Ireland*, UN TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=185.

⁴²*CEDAW: a superhero for women in Scotland*, ENGENDER, <https://www.engender.org.uk/content/cedaw/>.

⁴³*Human rights*, SCOTTISH GOVERNMENT, <https://www.gov.scot/policies/human-rights/our-international-obligations/>.

⁴⁴*Menstrual Hygiene a Human Rights Issue*, HUMAN RIGHTS WATCH (Aug. 27, 2017, 12:01 AM), <https://www.hrw.org/news/2017/08/27/menstrual-hygiene-human-rights-issue>.

⁴⁵Veronicah Kiende, *Examining Period Poverty*, UAB INSTITUTE FOR HUMAN RIGHTS BLOG (Nov. 11, 2019), <https://sites.uab.edu/humanrights/2019/11/11/examining-period-poverty/>.

⁴⁶UN G.A. Res. 217 (III) A art. 1, Universal Declaration of Human Rights (Dec. 10, 1948); International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *ICCPR*].

⁴⁷ICESCR, *supra* note 32, art. 13; CEDAW, *supra* note 37, art. 10.

⁴⁸ICESCR, *supra* note 32, art. 6(1); CEDAW, *supra* note 37, art. 11(1).

⁴⁹ICCPR, *supra* note 45, arts. 2(1), 26; ICESCR, *supra* note 32, art. 2(2).

⁵⁰ CEDAW, *supra* note 37, arts. 3, 5(a).

CONCLUSION

Needless to say, this law is a welcome change among circles advocating for an end to period poverty. By shedding light on the social consequences pertaining to menstruation and attempting to change the societal outlook towards it, the positive impacts of the Bill extend beyond simply preserving the legal rights of menstruators. It cannot be denied that the phenomenon of menstruation leads to the social exclusion of females due to the surrounding stigmas and prejudices attached to it. In such a scenario, when the Parliament actively passes a law providing free menstrual products, conversations related to menstruation increase and it is no longer considered to be shameful or taboo. Apart from making women comfortable, such a transition can also make society more sensitive to the struggles of the fairer sex in order to promote mutual respect and prevent discrimination based on gender.

It can be said that the elimination of period poverty and access to menstrual products is at the intersection of UN Sustainable Goals 4 (quality education) and 5 (gender equality).⁵¹Hence, other countries may also take a lesson from Scotland and try to replicate such a Bill within their own territories to abolish period poverty and support women's rights.

The Bill, in its present form, seems quite promising. This is not to say that problems may not be encountered at later stages during implementation. As is the case with any new law that is made, its execution will not be completely easy. However, since this is the first time in the world that such a law has been made, its execution can help in identifying possible lacunae that were overlooked in order to give a better idea to the government and lawmakers for the future. Nonetheless, the careful deliberation of the Scottish Parliament in drafting and adopting the Bill is highly commendable. One can only hope that other nations will soon follow suit in this aspect.

⁵¹İlayda Eskitaşcıoğlu, *Access to Menstrual Products is a Constitutional Right. Period.*, VERFASSUNGSBLOG (Dec. 5, 2019), <https://verfassungsblog.de/access-to-menstrual-products-is-a-constitutional-right-period/>.