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**CLOSING THE GENDER DIVIDE: MENSTRUAL LEAVE AS A CATALYST FOR
WORKPLACE EQUITY-EMBRACING INCLUSIVITY IN MODERN WORKPLACE**

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ABSTRACT

Menstrual Leave is a policy aimed at promoting workplace equity by acknowledging and accommodating the unique needs of individuals with menstruation. Equity in the workplace is the idea that all employees are provided with fair and equal opportunities based on their individual needs. Equity in the workplace hinges on equality, openness, and belonging. According to a report from McKinsey & Company found that businesses with gender, ethnic, and culturally diverse leadership are more likely to financially outperform businesses that aren't. Word 'Equality' and 'Equity' sounds similar but they aren't the same. Article 21 of the Indian Constitution specifies right to Food, Shelter, Health Care, and Work is a Fundamental Right. Women's Health should also be taken into account while they are being employed by framing suitable policies. The recent discussion on menstrual leave in the Indian Parliament was sparked by Union Minister Smriti Irani's statement. Workplace equity is enhanced when organizations prioritize implementing policies that support a more inclusive and understanding environment. At the global level, there are policies dealing with and detailing Menstrual leave i.e. in Japan, South Korea, etc. But on the contrary note countries like the US, and India lacked any formal policy on menstrual leave. Notable Legislative action: The Draft National Menstrual Hygiene Policy,2023, formulated by the Ministry of Health and Family Welfare.

In this paper, we will delve into the imperative for robust policies and legislation to advance workplace equity through provisions on menstrual leave. This paper explores the need for a legal provision for menstrual leave in India to address the stigma surrounding menstruation and promote gender equality in the workplace and society. As the legal landscape evolves, this paper will highlight the potential benefits of such policies in fostering a more inclusive and supportive workplace, contributing to overall gender equality and employee well-being.

KEYWORDS: *Menstruation, Equity, Gender Equality, Indian Constitution*

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INTRODUCTION:

While legislation in several countries across Asia including Indonesia, Japan, and South Korea promotes paid menstrual leave for women, the issue was brought into a major talk of the town in India when Culture Machine, a media Start-up in Mumbai introduced a policy of giving women leave on the First Day of (their) Period (Popularly called FOP Leave). Soon after, the private (unaided) schools in Kerala instigated a similar policy for teachers (NDTV, 2017). Culture Machine also wrote a petition asking the Ministries of Human Resource Development and Women and Child Development to make FOP leave in the Law. On the contrary, the Indian Women and Child Development Minister, Smriti Irani opposed the mandatory menstrual leave policy in the debate at the Indian Parliament stating **“Menstruation is a Natural Process, Menstrual Cycle Not a Handicap”**. She further added it is a natural part of women’s life journey. The Minister further cited it as a potential workplace discrimination.

STIGMA SURROUNDING MENSTRUATION:

The cultural stigma surrounding menstruation in many parts of India is deeply rooted and can be traced back to historical and religious beliefs. These beliefs, originating from Vedic times, perpetuate the notion that menstruation is impure or associated with guilt. The practice of isolating women during menstruation reflects these cultural norms, despite lacking scientific basis. Challenging such stigmas and promoting menstrual hygiene education are crucial steps towards fostering a more inclusive and informed society. It’s alarming to see the prevalence of misinformation surrounding menstruation, especially among young women. Beliefs about certain foods affecting menstrual pain or flow, as well as misconceptions about contamination through touch or interactions with boys, highlight the need for accurate and comprehensive menstrual education. Addressing these misconceptions through evidence-based information can help empower young women to make informed choices about their menstrual health and debunk harmful myths. The findings from the study in South Asia highlight the urgent need for improved menstrual education programs to ensure that girls are informed about their bodies and reproductive health. Similarly, in developed countries like the United States, addressing misconceptions and providing clear, empowering information about menstruation is essential to support girls' well-being and confidence. Efforts should be taken to promote open dialogue, dispel myths, and foster positive attitudes towards menstruation. The lack of premenarcheal education about menstruation can contribute to negative emotional experiences when young women first begin menstruating. Addressing these gaps in knowledge and providing comprehensive menstrual

education can help normalize the experience and empower young women to better understand and manage their menstrual health. It's crucial to create supportive environments where discussions about menstruation are encouraged and stigma is reduced.

CONCEPT OF PAID LEAVE:

Paid Leave refers to the time that an employee takes off from their job due to illness or other reasons without any pay reductions. Leave is the Right of an Employee and is a statutory Obligation of employers.

1. Under the Shops and Establishment Act, employers are required to provide their employees with up to 6 days of paid leave to accommodate any urgent or unforeseen personal requirement.
2. Generally, companies provide employees with a minimum of 0.5 days to a maximum of 3 days of leave per month based on certain criteria.
3. The Factories Act 1948 states Employee who has worked at least 240 days in a calendar year is entitled to 12 working days of paid leave or annual leave.
4. The Supreme Court of India Rejected a PIL Regarding Menstrual Leave for Workers and Students across the country.

ATTEMPTS BEING MADE IN INDIA: Swiggy, and Zomato -Have introduced Menstrual Leave Policies.

The Right To Women To Menstrual Leave and Free Access To Menstrual Health Products

BILL, 2022: Drafted by SHRI HIBI EDEN M.P

It is a main legislation proposed in Parliament with the object of:

1. The right to Paid Leave during the period of Menstruation for Working Women
2. Menstrual Leave for female students
3. Free Access to Menstrual Health products including menstrual caps, tampons, and sanitary pads irrespective of status or religion.

THE 2022 BILL GRANTED THE FOLLOWING

Total 10 Sections. Important few are:

- (1) In the case of Female Students -Right to Leave of Absence from Educational Institution for 3 days during their menstruation.
- (2) Right to Access to free menstrual health products.

SECTION:4² ESTABLISHMENT OF AUTHORITY:

Central Government shall establish an Authority known as the Female Menstrual Health Products Price Regulating Authority for the purpose of this act.

SECTION:5³ FUNCTIONS OF THE AUTHORITY:

- (1) Availability and distribution of menstrual health products free of cost to every woman.
- (2) Regulate the price of such products.
- (3) Create importance and awareness of such products.
- (4) Maintain accounts following International Standards.

MENSTRUAL LEAVE PROMOTES WORKPLACE GENDER DISCRIMINATION OR NOT?

Yes, that's a valid concern. Introducing menstrual leave policies could inadvertently reinforce stereotypes about women's productivity and reliability in the workplace, potentially leading to discrimination in hiring and promotion decisions. Companies need to address these biases and ensure that such policies are implemented in a way that promotes equality and doesn't contribute to gender-based discrimination.

In this case, the *Flores v. Virginia Department of Corrections*⁴ the Federal District Court Held that menstruation-based discrimination is a sex-based discrimination. In the case of *Harper v. Thiokol Chemical Corporation*⁵ - Harper was prohibited from returning to work after her maternity leave until she had a normal 'menstrual cycle' which eventually resulted in her firing. The issue was she sued claiming her employer discriminated against her 'on the basis of sex'. The District Court held that Thiokol's policy imposes a burden that women suffer but males don't. Further stated it as discrimination 'on the basis of sex'.

From a feminist perspective, there's concern that introducing menstrual leave could reinforce stereotypes about women's capabilities and reinforce the idea that women are less dedicated to their

careers. Additionally, existing policies like mandatory maternity leave in India already contribute to biases against hiring women. It's crucial for companies to address these concerns by promoting gender equality through inclusive policies and challenging stereotypes about women's productivity and commitment to their careers. Instead of adding more gender-specific policies, efforts should be directed toward creating a more inclusive work environment for all employees.

COUNTRIES OFFERING MENSTRUAL LEAVE:

While uncommon in the US, menstrual leave has been adopted by some US companies and several parts of Afro-Eurasia. Below are countries that currently offer menstrual leave:

- a) JAPAN- Introduced menstrual leave in 1947, mandating that employers can't require women who experience painful menstruation to work those days.
- b) INDONESIA- Introduced a policy in 1948 and restricted it in 2003, allowing women to take the first 2 days of their menstrual cycle off work if they experience pain.
- c) SOUTH KOREA- Grants women a one-day "Physiological Leave" each month.
- d) TAIWAN- Allows women to request a day off for menstrual leave each month at half their wage. If more than 3 such leaves are taken in a year, the rest are counted towards sick leave.
- e) VIETNAM- Gives women 3 Days of menstrual leave a month and stipulates a 30-minute break for every day of their menstrual cycle. Women employees who don't take menstrual leave are paid extra.
- f) ZAMBIA- Entitles women to a 1-day leave every month without reason or medical proof.
- g) SPAIN- passed a law this year entitling employees to a 3-to 5-day menstrual leave depending on the severity of symptoms.

JAPAN - 1ST INTRODUCED TO MENSTRUAL LEAVE.

It was in Japan the first country to introduce Menstrual Leave back in the 1940's. The historical roots of menstrual leave in Japan trace back to the 1930s when a pioneering woman negotiated a groundbreaking five-day paid menstrual leave with her employer. This landmark agreement laid the foundation for recognizing menstrual leave as a right for women, later enshrined in the Labour Code. However, despite its inclusion in the legal framework, the practical implementation of menstrual leave

has fallen short in many corporate practices and within the broader business system. The lack of specific regulations within the Labour Code regarding the duration and compensation of menstrual leave has left it open to interpretation by individual companies. As a result, disparities in policies and practices regarding menstrual leave persist, contributing to the challenges faced by women in the workforce. The historical context underscores both the progress made in recognizing women's health needs and the ongoing struggle to fully realize gender equality and inclusivity in the workplace.

Despite the guarantee of menstrual leave in Japan's Labour Code, there appears to be limited uptake of this benefit among female workers. While the law ensures that women have the right to take menstrual leave regardless of their employment contract or working hours, the lack of specific regulations regarding the duration and payment of this leave leaves it to the discretion of individual companies. As a result, companies may offer varying policies, such as providing paid leave for the first day and unpaid leave for subsequent days.

Despite the legal provision, anecdotal evidence suggests that many women do not take advantage of menstrual leave. Statistics indicate that only a small percentage of female workers actually take days off due to menstrual issues, with just 0.9 percent reported. This discrepancy between the legal entitlement and actual utilization of menstrual leave raises questions about the effectiveness of current policies, potential cultural taboos surrounding menstruation, and workplace dynamics that may discourage women from taking time off for menstrual-related reasons.

NEGATIVE IMPACTS OF MENSTRUAL LEAVE IN JAPAN:

While menstrual leave in Japan is intended to address the physical discomfort that some women experience during menstruation, there are several potential negative impacts associated with this policy:

1. Stigmatization and Gender Inequality
2. Discrimination and Career Progression
3. Workplace Dynamics
4. Cultural Norms and Taboos

SPAIN: PAID LEAVE CONCEPT:⁷

Spain passed a bill guaranteeing paid menstrual leave for women and it came into force. Features:

1. It created a concept of Special Sick Leave.
2. It is called 'SPECIAL' because it aims to provide economic benefits to women from 1st day of leave.
3. Women requiring such leave should be certified by a Medical Practitioner.
4. Economic benefit will be given to only women who are properly paid into Social Security for the preceding 6 months. If they don't pay they won't be eligible for sick leave.
5. Statutory sick pay for Menstrual leave won't be equal to a woman's normal salary

Statutory Sick Pay =75% Of Covered Earning From 1st Day Of Leave

(Covered Earnings-The Total Amount of an employee's pay that counts towards how Social Security Administration calculates retirement benefits and Taxes)

NEGATIVE IMPACT OF MENSTRUAL LEAVE:

Stigma and Discrimination surrounding menstruation can have significant negative effects on individuals' well-being and workplace performance. This not only affects individuals directly but also perpetuates inequalities between genders in the workplace. Addressing the stigma and discrimination is crucial for creating a more inclusive and supportive work environment where all employees can thrive regardless of gender. It requires education, awareness, and policies that promote understanding and accommodation of menstrual health needs.

R. Vasantha V. Union Of India (2002)

Landmark case on Gender Diversity at Workplace. Karnataka Allows Women To Work In Night Shifts In Factories. In the case of Vasantha R v Union of India [(2001) 1 ILLJ 843 Mad], the High Court of Madras declared Section 66(1)(b) of the Factories Act, 1948 unconstitutional, as it restricted women from working in factories beyond certain hours. This provision was deemed to violate Articles 14, 15, and 16 of the Constitution of India. Section 66(1)(b) limited women's working hours between 6 am and 7 pm, with a slight extension permissible by state governments to 5 am and 10 pm.

However then Government of Karnataka issued a notification on 20 November 2019, allowing women to work night shifts (between 7 pm and 6 am), thus circumventing the restriction imposed by the Act.

PERMISSION COMES WITH CONDITIONS:

The Notification issued by the Government of Karnataka permits women to work night shifts in factories, subject to various conditions. These include obtaining written consent from the women employees and ensuring compliance with measures to prevent sexual harassment, such as incorporating specific rules and penalties in the code of conduct, amending standing orders, and establishing a complaint redressal mechanism. Additionally, the employer must provide proper lighting, CCTV coverage with footage stored for 45 days, employ women in batches of at least 10 with two-thirds of the total workforce being female, ensure one-third of supervisory staff are women, appoint female wardens, and provide transportation equipped with CCTV cameras. Other requirements include women security at entry/exit points, restrooms, separate canteen facilities, medical facilities, and emergency vehicles where applicable. Employers must also conduct regular meetings with women employees to address grievances, submit reports to the Inspector of Factories, and notify authorities of any untoward incidents.

SUGGESTIONS:

From doing this research paper regarding menstrual leave in connection with workplace equity following will be our suggestions:

- ❖ This concept of Menstrual Leave is a very 'SUBJECTIVE CONCEPT'-Differs for every individual menstruating woman.
- ❖ It will be a critical job for the legislative to frame laws fulfilling every requirement of women.
- ❖ It will be difficult for the legislative to frame one 'HARD AND FAST RULE' for this subjective concept.
- ❖ When the legislative makes 3-day Menstrual Leave mandatory to be followed by law following will be the implications:

a) **DECREASE WOMEN EMPLOYMENT RATE**

MNC with profit motive will stop hiring women at the very initial stage of employment. It will affect the growth of women in general

b) MIS-USE BY WOMEN:

Some women might misuse this paid leave for menstruation for any other purpose because it will be difficult for the employer to find out whether she is really menstruating or not.

c) ORANGANISED & UNORGANISED SECTORS:

Women working in organized sectors will have some comfort zones like clean restrooms, cotton pads, and a safe environment, etc., They will also not be involved in hard labour. Comparatively, women working in unorganized sectors will exposed to sunlight, hard labour, no sanitized restroom, etc., Rules must be made for regulating and protecting women in unorganized sectors.

d) WORKPLACE EQUITY:

When this 3-day paid leave is given it will in no way promote gender equity or equality in the workplace. It paves the way only for gender discrimination. It will lead to mockery of women than before.

e) ALTERNATIVE MEASURES:

Instead of providing paid leave, the following measures can be taken to help menstruating women: 3 Days of work from home can to women at their menstruation period benefiting both the employer and women. Even when they come to the office for work at that time, providing them with Proper Sanitation facilities and cotton pads, Not overloading them with extra work those days, Teaching them some yoga exercises, etc.

CONCLUSION

In conclusion, the discourse surrounding menstrual leave intersects with broader discussions on workplace equity, gender discrimination, and societal perceptions of menstruation. While legislation in various countries, including India, has sought to address the issue through policies promoting paid menstrual leave, debates persist regarding the efficacy and potential consequences of such measures. The introduction of menstrual leave by private companies like Culture Machine in India and the subsequent debates in the Indian Parliament reflects a growing recognition of the need to address the challenges faced by menstruating individuals in the workplace. However, contrasting viewpoints, such as those expressed by Indian Women and Child Development Minister Smriti Irani, underscore the complexities involved in implementing menstrual leave policies. Critics argue that such policies may inadvertently reinforce gender stereotypes, perpetuate workplace discrimination, and hinder women's career advancement. Concerns also arise regarding the potential

misuse of menstrual leave and its impact on workforce dynamics, particularly in sectors where women are already underrepresented. Moreover, experiences from other countries, such as Japan and Spain, highlight both the historical roots of menstrual leave and the ongoing challenges in its practical implementation. While some countries have made strides in legislating menstrual leave, disparities in workplace practices and societal attitudes continue to shape individuals' experiences. Moving forward, it is essential to adopt a nuanced approach that addresses the diverse needs of menstruating individuals while promoting workplace equity and inclusivity. This may involve exploring alternative measures, such as flexible work arrangements and improved menstrual health education, alongside targeted policies like menstrual leave. By fostering open dialogue, challenging stigma, and prioritizing the well-being of all employees, we can strive towards creating more supportive and equitable workplaces for menstruating individuals.