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E.MBA, LL.M, PH.D, PGDSAPM

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Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide 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

A CONSTITUTIONAL PERSPECTIVES ON MENSTRUAL LEAVE POLICY IN INDIA

AUTHORED BY - DR. SIMMI VIRK*

Abstract

It is clear that the term "feminism" was chosen on purpose to capture the complex fight for women's equality and political freedom. The word "feminism" became the catchphrase for people promoting women's rights as the feminist movement grew in strength, particularly in the late 19th and early 20th centuries. The paper also explores the historical significance of the 1929 Maternity Benefit Act, highlighting the necessity of taking proactive steps to ensure its successful implementation. In order to eliminate prejudices, promote tolerance, and work toward a more just society, it ends by urging a cultural change.

Introduction

The Vedic period is where this tale first appeared, and it is commonly associated with Indra's murder of Vritra. The Veda claims that the shame of killing a brahmana-murder manifests itself every month as menstruation since women are believed to have shared some of Indra's guilt. Hinduism also prohibits women from going about their daily lives normally when they are menstruating. She must first be "purified" before being permitted to reunite with her family and return to her regular duties. In certain cultures, women bury the clothing they wear during their periods to prevent evil spirits from using it, and girls and women who are menstruating are prohibited from praying and from touching sacred books. This myth also stems from cultural ideas of the impure nature of menstruation, which could contaminate the food they handle or prepare. But research says that endometrial bleeding, which is followed by cycle preparation, is caused by ovulation and a missed pregnancy opportunity. Some supporters claimed that women were morally superior to males and that allowing them to participate in civic life would enhance both the political process and public behavior.

The word "feminism" has a strong relationship to its Latin roots, as evidenced by its etymology,

* Associate Professor, JIMSEMTC, Deptt. of Law (GGSIPU) Gr. Noida; Former Associate Professor, School of Law, Galgotias University, Gr. Noida, Former Assistant Professor, Amity Law School, Delhi (GGSIPY). Noida, Former HOD, CPJ-CHS & SOL (GGSIPY) Narela.

which refers to the word "femina," which means "woman." The way the term has changed throughout time captures the spirit of the larger movement that supports gender equality, women's rights, and women's empowerment in all spheres of life. Examining the linguistic origins, the Latin word "femina" refers to both the biological part of being female and the more general notion of womanhood, including its social, cultural, and historical connotations.¹

The late nineteenth and early twentieth centuries saw the emergence of the first wave of feminism, a crucial period in the history of women's rights. It was a reaction to the liberal, socialist political climate of the century as well as the shifting dynamics of urban industrialism. This wave's main goals were to eliminate social constraints on women and create possibilities, with a special emphasis on obtaining the right to vote.²

Development of the menstrual leave concept

In the 19th century, the idea of menstruation leave was initially proposed. The policy was originally implemented in Soviet Russia in 1922, but it was repealed five years later because it discriminated against women in the workforce. Taiwan and South Korea later embraced the notion of menstruation leave after Japan introduced it in 1947 and included it into their labor law, which is still in effect today. While all of these nations have offered menstruation leave to its female employees, Zambia was the first to provide paid leave for all female employees each month without requiring a medical certificate or an explanation. The first European nation to offer three to five days of menstruation leave with a doctor's certificate authorizing the leave was Spain in 2023. Some businesses and organizations started the menstrual leave policy out of self-interest rather than waiting for legal mandates.

Constitutional view of Menstrual Leave in India

In the Indian context, the Article 14, Article 21, and Article 41 make up this symbolic trinity, which creates a strong framework that protects women's livelihood, health, social equality, and general chances for both professional and personal growth. Article 14 reads, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

¹ "The Politics of Menstrual Leave and its relevance in Universities- Feminism in India", Available at: <https://feminisminindia.com/2023/03/01/the-politics-of-menstrual-leave-and-its-relevance-in-universities/> last visited Sept. 20, 2025).

² *Ibid.*

The fundamental right to equality before the law and equal protection under the law is established in Article 14 of the Indian Constitution. This suggests that women have the same rights as other citizens to be treated equally in all areas of life, without facing gender-based discrimination.³

With its emphasis on the idea that all people are equal before the law, regardless of their background, this fundamental right acts as a strong barrier against discrimination and arbitrary decisions. It is clear that a policy like this is in line with the constitutional guarantee of equality when we apply the ideas of Article 14 to the Indian Menstrual Leave Policy. Women have special biological needs, and menstrual leave recognizes that some menstrual-related health problems can make it difficult for them to work at their best during those days.

Menstrual leave may be included in the right to life and personal liberty guaranteed by Article 21 of the Indian Constitution. First of all, because menstruation causes discomfort and the body is weak and susceptible, it is not appropriate to ask someone to work during this time. Second, developing nations face fundamental sanitation challenges, such as inadequate menstrual hygiene alternatives, clean, safe, and private facilities for women, and a lack of suitable sanitary facilities. Both their fundamental right to health and everyone else's right to health are violated as a result.

Article 41 of the Indian Constitution states that “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” This article is part of the Directive Principles of State Policy, which aims to ensure social and economic justice for citizens.

The Indian Constitution's Article 42 requires the government to enact legislation that guarantees fair and compassionate working conditions as well as maternity benefits. Although these provisions offer a constitutional foundation for addressing gender equality and non discrimination, national and state laws, regulations, and judicial interpretations will determine how menstrual leave policies are specifically implemented and regulated. It is crucial to remember that these clauses are open to judicial interpretation and may change to accommodate

³ The Constitution of India, Article 14.

new demands and cultural shifts.

In recent years, menstrual health has gained prominence as a critical component of women's wellbeing. The idea of menstrual leave acknowledges the unique health requirements and difficulties that women have throughout their menstrual cycles. Menstrual leave is implied from the larger right to health and the right to live with dignity, even though it is not specifically mentioned in the Indian Constitution. A vital component of women's health, menstrual health has attracted attention recently. Women's unique health needs and difficulties throughout their menstrual cycles are acknowledged by the idea of menstrual leave. Although menstruation leave is not specifically mentioned in the Indian Constitution, it is implied by the larger rights to health and dignity.

Need for Menstrual Leave

Period leave, commonly referred to as menstrual leave, is a policy that permits working women to take time off while they are experiencing menstrual pain. By enabling women to take the required time off to manage their physical and mental health, these rules seek to address the difficulties that women encounter during their periods. In addition to improving women's well-being, menstrual leave fosters and boosts workplace productivity and fosters greater equality and flexibility. Women's health would be improved by the menstrual leave policy, which lowers the risk of infections and enhances sexual and reproductive health.

Implementation of Leave

A Menstrual Leave Policy guarantees women in the workplace equal legal protection. It avoids the discrimination that could occur if women were denied leave for menstruation-specific health reasons. It may be argued that denying women menstruation leave violates their right to equality before the law since it ignores the fundamentally different health needs of men and women.

Status of menstrual leave policy in India

The Maternity Benefit Act of 1929, the first pre-independence law specifically created to address the vital need for safeguards associated to childbirth in the workplace, represents a significant turning point in India's legislative history. The urgent problems faced by women, especially those working in Bombay's cotton industries, who were being denied the right to

procreate, prompted this historic law. The story then turns to how society views menstruation, highlighting how important it is to see it as a physiological phenomenon in order to advance social justice. But stigmatizing menstruation by portraying it as a cause of embarrassment is obviously in odds with the goal of equality.⁴

To make sure employers follow the law, this may entail enacting fines for non-compliance. Employers should be given financial incentives and rewards, such the waiver of license fees, to further encourage compliance and promote a culture of maternity protection law observance. Shri Ninong Ering introduced the menstruation law in Arunachal Pradesh as a private member bill in 2017. The 2017 Menstrual Bill was created to address the requirements of women in the workforce, however it hasn't been approved. Following the bill's inability to pass, two private enterprises took the lead in enforcing the menstrual leave policy in their own best interests. In 2017, Gazoop and Culture Machine, two enterprises based in Mumbai, were the first private companies in India to implement period leave. As time passed, both individuals and organizations began to take notice of the idea of menstrual leave. The rest of the world was awakened by the initiation by different companies.

As a response, Zomato, an Indian food delivery firm, decided to grant transgender staff and female employees up to 10 days of monthly leave in 2020. This decision attracted attention and sparked a conversation about gender equality and menstruation health in India. The other top online food delivery service, Swiggy, followed Zomato in granting its female staff two days per month.

At the National level

- There is no law governing menstrual leave in India and also there is no centralised direction for 'paid menstruation leave' in India.
- **Draft Menstrual Hygiene Policy 2023:** It recognises the need to address the issue of gender discrimination and create an enabling work environment which supports leaves and work-from-home options.

⁴ Maternity benefit act-boon and bane for the nation, Available at: <https://timesofindia.indiatimes.com/readersblog/maternitybenefitactboonandbaneforthenation/maternity-benefit-act-boon-and-bane-for-the-nation-51056/> (last visited July 26, 2025).

- **The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022:** A private member bill proposing paid menstrual leave of three days in any establishment registered with the government.

At the state level

- **1992: Bihar government** introduced a policy that granted female employees two days of paid leave every month for menstruation-related reasons.
- **2023: Kerala Government** granted menstrual leave for female students studying in all state universities coming under the Department of Higher Education.

Although the Menstrual Leave Policy is a step in the right direction toward acknowledging the health requirements of women, it should be applied without reinforcing stereotypes or impeding career advancement. It ought to be written in a way that guarantees women won't experience prejudice or discrimination at work because of their biological traits.

A public interest litigation (PIL) was filed before the Supreme Court of India (SC) in January 2023, requesting that all States be directed to develop a policy for menstrual pain leave for working women and female students in accordance with the Maternity Benefit Act, 1961. However, the Supreme Court has resolved the PIL in an order dated 24-2-2023¹⁰, indicating that the petitioner should submit a submission to the Union Ministry of Women and Child Development so that the Ministry can make the proper judgment.

By implementing rules that provide menstrual leave, many Indian workplaces have begun to recognize the importance of menstruation health. This acknowledges that women's capacity to perform at their best may be impacted by pain, discomfort, or other health problems that they may have during their periods.

Gaps and vulnerable groups

The issue of menstrual leave in India highlights significant gaps and vulnerabilities, particularly for groups that are often left outside the ambit of formal labour protections. A major concern arises in the informal sector, which comprises a vast majority of India's workforce, including daily wage earners, home-based workers, and those employed in small-scale factories. These workers typically lack access to any formal leave entitlements, let alone provisions for menstrual leave. For them, taking time off often directly translates into a loss of income, creating a difficult choice between health and livelihood. This underscores the importance of

state intervention through welfare schemes or social protection mechanisms that can provide safety nets where employer-based leave policies are non-existent (SSRN).

Another area of vulnerability lies within educational institutions, where policies related to menstrual leave and support remain inconsistent. While a few universities and colleges have begun to offer limited menstrual leave or flexible attendance policies, such initiatives are far from uniform across the country. Moreover, infrastructural support—such as access to sanitary facilities, counselling services, and awareness programmes—varies widely between urban and rural institutions, as well as between public and private establishments. This unevenness highlights the urgent need for a more structured and inclusive approach that not only accommodates leave but also ensures supportive environments for young women and menstruating students.

Conclusion

In the 1992 decision of *SL Bhagwati v. Union of India and Ors*, the Supreme Court of India argued in support of menstrual leave, stating that it would allow women to take care of their families and health. The Bihar government implemented a policy of two paid menstrual leave days per month in 1992. The Delhi government declared in March 2021 that all of its female employees will be eligible for menstrual leave. Any day of their menstrual cycle is acceptable for taking the leave. All female teachers and students at NALSAR University of Law are now eligible to take one day of menstrual leave per month under a new policy.

In 2017 after the Mumbai-based startup, A startup named Mathrubhumi allowed its women employees to stay at home for the first day of their period. As time went on, the concept of Menstrual leave got attention from the organizations and as well as from people. The initiation by various companies became an eye-opener to the rest of the world. As a result, in the year 2020, the Indian food delivery service-based company, Zomato decided to give female employees and transgender menstrual leave for a period of up to 10 days, which triggered the attention of people and led to the discussion about menstrual health and gender equality in India. Followed by Zomato, swiggy the other leading online food delivery company took the initiative to grant its female employees 2 days per month. This decision was made by them to support their women delivery partners as they experience discomfort from traveling on the road and other reasons.

By 2025 menstrual leave in India sits at an experimental stage: a few state experiments, several voluntary corporate policies, and an active public debate. The choice ahead is not simply whether to grant leave, but how to design it so it improves health and dignity without reinforcing discrimination. A pragmatic path combines modest paid leave, robust anti-discrimination rules, support for informal workers, and stronger menstrual-health infrastructure.

