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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

“FROM TRADITION TO TRANSITION: NAVIGATING THE LANDSCAPE OF PAID MENSTRUAL LEAVE”

AUTHORED BY - BIBHUTI BHATTA

ABSTRACT

Menstrual leave policy offering paid time off during menstruation is growing significantly globally. This paper uses a comprehensive strategy that include doctrinal analysis, implemented in nations like Japan, South Korea, Taiwan etc each with unique nuances and consequences and a topic of controversy in nations like India, where cultural norms and menstruation taboos collide. This has also brought attention to the challenges of implementing such policies in predominantly patriarchal societies and the potential impact on societal attitudes toward menstruation. Structured into four distinctive parts, the study navigates through the historical genesis, evaluates practical implications, scrutinizes global implementations, and investigates contemporary discourse within the Indian context. Part I begins with a brief study of the menstrual leave's evolution negotiating the stigmas which surrounded it. This section provides an overview of the background and summarizes how societal views about menstruation changed over time. In Part II, the feasibility of menstrual leave policies is critically examined, delving into the contradiction between the idealistic notion and the practicality of its implementation in practice. It carefully analyses the possibility of paid menstrual leave in light of many sociocultural and economic contexts. Part III of this study delves into an examination of the country that introduced menstrual leave, exploring both historical and present-day conditions. By analysing the experiences of this country, the research aims to derive valuable insights into the effectiveness and challenges associated with the long-term implementation of paid menstrual leave. The focus of Part IV is modern India, considering recent discussions around menstrual leave in India. This section examines India's socio-cultural environment and delves into the intricacies of the discussion, assessing the possible obstacles and effects of this kind of policy on India's social structure. Through an integration of global viewpoints, historical background, and a critical analysis of current discourse, it seeks to offer a comprehensive interpretation of paid menstrual leave. The findings provide a basis for informed conversations and possible directions for further study, policy development and significantly add to conversations on gender equality, workplace policies,

and society attitudes around menstruation.

KEYWORDS: Menstruation, Societal attitudes, Gender, Taboos, Policy development

I. INTRODUCTION

In ancient civilizations, menstruation carried diverse meanings and was interpreted through various cultural lenses. Some societies revered menstruating women, considering them powerful and connected to mystical forces. An example is ancient Egypt, where menstruation was associated with the lunar cycle and the goddess Isis. In Hinduism, menstruation symbolized the cosmic rhythm of life and death through the goddess Shakti's menstrual cycle, reflecting concepts of fertility and creation.

Cultures like ancient Greece and Rome featured menstrual huts, where women would retreat during their periods. These spaces were deemed sacred, and rituals were performed to honour the cyclical nature of life. However, with the structuring of societies, menstruation acquired negative connotations. It became associated with impurity, leading to the characterization of menstruating women as "unclean."

Religious restrictions emerged, with some texts prohibiting menstruating women from participating in rituals or entering temples, a concept found across various faiths. Social isolation during menstruation further reinforced the idea that menstruating bodies were somehow dangerous or polluting.

Early medical texts depicted menstrual blood as waste material to be expelled from the body. Misconceptions about menstruation gave rise to harmful practices, such as the belief that suppressing menstruation could enhance a woman's health.

Menstruation became linked to female weakness, reinforcing gender stereotypes. Women were considered physically and emotionally vulnerable during their periods. The silence surrounding menstruation perpetuated shame and hindered open discussions, contributing to a lack of knowledge and unnecessary suffering. Early perspectives on menstruation spanned from reverence and mysticism to taboos and negativity. These historical viewpoints continue to shape our understanding and cultural attitudes toward menstruation today.

The concept of menstrual leave was first applied in post-Revolutionary Russia at the turn of the 20th century. In 1922, Soviet Russia implemented a menstrual leave policy, allowing women to take time off during menstruation. However, this policy faced challenges, including resulting discrimination against female workers, leading to its eventual removal in 1927.

Even earlier, in 1912, a girls' school in the south Indian state of Kerala granted its student menstrual leave. This progressive step recognized the unique needs of menstruating individuals and aimed to prioritize their well-being.

Japan holds a significant place in the history of menstrual leave. In the late 1920s, Japanese labour unions began demanding leave (known as "Seiri Kyuko") for female workers. In 1947, Article 68 of the Japanese Labor Standards Law officially allowed menstruating women to take days off work. This legal provision acknowledged the physical challenges faced by women during menstruation. However, ongoing debates continue to question whether menstrual leave is a medical necessity or a discriminatory measure.

Despite these early efforts, stigma related to menstrual leave persists. Some view it as perpetuating stereotypes and further medicalizing menstruation. Taking leave may require disclosing personal information to male managers, potentially reinforcing discriminatory attitudes. Employers often worry about the impact of menstrual leave on workplace productivity. Balancing the needs of individual employees with organizational efficiency remains a challenge. The historical trajectory of menstrual leave policies reflects both progress and obstacles. As we continue to explore this topic, understanding the nuances of implementation and societal attitudes is crucial. Menstrual leave policies remain a critical aspect of promoting gender equality and recognizing the specific health needs of women.

A. Stigmatization and Silence

Stigmatization and Silence surrounding menstruation have persisted despite historical reverence and mystical associations with this natural biological process. Menstruating women often faced negative stigmas, encountering discomfort, secrecy, and even shame. Cultural narratives deeply ingrained in societies perpetuated the notion that menstruation should be hidden or endured quietly. Consequently, women bore the burden of this silence, navigating their menstrual cycles discreetly and often without acknowledgment or support.

Workplace environments, historically shaped by male norms, rarely considered the unique needs of menstruating employees. Restrooms, break times, and policies were designed without accounting for menstrual health. Workplace norms that favoured male bodies, such as the standard 9-to-5 workday, rigid schedules, and lack of flexibility, did not accommodate the fluctuations and discomfort associated with menstruation. Women, therefore, faced challenges, including the pressure to maintain productivity despite fear of being perceived as less productive during menstruation.

The fear of judgment and scepticism surrounding taking leave due to menstrual issues created a stigma around such requests. Many women hesitated to request time off, concerned that it could negatively impact their professional reputation. The silence surrounding menstruation turned it into an invisible struggle, as women coped with cramps, fatigue, and hormonal shifts while maintaining a façade of normalcy.

While progress has been made, with some companies now recognizing menstrual leave as a legitimate reason for time off, the implementation and acceptance of such policies vary widely. Countries like Japan, South Korea, and Indonesia have formalized menstrual leave policies, but challenges remain. Advocates argue that acknowledging menstruation as a valid reason for leave is essential for gender equality and overall well-being.

Breaking the silence around menstruation, both historically and in contemporary workplaces, is crucial for fostering empathy, inclusivity, and a more equitable work environment. Recognizing menstrual health as a legitimate concern contributes to creating a workplace that acknowledges and accommodates the diverse needs of all employees, irrespective of gender.

B. Shifting Paradigms: Legal and Cultural Changes

The mid-20th century witnessed significant advancements in women's rights. As women entered the workforce in larger numbers, discussions around menstrual leave gained momentum. Activists and feminists emphasized the need for policies that explicitly recognized menstruation as a valid reason for time off. These movements aimed to dismantle the stigma and secrecy surrounding menstruation.

Countries such as Japan, South Korea, and Taiwan took concrete steps to institutionalize menstrual leave. Legal frameworks were established, and employers gradually accepted the

idea. However, challenges persisted. Employers raised concerns about productivity, while some questioned whether menstrual leave perpetuated gender stereotypes. Balancing the practical needs of women with workplace efficiency remained an ongoing debate.

Menstrual leave policies are now widespread, albeit with variations across countries. Some nations provide a fixed number of days per menstrual cycle, while others allow for flexible arrangements. Research continues to explore the impact of such policies on workplace dynamics, productivity, and overall well-being.

By tracing the trajectory of menstrual leave policies, we gain insights into the shifting attitudes toward menstruation. As we proceed to subsequent sections, we will delve deeper into the practical implications, legal frameworks, and contemporary discourse surrounding this crucial issue.

II. THE IDEALISTIC NOTION VS. PRACTICAL IMPLEMENTATION

The advocacy for menstrual leave, although gaining global momentum, faces a nuanced debate over its idealistic notion versus practical implementation. Proponents argue that recognizing and providing specific leave for menstruation is a crucial step towards achieving gender equality, as it acknowledges the unique challenges women experience during their menstrual cycles. This perspective underscores the importance of accommodating women's health needs in the workplace and fostering an environment that recognizes the biological differences between male and female employees.

However, as the concept gains traction, critics express concerns about the feasibility and potential drawbacks associated with implementing menstrual leave policies. A primary concern raised by employers is the potential impact on workplace productivity. Granting additional leave raises worries about its potential effects on overall organizational efficiency, as employers grapple with the delicate task of balancing the individual needs of employees with the broader goals of the organization.

The debate surrounding menstrual leave encompasses not only concerns about workplace productivity and gender stereotypes but also extends to the potential reluctance of employers to hire or retain female workers due to the provision of additional leave. This apprehension

on the part of employers adds a layer of complexity to the discussion, as it intertwines with broader issues of gender bias and equality in the workforce.

Employers may express reluctance to employ female workers if the provision of menstrual leave is perceived as an additional burden on the organization. The concern centres around the potential impact on overall operational efficiency and the costs associated with accommodating the unique needs of female employees during their menstrual cycles. This apprehension, rooted in economic considerations, poses a significant challenge to the successful implementation of menstrual leave policies.

Moreover, the implications of menstrual leave can be particularly disadvantageous for women working in small-scale industries. In these settings, where resources and manpower may be limited, the provision of additional leave can be perceived as a significant disruption. The potential economic strain on small businesses and the fear of productivity loss may lead to employers hesitating to hire or retain female workers. This reluctance can have detrimental effects on the independence and autonomy of women in such industries, limiting their opportunities for employment and advancement.

The impact on women's independence and autonomy is particularly pronounced in small-scale industries where the workforce is often tightly knit, and roles are multifaceted. The fear of disruptions caused by menstrual leave may contribute to an environment where female workers feel pressured to downplay their health needs or forgo taking the leave to maintain job security. This compromises their autonomy to manage their own health and work-life balance, reinforcing traditional gender roles that disadvantage women.

In navigating the complexities of implementing menstrual leave policies, it becomes crucial to address these concerns comprehensively. Striking a balance between the needs of female employees and the operational realities of small-scale industries requires careful consideration. Efforts should focus not only on destigmatizing menstruation but also on creating inclusive policies that promote gender equality while ensuring the economic viability and autonomy of women in the workforce, particularly in small-scale industries.

A. Sociocultural and Economic Contexts

In the context of the socio-economic impact on the feasibility of paid menstrual leave, it is

essential to consider the economic context of a given country. Countries with well-established social safety nets may find it more viable to implement paid menstrual leave policies, as there is a greater capacity to absorb the associated costs. In these environments, where financial resources are more abundant, employers may be more willing to provide such benefits without significant hesitation.

Conversely, in economically strained environments, employers may face financial constraints that make the provision of paid menstrual leave less feasible. The economic context becomes a crucial factor influencing the decision-making process, as businesses in financially constrained settings may prioritize other operational needs over implementing additional leave policies.

Moreover, the sociocultural context, especially in predominantly patriarchal societies like India, plays a significant role in shaping attitudes towards menstrual leave. Cultural norms and taboos surrounding menstruation intersect, creating additional challenges for the implementation of menstrual leave policies. In these societies, deeply ingrained beliefs about menstruation often contribute to the stigmatization of women during their menstrual cycles. Addressing these cultural norms requires a concerted effort to challenge and reshape societal attitudes, fostering open conversations about menstruation and women's health.

Implementing menstrual leave policies in such contexts involves not only navigating the economic implications but also addressing deeply rooted cultural beliefs. Breaking the silence around menstruation and challenging taboos are integral steps in creating a more inclusive and supportive environment for women in the workplace. The success of implementing menstrual leave policies hinges on the ability to navigate and reconcile these sociocultural and economic factors, fostering positive changes in both attitudes and practices surrounding menstruation.

III. A CASE STUDY OF MENSTRUAL LEAVE IMPLEMENTATION

The inception of menstrual leave policies dates back to post-World War II Japan, where in 1947, the country established a groundbreaking policy granting women paid leave for period-related matters. This policy, rooted in the struggles of female conductors lacking access to facilities during their work, marked a significant milestone. However, the longstanding nature of Japan's menstrual leave law has produced discouraging outcomes. Critics leverage it to argue against equal opportunities and wages for female workers, while employers' express

reluctance to hire women due to perceived increases in workplace overhead. The policy inadvertently fosters a perception that women might take unfair advantage, contributing to the challenges surrounding its implementation and enforcement.

A. South Korea's Shifting Landscape

South Korea, another early adopter of menstrual leave legislation in 1953, witnessed a transformative shift with a 2003 revision that changed menstrual leave from paid to unpaid. This alteration resulted in a significant discordance between legal provisions and actual workplace practices. Few employers recognize the protections extended to female workers, and many women are reluctant to claim the benefit due to discomfort in requesting time off from male bosses. This example illustrates the complexities of implementing and sustaining menstrual leave policies over time.

B. Australian Advocacy and Corporate Initiatives

Australia lacks a national policy on menstrual leave, but a women's advocacy group, the Victorian Women's Trust (VWT), garnered attention in 2017 for implementing a paid menstrual leave policy. VWT's initiative offers employees twelve paid days off annually for symptoms related to menstruation and menopause. The policy, separate from sick leave, also provides flexible work options, demonstrating a comprehensive approach to supporting employees' well-being. VWT's efforts extend beyond its organization, as it encourages other companies to adopt similar policies, providing a menstrual policy template for widespread adoption.

C. Zambian Cultural Nuances and "Mother's Day"

In Zambia, a patriarchal society, the statutory code allows female workers to take off one day per month related to their periods, known as "Mother's Day". This policy aligns with cultural norms that recognize women as primary caregivers. While this reflects Zambia's cultural context, critics in less patriarchal countries might argue that such policies perpetuate gender roles and hinder true gender equality.

D. Russian Backlash and Italy's Legislative Hurdles

In 2013, a proposal for menstrual leave protection in Russia faced ridicule and dismissal, highlighting the challenges of introducing such policies in certain cultural and legislative contexts. Italy faced a similar fate as its proposed menstrual leave bill failed to obtain

parliamentary approval. Concerns about unintended adverse effects on menstruators and potential threats to women's workplace mobility played a role in the decision. Additionally, the proposed duration of three days per month, totalling thirty-six days annually, raised questions about the appropriateness of categorizing such leave under traditional benefits.

E. Indonesian Policies and Implementation Challenges

Indonesia grants female employees two days of menstrual leave per month, aligning with its broader culture of generous leave policies. However, implementation challenges arise, as evidenced by instances of excessive humiliation in certain corporations. Despite positive legislative intentions, the gap between policy and practice highlights the complexities of translating menstrual leave into meaningful workplace support.

F. Chinese Controversies and Proposed Rationale

In at least three Chinese provinces, women are entitled to one to two days of paid menstrual leave per month, contingent upon obtaining a medical certificate. This policy has sparked controversies, with opponents citing operational costs and concerns about potential discrimination against women. Politician Zhang Xiaomi's rationale for a mandatory, blanket paid menstrual leave policy in China emphasized that a significant percentage of females were adversely affected by menstruation, underscoring the potential health impact and the need for supportive workplace policies.

G. Corporate Initiatives and the U.S. Landscape

In the United States, where no governmental provisions exist, paid menstrual leave is at the discretion of employers. Notable examples include Nike, which introduced a company-wide menstrual leave policy in 2007. As more international companies, like Zomato in India and the Victorian Women's Trust in Australia, implement menstrual leave policies, and as more countries contemplate such policies, the issue gains prominence in contemporary workplace discourse.

H. Global Shifts and Corporate Initiatives

Globally, the discourse on menstrual leave has gained momentum, with India leading the way by providing two days of menstrual leave per month to full-time female government employees since 1992. The private sector, exemplified by companies like Zomato, has followed suit, implementing menstrual leave policies. Zomato's CEO emphasized the importance of

normalizing discussions around menstruation, addressing potential criticism by stating that men would have been granted the same privilege if they menstruated.

The global landscape of menstrual leave policies is diverse, reflecting historical, cultural, and legislative variations. Examples from Japan, South Korea, Australia, Zambia, Russia, Italy, India, Indonesia, China, and the United States showcase the challenges, advocacy efforts, and cultural influences shaping these policies. The absence of governmental provisions in the U.S., as seen in Nike's company-wide policy, highlights the role of employers. The evolving global landscape emphasizes the need for nuanced approaches that consider cultural attitudes, legal frameworks, and workplace dynamics in addressing the intersection of gender, health, and work.

I. Lessons Learned:

Global implementations of menstrual leave policies offer a spectrum of lessons encompassing both successes and pitfalls, providing valuable insights into their feasibility and impact. Japan's enduring policy exemplifies success despite historical challenges, showcasing the policy's viability over time. However, South Korea's shift to unpaid leave highlights the need for policies to adapt to economic shifts, emphasizing the importance of flexibility. Pitfalls, seen in Russia's backlash and Italy's legislative hurdles, underscore the challenges of navigating opposition and anticipating unintended consequences. Implementation challenges in Indonesia and China reveal complexities in translating policy into practice, emphasizing the need to address ambiguities and potential discrimination. Analysing the gender equality impact is crucial—did menstrual leave contribute to narrowing gender gaps or inadvertently reinforce stereotypes? Experiences from India, with a policy since 1992, and Zomato's recent implementation provide insights into destigmatizing menstruation and fostering gender equality.

Recommendations can focus on fine-tuning policies based on these global experiences, considering practicality, cultural context, and gender equity. Lessons learned from various countries can guide policymakers in crafting policies that effectively address the unique needs of menstruating individuals while avoiding unintended consequences. In proposing recommendations, policymakers should prioritize a nuanced approach that balances these factors.

Ensuring the long-term sustainability of menstrual leave policies is paramount. Examining successful cases like Japan and learning from challenges in other countries can provide insights into measures that enhance policy longevity. Balancing economic considerations, cultural acceptance, and a commitment to gender equity is key to sustaining these policies over time. The recommendations derived from global experiences can serve as a guide for policymakers seeking to implement and maintain effective menstrual leave policies that stand the test of time.

IV. MENSTRUAL LEAVE IN MODERN INDIA: SOCIO-CULTURAL DYNAMICS AND IMPLICATIONS

In the context of India, the socio-cultural lens reveals a longstanding struggle with stigma and silence surrounding menstruation. Cultural taboos, myths, and misconceptions have contributed to a pervasive silence around this natural bodily process. Traditional gender norms, deeply ingrained in society, dictate that women manage their menstrual health quietly, with the workplace, primarily designed for men, often neglecting to accommodate the unique needs of menstruating women. Social expectations further compound this, placing an additional burden on women to fulfil their roles both at home and work without disruption.

Recent initiatives and debates have brought menstrual leave into the spotlight. Zomato's decision to offer up to 10 days of "period leave" initiated nationwide discussions, drawing both praise for its progressive stance and criticism questioning its feasibility and impact. Legal complexities surrounding menstrual leave were underscored by the Supreme Court's dismissal of a petition seeking nationwide menstrual leave, emphasizing it as a policy issue rather than a legal mandate. Currently, only Bihar and Kerala have implemented state-level menstrual leave policies, with Bihar granting two days of paid menstrual leave per month and Kerala extending it to students as well.

Examining the potential obstacles and effects of menstrual leave in India reveals multifaceted challenges. Critics express concerns about potential employment discrimination, fearing that employers might hesitate to hire female workers due to perceived productivity gaps linked to menstrual leave. The delicate balance between health and productivity is emphasized, acknowledging that while some women genuinely require menstrual leave, others may manage symptoms without taking time off. Implementing menstrual leave necessitates a significant cultural shift, challenging age-old norms, educating employers, and fostering empathy to

address the complex interplay of societal attitudes.

One of the crucial considerations for fostering a more inclusive workplace environment in India is to prioritize an increase in sick leave policies instead of exclusively focusing on menstrual leave. This approach could be particularly feasible in the current socio-cultural context and can complement the ongoing efforts to raise awareness about menstruation.

Advocating for an increase in sick leave encompasses a broader spectrum of health-related concerns, acknowledging that individuals may face various health challenges beyond menstruation. By promoting a more comprehensive sick leave policy, organizations can accommodate diverse health needs, including menstrual health, without singling out a specific group. This approach aligns with the evolving discourse on holistic well-being and inclusivity.

Increasing sick leave, while simultaneously continuing efforts to educate about menstrual health, demonstrates a commitment to creating a workplace that prioritizes the overall health and welfare of its employees. This balanced approach allows for a more nuanced and inclusive strategy, fostering a workplace culture that is considerate of diverse health requirements. It serves as an interim solution while societal attitudes around menstruation continue to evolve, providing a pragmatic and feasible path forward for businesses and policymakers in India.

Looking toward the way forward, the importance of awareness and education is highlighted. Public campaigns are deemed essential to dispel myths and reduce stigma, fostering acceptance of menstruation as a natural and essential aspect of women's health. Tailored policies that offer flexibility for women to manage their health without compromising work obligations are deemed crucial, emphasizing a shift away from rigid leave structures. A holistic approach is advocated, asserting that menstrual leave should be part of a broader strategy addressing women's well-being, including access to menstrual hygiene products, health education, and mental health support. Ultimately, India's journey toward recognizing menstrual leave as a legitimate concern involves navigating cultural norms, legal complexities, and societal attitudes, with the key to success lying in striking a delicate balance between health, productivity, and gender equality for a more inclusive workplace and society.

CONCLUSION

There is a pressing need to address the issue of menstrual leave in India due to the complex interplay of tradition, modernity, and gender dynamics. In the context of menstrual leave policy, India faces challenges rooted in cultural taboos surrounding menstruation, the clash between traditional gender roles and evolving societal expectations, and the absence of clear legal provisions. Informed policy decisions are deemed crucial to navigate this intricate landscape. Integrating global perspectives allows for a broader understanding of successful implementations elsewhere, providing insights that can be tailored to the Indian context. Considering historical context sheds light on the roots of societal norms and beliefs, aiding in crafting policies that resonate with the cultural fabric. Critical analysis ensures that proposed policies are well-rounded, addressing potential challenges and unintended consequences. The goal is to contribute to a more inclusive and empathetic discourse that goes beyond challenging taboos and aims for genuine societal change in how menstruation is perceived and managed in the workplace.

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