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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **MENSTRUAL LEAVE: CURING THE** **BLEMISHES**

AUTHORED BY - URVASHI BANSAL

## **Abstract**

In this article, the author shall examine the current legal status of separate menstrual leave in India and other countries as well as analyse its importance and necessity. The adoption of menstruation leave in the context of "environmental, social, and corporate governance" efforts has also been attempted to be studied by the author. The author has also looked at the changing business practises in India with regard to the adoption of policies regarding menstruation leave and associated rewards. The legal status and common practices in other jurisdictions are also addressed by the author through this article.

## **Introduction**

Women in India nowadays play a major role in the service sector and nearly about 45% of women in India are employed in various fields. This number was less than 20% about 10-12 years ago, there are a lot of companies and organizations that do not employ women because they get married, leave the job, ask for maternity leave and now for period leaves also. Similarly on the other hand they consider employing men as simple and easy without any distractions. Menstruation has always been a hush-hush topic for the people in India to be talked about and many women suffer because of the embarrassment that the society feels in talking about it. In rural areas most of the people are illiterate and they do not have any idea about this process.

The first step should be teaching them and telling them about it and stopping treating it as a taboo. This shell of secrecy is slowly dissolving in a completely different vista. According to the findings of the International Journal of Environment Research and Public Health's Menstrual Hygiene Preparedness Among Schools in India (2020)<sup>1</sup>, less than half of the girls know about menstruation before menarche. According to a study conducted by UNICEF and the National Institute of Urban

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<sup>1</sup> Sharma, S., Mehra, D., Brusselaers, N., & Mehra, S. (2020). Menstrual hygiene preparedness among schools in India: a systematic review and meta-analysis of system-and policy-level actions. International journal of environmental research and public health, 17(2), 647.

Affairs (2020), adolescent girls living in disadvantaged urban slums lack access to basic menstruation hygiene services. Since they cannot afford them, one in every two females is denied sanitary products and tampons throughout their menstrual cycle. The figures have been long, yet the fight goes on.

The remarkable **Sabarimala verdict**<sup>2</sup>, which restricted menstruating women to enter the temple, Apex Court has tried to bridge the gap between constitutional ideals and social reality by permitting the women to visit the temple premises. The apex court also declared that these types of rules are one reason that menstruation is regarded as an ailment and a sign of impurity and people feel ashamed talking openly about it, one such landmark judgement provided by the Indian court helped in elevating the standing of women in society, but there is still a long journey to go.

Menstruation is a 3–7-day long process that basically determines the pregnancy of women and otherwise helps in removal of the toxins in the body of women. Many females suffer from different problems during their menstrual cycle which include irritation, mood swings, unusual cravings, pain, cramps, and a lot more. During such time, women may find it difficult to maintain a consistent level of productivity in an otherwise fast-paced work environment. Many women also suffer from disorders related to menstruation such as ovarian cysts, endometriosis, dysmenorrhea, etc.

## **The Menstruation Bill, 2017**

The idea of the Menstruation Bill, 2017 was proposed by Mr. Ninong Ering, who is a member of parliament (Lok Sabha) from Arunachal Pradesh.

- It includes 2 days' leave for all the women working in the private or public sector during their periods.
- The bill expresses that any lady going through the feminine cycle will be given an extra time remittance assuming they select to work rather than leave, and they would likewise be given 30 minutes of rest periods two times every day for not over four days.
- It also seeks improved workplace accommodations for women.
- The bill should likewise be extended to girls in schools from eighth grade and up.

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<sup>2</sup> Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors. (2019) 11 SCC 1



- These leaves must be offered to every woman without fail, and no woman shall be discriminated against because of her occupation.
- If a woman working in a corporation is given paid menstrual leave, a woman factory worker is entitled to the same benefit.
- The leaves will be added to the sick leaves.

The law, however, has still not been picked up by parliament, although many have applauded this suggestion, while many have properly opposed it.

Bihar is the only state in India giving two days of the period passed on to its lady's representatives starting around 1992<sup>3</sup>. A government school in Kerala<sup>4</sup> provided menstrual leave to its students during their annual examinations and permitted them to attempt the same at a later stage. Organizations like Byju's<sup>5</sup>, Zomato<sup>6</sup>, Culture magazine, and a couple of others are essential for the corporate circle giving period leaves in India.

### **Corporate sector's stance:**

Many companies have already started giving this incentive to female employees by providing them 10 days of paid leave in a year. After many discussions women from different sectors had different views on this topic of period leave, some of them advocate this concept of paid leaves because of the excessive pain and disturbances on the professional front while the other half of them believed that getting period leave would provide an upper hand to the men in the already existing patriarchal society by considering them weak and unfit to work.

A handful of start-ups in India have stepped up and allowed female employees to take a day or two off during their menstrual cycle. In a last-ditch effort to revolutionize and make the workplace gender-inclusive, teachers in Uttar Pradesh launched a campaign in July 2021<sup>7</sup>, demanding that a certain set of days be given as paid leave to teachers during their periods. Mahila Shiksha Sangh reported alarming statistics about unsanitary school restrooms, girls' dropout rates, and absenteeism. They hoped to extend that freedom to schoolchildren if they were successful in their endeavors. Working closely with the Lucknow District Chief Development Officer, projects such as Menstrual Hygiene Friendly Spaces, public educational spaces such as Kasturba Gandhi

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<sup>3</sup> Bihar Vikas Mission, Human Resource Manual.

<sup>4</sup> Ahead of its time! This Kerala school granted menstrual leave to students way back in 1991 (The Economic Times)

<sup>5</sup> From Period Leaves to Child Care Leaves, All About BYJU'S Updated Leave Policy.

<sup>6</sup> Introducing period leaves for women (zomato.com).

<sup>7</sup> Mahila Shiksha Sangh: a campaign towards empowering women

Vidyalaya, and housing for girls with disabilities are attempting to make menstrual compliant by installing sanitary napkin vending machines that can be used to dispense free of charge biodegradable sanitary napkins.

In this tech-savvy world, women generally do not demand a full day's leave or something but thanks to Covid-19 we have the option of working from home as well and it is believed and agreed by almost every individual that working from home is easier and would help them ease the pain. The women as well and the company is not at loss. This creates a win-win situation on both ends. It might as well increase the productivity of the person because they are relaxed and can work flexibly.

## **Providing leave just or not?**

Such development must come from the bottom-up – discussions about menstrual flow and discomfort must move out of women's locker rooms and into the open, with men, children, and coworkers willing to participate in both social and work capacities. Men must first normalize this extremely common occurrence and recognize it in a sole discretion – after all, policy improvements and pro-leave laws, while effective in their own right,<sup>8</sup> will only go so far to combat prejudice and inconsideration towards menstruation. If we do this as a society, some of our most effective staff members will profit immensely in terms of satisfaction and performance – plus India Inc. will benefit as well.<sup>9</sup>

Period leave is not something that every woman is looking up to get but it's an additional luxury debated upon considering the situation of women during their menstrual cycle, and if this is provided it doesn't necessarily mean that every time, they would be on leave but it's their discretion to work or not. A lot of companies in the corporate are reluctant to provide normal days' leave to their employees and not even a WFH facility. They are the major ones protesting this very idea and arguing about the feminist ideologies.

## **Legal Position in other jurisdictions**

There are several countries that grand period leaves to women these are:

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<sup>8</sup> Shailendra Mani Tripathi v. Union of India, WP (C) No. 172 of 2023, order dated 24-2-2023 (SC).

<sup>9</sup> SEBI/HO/CFD/CMD-2/P/CIR/2021/562, dated 10-5-2021.

**South Korea-** Menstrual leave policy started in 2001, it states women must be paid for unused menstruation leave<sup>10</sup>.

**Zambia-** One day of leave per month.<sup>11</sup>

**Spain-** It is the first European country to grant three days of paid menstrual leave.<sup>12</sup>

**Taiwan-** allows paid three days of holiday per month which is not to be equated with sick leaves.<sup>13</sup>

**Japan-** This policy came into force in 1947 and now finally Japan obligates paid period leave to women<sup>14</sup>.

**Indonesia**<sup>15</sup>- Two days per month of paid leave.

There are ongoing debates in the Philippines, France, Brazil, and Hong Kong to bring up the same policy.

## **Legal Position: India**

The position regarding the discriminatory character of the policy might be contested under Article 14 of the Constitution, which refers to the concept of 'Equality before the law,' and if there are laws that supervise the behavior of all employees, there shall be equality on equal footing. Because men do not ovulate, women must not lag due to their biological constitution. The menstrual leave policy is also protected by Exemption 15(3) of Article 15(1) of the Indian constitution, which grants the legislative body the authority to adopt regulations and specific provisions on positive discrimination that help patriarchal victims, namely women and children.

Furthermore, Article 42 of the Indian constitution, under the Directive Principles of State Policy (DPSP), allows the state to ensure that women have just and acceptable working conditions, as well as maternity leave.

However, recently, Hon'ble Chief Justice of India Mr. D.Y. Chandrachud in one of his speech also mentioned about the work culture in his office, and he has also started giving the women employees of the office an option to work from home during the first 2-3 days of their menstrual cycle. This initiative taken by the Hon'ble Chief Justice is expected to have a positive impact in all the sectors.

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<sup>10</sup> Labour Standards Act.

<sup>11</sup> The Employment Code Act, No.3 of 2019.

<sup>12</sup> Painful periods? Spain just passed Europe's first paid 'menstrual leave' law.

<sup>13</sup> Act of Gender Equality in Employment.

<sup>14</sup> Labour Standards Law [Law No. 49 of 7 April 1947

<sup>15</sup> Act Concerning Manpower [Indonesian Labour Law] No. 39, 2003.

## Trends in the Indian Industry

1. The government of Bihar provides 2 days period of leave to all the female employees.
2. The government of Kerala is also raising its voice and working on taking this initiative.
3. The brand '**Nike**' has been providing period leaves to its female employees since 2007.
4. '**ARC**', five-year-old market research and strategic consulting startup in Hyderabad has already looked forward to period policy.
5. '**Horses stable**' a startup based in Bangalore is providing its female employees with two-day menses leave. Not only this, but they also provide an allowance of Rs 250 to help them throughout the difficult period.
6. '**Mathrubhi**', leading Kerala's media group of the TV channel has brought period leaves that will benefit about 50 women presently working under the channel.

Many other companies and organizations are also taking an initiative.

## Conclusion

We have arrived at a point in history when both religion and science have developed in unprecedented ways. We live in a time that provides us with both promises and possibilities. Women's health must be prioritized in both private and corporate workplaces where women work. The Menstruation Benefit Bill has gathered traction and received varied reactions. Opponents said that it would worsen the wage disparity between male and female employees. All men and women must accept their biological distinctions. Menstruation is the kind that women experience. This is part of what makes you distinctive, and that does not necessarily indicate gender disparity.

As has been stressed and seen in recent years, creating an inclusive workplace acquires tremendous relevance. Menstrual leave implementation is a significant step towards eradicating decades of stigma. To promote the wellbeing of the organization's employees, it is crucial to adapt to the workplace practices that are always changing. The Government of Bihar was ahead of its time in this regard, even though organisations have only lately started to apply the practice of offering menstruation leave and that the current Indian legal system has not yet addressed this issue. The much-needed transition in the workplace will be facilitated by allowing for open discussions and aiding women in the profession regarding menstruation without attributing any shame to it.