
ADDRESSING MENSTRUAL STIGMA: THE CASE FOR IMPLEMENTING MENSTRUAL LEAVE AS A LEGAL PROVISION IN INDIA

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ABSTRACT

This paper explores the need for a legal provision for menstrual leave in India to address the stigma surrounding menstruation and promote gender equality in the workplace and society. Menstrual leave refers to a policy that allows women to take time off from work or school during their menstrual cycles. While some companies in India have voluntarily introduced menstrual leave policies, there is no legal provision for it yet. The paper argues that a legal provision for menstrual leave is necessary to ensure that women are not discriminated against in the workplace and have the right to take time off during their menstrual cycles. However, the paper also acknowledges concerns about the implementation of menstrual leave policies and suggests that the policy should be carefully crafted, with proper guidelines for its implementation, to address concerns about its misuse and promote gender neutrality. Ultimately, the paper concludes that implementing a legal provision for menstrual leave in India is crucial for addressing menstrual stigma and promoting gender equality in the workplace and society.

Keywords: Menstrual Leave, Menstrual Stigma, Legal Provision, Gender Equality, Workplace

Introduction

Menstruation is a natural biological process that occurs in women,¹ and it has been a topic of social stigma and taboo in India for decades. Women in India often face discrimination and societal barriers, including restrictions on their mobility, access to education and employment, and their ability to fully participate in society during their menstrual cycles. One way to address this issue is by implementing menstrual leave policies. Menstrual leave refers to a policy that allows women to take time off from work or school during their menstrual cycles. This policy has already been implemented in some countries like Japan, Indonesia, Taiwan, South Korea, and Zambia.² In India, some companies have voluntarily introduced menstrual leave policies, but there is no legal provision for it yet. A legal provision would ensure that women have the right to menstrual leave, and employers are required to provide it. It would also help to remove the stigma surrounding menstruation and promote gender equality in the workplace and society.³ However, there are concerns about the implementation of menstrual leave policies. Some argue that it could be misused, leading to discrimination against women in hiring and promotion. Others argue that it could reinforce the notion that women are weak or unable to perform their duties during their menstrual cycles.⁴ To address these concerns, any legal provision on menstrual leave should be carefully crafted, with proper guidelines for its implementation. The policy should also be gender-neutral, meaning that both men and women should have access to it.⁵ There is a need for a legal provision for menstrual leave in India to ensure that women are not discriminated against in the workplace and have the right to take time off during their menstrual cycles.⁶ The policy should be carefully crafted, with proper guidelines for implementation, to address concerns about its misuse and promote gender equality in the workplace and society.⁷

¹ Sayed Qudrat Hashimy, 'Emerging Paradigm of Disability Laws and Protecting Differently Abled Person: Flying Kites in the Indian Sky' (10 March 2023) <<https://papers.ssrn.com/abstract=4383911>> accessed 23 April 2023.

² Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (2022) 5 International Journal of Management and Humanities 1270.

³ *ibid.*

⁴ Sayed Qudrat Hashimy, 'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' (2023) 3 Trinity Law Review 12.

⁵ 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse by Sayed Qudrat Hashimy :: SSRN' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4308596> accessed 23 April 2023.

⁶ Sayed Qudrat Hashimy, 'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' (10 March 2023) <<https://papers.ssrn.com/abstract=4383915>> accessed 23 April 2023.

⁷ Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (2022) 5 International Journal of Management and Humanities 1270.

Menstrual leave refers to a policy that allows women to take time off from work or school during their menstrual cycles.⁸ It is intended to address the physical discomfort and emotional stress that many women experience during menstruation, and to help remove the stigma surrounding menstruation by acknowledging it as a legitimate reason for time off.⁹ Menstrual leave policies vary by country and organization, with some providing paid leave, while others provide unpaid leave.¹⁰ The implementation of menstrual leave policies has been a topic of debate, with some arguing that it could be misused and reinforce negative stereotypes about women's ability to work during menstruation, while others argue that it is a necessary step towards promoting gender equality and recognizing the importance of women's health and well-being.

Menstrual Leave and International Law

Menstrual leave refers to a type of leave that allows women to take time off work or school during their menstrual cycle to manage menstrual pain and discomfort. While menstrual leave is not yet widely recognized as a legal right under international law, some countries have introduced laws or policies that provide for menstrual leave.¹¹ For example, in 2017, Zambia became the first African country to introduce menstrual leave, allowing female workers to take off one day per month during their menstrual cycle. Other countries that have introduced similar laws or policies include Japan, South Korea, and Taiwan.¹² However, the concept of menstrual leave remains controversial and there are concerns that it could perpetuate gender stereotypes and discrimination against women. Additionally, some critics argue that menstrual leave policies could be abused or used as a pretext for discrimination against women in the workplace.¹³ Under international human rights law, discrimination on the basis of sex is prohibited, and women are entitled to equal treatment in the workplace. While menstrual leave is not specifically recognized as a legal right under international law, women may be able to

⁸ Sayed Qudrat Hashimy, 'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' (2023) 1 Trinity Law Review <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4383911> accessed 23 April 2023.

⁹ Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (14 December 2022) <<https://papers.ssrn.com/abstract=4308596>> accessed 23 April 2023.

¹⁰ Sayed Qudrat Hashimy, 'LEGAL PARADIGM OF MENSTRUAL PAID LEAVES POLICY IN INDIA: A JURISPRUDENTIAL DISCOURSE' (2023) 3 Trinity Law Review 12.

¹¹ 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse by Sayed Qudrat Hashimy :: SSRN' (n 5).

¹² *ibid.*

¹³ *ibid.*

argue that they are being discriminated against if they are denied the right to take time off work or school during their menstrual cycle.¹⁴

Menstrual Leave and Human right

The issue of menstrual leave intersects with human rights in a number of ways. One of the key human rights at stake is the right to health. Menstrual pain and discomfort can be severe for some women and can negatively impact their physical and mental health. All individuals have the right to the highest attainable standard of health, including the right to access health care and information related to menstrual health. Furthermore, the issue of menstrual leave is closely tied to gender equality and non-discrimination. Denying women the ability to take time off work or school during their menstrual cycle could be seen as a form of discrimination based on sex, which is prohibited under international human rights law. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly requires states to take measures to eliminate discrimination against women in the workplace, including by providing women with equal access to leave and benefits. However, as mentioned earlier, there are also concerns that menstrual leave policies could perpetuate gender stereotypes and discrimination against women. Some critics argue that menstrual leave policies could reinforce the idea that women are inherently weaker or less capable than men, which could further entrench gender inequality in the workplace.

In summary, the issue of menstrual leave is complex and requires careful consideration of both the potential benefits and drawbacks. While it is not yet recognised as a legal right under international human rights law, the issue is gaining increasing attention and may be the subject of further debate and discussion in the years to come.

Menstrual Leave and Disability Laws

There is ongoing debate in India about whether menstrual leave should be considered a form of disability.¹⁵ While some argue that menstruation is a natural process and should not be considered a disability, others argue that it can cause significant physical discomfort and pain

¹⁴ *ibid.*

¹⁵ Sayed Qudrat Hashimy, 'Emerging Paradigm of Disability Laws and Protecting Differently Abled Person: Flying Kites in the Indian Sky' (2023) 3 1.

that can impair a woman's ability to work or carry out her daily activities.¹⁶ Under the Rights of Persons with Disabilities Act, 2016, menstruation is not considered a disability.¹⁷ However, the Act does recognize the need for reasonable accommodations for persons with disabilities in the workplace, including flexible working hours and time off for medical treatment.¹⁸ Some argue that similar accommodations should be made for women during menstruation, including the provision of menstrual leave as a reasonable accommodation.¹⁹ This would require employers to provide paid or unpaid leave to women during their menstrual cycles, in the same way that they would provide leave for other medical conditions.²⁰ Still, others argue that considering menstruation as a form of disability could reinforce negative stereotypes about women's ability to work during their menstrual cycles, and could further stigmatize menstruation.²¹

Menstrual Leave and Hindu Philosophy

Hindu philosophy has a complex relationship with menstruation. On the one hand, Hindu scriptures recognize menstruation as a natural bodily process and do not view it as impure or sinful.²² However, there are also many cultural and social taboos surrounding menstruation that have developed over time. In Hinduism, there is a concept of "Ashoucha," which refers to a state of impurity or uncleanness.²³ Menstruating women were traditionally considered to be in a state of Ashoucha and were expected to refrain from certain activities, such as entering temples or participating in religious ceremonies, until they had completed their menstrual cycles and undergone a purification ritual.²⁴ These cultural and social taboos surrounding menstruation have contributed to the stigma surrounding menstruation in India and can impact women's access to education, employment, and healthcare.²⁵ However, some scholars argue

¹⁶ Sayed Qudrat Hashimy, 'Emerging Paradigm of Disability Laws and Protecting Differently Abled Person: Flying Kites in the Indian Sky' (2013) 3 Trinity Law Review 11.

¹⁷ Sayed Qudrat Hashimy, 'Emerging Paradigm of Disability Laws and Protecting Differently Abled Person: Flying Kites in the Indian Sky' (2023) 1 Trinity Law Review
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4383911> accessed 23 April 2023.

¹⁸ Sayed Qudrat Hashimy, 'EMERGING PARADIGM OF DISABILITY LAWS AND PROTECTING DIFFERENTLY ABLED PERSON: FLYING KITES IN THE INDIAN SKY' (2023) 3 Trinity Law Review 1.

¹⁹ Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (2022) 5 International Journal of Law Management & Humanities 1270.

²⁰ Hashimy, 'Emerging Paradigm of Disability Laws and Protecting Differently Abled Person' (n 1).

²¹ Hashimy, 'LEGAL PARADIGM OF MENSTRUAL PAID LEAVES POLICY IN INDIA' (n 10).

²² 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse by Sayed Qudrat Hashimy :: SSRN' (n 5).

²³ Hashimy, 'Menstrual Leave Dissent and Stigma Labelling' (n 2).

²⁴ Hashimy, 'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' (n 4).

²⁵ Hashimy, 'Menstrual Leave Dissent and Stigma Labelling' (n 9).

that Hindu philosophy also provides a basis for recognizing the importance of menstrual leave. For example, the Hindu concept of "Sattva" emphasizes the importance of balance and harmony in life.²⁶ Women's menstrual cycles are seen as an integral part of the natural cycle of life and should be respected in order to maintain balance and harmony in society.²⁷ Some scholars argue that providing menstrual leave to women is a way of recognizing the importance of this natural cycle and promoting balance and harmony in the workplace and society.²⁸ In theory, while Hindu philosophy recognizes menstruation as a natural bodily process and does not view it as impure or sinful, cultural and social taboos surrounding menstruation have contributed to the stigma surrounding menstruation in India.²⁹ However, some scholars argue that Hindu philosophy also provides a basis for recognizing the importance of menstrual leave as a way of promoting balance and harmony in society.

Menstrual Leave and Islamic Law

Islamic law also has a complex relationship with menstruation.^{30,31} In Islam, menstruating women are considered to be in a state of impurity, and are not permitted to perform certain religious practices, such as praying or fasting, until they have completed their menstrual cycles and undergone a purification ritual.³² Nevertheless, there is no specific provision in Islamic law that addresses the issue of menstrual leave.³³ Some Muslim scholars argue that women should be allowed to take time off from work or school during their menstrual cycles,³⁴ as it is a natural bodily process that can cause physical discomfort and pain.³⁵ They point to the importance of protecting women's health and well-being, as well as the importance of gender equality.³⁶ Others argue that menstruation is a private matter and that women should not be required to

²⁶ 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse by Sayed Qudrat Hashimy :: SSRN' (n 5).

²⁷ Hashimy, 'Legal Paradigm of Menstrual Paid Leaves Policy in India' (n 6).

²⁸ Hashimy, 'LEGAL PARADIGM OF MENSTRUAL PAID LEAVES POLICY IN INDIA' (n 10).

²⁹ Sayed Qudrat Hashimy, 'The Legal Paradigm of Menstrual Leaves Policy in the UAE, Kuwait, and Afghanistan' (2023) 1 Journal of Medicine and Health Research
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4383912> accessed 23 April 2023.

³⁰ Sayed Qudrat Hashimy, 'Menstrual Leave in Islamic Jurisprudence: A Classical Rhetoric' (January 2020)
<<http://eprints.uni-mysore.ac.in/17433/10.6084/m9.figshare.22133273>> accessed 23 April 2023.

³¹ 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.

³² *ibid.*

³³ Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (n 19).

³⁴ Hashimy, 'Menstrual Leave Dissent and Stigma Labelling' (n 9).

³⁵ Hashimy, 'The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' (n 31).

³⁶ Sayed Qudrat Hashimy, 'The Fourth World Approaches to International Law: A Cursory Glance' (December 2020) <<http://eprints.uni-mysore.ac.in/17431/10.6084/m9.figshare.22133249>> accessed 23 April 2023.

disclose information about their menstrual cycles to their employers or colleagues.³⁷ They also express concern that granting menstrual leave could reinforce negative stereotypes about women's ability to work during their menstrual cycles and could further stigmatise menstruation.³⁸

Henceforth, while Islamic law recognises menstruation as a state of impurity, there is no specific provision that addresses the issue of menstrual leave.³⁹ Muslim scholars have differing opinions on whether women should be allowed to take time off from work or school during their menstrual cycles.⁴⁰ It is important to respect women's privacy and autonomy in deciding whether to disclose information about their menstrual cycles and to consider the importance of promoting women's health and well-being and gender equality in the workplace and society.⁴¹

Menstrual Leave and Taxation

In India, there is currently no specific tax provision related to menstrual leave. However, the provision of menstrual leave by employers could potentially have tax implications. If menstrual leave is provided as a paid leave, it would be considered a part of the employee's salary and would be subject to income tax.⁴² Similarly, if the employer provides menstrual leave as a benefit in kind, such as by providing sanitary products or menstrual pain relief medication, this would also be considered taxable. On the other hand, if menstrual leave is provided as an unpaid leave, it would not be subject to income tax.⁴³ However, the employee's income would be reduced during the period of leave, which could impact their overall tax liability. It is important to note that the provision of menstrual leave is not currently mandated by law in India, and it is up to individual employers to decide whether to provide this benefit to their employees. Some employers have started to provide menstrual leave as a way of promoting gender equality and supporting women's health and well-being.

³⁷ Hashimy, 'LEGAL PARADIGM OF MENSTRUAL PAID LEAVES POLICY IN INDIA' (n 10).

³⁸ Sayed Qudrat Hashimy, 'The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan' (10 March 2023) <<https://papers.ssrn.com/abstract=4383912>> accessed 23 April 2023.

³⁹ 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse by Sayed Qudrat Hashimy :: SSRN' (n 5).

⁴⁰ Hashimy, 'The Legal Paradigm of Menstrual Leaves Policy in the UAE, Kuwait, and Afghanistan' (n 29).

⁴¹ Hashimy, 'Menstrual Leave in Islamic Jurisprudence' (n 30).

⁴² Sayed Qudrat Hashimy and Prof (Dr) M Suresh Benjamin, 'A Tale of Two Tax Systems: A Comparative Analysis of General Anti-Avoidance Rules Provisions in India and Australia' (14 April 2023) <<https://papers.ssrn.com/abstract=4419192>> accessed 23 April 2023.

⁴³ *ibid*.

Menstrual Leave and Fourth World

The concept of the "Fourth World" generally refers to indigenous and marginalized communities that face significant social, economic, and political challenges.⁴⁴ In many of these communities, there may be limited access to healthcare, education, and other basic resources, which can make it difficult for women to manage their menstrual cycles.⁴⁵ The provision of menstrual leave could be particularly important for women in Fourth World communities, as it can help to address some of the challenges they may face in managing their periods. Menstrual leave can provide women with the time and resources they need to manage their menstrual cycles in a safe and dignified way, without the fear of negative consequences at work or school.

However, it is important to note that the provision of menstrual leave alone is not enough to address the broader challenges faced by women in Fourth World communities.⁴⁶ Women in these communities may also face significant barriers to accessing healthcare, education, and economic opportunities, which can impact their ability to manage their menstrual cycles and live healthy, productive lives.⁴⁷

To truly address the challenges faced by women in Fourth World communities, it is important to take a holistic approach that addresses the broader social, economic, and political factors that contribute to their marginalisation.⁴⁸ This could include efforts to improve access to healthcare and education, promote economic empowerment, and address systemic inequalities and discrimination.

Menstrual Leave and Health Policy in India

Menstrual leave has gained attention in India as a policy issue related to women's health and well-being. The provision of menstrual leave can help to address the physical and emotional challenges that women may face during their menstrual cycles, such as pain, discomfort, and fatigue. However, there are also concerns that menstrual leave policies could reinforce negative

⁴⁴ Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (n 19).

⁴⁵ Hashimy, 'The Fourth World Approaches to International Law' (n 36).

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse by Sayed Qudrat Hashimy :: SSRN' (n 5).

stereotypes about women's ability to work or study during their menstrual cycles, or could lead to discrimination against women in hiring or promotion decisions.

In order to address these concerns and promote the health and well-being of women in the workplace and in schools, there is a need for comprehensive health policies that address menstrual health and hygiene. Such policies could include initiatives to promote menstrual health education, provide access to affordable menstrual products, and promote workplace accommodations for women who experience menstrual pain or discomfort. In addition, health policies should address broader issues related to gender equity and women's health, such as access to reproductive healthcare and family planning services, and addressing gender-based violence and discrimination.

Inclusively, while menstrual leave is an important policy issue related to women's health and well-being, it is just one part of a broader set of policies and initiatives needed to address the challenges that women face in accessing healthcare and achieving gender equity in India.

Menstrual leave and Indian Constitution

The Indian Constitution guarantees certain fundamental rights to all citizens, including the right to equality, the right to life and liberty, and the right to work with dignity. These rights are enshrined in Articles 14, 15, 21, and 23 of the Constitution. The provision of menstrual leave can be seen as an important step towards ensuring that women are able to exercise these fundamental rights in a meaningful way. Menstrual leave policies can help to promote gender equality by recognizing and addressing the unique challenges that women face in managing their menstrual cycles, and by ensuring that women are not discriminated against in the workplace or in schools on the basis of their gender. At the same time, it is important to ensure that menstrual leave policies do not violate other fundamental rights guaranteed by the Constitution, such as the right to work and the right to equality. Menstrual leave policies should be implemented in a way that is fair, non-discriminatory, and respectful of the rights of all employees, regardless of gender.

Hence, the provision of menstrual leave can be seen as an important policy issue related to the fundamental rights guaranteed by the Indian Constitution. By recognizing and addressing the unique challenges that women face in managing their menstrual cycles, menstrual leave

policies can help to promote gender equality and ensure that women are able to exercise their fundamental rights with dignity and respect.

Menstrual leave and Indian Labour Law

The provision of menstrual leave intersects with Indian labour law, which is designed to protect the rights of workers and ensure that they are treated fairly by their employers. In India, the right to leave is governed by the Leave Rules of the Industrial Employment (Standing Orders) Act, 1946, which applies to all establishments employing more than 100 workers. While there is no specific provision for menstrual leave in Indian labour law, the Maternity Benefit Act, 1961, provides for paid leave for pregnant women and new mothers. Some companies in India have also introduced menstrual leave policies as a way to recognize and address the challenges that women face during their menstrual cycles. However, there are concerns that menstrual leave policies could be misused or abused by employers, or that they could lead to discrimination against women in hiring or promotion decisions. In order to address these concerns and ensure that women are treated fairly and equitably in the workplace, it is important to establish clear guidelines for the provision of menstrual leave and to ensure that employers are held accountable for complying with these guidelines.

Menstrual leave and Industrial Law

The provision of menstrual leave intersects with industrial law in India, which is designed to regulate the relationship between workers and management in industrial establishments. Industrial law includes laws related to collective bargaining, trade unions, industrial disputes, and the regulation of working conditions. In the context of menstrual leave, the Industrial Employment (Standing Orders) Act, 1946, which applies to all establishments employing more than 100 workers, provides guidelines for the granting of leave to workers. While there is no specific provision for menstrual leave in this Act, some companies in India have introduced menstrual leave policies as a way to recognize and address the challenges that women face during their menstrual cycles. However, there are concerns that menstrual leave policies could be misused or abused by employers, or that they could lead to discrimination against women in hiring or promotion decisions. In order to address these concerns and ensure that women are treated fairly and equitably in the workplace, it is important to establish clear guidelines for the provision of menstrual leave and to ensure that employers are held accountable for complying with these guidelines.

Menstrual leave and Employment issues

The provision of menstrual leave raises a number of employment issues in India, particularly with respect to discrimination, productivity, and costs.

One of the primary concerns with menstrual leave is that it could lead to discrimination against women in hiring or promotion decisions. Employers may view women as less productive or reliable due to their menstrual cycles, which could lead to them being passed over for job opportunities or promotions. This could result in a gender pay gap and contribute to gender inequality in the workplace.

Another issue with menstrual leave is its potential impact on productivity. Employers may worry that menstrual leave could disrupt work schedules or create staffing shortages, leading to a decrease in productivity. However, studies have shown that allowing women to take menstrual leave can actually increase productivity by reducing absenteeism and improving employee morale. Finally, there is a cost associated with providing menstrual leave. Employers may worry that they will have to bear the cost of hiring replacement workers or paying overtime to cover the absence of women on menstrual leave. However, the cost of menstrual leave can be offset by the benefits of improved employee morale, reduced absenteeism, and increased productivity.

Therefore, while the provision of menstrual leave raises a number of employment issues in India, it is an important policy issue that can contribute to gender equality and improve workplace productivity. It is important for employers and policymakers to carefully consider these issues and establish clear guidelines for the provision of menstrual leave to ensure that it is implemented in a way that is fair and equitable for all employees.

Menstrual Leave and women's Empowerment

The provision of menstrual leave can be a powerful tool for women's empowerment in India. By recognizing the unique challenges that women face during their menstrual cycles and providing them with time off to manage their symptoms, menstrual leave can help to promote gender equality in the workplace and improve women's overall well-being. One way in which menstrual leave can empower women is by allowing them to take control of their own health and well-being. Women who are able to take time off work during their menstrual cycles are

better able to manage their symptoms and take care of themselves, which can lead to improved physical and mental health. This, in turn, can help to reduce absenteeism and increase productivity. In addition to improving women's health, menstrual leave can also help to promote gender equality in the workplace by reducing the stigma and discrimination that women face. By recognizing the challenges that women face during their menstrual cycles and providing them with time off to manage their symptoms, employers can demonstrate their commitment to creating a workplace that is inclusive and supportive of women. Finally, menstrual leave can also help to promote women's economic empowerment by reducing the gender pay gap and improving women's overall employment prospects. By providing women with the flexibility to manage their menstrual cycles, employers can help to create a more level playing field for women in the workplace, which can lead to greater economic opportunities and better outcomes for women and their families.⁴⁹

Thus, provision of menstrual leave is an important policy issue that can play an important role in promoting women's empowerment in India. By recognizing the unique challenges that women face during their menstrual cycles and providing them with time off to manage their symptoms, menstrual leave can help to promote gender equality in the workplace and improve the overall well-being of women.

Menstrual Leave and Feminism

The provision of menstrual leave can be seen as a feminist issue in India, as it seeks to address the specific challenges that women face in the workplace due to their menstrual cycles.

Feminism is about promoting gender equality and addressing the ways in which women are disadvantaged in society. One of the ways in which women are disadvantaged in the workplace is through the stigmatization of menstruation. Menstrual leave seeks to challenge this stigma by acknowledging the unique challenges that women face during their menstrual cycles and providing them with time off to manage their symptoms. Menstrual leave can also be seen as a way of promoting women's agency and autonomy. By providing women with the ability to manage their menstrual cycles in a way that is convenient and supportive of their well-being, menstrual leave can help women to feel more in control of their bodies and their lives. This can

⁴⁹ 'Why India Must Know Periods to Understand Period Leave | India News - Times of India' <<https://timesofindia.indiatimes.com/india/menstrual-leave-when-will-india-be-ready-for-it/articleshow/98479633.cms?from=mdr>> accessed 23 April 2023.

help to promote a sense of empowerment and self-determination among women, which is a key goal of feminist movements.⁵⁰

In addition, menstrual leave can help to challenge gender stereotypes and traditional gender roles. By providing women with time off to manage their menstrual cycles, menstrual leave can challenge the idea that women are solely responsible for domestic duties and caretaking, and demonstrate that women are capable and valuable members of the workforce.

Menstrual Bill in India

There is currently no specific "Menstrual Bill" in India. However, there have been several initiatives and proposals aimed at addressing menstrual health and hygiene in the country.

In 2018, the Indian government launched the "National Menstrual Hygiene Scheme" to promote menstrual hygiene management among adolescent girls and women.⁵¹ The scheme includes the provision of free sanitary pads to girls in rural areas, as well as the construction of menstrual hygiene management facilities in schools and other public spaces.⁵²

Additionally, in 2020, a private member's bill titled "Menstruation Benefit Bill" was introduced in the Indian Parliament. The bill proposed the provision of two days of menstrual leave every month to female employees in both the public and private sectors. However, the bill is yet to be passed into law.⁵³

The provision of menstrual leave as a legal provision in India is currently under discussion, and there are ongoing debates and consultations around its implementation. The implementation of menstrual leave as a legal provision has the potential to promote women's health, well-being, and empowerment, and to challenge menstrual stigma and gender

⁵⁰ 'Explained: What Is India's Stand On Menstrual Leave Policy' <<https://www.indiatimes.com/explainers/news/explained-what-is-indias-stand-on-menstrual-leave-policy-594889.html>> accessed 23 April 2023.

⁵¹ 'The "National Menstrual Hygiene Scheme" - Google Search' <https://www.google.com/search?q=the+%22National+Menstrual+Hygiene+Scheme%22&rlz=1C1CHBF_enIN1020IN1020&oq=the+%22National+Menstrual+Hygiene+Scheme%22&aqs=chrome..69i57j0j4&sourceid=chrome&ie=UTF-8> accessed 23 April 2023.

⁵² Hashimy, 'LEGAL PARADIGM OF MENSTRUAL PAID LEAVES POLICY IN INDIA' (n 10).

⁵³ Bhumika Indulia, 'Looking Beyond the Law: The Case of Menstrual Leave in India' (*SCC Blog*, 7 March 2023) <<https://www.sconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>> accessed 23 April 2023.

stereotypes in the workplace. However, it also requires careful consideration and planning to ensure that it is effective, equitable, and sustainable.

Menstrual Leave and Indian Judiciary

Menstrual leave refers to a policy that allows women to take time off from work during their menstrual cycle, either as paid or unpaid leave. This policy has been gaining traction in many countries, including India.⁵⁴ In India, there have been several cases where the judiciary has addressed the issue of menstrual leave. For example, in 2017, the Mumbai-based media company Culture Machine introduced a policy that allowed women employees to take the first day of their period off as a paid day. This move was widely appreciated and was covered by several media outlets.⁵⁵

In another instance, the Central Industrial Security Force (CISF) was directed by the Delhi High Court in 2019 to grant menstrual leave to its female employees.⁵⁶ The court noted that menstruation is a natural biological process and that women should not be made to suffer during this time. However, it is important to note that there is no national law in India that mandates menstrual leave, and the policy varies from company to company. The concept of menstrual leave is still relatively new and controversial, with some arguing that it could be stigmatizing for women and lead to discrimination in the workplace.⁵⁷

Menstrual Leave and Education System

The concept of menstrual leave has also been discussed in the context of the education system in India. Many girls in India face challenges attending school during their menstrual cycles due to lack of access to sanitary products, inadequate facilities, and social stigma. To address these challenges, some schools have introduced menstrual leave policies that allow girls to take time off during their period. For example, in 2017, a school in Kerala announced that it would provide menstrual leave to its female students. This move was aimed at reducing absenteeism among girls and helping them to manage their periods in a more comfortable and dignified

⁵⁴ Madhavi Gaur, 'Supreme Court on Menstrual Leave and Its Global Standing' (*adda247*, 28 February 2023) <<https://currentaffairs.adda247.com/supreme-court-on-menstrual-leave-and-its-global-standing/>> accessed 23 April 2023.

⁵⁵ *ibid.*

⁵⁶ 'SC Refuses to Entertain PIL for Menstrual Leave for Women in Schools, Workplaces | Latest News India - Hindustan Times' <<https://www.hindustantimes.com/india-news/sc-refuses-to-entertain-pil-for-menstrual-leave-for-women-in-schools-workplaces-101677220209173.html>> accessed 23 April 2023.

⁵⁷ Hashimy, 'LEGAL PARADIGM OF MENSTRUAL PAID LEAVES POLICY IN INDIA' (n 10).

way.⁵⁸ However, the idea of menstrual leave in schools has also been criticized by some who argue that it could lead to discrimination against girls and reinforce negative stereotypes about menstruation. Instead, they suggest that schools should focus on improving menstrual hygiene facilities and education, so that girls can manage their periods without having to miss school.

Therefore, the issue of menstrual leave in the education system is a complex one that requires a nuanced approach. While some schools have introduced such policies, it is important to ensure that they are implemented in a way that does not stigmatize or discriminate against girls. At the same time, efforts should be made to improve menstrual hygiene facilities and education, so that girls can manage their periods without having to miss out on their education.

Recommendation

Here are some recommendations for the implementation of menstrual leave in India:

- i. Consultation with stakeholders: Before implementing menstrual leave as a legal provision, it is important to consult with stakeholders, including employers, employees, and menstrual health experts. This will help to ensure that the provision of menstrual leave is effective, equitable, and sustainable.
- ii. Clear guidelines and policies: The implementation of menstrual leave should be accompanied by clear guidelines and policies to ensure that it is consistent and fair. This includes guidelines on eligibility, duration, and compensation.
- iii. Awareness-raising and education: To reduce menstrual stigma and promote menstrual health and hygiene, there is a need for awareness-raising and education campaigns. This can be done through various channels, including schools, workplaces, and the media.
- iv. Affordable and accessible menstrual products: To support women in managing their menstrual cycles, it is important to ensure that menstrual products are affordable and accessible. This includes the provision of free or subsidized menstrual products in public spaces, such as schools and workplaces.

⁵⁸ *ibid.*

- v. **Monitoring and evaluation:** To ensure that menstrual leave is effective and sustainable, it is important to monitor and evaluate its implementation. This includes collecting data on the uptake of menstrual leave, its impact on absenteeism and productivity, and any challenges or barriers to its implementation. This will help to inform future policies and programs related to menstrual health and hygiene in India.

By implementing these recommendations, India can ensure that menstrual leave is a meaningful and effective provision for promoting women's health, well-being, and empowerment.

Conclusion

In conclusion, the provision of menstrual leave as a legal provision in India can have significant benefits for women's health, well-being, and empowerment. By recognizing the unique challenges that women face during their menstrual cycles and providing them with time off to manage their symptoms, menstrual leave can help to reduce absenteeism and improve productivity, while also promoting gender equality in the workplace and challenging gender stereotypes.

However, the implementation of menstrual leave as a legal provision in India requires careful consideration and planning to ensure that it is effective, equitable, and sustainable. This includes consultation with stakeholders, including employers, employees, and menstrual health experts, as well as the development of clear guidelines and policies to ensure that the provision of menstrual leave is consistent and fair.

Furthermore, menstrual leave should be seen as one part of a broader effort to address menstrual stigma and improve menstrual health and hygiene in India. This requires a multi-sectoral approach that includes education, awareness-raising, and the provision of affordable and accessible menstrual products and services.

In a nutshell, the implementation of menstrual leave as a legal provision in India has the potential to make a significant difference in the lives of women, promoting their health, well-being, and empowerment and helping to build a more inclusive and equitable society for all.