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"MENSTRUAL LEAVE POLICY: LABOUR LAW OBLIGATION OR EMPLOYER DISCRETION?"

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INTRODUCTION

Menstruation is a biological function which is experienced by approximately half of the working population yet the discussion about it is absent in mainstream of Indian labour law. Studies show that between 50 percentage to 95 percentage of women experience period pain or discomfort. Despite this Indian labour law offers no dedicated or special provision, compelling women's to either utilize either general sick leave or to work through pain at cost to their health and productivity. The absence of legal framework raises a significant question regarding workplace equality and state's obligation to include gender-specific biological needs within labour law.

This paper examines whether menstrual leave should be recognised as a statutory labour right under Indian labour law or whether it should remain a matter of employer discretion. It analyses constitutional principles, labour legislation, international standards, judicial developments, and policy surrounding menstrual leave.

Understanding Menstrual Leave and Workplace Challenges

Menstrual leave is a workplace policy that allows women to take a paid or unpaid leave during their periods without exhausting their general sick leave. During menstruation women face issues such as nausea, migraine, cramps and etc.

Studies suggest menstrual health affects the productivity and workplace participation. A study examining the experiences of working individuals found out that 45.2%¹ of respondents reported absenteeism related to their menstrual cycle, averaging 5.8 days of absence annually and 48.4%² reported not receiving any managerial support. These findings show that menstrual health is not only an individual issue but it is also a workplace concern. From labour

¹ <https://pmc.ncbi.nlm.nih.gov/articles/PMC9761221>

² <https://pmc.ncbi.nlm.nih.gov/articles/PMC9761221>

law perspective these finding strengthen argument that workplace policies should be gender-specific in order to promote substantive equality.

In India average sick leave can range between somewhere around 6 to 12 days, depending upon organisation. Menstruation is a biological process rather than an occasional illness. Employees who experience severe menstrual symptoms like endometriosis may be required to utilize a significant portion of the annual sick leave, thereby reducing the leave for medical emergencies furthermore there exist a social stigma surrounding menstruation due to which employees hesitates to discuss this with employers., compelling many to conceal their symptoms or provide alternative explanations for their absence

Constitutional Framework for Menstrual Leave in India

Indian constitution provide a string framework supporting menstrual leave as fundamental right rather than employer discretion. The framework is found in fundamental rights and DPSP, which collectively uphold dignity, equality, health and just working condition.

Article 14: Equality before law

Article of Indian constitution guarantees equality before law and equal protection of law. The supreme court interpreted article 14 as "equality for equals, not treating unequals as equals. Menstrual leave doesn't classify women as 'handicapped' rather it recognize the biological diversity. Creating a reasonable classification based on menstruation will ensure equal opportunity without any discriminations. In the case of *Lieutenant Colonel Nitisha v. Union of India* (2021) supreme court recognised the that indirect discrimination is violation of fundamental right. The Court held that facially neutral criteria can be indirectly discriminatory when they structurally deny opportunities to women.

Refusing menstrual leaves to women creates a indirect discrimination which means women either exhaust their sick leaves or work in pain, which will place them at disadvantage compared to male colleagues.

Article 15(3)

Nothing in this article shall prevent the State from making any special provision for women and children.³ Article 15(3) removes any discrimination challenge to menstrual leave and it

³ <https://indiankanoon.org/doc/609295/>

expressly allows state to make any special provisions for women biological needs including menstruation. Similarly, Karnataka High Court grounded menstrual leave in Article 15(3) as constitutionally permissible.⁴

Article 21

Article 21 talks about life and personal liberty, which supreme court over the time has expanded to include right to health and dignity In. *DR Jaya Thakur v. Government of India* (January 2026)⁵, supreme court directed states to ensure access of sanitation and hygiene, court also declared menstrual health as integral part of right to life.

Karnatka high court held that menstrual health is linked to right to life under article 21 and directed implementation of menstrual paid leave of 1 day in both private and public sector.⁶

Article 39(e) & 42: Directive Principles (DPSP)

39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;⁷

42 The State shall make provision for securing just and humane conditions of work and for maternity relief.⁸

While DPSP is not directly enforceable, they act as guide to legislative policy. DPSP highlights the state obligation for humane working conditions. Menstrual leave is proactive step towards compassionate workplace. Constitutional framework and DPSP supports menstrual leave as statutory right rather employers discretion.

Existing Legal Position in India: Labour Law and Menstrual Leave

Despite growing debates around paid menstrual leave there is no central legislation mandating the same, However states like Bihar and Karnatka provides paid menstrual leaves to the female employees. Existing labour law does talk about female health, working condition and wages yet none talks about menstrual health.

⁴ <https://www.scconline.com/>

⁵ <https://www.scobserver.in/journal/supreme-court-directs-implementation-of-menstrual-health-facilities-in-schools/>

⁶ <https://www.hindustantimes.com/india-news/menstrual-health-linked-to-fundamental-right-to-life-hc-101776282071895.html>

⁷ <http://student.manupatra.com/Academic/Abk/Constitutional-Law-of-India/CHAPTER-14.htm>

⁸ <http://student.manupatra.com/Academic/Abk/Constitutional-Law-of-India/CHAPTER-14.htm>

Maternity Benefit Act, 1961

Maternity benefit act is primary legislation protecting women reproductive health rights of females in India. The act provides maternity leave, nursing breaks and other things related to pregnancy. The scope is limited to childbirth and maternity conditions and does not count menstruation or menstrual disorders. This depicts a broad gap in labour law. While legislature has recognised pregnancy and childbirth as biological conditions it has still not accepted menstruation.

The Occupational Safety, Health and Working Conditions Code, 2020.

The Code establishes that employers must ensure safe working conditions and protect workers from hazards within the workplace.

While the Code is related to concerning worker welfare it makes no direct mention of menstruation, menstrual leave, or workplace infrastructure that could accommodate challenges that come with menstruation.

The Code on Social Security, 2020.

The Code talks about social security legislation for all sectors and pertains to employee insurance, gratuity, provident funds, and maternity benefits. Like the Maternity Benefit Act, the reproductive health concept is largely discussed with relation to maternity, and no independent provision for social security benefit or leave in relation to menstruation exists.

The Menstruation Benefit Bill, 2017.

Perhaps the most discussed and prominent legislation that attempts to introduce menstrual leave is the Menstruation Benefit Bill, 2017 which was a private member's bill presented by an MP of the Parliament Ninong Ering. The Bill stipulated two days of paid menstrual leave every month for women employees and female students and proposed to educate workers and students on menstrual health.

The bill was however never enacted into law, and even though it succeeded in sparking a public discourse on menstrual rights and workspace inclusions, it remains only a proposal and does not hold any legal value.

Initiatives taken by State Governments and Employers.

Since there is no central legislation for menstrual leave it appears that this issue is predominantly a result of employer initiative and state-level provisions. It has been noted that

various Indian organizations have begun voluntary provisions of paid menstrual leave for their employees as a measure to promote diversity and inclusion at the workplace, this is entirely dependent on employers' will and has no legal obligation. Furthermore, a few state governments have started making moves towards policies for menstrual leave specifically for categories of employees and students which shows a growing concern of menstrual health issues at the workplace; however the inconsistent legal framework still poses challenges as there is no uniform provision covering the entire country.

Current legal stance

In India, menstrual leave is still not a statutory right. There is no central legislation that requires an employer to grant menstrual leave to employees, and there is no enforceable claim that an employee has for it. Existing provisions talk about such a situation that are only generic provisions for sickness leave, organizational policies and scattered governmental policies. The constitutional right to work, in general is supported by the labour welfare aims but the lack of a central framework pushes its implementation under employers' discretion which further sparks the debate of it becoming a voluntary employment benefit or a statutory right.

Several countries have recognised menstrual health as a workplace issue and legislated or established company regulations that support menstrual leave. These diverse regulations and implementations provide valuable insights into how legal systems navigate the rights and needs of employees against workplace productivity and gender equality.

Japan

Japan's experience with menstrual leave is one of the earliest. Under the Labour Standards Act 1947, women experiencing difficulty in working during their menstrual period can claim leave. The provision was enacted to cater to the physical challenges women face during menstruation and to protect women's health in the workplace. Though the law was enacted long ago, there are studies showing the low uptake of menstrual leave due to the workplace culture and social stigma attached, as women may worry about being stigmatized for their career. However, Japan's example shows that menstrual leave can be incorporated into labour laws without being a disruption for the workplace.

In South Korea, the Labour Standards Act mandates the right of female workers to request menstrual leave. Employers must comply with these requests and accommodate them. The policy also signifies the recognition by the state that menstrual pain is an issue that can affect

working ability. Despite these provisions, there are debates ongoing on the provision of compensation for menstrual leave, on the implementation of menstrual leave, and on the risk of abuse of the system. South Korea proves that mere recognition through legal frameworks is not enough and that it needs to be supported by workplace culture and awareness.

Indonesia

Indonesian Labor Law grants the female worker the right to take time off during the first two days of their menstrual cycle if they have painful menstrual conditions which hinder their ability to work. This Law specifically recognises menstrual symptoms as a legitimate health related reason for accommodation at the workplace. The Indonesian method, which grants menstrual leave based on need rather than an outright right to take leave on a monthly basis, attempts to strike a balance between the welfare of employees and the concerns of employers about worker productivity and availability.

Spain

In 2023, Spain became one of the first European nations to grant menstrual leave through legislation. This new policy allows workers who have painful periods to take sick leave and have it paid through Social Security rather than by the employer. The measure states that medically certified women suffering from severe menstrual pain will be granted paid leave which will be covered under the social security system rather than by individual employers. Spain's policy, a step forward to protect women's rights, recognizes the health issue caused by menstrual pain and does not burden the employer on a recurring monthly basis, preventing discrimination against hiring and promotions.

Lessons for India

Various models of menstrual leave provide evidence that a single uniform policy may not fit all workplaces and countries. While some nations provide an unlimited right to leave on menstruation, other nations have put restrictions to accommodate for the concerns and interests of employers. It is however quite evident that menstrual health is no longer being considered a private issue and more of a work place issue which requires accommodation. India need not have to necessarily adopt an absolute leave policy but can consider a policy that offers restricted time off on a month-to-month basis with work-from-home facility, flextime for employees or with medically certified proof for serious conditions, that provides benefits for the female workforce and simultaneously considers employers' productivity demands without any

discrimination. The Spanish and other countries' example shows that menstrual leave is a necessary and manageable provision of labour law in several countries. It strengthens the case for India to reconsider why menstrual leave provisions remain absent from its labour legislation.

Conclusion

The discussion of menstrual leave involves far more than mere granting of leave; it also encapsulates the greater themes of workplace equality, health, dignity, and welfare of labour. While a significant part of the Indian workforce undergoes the process of menstruation, the prevailing labour laws in India consider the effects of menstruation as an individual burden and management problem instead of as workplace accommodation. Many employees are therefore forced to use their ordinary leave on the grounds of sickness, or attend work despite immense bodily pain.

The argument that equality of the sexes as enshrined in the Constitution and the concepts of dignity and health support the notion of health and the workplace are strong enough on the normative level. International examples also suggest that menstrual leave is not only feasible, but is already functioning in other regions of the world. On the other hand, issues of workplace discrimination, financial costs to the employer, and negative reinforcement of traditional sex stereotyping must not be overlooked, since a flat-rate rule, irrespective of these factors, might ironically compromise equality in the workplace.

The question, therefore, cannot rest merely with discretion, as the absence of legal framework means inconsistent protection of workers' rights, which are entirely at the mercy of goodwill of the employer. Instead of an absolute mandatory provision that might be difficult for the employers, the Indian labour law should introduce minimal standards, where the employers would have to formulate the menstrual health policies. The employer could decide the mode or nature of implementation—paid leave, unpaid leave, remote working arrangements or flexible work schedule, or some alternative accommodation—in accordance with size and type of the organisation.

This kind of balanced regulation would not only acknowledge menstruation as a problem that pertains to the workplace but would also provide necessary autonomy to the employer, while moving the Indian labour law closer to substantive equality and helping it accommodate

biological realities without making them detrimental to the employment of women. At the end of the day, the goal is not to give women special treatment but rather to create a compassionate and non-discriminatory workplace that caters to the need of the workforce

