

---

# THE NEED AND LEGAL PERSPECTIVE OF THE MENSTRUAL LEAVE IN INDIA

---

Bhargabi Kundu, South Calcutta Law College

## ABSTRACT

The biological growth and characteristics of women are different in comparison to their male counterparts. Due to hormonal changes, they go through the menstrual cycle every month. Menstruation, in simple words, is the monthly bleeding from a woman's body, and the severe pain they feel during that process is something indescribable. They get mentally and physically exhausted, and coping with it gets much more difficult if it's a working woman. With the growth of India, more women are entering into jobs and are making a significant contribution to the economy and companies. Government and organizations should make sure that their basic needs are fulfilled, but they're relatively insensitive towards the monthly pain, cramps, and heavy bleeding the women face. During the menstrual cycle, they must rest for at least the first 3 days, but no initiative -has been undertaken. It has been in debate for years and recently came again to the surface due to a PIL filed before the Supreme Court. In the present research paper, the author will try to unfold the questions on the need for menstrual leave and various legal provisions related to it.

**Keywords:** Menstrual leave policy, menstruation, period, women.

## **INTRODUCTION**

Menstruation, in simple words known as periods, is the regular discharge of blood and mucosal tissue from the inner lining of the uterus through the vagina due to hormonal rise and fall.[1] There are few symptoms advance to the start of menstruation which disrupts the daily functioning either during or in the days leading up to menstruation. Twenty to thirty percent of the women population face premenstrual syndrome (PMS), with 3 to 8% experiencing severe symptoms, which makes it difficult for them to continue with their daily jobs[2].

Globally, the working environment has been constantly flourishing, including in India. India has evolved so much in these years, and the economic advancement of a country is dependent on the proper utilization of dynamic manpower. We can see the change in the work culture where women are no longer restricted to their household chores and are progressively joining the workforce and are liable for the growth in the economy. Women are outrivalling in many aspects compared to their male counterparts, and such an influx of women has happened in both the organized and unorganized sectors. In the unorganised sector, even though their work is not remunerated, their support and contributions to the economy are a step in the positive direction. In the organized sectors, women are properly working, and their work towards the growth in the economy is also properly remunerated and has also played a significant role. The Labour Force Participation Rate for females has risen to 25.1% in 2020-21 from 18.6% in 2018-19. There is also a notable increase in the Rural Female Labour Force Participation Rate from 19.7 % in 2018-19 to 27.7% in 2020-21[3].

For decades, women have engaged themselves in employment, but there always remained a disparity between the working conditions and environment for both men and women. But we have seen the change in the policies for women for their benefit. The Government of India has announced many policies to help the women and can get benefitted. The policies aim to give an equal status to the women as that of their male counterparts. However, there is still a topic left which amidst these policies has been constantly neglected, which is “menstruation.” It is an inevitable natural and biological phenomenon which still carries an inexplainable stigma in the society.

## **RESEARCH METHODOLOGY**

The present paper is explanatory, descriptive, and quantitative. It makes use of the

interpretation of facts which are abstract in nature. The information used in this study has been gathered from primary and secondary sources. The researcher has also relied upon a quantitative research strategy, which focuses on numerical data.

## **RESEARCH QUESTIONS**

The research focuses on a thorough understanding of the need for menstrual leave in India and various provisions of Indian statutes related to it.

1. What is the need for a separate period of leave in India?
2. Should the leave be paid, and if paid, for how long the paid leave will persist?
3. Should the Judiciary pass an order mandating the menstrual leave policy, or should it be in the hands of the Legislature?

## **RESEARCH OBJECTIVE**

1. To understand the immediate need in passing a menstrual leave policy.
2. To scrutinize the challenges of not taking period leave policy into consideration.

## **CHAPTERISATION**

1. The concept of menstrual leave.
2. The need for menstrual leave.
3. Global overview of menstrual leave policy.
4. Measures taken by India on menstrual leave policy
5. Legal position in India
6. Suggestions and Conclusion

## **THE CONCEPT OF MENSTRUAL LEAVE**

Menstrual leave is a type of leave where a person may have the option to take paid or unpaid leave from their work if they are menstruating and are unable to go to work because of this.[4] The issue of period leave has always been in controversy and also has been associated with discrimination against the women. This issue has been currently attracting the attention of the global media and attention from the public.

The menstrual leave policy aims to acknowledge the challenges that periods can pose for women and grant them the bare minimum time off from their work to take care of their well-being. Women can take their time off from work, either paid or unpaid, and the duration of their leave can differ as per the policy, varying from one to several days. The day offs can certainly be a step forward for the benefit of women who are working and contributing towards the growth of the economy, be it organized or unorganized sectors.

## **THE NEED OF MENSTRUAL LEAVE**

There's an immense and immediate need of menstrual leave in the workplace for the well-being of the women. The menstrual policies are envisioned to help women cope with their menstrual symptoms, such as belly cramps, back pain, fatigue, and nausea. A change in hormones resulting in the mood swings and emotions also follow with it. These policies aim to reduce the taboo of the culture of menstruation in the public as it realizes the societal and cultural stigma encompassing it. In India, around 20% of the population who menstruates, inclusive of women, trans men, and non-binary persons, have polycystic ovary Syndrome (PCOS), and around 25 million suffer from endometriosis, and the intensity of pain is unimaginable. This is a significant step in the recognition of everyone's health needs and should be put some thought into implementing in the workplace.

Leave on account of period is neither regulated under any statutes in India nor any companies' employment framework. Menstrual leave can be given as a special leave that the employer can offer to their women workforce. Due to the stigma in the society on account of this menstruation, most women often feel uncomfortable showing their pain and discomfort or talk about it. They fear being left out and miss out on professional opportunities. Leaves for menstruation by the companies will not only help the women to get back to their work in a more efficient manner but also will promote a healthy environment. It'll result in more

productivity as it will allow them to focus on their work.

It can be argued that women can simply take sick leaves, but apart from just the need to take rest, it was the lack of humane working conditions that pushed the labor movements for menstrual leaves.

Last but not least, by understanding the challenges faced by women during their period cycle and making efforts to establish a policy, employers can build a supportive environment for their employees.

## **GLOBAL OVERVIEW OF MENSTRUAL LEAVE POLICY**

There has been a push on the paid menstrual leave globally. Many women have painful periods, but not many countries allow them to take leave from work. In Asia, most of the countries don't have the policies for paid menstrual leave.

**The country-wise list that allowed menstrual leave is discussed below.**

### **The first in Europe: Spain**

The first country in Europe to pass legislation on paid menstrual. The left-wing government of Spain wrote the law offering them paid leave at the physician's direction. Irene Montero, the Equality Minister, swore, "No more going to work with pain, no more taking pills before arriving at work and having to hide the fact we're in pain that makes us unable to work." [5]

Spanish unions, along with many women, have criticized this legislation, making it a contemporary issue of debate. It has been criticized that this type of legislation will allow companies to favor male candidates while hiring.

### **Japan**

In Asia, Japan was the first country to introduce the concept of menstrual leave policy as part of labor law in 1947, after it became popular among the labor unions in the 1920s. Article 68 makes it mandatory for employers to not ask any women to work who experience severe periods. The beginning of this policy is traced back to 1928 when the female conductors working for the Tokyo Municipal Bus Company went on a strike so that they didn't have to abandon their jobs altogether due to monthly absences [6].

In the year 2014, an analysis made by the government showed that less than 0.9% of the women who were surveyed had taken leave, despite the presence of the policy of menstrual leave in their workplace.

### **Indonesia**

Just a year after Japan introduced its menstrual leave policy, Indonesia introduced a policy that was further amended in 2003. It says working women experiencing period pains are not bound to work on the first two days of their cycle, but due to ignorance of the law, many employers only give one day or no leave at all for menstruation. It's noted that the reforms made in 2003 weakened the policy of menstrual leave, subjecting it to negotiations between the employer and the employees.

### **Taiwan**

Article 14 of the Gender Equality in Employment in Place Act of Taiwan states that the employees have the right to ask for a period of leave once every month at half of their regular pay and up to three such leaves per year, and any other leaves taken will be addressed as sick leaves.

### **South Korea**

Article 73 of the labor law in South Korea takes a slightly diverted path, which allows a physiologic leave that helps all working women to take an off day every month. There is also strict punishment of fine amounting to 3844 \$ against the employers if the provision is not followed.

Recently, there has been a case where the ex-chief of Asiana Airlines was held guilty and was imposed a fine of 2 million won (\$ 1790) passed by the lower court, which Korea's top court upheld for rejecting menstrual leave for flight attendants. Asking a female employee to prove they've periods can infringe their privacy.

It has been noticed that various countries have already started implementing menstrual leave policies for their female workers, and a few countries like Japan and Indonesia already had it from the 1940s. There's a difference in the number of leaves provided to the employees on account of their periods, but their well-being is taken into consideration. The number of leave

days varies for each country, and each country has its own legislation of providing either a paid leave or an unpaid leave, or half the salary leave.

### **MEASURES TAKEN BY INDIA ON MENSTRUAL LEAVE POLICY**

The labor laws in India do not expressly specify any provisions or regulations on menstrual leave, so there is no such mandatory special leave given to women workers. But few State governments or companies made their own policy to respect the well-being of their women workforce and granted leaves during their menstruation.

The Government of Bihar, in the year 1992, passed an order that the State Government grants 2 days of special leave every month to women workers who are working in any organization under the control of the State government. The Bihar Vikas Mission, which is a body registered under the provisions of the Societies Registration Act of 1860, implemented the Human Resource Manual[7], which makes reference to such special leave for the women workforce.

In 2017, the MP of Arunachal Pradesh, MP Ninong Ering, introduced the bill “The Menstruation Benefits Bill, 2017” in Parliament, which will provide 4 days of paid menstruation leave per month to female employees in any organization or institution registered with the government. The Bill was again presented but was not given any heed and was disregarded as an “unclean topic.”

In 2018, an attempt was made by Dr. Shashi Tharoor to introduce a bill on the topic of menstrual health. He introduced the Women’s Sexual Reproductive and Menstrual Bill, which proposed the free availability of sanitary napkins for easy access for women.

In 2022, the Congress MP Hibi Eden from Kerela introduced a bill on “The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill,” providing three days of paid leave to menstruators. The Bill lists the problems that female students face during this period, which results in their missing classes or exams.

Few individual companies have also taken steps forward to grant menstrual leave to their female employees. In 2020, Zomato declared a 10-day leave policy, which they can take per year. Other than Zomato, more companies came forward to introduce leaves for their women workforce. A Mumbai-based company[8] announced a policy of leave to women on the first

day of their periods. Following up, an integrated marketing agency[9] also adopted such a policy. Most of the companies give them a paid day off, which they can take.

In a recent case in February 2023, a lawyer filed a Public Interest Litigation arguing on the requirement of the introduction of menstrual leave. The Supreme Court rejected the PIL opining that the issue falls under the policy domain of the government. CJI DY Chandrachud suggested that the Union Ministry on Women and Child Development be urged to investigate this matter.

It's not the first time that the matter has been brought to the judiciary. In the year 2020, the Delhi High Court directed the Centre and the Delhi government to consider a petition asking for paid menstrual leave for employees, including the daily wage laborers, yet there was no action in regard to that.

In my opinion, there should be a uniform law nationwide to provide paid leave due to menstruation to women employees, including daily wage laborers or contractual laborers. The Parliament shall make an act on Menstrual leave indicating the specified number of days one can take a leave and if it is paid or unpaid, and the Judiciary must strictly take up any violation of this law.

## **LEGAL PERSPECTIVE OF MENSTRUAL LEAVE IN INDIA**

It has been quite argued on the constitutional validity of the menstrual leave policy. Kerela recently ordered to grant menstrual leaves to the women where in the petition, the provision of Section 14 of the Maturity Benefit Act, 1961 was mentioned by the advocate representing it and making his point by stressing that all the states should follow the provision. It is a sheer violation of Article 14 of the Indian Constitution as it treats women differently in different states, and no particular statute is followed to follow a uniform process.

Article 14 of the Constitution of India talks about Equality before law. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.[10] This article was drafted with a view to put a positive duty on the State to make uniform laws that shall protect the citizens who need it. This article also states that no special treatment should be given between classes without any justified reason. Equal protection of the laws means all persons in similar circumstances shall be given the same rights. All women



around the nation go through the same menstrual cycle, and they should be equally treated by giving out the equal leave policy.

As much as the legislation providing maternity leave to the women has been welcomed and is valid, it's not arguable why the menstrual leave is considered as an unclean and is targeted as unfair and prejudicial when menstruation is something biological and happens to everyone.

Article 42 of the Directive Principles of State Policy states that the State is mandated to "make provisions for securing just and humane conditions of work and maternity relief." Humane conditions of work also include working not under pain due to menstrual pain. Further, Article 15 of the Indian Constitution forbids discrimination on any grounds, be it religion, race, caste, gender, or place of birth, but Article 15(3) states that the State can make laws to safeguard and protect women and children[11] and nothing in Article 15 shall prevent the State in implementing so. Thus, it can be witnessed that the Constitution bestows a duty on the State to safeguard women from any discrimination because of the natural biological process of menstruation.

Another provision of the Constitution allows women to live with dignity and guarantees every person the right to life. Article 21 of the Constitution of India deals with the "Protection of Life and Personal Liberty." According to this article, "No person shall be deprived of his life or personal liberty except according to procedure established by law"[12]. The right to life specified under this article includes the right to live with human dignity[13]. The humiliation the women in our country face due to menstruation being a social stigma results in the violation of their right to live with dignity. To protect the rights of everyone in the country, the Legislature and the Judiciary should step up. The Legislature can formulate a policy to safeguard the well-being of women workers during their periods, and the Judiciary should make sure the policies introduced and passed by the Legislature are followed. Any organization not adhering to the policy be given stringent punishment.

## **SUGGESTIONS AND CONCLUSION**

There is a sheer need for the policy of menstrual leave. It is beneficial not only for the women workers but also for the companies, allowing them to have twice the productivity once they're back from leave. They'll also build a healthy work environment respecting the needs and well-being of the women workers.

There have been initiatives by the government for equal participation and treatment of women, but the topic of menstrual leave has remained untouched. This research paper was written to analyze the need for menstrual leave in India. According to statistics, millions of women in India suffer from PCOS, and almost most of the population have pre-menstrual pains. The Parliament should pass bills on Menstrual health in the workplace and menstrual leave. Uniform legislation needs to be set forth so that there is no infringement of Article 14 of the Constitution of India.

Bihar has been the first state to implement a leave policy for their women workforce, along with a few food delivery companies, marketing companies, etc., who have come forward to provide leave to the women during their menstrual cycle.

While companies and institutions are progressively considering the biological and natural phenomenon of menstruation and showcasing a positive approach, the mere implementation of menstrual leave may not suffice, as men might have a sense of discrimination against their female counterparts. They should be made aware that it is for the welfare and well-being of their female counterparts, and they should support them. Hiring Managers and employers or immediate bosses should be trained to handle such situations properly and combat inhibitions during the menstrual cycle. Employers shall provide a safe place for their workforce, be it men or women, so that it is no longer taboo and they can communicate efficaciously without any hesitation.

**REFERENCES**

[1] Women's Gynecologic Health, Jones & Bartlett Publishers, 2011, p.94, ISBN 9780763756376.

[2] Biggs WS, Demuth RH (October 2011). "Premenstrual syndrome and premenstrual dysphoric disorder," available at Premenstrual syndrome and premenstrual dysphoric disorder - PubMed (nih.gov) , last seen at 22.05.23

[3] Press Information Bureau, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1894913> , last seen at 22.05.23.

[4] King S. (2021) Menstrual Leave: Good Intention, Poor Solution. In: Hassard J., Torres L.D. (eds) *Aligning Perspectives in Gender Mainstreaming. Aligning Perspectives on Health, Safety and Well-Being*. Springer, Cham, available at [https://link.springer.com/chapter/10.1007/978-3-030-53269-7\\_9](https://link.springer.com/chapter/10.1007/978-3-030-53269-7_9) , last seen on 22.05.23.

[5] SPAIN VOTES TO INTRODUCE PAID MENSTRUAL LEAVE, available at <https://westherald.com/spain-votes-to-introduce-paid-menstrual-leave/5955/> , last seen at 23.05.23.

[6] Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender, Barbara Molony, Santa Clara University, available at <https://scholarcommons.scu.edu/cgi/viewcontent.cgi?article=1100&context=history> , last seen at 25.05.23.

[7] Bihar Vikas Mission, Human Resource Manual, available at <https://www.scsonline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/> , last seen at 24.05.23.

[8] Culture Machine and Gozoop become India's first companies to introduce the 'First Day of Period' leave policy, available at <https://www.indiatvnews.com/lifestyle/news-first-day-of-period-fop-leaves-policy-introduced-in-india-s-culture-machine-and-gozoop-390821> , last seen at 25.05.23.

[9] *Ibid.*

[10] Article 14 of the Constitution of India, 1950.

[11] Article 15 Clause 3 of the Constitution of India, 1950.

[12] Article 21 of the Constitution of India, 1950.

[13] *Francis Coralie Mullin v. UT of Delhi*, AIR 1981 SC 746.