

**A CRITICAL ANALYSIS ON THE MENSTRUAL LEAVE DEBATE: A  
WELCOME MOVE FOR WOMEN'S EMPOWERMENT OR A HURDLE  
TO WOMEN'S EMPLOYMENT?**

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**ABSTRACT**

*Menstrual leave raises several issues related to the wellness of women, employment, and gender parity at work. Period leave is often seen as “medicalising a normal biological process”. Despite being a natural process, menstruation is accompanied by unpleasant symptoms like cramps, nausea, headaches, and aches in the back and muscles. Additionally, symptoms may manifest in a crippling manner. In light of the recent initiative by employers of certain private companies in India to provide period leave, this has been discussed and debated in the public sphere, thereby normalising the conversation around menstruation to an extent where "periods" are still seen as taboo and impure. This paper throws light on the uproar that has arisen from this controversy in the public sphere in India. There are several countries that have implemented this policy already, some of them being Taiwan, Zambia, Indonesia, and South Korea already provide their female employees with paid period leave. Yet, in India, there is a heavy backlash for this provision. This paper also throws light on the roadblocks that cropped up in its implementation. This will be understood in the light of several other countries that have implemented this policy already. To conclude, this paper will also suggest some reforms that could be taken for the same.*

**Keywords:** Menstrual leave, female employees, gender equality

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## **INTRODUCTION**

Menstruation is the normal biological process of a woman wherein there is a regular discharge of blood and the inner lining of the uterine wall when the egg has not been fertilized by a sperm. As this is termed a natural phenomenon, there are several debates on why there is no need for preferential treatment. Menstruation is the result of the rise and fall of hormones such as estrogen and progesterone which influence female fertility. But this is accompanied by pain and discomfort. The pain, also known as dysmenorrhea or period pain, ranges from dull and bothersome to severe and extreme. Menstrual cramps tend to begin after ovulation, when the ovaries release an egg that travels down the fallopian tube which causes pain in the lower abdomen and sometimes in the back as well. There are roughly about 7-15% of women who experience such a level of discomfort that this phenomenon disrupts their entire day during which they cannot even perform regular functions.<sup>1</sup> Some of the regular symptoms also include nausea, diarrhoea, constipation, bloating, headaches, etc. There have, quite recently, been several vehement demands for the introduction of menstrual leaves in workplaces and even education centres. The primary point made by advocates of menstrual leave is that menstruation-related symptoms are probable and significant factors in the loss of efficacy in the work life of women and presenteeism, thereby, acts as a greater burden than absenteeism.<sup>2</sup> However, there have been several arguments made against this proactive move as it might have far more severe repercussions on the employment opportunities of women. These will be discussed in greater detail in this paper.

In recent years, the global discourse on gender equality has made remarkable strides, aiming to dismantle barriers that hinder women's full and equal participation in the workforce. There are a few countries that have already approved such a policy and have implemented it. Some of them are Spain, Japan, Zambia, Taiwan, Indonesia, etc. This research will study some of the ramifications of this policy in these countries. The menstrual leave movement has emerged as a means to challenge the status quo and foster a more inclusive work environment. Advocates argue that providing menstrual leave can empower women to prioritize self-care, reduce the prevalence of workplace absenteeism due to menstrual symptoms, and ultimately contribute to improved productivity and employee well-being. Critics fear that associating women with a

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<sup>1</sup> Hong Ju, Mark Jones, Gita Mishra, "The Prevalence and Risk Factors of Dysmenorrhea" 36(1) *Epidemiologic Reviews* (2014)

<sup>2</sup> Mark E Schoep, Eddy M M Adang, Jacques W M Maas, Bianca De Bie, Johanna W M Aarts, Theodoor E Nieboe, "Productivity loss due to menstruation-related symptoms: a nationwide cross-sectional survey among 32 748 women" 9(6) *BMJ OPEN* (2018)

monthly need for time off might lead to biased hiring practices, reduced opportunities for career advancement, or a widening gender pay gap.

Ultimately, the question of whether this move might have more advantages than disadvantages can be grasped by looking at its possible impact on women's employment which depends on striking a fine balance between women's health demands and averting unforeseen repercussions that could entrench current gender inequities. This analysis seeks to advance a more deliberate and enlightened conversation by critically analyzing both sides of the debate in order to pave the way for equitable remedies to the problems women confront in the contemporary workplace.

### **WEIGHING THE PROS AND THE CONS**

A woman undergoes different levels of pain during menstruation. Few women undergo mild discomfort during their periods, but for those who do not, it can be severe and debilitating, preventing them from carrying out their day-to-day errands. As a matter of fact, this is a subjective phenomenon. However, when we look at some statistics, we find that around 80% of women experience some amount of period pain. Out of which for 5% to 10% of women the pain is so much so that it interferes with their life and activities and for 40% of them this pain is accompanied by “premenstrual side effects such as bloating, tender breasts, swollen stomach, lack of concentration, mood swings, clumsiness and tiredness.”<sup>3</sup>

The advocates of such a policy argue that when women are given leaves for their menstruation, their physiological experiences akin to menstrual cycles are acknowledged and they are given recognition for the same. Granting leaves during cycles of menstruation can show that an employer is sensitive to the needs of his women employees and is committed to enabling and providing for his employees. For this, those in favour cite conditions such as endometriosis, adenomyosis and polycystic ovary syndrome (PCOS) which are associated with severe and unmanageable pain. PCOS has been on a steady rise due to lifestyle changes and Endometriosis affects about 10% of women in the reproductive age group<sup>4</sup>. They also argue that such kind of pain can be managed to some extent by avoiding taxing work and stress with the required rest. This in general, will improve the well-being of women and increase productivity. In a country

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<sup>3</sup> Dr Pratima Gupta, “WOMEN’S HEALTH CONCERN FACT SHEET Information for women Period pain” (British Menopause Society, November 2022)

<sup>4</sup> Jyothisna Latha Belliappa, “Menstrual Leave Debate: Opportunity to Address Inclusivity in Indian Organizations” 53(4) Indian Journal of Industrial Relations (2018)

like India, where menstruation is still seen as taboo and stigma, bringing about such a policy will bring forth more discussion on this issue and contribute to overcoming such taboo as well. There are, however, some gaps in these advances. Primarily, they focus only on certain sections of the society. They blatantly ignore a vast majority of underprivileged and lower caste women employed as unskilled and semi-skilled workers and have from restricted to almost no access to menstrual hygiene products, the homemakers and students have equally suffered, their issues are not being raised or even heard out.<sup>5</sup>

Journalist Barkha Dutt, in an opinion piece for The Washington Post in 2017, argued against paid menstrual leave. *“First-day period leave may be dressed up as progressive, but it actually trivialises the feminist agenda for equal opportunity, especially in male-dominated professions. Worse, it reaffirms that there is a biological determinism to the lives of women, a construct that women of my generation have spent years challenging,”*<sup>6</sup> she had written. There are many who argue that this move will reinforce gender stereotypes that women are less capable or competent than men and label them to be “weaker”. It could create issues of understaffing in certain companies which have a small workforce. This, in turn, has the dangerous possibility of abuse where leave is taken in the garb of painful menstruation which cannot be verified. Menstrual leave is intended to benefit women, but if it causes employers to be more reluctant to hire or promote women employees out of apprehension of potential work disruptions, it may unintentionally increase gender inequities and have negative consequences.

## **IMPLICATIONS, CHALLENGES AND LESSONS FOR INDIA FROM GLOBAL MENSTRUAL LEAVE INITIATIVES**

Several countries around the world have already adopted and implemented a policy for menstrual leave in organizations and companies. Among the first was Spain which became the first European country to enforce this. The government agreed to foot the bill once a doctor’s note is shown to provide for 3-5 days of paid menstrual leave. Besides this, it also included the provision of menstrual hygiene products to be given free of cost to schools and prisons. In fact, a number of nations, including Zambia, South Korea, Indonesia, Japan, and South Korea,

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<sup>5</sup> *Ibid.*

<sup>6</sup> Barkha Dutt, “I’m a feminist. Giving women a day off for their period is a stupid idea.” *The Washington Post* (The United States, 3 August 2017), available at < <https://www.washingtonpost.com/news/global-opinions/wp/2017/08/03/im-a-feminist-but-giving-women-a-day-off-for-their-period-is-a-stupid-idea/>> ( last visited on 1 March 2024)

already provide paid menstruation leave in a variety of ways. However, more controversy may surround the implementation and enforcement of menstruation leave than any other employment perk. Japan, which is considered quite safe and considerate for females, introduced a menstrual leave policy permitting any female worker to use this at the time of her menstruation each month if she experiences physical discomfort that is so severe it makes it difficult to attend work at all. But this does not specify the number of days or whether the leave is paid or unpaid.<sup>7</sup> Menstrual leave is presently available in three Chinese provinces (Hubei, Shanxi, and Ningxia), while women are given two days of leave each month in Indonesia.<sup>8</sup> Women in South Korea were given one day of paid menstruation leave per month beginning in 2001. In addition, Taiwan's Act on Gender Equality in Employment was amended to include a menstrual leave clause in 2002, giving female employees the option to request menstrual leave.<sup>9</sup> In Zambia, women are given one menstrual leave day per month. The policy is referred to as a "Mother's Day," which stresses women's potential for becoming mothers.<sup>10</sup> In 2017, Italy proposed a bill for a menstrual leave policy to its Parliament which would ensure that companies grant three paid days per month to female employees who experience painful periods, as long as they provide a medical certificate from a recognised doctor. This, however, failed in the Parliament due to the concern of grave and unwarranted consequences.<sup>11</sup>

Now that a few countries and their respective policies have been laid out. This paper will attempt to outline the consequences of the same to compare and evaluate whether or not this policy has achieved its intended goal. In Japan, the results of this policy were quite discouraging. It has been found that the paid menstrual leave policy hasn't served women. Alice J. Dan, a professor University of Illinois professor writes that "In Japan, the leaves have been raised as a rationale against giving female employees equal pay and positions."<sup>12</sup> Paid leave can cause rift and tensions between women and men in the workplace. Additionally, companies admit that it is easier for them to employ men over women due to these excess overhead expenses. Some also open up about the dubious nature of these leaves as it becomes challenging to determine whether female workers truly require the work due to their discomfort or are

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<sup>7</sup> Bobel C, Winkler IT and Fahs B, *The Palgrave Handbook of Critical Menstruation Studies* 43 NCI 562 (Singapore, 2020)

<sup>8</sup> *Id.* at 563

<sup>9</sup> *Id.* at 563

<sup>10</sup> *Id.* at 563

<sup>11</sup> *Id.* at 563

<sup>12</sup> *Id.* at 562

simply "cashing in" on being a woman. In China as well, an investigation with regard to this policy showed that 20% of women would not even exercise such a right because it was their personal business. In South Korea, the law was passed as early as 1953, it enacted the Labor Standard Act ("LSA"), which established protections for working adult females. This granted one day of paid menstrual leave per month. This, however, was amended in 2003 by amending the Act itself to replace "paid" with "unpaid" and only at the request of the woman alone. The Amendment made this benefit redundant and it was exercised by almost none. This clearly portrays the discourse between the law and reality.<sup>13</sup>

In Zambia, the concept of "Mother's Day" which is the period of leave was a success. Due to the patriarchal culture in this country, women are seen as primary caregivers, whether married or not. Therefore, this process which is a major factor in childbearing is seen as an essential policy. In India, the Kerala government has recently introduced this to female students in the Department of Higher Education. From as early as 1992, the Bihar government was offering two days of menstrual leave a month. The big wave of thrust towards this movement was when a digital media company, "Culture Machine", a company based off of Mumbai, Maharashtra, introduced this policy within its work culture, allowing its female employees to opt for one paid day off every month, known as "First Day of Period Leave" and have also initiated a petition for all other companies to introduce the same (Blush Originals 2017). The business produced a YouTube video that showed female employees learning for the first time about their menstruation leave policy. Women in the video expressed their enthusiasm for the strategy and a belief that it would improve the well-being of female employees (Blush Originals, 2017). There was concern that providing women with multiple types of paid leaves in line with their biological processes would engender hatred and competition among males since the Maternity Benefits Act (2017) was recently changed to increase maternity leave from 12 to 26 weeks.<sup>14</sup> The outcome and effectiveness of this kind of woman-centric policy can be partially predicted when understood in terms of the mindset and culture within that particular country. There cannot be a uniform answer to whether this is a good policy or a bad one.

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<sup>13</sup> Hilary H. Price, "Periodic Leave: An Analysis of Menstrual Leave as a Legal as a Legal Workplace Benefit" 74(2) Oklahoma Law Review (2022)

<sup>14</sup> The Maternity Benefit (Amendment) Act, 2017 (Act No.6 of 2017), s. 3

## **LEGAL MOVES IN INDIA AND POSSIBLE REFORMS**

The Supreme Court of India rejected a Public Interest Litigation (PIL) on February 24, 2023, that demanded the implementation of paid menstrual leave in the nation, stating that such a regulation may discourage employers from recruiting women. The Apex court's stance on the matter sparked strong opinions on both sides of the issue. Some people think the policy will result in more inclusivity of women within the working environment by empathizing with the natural physiological processes of their bodies and assisting them in managing such pain, while others think it will promote discriminatory practises and limit a woman's ability to advance professionally. Indian women's labour force participation is said to have increased from 32.8% to 37% from 2021-22 to 2022-23<sup>15</sup>. In India, this policy has been propelled yet has failed due to the apprehension that women employees who already fall behind in employment opportunities will further be hit by this move. In the case of *Ayyaa v. The Chief Secretary, Tamil Nadu*, a petition was filed under Article 226 of the Constitution of India for "Proof Less Menstrual leave" under the "Unearned Medical Leave" category for painful menstruation. The Apex Court directed the petitioner to approach the Union Ministry of Women and Child Development in order to make an appropriate decision. However, a Public Interest Litigation<sup>16</sup> filed by Advocate Shailendra Mani Tripathi and heard by the Supreme Court on July 8, 2024, allowed for the petition demanding paid menstrual leave, directing the petitioner to approach the Secretary of the Ministry of Women and Child Development to draft a policy on this as this is a matter of policy to be dealt with by the Government. This is a steady move in favour of menstrual leave for India.

In 2017, a major step came in this direction when parliamentarian Ninong Ering presented "The Menstruation Benefits Bill, 2017". This aimed at providing "2 days of paid menstrual leave utilized by women in both public and private foundations enrolled with the Central and additional state governments, adding up to 24 days each year with an additional 4 days per month for students above class VIII."<sup>17</sup> However, this bill did not pass.

As visualised by the Constitution, the state is required to "make provision for securing just and humane conditions of work and for maternity relief," according to Article 42 of Part IV of the

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<sup>15</sup> Ministry of Statistics and Programme Implementation, "Periodic Labour Force Survey Report 2022-23" (October, 2023) (PIB: 1967291)

<sup>16</sup> 2023 SCC OnLine SC 228

<sup>17</sup> Anshul Prakash, et al., *Looking Beyond the Law: The Case of Menstrual Leave in India*, 2023 SCC OnLine Blog Exp 19, <https://www.sconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

Constitution, which is a part of the Directive Principles of State Policy. Article 15 prohibits discrimination solely on the basis of sex, although condition 3 of the Article allows the state to adopt laws allowing any unusual arrangement for women.<sup>18</sup> Hence, the section of a law by Parliament perceiving the right to menstrual leave won't just be constitutional, but a satisfaction of the State's commitment under the Constitution. This however was opposed strongly saying that these many days of leave a month would hamper the work environment. This will buttress the well-established principle of "impurity" that is attached to menstruation rather than eliminating it. This is justified on the grounds that this is not a universal problem that every woman experiences and the degree of pain she faces is not uniform.<sup>19</sup>

In order to understand the possible effect of such a policy, we must compare this with a similar women-centric policy already implemented which is the Maternity Benefit Act, 1961. According to the Labour Bureau's Report On Working Of The Maternity Benefit Act, 1961 during the year 2018<sup>20</sup>, "the percentage of women workers claiming maternity benefits to the total number of women workers employed in factories was the highest at 17.65% in UT of Andaman & Nicobar Islands followed by 3.75% in Jharkhand and 3.43% in Haryana. In plantations, the highest percentage was in Assam at 5.90% followed by Karnataka i.e., 5.29% in 2018."<sup>21</sup> The number of women workers who claimed maternity benefits under the ESI Act was "the highest in Kerala 7,583 followed by Karnataka 7,032."<sup>22</sup> This shows the immense positive impact that such an Act had on women workers in India. Certain studies show that the rate of maternal death and morbidity was dramatically reduced when the legislation was implemented. Mukherjee and Majumder (2015) conducted a different study that found that the Act dramatically boosted the number of women workers who sought antenatal care services. Additionally, the initiative has boosted the employment opportunities for female workers. The Act greatly boosted the retention of women in the workforce after delivery, according to research by Kabeer et al. (2012). Gupta and Ghosh (2018) conducted a different analysis that found that the act considerably boosted the number of women working in the formal sector. Overall, women workers in India have been significantly impacted by the Maternity Benefits

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<sup>18</sup> The Constitution of India, Art. 15, 42

<sup>19</sup> Saiba Meher Rajpal, Vanshika Mehta, "The Extent of Menstruation Leave Policy in India" 7(3) International Journal of Advance Research and Innovative Ideas in Education (2021)

<sup>20</sup> Ministry of Labour and Employment, Labour Bureau, "Report On Working Of The Maternity Benefit Act, 1961 During The Year 2018" (2022), [https://labourbureau.gov.in/assets/images/pdf/Annual\\_Report\\_Maternity\\_Benefit\\_Act\\_2016.pdf](https://labourbureau.gov.in/assets/images/pdf/Annual_Report_Maternity_Benefit_Act_2016.pdf)

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*



Act, 1961. To safeguard the health and well-being of women and their infants, the legislation has offered a number of benefits, such as paid maternity leave, medical benefits, and other amenities. According to a survey conducted on 350 start-ups and SMEs by employment services company<sup>23</sup>, Team Lease Services, two-thirds of all respondents, or 66%, admit that the maternal benefit law has a negative influence on their choice to hire women. Only 22% of respondents claimed that the new maternity leave laws will not influence all their hiring decisions. A staggering 35% of respondents said they believe the Act will have a detrimental effect on both expenses and profitability.<sup>24</sup> This is a dangerous policy that could drive backward the opportunities that women have been provided after many years of hard work.

There are however several benefits that could outweigh these negative impacts. Although this policy of menstrual leave could be implemented it must be done in a way to prevent its abuse by a verification step like that in Spain. The most viable recommendation would be to allow for one day of menstrual leave monthly for all women employees as this would bolster the productivity and well-being of women workers. The concept of ‘Menstrual flexibility’ entitles women to take a work leave during their period and compensate this loss of work on some other days. This could be more beneficial as it does not hinder the number of days of work and thereby does not have a negative impact on the hiring of women. ‘Wellness leave’ emphasizes on the importance all employees who might need to take time off and leaves at times when they do not qualify for medical leaves. These fixed days of leave could benefit all employees while maintaining privacy as well.

## **FINDINGS AND DISCUSSION**

On July 8, 2024, in lieu of a writ petition invoking Article 32 of the Constitution of India, the Supreme Court of India led by CJI Dr. DY Chandrachud directed the Secretary of Union Government’s Ministry of Women and Child Development to initiate the drafting of a policy on the paid menstrual leave facility under the Maternity Benefit Act, 1969 and due to its multifarious nature, will require the assistance of States and Union Territories as well.<sup>25</sup> While

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<sup>23</sup> Vineet Bhalla, “The Flaw in India’s Maternity Benefit Law” *The Quint*, (India, 10 June 2018), available at [www.thequint.com/opinion/the-flaw-in-indias-](http://www.thequint.com/opinion/the-flaw-in-indias-) (last visited on 10 May 2024)

<sup>24</sup> *Ibid.*

<sup>25</sup> Apoorva, [Menstrual Leave Policy] *Supreme Court asks Union Govt. to consult all stakeholders on model policy*, SCC OnLine Times, <https://www.sconline.com/blog/post/2024/07/11/supreme-court-asks-union-govt-consult-all-stakeholders-model-menstrual-leave-policy/#:~:text=Supreme%20Court%3A%20In%20a%20writ,Judge%20Bench%20of%20Dr.%20DY>

discussing this policy, the court cautioned against making this policy compulsory as it could discourage the employment of women which would be undesirable. This is in line with the discussion made in the above parts of this paper. As a result of experiences drawn from this policy being introduced in several other countries, there could be imminent risk in introducing this policy in India. The recent contemporary move brought about by India allowing women of the menstruating age to enter the Sabarimala Temple was met with heavy backlash by the community which shows that this concept is still very much taboo in the country. According to the Global Gender Gap Report 2023 by the World Economic Forum<sup>26</sup>, the global gender gap stands at 68.4% with the Southern Asia region at the second lowest score of the 8 regions and witnessing a rise in the gap. Introducing such a policy in India, like in Japan, could lead to women being reluctant to use it at all due to the fear of sexual harassment as well as leading to a widening of this gender gap especially in the employment of women. As a result of the surveys conducted and the introduction of similar policies in several other countries, which have been examined in the above parts of this paper, the hypothesis has been disproved. There is no real data that could substantiate that the initiation of a contemporary menstrual leave policy in India will boost the morale, productivity and efficiency of women employees in India. India requires several more years of steady development in their understanding of menstrual health and its acceptance before a move like this could efficiently function in this country. As a result, for the current status of employment rates in India, this policy might not produce good results and thereby, the hypothesis has been disproved.

## **CONCLUSION**

Ultimately, the crux of the issue today, is not whether the menstrual leave policy should be introduced all across India but rather the primordial mindset that still prevails in the Indian society in relation to “periods”. The stigma attached to this biological process requires not just a law, for it to be diluted but rather decades of consistent social change. In a country where women in rural areas still have marginal access to advanced and environment-friendly alternatives to menstrual hygiene products, menstrual leave is a rather forward step that may not be utilised at all as seen in several other South-East Asian countries through this paper. While conversations around this concept should be encouraged and this might be a steady move towards destigmatising this concept, it may at this point in time, not serve its purpose but rather

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<sup>26</sup> Global Gender Gap Report 2023, World Economic Forum, <https://www.weforum.org/publications/global-gender-gap-report-2023/digest/>

become a roadblock for the marginalised women community in seeking employment. In any case, the conversation on menstrual leave is crucial because it demonstrates the gaps in our society's commitment to sex equality in the workplace and its assessment of sex equality. By persistently addressing society's apprehension about menstruation, we may eventually contribute to permanently closing the gender equity gap.