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Menstrual Leave: Examining the Global Policies and the Legal Framework in India

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Menstruation is a biological phenomenon, which occurs monthly in women and children. The management of menstruation at work, however, is one of the most ignored problems that need immediate help and attention since it impairs women's productivity and performance. Menstrual leave as a legal entitlement would not only provide menstrual women with much-needed relief, but it would also help to eradicate the social stigma associated with menstruation. Women's health, workforce participation, and gender equity at work are some of the issues that menstrual leave brings up. This article talks about how the word 'menstruation' is still considered taboo in India and how it originated from ancient religious sacred texts like Manusmriti and Rig-Veda. It also states the present status of menstrual leave policies in India and in other global countries like Japan, Spain, etc. It further analyzes the implication of constitutional rights and the affirmative action provisions which clarifies that menstrual leave can be implemented by the state without any injustice and biased practices. A critical review of the pros, cons, and the need for implementing the menstrual leave policies is stated in the text for a better understanding of the concept of menstrual leave Implications.

Keywords: *menstruation, menstrual leave policies, taboo, period leave, women's health.*

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 rarely seen, except privately by women.”

- Judy Grahn

Menstruation is a natural biological phenomenon that occurs monthly to over 1.8 billion girls and women of reproductive age¹. It is a monthly cycle in which the “normal discharge of blood and tissue from the uterine lining through the vagina occurs as part of a woman's monthly menstrual cycle”². It is one of the signs of the beginning of puberty in females and it generally begins between the age of 9 to 15 years old. Throughout their menstrual cycle, women feel varied degrees of physical pain and agony and hormonal changes that cause mood swings.

The idea of menstruation is still viewed as a social taboo in today's world due to the unwanted discomfort, humiliation, poverty, and illiteracy among the people. As women are considered the ‘second sex’ they have been disregarded for many benefits and opportunities due to various reasons and menstrual taboos are one of the reasons, and this affects the mental, physical, and emotional well-being of the women. Living in a society where patriarchy is prevalent menstruation is still viewed as filthy, unclean, and impure. Menstruation is still viewed as taboo in many communities, despite significant advancements in women's empowerment in contemporary times, such as their growing involvement in a variety of employment sectors. Unfortunately, most nations still do not recognize menstruation leave as a legal right. As a result, menstrual women frequently have to go to work while in pain or discomfort, which can harm their productivity and health.

Menstrual leave as a legal right would not only bring much-needed respite to menstruating women but would also assist to remove the social shame associated with menstruation. It would

¹ Jane Wilbur et al., ‘Systematic Review of Menstrual Hygiene Management Requirements, Its Barriers and Strategies for Disabled People’ (2019) 14(2) PLOS ONE Journal <[10.1371/journal.pone.0210974](https://doi.org/10.1371/journal.pone.0210974)> accessed 10 April 2023

² ‘About Menstruation’ (NICHD, 31 January 2017)

<<https://www.nichd.nih.gov/health/topics/menstruation/conditioninfo>> accessed 10 April 2023

raise awareness of the biological and physiological facets of the menstrual cycle, as well as encourage open and honest discussions about it. This, in turn, may help to minimize the prejudice and humiliation that menstruation people frequently endure. Additionally, by addressing the special requirements and experiences of women, recognizing the need for menstruation leave in the workplace will advance gender equality and equity. Also, it would aid in dispelling gender-based preconceptions that associate menstruation with inferiority or weakness. Ultimately, establishing menstruation leave as a legal right would be a big step toward building a more diverse and just society.

ORIGIN OF THE 'TABOO' IN INDIA

This social taboo regarding the menstrual health of women is not a contemporary issue, it dates to the ancient Indian traditional texts which were considered sacred by the people. Two of the most important texts Manusmriti and The Rig Veda deal with how women should be treated while she is on their periods and states the inequalities faced by women during their menstrual cycle. Wendy Doniger O'Flaherty asserts firmly that "The Rig Veda is a book by Men about male concerns in a world dominated by men; one of the concerns is women, who appear throughout the hymns as objects, though seldom as subjects"³.

The code of conduct written in Manusmriti sow the seed for the social stigma attached to the word 'menstruation' from generations and has negatively affected women socially and economically. It states "For or the wisdom, energy, strength, sight, and vitality of a man who approaches a woman covered with menstrual excretions, utterly perish. If he avoids her, while she is in that condition, his wisdom, energy, strength, sight, and vitality will increase. that at which the slayer of a learned Brahmana has looked, nor that which has been touched by a menstruating woman, nor that which has been pecked at by birds or touched by a dog". This code of conduct signifies the patriarchal nature of the society while law-making in ancient India. Women were treated merely as objects and menstruating women were compared to animals and advised men to avoid menstruating women to increase their vitality. These verses show that

³ Elizabeth M Whelan, 'Attitudes toward Menstruation' (1975) 6(4) International Committee on Applied Research In Population <<https://doi.org/10.2307/1964817>> accessed 10 April 2023

these biased practices weren't done to protect women rather they were done to protect males and their prevailing patriarchy.

Janet Chawla in her research article "Mythic Origins of Menstrual Taboo in Rig Veda"⁴ states her empirical data of the two interviews which she conducted in Delhi and assembled the accounts of women from various social groups on their periods, pregnancy, births, and parenting experiences. One thing which was highlighted was "ritual pollution" that "almost every woman spoke of her body as being considered as unclean and impure during the time of menstruation and post-partum. Women were told of being prohibited from going to Mandir, Masjid, or Gurdwara to perform or participate in pujas. Not reading holy books as well as the importance of bathing rituals after menstruation. One Basti woman described the blood of childbirth as 'rook hua' (stagnant) and the placenta as 'nau mahina ka narak kund' (nine months' hell vessel)". This interview reflects the survival of profoundly rooted menstrual beliefs and behaviors in particular cultures and societies.

MENSTRUAL LEAVE POLICIES IN DIFFERENT COUNTRIES

Period leave, commonly referred to as menstrual leave, is a policy that acknowledges the difficulties and discomforts experienced by women who menstruate. Allowing this paid leave may help the women to manage their menstrual symptoms like cramps and low energy and can take care of their health without worrying much about work obligations. Depending on the business or organization, menstrual leave rules can range from a few hours to a few days in length and remuneration, and they can be paid or unpaid. Globally several countries are providing paid menstrual leave policies, like Japan, Taiwan, Indonesia, South Korea, and most recently Spain. In India, only two states provide paid menstrual leave that is Bihar and Kerela. I will focus on some examples of different countries with their policies.

⁴ Janet Chawla, 'Mythic Origins of Menstrual Taboo in Rig Veda' (1994) 29(43) Economic and Political Weekly <<https://www.jstor.org/stable/4401940>> accessed 10 April 2023

India

- Recently on 24 February 2023, Supreme Court rejected a PIL⁵ regarding menstrual leave for workers and students in India. The court referred to it as a policy issue and said that menstrual pain leave has many implications, and it can discourage companies or employers to hire female workers.
- In 1992, the then Bihar government, led by Lalu Prasad Yadav, implemented a policy to give female employees two days of paid leave every month for reasons related to menstruation. This regulation was designed to improve female employees' health and well-being while also lowering absenteeism and increasing productivity⁶.
- Recently In January 2023, Kerala Government headed by Chief Minister Pinarayi Vijayan declared that the students enrolled in colleges that fall under the purview of the State's Higher Education Department would now be eligible for menstruation and maternity leaves. The minimum attendance requirement for taking exams will be reduced for female students from the current 75% to 73%. Women students over the age of 18 years will be entitled to take up to 60 days of maternity leaves. By taking inspiration from this announcement, A Kerala school called Labour India Public School, Kottayam, took this inspiration and chose to implement a similar approach for its children on January 24 in honor of National Girl Child Day.⁷
- In 2017, Ninong Ering, a Member of Parliament from Arunachal Pradesh, proposed the Menstrual Benefits Bill, 2017 in an attempt to enact legislation for period leave at the Central level, proposing two days of menstrual leave every month to both public and private employees. The Private Member's bill is however not passed by the government.

⁵ 'SC Refuses to Entertain PIL Seeking Menstrual Pain Leave for Female Students, Working Women' (*The Indian Express*, 24 February 2023) <<https://indianexpress.com/article/india/sc-refuses-pil-menstrual-pain-leave-female-students-working-women-8464057/>> accessed 10 April 2023

⁶ Falguni Sharma, 'Lalu's Bihar to Spain – Controversial Journey of Menstrual Leave Spans Decades' (*The Print*, 23 February 2023) <<https://theprint.in/india/lalus-bihar-to-spain-controversial-journey-of-menstrual-leave-spans-decades/1394082/>> accessed 10 April 2023

⁷ *Ibid*

He reintroduced the same Bill again in 2022 on the opening day of the Arunachal Pradesh Legislative Assembly's Budget Session. Nevertheless, this was not considered⁸.

- Many Companies like Zomato, Swiggy, and Byju have implemented menstrual leave policies in India. In 2020, Zomato introduced period leaves for women to foster a secure culture for both men and women at the same time. It allows all women including the transgender people working under Zomato to avail of a maximum of 10 days of paid period leave in a year⁹.
- In 2021, Swiggy introduced “a no-questions-asked, two-day paid monthly period time-off policy for all our regular female delivery partners.”¹⁰. It also introduced several other measures allowing access to vehicles, providing access to sanitary facilities, and putting in place safety precautions for female delivery partners.

Spain

- Recently in February 2023, Spain became the first European country to entitle female workers a paid menstrual leave. In Spain, women now have the right “to three days of menstrual leave a month – with the option of extending it to five days – if they experience painful periods”¹¹. Irene Montero, the equality minister of Spain said, “Without such rights, women are not full citizens”. And apart from the menstrual leave policy the legislature also enhanced the abortion and transgender rights for teenagers.

⁸ Ratna Singh, ‘Why Paid Menstrual Leave Should Be a Reality in India: Legal Experts Weigh In’ (*Bar and Bench*, 26 February 2023) <<https://www.barandbench.com/columns/why-paid-menstrual-leave-should-be-a-reality-in-india-legal-experts-weigh-in>> accessed 10 April 2023

⁹ ‘Introducing Period Leaves for Women’ (*Zomato*, 08 August 2022) <<https://www.zomato.com/blog/period-leaves>> accessed 10 April 2023

¹⁰ Peerzada Abrar and Neha Alawadhi, ‘Swiggy to Give 2-Day Paid Monthly Period Leave to Female Delivery Partners’ (*Business Standard*, 21 October 2021) <https://www.business-standard.com/article/companies/swiggy-to-give-2-day-paid-monthly-period-leave-to-female-delivery-partners-121102001350_1.html> accessed 11 April 2023

¹¹ Niha Masih, ‘Need Time off Work for Period Pain? These Countries Offer “Menstrual Leave’ (*The Washington Post*, 17 February 2023) <<https://www.washingtonpost.com/world/2023/02/17/spain-paid-menstrual-leave-countries/>> accessed 10 April 2023

Japan

- It is the first country in Asia to introduce menstrual leave. It introduced this as part of its labor laws in 1947. Under Article 68 of the Labour Law¹², employers are prohibited from requesting women who are undergoing period pain work on those days.
- The fight for menstrual leave in Japan dates to 1928 when the Tokyo Municipal Bus Company did not provide toilets for female conductors throughout the day. Women were unable to work if they did not have access to bathrooms and sanitary products¹³. The right to a paid menstruation leaves law was pushed for and gained by labor union lobbyists for women.
- However, the outcomes of the law are discouraging, those who oppose it have used it to argue against equal opportunity and pay for female employees, while some employers have acknowledged that they are less inclined to hire women since paid leave increases workplace expenses.

Indonesia

- It is the second Asian country after Japan to legalize paid menstrual leaves for women. The policy enacted was established in 1948 and amended in 2003. It states that “female workers experiencing menstrual pain are not obliged to work on the first two days of their cycle”.
- This regulation is consistent with a culture that seems to promote time spent away from work because Indonesia often provides workers with extended leave. Indonesian employees have fifteen paid public holidays each year.

¹² Moor Lisandra, ‘Japan’s Menstrual Leave Is Often Unpaid – and Unused’ (*Tokyo Weekender*, 19 May 2022) <<https://www.tokyoweekender.com/japan-life/news-and-opinion/japans-menstrual-leave-is-often-unpaid-and-unused/>> accessed 10 April 2023

¹³ Maham Javaid, ‘Asian Countries Have Been Offering Females Paid Menstrual Leave for Almost 70 Years’ (*Medium*, 02 March 2016) <<https://timeline.com/asian-countries-have-been-offering-females-paid-menstrual-leave-for-almost-70-years-401056aeb1ec>> accessed 10 April 2023

Zambia

- It has a provision in its labor code that female employees can take one day of leave per month. This provision can be availed by stating the reason for period leave as 'Mother's Day' even if you don't have a child.
- The main reason for enacting the provision of Mother's Day is because this policy reinforces the idea that childrearing and raising children is a significant role of womanhood in Zambia's mainly patriarchal society. The lawyer Linda Kasonde states, "The reason why Mother's Day is important within the Zambian context is that it recognizes that women are the primary caregivers in our society - regardless of whether they are married or not".

CONSTITUTIONALITY OF MENSTRUAL LEAVE IN INDIA

The adoption of menstrual leave laws has been the subject of discussion, with some contending that it is discriminatory towards males and contravenes the ideals of equality. Yet it's important to know that the Indian Constitution has affirmative action clauses to eliminate prejudice against certain groups, such as women and children.

Article 14 of the Constitution in India¹⁴ guarantees the "Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth". Article 14 provides negative as well as positive duty on the state to make laws accordingly. The negative duty of the state implies that it should not intervene with the rights of the individuals whereas, the positive duty of the state implies that it should make laws that protect the individuals who need them. Thus, the idea and tenet of Article 14 do not amount to laws being uniform and universal all the time to all the people, but rather it states that laws may be made available to individuals and classes if there are unique circumstances or reasons why they should be introduced, or if such laws will be advantageous to society. Thus, in the case of

¹⁴ Constitution of India 1950, art 14

menstrual leave women should be treated differently from men since menstrual leave is a justifiable reason for making additional laws for women.

Article 15 of the Indian Constitution¹⁵ states, “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth” and clause 3 of this article states that “Nothing in this article shall prevent the State from making any special provision for women and children”. The provision of clause 3 gives power to the states or the government to enact any law that would benefit women and children. Thus, the Centre has the authority to make laws and policies regarding menstrual leave for the upliftment of women and children in the country. Moreover, by Article 15(3), the Centre has approved several laws and regulations including the Sexual Harassment at Workplace Act, the Maternity Benefit (Amendment) Act 2017, and many other legislations related to women and child empowerment.

Article 42 of the Indian Constitution¹⁶ is one of the clauses that may be used to support a policy that gives women access to period leave. It is a part of the Directive Principle State Policy which states that “The State shall make provision for securing just and humane conditions of work and for maternity relief.” Article 42 can be used to support the granting of menstrual leave to women as an important step toward creating fair and humane working conditions for women. For many women, menstruation may be a difficult and painful time, which can have an impact on their well-being and productivity at work. By granting menstrual leave, the state may assist female employees in controlling their monthly symptoms and looking for their health, which may result in securing “just and humane conditions of work” for women.

Moreover, the Supreme Court in the *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*¹⁷ stated that Article 21 defines “life” as living life with human dignity rather than survival or animal existence. Due to their periods, women workers experience prejudice and humiliation, and their constitutional right to live in dignity is thereby violated. The

¹⁵ Constitution of India 1950, art 15

¹⁶ Constitution of India 1950, art 42

¹⁷ *Francis Coralie Mullin v The Administrator, Union Territory of Delhi & Ors* (1981) AIR 746

government has the right to intervene and create a policy to forbid such acts, to stop the suffering of such female employees, and to prevent constitutional rights from being violated.

IS IT APPROPRIATE TO PROVIDE MENSTRUAL LEAVE IN INDIA?

Pros of Menstrual Leave

A menstrual leave policy may result in increased job security for menstruators, and this is a very important merit of implementing menstrual leave. In the case of Rachel Rickert, a 27-year-old model who worked for Hyundai and one day due to continuous work for three to four hours she was not able to change her tampon which led to a stain on her dress and this incident resulted in the model being fired from her position just because she was on her periods¹⁸. Therefore, if menstrual leave would be granted menstruators would be able to take time off to manage their period symptoms, and thus avoid such incidences and have a better employer-employee relationship.

Additionally, Menstrual leave can contribute to a more inclusive and supportive workplace culture. Employers may demonstrate their commitment to the well-being of their employees by acknowledging menstruation as a real health condition that demands attention, therefore boosting employee-employer relationships. This can result in a more favorable work atmosphere and increased staff morale and productivity.

It also promotes gender equality among men and women in the workplace. And equality in the workplace implies equal and just working conditions for both men and women. For example, Article 14 states the “doctrine of reasonable classification” states that a reasonable distinction must be rationally related to the goal of the legislation in question. Menstrual leave provision would be only for women at the time of menstruating and not for others.

It will reduce absenteeism and would thus increase the productivity of the workplace. Menstrual discomfort and pain are frequently associated with absences, which can have a detrimental

¹⁸ Sarah Hazlehurst, ‘This Hyundai Model Says She Was Fired After Getting Period’ (*Global Citizen*, 08 June 2017) <<https://www.globalcitizen.org/en/content/period-hyundai-menstruation-gender-equality/>> accessed 11 April 2023

effect on workplace productivity. By granting women time off for their periods, they may control their symptoms and return to work feeling more rested and focused and this may improve their likelihood of being effective and engaged in the work. As a result, both the person and the company may experience increased output and overall success.

Menstrual leave also has the potential to help a few, but all-too-often ignored, groups of people, particularly genderqueer and transgender males. Because these persons may “experience significant amounts of transphobia and other sorts of gender discrimination” when menstruating, a policy might make them feel safer. The danger of prejudice and violence may be reduced if there was a menstrual leave policy in place, allowing these people to use the leave without disclosing their menstruation status.

The last and the most important impact menstrual leave can make is by encouraging more discussions and debates surrounding the taboo related to menstruation. This increased discussion and knowledge might motivate individuals to seek medical attention if they are having problems with their menstrual health by enlightening them about proper menstrual hygiene and dispelling common myths and misconceptions about menstruation.

Cons of Menstrual Leave

One of the main arguments possessed by people and is very prominent is the abuse of the menstrual leave policy. There is a possibility that employees may abuse the policy and take unneeded time for vacation, or they might just fabricate the symptoms to take time off. This could lead to a loss of morale and trust in employer-employee relations and thus dismantle the organizational structure of the company.

The menstrual leave policy perpetuates inequality among men and women in the workplace. Men do not have such policies addressing particularly their concerns, while women have such policies as maternity leave which gives them extra leaves as compared to men and thus it is unfair for men in the workplace. However, it is equally important to note that men do not go through menstruation and the symptoms associated with it, so it is very vague to argue that they don't have a specific relief policy. At last, the goal of the state is to create a friendly

environment around the workplace and address the requirements of different groups for varied reasons, one of them being menstrual leave.

In some cases, the implementation of the menstrual leave policy may require some employees to inform their employers about their menstrual cycle and other health concerns. Some employees could feel humiliated by this, which could make them uncomfortable and embarrassed in front of their work colleagues. Moreover, discussing menstruation publicly may be viewed as improper or insulting in some cultures and countries where it is still regarded as a taboo subject. However, some countries like Zambia made this policy keeping in mind the mental harassment or privacy of the women employees and made the norm to say 'Mother's Day' as the reason for the menstrual leave issue.

Menstrual leave for women may reinforce the idea that they are too sensitive or emotional to manage the rigors of the workplace. And this policy could give the impression that hiring and keeping women as employees is more expensive due to the possibility that they need more time off work than their male counterparts. This prejudice is sometimes used to excuse paying women less than males or to outright exclude them from certain professions and this thus leads to gender discrimination in the workforce and in hiring employees.

NEED FOR IMPLEMENTATION OF MENSTRUAL LEAVE

As stated in the article above, In India the term 'menstruation' comes with a lot of social stigmas and taboos with the idea of impurity and pollution added to the person's identity while on period. Menstrual hygiene is one of the most neglected topics in India, especially the rural India. From the most recent National Family Health Survey (NFHS-5) round, data on 95,551 teenage women from rural India were examined. Just 42% of teenage women in rural India adopted sanitary practices entirely, and there were significant regional differences at the state and district levels¹⁹.

¹⁹ Aditya Singh et al., 'Menstrual Hygiene Practices among Adolescent Women in Rural India: A Cross-Sectional Study' (*BMC Public Health*, 2022) <<https://bmcpublikealth.biomedcentral.com/articles/10.1186/s12889-022-14622-7>> accessed 11 April 2023

A common criticism of period leave is that it “medicalizes a natural biological function”. Although a natural process, menstruation is accompanied by unpleasant symptoms like cramps, vomiting, and back and muscle aches. Moreover, some people may have diseases like polycystic ovarian syndrome (PCOS) or endometriosis, which can result in even worse symptoms. As per the data stated in the editorial of Indian Express “In India, 20 percent of menstruators (an inclusive term referring to women, trans men, and non-binary persons who menstruate) have PCOS and approximately 25 million suffer from endometriosis.”²⁰ In such cases implementing a day or two days leave is a much-needed viable option to protect the basic human rights of women and protect her.

“In many European and North American countries, mandatory paid paternity leaves, parental leave (shared by both parents), and remote/flexible working hours for parents with children under 12 years of age are provided. Additionally, some governments provide financial support to employers to help cover the costs of paying employees on maternity/parental leave.”²¹ This same policy can be implemented in India too by the government using providing some additional financial support to employers to incentivize them to make policies related to menstrual leave for women. Companies can be forced to implement obligatory “self-care leave” for those individuals who cannot avail of menstrual leave. Both strategies of leave should be provided with the same logistical advantage, and this will eventually help the workers to enhance their productivity.

CONCLUSION

Overall, Menstruation leave is a highly contested issue in India. While some people contend that implementing the policy will help increase job security, and productivity and reduce absenteeism among menstruators. While some argue that introducing such a policy would increase the social stigma associated with the word for generations now and portray women as the weaker sex and hence leading to an increase in gender discrimination in the workplace and

²⁰ ‘It’s Time to Act, Period: There Is No Room for Debate on Menstrual Leave’ (*The Indian Express*, 02 February 2023) <<https://indianexpress.com/article/opinion/columns/time-to-act-period-no-room-for-debate-on-menstrual-leave-8420201/>> accessed 11 April 2023

²¹ *Ibid*

in hiring employees. While the Indian government has not yet made menstruation leave mandatory for all menstruators, certain states within India and some companies have made of granting menstruation leave of one or two days per month.

The implementation of menstrual leave in India overall would serve as a great move towards the protection of the rights of women and empowering them by the ways of gender-specific laws. The introduction of this policy at the workplace will help increase productivity and destigmatize the 'taboo' related to menstruation in contemporary India. We can foster greater gender equality and inclusivity in various areas by persistently discussing and enhancing awareness about menstrual health and the predicaments encountered by women in this regard. It is crucial to acknowledge that menstruation is a regular and inherent aspect of women's lives and collaborate to construct a more encouraging and empowering atmosphere for every woman who experiences it.