

MENSTRUAL LEAVE POLICY: THE ONGOING DEBATE AND THE WAY FORWARD

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ABSTRACT

This study includes a description of the natural process of menstruation and how it is considered taboo in society. The study also describes the provisions for menstrual leave policies in countries around the globe along with providing details about the history and current status of menstrual leave policy in India. This study states about the Public Interest Litigation filed before the Supreme Court of India for a policy for menstrual leave for female workers and students in all states of India and the grounds for its dismissal. The article also provides a brief about the progressive measures taken by some of the companies in the corporate world. The write-up also mentions the arguments given by both sides making this case of menstrual leave policy a debatable topic. The article, at last, provides a way forward in this regard and what sustainable steps could be taken so that it works to benefit women's health and well-being.

Keywords: Menstruation, Leave, Policy.

INTRODUCTION

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

- John Grahn

Why menstruation is considered taboo? Why girls don't talk about periods near male members of the family? Why sanitary pads are to be wrapped in newspaper? Why girls are not allowed to go to temples and cook food during those days? When will this get over and people accept the fact that periods are part of a female's life? Inadequate WASH(water, sanitation, and hygiene) facilities can pose a major obstacle to women and girls, which in turn, has severe economic costs on their lives and on the country. In many cultures, menstruating women are considered impure and are systematically excluded from

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participating in everyday practices, such as education, employment, and cultural and religious practices.¹

Menstruation is a simple natural and healthy process for girls and women of reproductive age in which the uterus sheds blood and tissue through the vagina, often called periods in Western communities. It typically lasts for 2 to 5 days, but this varies on an individual basis.² Menstrual leave policies refer to the rules and regulations that allow workers and students to take time off during their menstrual cycle. These policies are intended to help them manage cramps, pain, fatigue and other menstrual symptoms helping them to maintain their menstrual health and well-being also aiming to reduce the social and cultural stigma surrounding it.³ As On 24 February 2023, The Hon'ble Supreme Court of India refused to entertain a Public Interest Litigation seeking menstrual leave for female students and working women across India stating that the matter fell within the policy domain and the petitioner could file a representation before the Union Ministry of Women & Child Development.⁴

PROVISIONS FOR MENSTRUAL LEAVE POLICY IN OTHER COUNTRIES

Some significant developments regarding the menstrual leave policy recently took place across the world and Spain has become the first European country to approve 'paid menstrual leave' in case of severe pain for the workers and in other countries such as Japan, Indonesia, South Korea, Taiwan, Vietnam, Zambia and the Soviet Union laws similar to this were introduced many years ago. A national policy was introduced by the Soviet Union in the year 1922.⁵ Menstrual Leave was introduced by Japan in the year 1947 in the labor law, Article 68 of which states, "When a woman for whom work during menstrual periods would be especially difficult has requested leave, the employer shall not employ such woman on days of the menstrual period".⁶ Many countries have made such statutory provisions within their legal framework after Japan. In Indonesia, Article 81 has provided that women who suffer from

¹The World Bank, 'Menstrual Hygiene Management Enables Women and Girls to Reach Their Full Potential, (The World Bank, 25 May 2018) <<https://www.worldbank.org/en/news/feature/2018/05/25/menstrual-hygiene-management>> accessed on 8 April 2023

²United Nations Population Fund, 'Menstruation and human rights - Frequently asked questions', (UNFPA, May 2022) <<https://www.unfpa.org/menstruationfaq>> accessed 4 April 2023

³Pooja Yadav, 'Explained: What Is India's Stand On Menstrual Leave Policy', (Indiatimes.com, 7 March 2023) <<https://www.indiatimes.com/explainers/news/explained-what-is-indias-stand-on-menstrual-leave-policy-594889.html>> accessed 4 April 2023

⁴Padmakshi Sharma, 'Supreme Court Refuses To Entertain Plea Seeking Menstrual Leave, Says Matter Falls In Policy Domain', (Live Law, 24 February 2023) <<https://www.livelaw.in/top-stories/supreme-court-refuses-to-entertain-plea-seeking-menstrual-leave-says-matter-falls-in-policy-domain-222395>> accessed on 4 April 2023

⁵ Ashutosh Singh, 'For Sound Menstrual Policy, Conversations Around it Must Be More Public', (The Wire, 1 March 2023) <<https://thewire.in/women/for-sound-menstrual-policy-conversations-around-it-must-be-more-public>> accessed on 4 April 2023

⁶ Labour Standards Law 1947, s 68 (Japan)

menstrual pain are required to inform their employer about the same and are not obliged to report for work for the first two days of their menstrual cycle⁷. In South Korea, Article 73 of the labor law provides for monthly “physiologic leave”, allowing all female workers to have a day’s leave every month⁸. In Taiwan, Article 14 of gender equality and employment law provides all female employees the right to request a day off every month at half their regular wage. These leaves are regarded as period leaves and if more than three such leaves are taken in a year, the additional days are counted as sick leaves.⁹ The Labor Laws of Vietnam provide a 30-minute break for women each day of their menstrual cycle. There was a reform in the year 2020 in which menstrual leave for three days a month was added and the female workers who decided to not avail of such leave benefits needed to be paid extra. In Zambia, there is an interesting concept of Mother’s Day in which there is no need of giving any reason or to provide any medical certificate for one day of leave every month.¹⁰

Menstrual Hygiene Day is an annual awareness day celebrated to break the silence and aware of the fundamental role that good menstrual health hygiene plays in enabling women and girls to reach their full potential¹¹. In 2016, Sweden became the first country to introduce menstrual leave and in 2017, Italy became the first European country to introduce menstrual leave on 16 February 2023 Spain’s Parliament approved the legislation related to paid menstrual leave, making it the first European country to do so. However, many European countries including France have not yet introduced any such similar legislature and there is no legal provision although, some companies here have institutionalised their own policies to provide menstrual leaves to the workers. Also, many countries in the United Kingdom like Nike and Coexist have voluntarily implemented menstrual leave policies for their employees. Thus, not all countries have menstrual leave policies also, these policies differ widely in the terms of total leaves allowed, whether the policy is mandatory or voluntary, and whether it applies to all female employees or only to those who suffer severe menstrual pain.¹²

⁷ Indonesian Labour Law 2003, s 81

⁸ Labour Standards Act 2020, art 73

⁹ Gender Equality in Employment Act, art 14(Taiwan)

¹⁰Niha 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 on 4 April 2023

¹¹The World Bank (n 1)

¹² 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/#google_vignette> accessed on 4 April 2023

STATUS OF MENSTRUAL LEAVE POLICY OF INDIA

The issue of menstrual leave in India was advocated as early as in the year 1992 in the case of *SL Bhagwati vs. Union of India and Ors*¹³, in which the Hon'ble Supreme Court of India was in favour of menstrual leave so that the women are able to take care of their health and families. In the same year, the Bihar Government introduced a policy of two days of paid menstrual leave every month.¹⁴The Human Resource Manual¹⁵ implemented by Bihar Vikas Mission also refers to such special leave for female employees. Besides this, more than a century ago, in 1912, a government school in Kerala provided menstrual leave to students during their annual examinations and also permitted them to attempt them at a later stage. A private member's bill was introduced by Mr. Ninong Ering before the Parliament of India, Lok Sabha to inter alia provide for 4 days of paid menstruation leave to all women employees in any establishment registered with the appropriate government. This Menstruation Benefit Bill, 2017 proposed to implement menstrual leave and other related benefits. It also provided for the formation of a grievance redressal mechanism. As the bill was not tabled for discussion before the parliament at that time, Mr. Ering, as a member of the Legislative Assembly again tabled it during the 2022 Budget Session in the Arunachal Pradesh Legislative Assembly, but the bill was withdrawn shortly after and in present the legal position in this regard remains unaffected.¹⁶

The Delhi Government in March 2021 announced that menstrual leave by female employees can be taken on any day of the cycle and it would not be deducted from their annual leave entitlement. The Uttar Pradesh Government announced that its female employees would be entitled to one day of menstrual leave per month.¹⁷Also, some progressive steps have been taken by the corporate world in this regard. In 2017, two Mumbai-based companies Gozooop and Culture Machine became the first private companies to introduce period leave in India. Zomato introduced menstrual leave for up to 10 days a year for its female and transgender employees. Similar provisions have also been introduced by Swiggy and Byjus. Gurugram-

¹³*SL Bhagwati vs. Union of India* 1989 AIR 2088, 1989 SCR (3) 1010

¹⁴S Jyotiranjan, 'Is it necessary to have a menstrual leave policy?', (The Pioneer, 28 February)

<<https://www.dailypioneer.com/2023/state-editions/is-it-necessary-to-have-a-menstrual-leave-policy-.html>> accessed on 4 April 2023

¹⁵Bihar Vikas Mission, Human Resource Manual

<https://bvm.bihar.gov.in/Application/uploadDocuments/download/Document20220325_134819.pdf> accessed 6 April 2023

¹⁶Anshul Prakasht, 'Looking Beyond the Law: The Case of Menstrual Leave in India' (SCC OnLine Blog, 7 March 2023)<<https://www.scconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>> accessed 6 April 2023

¹⁷S Jyotiranjan (n 1)

based Public Relations and Advocacy Group (PRAG) have also started to offer a free consultation to all organisations who commit or announce the implementation of paid menstrual leave for their female employees.¹⁸ In her response to the questions in Lok Sabha regarding provisions of menstrual leave the Minister of Women and Child Development stated that the Government had undertaken various initiatives for spreading awareness regarding menstrual hygiene and health and to increase access to these menstrual hygiene products. She also stated that the Government was not examining any proposal to include such leaves in Central Civil Service (Leave) Rules, 1972 and a PIL was filed before the SC seeking that a direction be issued to all the States to frame a policy for menstrual leave for female workers and students under the provisions of the Maternity Benefit Act, 1961.¹⁹

However, the PIL has been disposed of by the SC by way of an order dated 24-02-23²⁰. During the brief hearing, the bench took note of the submissions of a law student that it may disincentivise employers from hiring female workers and the court also argued that it is a matter of policy and the government should act on it.²¹

ARGUMENTS: IN FAVOUR AND AGAINST OF MENSTRUAL LEAVE POLICY

The menstrual cycle brings with it heavy bleeding, painful cramping, fatigue, migraine, anxiety, and depression which need rest and relaxation for women and a study by the University College London which was cited by the petition before the Supreme Court suggests that the amount of pain that woman goes through during periods is equivalent to the pain experienced during a heart attack.²² Physical discomfort and pain during the menstrual cycle are also accompanied by hormonal changes which result in mood swings that make it difficult for women to maintain a consistent level of productivity in comparison to the fast-paced work culture. Many women also suffer from disorders such as ovarian cysts, endometriosis, dysmenorrhea, etc.²³ The petition while seeking the effective implementation of Section 14 of the Maternity Benefit Act, 1961 which involves the appointment of enforce the Act's provisions, also contended, "*It is accordingly a violation of Article 14 in as much as this Act differentiates women in the name of federalism and state policies. Despite that women suffer from similar physiological and health issues during their menstrual cycles, they*

¹⁸Ratna 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 on 6 April 2023

¹⁹Anshul Prakasht (n 1)

²⁰Shailendra Mani Tripathi v. Union of India, WP (C) No. 172 of 2023, order dated 24-2-2023 (SC)

²¹Ashutosh Singh (n 1)

²²S Jyotiranjana (n 2)

²³Anshul Prakasht (n 2)

are being treated differently in different states of India. However, women, having one citizenship, i.e., of India, must be treated equally and shall be conferred with equal rights; otherwise, it causes a violation of Article 14 of the Constitution of India."²⁴

Some people have also argued against the menstrual leave policy by stating that if women have been in the workforce for decades and they have been managing well then there is no need for menstrual leave suddenly. It is also argued that if women are allowed to have menstrual leaves, it will restrain organizations from hiring women further. Many people argue that the menstrual leaves will hinder business and can prove to be economically harmful. However, it is essential to keep in mind that there are biological distinctions between men and women and employee dissatisfaction in any case usually affects their commitment towards their work and organisation thus, this case for the menstrual leave policy faces several challenging arguments.²⁵

WAY FORWARD IN REGARDS TO THE MENSTRUAL LEAVE POLICY IN INDIA

Although the discussion around the topic of menstruation is changing and it is becoming a more normal and accepted topic of public discussion. Many countries have implemented policies related to menstrual leave and in India also, some progressive steps have been taken by many countries in this regard. Implementation of a menstrual leave policy is a necessary step for not only breaking the decades of stigma surrounding the topic of menstruation but also for the leaves required during those days. These leaves should not be included within the sickness leaves, as providing two-three days' leave during that painful and discomforting period will not cause any harm but will only help to increase women's productivity on other days of the month thus, helping them to contribute more efficiently. Policies like these will help to increase women's participation in the workforce as they can help them to take care of their health and well-being. Many countries around the world have taken measures for providing menstrual leaves to women and implementing the menstrual leave policy in India will also prove to be a positive step.

The menstrual leave is not violative of the right to equality as even our constitution under Article 15(3) gives power to the legislature for special provisions for women and children. Along with providing paid menstrual leaves some other measures should also be taken into consideration by the authorities. There should be access to affordable hygienic conditions in

²⁴S Jyotiranjan (n 3)

²⁵MahekNankani, 'The case for menstrual leave policy', (The Deccan Herald, 18 March 2022) <<https://www.deccanherald.com/opinion/the-case-for-a-menstrual-leave-policy-1092477.html>> accessed on 8 April 2023

the workplace and the work-from-home facility could also be provided to the women during periods according to their comfort and flexibility. Provisions such as menstrual leave will help to create a healthy and comfortable work environment for women making way for open conversations and discussions in relation to menstruation and breaking all the stigmas related to it. This move will work towards creating a progressive and inclusive space for women and help them to maintain their physical and mental well-being and reach their full potential.

