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Menstruation Leaves for women: Law and Policy

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This study will include extensive research on the law and policy discussions and development pertaining to menstruation leaves, mainly in the Indian parliament. The review will identify the need for menstruation leave-related laws and how the same has various effects on different stakeholders. Indian laws will be compared with countries that have enforced menstruation leaves and how these laws have had significant benefits as well as consequences. We will also provide suggestions and solutions for any problems that arise through the implementation of laws that benefit women with regard to menstruation leaves. Menstruation, also known as the menstrual period, refers to the monthly discharge of the lining of the uterus in a woman's body,¹ resulting in the sufferance of 30-40%² of menstruating women from severe physical, mental and physiological symptoms such as fatigue, concentration difficulties, depression and dysmenorrhea³ (severe pain/cramps in the abdomen⁴, negatively affecting the productivity of up to 20% of women)⁵. Although the extent of the effects of menstruation is unique for every woman, menstruation pain has been described to have the potential of being as “bad as having a heart attack.”⁶ This has given rise to the concept of menstruation leaves. These are usually paid leaves - exclusive from sick leaves - which are provided to female

¹ Charles Patrick Davis, 'What should I know about menstruation? What is the medical definition of it?' (MedicineNet) <<https://www.medicinenet.com/menstruation/article.htm>> accessed 14 October 2021

² Roos Jansen, 'Why all companies should offer period leaves?' (Sifted, 12 May 2021) <<https://sifted.eu/articles/paid-period-leave/>> accessed 14 October 2021

³ 'Normal Periods Symptoms of Menstruation' (Society of Obstetricians & Gynecologists of Canada) <<https://www.yourperiod.ca/normal-periods/symptoms-of-menstruation/>> accessed 14 October 2021

⁴ 'What is dysmenorrhea?' (John Hopkins Medicine) <<https://www.hopkinsmedicine.org/health/conditions-and-diseases/dysmenorrhea>> accessed 14 October 2021

⁵ Moitrayee Das, 'Why Do We Need The Menstrual Leave Policy In India?' (Feminism in India, 20 September 2019) <<https://feminisminindia.com/2019/09/20/need-menstrual-leave-policy-india/>> accessed 14 October 2021

⁶ *Ibid*

employees during their menstrual cycle. The terms of the leave, including the time period, differ in every company, industry, and country. India is a country with one of the lowest female labor and workforce participation rates globally. Part of this is owed to the fact that there is a lack of provision of proper infrastructure and basic sanitation facilities like clean and usable washrooms, thus making it difficult for women to work while on their period and resulting in a drop in the number of working women in India.⁷

Keywords: *menstruation, law, policy.*

INTRODUCTION

In 1992, Bihar, one of India's eastern states, became the first and - back then- the only state to introduce a two-day-per-month paid menstruation leave for women working in any sector. This benefit was also extended to the female students of grade eight and above that studied in schools that were recognized by the state.⁸ This was followed by various companies, including Maharashtra-based 'Culture Machine' and 'Gozoop,' who started providing a one day per month paid menstruation leave for its female employees in 2017, hence becoming the first Indian company to implement menstruation benefits. Soon after 'Culture Machine' announced menstruation leaves, 'Matrubhumi,' a Kerala-based media giant introduced similar leaves for the 75 women employees out of a total of 320 employees. In 2018, 'Rahat Leave' was introduced by Tata Steel which included a one-day leave every month. A Delhi-based company named 'Horses Stable' began providing two days paid menstrual leaves as well as providing a one day paid leave for the married male employees of their company, so as to take care of their wives during menstruation.⁹ In 2020, Zomato, a multinational company, introduced ten paid menstrual leaves yearly.¹⁰ All the above-mentioned instances stem from the same root cause: the downsides faced by women while on their period. Hence, companies and states that have been implementing benefits for women have been connected together through the common want and need to look out and care for their employees, without a gender bias while implementing and offering benefits. Often, however, the provided benefits are seen as a means

⁷ Garima Sahai, 'Period Leave: Gender Blindness is Never the Same as Gender Equality' (*The Wire*, 11 September 2020) <<https://thewire.in/women/period-leave-zomato-women-gender-blindness>> accessed 14 October 2021

⁸ Ankita Dwivedi Johri, 'When Lalu Prasad gave nod for leave during menstruation' (*The Indian Express*, 14 October 2021) <<https://indianexpress.com/article/opinion/columns/when-bihars-women-got-period-leave-6575393/>> accessed 14 October 2021

⁹ Sonam Joshi, 'Meet the people who have period leave' (*The Times of India*, 16 August 2020) <<https://timesofindia.indiatimes.com/home/sunday-times/meet-the-people-who-have-period-leave/articleshow/77565635.cms>> accessed 14 October 2021

¹⁰ Zomato, 'Introducing Period Leaves for Women' (*Zomato*, 8 Aug 2020) <<https://www.zomato.com/blog/period-leaves>> accessed 14 October 2021

to increase gender inequality, as well as strengthen biological determinism, hence making the concept of menstruation leaves a taboo in India. The benefits provided by each company or state may be different in terms of details including the number of days off, nevertheless, all present the same solution - providing leaves through a considerate mindset for women, hence helping normalise the concept in the process.

At a country level, the first time Ninong Ering from Arunachal Pradesh, a Member of the lower house of parliament introduced raised this issue by tabling 'Menstrual Benefits Bill, 2017.' The bill seeks 4 days of paid leaves every month for women working in any sector as well as for school-going girls of standard 8 or above. Bill also stated that those women who opt to work during menstruation should get overtime allowance and a rest time of 30 minutes twice a day. Bill also emphasised clean and separate toilets for men and women, setting up of a Grievance Redressal Committees. Also, it states the punishment for those of jail for one to three months or fine of ten thousand to fifty thousand or both who (a) denies leaving to a woman during her menstruation; or (b) obstructs a female employee from an entitlement of menstrual leave; or (c) denies or discontinues prescribed rest and recreation facilities to the women during her menstruation. However, the bill was rejected by the Ministry of Women and Child Affairs on the ground that it violates the constitutional value of Gender Equality.¹¹ On 23rd Nov 2020, the Delhi labor union filed a petition in Delhi High Court which prayed for paid menstruation leaves of 4 days a month to all classes of women employees and extra allowance for women who opt to work during menstruation. After hearing the counsels for both the parties and after looking at the issue at hand carefully High court issued a notice to Govt. asked to consider this writ petition as representation and decide as soon as possible about the same in accordance with the law, rules, regulations, and other government policies."¹²

REACTIONS OF STAKEHOLDERS ON MENSTRUAL LEAVES

Menstruation is taboo in India as people feel uncomfortable talking publicly about it. But the 'Menstrual Benefit Bill' presented by Ninong Ering and Menstruation leaves provided by some companies has triggered widespread debate and discussion where not only men but also some women argued against such benefits while some groups of people welcomed such a decision. Some women who opposed such framework thought that by this they will be perceived as a weaker gender and feared discrimination as they also have maternity benefits. Anyways Kavita Krishnan in an interview stated that since 1992 when Bihar instilled the period leaves many women started to avail themselves those benefits and there was still discrimination

¹¹ Menstruation Benefits Bill 2017

¹² *Delhi Labour Union v Union of India* WP (C) 8196/2020

prevalent but it was not increased after the benefits were instilled.¹³ Major pushback against such policy was fear of discrimination in hiring women, in pay scales, in the promotion or in extra rewards/bonuses, and in the type of work assigned to them by employers. Many people feared that it would ask women to prove their menstruating status and incapability of work at the time of opting for such leaves which can sometimes also lead to various kinds of harassment by colleagues at their workplace. This was also one of the reasons for the failure of menstruation leave policies in countries like Japan and Indonesia¹⁴. Several people argue that many people may misuse such leaves just by citing their biological reasons and take days off even if they don't need it. Some naysayers of this policy even cited the example of Serena Williams who won a major tennis tournament while she was pregnant¹⁵. Barkha Dutt, a journalist, and columnist, and feminist opposed menstruation leaves and described it as a stupid idea to grant such leaves. Barkha Dutt says that for women to use the fight against menstrual taboos as an excuse for special treatment is a disservice to the seriousness of feminism.¹⁶ While many feminists stood up in support of menstrual leaves. Somaya Gupta in direct response to Barkha Dutt's comment stated that she is also a feminist and supports period leaves. The policy of menstrual leaves has been criticized on the grounds that it legitimizes the very same gender inequality, which it seems to be fighting against.¹⁷

COMPARATIVE REVIEW OF LAW AND POLICY OF SOME OTHER COUNTRIES

Very few countries in the world have a menstruation leave policy for women and such policies mostly revolve around debates and controversies which lead to very low usage of such benefits in the countries which have such laws. During the 19th century, various sectors/factories in Russia implemented the menstrual leave policy but was the policy was discontinued in 1927 due to discrimination faced by women in hiring, pay scales, etc.¹⁸ In Japan, around the 1920s various Japanese labor unions started demanding a menstrual leaves policy. In 1947 Japan implemented the Labour Standards Law in which Art. 68 of its asks an employer to not deny leave to a woman requested during menstruation,¹⁹ if she is facing

¹³ Brishti Sen Banerjee, 'Making a case for Period Leave' (*Feminism in India*, 19 Mar 2021) <<https://feminisminindia.com/2021/03/19/period-leave-indian-private-public-sector/>> accessed 14 October 2021

¹⁴ Lahiri-Dutt K & Robinson K, "'Period Problems" at the Coalface' (2008) 89(1) *Feminist Review* 102-121

¹⁵ Urvashi Prasad, 'India needs a menstrual leave policy' (*The Hindu Business Line*, 7 June 2017) <<https://www.thehindubusinessline.com/opinion/india-needs-a-menstrual-leave-policy/article24105589.ece>> accessed 14 October 2021

¹⁶ Barkha Dutt, 'Opinion: I'm a feminist. Giving women a day off for their period is a stupid idea' (*The Washington Post*, 3 August 2017) <<https://www.washingtonpost.com/news/global-opinions/wp/2017/08/03/im-a-feminist-but-giving-women-a-day-off-for-their-period-is-a-stupid-idea/>> accessed 14 October 2021

¹⁷ Vrinda Aggarwal, 'Leave to Bleed : A Jurisprudential Study of the Policy of Menstrual Leaves' (2017) 8 *JILS* 1

¹⁸ Melanie Ilic, 'Soviet Women Workers and Menstruation: A Research Note on Labour Protection in the 1920s and 1930s' (1994) 46(8) *Taylor & Francis, Ltd, University of Glasgow, Europe-Asia Studies* 1409-15, 1

¹⁹ Labour Standards Law 1947, s 68 (Japan)

extreme discomfort and needs a leave or if she is working in a hazardous condition.²⁰ In Indonesia the Indonesian labor law under Art. 81 has granted the choice to women to take paid leaves on first as well as on the second day of menstruation and the employer cannot deny granting such leaves.²¹ In South Korea according to Art. 73 of Labour Standards Law employers have to grant one physiologic leave to a woman per month if a woman claims for a physiologic leave.²² In Italy a proposal for the provision of 3 days period leaves a month was made but the parliament rejected the proposal. If the proposal was accepted, Italy would become the first European nation to have such provision.²³ In 2015 Zambia, a country in East Asia also enacted a law under which women can claim a one day period leave per month which they considered as 'mother's day even though all working women won't be mothers and if any employer rejects such leaves then he/she can be prosecuted under a certain section of country's labor law.²⁴ In Taiwan under Art. 14 of the Gender Employment Act 3 days per year in addition to 30 days extra sick leave is granted to women. The 3 extra paid leaves are especially for menstruating women suffering extreme discomfort during menstruation.²⁵ According to some of the reports of china.org women in China can take paid leave up to 2 days a month by producing a certificate from a medical institute or hospital.

POINTS TO KEEP IN MIND WHILE DRAFTING AND IMPLEMENTING MENSTRUATION POLICY

Gender-neutral sick leave policy does not take into account women's special needs for menstrual leaves apart from actual sickness leaves provided to both genders at the workplace. Therefore in these sick leaves, men have to accommodate only their sickness while women have to accommodate their tough days during the menstruation cycle because of their biological differences as well as other days of sickness which amounts to inequality in itself. Thus menstruation leaves should be granted as gender-specific extra leaves rather than gender-neutral leaves.²⁶ The protection of dignity and privacy of a woman availing such leaves should be protected by making special provisions in the proposed law of menstruation because if privacy is not maintained about such data chances of physical or mental harassment

²⁰ Momoko Takemi, "'Menstruation Sutra' Belief in Japan' (1983) 10(2/3) Japanese Journal of Religious Studies 229-46

²¹ Indonesian Labour Law 2003, s 81

²² Labour Standards Act 2020, art 73

²³ Anna Momigliano, 'Italy set to offer 'menstrual leave' for female workers' (*Independent*, 25 March 2017) <<https://www.independent.co.uk/news/world/europe/italy-menstrual-leave-reproductive-health-women-employment-a7649636.html>> accessed 14 October 2021

²⁴ Kennedy Gondwe, 'Zambia women's "day off for periods" sparks debate' (*bbc.com*, 4 January 2017) <<https://www.bbc.com/news/world-africa-38490513>> accessed 14 October 2021

²⁵ Gender Equality in Employment Act, art 14 (Taiwan)

²⁶ Siddhi Gupta, 'Menstrual Leave - A Step toward Substantive Equality' (2021) 7(2) NLUJ LR

may increase at the workplace. This is the reason why Bihar's menstruation policy is running successfully where employers cannot peep in the private info of employees or cannot assess the reason behind using such leaves by an employee²⁷. If a menstrual leaves policy is enacted in an Organization then there should be good relations and better understanding between employer and employee so that it may help to reduce the chance of misuse of such leaves. The pandemic has changed the working of many organizations and many employees were working from home during the pandemic. This is a good option that can be made available to menstruating women during their menstruation period. This can help women to work from their home comfortably and in becoming productive during such days. This can also save the extra cost which an employer has to borne by hiring a woman and discrimination in hiring can be prevented.²⁸ The policy should also make a provision for separate and clean toilets for men and women and also the facility for disposing of sanitary napkins.²⁹ Further, the way to apply for menstrual leave should be automated just like Gozoop has where employees can avail their leaves by just submitting an application on an online portal that is never rejected. This method has helped women employees in maintaining their privacy and dignity.³⁰ Various tax benefits should be provided to employers by the Government who provide menstrual leaves and hire women as their employees just like some countries of the European Union do.³¹

CONCLUSION

The concept of menstruation leave policy is debatable due to some reasons mentioned above in the review but it is majorly believed that it is imperative for countries, states, and companies to implement similar policies because many women that face extreme pain during their menstruation days need to be compensated and provided with benefits. However, benefits obtained by a nation by institutionalizing such policy outweighs the cost borne by some stakeholders by providing such leaves. Policies will help in the participation of women in the workforce and in the growth of the nation. Leaves will also help to break the taboo around menstruation. Women can increase their productivity because while working during menstruation, a woman loses productivity of around nine days due to mental trauma faced

²⁷ *Ibid*

²⁸ Ratika Rana, 'Is paid period leave a welcome move towards attaining gender parity?' (*The Logical Indian*, 23 August 2021) <<https://thelogicalindian.com/inclusivity/women-menstrual-leave-30369?infinitescroll>> accessed 14 October 2021

²⁹ Shankar IAS Academy, 'Menstrual Benefits Bill' (*Ias Parliament*, 9th June 2018) <<https://www.iasparliament.com/current-affairs/menstruation-benefits-bill>> accessed 14 October 2021

³⁰ MW Staff, 'Meet the Pioneers Who Have Implemented Menstrual Leave Policy in their Companies' (*Man's World India*, 14 July 2017) <[Meet The Pioneers Who Have Implemented Menstrual Leave Policy In Their Companies \(mansworldindia.com\)](https://mansworldindia.com/Meet-The-Pioneers-Who-Have-Implemented-Menstrual-Leave-Policy-In-Their-Companies)> accessed 14 October 2021

³¹ European Commission, 'Stimulating Job Demand : The Design of Effective Hiring Subsidies in Europe' (*European Employment Policy Observatory Review*, 2014) <<http://www.ec.europa.eu/social/BlobServlet?docId=11950&langId=en>> accessed 1 October 2021

during menstruation while working. The best way to support this policy is the support of the government to stakeholders by providing stakeholders extra benefits who provide such leaves. Government can solve most of the disagreements with such a policy. These gendered-based policies don't necessarily seem to violate the notion of equality because the issue in itself is gender-specific and hence, the solution would inevitably be gender-specific too.