
NEED FOR PAID MENSTRUAL LEAVE AS A LABOUR LEGISLATION IN INDIA: AN OVERVIEW

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ABSTRACT

Menstruation is an age-old taboo globally and especially in India. Every time a woman has her periods, she is still forced to follow the age-old practices which everyone is aware about. Despite of the pain and discomfort, every woman must do their daily activities. Women working at office or especially in a work which demands physical strength cannot even demand rest during their periods as they are hesitant to talk about it. According to research conducted at University College London stated that a menstrual cramp can be equivalent to heart attack¹. This shows how severe the pain can be and stressing or straining during the cycle will only affect the health of a woman. Menstrual leave is a sensitive matter just like maternity leave. Though the cycle lasts short than the Maternity period, the pain and discomfort with other health issues are serious within that short time which has various repercussions that are projected in the working or studying environment. Women at the workplace already have the benefit of maternity leave through The Maternity Benefits (Amendment) Act 2017 and various labour legislations but still the debate of menstrual leave is not addressed in a concerned manner. In such a case whether it is fair for a woman to take risks and challenging tasks while undergoing so much bodily discomfort or does this whole issue of wanting a paid menstrual leave result in a roadblock for their career by discouraging companies to hire woman workers? A feminist activist Kavitha Krishnan says that whenever government makes any policy it is in view of benefiting the male workers. Not only women but also trans-men undergo periods and it is important to address the issue of menstrual leave². While a lot of people support the paid menstrual leave agenda. It has also received a lot of criticism. In this article, we will discuss the ever-going debate on whether menstrual leave can be allowed in India in workplaces for the benefit of women and the position of menstrual Leave so far in both India

¹ Menstruation Benefit Bill, 2017

² Falguni Sharma, *Lalu's Bihar to Spain — controversial journey of menstrual leave spans decades*, ThePrint.

and other countries along with the significance of why menstrual leave is necessary from the aspect of labour laws of our country.

INTRODUCTION

The competitive world has become more of a survival of the fittest where both men and women are enrolled in all spheres of work. There is nothing a woman cannot do now. But women do have a certain biological process every month that leaves them with pain and discomfort that affects their well-being and the strength to take up challenging tasks. Menstrual leave is not legislation passed in India. hence, women continue to do everyday activities with bearing so much pain. It is a known concept that every woman attaining puberty has a menstrual cycle ranging between 28-32 days every month. The body of each woman differs and so does the intensity of cramps. It is not only the menstrual cramps that affect the women but also the Pre-Menstrual Syndrome which includes a lot of health issues and discomfort due to hormonal changes such as – body pain, nausea, mood swings etc. According to the American College of Obstetricians and Gynaecologists, more than half of menstruating women experience pain for one or two days every month. And some experience severe pain that they cannot perform normal activities until the cycle gets over. In such a case, how efficiently a woman can work during the cycle will, either way, contribute less to that day's productivity. Instead, a properly paid leave could do better. Another study by Endometriosis Society India suggests that over 25 million women suffer from endometriosis, a condition that makes period pain so bad that women may pass out from it³. After all this, due to the stigma attached to it, women are often hesitant to talk about their pain and demand rest at the workplace during their cycle. This moreover, creates another fear for women, as employers might become reluctant to hire female workers for this very reason of providing them with leaves that might affect production or sales or the misconception that men can think of this as a weakness of women.

POSITION IN OTHER COUNTRIES:

Several countries have menstrual leave policies that give women the right to get paid menstrual leave. The right to get paid menstrual leave in these countries is viewed as a right towards

³ Shabnam Omidvar, Fatemeh Nasiri Amiri, Afsaneh Bakhtiari and Khyrunnisa Begum, A study on menstruation of Indian adolescent girls in an urban area of South India. doi: 10.4103/jfmpe.jfmpe_258_17

women's health and hygiene. In countries like US, UK, and Australia, it is a rare sight to get a menstrual leave and no such legislation has been passed too. While the below-mentioned countries have included paid menstrual leave as a labourer's right and passed the respective labour legislation considering the situations of women workers. companies in the following countries⁴ have introduced their company policy where they offer, paid menstrual leave for their employees.

Japan – Japan introduced menstrual leave as an industrial right in 1947 itself⁵. With this right, the law mandates that no female employee can be forced to work during the cycle if they experience difficulties.

South Korea – In South Korea, article 73 of the labour standards law mandates a monthly physiologic leave so that women are allowed to take a day off from work.

Vietnam – Vietnam's labour law provides for a 30-minute break for every female worker during their menstruation cycle. In a recent reform in the year 2020, the labour law provides for a complete 3 days off paid leave.

Indonesia – Indonesia was one of the earliest Asian countries to adopt a menstrual leave policy in the year 1948. It was restructured in the year 2003. Under labour act no.13, the law mandates paid leave on the first two days of the period.

Zambia – In the year 2015, Zambia passed a law granting a day leave for women during menstruation without any prior notice or doctor's note. This measure was referred to as 'Mother's Day'.⁶

Sweden - In the year 2016, Sweden introduced their paid menstrual leave policy allowing women who experience cramps to take three days off during their cycle.

Taiwan – As per Article 14 of the Act of Gender Equality in Employment at Workplace⁷, the

⁴ Employee wellbeing, From Japan to Zambia; the push for paid menstrual leave, Read more at: <https://hr.economictimes.indiatimes.com/news/workplace-4-0/employee-wellbeing/from-japan-to-zambia-the-push-for-paid-menstrual-leave/91658204>

⁵ Labour Standards Law [Law No. 49 of 7 April 1947]

<https://www.scconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

⁶ The Employment Code Act, No.3 of 2019, <https://www.scconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

⁷ Act of Gender Equality in Employment, <https://www.scconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

employees have the right to take a day off as a period of leave but their wage is deducted by 50% on menstrual leave.

Spain - Recently on 16th February 2023, Spain became the first European country to introduce a Paid menstrual leave law for every woman experiencing severe pain, a right to take three to five days of paid menstrual leave.

Not the only the above-mentioned countries grant paid menstrual leave. Even companies such as Nike and Coexist have introduced menstrual leave policies at the company level since the USA does not have menstrual leave as labour legislation.

NIKE - Nike in the USA is the only global sportswear brand that has implemented a menstrual leave policy since the year 2007 in its code of conduct. Even their business partners are obliged to follow this policy which is made sure of by signing a memorandum.

Coexist – Coexist is a firm in the community of Bristol in the UK. Coexist is the first firm in the UK to break the menstrual stereotype and taboo and introduced menstrual policies at the workplace by prioritising women's health in the working environment.

Even a French cooperative La Collective provides women staff with one day menstrual leave, An Australian Gender Equality Agency - Victorian Women's Trust offers 12 days of paid menstrual and menopause leave to female workers. While all these are, on one hand, this is also thought-provoking as to why menstrual leave is not passed as labour legislation in India where the Labour Force Participation Rate (LFPR) is estimated at 32.8% for female workers⁸.

POSITION IN INDIA:

The Indian government various aspects have taken steps to increase female participation in the labour force. They have incorporated several policies and codes to provide women workers with an equal and comfortable working environment. For instance, in the landmark case of *S. L. Bhagwati vs. Union of India and Ors.*⁹, in 1992, the Supreme Court held in favour of working women to receive paid menstrual leave to take care of their health. The supreme court also

⁸ Ministry of Labour and Employment, Labour Force Participation Rate (LFPR) of women shows an increasing trend as per the annual PLFS reports, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1908961>

argued that women should have right to menstrual leave as their fundamental right since 1992 but it was not effectively implemented.

The Code on social security 2020 provides for social security benefits during sickness, disablement, maternity etc. The maternity benefits act 2017 provides women with 12-26 weeks of paid leave and other added maternity benefits. Even unmarried women and surrogate women have access to maternity leave. Not only for maternity even in case of miscarriage, a woman has up to 45 days of paid leave. Maternity benefits at the workplace play a pivotal role in safeguarding the health conditions of women. In such a case, even menstruation is health-related. It is important for women who go through severe pain or in cases of women who have PCOS to take proper rest.

As per the Factories Act 1948, one of the main aims is to provide healthy and sanitary conditions at the workplace. This provides for separate sanitation facilities and restrooms for women, fixed working time for women, weekly a day off for women, adequate protection during night shifts etc. There are many other favourable legislations for working women in the labour sphere such as the equal remuneration act, minimum wages act etc.

MENSTRUAL BENEFIT BILL 2017: AN OVERVIEW

There have been a lot of conversations going around regarding the implementation of menstrual policies as labour legislation but so far it is unsuccessful in our country. The Menstrual Benefits Bill 2017 was first introduced by Shri Ninong Ering a member of parliament as a private member bill before Lok Sabha to provide women with certain menstrual benefits at the workplace or educational institutions. The MP also suggested that this bill would create a women friendly working environment and introduction of female labour laws for the welfare of women. Section 2 of This Bill has mentioned the applicability to every establishment in India such as Mines, Factories, Companies etc. and even for self-employed persons working in unorganised sectors, irrespective of whether it is owned by the government or not. The bill covers every woman working in the establishment proposed in the bill as well as female students above class 8th grade. The main purpose of the bill is in section 4 which gives the right to menstrual leave to women with not exceeding 4 days of paid leave during the menstrual cycle for female employees with other benefits. However, if a woman wishes to work instead of taking an off, she can do so and for this she is entitled to an overtime allowance at a rate prescribed. Other benefits under this bill provides women with a 30 minutes break twice a day

during her menstruation for those 4 days and creche facilities. This bill also provides under section 8 every woman with the right to self-perception of her menstruation so that she can avail the benefits¹⁰.

If the women face any difficulties in availing the benefits under this bill, she can approach the complaint committee under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 or any other Grievance Redressal Committee to seek redressal. The bill also provides for the punishment under section 10 to be given for any person if he/she does not provide the benefits in this bill. He/she will be punished with imprisonment for a period not less than 1 month but exceeding up to 3 months and with fine not less than ten thousand but exceeding up to fifty thousand.

While this bill was not discussed, the same was introduced in the year 2022's Budget session before Arunachal Pradesh's Legislative Assembly and the bill was dismissed considering menstruation to be an "unclean topic"¹¹. Moreover, the bill despite so much support, received objections from people, even by many women themselves such as the Congress spokesperson, Priyanka Chaturvedi stated that women's participation needs not be encouraged by exclusive policies rather an inclusive policy and equal opportunity is the need and not concessions due to biological differences.

OBJECTIONS AGAINST THE MENSTRUAL BILL:

1. The menstrual leave can hamper inclusivity that 4 days long leave can make women miss out on important meetings, cannot keep up with the target, lag in productivity.
2. This will discourage employers to hire female workers. Even if they are hired due to the concession of 4 days can be detrimental to their promotions, participation, and salary.
3. A paid leave for menstruation will show it in limelight as some sickness or health issue rather than a simple natural biological process.

¹⁰ Menstruation Benefit Bill, 2017.

<http://164.100.47.4/billtexts/lbills/asintroduced/2651LS%20As%20In.pdf>

¹¹ Akanksha Kuller, the unfortunate non-debate on menstrual leave in Arunachal Assembly, Read more at: <https://www.deccanherald.com/opinion/the-unfortunate-non-debate-on-menstrual-leave-in-arunachal-assembly-1096126.html>

4. The intensity of pain differs for each woman and all these years woman have been working with the pain and still does not compromise on the productivity or quality of work. In such a case a 4 day off proves to be detrimental for holding their job, promotions, or salary.
5. The bill is against the agenda of 'feminism' which treats both men and women at equal footing. Providing a paid leave due to a woman's biological process will process might portray her weak and incapable in the minds of male workers/employers. And can amount to gender bias at workplace.

PUBLIC INTEREST LITIGATION FOR PAID MENSTRUAL LEAVE:

On January 2023, a PIL was filed before the Honourable Supreme Court of India before the three judges bench led by Chief Justice of India D.Y. Chandrachud, Justice PS Narasimha, and Justice JB Pardiwala by the advocate Shailendra Mani Tripathi requiring the Indian state governments to make policies regarding paid menstrual leave to women employees and female students and complying with section 14 the of Maternity Benefits Act 1961. The contentions of the counsel were that the dismissal of the Menstrual leave is violative of Article 14 which is discussed in detail later in this article. Further the PIL highlights that the along with the menstrual benefits bill, the Women's Sexual, Reproductive and Menstrual Rights Bill¹² which proposed that sanitary napkins be freely accessible to every woman at their workplace or educational institutions which was introduced by Dr. Sashi Tharoor in 2018 was rejected as well which reflects the stigma that menstruation still carries in Indian society. The PIL also cites Central Civil Services (CCS) leave rules which made provisions for Child Care Leave for both women and men (paternity leave) employees to take care of their children till they attain the age of 18¹³.

Just like maternal leave, menstrual leave is also necessary and it's high time that a male-dominated society understands the plight of working women. But still, the Supreme Court rejected the PIL stating that the paid menstrual leave issue is a matter to be decided by the

¹² THE WOMEN'S SEXUAL, REPRODUCTIVE AND MENSTRUAL RIGHTS BILL, 2018
<http://164.100.47.4/billtexts/lbills/asintroduced/2271as.pdf>

¹³ Rule 43-C of the Central Civil Services (Leave) Rules, 1972

Union Government, not by the court. However, the court asked the petitioner to could file a representation before the Union Ministry of Women & Child Development.

INITIATIVES BY THE STATE GOVERNMENTS AND PRIVATE SECTORS:

In India, Bihar and Kerala are the only states that introduced menstrual policies for women. In Bihar, it was introduced in 1992, under the government of Lalu Prasad Yadav, granting two days of paid menstrual leave. It was implemented to address the menstrual well-being of women workers and for reducing absenteeism and to improve productivity. Following this, the Kerala government under chief minister Pinarayi Vijayan made a similar announcement of one day of paid leave for female employees during menstruation. The Kerala government also announced that menstrual leave for female students will be granted in all state universities under the Department of Higher Education as the attendance percent required to attend examinations cut down from 75% to 73%. In march 2021, Delhi government announced that female government employees can take any one day off during the cycle and it will not be deducted from annual leave entitlement. Following this, in July and august 2021, Uttar Pradesh government and Maharashtra government also made a similar announcement respectively. Recently in 2022, a proposed bill Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022" was introduced that proposed to provide three days of paid menstrual leave for women and transwomen and three days menstrual to school students as well. This bill also recommends to make sanitary products free and cut heavy taxes on it.

As far the private initiatives, in 2017, the digital media companies Culture Machine and Gozoop in Mumbai were the first to offer women employees with First Day of Period leave (FOP)¹⁴. In 2020 food delivery company Zomato India whose 35% of the workforce is women, is one of the first companies to provide 10 days period leave per year to its female and transgender employees with a view to provide an inclusive working environment. Following this, a similar announcement was made by Swiggy India, Byjus, Mathrubhumi, orient electronics as well.

Public Relations & Advocacy Group (PRAG) situated in Gurugram offers not only paid menstrual leave to its employees also free consultation to all organisation that provide paid

¹⁴ Culture Machine and Gozoop, become India's first companies to introduce 'First Day of Period' leave policy, <https://www.scconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

menstrual leave to its employees.

CONSTITUTIONAL VALIDITY OF THE MENSTRUAL BENEFITS BILL 2017:

Menstrual right is though not an explicit fundamental right, it is however under the scope of right to health and the article 39(e) of the Directive Principles of State Policy directs the states to ensure the health and safety of workers both men and women. Therefore, its high time to discuss the ongoing issue of menstrual leave and the fundamental rights associated with it.

ARTICLE 14 AND MENSTRUAL LEAVE:

One of the fundamental rights – Right to Equality under Article 14¹⁵ of the constitution states “State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” It mandates all the authorities to provide equal treatment of all citizen and ensure equal protection and equality before the law. Article 14 does not state that all laws must be universal for both men and women for being equal. In cases of special circumstances or due to some specific reasons an exclusive law is needed for the protection and is in interest of the society at large then such a law is not violating article 14. Therefore, a period leave cannot be held discriminatory as women and men are biologically different. The Maternity Benefits Act 2017 is exclusive for women considering the special circumstance that only a woman can attain motherhood. Just like that menstruation is also a biological process exclusive for woman and transgenders, then why the Menstrual Benefits Bill is held discriminatory. In fact, Article 14 vouches for equal treatment in equal circumstances and not equal treatment in unequal circumstance. Even supreme court in the case of E.P. Royappa v State of Tamil Nadu¹⁶ in 1974 held that right to equality is dynamic. The constitution makes it clear that no one can prevent the state from making special laws for the safety and empowerment of women and children. In such a case, dismissal of the Menstrual Benefit Bill 2017 violates the right to equal treatment. Considering menstruation and the discomfort and pain associated with it, taking it as a special circumstance for women at workplace, a right to paid menstrual leave does just for the welfare and basic health requirement for a woman.

ARTICLE 15(1) AND MENSTRUAL LEAVE:

¹⁵INDIAN CONST Art.14 “right to equality”.

¹⁶ 1974 SCC (4) 3

Article 15(1) of the constitution states that the State cannot make any laws that is discriminatory against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. However, article 15(3) of the constitution allows the state to make special provisions for the protection of women and children. This was also upheld by the Supreme Court in the case of *Government of Andhra Pradesh vs P.B. Vijayakumar & Anr*, 1995¹⁷. Under this article various legislations favouring working women have been passed such as The Maternity Benefits Act 2017, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, The Equal Remuneration Act 1976 etc. All these legislations do not violate article 15(1) so does the need for paid menstrual leave. Paid menstrual leave can be seen as a special provision for the acknowledgement of the efforts they put at workplace despite pain they go through, encouraging more participation of woman at labour force and a step towards protecting woman's health and hygiene.

ARTICLE 21 AND MENTRUAL LEAVE:

Article 21 of the Indian constitution provides right to life and right to personal liberty¹⁸. Right to life does not only include the above-mentioned rights, it is widened to the scope of covering other rights such as Right to health and medical aid, right to education, right to shelter, right to privacy, right to pollution free air and water, right to social justice and economic empowerment, hygienic conditions in the workplace & right to leisure. Therefore, right to health is a part and parcel of right to life. In the case of *Consumer Education and Research Centre V UOI*¹⁹, the Supreme Court held that the right to health and medical aid for a worker while in service or post-retirement is covered under the ambit of fundamental right under article 21 of the constitution. Menstruation concerns with women's health and hygiene in such a case asking a woman to work during her periods with the pain and discomfort she is undergoing is violating right to health under article 21 of the constitution. Moreover, not many workplaces have proper sanitation facility or separate restrooms, clean and hygienic working conditions, or proper menstruation alternative facilities. These result in violating the women's menstrual health if she is going to work.

¹⁷ 1995 SCC (4) 520

¹⁸ INDIAN CONST Art.21 "right to health"

¹⁹ 1995 SCC (3) 42

CONTROVERSIES ON THE MENSTRUAL LEAVE:

The major concern involving controversy for woman who are against the menstrual leave is about the decline in hiring female workers, delay in promotions and that the topic is against the feminist agenda as it might create gender bias. Some women feel that implementing an exclusive bill for menstrual leave will further label it as a sickness or issue rather than considering it a normal biological process. These people suggest that, during the paid menstrual leave, work from home can be done if the job description allows it, otherwise a day off can be valid as three to four working days of paid leave will for sure discourage employers from hiring female employees.

Now, people who support the bill feels this as a progressive step towards acknowledging the menstrual concept as it will not be a taboo anymore to discuss it openly. Mariam Dhawale, general secretary of the All-India Democratic Women's Association (AIDWA) states that if women are participating in socio economic activities, then needs should be considered as well in the policy framing as it is a physical condition that no women can avoid²⁰. In a study shows that during menstrual cycle 45-95% of women reported that dysmenorrhea, mood swings and lack of concentration during menstrual cycle severely impacts the productivity²¹. In such a case, it is better to provide a menstrual leave as a labour legislation as working on menstrual cycle affects productivity which proves the work of that useless. It is Moreover, if every citizen has the basic right to health and to live with dignity, its necessary for the government to address the issue of menstrual leave policies as a labour legislation.

CONCLUSION:

In a country where menstruation is a taboo still today, the implementation of the menstrual bill 2017 despite its dismissal, has created awareness about menstrual health and women's problems at workplace and educational institutions. Though the apex court has considered the right to health as a fundamental right under article 21 of the constitution, the apex court has turned silent towards the matter of implementing the menstrual leave. The implementation of menstrual leave has both pros and cons as discussed above. It is notable that despite of the

²⁰ Samriddhi Sakunia, Why Period Leaves are Necessary and Need Policy Intervention, <https://theleaflet.in/why-period-leaves-are-necessary-and-need-policy-intervention/>

²¹ Sonia Ponzo, Aidan Wickham, Ryan Bamford, Tara Radovic, Liudmila Zhaunova, Kimberly Peven, Anna Klepchukova, and Jennifer L Payne, Menstrual cycle-associated symptoms and workplace productivity in US employees: A cross-sectional survey of users of the Flo mobile phone app, Doi: 10.1177/20552076221145852

increased literacy rate and reduced female infanticide, the female labour force has been continuously reducing from 2004 to 2018 from 42.7% to 23.3 % then this can be due to the unpleasant and uncomfortable working places that lack basic facilities for women's health and safety. In that case, a paid menstrual leave can help bridge the gap between the falling labour force and absenteeism among the female employees and provide a good opportunity, comfortable and equitable working environment.