



Rethinking of Menstrual Leave under the Aegis of Indian Constitution

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Abstract

Menstrual leave is a contentious topic in the current environment. The idea of menstruation leaves, which aims to promote women's health and well-being during their monthly cycles, is becoming more and more popular worldwide. In India, the government is guided by the directive principles of state policy to guarantee social and economic fairness. According to Article 42 of the DPSP, the state must provide for menstrual leave, maternity leave, and fair and decent working conditions. The wellbeing of working women in society, menstrual leave, and human working circumstances are highlighted in the text. According to the Supreme Court of India's ruling, the national and state governments, not the courts, should decide whether to implement a menstrual leave policy. Menstrual leave is not governed by any laws. The goal of this study is to add to the global conversation on advancing menstruation people's inclusivity and well-being.

Keywords: Menstrual leave, Women health and wellbeing, Role of government, Women and law, Directive principles of state policy.

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INTRODUCTION

There are biological differences between males and women. Every cycle, a woman's body gets ready for motherhood; she can become pregnant and then take use of maternity leave to benefit her new family. In India, mothers can even take up to two years of paid leave for childcare till their child turns eighteen. These perks or special leaves acknowledge the contribution women provide to their families. Positive discrimination like this helps the family, which in turn benefits the society and the country.³ Naturally, once the quantity and influence of women in the working grew, provisions were made for these kinds of benefits. This is comparable to the historical occurrence of women being granted the right to vote. Women have made willing and effective contributions to all areas of development and are incredibly adaptable, yet their biological makeup requires them to bleed continuously for a few days every month.

Menstruation-related illnesses can affect women for different lengths of time and at different stages of their reproductive lives, and they are characterized by a wide range of symptoms.⁴ Although it has been suggested that menstruators take painkillers to treat the most prevalent pain symptom, long-term use of regular painkillers is not advised by medicine. Instead, menstruators who require such treatment may benefit from alternative methods like hot fomentation and resting in the comfort of their own homes.⁵ Recognizing the requirements of other gender minorities who also menstruate and do not necessarily have access to the same infrastructure as gender-neutral restrooms is another challenge. Therefore, having access to menstrual leave when necessary, will undoubtedly benefit all menstruators.⁶

Requiring women to work without the option of taking menstrual breaks may make menstruation-related health problems worse. This may result in more stress, a lower level of work satisfaction, and even a higher risk of long-term health issues. Pain, exhaustion, and discomfort associated with menstruation might interfere with a woman's ability to function at her best at work.⁷

³ Ismat Kaur Sukhija and Harpreet Kour Isher, 'Navigating Menstrual Leave Policy-Global Trends and the Indian Paradigm' (2024) 21 World Journal of Advanced Research and Reviews 2847.

⁴ *ibid.*

⁵ Sayed Qudrat Hashimy, 'the Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' [2023] Journal of Disease and Global Health 16 <<https://ikprress.org/index.php/JODAGH/article/view/8159>> accessed 2 August 2024

⁶ *ibid.*

⁷ 'Menstrual Leave in India – Latest Trends & Perspectives – BCP Associates LLP' <<https://bcpassociates.com/menstrual-leave-in-india-latest-trends-perspectives/>> accessed 18 October 2024.



Denying women, the right to take menstrual absences might lead to a discrepancy in the experiences of male and female employees by indirectly impeding women's ability to function at work during their periods. The idea that denying menstruation leaves might amount to indirect discrimination against women is predicated on the idea that employers need to recognize and provide for women's particular requirements during menstruation.⁸ Smriti Irani, the union minister for women and child development, responded, "Menstruation is not a handicap," when a question about paid menstrual leave came up. Since it is more neutral and fits with a social model of disability that acknowledges the role that societal constraints play in limiting opportunities for people with impairments, the term "disability" is frequently used in today's linguistic debates. Menstruation is a normal and transient biological phenomenon that affects a lot of women. While various bodies have varied experiences, characterizing it as "not a handicap" may not fully convey the subtleties of the experience. It is important to stress the distinction between normalizing periods and erasing menstrual experiences. Women battled to normalize menstruation in the first place; have we done so to the point where advertisements for sanitary napkins depict them now? Some women find that their menstrual cramps are intolerable, to the point where they require such leaves. If this handicapism served as the foundation for the idea of paid sick days? It is necessary to consider this. This idea and our constitution are at odds with one another.⁹

Equality and Non-Discrimination

The foundations of transformation are equality and nondiscrimination.¹⁰ The values of equality and nondiscrimination ingrained in the constitution's structure best illustrate the transformative power of constitutionalism. The discussion about legislation that acknowledge and cater to the special needs of women, particularly those related to menstruation, has become more prevalent as we move closer to gender parity. One of the main tenets of transformative constitutionalism is the advocacy of

⁸ *ibid* 2023.

⁹ Manupatra, 'Paid Menstrual Leaves: A Progressive Step in Harmony with the Constitution of India' <<https://articles.manupatra.com/article-details?id=undefined&ifile=undefined>> accessed 17 October 2024; Julie Hennegan and others, 'Measurement in the Study of Menstrual Health and Hygiene: A Systematic Review and Audit' (2020) 15 PLOS ONE e0232935.

¹⁰ Sayed Qudrat Hashimy, 'Menstrual Paid Leave Policy and Women Empowerment in the Shadows of Equality under the Aegis of Indian Legal Landscapes' (2023) 13 Bangalore University Law Journal <<http://eprints.uni-mysore.ac.in/17459/>> accessed 21 October 2024.

inclusive policies and the opposition to social practices that reinforce bias.¹¹ Two precedents that recognize the need for equality and legal protection include the Triple Talaq ruling and the Sabarimala Judgement. The latter ruling creates a benchmark for identifying and resolving the unique challenges that women face, especially those related to menstruation. The gender equity concept of the Triple Talaq verdict aligns with broader notions that support women's rights and well-being, like considering menstrual health. The Sabarimala verdict provides a foundation for understanding the importance of challenging societal norms and practices that subject women to discrimination on the basis of their biological processes, such as menstruation.

In terms of menstrual leave, the decision supports the idea that traditions endangering women's well-being must yield to the equality and nondiscrimination guaranteed by the constitution. These evaluations aid in debunking stereotypes and breaking free from deeply ingrained social mores that could marginalize women based on their gender or biological makeup. This is consistent with the broader effort to acknowledge and de-stigmatize menstruation as an essential and natural aspect of a woman's life.¹²

Reasonable Classification & Indirect Discrimination.

The concept of substantial equality examines the various attributes that set one group apart from the others. Consequently, discrimination against a group may occur indirectly as a result of the law's equal implementation. Therefore, while interpreting the law, the concept of substantive equality seeks to take these distinctions into account. Therefore, it could be considered indirect discrimination to deny women their menstrual leaves. Menstruation leaves are a legitimate classification to offer. Due to biological differences, menstruation is a typical phenomenon that can have an impact on a woman's physical and emotional health. Recognizing this difference and allowing leaves acknowledges the need to treat individuals differently based on a valid classification.

Adding menstruation leaves to the goal of improving the health and wellness of women in the working makes sense.¹³ The array of the study is married with the following legal discourse.

Constitutional Landscapes

¹¹ Hashimy SQ, 'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' [2023]

¹² Manupatra, 'Paid Menstrual Leaves' (n 9); Hennegan and others (n 9).

¹³ Manupatra, 'Paid Menstrual Leaves' (n 9); Kholoud K Alharbi and others, 'Knowledge, Readiness, and Myths about Menstruation among Students at the Princess Noura University' (2018) 7 Journal of Family Medicine and Primary Care 1197.



Reflective of Empowering Vulnerability

Examining the menstrual leave argument reveals that the founding fathers of the country intended to establish a society that recognizes and addresses the unique challenges that different groups of people face, including women. Regulations pertaining to menstruation leave are consistent with the spirit of Article 15 which attempts to challenge social norms and remove barriers that could lead to discrimination against women based on their biological differences. The constitutional framework recognizes the need for specific protections, which helps women who might otherwise be at risk in the workplace. Rather than being perceived as a give-in or favor, menstrual leave ought to be seen as a tool that advances the more general concepts of fairness and equality.

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1.Right to Equality Article 14¹⁵

The Indian Constitution provides equal protection under the law and equality before the law. The concept of 'equality for the equals & not treating unequal's as equals' is discussed in this article. Recognizing the particular difficulties women face during their periods and granting them time off does not mean labeling women as disabled. Rather, it acknowledges the biological differences between men and women, guaranteeing that neither gender will experience discrimination because

¹⁴ Manupatra, 'Paid Menstrual Leaves: A Progressive Step in Harmony with the Constitution of India' 2024 <<https://articles.manupatra.com/article-details?id=undefined&ifile=undefined>> accessed 18 October 2024.

¹⁵ Manupatra, 'Paid Menstrual Leaves' (n 9); Manupatra, 'Paid Menstrual Leaves: A Progressive Step in Harmony with the Constitution of India' 2024 <<https://articles.manupatra.com/article-details?id=undefined&ifile=undefined>> accessed 17 October 2024.

of their particular health needs and that both will have equal opportunity to succeed in the job. It is appropriate to classify people according to these differences, and women should be eligible for these leaves. As made clear in a number of Supreme Court rulings, equality probes social inequity and makes an effort to solve it through a penetrating approach.

An excellent example of this is *Lieutenant Colonel Nitisha v. Union of India* which claimed constitutional morality to shield non-binary genders from the wrath of cultural conformity and was founded on the concepts of transformative constitutionalism to battle against society's biases and therefore build a sense of brotherhood.

2. Right against Discrimination Article 15¹⁶

Sex-based discrimination is forbidden by Article 15. Refusing to provide women with the necessary respect and assistance during their menstrual cycle may be interpreted as an indirect form of discrimination, similar to refusing them leave due to differences in sexual orientation. Rather than creating an inequitable work environment, menstrual leave guarantees that women are not unjustly burdened in the workplace because of their biological characteristics.

3. Right to Health Article 21¹⁷

The right to life and personal liberty, which includes the right to health, are guaranteed under Article 21. By giving women the time and resources they need to take care of their health throughout their menstrual cycles, menstrual leave helps to ensure their wellbeing. This is in line with the right to livelihood and the constitutional obligation to safeguard the health and lives of all citizens. These are complex legal issues that should never have been brought up in Parliament. In fact, right to health should have been seen from the early stage of constitutional drafting in 1950 that could have been seen from a more sociological perspective.¹⁸ The law and women trust in the jurisprudential aspects, such as reproductive rights, menstruation, right to privacy, health and having baby, feeding nutritious breeding. I argue that there is a gap between women and constitutional aspiration since 1950 with respect to menstrual leave. It could be called as asymmetric of law enforcement in India.

4. Dignity of Individual (Article 21)¹⁹

¹⁶ India CONST. Article 15 read with article 14 of Indian Constitution 1950.

¹⁷ Manupatra, 'Paid Menstrual Leaves' (n 9); Shayesteh Jahanfar and Mozghan Zendejdel, 'Contraceptive Knowledge, Prevalence of Contraception Use, and the Association between Sex Education and Contraception Knowledge among University Students in Michigan, USA' (2024) 13 Journal of Family Medicine and Primary Care 1676.

¹⁸ Habibullah Ibrahimy and others, 'Role of Self-Help Groups in Socio-Economic Development of Women in Yaranahalli Panchayat, Mysore' (2023) 1 Journal on Vulnerable Community Development 29.

¹⁹ Manupatra, 'Paid Menstrual Leaves' (n 9) 2024.



Article 15 forbids discrimination based on a person's sex. Similar to denying someone their freedom because of their sexual orientation, failing to give women the respect and support they need throughout their menstrual cycle could be seen as an indirect form of discrimination. Menstrual leave ensures that women are not unfairly burdened in the job due to their biological traits, as opposed to creating an unequal work environment. Upholding women's dignity at work is facilitated by acknowledging menstruation health and offering leave. The constitutional commitment to upholding the dignity of every person is consistent with ensuring that women may manage their health without facing stigma or prejudice.

Sustaining the dignity of women in the profession requires policies like paid menstrual leave, which acknowledge and address the difficulties associated with menstruation. It serves as more evidence that a person's bodily functions are included in the entirety of their right to dignity.

5. Directive Principles of State Policy, Article 39²⁰

The Directive Principles of State Policy mandate the implementation of policies that guarantee equitable and humane working conditions. Menstruation absence can be seen as a proactive measure in creating a caring work environment that acknowledges the special needs of female employees without stigmatizing their menstruation. It acknowledges the fundamental reality of menstruation and seeks to guarantee that women receive equitable treatment and the support they require to balance their duties to their jobs and their health.

6. Right to Work in Safe and Healthy Conditions Article 42²¹

The state's duty to offer maternity leave and equitable and compassionate working conditions is particularly emphasized in Article 42. While paid menstruation breaks are typically linked to maternity benefits, they can also be viewed as a continuation of this idea, ensuring that women receive the support they require during their menstrual cycles.

²⁰ Sydney Colussi, Elizabeth Hill and Marian Baird, 'Engendering the Right to Work in International Law: Recognising Menstruation and Menopause in Paid Work' (2023) 5.

²¹ Sayed Qudrat Hashimy, 'The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' [2023] *Journal of Disease and Global Health* 16 <<https://ikprress.org/index.php/JODAGH/article/view/8159>> accessed 2 August 2024

Beyond Legal Mandates

The Cultural Shift²²

While laws are vital, we should go beyond what is written in them, according to transformative constitutionalism. It promotes a cultural shift by fostering an environment at work where discussing menstruation is open, accepted, and not stigmatized. Policies pertaining to menstruation leave are an indication of the revolution that will bring about a more progressive and inclusive society. Businesses in India such as Zomato, Swiggy, and Byjus have enthusiastically adopted the concept of menstrual paid leaves. A number of governments, such Kerala in 2023 and Bihar in 1992, have established state regulations for paid menstrual breaks, setting an example for other states to follow. The notion that women may have less employment possibilities as a result of their physiological and biological responsibilities must be categorically rejected. It's time to stop telling women that their success in the workplace hinges on downplaying or rejecting their natural physiology and instead vehemently reject the idea that they must fit into a male-centric model. In conclusion, the argument that menstruation is not a disability shouldn't prevent women from addressing the unique challenges they confront.

Menstruation leave is a positive step toward creating a workplace that honors and accommodates the different needs of every worker, regardless of gender, in line with the principles upheld by the Constitution's ideals of equality, health, and dignity. Rather than labeling menstruation as a handicap, the intention is to foster an inclusive environment that upholds the constitutional values of equality and everyone's right to wellbeing.

As we examine the menstruation leave policy within the framework of the Indian Constitution, the spirit of transformational constitutionalism beckons. It challenges us to envision a society in which rules are not just necessary burdens but also tools for bringing about social transformation. The principles of justice and equality enshrined in the constitutional framework propel us forward on a path where acknowledging our weaknesses makes them stronger and where the actions we enact show our dedication to a more equitable and inclusive future.

In the realm of menstrual leaves, the constitutional journey is about transformation rather than conformity. The Indian Constitution is a thick fabric that skillfully weaves the ideas of justice, equality, and dignity with the empowerment theme. Regulations governing menstrual leave are a step toward fostering an environment where vulnerability is acknowledged and addressed in

²² Colussi, Hill and Baird (n 20).



accordance with fundamental constitutional values. Remember that the objective is not only to grant leave, but also to empower vulnerability and build a future where all individuals can thrive, whatever of their biological circumstances, as we navigate the intricacies of policy implementation. Indian Constitution is not for namesake transformative in nature, if it allows for such leaves to be granted to women, then why isn't society transforming to acknowledge it.²³

Requiring women to work without the option of taking menstrual breaks may make menstruation-related health problems worse. This may result in more stress, a lower level of work satisfaction, and even a higher risk of long-term health issues. Pain, exhaustion, and discomfort associated with menstruation might interfere with a woman's ability to function at her best at work. Denying women, the right to take menstrual absences might lead to a discrepancy in the experiences of male and female employees by indirectly impeding women's ability to function at work during their periods. The idea that denying menstruation leaves might amount to indirect discrimination against women is predicated on the idea that employers need to recognize and provide for women's particular requirements during menstruation.²⁴ Menstrual leave, whether paid or unpaid, is a unique type of leave intended to alleviate discomfort throughout the menstrual cycle. For several decades, there has been discussion about establishing and enforcing a menstrual leave policy, but it has yet to gain international recognition. Menstrual issues have historically been treated with casual insignificance. Furthermore, there has always been a concern among authorities who acknowledge the problem that offering menstrual leave will hurt menstruators more than it will help them, if at all, and the women gets sense of oneness to stand up for their right.²⁵ Those who menstruate, such as women, girls, and other gender minorities (transgender men, non-binary people), are implied to be "menstruators." The purpose of this essay is to examine the menstrual leave policy from a worldwide viewpoint and discuss its applicability in the Indian context.²⁶ The menstrual cycle is an inevitable biological requirement.

²³ Manupatra, 'Paid Menstrual Leaves' (n 14) 2024.

²⁴ 'Menstrual Leave in India – Latest Trends & Perspectives – BCP Associates LLP' (n 7) 2023.

²⁵ Sayed Quadrat Hashimy and Habibullah Ibrahimy, 'Role of Self-Help Groups through Micro-Finance for Poverty Alleviation' (2023) 1 Journal of Governance and Policy Review 27.

²⁶ Ismat Kaur Sukhija and Harpreet Kour Isher (n 3).

Because menstruation is a physiological event, women must make certain personal accommodations in order to continue with their regular routine. Regretfully, awareness of menstruation hygiene is still lacking in some areas. and goods, inadequate facilities (such public and private restrooms with a functional water supply), constrictive customs and superstitions around menstruation, as well as a tacit acceptance or willful ignorance of the different

issues related to this recurring bleeding. A lack of menstruation necessities, or period poverty, is nevertheless a reality. based on each person's unique circumstances. Given that menstruation results from the interplay of several Any aberrant changes in a woman's hormones are covered by the specialized medical field of gynecology. A sizable portion of menstruators experience painful periods, which are referred to as dysmenorrhea in medical terminology. Persistent or severe dysmenorrhea may indicate gynecological issues with the female reproductive system.

hefty Bleeding necessitates frequent bathroom visits for changing in order to prevent public humiliation from spills and stains of clothing. Excessive bleeding may indicate hormonal imbalances or specific uterine illnesses. Some individuals might be incapacitated by severe back pain, constipation or diarrhea, migraines during menstruation, nausea, or even fainting episodes. because of the discomfort. Additionally, there are a variety of less severe symptoms that affect a person's health, like bloating and exhaustion. According to a 2017 countrywide study of 42,879 women in the USA, one in three of them gave up their routine tasks throughout the menstrual cycle. Therefore, taking time off for personal health during menstruation may be a valid justification. to be considered sick leave.²⁷

Menstrual Leave by Corporations

While Indian labor laws include provisions for sick and casual leaves, there is no specific legislation addressing menstrual leave in the country.

Accordingly, organizations have the flexibility to create their policies regarding menstrual leave. Zomato was at the forefront, introducing a 10-day 'period leave' to foster a more inclusive organizational culture. Likewise, Swiggy, another online food delivery platform, implemented a 'time off' policy for its female delivery partners. Similarly, various companies across the industry, such as Byjus, Culture Machine, FlyMyBiz, and Gozoop, have proactively formulated policies addressing menstrual leave. Menstrual leave policies have not been widely adopted across India,

²⁷ Ismat Kaur Sukhija and Harpreet Kour Isher, 'Navigating Menstrual Leave Policy-Global Trends and the Indian Paradigm' (2024) 21 World Journal of Advanced Research and Reviews 2847.



with only Bihar and Kerala being the two states to have implemented such policies for women. Bihar initiated its policy in 1992, allowing employees two days of paid menstrual leave each month. Kerala has recently announced menstrual and maternity leave provisions for students in universities under the state's higher education department, and a similar system has been introduced in a Kerala school.²⁸

Smriti Irani, the Union Minister of Women and Child Development, said that menstruation is not a "handicap" and does not call for a special policy of "paid leave" during the current winter session of Parliament. "As a menstruating woman, I believe that the menstrual cycle and menstruation are normal parts of a woman's life journey," she said. Just because someone has not experience menstruation has a certain opinion about it does not mean that we should support policies that deny women equal chances.

Arunachal Pradesh Lok Sabha member Mr. Ninong Ering introduced the Menstruation Benefits Bill, 2017, a private member's bill, in the legislature in 2017. Subsequently, in 2018, Thiruvananthapuram, Kerala, Member of Parliament Dr. Shashi Tharoor submitted the Women's Sexual, Reproductive and Menstrual Rights Bill. Despite not passing, both laws sought to guarantee women's access to period health supplies and their right to menstruation leave. A different proposed bill, the "Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022," was recently introduced. It aimed to offer three days of paid leave to women and transwomen during their periods, as well as to students. Nevertheless, it was not enacted.²⁹

Similarly, earlier this year, the Supreme Court of India declined to address a Public Interest Litigation (PIL) seeking menstrual leaves for female students and working women nationwide, stating that the issue fell within the domain of policy and directed the petitioner to make a representation to the Ministry of Women and Child Development, which may take an appropriate decision in this regard.³⁰ On 3rd August 2023, the government of Maharashtra issued a notification

²⁸ Trisha Maharaj and Inga T Winkler, 'Transnational Engagements: Cultural and Religious Practices Related to Menstruation' in Chris Bobel and others (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan 2020) <<http://www.ncbi.nlm.nih.gov/books/NBK565655/>> accessed 18 October 2024.

²⁹ *ibid.*

³⁰ *ibid.*

introducing the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) (Amendment) Bill 2023. According to the proposed amendment, female employees working in shops and establishments in Maharashtra will be eligible for paid menstrual leave. This initiative aims to safeguard the health and well-being of women employees. Additionally, the Ministry of Health and Family Welfare, Government of India has published the draft National Menstrual Hygiene Policy, 2023, with an objective 'menstrual friendly environment' in all settings including homes, schools/ educational institutions, workplaces and public spaces .³¹

MENSTRUAL LEAVE AND RELIGIOUS PRACTICES

Participants from different cultural and religious backgrounds engage in a conversation about menstrual practices through this transnational engagement. They are urged to think back on their personal encounters with these methods and analyze the effects these practices have had on them. It is evident from the *debate* that individuals have different perspectives on traditional menstrual practices, and these perspectives frequently contradict the widespread perception of traditional practices as constraints placed on women.

Manoj Kumar Jha, a member of the Rashtriya Janata Dal (RJD), asked a question concerning the nation's menstrual hygiene policy, and this comment was given in response. Irani told the Lok Sabha earlier in the session that "no proposal under consideration by the government to make provisions for mandatory paid menstrual leave in all workplaces" was in response to a question from Dr. Shashi Tharoor.³² Comparing the rest of the world to India, Japan has a 1947 law requiring employers to provide women with menstrual leave upon request or for as long as necessary. Nonetheless, women are not required by law to be paid while on menstruation leave. Remarkably, according to a 2020 labor ministry survey, about 30% of Japanese businesses choose to offer either full or partial pay during menstruation leave.³³ Women in South Korea are entitled to one day of unpaid leave every month for menstruation. Taiwan allows for three days annually, whereas Zambia enables women to take an unpaid day off throughout their menstrual cycle, known as "Mother's Day." Two days are permitted for each menstrual cycle in Indonesia.³⁴ One of the first nations in Eur Menstrual leave policies for female employees/partners were first introduced by Culture Machine, *Gozoop*, and

³¹ *ibid.*

³² C Bobelenglish, 'The Palgrave Handbook of Critical Menstruation Studies -

³³ Sayed Qudrat Hashimy, 'The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' (2023) 16 Journal of Disease and Global Health 16.

³⁴ Sayed Qudrat Hashimy, 'Exploring Menstrual Leave in Islamic Jurisprudence: Cultural and Religious Perspectives' (2023) 6 International Journal of Law Management & Humanities 3287.



Zomato in 2017 and 2020,³⁵ however the practice has recently acquired traction. Many businesses, including the full-time legal firm *Khaitan & Co.* and *Gencosys*, have adopted this practice and announced paid menstruation leave for its colleagues and employees. This new trend is a reflection of a larger industry-wide movement where businesses want to improve the health of their female staff members and help eliminate the stigma attached to menstruation. An alternative to paid period leave has been suggested by Ghazal Alagh, a *Shark Tank India* judge and co-founder of the beauty firm *Mama Earth*.³⁶ Her recommendation follows Union Minister *Smriti Irani's* remarks in Parliament, when she advocated for women who are having menstruation pain to work from home instead of implementing paid leave. Adopting a progressive approach on menstruation-related issues by organizations requires more than just putting regulations in place. Workshops that promote awareness about menstruation health must be held by organizations.³⁷

Although it is widely acknowledged in Trinidadian Hindu religious practice that menstruation is "defiling," "impure," and "unsuited" for worship, it is ultimately the responsibility of women to follow these regulations. Because menstruation may be a highly private occurrence, women and girls can participate in the custom without anybody knowing they are on their period, giving them the freedom to decide whether or not to keep it going. This can provide the freedom to practice as one pleases, with no possibility of outside interference. Nonetheless, the customs endure and girls frequently come to view their own bodies as tarnished and filthy as religious leaders and older women perpetuate these regulations and rituals for younger girls. They might give up their personal preferences (to take part in the ritual) in order to show respect for this shared belief. What would happen if a woman or girl went about her period knowing that she was participating in ritual? What would occur if someone became aware of it? Another disincentive would be the possible humiliation. In the end, women police themselves, and in Trinidad and Tobago, the majority of them are capable of doing so if they so want. However, the social pressure to adhere to customs may be too great to encourage outright disobedience.³⁸

³⁵ 'Menstrual Leave in India – Latest Trends & Perspectives – BCP Associates LLP' (n 7).

³⁶ Hashimy, 'Exploring Menstrual Leave in Islamic Jurisprudence' (n 34).

³⁷ C Bobelenglish (n 32).

³⁸ *Ibid.*

Statutory Enforcement

Menstrual leave is not specifically covered by any laws in India. Nonetheless, the following bills and suggestions have been put forth:

- a- Women's Rights to Free Access to Menstrual Health Products and Menstrual Leave Bill (2022) Women and transwomen would be entitled to three days of paid leave during their periods under this measure. Additionally, it aims to provide pupils with the benefit.
- b- The 2019 Bill for Paid Leave and the Right to Menstrual Hygiene. This law would give women the right to paid leave during their periods, health benefits, and facilities for menstrual hygiene.

Menstrual leave policies have also been established by a few Indian companies, including:

- i. Byjus: developed policies addressing menstrual leave;
- ii. Culture Machine: developed policies addressing menstrual leave;
- iii. FlyMyBiz: developed policies addressing menstrual leave;
- iv. Gozoop: developed policies addressing menstrual leave;
- v. Zomato: instituted a 10-day paid period leave annually in 2020;
- vi. Swiggy: instituted a "time off" policy for its female delivery partners.³⁹

In addition to proposing legislation titled "The Right of Women to Menstrual Leave and Free Access to Menstrual Leave," which was established to examine and suggest the viability of implementing menstrual leave in the private sector, the committee is scheduled to suggest a menstrual leave policy for Karnataka that would allow for one day of leave per month. This is scheduled for July 6, 2024.⁴⁰ All female employees should be granted paid menstruation leave, according to the proposal. Getty Images is the source of the representational image. In addition to recommending that Karnataka implement a menstrual leave policy with one day of leave per month, a committee established to examine and recommend the viability of implementing menstrual leave in the private sector is also recommending that the State Legislature pass the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill in order to give the policy teeth. The 18-member committee, led by Dr. Sapna Mohan, Associate Dean of Christ University's School of Law, has

³⁹ 'Menstrual Leave and Law or Acts - Google Search' <<https://www.google.com/search?> accessed 19 October 2024.

⁴⁰ *ibid.*



prepared a draft suggestion that will be finalized and presented to the government in the coming days. At the governmental level, the suggestions would be further discussed.⁴¹

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The Committee has been requested to investigate the viability of instituting menstruation leave in the State's private sector, which includes the IT and clothing industries.

Eyebrows have been raised by the terms of reference, which exclude women from the government sector except from Asha and Anganwadi workers and Home Guard members.⁴²

The women's "right." The proposal, among other things, acknowledges leave as a "right of the women" and suggests that all female employees under the age of 55 be granted paid menstrual leave, which should be handled discreetly and for which no medical records are required. Additionally, it suggests that the government include suitable penalties for individuals who refuse leave.⁴³

In India, current labor rules like the Maternity Benefit Act, 1961, do not mandate menstruation leave; instead, it is a voluntary effort. The changing character of this issue is shown by recent legal developments, such as a Supreme Court ruling instructing parties to address menstrual discomfort leave through policy frameworks rather than court requirements. The draft report stated that many firms are seeing the value of menstruation health as part of holistic employee welfare and retention initiatives, even in the lack of legislative requirements.⁴⁴

⁴¹ Sharath Srivatsa, 'Panel to Recommend Menstrual Leave Policy, Legislation to Karnataka Government' *The Hindu* (6 July 2024) <<https://www.thehindu.com/news/national/karnataka/panel-to-recommend-menstrual-leave-policy-legislation-to-karnataka-government/article68370775.ece>> accessed 19 October 2024.

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

The discussions generated a range of reactions, with some criticizing the menstrual leave policy on the grounds that it might hinder women's employment, which is already low. Members worried that not only would it stigmatize and portray women as weak, but it would also be challenging to supervise its implementation in the unorganized sector. Additionally, it has been noted that since all women have three to five days of menstruation each month, it would be absurd to grant one day of absence.⁴⁵ Even though most members agreed with the proposal, Labour Department experts suggested adding five or six more days of sick leave annually that could be used for menstruation problems rather than calling a distinct leave period "menstrual leave." Additionally, it was believed that a 12-day menstruation break per year would result in a decrease in output.⁴⁶ Nonetheless, those who voiced support said that in order to promote women's menstrual health, it was critical to give them access to a supportive social environment and rest. They contended that instituting menstrual leave would institutionalize the physiologic and rational aspects of menstruation.⁴⁷ Additionally, it has been noted that similar arguments against maternity leave have been made all over the world. They have stated that rather than concentrating on the microeconomic choices made by individual businesses, the emphasis should be on the macroeconomic advantages of promoting increased female labor force participation.⁴⁸

INDIAN STATES' PERSPECTIVE

Policies on menstrual leave in India and other countries Since 1992, Bihar, one of the Indian states, has implemented a menstrual leave policy. Two days of special leave are granted to female employees each month. The government of Kerala stated in 2023 that all State universities would offer menstrual leave, allowing female students to be excused from class by 2% for monthly problems. Menstrual leave for female employees is being considered by the Maharashtra government, but it has not yet been legally implemented.⁴⁹

INTERNATIONAL PERSPECTIVE

The right to three days of menstrual leave per month, with the possibility of five days if there is extreme pain, is guaranteed to women in Spain. In Japan, Article 68 of the Labor Law prohibits

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*



asking women who are going through a tough time to work. In Indonesia, women who are in discomfort during their periods are not required to work during the first two days of their cycle. Every month, South Korean women employees are entitled to one day off. Women employees in Vietnam are entitled to three days of menstruation leave per month and a 30-minute break on each day of their period. Female employees in Zambia are entitled to one day of leave every month.⁵⁰ The USSR was the first nation to provide this leave in 1922, but it was taken away five years later. Japan implemented a policy to safeguard women's ability to procreate or become mothers in 1947, following World War II, although it was not uniformly accepted. In 1953, South Korea did the same. Menstrual leave is also provided by a few other nations, including Zambia, Taiwan, various Chinese provinces, Indonesia, and the most recent additions, Spain, and Ireland (Bank of Ireland).⁵¹ Additionally, the Spanish government has authorized a reduction in the taxes imposed on menstrual products from 10% to 4%, classifying them as necessities.⁵² The amount of leave that each nation offers varies, with some being more generous than others. In Indonesia, for instance, women have the right to take time off during the first two days of their periods. One day of paid leave is provided each month in South Korea (subject to particular request). In Taiwan, employees are granted three days of leave each year with particular request. One day of leave each month without a medical certification is permitted in Zambia, but three to five days of leave are permitted in Spain following the issuance of a medical certification.⁵³

Economic Stability of Women

The following are some ways that menstrual leave can improve women's financial security: Enhancing well-being and health Without facing financial repercussions, menstrual leave enables women to prioritize their health and manage their symptoms. Boosting output Women who take menstrual leave are less likely to work while they are uncomfortable, which may

⁵⁰ *ibid.*

⁵¹ Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (2022) 5 Issue 6 International Journal of Law Management & Humanities 1270.

⁵² *ibid.*

⁵³ Ismat Kaur Sukhija and Harpreet Kour Isher (n 3).

result in higher output. Closing the gender pay disparity Women can completely engage in the workforce without compromising their pay by taking menstrual leave.⁵⁴

Making the Workplace More Welcoming

Menstrual leave can promote candid conversations about menstrual health and help normalize menstruation. A safer and more egalitarian workplace may result from this. Increasing the retention rate of employees Employee retention may increase as a result of menstruation leave. Menstrual leave may have certain disadvantages, nevertheless, such as: Discrimination Some claim that requiring paid time off could deter employers from recruiting women. Stigma in society According to others, granting menstrual women "special status" could legitimize the stigma associated with menstruation. Inability to obtain sanitary products Many Indian women, particularly those with modest salaries, struggle to pay for sanitary goods.

MENSTRUAL LEAVE AND EMPOWERMENT OF WOMEN

A provision known as "menstrual leave" enables those who are menstruating to take time off of work or education while they are having menstrual symptoms. Women can benefit from it in a number of ways, such as: Menstrual support they require during their menstrual cycles. Menstrual leave recognizes that menstruation is a normal physiological process and that individuals who go through it may feel pain and discomfort. Encouraging productivity and health: Women who are menstruating can benefit from menstrual leave by managing their health performing better at work. fostering inclusive workplaces: By recognizing each employee's well-being, menstrual leave can contribute to the development of more inclusive workplaces. Reducing stigma: Menstrual leave has the potential to lessen the stigma attached to having a menstrual cycle. Enhancing feeling of wellbeing: Menstrual leave has the potential to enhance people's general feeling of wellbeing.

Menstrual Leave and Health

Menstrual leave can help women with health issues related to menstruation, such as cramps, bloating, and emotional distress:

Painful periods

Menstrual leave can help women with dysmenorrhea, or painful periods, by allowing them to rest and recover.

Other health conditions

⁵⁴ *ibid.*



Hormonal fluctuations during menstruation can worsen other health conditions, such as asthma and migraines.

Endometriosis and PMDD

Menstrual leave can help women with debilitating health issues like endometriosis and PMDD, which can impact their ability to work.

Menstrual leave can also help to:

Reduce stigma

Menstrual leave can help to normalize menstruation and reduce stigma around it.

Increase productivity

Menstrual leave can help women manage their periods and avoid working while uncomfortable, which can improve productivity.⁵⁵

The concept of menstrual leave is an expansion of article 21, the right to life under the constitution of India; one should not be expected to work during menstruation, because of the menstrual pains, and the body being weak and vulnerable, basic sanitation

RECENT DEVELOPMENT ON MENSTRUAL LEAVE

The new Menstrual Leave Policy of Hidayatullah National Law University (HNLU) will go into effect on July 1st, 2024. This forward-thinking initiative, which is a component of the larger HNLU Health Shield Initiative, demonstrates the university's dedication to promoting a welcoming and encouraging learning environment."The implementation of the MLP marks understanding and facilitating the special needs of young women students at HNLU to support their academic pursuit," said Prof. V.C. Vivekanandan, Vice Chancellor of HNLU. "We thank the Academic Council for its support through such policy."⁵⁶ Recognizing the psychological and physiological needs of its students, the HNLU-Menstrual Leave Policy seeks to offer specific help in the form of compensatory attendance throughout the menstrual cycle. This program will lessen the potential health risks that students may experience when they attend classes when they are menstruating. During teaching days, students are eligible to claim one day of presumed attendance every calendar month. During

⁵⁵ 'Menstrual Leave and Health Issues - > accessed 19 October 2024.

⁵⁶ LIVELAW NEWS NETWORK, 'HNLU Announces Menstrual Leave Policy For Female Students' (25 July 2024) <<https://www.livelaw.in/lawschool/news/hnlu-menstrual-leave-policy-264496>> accessed 19 October 2024.

test days, these exceptions will be extended if there is verified necessity for bedrest owing to specific needs. In addition, students with diseases or syndromes related to irregular menstruation, such as PCOS, are eligible to claim considered attendance for up to six classes per subject per semester. The University's dedication to the well-being of female students and its proactive stance in resolving health-related matters are shown in the HNLU-Menstrual Leave Policy.⁵⁷ The petitioner claimed that requiring such leave will cause women to "be shunned from the workforce" in response to the court's question on how the leave will encourage more women to work. On July 8, the Supreme Court ordered the Centre to convene with States and other relevant parties to develop a model policy regarding menstrual leave for female employees.⁵⁸ A bench comprising Chief Justice D Y Chandrachud and Justices J B Pardiwala and Manoj Misra said the issue related to policy and was not an issue for the courts to look into. Moreover, such a decision from a court on granting such leave to women may prove to be counterproductive and "detrimental" to the cause as employers may avoid employing them.⁵⁹

In order to improve menstrual hygiene in the nation, the Indian Supreme Court has adopted the national strategy that the government must enforce it. The states and Union Territories were mandated by the Supreme Court to create a national strategy regarding menstrual hygiene for schoolgirls in April 2023. Additionally, the court ordered the states to respond to the policy by August 31, 2023. Distribution of sanitary napkins. The government was ordered by the court to concentrate on distributing sanitary napkins and to develop a model for the quantity of restrooms available to females in schools. Awareness of menstrual hygiene The absence of facilities and knowledge about menstruation hygiene in schools has prompted the court to take action. Menstrual hygiene is a complicated topic with numerous facets, such as: religious and cultural dimensions the menstrual cycle and psychosocial.⁶⁰

⁵⁷ *ibid.*

⁵⁸ PTI, 'SC Asks Centre to Frame Model Policy on Menstrual Leave for Women' *The Hindu* (8 July 2024) <<https://www.thehindu.com/news/national/sc-asks-centre-to-frame-model-policy-on-menstrual-leave-for-women/article68380706.ece>> accessed 19 October 2024.

⁵⁹ *ibid.*

⁶⁰ 'Judicial Approach on Menstrual Hygiene in India - IIEAAYFhgKGB7CAgoQABgWGAoYHhgPwgILEAAYgAQYhgMYigXCAGcQIRigARgKwgIEECEYCPgDAIgGAZAGCZIHBDuMTKgB7VH&sclient=gws-wiz-serp' accessed 19 October 2024.



CONCLUSION

Unlike maternity benefits, menstrual leave is neither a new concept nor widely acknowledged as a person's entitlement. All menstruators should ideally be covered by the coverage. Several concerns would need to be addressed in order to create and execute a menstrual leave policy. Limiting the number of leaves, establishing a compensation plan, and the event that additional leaves are required, medical certification would contribute to greater openness in the application of the guidelines and everyone's acceptance. Presenting ideas like "work-from-home," flexible scheduling, and Personalized work schedules may also resolve a lot of problems. enhancing working conditions by enhancing The need for leave may be reduced by providing infrastructure, menstruation necessities, and a rest area. Recognizing the requirements of menstruators, including the community's non-binary members, as well as Strong legislative backing would be necessary to update a gender-neutral sick leave policy so that laws are created and carried out on a nationwide scale. A survey on quality of life concerns must be carried out for all menstruating people and candidly address the matter, giving it the weight it deserves. contributes more steadily to economic growth in the areas of employment and education than supporting gender equality in regard to fundamental rights and health. Therefore, to guarantee a progressive and inclusive process, individuals need to have access to respectable employment prospects and a setting that can overcome the different biological, economic and social elements that could stand in the way of their empowerment. Recognizing that a woman's menstruation may limit her transitional period and arranging for care for those who require it, one indication of an equitable society that acknowledges the needs of all societal segments is the passage of time. creates arrangements for people to look after themselves so that, on divergent paths, they can both constructively contribute to the economic progress of their country and themselves. In the end, for this transformation to occur, the initial to be made is in the legislators' and stakeholders' thoughts.