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"FROM MATERNITY LEAVE TO MENSTRUAL LEAVE: TRACING WOMEN'S ONGOING STRUGGLE FOR WORKPLACE DIGNITY IN INDIA'S LABOR LAWS."

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ABSTRACT

This legal article explores the evolving discourse on menstrual leave in India, contextualizing it within the broader struggle for women's workplace rights. Historically, Indian women have faced a protracted battle even to secure maternity leave—an entitlement tied to a natural biological process. Extending this discourse, the article examines the proposition of menstrual leave, another health-related necessity rooted in women's physiology. The discussion navigates the polarized opinions surrounding this issue, categorizing them into affirmative & dissenting views, and highlights the socio-cultural reluctance to acknowledge menstruation as a legitimate ground for workplace policy reform. A comparative global lens is adopted to underscore how several countries have implemented progressive menstrual leave policies, setting a precedent that India has yet to follow. These international models demonstrate improved employee well-being and workplace productivity, challenging the apprehensions surrounding such reforms.

The methodology employed in this article includes doctrinal legal research, drawing from books, scholarly journals, relevant labor law statutes, and credible online sources. By examining both the maternity and menstrual leave frameworks, the article underscores the biological linkage between the two and advocates for a rights-based approach to women's health and dignity at work. The piece aims to inform, provoke dialogue, and contribute to policy development in Indian labor law.

1) INTRODUCTION

Denying menstrual leave by claiming existing provisions are enough ignores the real physical challenges women face; recognizing this need affirms dignity, promotes workplace equity, and strengthens women's rightful place as equal contributors. This statement itself speaks volumes by highlighting both the ongoing struggle of women and how it can be resolved through positive steps in this regard, which will be elaborated upon in the discussion ahead. Compelling women to work without the provision of menstrual breaks can aggravate health issues associated with menstruation. This could lead to increased stress, reduced job satisfaction, and potentially heighten the risk of long-term medical complications.¹ Granting menstrual leave constitutes a valid form of classification. Given the biological differences between genders, menstruation is a natural process that can affect a woman's physical and emotional well-being. Acknowledging this distinction and permitting leave reflects an understanding that equitable treatment may require accommodating genuine physiological differences.² While legal provisions are essential, transformative constitutionalism urges society to move beyond the text of the law and embrace deeper cultural change. This framework encourages the creation of workspaces where conversations about menstruation are normalized, free from stigma, and approached with openness and acceptance. Menstrual leave policies represent an important step toward achieving a more inclusive and forward-looking social order.³

Several Indian companies, including Zomato, Swiggy, and Byjus, have proactively introduced paid menstrual leave, reflecting a growing awareness of employee well-being. Additionally, state governments such as Bihar (1992) and Kerala (2023) have implemented menstrual leave policies, setting a precedent for others to imitate. The belief that biological processes like menstruation reduce women's employability must be firmly rejected. It is imperative to shift away from the expectation that women must conform to male-oriented norms to succeed professionally. Menstruation should not be viewed through the lens of disability, yet this reality should not invalidate the genuine challenges it presents. Introducing menstrual leave aligns with

¹ Bhagyamma G & Dr. Ramesh, *Rethinking of Menstrual Leave under the Aegis of Indian Constitution*, IX (II) JSSJLSR 1, 2 (2023), <https://www.jsslawcollege.in/jsslc-online-journal/>.

² Gopala & Ramesh, *supra* note 1, at 4.

³ Sydney Colussi, Elizabeth Hill & Marian Baird, *Engendering the Right to Work in International Law: Recognising Menstruation and Menopause in Paid Work*, 5 U OXHRH J 1, 7-8 (2023), [HTTPS://OHRH.LAW.OX.AC.UK/JOURNAL-2/](https://ohrh.law.ox.ac.uk/journal-2/).

Constitutional values—particularly those related to equality, dignity, and health—and promote a more empathetic and equitable work culture. The goal is not to stigmatize menstruation, but to recognize and accommodate the diverse needs of all workers.⁴

2) MATERNITY LEAVE (JOURNEY SO FAR)

Maternity leave is a critical workplace entitlement that recognizes the unique physical and emotional challenges women face during pregnancy and childbirth. In India, this provision has gained increasing significance as awareness about maternal health and women's rights in the workforce has grown. Pregnancy often brings about profound physical and psychological changes, necessitating adequate rest and medical care. Realizing this, Indian labour laws have evolved to provide paid maternity leave, acknowledging the need for financial security and job protection during this vital period. The cornerstone of maternity leave in India is the Maternity Benefit Act, 1961,⁵ which ensures that women working in establishments with ten or more employees are entitled to paid leave for a specified period before and after childbirth. Overall, maternity leave in India is not merely a statutory obligation but a crucial step toward gender-sensitive workplace policies and the broader goal of achieving gender equality in employment. Some of the most relevant provisions within this prescribed act are: right to payment of the maternity benefit,⁶ payment of medical bonus,⁷ protection against dismissal during absence of pregnancy,⁸ precedence of the act over other laws & agreements.⁹ Judicial recognition of maternity leave has developed over time, with key judgments paving the way for its effective implementation, such as the case of *B. Shah v. Presiding Officer*,¹⁰ which dealt with how the duration of maternity leave has to be calculated. Another famous *Muster roll* case¹¹ extended maternity benefits to those working on temporary basis as well. The above discussion clearly illustrates the evolving and progressive journey of the maternity leave provision in India.

⁴ Gopala & Ramesh, *supra* note 1, at 8.

⁵ Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (Ind.).

⁶ Maternity Benefit Act, 1961, 5, No. 53, Acts of Parliament, 1961 (Ind.).

⁷ Maternity Benefit Act, 1961, 8, No. 53, Acts of Parliament, 1961 (Ind.).

⁸ Maternity Benefit Act, 1961, 12, No. 53, Acts of Parliament, 1961 (Ind.).

⁹ Maternity Benefit Act, 1961, 27, No. 53, Acts of Parliament, 1961 (Ind.).

¹⁰ *B. Shah v. Presiding Officer*, Labor Court, (1977) 4 SCC 384 (Ind.).

¹¹ *Municipal Corpn. Of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224 (Ind.).

3) A CALL FOR MENSTRUAL LEAVE

Menstrual leave has become a debated issue in today's context. The concept, intended to support women's health and comfort during their menstrual cycles, is increasingly gaining global attention and acceptance.¹²

ARGUMENTS FOR MENSTRUAL LEAVE:

- Menstrual leave allows women to focus on their health and manage menstrual symptoms without the risk of financial loss, thereby supporting their overall well-being. By reducing the need to work while experiencing discomfort, it can also lead to improved productivity.¹³
- Menstrual leave can encourage open discussions around menstrual health, helping to break taboos and normalize the topic in the workplace. This may contribute to creating a safer and more inclusive work environment. Additionally, offering such leave can lead to higher employee retention by showing support for women's health needs.¹⁴
- In January 2023, a Public Interest Litigation (PIL) was submitted to the Supreme Court of India,¹⁵ requesting the Court to instruct all State governments to formulate a policy granting menstrual pain leave to female employees and students, in accordance with the Maternity Benefit Act, 1961. This initiative, showed the growing demand for this policy.

ARGUMENTS AGAINST MENSTRUAL LEAVE:

- Critics argue that paid menstrual leave could reinforce harmful stereotypes, portraying women as the weaker sex and undermining the goal of equality in status and opportunities. Employers might avoid hiring menstruating individuals due to concerns over productivity and reputation, which could indirectly harm women's career prospects.¹⁶
- The focus may shift from a woman's abilities to the fact that she is granted menstrual leave, leading to biased perceptions at the workplace. Women may be seen as more costly

¹² Gopala & Ramesh, *supra* note 1, at 1.

¹³ Gopala & Ramesh, *supra* note 1, at 18.

¹⁴ *Id.*

¹⁵ Shailendra Mani Tripathi v. Union of India, (2024) SCC OnLine SC 1694 (Ind.).

¹⁶ Bhoomi Aggarwal, *Menstrual Leave: Necessity or Controversy?*, MANUPATRA ARTICLES (Oct. 2024), <https://articles.manupatra.com/article-details/Menstrual-Leave-Necessity-or-Controversy> .

or less committed compared to men, who don't receive such specific leave benefits, creating a sense of unfairness.¹⁷

4) GLOBAL COMPARATIVE VIEW

It is often observed that provisions and discussions which garner international attention tend to be of significant importance and relevance. The issue of menstrual needs, along with the legal provisions addressing them, has similarly gained global recognition over the years. Several countries across the world have already adopted policies specifically catering to menstrual health and related needs. This discourse is further explored in the following discussion.

Regardless of the status of such policy in India, several other nations—including Japan, Indonesia (since the 1940s), Taiwan, South Korea, Vietnam, certain branches of the Chinese military, and Zambia—have positively adopted and implemented it.¹⁸ These countries have successfully integrated menstrual leave provisions into their public and private sector labor laws. This progressive inclusion aims to improve working conditions for female employees and promote a more supportive workplace environment.¹⁹ The duration and structure of menstrual leave policies differ across countries, with some nations offering more accommodating provisions than others.²⁰ In Spain, women are entitled to up to three days of menstrual leave per month, which can be extended to five days in cases of severe pain. Japan's Labor Standards Act, specifically Article 68, ensures that employers cannot compel women to work during difficult menstrual periods. In Indonesia, female workers are permitted to take leave on the first two days of their cycle if they experience discomfort. South Korea allows women one day of menstrual leave each month. In Vietnam, female employees can take up to three days off per month for menstruation and are also allowed a 30-minute rest break on each day of their period. Meanwhile, in Zambia, women are granted one day of menstrual leave every month.²¹

¹⁷ *Id.*

¹⁸ Aneri Pattani, *In some countries women get days off for period pain*, THE NEW YORK TIMES, (June 24, 2017, 02:09 AM), <https://www.nytimes.com/2017/07/24/health/period-pain-paid-time-off-policy.html>.

¹⁹ Maria Binny Palamattom, *Why Menstrual Leave Policy In India? – A Socio-Legal Analysis*, 2 IND. L.J. 1, 7 (2024).

²⁰ Gopala & Ramesh, *supra* note 1, at 17.

²¹ Sharath Srivatsa, *Panel to Recommend Menstrual Leave Policy, Legislation to Karnataka Government*, THE HINDU EPAPER (July 6, 2024), <https://www.thehindu.com/news/national/karnataka/panel-to-recommend-menstrual-leave-policy-legislation-to-karnataka-government/article68370775.ece>.

5) CONCLUSION

The journey toward menstrual leave in India reflects a broader societal and legal struggle for recognizing women's physiological needs within the framework of workplace rights and gender equality. From the hard-earned progress in securing maternity leave to the current push for menstrual leave, it is clear that women's health has long been under-acknowledged in labor discourse. Menstrual leave, like maternity leave, is not a privilege but a necessary accommodation rooted in biological reality and fundamental rights such as health, dignity, and equality. As this article has explored, the global precedent clearly demonstrates that menstrual leave is feasible and beneficial—enhancing employee well-being, fostering inclusive workplaces, and improving retention and productivity. Yet, despite positive steps taken by select Indian companies and state governments, the lack of a nationwide policy indicates hesitancy and stigma still surround this issue.

Concerns about reinforcing gender stereotypes or creating inequality must be addressed through sensitive implementation rather than outright dismissal of the policy. Constitutional morality and transformative justice demand that we move beyond token gestures and embrace structural change. Ultimately, recognizing menstrual leave is not about favoritism—it is about fairness. While India has taken initial strides, there is still a long way to go before menstrual leave becomes a normalized and legally recognized right across all sectors.