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Navigating Challenges in Implementing Menstrual Leave Policy in India

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ABSTRACT

In recent years, discussions surrounding gender equality and inclusivity in the workplace have gained significant momentum. One key area that has emerged as a focal point of these discussions is the implementation of menstrual leave policies. Menstruation is a natural bodily process experienced by billions of women worldwide, and it often comes with physical discomfort and emotional challenges. In biological terms, "The menstrual cycle is the process that takes place every month and involves normal vaginal bleeding and the shedding of the lining of the uterus or womb" thus making the female body capable of conceiving the child in future. However, menstruation could occur in females as early as the age of 9 years but usually initiates when the female enters her teenage years.

Recognizing the need for menstrual equity and women's rights, many countries have introduced policies that allow for menstrual leave. India, too, has witnessed discussions around implementing menstrual leave policies. The concept of menstrual leave is not something recently formulated but has its origins and roots in the early 20th century. This Menstrual leave policy, in its literal sense, could be elaborated as "a leave that could be either paid or unpaid, taken by an employee when she is observing menstruation."

This article delves into the multifaceted challenges that arise while implementing menstrual leave policies.

Keywords: *Gender equality, Menstrual Leave Policy, Challenges, Women's Rights, Menstruation.*

I. INTRODUCTION

Menstruation has always been perceived as a taboo or ailment by society. Our society had always been ignorant towards the problem but this norm was broken in the early 20th century when the Soviet Union (Russia) took the initiative and realized the need for a menstrual policy. They framed the same in 1922 through an act called "The Bolshevik menstrual policy," where women working at factories were provided with a monthly leave of two to three days during their menstrual cycle, and the leave used to be fully paid. However, the legislation lost its

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significance with the collapse of the Soviet Union in 1991, post-Cold War as country's ideals which should be based on equal standards were rather engrossed with notion of sexism.

Japan also introduced and implemented this policy in 1947 via Article 68 of the 'Labor Standards Act,' which states that "when a woman for whom work during menstrual periods would be especially difficult has requested to leave, the employer shall not have said woman to work on days of the said menstrual period" and thus provides the same as an industrial right to women. But there has been a palpable decline in the number of women seeking the said benefit, specifically in organized service sectors. Studies have indicated that in order to better their job prospects, women prefer to forgo the said benefit by relying on medications. The rationale behind this was hinged upon the presumption of uniformity in women's experiences during the course of menstruation. However, such a presumption is fairly rebuttable. There exists scientific uncertainty to unequivocally conclude that all women necessarily undergo pain and discomfort which makes them ill equipped to function economically.

Later, erstwhile colonial nations like Indonesia and South Korea adopted the same in their legislative setup. However the said policy was not backed by any of the stakeholders — the government, the women rights activists, international players or the employers. In the absence of stakeholder support, inattentiveness of human rights movements and problematic economic theories, the right to menstrual leaves in Indonesia has died a slow death.

II. INDIA'S APPROACH TOWARDS MENSTRUAL LEAVE

Amidst the rampant framing and implementation of menstrual policies across the globe, India too has witnessed discussions around implementing menstrual leave policies. The concept of "Menstrual leave" was first discussed in 1992 when the Bihar government, headed by the then CM Lalu Prasad Yadav, introduced and implemented this policy, which provided working female employees in government jobs with 2 days of leave per month for menstruating reasons. Despite its introduction in 1992, it is hard to say that the country is ready to nationalize the Menstrual leave policy as a matter of a legitimate right, as women even today hesitate to ask for menstrual leave, says the District Magistrate of Purnea district in Bihar³.

Following the footsteps of Bihar, Kerala has also taken a step ahead towards safeguarding the interests of females who undergo menstruation and face difficulties in their normal routine work. Considering the same, the state has announced a policy that widens the ambit of the

³ Rohit Kumar, *How my district became first in Bihar to have Menstrual Hygiene Management plan: IAS officer*, THE PRINT (May 7, 2022, 12:43 PM), (<https://theprint.in/opinion/how-my-district-became-first-in-bihar-to-have-menstrual-hygiene-management-plan-ias-officer/946133/>).

sufferers and includes students in all government-run higher educational institutions to participate in their semester exams with 73% attendance instead of the prescribed 75% as per the university rules.

In the recent past, several attempts, though unsuccessful, have been made to frame legislation regarding period leave in other parts of the country as well. Shri Niong Ering, a Member of Parliament, introduced the Menstruation Benefit Bill 2017 in Lok Sabha with an aim to provide women at the workplace or in educational institutions with certain menstrual benefits or privileges. The bill had provisions for 4 days of paid menstrual leave per month at the workplace, leave from educational institutions, and in cases where women choose to work while menstruating, 30 minutes of break for four consecutive days to be given by the employer, and extra allowance to be paid. The bill also included certain penal provisions such as imprisonment up to 3 months and compensation ranging from 10,000 to 50,000 for the failure to adhere to the prescribed rules. However, the bill failed to get recognition by the MPs and was dismissed.

Later in 2022, the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill was introduced in the Arunachal Pradesh legislative assembly with a similar motive as that of the 2017 bill, providing 3 days of paid menstrual leave and including transgender individuals within this sphere. However, this bill too suffered a setback and faced criticisms, eventually leading to its dismissal.

Various private companies like Culture Machine, Mathrubumi, Swiggy, Zomato, Gozoop etc., have initiated and incorporated certain rules safeguarding the rights of their female employees, keeping their menstrual health as a concern that might affect their productivity.

Culture Machine: Culture Machine, a digital media company based in Mumbai, gained attention in 2017 when it became one of the first organizations in India to introduce menstrual leave. Under their policy, female employees are entitled to one day of paid leave each month if they experience discomfort or pain during menstruation.

Mathrubhumi: Mathrubhumi, a prominent media organization based in Kerala, introduced a menstrual leave policy in 2017. The company offers a two-day paid leave per month to female employees who experience discomfort or pain during menstruation.

Zomato: Zomato announced that both women and transgender employees could avail of up to ten days of paid menstrual leave per year.

Swiggy: Female employees are entitled to one day of paid leave each month for menstrual-related issues.

Gozoop: Gozoop is a digital marketing agency headquartered in Mumbai, has also taken progressive steps towards gender inclusivity. In 2018, the company introduced a menstrual leave policy, allowing female employees to take a day off every month for menstrual-related issues

III. CHALLENGES IN IMPLEMENTING MENSTRUAL LEAVE POLICY IN INDIA

Menstrual leave as a policy seems to be a controversial aspect whose ends are difficult to meet in India. The implementation of such policies in a diverse and complex country like India comes with its own set of challenges.

(A) Social Stigma and Cultural Taboos:

There are several challenges in framing and implementing a uniform menstrual leave policy in a diversified country like India. If we look through the jurisprudential aspect, Savigny defines the law as "the popular conscience of people,"⁴ which clearly indicates that something which goes against the general will of the people faces difficulties in its effective implementation in society and fails to get legal recognition. The same is the case with menstrual leave, which needs to be addressed first by eliminating the conservative ideology prevailing in society through some measures instead of directly framing laws for the same.

Bihar introduced the menstrual leave policy for government employees way back in 1992, giving women a 2-day leave per month. Unfortunately, even after three decades, the policy failed to achieve its objective as the prerequisites of the policy were not fulfilled, and they have not been fulfilled even today, as revealed by the District Magistrate of Purnea District. He said he signs numerous leave applications daily, none of them stating menstruation as the reason for leave.

70% of India's population lives in villages⁵ and most women in rural areas consider menstruation a matter of privacy. They are not comfortable speaking about it due to the taboo associated with it. This taboo has to be removed from society before compelling them to openly talk about their menstrual cycle in order to avail menstrual leave benefits, as it would infringe on their privacy.

(B) Workplace Discrimination and Gender Bias:

In India, women have always been subjected to discrimination in some form or another, and

⁴ DR.N.V.PARANJAPE, STUDIES IN JURISPRUDENCE & LEGAL THEORY 37, (9th ed. 2019).

⁵ CENSUS OF INDIA 2011, *Report Of The Technical Group On Population Projections November, 2019*, NATIONAL COMMISSION ON POPULATION MINISTRY OF HEALTH & FAMILY WELFARE NIRMAL BHAWAN, NEW DELHI, (https://nhm.gov.in/New_Updates_2018/Report_Population_Projection_2019.pdf)

the same could exponentially rise if this policy is widely implemented. According to the data produced by the Periodic Labor Force Survey from July 2021 to June 2022, 29.4% of women aged between 15-59 (menstruating age) are part of India's labor force⁶. If we consider implementing such a policy in establishments or workplaces, it would prove to be another reason for discrimination against women. For example, an employer has to select between two candidates of the same calibre he is most likely to hire the one who would bring more assets rather than liabilities. Also, an employer is not likely to comply with requisites that would prove detrimental to his own pocket. Eventually, the salary of women would be sacrificed, and the employer would offer lesser pay to women compared to their male counterparts. By increasing the cost of hiring women, we actually risk keeping them out of the workforce.

(C) Operational Challenges

It is impossible to implement a uniform menstrual leave policy across all sectors. India has 94% of women working in the unorganized sector. It would not be feasible to regulate the unorganized sector and extend the benefit of this legislation to those who need it the most. Moreover, women working in this sector are mostly daily wage earners, Women in rural areas are majorly involved in agriculture, be it commercial or domestic. To grant menstrual leave in women lead sector would prove detrimental for the organization.

According to the 2011 census, 10% of India's population were female adolescents aged 10-19 years, which translates into approximately 120 million girls⁷. At any given point in time, 17% of the students are menstruating. It is not feasible for them to take leaves every month in lieu of menstruation as it would hamper their academics. Another aspect is that students appearing for competitive exams like JEE, NEET, etc., are bound to sit for exams even if they are menstruating on the same day as it wouldn't be possible for the authorities to cater to the needs of every menstruating student.

A report published by the National Library of Medicine on "Effect of Menstruation on girls and their schooling and facilitation of Menstrual Hygiene Management(MHM) in schools"⁸ concluded that menstrual hygiene education, accessible sanitary products, pain relief, and

⁶ Dhruvika Dhamija, & Akshi Chawla, *Decoding women's labour force participation in 2021-22: What the Periodic Labour Force Survey shows*, Centre for Economic Data & Analysis (<https://ceda.ashoka.edu.in/decoding-womens-labour-force-participation-in-2021-22-what-the-periodic-labour-force-survey-shows/>).

⁷ Sivakami M, Maria van Eijk A, Thakur H, Kakade N, Patil C, Shinde S, Surani N, Bauman A, Zulaika G, Kabir Y, Dobhal A, Singh P, Tahiliani B, Mason L, Alexander KT, Thakkar MB, Laserson KF, Phillips-Howard PA, *Effect of menstruation on girls and their schooling, and facilitators of menstrual hygiene management in schools: surveys in government schools in three states in India, 2015*, J Glob Health 2019 Jun 9, PMID: 30546869; PMCID: PMC6286883. (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6286883/>).

⁸ *Id.*

adequate sanitary facilities at school would improve the schooling experience of adolescent girls in India. It can be safely deduced that providing menstrual leave is not feasible as of now; rather, providing adequate menstrual hygiene facilities at the workplace is the need of the hour.

IV. SUGGESTIVE MEASURES

It is crucial to address these concerns through a multi-faceted approach. The implementation of menstrual leave or any sort of relaxation for menstruating women is a kind of social reform, and to bring the same into effect, awareness among the population holds paramount importance. Hence, consistent efforts in raising awareness are the need of the hour. The companies should be bestowed with this responsibility by incorporating a menstrual awareness program under CSR, i.e., Corporate Social Responsibility.

Employers should foster inclusive work environments that promote gender equality and provide support mechanisms for women during menstruation. Sensitization programs for managers and colleagues can help eradicate biases and create a more empathetic workplace culture.

On 8th March 2022, the District Magistrate of Purnea District, Bihar, launched an action plan for menstrual hygiene management, becoming the first district in Bihar to do so. NITI Aayog has also approved and appreciated their proposal for MHM-friendly toilets and kits for 200 government high schools⁹. It is suggested that the same implementation should be done not only in schools/educational institutions but in all the organizations where women are part of the workplace.

In addition to clean separate washrooms for women and MHM kits, the workplace must have crèche facilities for menstruating women. Women on their days of menstruation should be given a rest interval of 30 minutes, at least twice a day. Work from home should be preferred whenever feasible for the organization.

Collaborative efforts between the government, NGOs, and employers can help develop tailored approaches and outreach programs to address the specific needs of working women.

V. CONCLUSION

The implementation of a menstrual leave policy in India comes with several challenges, including social stigma, workplace discrimination, operational complexities, and issues related to navigating the challenges in implementing a menstrual leave policy in India requires a multi-faceted approach that encompasses awareness-building, stakeholder engagement, clear

⁹ *Supra* Note 1.

guidelines, and supportive measures the informal sector. Despite numerous attempts made by authorities at different levels, it still seems to be a distant goal to achieve. Women are still fighting for basic facilities such as separate washrooms at the workplace, at this point of time introducing mandatory menstrual leave might not be received well.

Menstrual Leave Policy should be introduced & implemented in phases. In the first phase it should be made discretionary while facilities like clean separate washrooms, MHM Kits etc. shall be implemented mandatorily in all the organizations where women are employed. And subsequently it can be made compulsory in the coming years. Start by conducting research to understand the prevalence of menstrual-related challenges faced by employees in your organization. Collect data through surveys or anonymous feedback to gauge the level of need and interest in a menstrual leave policy.

Addressing aforementioned obstacles requires a comprehensive and collaborative approach involving government, employers, civil society, and the general public. By raising awareness, fostering inclusive workplaces, and tailoring solutions to different sectors, India can take significant strides towards menstrual equity and ensure that women can exercise their right to dignified and supportive workplaces during menstruation. Let's embrace the ideals of equality in building a progressive Nation where women's health and professional aspirations goes hand in hand.

In conclusion, implementing a menstrual leave policy in India is a complex undertaking that requires careful consideration and navigation of various challenges. While the intention behind such a policy is commendable, it is essential to address the concerns and obstacles that may arise during its implementation.
