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MENSTRUAL LEAVE IN INDIA: A SOCIO-LEGAL ANALYSIS OF EQUALITY, LABOUR RIGHTS, AND WORKPLACE INCLUSION

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Abstract

Menstrual health is now being considered a part of women health, dignity and equality at the work place. Although equality is guaranteed in the constitution, and there is an increased discussion of gender-inclusive workplaces, India lacks an extensive legal mechanism covering menstrual leave to the employees at the national level. Lacking a consistent policy has created a lot of socio-legal controversy on the aspect of balancing substantive equality, labour rights, inclusion at the workplaces and the danger of perpetuating gender stereotypes. Although some State programs and some private organisations have created menstrual leave programs, these have been inconsistently and rarely implemented most especially among women who work in the unorganised sector.

The current paper uses a socio-legal method in reviewing legal, constitutional and social aspects of menstrual leave in India. It examines the applicability of Articles 14, 15, 16, 21 and 42 of Indian Constitution in facilitating gender equality, dignity, health and humane working conditions. The paper also analyzes the current labour law system, policy changes and legal principles concerning the rights of women in the workplaces. Moreover, it discusses the pragmatic issues related to the implementation acceptance of menstrual leave, such as the stigma in the workplace, discrimination, absence of awareness, fears about productivity, and omission of informal-sector employees. The policies of menstrual leaves in some countries like Spain, Japan, Indonesia and Zambia are comparatively analyzed in order to establish the new practices on menstrual leaves and their teaching points on India.

This paper states that menstrual leave should not be considered simply as an employment benefit but a socio-legal concern relating to the constitutional values, social health, gender justice and inclusive labour regulation. It argues that a legal system in the future must be able to provide a balance between the safeguarding of the health of menstruation and the elimination

of discriminatory employment practices. The paper finds that a rights-based, gender-sensitive and evidence-informed program is the most viable in terms of the inclusion of women in the workplace as well as promotion of substantive equality and protection of the dignity of women in the world of work.

Keywords: Menstrual Leave, Menstrual Health, Socio-Legal Research, Labour Rights, Workplace Inclusion.

1. Introduction

Menstrual health is part of physical, mental and reproductive well-being of women and has become more and more human rights, population health, and work equality issues. Although menstruation is natural biological process, it is still culturally taboo, and despite being associated with a degree of social stigma, it frequently impacts the dignity, health and the ability of women to work. The lack of supportive workplace policies and policies that support women through their worst menstrual cycles or other health issues means that many women are still working despite this.¹

Article 14, 15, 16 and Article 21 of the Constitution of India guarantee equality, the non-discrimination, the dignity, and the right to life of workers whereas Article 42 of the constitution instructs the State to provide fair and humane working conditions. Despite the Indian labour laws being very broad in their protection of maternity and the welfare of the workers, a unified law has not been enacted on menstrual leaves as employment right. Thus, menstrual leave has become a significant socio-legal problem with constitutional rights, labour welfare, health, and inclusion in the workplace as its central concerns.²

Over the last few years, various private organisations have voluntarily instigated menstrual leave policies, and legislative initiatives have entered the debate over a standard set. As the debate underscores, employee health as well as workplace equality should be balanced at the same time as protective measures should not work towards discrimination.

¹ United Nations Population Fund (UNFPA), *Menstruation and Human Rights – Frequently Asked Questions* (2022).

² Constitution of India, arts. 14, 15, 16, 21 & 42; Maternity Benefit Act, 1961; Occupational Safety, Health and Working Conditions Code, 2020.

The paper takes a socio-legal perspective of analyzing the constitutional and legal context of menstrual leave in India. It examines constitutional issues, labour legislation, and policy action, international practice and the practical issues that require consideration in recognition of menstrual leave. The article also proposes solutions towards creation of a comprehensive and balanced legal system that facilitates gender equality and dignity in the workplace.³

2. Concept of Menstrual Leave and Menstrual Health

Menstrual leave is a policy approach that enables employees with menstrual pain or other health problems to take an absence that is either paid or unpaid with no impact on their employment benefits and services. It acknowledges that certain people may experience severe symptoms of dysmenorrhoea, fatigue, headache, excessive bleeding, even endometriosis and PCOS, which might interminately affect their work capacity.⁴

The goal of the menstrual leave is not to give special treatment but ensure employee health, dignity, and inclusion into the workplace by reasonable accommodation. With the emergence of awareness on menstrual health, a number of employers in the world have taken up supportive workplace policies to support the health needs of employees.⁵

India lacks any national law that offers any statutory menstrual leave. However, the matter has turned out to be a significant topic of legal and policy debate since it touches on constitutional principles of equality, dignity, labour rights, social justice. Socio-legally, menstrual leave is as effective as it is legal but also within the workplace culture, public reactions, and non-existence of menstrual stigmas.⁶

3. Constitutional Framework Governing Menstrual Leave and Workplace Equality in India

Despite the fact that the Constitution of India does not specifically identify menstrual leave, the considerations it puts forward give a solid constitutional basis to advance gender-sensitive work policies.⁷

³ International Labour Organization, *Women at Work: Trends 2016* (International Labour Office, Geneva, 2016).

⁴ D.C. Dutta, *Textbook of Gynaecology* (Jaypee Brothers Medical Publishers, New Delhi, 8th edn., 2020).

⁵ H.L. Kumar, *Labour Problems and Labour Laws* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, latest ed.).

⁶ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, New Delhi, 1999).

⁷ M.P. Jain, *Indian Constitutional Law* (LexisNexis Butterworths Wadhwa, Nagpur, 9th edn., 2024).

3.1 Article 14: Right to Equality

Article 14 will ensure equality before the law and equality of protection under the law. Substantive equality principle allows fair actions that can be taken to accommodate the biological differences which hamper the participation of women in employment. Thus “menstrual health workplace accommodations could be perceived as supporting the true equality, rather than special treatment.”⁸

3.2 Article 15: Protective Measures for Women

Article 15(1) forbids any discrimination based on the basis of sex and Article 15(3) gives the State the authority to adopt special measures towards women. According to this provision, the protection measures aimed at eliminating structural disadvantages are in harmony with constitutional equality. A well thought out menstrual leave policy would therefore be considered a welfare issue that ensures the health and dignity of women.⁹

3.3 Article 16: Equality of Opportunity

Article 16 ensures that there is equality of opportunity in government employment. The employee welfare must be safeguarded by any menstrual leave policy without negatively affecting the recruitment, promotion or career growth of employees. It is the duty of employers to make sure that employees are not discriminated against to claim legitimate health related benefits.¹⁰

3.4 Article 21: Right to Life and Dignity

Article 21 has been construed to encompass the right to health, privacy, dignity and human working conditions. Menstrual health has a direct impact on the physical and mental well-being, so justifiable support in the workplace is just in keeping with the constitutional goal of safeguarding human dignity.¹¹

3.5 Article 42 and Directive Principles

Article 42 guides the State in obtaining fair and humane terms of labor and maternity leave. Articles 38, 39(e) and 47 further facilitate promotion of social welfare, health of workers and health of the people. Taken together these provisions underpin the establishment of safe,

⁸ Constitution of India, art. 14.

⁹ V.N. Shukla, *Constitution of India* (Eastern Book Company, Lucknow, 14th edn., 2022).

¹⁰ Constitution of India, art. 16.

¹¹ M.P. Jain, *Indian Constitutional Law* (LexisNexis Butterworths Wadhwa, Nagpur, 9th edn., 2024).

healthy, and inclusive workplaces.¹²

3.6 Judicial Perspective

As far as the Indian courts have not established menstrual leave rights as a legal right, the judicial rulings of the rights of maternity leave, rights regarding reproduction and the courts understanding of dignity in the workplace point to the progressive understanding of constitutional rights. These universal principles give a compelling constitutional foundation of future policymaking regarding menstrual health and accommodation in the workplace.

4. Legislative Framework and Policy Developments Relating to Menstrual Leave in India

There is no central law in India to provide an employee with a statutory right of menstrual leave. Current labour regulations are more oriented towards maternity protection, employee welfare, work safety and social security and much less about menstrual health.

The Maternity Benefit Act of 1961 gives paid maternity leave and other associated employment protection which does not concern menstrual health. Similarly the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 enhance welfare of labour but has no statements concerning menstrual leave.¹³

A number of legislative ideas have suggested the introduction of menstrual leave, menstrual hygiene, and increased awareness in workplace. Even though these proposals have brought lots of discussion to the population, no complete piece of legislation has been passed.¹⁴

Other than legislative efforts, some corporations have voluntarily provided menstrual leave as part of an employee welfare programme. Nevertheless, such policies are still confined to a few segments of the organised labour force and the women in the informal sector are usually out of scope. In the socio-legal context, there is also no standardized approach to law and this has led to discrepancy in practices in the workplace in the country. Any future policy must consider the health of employees, equality in the workplace and efficiency in

¹² Constitution of India, arts. 38, 39(e), 42 & 47.

¹³ H.L. Kumar, *Labour Problems and Labour Laws* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, latest ed.).

¹⁴ The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022 (Bill No. 248 of 2022) (Private Member's Bill); The Menstruation Benefit Bill, 2017 (Private Member's Bill).

organisations whilst considering mechanisms against discrimination. An adaptable and gender sensitive system that is backed up with awareness campaigns based on strong implementation would be more effective in advancing constitutional prerogatives of equality, dignity and social justice.¹⁵

5. Comparative Analysis of Menstrual Leave Policies: International Perspectives

Menstrual leave is increasingly being recognised by law or workplace policy in a few countries, though there are significant differences in the extent, and eligibility and implementation of these provisions. Such foreign experiences have shown that menstrual leave is rapidly becoming a welfare provision by employers that seek to safeguard the health, dignity, and productivity of their employees. Simultaneously, they show that legal recognition is not enough to be applied effectively, without proper implementation, awareness and protection against being discriminated against. An analysis of these models would be much instructive to India in the creation of an inclusive and balanced law system.

5.1 Japan

The labour standards act 1947 is the first act to recognise menstrual leave in Japan. Workers that are severely menstruating and could not work due to discomfort may ask their employers to grant them leave but the legislation does not mandate any employer to grant workers paid leave. Although the use of menstrual leave is long-established and legalised, their utilisation rates are low. A large number of employees are reluctant to make use of the benefit because of stigma at work place, privacy and lack of desire to be considered less productive. The experience of the Japanese population proves that social attitudes and the workplace culture may contribute equally to the appointment of the effectiveness of legal rights.¹⁶

5.2 Indonesia

The labour law in Indonesia grants menstrual leave to female workers and ensures that employees will take menstrual leave during the initial days of bleeding when they have pains or discomfort. But there is a range of implementation in workplaces, where some employers require medical certificates or employ restrictive measures. This has led to an aspect whereby

¹⁵ S.N. Mishra, *Labour and Industrial Laws* (Central Law Publications, Allahabad, latest ed.).

¹⁶ Labour Standards Act, 1947 (Japan), art. 68; Kazuo Sugeno, *Japanese Employment and Labour Law* (Carolina Academic Press, 3rd edn., 2019).

many employees are practically challenged when it comes to the exercise of this right. Indonesia shows that employer compliance, employee awareness and efficient enforcement mechanisms should be provided in order to legally recognize.¹⁷

5.3 Spain

Spain has implemented paid menstrual leave to those employees with established severe medically certified menstrual conditions. The act is part of a greater reproductive health system which aims at safeguarding the health of women and consequently their involvement in work. Spain is implementing a public health stance instead of perceiving menstruation as an individual issue by acknowledging menstrual disorders as legitimate health issues. Sufficient protective measures have been implemented as well to ensure that it is not abused and to ensure efficiency in the workplace.¹⁸

5.4 Zambia

Zambia has a trend of what is popularly referred to as the Mother's Day in which female workers are allowed once a month a day off without any medical permission. The policy will help to take care of employees and minimize unjustified administrative practices. Despite the fact that its implementation requires cooperation among the employers to a considerable extent, it proves that flexible work arrangements could be effective in meeting the health needs of employees without being a complicated area of law.¹⁹

5.5 Lessons for India

The experiences in Japan, Indonesia, Spain, and Zambia prove that no single model of implementing menstrual leave can be found. There are however some well-known principles. Good menstrual leaves policies must have anti-discrimination, awareness in the workplace, privacy of employees and flexibility in execution. In the case of India, a future structure must be based on a balance between the constitutional values of equality and dignity and the practical work needs. Instead of concentrating on statutory leave only, the policymakers are encouraged to ensure a holistic approach is taken to encourage menstrual health, inclusive workplace, and

¹⁷ Labour Act No. 13 of 2003 (Indonesia), art. 81; International Labour Organization, *Indonesia: Labour Law Profile* (ILO).

¹⁸ Organic Law 1/2023 of 28 February 2023 on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy (Spain).

¹⁹ Zambia Ministry of Labour and Social Security, Employment Policy relating to the practice commonly known as "Mother's Day"; International Labour Organization, *Women at Work: Trends 2016* (International Labour Office, Geneva, 2016).

gender-sensitive employment policies.

6. Socio-Legal Challenges in Implementing Menstrual Leave in India

Though menstrual leave is an increasingly popular concept in India, its enactment is fraught with a number of socio-legal issues. Those obstacles are not only due to a lack in the legal framework but also due to existence of the social attitudes, practices at the workplace and realities in the labour market. Thus, a policy concerning the menstrual leave should strike a balance between the best interests of the employees and equality, non-discrimination and efficiency of the organisation.²⁰

6.1 Social Stigma and Menstrual Taboos

The practice of menstruation has remained to be shrouded in cultural taboos and social stigma in most regions of India. Most women are not free to discuss their menstrual health openly because of the embarrassment or negative perceptions at work place. Therefore, even where there is a provision of menstrual leave, the employees might be reluctant to use it due to the fears about privacy, professional reputation and career advancement. This means that without an increased awareness and sensitisation of the citizens and changes in legislation in the workplace, social barriers can never be removed.

6.2 Equality and Workplace Inclusion

Among the key constitutional controversies is the issue of promotion of substantive equality and equal employment opportunities. Though the purpose of menstrual leave is to facilitate real health requirements of people, critics can raise their voices claiming that the involvement of exclusive leave generates gender stereotypes or demotions by employers to hire women. Thus, future policy only ought to serve as a reasonable workplace accommodation but not a tool that precipitates new types of discrimination or disparate treatment.²¹

6.3 Exclusion of Women in the Informal Sector

Many of the Indian women are working in agriculture, domestic, construction, and other informal jobs where labour protection measures are not employed. It is the organised sector that would want to limit menstrual leave to, and leave millions of women with no form of

²⁰ M.P. Jain, *Indian Constitutional Law* (LexisNexis Butterworths Wadhwa, Nagpur, 9th edn., 2024); Constitution of India, arts. 14, 15, 16, 21 & 42.

²¹ M.P. Jain, *Indian Constitutional Law* (LexisNexis Butterworths Wadhwa, Nagpur, 9th edn., 2024).

meaningful support at work. Consequently, reforms in policy should also entail expansion of overall public health interventions, welfare programmes as well as social security strategies, which benefit women in informal workplaces.²²

6.4 Lack of Uniform Legal Framework

There does not exist a national policy on menstrual leave in India currently. This has seen a minimal number of organisations take up such policies voluntarily, with several employers offering no formal assistance on menstrual health. This lack of consistency results in a disparity in protecting employees in other fields and organisations. The harmonious system of policies would give more clarity to the employer responsibilities, workers rights, and the standards of implementing the policies.²³

6.5 Need for Awareness and Workplace Sensitisation

Awareness and social acceptance are important elements to the effectiveness of any legal framework. Menstrual health needs to be viewed as a valid occupational health concern, not one of stigma, by individuals who are employed, managers and employees alike. Repeat awareness briefs and health education campaigns, and gender-sensitization trainings would help to develop enabling workplaces where employees would be free to request reasonable accommodations.

Critical Analysis

Enacting menstrual leave goes beyond a legislative change. The organisational cultural and social changes, as well as changes in social attitudes, may help solve workplace inequalities only to a limited extent, without a purely legal solution. Likewise, voluntary employer initiatives can create inconsistent coverage by depending solely on voluntary initiatives. As such, a harmonized socio-legal engagement with legal protections, workplace awareness and institutional advantages are paramount in advancing gender inclusive employment patterns.²⁴

²² S.N. Mishra, *Labour and Industrial Laws* (Central Law Publications, Allahabad, latest ed.).

²³ Maternity Benefit Act, 1961.

²⁴ M.P. Jain, *Indian Constitutional Law* (LexisNexis Butterworths Wadhwa, Nagpur, 9th edn., 2024).

7. Recommendations

In an effort to drive inclusion in the workplace without compromising on worker well-being, it is advisable that the following be put in place:

- Government to come up with an all-encompassing national policy on menstrual health and inclusion in the workplace upon consulting with employers, employees, labour organisations and healthcare professionals.
- The practices that are recommended to provide menstrual health as a significant element of workplace wellbeing include the supply of hygienic sanitation structures, potable water, menstrual products, and favourable work conditions.
- The flexibility of workplace culture such as work-from-home arrangements, flexible working hours, and other wellness breaks or, in certain cases, limited menstruation leaves should be accepted.
- On this, it should be strongly guarded by the anti-discrimination laws to make sure that employees are not underprivileged in matters of recruitment, promotion, performance appraisal, career development on the basis of accessing menstrual health benefits.
- Awareness campaigns and gender sensitisation seminars must be held regularly to decrease the menstrual stigma and promote respect in the workplace.
- Policy reforms must also offer menstrual health care to women working in the informal sector by available public health programmes, welfare schemes and social security programmes.
- Future reforms: Empirical research evaluating workplace experiences, employer views and international best practices should support future reforms in order to get evidence-based policymaking.

All of these would reinforce constitutional values of equality, dignity and social justice but they would make workplaces healthier, more inclusive, and gender sensitive.

8. Conclusion

The social-legal problem of menstrual leave has become a crucial issue, which is at the cross-section between constitutional equality, labour rights, public health and workplace inclusion. Indian labour laws have a lot of protection in regard to maternity benefits and health care of employees, however, the area of menstrual health is not listed as a source of concern in the workplace. Workplace assistance therefore is essentially based on voluntary employer

programs, leading to unequal coverage and absence of consistency in practices. The experience of Japan, Indonesia, Spain, and Zambia prove that the legal recognition is not enough. Implementation would entail workplace awareness, anti-discrimination protection, favourable organisational culture, and trust of employees in the exercise of their rights. These foreign experiences give India good lessons on how to formulate a balanced and realistic framework. Socio-legal, menstrual leave cannot be regarded as an extra benefit of employment but as the aspect of the larger plan that occupational health, dignity in the workplace, and gender equality. The future legal/policy structure must act in harmony between constitutional values and realistic work practices and must ensure that the health of the employees is addressed without posing any form of obstacles to equal employment opportunities. Increased gender justice and inclusive workplaces in India would require a balanced strategy with awareness and the commitment of the institution and the implementation through inclusivity tools being vital to the cause.

