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**ADDRESSING WORKPLACE EQUITY: BUILDING A CASE FOR
MENSTRUAL LEAVE POLICIES IN WORKPLACE THROUGH
COMPREHENSIVE EXAMINATION OF LEGAL PRECEDENTS AND
THEIR IMPACT ON GENDER EQUALITY AND EMPLOYEE WELLBEING**

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ABSTRACT

Menstruation is not a “handicap” and therefore does not warrant a “paid leave policy”. This quote was addressed by the Women and Child Development Union Minister Smriti Irani in the winter Parliament session. The debate is whether menstrual leave should be granted in India. Menstrual leave is a policy that provides paid time off to those who are experiencing pain or discomfort linked to their menstrual cycle. It is essential for promoting workplace equity. The aim of this initiative promotes inclusivity and gender equality in professional contexts by acknowledging and respecting each person's distinct physiological demands. Although menstrual leave is not legally defined in India, the newly released draft **Menstrual Hygiene Policy 2023** acknowledges the need to address gender discrimination and establish a supportive work environment that allows for leaves of absence and work-from-home possibilities. There are many countries like Japan, Korea which provide menstrual leave, countries like Germany, Italy provide flexible working hours or sick leave to women. There are many advantages of providing menstrual leave to women. Menstrual leave promotes workplace equity by acknowledging women's biological realities and ensuring they are not at a disadvantage because of a natural occurrence. It can improve the supportive work environment and address the stigma associated with menstruation. It will enhance productivity in women. Women are working extremely hard to dispel preconceptions, shatter glass ceilings, and abolish gender bias in the workplace on a global scale. The existence of systemic, structural discrimination and inequality in the workforce is reflected in the abysmal representation of women in leadership positions across sectors and industries. The "gender leadership gap" must be closed by acknowledging and properly addressing the distinctions between men and women. This paper aims to examine the need to grant menstrual leaves and socio legal aspects of the issue. The paper will also delve into the existing judicial pronouncements to understand the current legal status of menstrual leave in India.

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INTRODUCTION

The world is moving towards a new era of liberalism, where demands for higher level of Equity and equality in all sectors are up for debate every other day. In such a scenario discussions surrounding gender equality and women's rights have gained unprecedented momentum. Yet, amidst the discourse on equal opportunities and fair treatment in the workplace, one area remains shrouded in silence and stigma: menstrual health. For centuries menstruation have been a topic of stereotypes and secrecy, often leading to the neglect of women's health needs in professional settings³. However, as we delve deeper into the complexities of gender dynamics and health equity, the call for action becomes increasingly urgent. This paper explores the transformative potential of paid menstrual leave policies in fostering workplace equity and supporting women's health and well-being. While the concept of menstrual leave may seem novel to some, it embodies a fundamental principle: acknowledging and accommodating the biological realities of half the global population. By providing paid leave specifically for menstruation-related challenges, employers have the opportunity to address a longstanding gap in workplace policies and cultivate environments that prioritize inclusivity, empathy, and respect.

The paper tries to make a case for the need of more research, discourse and awareness as the key to better implementation of the policies propagating paid leave during menstruation. Globally, there has been a growing movement in recent years as more businesses and nations have come to understand the significance of menstrual health in the workplace. Initiatives to expand or establish paid menstrual leave legislation have drawn attention and generated conversations on the intersections of gender, health, and labour rights from Zambia to Italy, Japan, and India.

It is critical to consider the justification for paid menstruation leave regulations, as well as any potential advantages and implementation issues, as we set out on this path towards greater equality. The paper first tries to inform about the physiology of menstruation, wherein it makes a case as to why it is important for some women to get leaves, the paper then delves into the already existing laws on the subject and how far have they been effective in attaining the desired goal of increased gender equality at the workplaces. The paper further goes on to discuss the challenges that have hindered the implementation of these policies wherein it discusses the point of view of the various stakeholders and tries to

³Belliappa, J., *Gender, Class and Reflexive Modernity in India*, Palgrave Macmillan, London: UK (2013).

issues at the grassroots. The paper finally tries to give some suggestions as to how the benefits for paid menstrual leave be maximized and the goal for Gender equality at workplace is equally achieved.

THE PHYSIOLOGY OF MENSTRUATION

The most significant monthly natural occurrence that occurs during a woman's reproductive life is her menstruation. Menstruation is characterized by the uterine wall being torn apart and leaking blood and vaginal fluids for three to five days. A single menstrual cycle's normal ovulation lasts two to three days. Menarche, or the beginning of maturity, happens between the ages of 11 and 51 and culminates in menopause, which occurs between the ages of 45 and

55. Menstruation is a transitional phase into maturity, coupled with other puberty-related symptoms. It indicates that a woman has reached childbearing age⁴.

Phases of the menstrual cycle:

Menstrual cycle occur in four phases:

1. **Phase of menstruation:** On Day 1, the lining of the uterus, ready for implantation, begins to shed, a process that takes three to five days.
2. **Folic phase:** During this stage, the main follicle begins to transform into a fully grown Graffian follicle. Additionally, the endometrium begins to proliferate. The uterus begins preparing to get pregnant again.
3. **Ovulatory phase:** Also known as the mid-cycle phase, this stage lasts from days 13 to 17. This is when ovulation occurs. The fertilization duration is described through the belief of the follicular segment and the ovulation duration.
4. **Luteal phase:** During this post-ovulation stage, the corpus luteum's destiny is determined. If fertilization takes place, the pregnancy begins. It signals the start of a new cycle if fertilization fails.

These are the changes which occur inside the body of a woman. Hormone levels in the body fluctuate throughout the cycle, causing a variety of physical and emotional changes. Premenstrual syndrome (PMS) is a collection of symptoms that typically appear before a menstruation.

⁴Chris Bobel & Ors., The Palgrave Handbook of Critical Menstruation Studies 9-10, Springer Nature Singapore Pte Limited 2020

PMS may include: Feeling bloated and sensitive breasts, experiencing emotional swings, feeling irritable, greasy or spotty skin, and a loss of sexual interest. PMS has the potential to worsen other health problems. For example:

Depression and anxiety: PMS can exacerbate depression and anxiety both before and during a period.

Irritable bowel syndrome (IBS): Before a period, IBS symptoms such as bloating and cramping may become more prominent.

Chronic fatigue syndrome: PMS might worsen the symptoms of this illness. Bladder pain syndrome might cause aggravation of PMS symptoms.

PMS symptoms may develop in the late 30s and 40s, particularly as menopause approaches⁵.

EXISTING LEGISLATIONS: ITS IMPLICATIONS AND CHALLENGES

Spain in February 2023 became the first country in Europe to pass the law regarding menstrual leave allowing three days leave every month from the workplace to women who suffer from extreme pain during periods⁶. Japan in 1947 introduced in its labor law “leave policy”. Employers are prohibited by law from asking women who are going through a tough time to work on those days, as stated in Article 68. Indonesia, another Asian country, became the early riser to provide Menstrual leave, the country came up with the idea in 1948 but got implemented in the year 2003. Policy provides two-day menstrual leave to women. A 2015 law in Zambia permits a day off without notice around this time, which is encouraging a gradual cultural change as unions support women in asserting their rights. The day is celebrated as “Mother's Day” and it celebrates the women’s capacity to become mothers. Mandating one day of unpaid menstrual leave policy South Korea penalizes non-compliant employers. In accordance with sick leave regulations, Taiwan's Act of Gender Equality provides three days of menstruation leave per year, in addition to ordinary sick leave. Compensation for this leave is set at 50%. Another Asian nation where menstruation days are taken into account for female employees is Vietnam. Every day when a woman has her period, she is entitled to a 30-minute break under the country's labor rules⁷.

⁵Debra Sullivan, The Relationship between the menstrual cycle and the body, MedicalNewsToday,9/02/2024,<https://www.medicalnewstoday.com/articles/period-length-and-effects>.

⁶Vicky McKeever, Spain to Reportedly Offer Three days of Menstrual Leave Every Month, CNBCmakeit, 7/02/2024,<https://www.cnbc.com/2022/05/13/spain-to-offer-three-days-menstrual-leave-every-month-reports.html>

⁷Kridasaksana & Ors, Menstrual Leave from a Health Law Perspective in Indonesia, PJMHS Vol. 14, No. 4, Oct-Dec 2020, 1592-1594

Three days of menstrual leave per month were included in a 2020 revision. If female employees decide not to take such a break, they should be compensated further. In 2017, Italy proposed a Menstruation Leave Strategy, requiring companies to provide three paid days per month to female employees experiencing uncomfortable periods with a clinical statement from a specialist. In Mexico, women working in government courts are entitled to one day of menstruation leave if facing substantial challenges. However, the agreement does not define whether this leave is awarded annually or monthly. In Chile, a measure is being submitted to give paid leave for women diagnosed with endometriosis and dysmenorrhea. These are the countries which have put efforts towards women Menstrual Hygiene and consider menstrual leave as a basic human right⁶.

Now coming to the situation in India, what all rights exist here for the Women in Bleed. Till now no legislation has been made in the Centre for menstrual leave, but some states and companies have started allowing leaves on their own. In 1992, Bihar became the first state to provide two-day menstrual leave to women without any explanation. Women have the right to choose which two days they want to have leave. Kerala government in January 2023 allowed all the students in state universities to take leaves in period and they would get attendance for those days. In 2017, Gozoop and Culture Machine, both based in Mumbai, became India's first private enterprises to offer period leave. Zomato will provide women and transgender employees with up to ten days of menstruation leave per year beginning in 2020. Since then, several private enterprises, including Swiggy and Byju's, have implemented similar practices. The Gurugram-based Public Relations & Advocacy Group (PRAG) recently provided free consultancy to all organizations who pledge to or announce the adoption of paid menstruation leave for female employees. PRAG is also the first public relations and communications agency to provide paid menstruation leave to its staff. W&D, also known as 'Wet and Dry,' is a New Delhi-based corporation that is establishing a menstrual leave policy. This company manufactures feminine hygiene products for women, including intimate area washes and tampons. Thomson Reuters Foundation offers menstruation leave to female employees and advocates for legislation allowing all working women to take time off for their first period. The Mavericks, a Gurgaon-based management advisory firm, now allows female workers to work from home on two days throughout their menstrual cycle.

Ninong Ering, a Member of Parliament from Arunachal Pradesh, introduced the Menstrual Benefits Bill, 2017, in an attempt to implement a period leave law at the Central level. The bill proposes two days of menstrual vacation every month for both public and private employees. However, Bill has yet to see the light of day. The Congress leader presented the Bill again in 2022, on the first day of the Arunachal Pradesh Legislative Assembly's Budget Session. However, this was not considered⁷.

A Public Interest Litigation (PIL) was filed by Shailendra Mani Tripathi in the Supreme Court on February 24, 2023 asking for paid leaves to women during menstruation. The petition mentioned a study which was conducted by University College London 2017 stating that menstrual pain is like a heart attack. The Supreme Court dismissed the petition stating that the matter falls within the domain of policy making and only the government can decide over the issue. This was not the first time the subject was brought before the courts. In 2020, the Delhi High Court asked the Central and Delhi governments to consider a plea for paid menstruation leave for female government employees, including daily wage and contractual workers⁸.

While there are various menstrual leave rules around the world, it's important to consider the benefits and pitfalls before extending them. Further research is needed to fully understand the impact of menstrual leave on menstruators' well-being and status in the workplace. We suggest that how and where these regulations are implemented will determine their impact.

DELVING INTO THE GREYS: WHY MENSTRUAL LEAVE POLICIES FAIL TO GIVE THE DESIRED IMPACT

Whenever the issue relating to the need for granting menstrual leaves comes up, there are often varying view from different standpoints, though the proponents of menstrual leave policies claim it as a feminist move towards gender equality at the workplace, a lot of feminist organizations have taken a different view rejecting the policy and claiming that it reinforces 'Biological Essentialism', which in turn does more harm than good for the women striving to make their place in the top positions of any workplace, the argument here is the policy reinforces the notion of a predetermined limit to women's capabilities at a

workplace due to her physiology thus inevitably making her less worthy than her male counterparts. A similar view was taken by the Women and Child Development Minister Smriti Irani when she opposed paid menstrual leave stating that it is not a handicap, “Menstruation is a physiological phenomenon among women and only a small proportion of women/ girls suffer from severe dysmenorrhea or similar complaints”¹⁰. This statement again stems from the argument that menstrual leave will increase discrimination and negative attitudes towards women.

While discussing menstrual leave as a policy one needs to look at it from the view of different stakeholders, and one of the important stakeholder other than women at workplace are the employees, they might see such paid leaves as an extra burden to the organization and might hesitate employing women in the workplace. Culture Machine’s video promoting FOP leave shows its women employees citing severe cramps, nausea, headaches and emotions such as irritability and tearfulness associated with pre-menstrual syndrome (PMS) as some of the symptoms that interfere with their performance at work (Blush Originals, 2017)¹¹. One employee claims, “I’m a dictator on the first day of my period.”; another states, “The worst thing someone can do [during my period] is talk.” While any workplace might have (both male and female) dictatorial managers, associating such behavior with PMS furthers stereotypes about women’s supposed emotionality, which have historically been used to limit their access to positions of responsibility and authority. Culture Machine’s video thus strengthens patriarchal biases by positioning menstruating women as hysterical and irrational. This kind of portrayal of problems faced in menstruation makes employers more skeptical and promotes the already existing stereotypes regarding menstruation, this may result in creating a more hostile environment for women at the workplaces. This is contrary to primary goals for bringing in paid menstrual leave policies which are to support national population and reproductive goals, give job security to women with reproductive health difficulties, and improve possibilities for individuals to take care of their personal health issues without facing negative career consequences. Another major objective was reducing “presenteeism”—the state in which workers show up for work but are too sick to function at optimal levels. What one needs to understand for bringing in more inclusiveness in the workplace will foster productivity and such health benefits are important for an employee’s productivity.

SOCIAL STIGMA

Another hurdle in reaping the desired benefit from the paid menstrual leave policies is the presence of already existing taboos related to menstruation and women's reproductive health in general, the social structure has been such that menstruation has always been a hush hush topic, in traditional Indian Households women often use various made up names to talk about menstruation, they are not allowed to touch food and various such restrictions are prevalent, so women coming from such backgrounds will rarely be comfortable in talking about their periods at their workplace lest asking leave for the same. Menstrual leave policies can become inefficient due to social stigma around menstruation in these ways:

Underutilization: Many women may hesitate to take advantage of menstrual leave due to concerns about judgment or stigma from colleagues or supervisors. This reluctance can lead to the policy being underutilized, defeating its purpose of providing support during menstruation.

Negative Perceptions: The existence of menstrual leave policies can reinforce negative stereotypes about women's capabilities and commitment in the workplace. Some individuals may perceive women as less productive or reliable due to their need for additional leave during menstruation.

Gender Inequality: If menstrual leave is only available to women, it can perpetuate gender inequalities in the workplace. This may imply that women are inherently less capable or require special treatment due to their biology, further marginalizing them professionally.

Limited Scope: Menstrual leave policies often focus solely on physical symptoms such as cramps or fatigue, overlooking the psychological and emotional aspects of menstruation. This narrow focus fails to address the comprehensive needs of menstruating individuals, potentially leading to dissatisfaction and reduced productivity.

Potential Backlash: Implementing menstrual leave policies without addressing cultural attitudes toward menstruation can provoke backlash or resentment among non-menstruating employees. They may perceive it as preferential treatment or unfair resource allocation.

To address these inefficiencies, it's crucial to implement menstrual leave policies alongside comprehensive education and awareness programs aimed at destigmatizing menstruation in the workplace. Creating a culture of understanding and support can help mitigate the negative effects of social stigma and ensure that menstrual leave policies are utilized effectively to promote employee well-being and productivity.¹³ The discussion in this paper

has so far been only related to the women working in the organized sector, but the women working in the unorganized sectors are equally in need of such policies as they are employed in sectors demanding more physical activity and they are mostly from the section of the society who cannot financially afford to take unpaid leaves and thus are forced to work even when they are not physically fit too, since menstruation is not a comfortable topic to be talked upon with men, women in these sectors will mostly not even tell the employer their reason for underperformance or will be shamed for talking about it, hence they would have to face the brunt from the both the sides. These are the major issues that women face at the ground level, and they have been internalized in such a way that they don't even realize that working in such conditions is an exploitation and they deserve leaves when they go through menstrual cramps and other physical atrocities at the time of their periods. What essentially is needed as the first place to reach the goal of gender parity in this context is to spread awareness and remove stigma around menstruation, and here comes the role of making conversations around menstruation an everyday talk and not just a topic of debate.

Menstruation is an everyday for almost half of the population of the world and its high time it should be made part of normal everyday conversations. Healthcare policies brought in by the governments should also consider this basic and essential need for women's health and taxes on essential products for menstruation should be exempted from taxes to make it easier for women to prioritize their menstrual health.

WAY FORWARD:

The way forward can only be better research and awareness, for better implementation of paid leave policies the two areas that the authors suggest are the most important : Firstly showing the employers the benefit in providing paid leave and Secondly removing stigma around menstrual health from the workplaces and society at large. The former can be attained by better research on productivity at workplaces considering various factors and the latter can be attained by creating more and more awareness through institutions and government starting conversations around the same. The initiation has already started with many companies coming up and voluntarily granting paid menstrual leaves and asking their employees to freely and casually ask for them as their right. Often employers are reluctant to invest resources and time on gender inclusivity and offer only lip service to the issue but

government research suggests that such investment has tangible benefits for organizations. Studying the experiences of women, religious minorities and sexual minorities across three companies in India, Rawat and Besergekar in their research found that employees who perceive the organization to be supportive tend to score higher in performance appraisals (possibly due to higher levels of motivation). The organizations should be sensitized that it is important for them to make their workplaces gender inclusive so as to improve productivity, not only leaves but also making workplaces women friendly with well equipped washrooms for female hygiene should be made their top priority. An ongoing campaign by the Indian job portal Sheroes, which encourages women to anonymously review their employers based on their gender inclusivity policies, highlights the business case for inclusivity. As of right now, the campaign has 10,000 reviews from over 350 companies (Sheroes Organization Section, n.d.). The public becomes aware of an organization's policies through official and informal reviews on mainstream and social media, necessitating the adoption of inclusive hiring and retention practices.

For workplaces to achieve gender parity, they need to cater to women's physiology, not seeing it as a burden but seeing it as basic amenities to be provided for the employees, women have already made their mark in all the sectors and they are a great contribution to all the fields therefore they deserve an equal opportunity for growth, which can only be done when their specific needs are catered to at their workplace. India is a country where 'presenteeism' is encouraged, and thus even when employees are not in the condition to show up which hampers productivity. Employees should therefore be made aware with the potential of encouraging a good environment for increased productivity and profit to their company.

To bring in change at the societal level, governments also need to bring in policies and look after their implementation through campaigns and increased awareness around menstruation and the policies around the same.