
ADDRESSING MENSTRUAL LEAVE ISSUES IN INDIA: LOOKING BEYOND THE LAW

L. Helan Jesus Mary – Author -Assistant Professor of Law – The Central Law College,
Salem, Tamilnadu

ABSTRACT:

Menstruation is a natural biological process experienced by women around the world. However, the impact of menstruation on a woman's physical and emotional well-being is often overlooked. In recent years, the concept of menstrual leave has gained traction as a means to address the specific needs of women during their menstrual cycle. It aims to provide women with the flexibility to take time off work during their menstrual cycles without facing any negative consequences, such as loss of pay or job security. In India, various states and private organizations have explored the idea of providing menstrual leave as part of their employment policies. Menstrual leave has been a topic of discussion for decades. The country's cultural and social context has traditionally associated menstruation with stigma and taboos, making it challenging for women to manage their menstrual cycles effectively. However, in recent years, various companies and organizations have introduced menstrual leave policies to support women's health and well-being. On the other hand, critics express concerns about potential misuse or discrimination against women in the workplace. They worry that providing menstrual leave could reinforce gender stereotypes and reduce opportunities for women in certain job sectors. Recently the Supreme Court of India refused to entertain a plea seeking menstrual leave because if employers were compelled to grant menstrual leave it may disincentivize them from hiring women at all. So, the policy related to menstrual leave should be designed with careful consideration of cultural norms, gender equality principles, and the needs and preferences of the workforce.

In this article, we discuss the need for separate menstrual leave in organizations, besides examining its extant legal position in India and across other jurisdictions. Additionally, we have also examined the evolving industry practice in India with respect to the implementation of policies and we have also looked at the advantages and disadvantages of menstrual leave and comprehensive Policies for Workplace Equality.

Keywords: Mensural leave, Period leave, Special leave, Health, well-being, Legislation, Policy, India.

1. INTRODUCTION:

The topic of menstrual leave is a complex and controversial one, with differing opinions on its necessity and implications. Menstrual leave refers to a policy that allows women to take time off from work or school during their menstrual cycles to manage menstrual-related symptoms and discomfort. Proponents of menstrual leave argue that it is necessary for several reasons. First and foremost, menstruation is a natural physiological process that can cause physical and emotional discomfort for many women. Severe menstrual symptoms such as cramps, fatigue, headaches, and mood swings can significantly impact a woman's ability to perform her best at work or school. Providing menstrual leave can help alleviate these challenges and promote gender equality by recognizing and accommodating the unique needs of women. Advocates also argue that menstrual leave can help reduce the stigma surrounding menstruation. Normalizing the need for time off during menstruation encourages open conversations and a greater understanding of women's health issues. Additionally, it can lead to increased awareness and research into menstrual health, ultimately benefiting women's overall well-being.

In recent years, the issue of menstrual leave has gained significant attention in India. Menstruation, a natural and essential biological process for women, should not be a taboo or a cause for discrimination. However, women in India continue to face challenges when it comes to managing their periods while working. This article aims to shed light on the advantages and disadvantages of menstrual leave, the current scenario in India compared with other countries, and the need for comprehensive policies to support women's health and workplace equality.

2. Legal position of menstrual Leave in Other Countries:

Japan¹: Japan is known for its progressive stance on gender equality in the workplace. The country has had menstrual leave policies in place for several decades. Some companies provide "seirikyuka" or "physiological leave" to female employees, granting them paid time off during their menstrual cycle. However, the utilization of this leave is relatively low due to the stigma surrounding it.

¹ Labour Standards Law [Law No. 49 of 7 April 1947]
<https://www.ilo.org/dyn/natlex/docs/WEBTEXT/27776/64846/E95JPN01.htm>

South Korea:² South Korea introduced a menstrual leave policy in 2001, allowing female employees to take one day off per month for menstrual-related issues. However, similar to Japan, the utilization of this leave remains low due to social pressure and concerns about job security.

Italy:³ Italy has taken a unique approach to menstrual leave by introducing the "menstrual bonus" in 2017. This policy grants women a flexible working schedule or the option to work from home during their menstrual cycle, without a reduction in pay. The aim is to empower women to manage their menstruation in a manner that suits their individual needs.

Zambia:⁴ In 2015, Zambia became the first African country to enact a menstrual leave policy. The law allows women to take one day off per month if they experience painful periods. This policy acknowledges the physical and emotional challenges women face during menstruation and aims to provide them with the necessary support.

Taiwan:⁵ In Taiwan, female employees experiencing difficulty while performing work due to their menstrual time are entitled to make a request for 3 days of leave in a year. Any leave exceeding such 3 special leaves will be deducted from their available sick leaves. Such prescribed menstrual leave of 3 days and sick leaves can be availed at half the rate of such employees' salary or pay.

Spain:⁶ The first European country to introduce menstrual leave recently as part of its legal regime, wherein female employees can avail of 3 to 5 days leave due to menstrual pain on the production of a doctor's note and the State social security system would back the same financially.

3. The Current Scenario in India:

The existing labour laws in India do not expressly provide for paid or unpaid leave on account of the menstrual cycle, and as such, there is no legal requirement for Indian employers

² Labour Standards Act, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/46401/74081/F-1959592377/KOR46401.pdf>

³ The Case of Menstrual Leave in India, <https://www.sconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

⁴ The Employment Code Act, No.3 of 2019, <https://www.parliament.gov.zm/sites/default/files/document/acts/The%20Employment>

⁵ Act of Gender Equality in Employment, <https://laws.mol.gov.tw/Eng/EngContent.aspxmsgid=469>

⁶ Painful periods Spain just passed Europe's first paid 'menstrual leave' law, <https://www.euronews.com/next/2023/02/16/spain-set-to-become-the-first-european-country-to-introduce-a-3-day-menstrual-leave-for-women>

to provide menstrual leave to their employees as a date.

The Menstrual Benefit Bill, 2017⁷ was first introduced by Shri Ninong Ering, Member of Parliament, as a private member's bill before the Lok Sabha with a motive to avail women of certain menstrual benefits at workplaces or educational institutions. The same bill was introduced again this year on the first day of the Budget Session of 2022 before the Arunachal Pradesh Legislative Assembly but the Bill was withdrawn shortly. As such in this regard the legal position of menstrual leave remains unchanged till now.

Benefits of the bill

- Paid menstrual leave for a period of 4 days for Female Employees
- Avail menstrual leave from school in case of Female Students
- Overtime allowance for Female employees in case they work during the menstruation cycle.
- 30 minutes of rest, twice a day for 4 days in case the Female employee work during her menstruation cycle.
- A Facility of creche separately or along with common facilities, for an establishment with more than 50 employees, within the prescribed distance.

The Bill was not passed as such in this regard the legal position of menstrual leave remains unchanged till now. There is no special legislation for menstrual leave in India.

Recently, the Minister of Women and Child Development has, to questions in Lok Sabha regarding provisions of menstrual leave, stated that the Central Government employees are not entitled to any provisions for menstrual leave now, and at present, the Government is not examining any proposal to include such mensural leaves in the Central Civil Services (Leave) Rules, 1972⁸. That said, the Government has taken various initiatives for awareness regarding menstrual hygiene and health and has also taken necessary steps to increase access to menstrual hygiene products with low taxes.

In January 2023, a public interest litigation (PIL)⁹ was filed before the Supreme Court of India, seeking that a direction be issued to all the States to frame a policy for menstrual leave

⁷ An Overview of the menstrual benefit bill, 2017, <https://www.khuranaandkhurana.com>

⁸ <http://164.100.24.220/loksabhaquestions/annex/179/AU2256.pdf>

⁹ Shailendra Mani Tripathi v. Union of India, WP (C) No. 172 of 2023, order dated 24-2-2023 (SC)

for female students and working women under the provisions of the Maternity Benefit Act, 1961. However, the PIL has been disposed of by the Supreme Court of India by way of an order dated 24-2-2023, suggesting that it would be appropriate if the petitioner submits a representation to the Union Ministry of Women and Child Development which may take an appropriate decision in this regard of menstrual leave.

In 2017, the Indian state of Bihar¹⁰ became the first state to grant 2 days of paid menstrual leave per month to its female government employees. Based on our informal discussions with the Bihar Government officials in this regard, we understand that grant of such leaves continues to be in practice. The Human Resource Manual implemented by Bihar Vikas Mission a body formed by the State Government for the implementation of various schemes also makes reference to such special leave for female employees. Aside from the above, more than a century ago, in 1912, a government school in Kerala¹¹ provided menstrual leave to its students during their annual examinations and permitted them to attempt the same exam at a later stage.

Menstrual leave is a policy that allows women to take time off from work during their menstruation days, providing them with the necessary support to manage their health. This type of leave recognizes that menstrual cycles can be accompanied by severe pain, discomfort, and other medical conditions such as dysmenorrhea, endometriosis, and polycystic ovary syndrome (PCOS). Granting menstrual leave not only promotes gender equality but also acknowledges the unique needs and challenges faced by women.

4. private sector policies:

India has seen some progress in addressing menstrual leave concerns. Several organizations, both in the public and private sectors, have taken steps to implement menstrual leave policies.

Since then, several private companies, including Culture Machine, Zomato, have implemented similar policies. The idea behind these initiatives is to provide women with a supportive work environment, recognizing that menstruation can affect productivity and

¹⁰ Bihar Vikas Mission, Human Resource Manual, https://bvm.bihar.in/Application/uploadDocuments/download20220325_134819.pdf

¹¹ Ahead of its time! This Kerala school granted menstrual leave to students way back in 191, <https://www.scconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

overall health.

A Mumbai-based media company¹² introduced a policy of offering leave to women on the first day of their period.

Recently News7 Tamil,¹³ a well-known Tamil television station introduced the 13 internal departments of the channel that female menstruating staff now have a right to four days of menstrual leave per month.

5. Advantages and Disadvantages of Menstrual Leave:

Menstrual Leave is a policy granting women paid time off from work during their menstrual cycle. This initiative aims to recognize the unique challenges faced by women during menstruation, prioritize their health and well-being, and foster a more inclusive work environment. However, like any policy, menstrual leave in India comes with its own set of advantages and disadvantages.

5.1. Advantages of Menstrual Leave:

Health and Well-being:

Menstrual leave acknowledges the physical and emotional challenges that many women experience during their menstrual cycle. From painful cramps to fatigue and mood swings, menstruation can take a toll on a woman's overall health. Allowing women to take time off during this period can contribute to their well-being, reduce stress, and promote a healthier workforce.

Increased Productivity:

By providing women with the opportunity to rest and recover during menstruation, employers can expect increased productivity in the long run. When employees are given time to take care of their health, they return to work with improved energy and focus, which can positively impact their performance.

¹²The Case of Menstrual Leave in India

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

¹³ <https://www.thenewsminute.com/article/tv-channel-news7-tamil-announces-period-leave-employees-161761>

Gender Equality and Inclusivity:

Implementing menstrual leave signifies a positive step towards gender equality in the workplace. It acknowledges the biological differences between men and women and strives to create a more inclusive work environment. This policy sends a message that the company values its female workforce and understands its unique needs.

Reduced Stigma:

Menstrual leave can play a crucial role in reducing the stigma surrounding menstruation. By normalizing discussions about periods and acknowledging their impact on women's lives, this policy can help break down taboos and create a more open and supportive workplace culture.

Employee Satisfaction and Loyalty:

Offering menstrual leave demonstrates that the organization cares about its employees' well-being. This can boost employee satisfaction and loyalty, leading to a more motivated and dedicated workforce.

5.2. Disadvantages of Menstrual Leave:**Discrimination and Stereotyping:**

Despite the good intentions behind menstrual leave, there is a risk of reinforcing gender stereotypes and discrimination against women. Employers may hesitate to hire or promote women, fearing that they may take frequent leaves, leading to a potential gender bias in hiring and decision-making.

Workload Distribution:

With female employees taking menstrual leave, there may be an uneven distribution of work among the remaining team members. This can lead to increased pressure on other employees and create a sense of resentment among the workforce.

Administrative Challenges:

Managing and tracking menstrual leave can be logistically challenging for companies, especially if the policy is not properly planned and communicated. Companies need to ensure that the policy is clear and that leave is granted appropriately.

Privacy Concerns:

Asking employees to disclose their reasons for taking leave can raise privacy concerns, as some women may not feel comfortable discussing their menstrual cycles with their employers.

Cost Implications:

For smaller companies, providing menstrual leave with full pay can lead to financial strain, potentially impacting the company's budget and profitability.

Misuse of the Policy:

Like any policy, there is a risk of some employees misusing menstrual leave, either by falsely claiming it or by using it for reasons other than menstruation. This may lead to scepticism and distrust among employers.

Despite the positive steps taken, the concept of menstrual leave still faces opposition and criticism. Some argue that it might lead to further discrimination against women in the workplace. However, these concerns can be addressed by implementing clear policies that protect women from any form of bias or stigmatization. It is crucial to educate employers, colleagues, and society about the biological realities women face and the need for compassionate and inclusive policies.

However, challenges exist in implementing menstrual leave policies. Concerns about potential misuse, reduced productivity, and increased burden on coworkers need to be addressed. Moreover, cultural attitudes and stereotypes surrounding menstruation may hinder the effective implementation of such policies.

6. Comprehensive Policies for Workplace Equality:

To ensure workplace equality and empower women, it is essential to establish comprehensive policies regarding menstrual leave. These policies should include the following key components:

Universal Implementation: Menstrual leave policies should be implemented across all sectors and industries, promoting a consistent and supportive environment for women.

Awareness and Education: Conducting awareness campaigns and educational programs can

help eliminate the stigma surrounding menstruation and create a more inclusive workplace culture.

Accommodating Work Environment: Employers should provide suitable facilities, such as clean and well-equipped washrooms, sanitary product dispensers, and private resting areas, to ensure women's comfort and hygiene during their periods.

Flexible Work Arrangements: Offering flexible working hours or remote work options can empower women to manage their periods effectively and maintain productivity.

Anti-Discrimination Measures: Implementing strict anti-discrimination policies that protect women from any negative repercussions or biased treatment due to their menstrual leave will help eliminate gender-based biases.

6. Conclusion:

Menstrual leave is not about favoring one gender over another but rather about promoting equality, understanding, and respect for women's health and well-being. By acknowledging the challenges faced by women during their menstrual cycles and implementing comprehensive policies, India can take a significant step towards creating a more inclusive and gender-equal society. It is time to break the silence, debunk the myths, and embrace menstrual leave.

Menstrual leave policies represent a progressive step towards gender equality and inclusivity in the workplace. While India and several countries have made strides in recognizing the importance of menstrual well-being, there is still work to be done to overcome cultural barriers and foster supportive environments. By prioritizing the physical and emotional needs of women, societies can create a more inclusive workplace that empowers women to manage their menstrual health effectively.

There are concerns that employers may discriminate against hiring women if they anticipate increased absenteeism due to menstrual leave. Critics also point out the potential for abuse, where employees may falsely claim menstrual symptoms to take time off work.

In this article, I discussed the legal position of menstrual leave in India and other countries and the advantages and disadvantages of mensural leave. " However, in India, there have been discussions and movements advocating for menstrual leave or "period leave" for women employees to address the challenges and discomfort they may face during

menstruation. The concept of menstrual leave is not unique to India and has been implemented in some countries and organizations around the world. It aims to provide women with the flexibility to take time off work during their menstrual cycles without facing any negative consequences, such as loss of pay or job security.

However, there are differing opinions on the matter. Supporters argue that menstrual leave acknowledges the natural process women go through and helps create a more inclusive and supportive workplace environment. It can also promote women's health and well-being, allowing them to manage their menstrual symptoms and perform better at work. On the other hand, critics express concerns about potential misuse or discrimination against women in the workplace. They worry that providing menstrual leave could reinforce gender stereotypes and reduce opportunities for women in certain job sectors.

It's essential to consider these perspectives and strike a balance that benefits both women employees and the overall work environment. The policy related to menstrual leave should be designed with careful consideration of cultural norms, gender equality principles, and the needs and preferences of the workforce.