

## **MENSTRUAL LEAVE: BROADENING THE HORIZONS OF LABOUR LAWS IN INDIA**

**Dr. Mamta Rani**

*Professor*

*Dept. of Sociology*

*K.G.K. (P.G.) College, Moradabad*

*Email: dr.mamta27@gmail.com*

**Keerti Singh**

*B.B.A., L.L.B. (Hons.)*

*Law College Dehradun, Uttarakhand University*

*Email: keerti02singh@gmail.com*

### **Abstract**

*The whataboutery encircling the societal dynamics has been regarding the gender-related pellets ever since the dawn of mundane life. Speaking of different pellets, our society has come a long way by the way of women's empowerment, but exactly how far along are we thinking? The dynamics of a woman's life have changed from a person who could only be visualized as a house-making machinery, to someone who could work outside the boundaries of a household. The basic fundamental rights include the right to equality which embodied a work culture that promoted jobs for each gender, without any discrimination.*

*When we move forward with the idea of right to work, we've legislated several Labour Laws guaranteeing the equitable distribution of work along with suitable working conditions, and such working conditions do include certain paid and unpaid leaves for emergencies and exigencies, but what if it is said that a woman would like a leave for her menstruation period. What would that entail?*

*A single sentence invites a plethora of questions and reservations, starting from whether isn't it a thing for which workplaces grant medical leave as it is a matter of health, to the point that would such a thing, even, if possible, to act upon it, wouldn't it affect the employment rate of females? This paper intends to work around some of these dimensions of menstrual leave.*

### **Keywords**

*Labour Laws, Dysmenorrhea, Industrial Rights, Gender Constraints, Menstruation, Clinical Health.*

Reference to this paper should be made as follows:

**Received: 22.09.2023**

**Approved: 28.09.2023**

**Dr. Mamta Rani,  
Keerti Singh**

*MENSTRUAL LEAVE:  
BROADENING THE HORIZONS OF  
LABOUR LAWS IN INDIA*

**Article No. 50**

*RJPSS Apr.-Sep. 2023,*

*Vol. XLVIII No. 2,*

*pp. 410-417*

**Online available at:**

[https://anubooks.com/  
view?file=3347&session\\_id=rjps-  
2023-vol-xlvi-ii-no2-sept-2023](https://anubooks.com/view?file=3347&session_id=rjps-2023-vol-xlvi-ii-no2-sept-2023)

**DOI:** [https://doi.org/10.31995/  
rjps.2023.v48i02.050](https://doi.org/10.31995/rjps.2023.v48i02.050)

## **Introduction**

For anything to take a stance, we first need to understand why menstrual leave became a topic of discussion in the field. The biological maturity of a woman is introduced during her adolescent period, and with such maturity comes various biological, psychological and environmental changes, which include dysmenorrhea or generally known as period pain, as one of its common spectacles. This condition of dysmenorrhea is experienced by more than half of women during their menstrual cycle and it lasted for two or three days, wherein the degree of pain is of an extent which renders normal mundane activities dreadful to accomplish. Such is also said to be accompanied by other symptoms including tachycardia, diarrhea, tremulousness, vomiting etc.

Japan, became one of the first countries to recognize the bodily sufferings of female workers and pass on an introduction of menstrual leave as one of its industrial rights, which has been similarly adopted by various other places including Taiwan, South Korea, Zambia and Indonesia, also, with Spain becoming the recent and first European country to implement the same. It is to continue the vanguard agenda of providing and defending the sexual and procreative rights of women.

To quote Savigny (Britannica, n.d.), “Law grows and develops like a language”, each society witnesses’ modification in the dynamics of its legislations and it is rightful to say that at the least, things have been changing in India, legislation are being updated with regards to the societal need. The literature review showcases that various states within our country and numerous organizations have been in favor of granting such leave and are already in motion with regards to it, and when a certain section is granting such, what is there ideology behind it? And if, it is truly something we, as a country, require to understand and gain sensitivity regarding it, how could we bring it into action? Thus, the central research question would deal with various pellets of menstrual leave.

### **Menstrual Leave: A Brief Introduction**

The idea of menstrual leave would fall under the category of such policies which would allow the female workers or rather female students too, around the nation to seek leave during their term of menstruation, generally, the central reason arising out of the hurt or distress caused during their menstruation cycle.

The aforementioned policy of menstrual leave would fall under the purview of Labour Laws (The Hindu, 2023), and would entail that the female workers could opt for an option of paid or maybe, unpaid leaves during their cycle of menstruation, apart from and distinctive from the health or medical leaves provided to them. The

concept of the menstrual leave policy and its duration would have to be dependent upon the organization offering such and shall range from one to seven days per month.

On one side of the coin, where the said policy intends to help female workers during their cycle, when they suffer various symptoms like cramps, fatigue, and mild to severe pain, on the other side, it poses as a threat, as various insinuations could arise which could lead to dissuasion and reduced employment rate of the female workers.

### **Menstrual Leave: India's Stand**

Menstrual leave is not a completely foreign notion in India. For example, a school in the southern state of Kerala has been providing menstruation leave to its pupils since 1912. In addition, Bihar has allowed women in the work two days of special menstruation paid vacation since 1992, while Kerala agreed to menstrual leave for women university students in January 2023. Recently, numerous Indian digital start-ups, including Zomato, Byju, and Swiggy, have given paid period leave to their employees.

Regardless, a Public Interest Litigation (PIL) (SCC Online, 2023) in January 2023, had been filed by an advocate named Shailendra Mani Tripathi in the Apex Court of India, the Supreme Court, which requested that a new "Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022" (British Safety Council, 2023), be introduced in all the States of India, uniformly. Under the said Bill, three days of paid leave shall be granted to the female and transgender employees of an organization during their menstruation cycle, and the said benefit shall also extend to the female students.

The Supreme Court, however, denied the application, finding that the said issue is a matter of policy forming under the purview of the Union government (Central Government) to determine, and not the jurisdiction of the courts. However, the courts granted the PIL petitioner permission to submit a communication to the "Union Ministry of Women and Child Development" asking for a decision and their opinion regarding the same.

Having said that, employers have begun to recognize in recent years that a significant amount of work and effective implementation of policies and procedures is required to be undertaken, from the standpoints of workforce retention, employee welfare, and ESG (SCC Online, 2023). The Securities and Exchange Board of India (SEBI), in a circular dated 10-5-2021, established business responsibility and sustainability, reporting requirements for India's top 1000 listed companies, which,

among other things, were to promote inclusive growth and equitable business development. Such reporting requirements call for disclosures such as gender composition, employee well-being measures, measures to ensure a safe and healthy workplace, examples of actions taken to address the concerns of vulnerable/marginalized groups, and training on human rights issues and policies. Before investing or lending money, investors (especially foreign investors) and, in certain situations, banks are looking at an organization's ESG compliance status from a commercial standpoint. Implementing regulations that help in managing menstruation leave would also help firms achieve their DEI goals within the specified ESG requirements.

#### **Industrial Outlook: In India**

While there is no legislation in India, currently, mandating menstruation leave, organizations are entitled to make a unilateral choice of their own and contractually provide more advantageous conditions of employment than those granted by the appropriate legal regulations (Live Law, n.d.). As a result, numerous industrial leaders in India are starting to develop particular internal norms for employee wellbeing and giving perks like as menstruation breaks to their female staff.

A media business in Mumbai declared a policy of providing women with paid vacation on the first day of their menstruation. Soon after, an integrated marketing agency implemented a similar policy. Menstrual leave has also been implemented by two significant Indian food delivery partners, Zomato and Swiggy (Yadav, 2023). While one announced up to 10 days of menstruation leave per year for all female workers (including transgenders), with one period leave for each menstrual cycle, the other implemented a "no questions asked" two-day monthly time-off policy for all female delivery partners throughout their menstrual cycle. In addition to such leaves, women delivery partners will be entitled to a minimum wage throughout that period. In accumulation to the aforesaid, one of the main firms in the education technology industry amended its leave policy to incorporate period leaves. As part of their new leave policy, women employees at the business can take up to 12-period absences each year. Each month, one period of leave will be credited, and female employees can take either one full day or two half-day breaks.

Many other companies have taken the initiative to include menstruation leave in their workplace policies. Furthermore, many firms give extra perks to their employees, such as providing sanitary pads at a low cost on their grounds.

While businesses are progressively accepting menstruation and taking a progressive approach, the mere introduction and implementation of menstrual leave may not be enough. Managers and staff should be provided with awareness to handle such situations responsibly and to overcome the stigma associated with menstruation. Managers should also offer a safe environment for their employees to interact efficiently without hesitancy or limitations.

### **International Sight towards Menstrual Leave**

A Japanese legislation, dating back to the year 1947 (United Nations Human Rights Office of the High Commissioner, 2022), legally mandates an employer to enable a female employee to take leave on menstrual cycle days, as needed and required by the female worker. Many nations have then followed Japan's lead and implemented comparable and similar statutory provisions, by introducing them into their legal frameworks.

In Indonesia, female workers who have discomfort during their menstrual cycle have the option to notify their employer, which grants them the right of not to report to work for the first two days of their menstruation. Whereas, South Korea provides for one day of paid leave each month to the female employees who put forth a special request in this respect.

Moving ahead, female employees in Taiwan who generally face trouble doing their jobs owing to their menstrual cycle have the right to seek three days of absence per year (with a maximum of one leave per month). Furthermore, any leave taken in excess of these three special leaves will be subtracted from their sick leave bucket. Such specified three-day menstruation leave and sick leave can be taken at half the rate of such employees' salary/pay.

In Zambia, female employees are entitled to one day of paid leave every month without the need to deliver a valid medical certificate. Spain, recently in 2023, became the first European country to include menstruation leave in its legislative framework, allowing female employees to take 3 to 5 days off due to period discomfort with the production of a doctor's letter, with the State social security system covering the cost.

### **Stances Against Menstrual Leave**

Dr. Suneela Garg, Chair of, the Programme Advisory Committee, National Institute of Health and Family Welfare, and Member of the Lancet Commission, stated her opposition to such legislation, in the following words (Bhatia, 2023):

“Menstruation is still a taboo issue in India, with many superstitions surrounding it. There are still many localities where menstruation women are not

permitted to enter temples or residences. In such a case, we're talking about enacting legislation that forces them to stay at home. Just because other nations, including Spain, have approved similar legislation does not imply that India should follow suit. Reason - we must remember that such nations are far ahead and incredibly progressive, but India still has a long way to go. Second, rather than discussing menstruation leaves, we should focus on a menstrual benefit policy that encompasses all females, including schoolgirls, and provides them with clean sanitation, menstruating goods, and an examination of safe disposal practices. We live in a period where we are supporting girls in sports, creativity, and technology - sectors where females have traditionally been underrepresented - while also discussing providing them with menstrual leave. In the COVID scenario, we witnessed numerous healthcare personnel and warriors striving to help society as a whole. If the menstrual leave legislation is implemented, it will act against such circumstances, most notably against women's empowerment, since many productive days will be lost."

### **Menstrual Leave Policy: A Call for Progress**

During the menstrual cycle, women endure varied degrees of physical discomfort and agony, which is also accompanied by hormonal changes, which result in swings in mood and emotional shifts. Women may find it challenging to maintain a regular level of productivity in an otherwise fast-paced work atmosphere during this period. Many women also suffer from menstrual diseases such as ovarian cysts, endometriosis, dysmenorrhea, and so on. Because of the shame associated with menstruation, even casual conversation on the subject is avoided. As a result, the idea of "menstrual leave" continues to be a widely overlooked topic in India.

As a result, leave for menstruation is not covered by the existing Indian labor and employment legal framework. Menstrual leave may be defined as a specific leave that a business may provide to its female employees in addition to their entitlement bucket of leaves (often earned, casual, and sick absences) (World Health Organisation, n.d.). Women frequently refrain from expressing menstruation-related discomfort in the workplace for a variety of reasons, including the stigma associated with menstruation, fear of discrimination, loss of professional possibilities, and so on. As a result, firms that implement menstrual leave will not only foster healthy dialogues about menstruation, but will also sensitize the staff and society at large. Employers who allow their female employees to relax throughout their menstrual cycle will see a productivity improvement and be able to focus better on professional responsibilities. From an optical aspect, the creation and execution of such accommodating policies and advantageous features can also aid in employee retention

and ensure employees that their problems are being treated favorably by their employers.

One may argue that there is always a likelihood for a female employee to take sick leave outside their normal leave allocation. Menstruation, on the other hand, is a natural biological process (Levitt & Barnack-Tavlaris, 2020) that is unrelated to any illness or condition. As a result, it is past time to normalize and accept the idea of “menstruation,” as well as accommodate and assist women’s requirements in terms of professional obligations.

### **Concluding Remarks**

Building an inclusive work atmosphere is becoming increasingly important, as seen by recent events. Menstrual leave is a significant step towards eradicating decades of stigma. To cater to the welfare of the organization’s personnel, it is critical to adapt to continually altering workplace practices and instill good practices. While organizations have only just begun to apply the practice of offering menstruation leave, and the existing Indian legislative structure has yet to address this issue, the Government of Bihar has been ahead of the curve in this respect. Organizations should make efforts to create and maintain a safe and healthy work environment, which may be accomplished by implementing rules, providing necessary benefits, extending assistance, and sensitizing the entire workforce. Making room for honest dialogues and providing support to women in the workplace regarding menstruation without shame would go a long way towards bringing about the much-needed transition in the workplace.

### **References**

1. Bhatia, A. (2023). *NDTV*. March. Retrieved from <https://swachhindia.ndtv.com/is-it-time-for-india-to-have-a-menstrual-leave-policy-75023/>.
2. *Britannica*. (n.d.). Retrieved from <https://www.britannica.com/biography/Friedrich-Karl-von-Savigny>.
3. (2023). *British Safety Council*. March. Retrieved from <https://www.britsafe.in/publications-and-blogs/safety-management-magazine/safety-management-magazine/2023/supreme-court-rejects-call-for-paid-menstrual-leave-in-india/>
4. Levitt, R.B., Barnack-Tavlaris, J.L. (2020). *National Library of Medicine*. July. Retrieved from <https://www.ncbi.nlm.nih.gov/books/NBK565643/>.
5. *Live Law*. (n.d.). Retrieved from <https://www.livelaw.in/lawschoolcolumn/lettering-menstrual-leave-in-the-constitution-221613>.

6. (2023). *SCC Online*. March. Retrieved from <https://www.sconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/#:~:text=As%20mentioned%20above%2C%20the%20existing,their%20employees%20as%20of%20date>.
7. (2023). *The Hindu*. February. Retrieved from <https://www.thehindu.com/news/national/explained-menstrual-leave-and-its-global-standing/article66554246.ece>.
8. (2022). *United Nations Human Rights Office of the High Commissioner*. June. Retrieved from <https://www.ohchr.org/en/statements/2022/06/high-commissioner-human-rights-statement-menstrual-health>.
9. *World Health Organisation*. (n.d.). Retrieved from <https://www.who.int/news/item/22-06-2022-who-statement-on-menstrual-health-and-rights>.
10. Yadav, P. (2023). *India Times*. March. Retrieved from <https://www.indiatimes.com/explainers/news/explained-what-is-indias-stand-on-menstrual-leave-policy-594889.html>.