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The Need to Implement Paid Menstrual Leave as a Labor Legislation in India: A Comprehensive Study

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ABSTRACT

The phenomenon of menstruation has persistently endured as a deeply entrenched societal taboo, transcending geographical boundaries and manifesting with particular intensity within the cultural context of India. Whenever a woman experiences menstruation, she is compelled to adhere to longstanding customs that are widely acknowledged. Notwithstanding the anguish and unease experienced, it is incumbent upon each woman to diligently engage in her routine undertakings. In the context of women employed within an office or occupations that require physical exertion, it is regrettably observed that these individuals encounter challenges when seeking to assert their entitlement to rest during their menstrual cycles. This predicament arises from a reluctance to openly discuss this natural physiological process. As per the findings elucidated in a study conducted at the esteemed University College London, it has been posited that the distressing phenomenon commonly referred to as menstrual cramps may potentially exhibit a comparable intensity to that of a myocardial infarction, colloquially known as a heart attack. This elucidates the profound magnitude of the anguish experienced, whereby exerting undue pressure or tension during the said period shall invariably compromise the well-being of the female individual.

The issue of menstrual leave, akin to maternity leave, is one of great sensitivity and significance. Whilst the duration of the cycle may be shorter than that of the maternity period, it is imperative to acknowledge the gravity of the pain, discomfort, and associated health issues that manifest within this condensed timeframe. These afflictions bear significant consequences that reverberate throughout one's professional or educational milieu. It is evident that women in the workplace currently enjoy the advantage of maternity leave as provided by The Maternity Benefits (Amendment) Act 2017 and other pertinent labour statutes. However, it is disconcerting to observe that the discourse surrounding the issue of menstrual leave remains inadequately acknowledged and deliberated upon. In the present matter, one must ponder upon the question of equity in relation to a woman's ability to undertake risks and arduous tasks amidst the considerable physical discomfort she experiences. Additionally, it becomes imperative to examine whether the proposition of a

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remunerated menstrual leave poses an impediment to the career progression of female employees, thereby potentially dissuading companies from engaging in their services. According to the esteemed feminist activist, Kavitha Krishnan, it is her contention that each time the government formulates a policy, it does so with the explicit intention of conferring advantages upon the male workforce. Both women and transmen experience the physiological phenomenon of menstruation, thereby necessitating a thoughtful examination of the matter pertaining to the implementation of menstrual leave. Many individuals espouse the cause of advocating for paid menstrual leave. Furthermore, it has garnered a substantial amount of criticism. Within the confines of this paper, we shall delve into the perpetual discourse surrounding the permissibility of granting menstrual leave within Indian workplaces, with a particular focus on its potential advantages for women. Additionally, we shall examine the current status of menstrual leave both within India and abroad, while also elucidating the importance of its necessity within the framework of our nation's labour laws.

Keywords: *Menstruation, Maternity benefit, menstrual leave, Labour laws*

I. INTRODUCTION

In the contemporary landscape of societal competition, it has become increasingly apparent that the prevailing paradigm is one of survival of the most adept, wherein individuals of both genders are actively participating in all realms of professional engagement. In the present era, it can be argued that there exists no task or endeavour that is beyond the capabilities of a woman. But women do have a certain biological process every month that leaves them with pain and discomfort that affects their well-being and the strength to take up challenging tasks. The assertion that menstrual leave has not been enacted as legislation in India is indeed accurate. Consequently, women persist in engaging in their daily pursuits while enduring a considerable degree of physical discomfort. It is a well-established principle that upon reaching the stage of puberty, every female individual experiences a recurring physiological process commonly referred to as the menstrual cycle, which typically spans a duration of approximately 28 to 32 days within each lunar month. The physical composition of each female individual is inherently distinct, and correspondingly, the severity of menstrual cramping experienced by each woman also varies. Not only do women experience the physical discomfort of menstrual cramps, but they are also burdened by the encompassing Pre-Menstrual Syndrome, which encompasses a myriad of health concerns and discomforts resulting from hormonal fluctuations. These include, but are not limited to, bodily aches, feelings of nausea, and erratic mood swings.

As per the authoritative guidance provided by the esteemed American College of Obstetricians and Gynaecologists, it is elucidated that a majority, exceeding fifty percent, of women who undergo menstruation encounter a sensation of discomfort lasting for a duration of either one or two days on a monthly basis. Furthermore, there exists a subset of individuals who endure an intense level of physical suffering, rendering them incapable of engaging in customary daily tasks until the aforementioned cycle of affliction concludes.

In the present matter, the extent to which a woman can perform her duties with proficiency during her menstrual cycle will invariably result in a diminished contribution to the overall productivity of the said day. On the contrary, it is my professional opinion that the implementation of a duly remunerated sabbatical would yield more favourable outcomes. According to an additional investigation conducted by the esteemed Endometriosis Society India, it has been posited that a staggering number exceeding 25 million women are afflicted by the debilitating ailment known as endometriosis. This particular condition engenders such excruciating menstrual discomfort that it may even result in women losing consciousness as a consequence². In light of the prevailing societal stigma surrounding the matter, it is not uncommon for women to exhibit a certain degree of reticence when broaching the subject of their physical discomfort and a corresponding need for respite within the professional sphere, particularly during their menstrual cycle. Furthermore, this situation engenders an additional apprehension for women, as employers may exhibit hesitancy in employing female individuals due to the apprehension of granting them leaves that could potentially impede productivity or sales, or due to the misguided notion that men may perceive this as a manifestation of the weakness inherent in women.

II. POSITION IN OTHER COUNTRIES

Numerous nations have implemented menstrual leave policies, which afford women the entitlement to receive remuneration during their menstrual cycles. The entitlement to receive remuneration for menstrual leave within these jurisdictions is perceived as a fundamental prerogative pertaining to the well-being and sanitation of women. In nations such as the United States, the United Kingdom, and Australia, the provision of menstrual leave is a conspicuously infrequent occurrence, with no corresponding legislative measures having been enacted thus far. In light of the following, it is worth noting that certain nations have indeed recognized the significance of paid menstrual leave as an entitlement for labourers, thereby enacting

² Shabnam Omidvar, Fatemeh Nasiri Amiri, Afsaneh Bakhtiari and Khyrunnisa Begum, A study on menstruation of Indian adolescent girls in an urban area of South India. doi: 10.4103/jfmpc.jfmpc_258_17

corresponding labour laws that duly acknowledge the unique circumstances faced by female workers. Several companies operating within the jurisdictions of the aforementioned countries³ have implemented a company policy wherein they provide their employees with the opportunity to avail of paid menstrual leave.

In the realm of labour rights, it is noteworthy to acknowledge that Japan, with its forward-thinking approach, implemented the concept of menstrual leave as an inherent entitlement within the industrial framework as early as the year 1947⁴. In accordance with the legal provisions at hand, it is incumbent upon us to recognize and uphold the right in question. Specifically, the law stipulates that it is impermissible to compel any female employee to engage in work activities during her menstrual cycle should she encounter any associated challenges or hardships.

In the jurisdiction of South Korea, it is incumbent upon us to acknowledge the existence of Article 73 within the framework of the labour standards law. This particular provision, in its wisdom, establishes the imperative of granting women a monthly respite, commonly referred to as physiologic leave, thereby affording them the opportunity to abstain from their professional duties for a single day.

In the context of Vietnam, it is noteworthy to highlight that the prevailing labour legislation in this jurisdiction stipulates a designated period of respite amounting to 30 minutes for each female employee during the course of their menstrual cycle. In light of a recent legislative reform in the year 2020, the labor law now encompasses a provision that affords employees the entitlement to a comprehensive three-day respite from work, wherein said leave is remunerated.

Indonesia, a nation of profound historical significance, stands as a testament to its progressive stance on labor rights. In the illustrious year of 1948, Indonesia emerged as one of the pioneering Asian countries to embrace the concept of menstrual leave, thereby demonstrating its commitment to the well-being and equitable treatment of its female workforce. The restructuring of the aforementioned entity occurred in the calendar year of 2003. Pursuant to the provisions set forth in Labour Act No. 13, it is incumbent upon employers to adhere to the legal requirement of granting paid leave to female employees during the initial two days of their menstrual cycle.

³ Employee wellbeing, From Japan to Zambia; the push for paid menstrual leave, Read more at: <https://hr.economicstimes.indiatimes.com/news/workplace-4-0/employee-wellbeing/from-japan-to-zambia-the-push-for-paid-menstrual-leave/91658204>

⁴ Labour Standards Law [Law No. 49 of 7 April 1947] <https://www.sconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

In the year 2015, Zambia enacted legislation that affords women the entitlement to a day of respite during the occurrence of menstruation, thereby obviating the need for any antecedent notification or medical attestation. The aforementioned measure was commonly denoted as 'Mother's Day.'⁵ in popular parlance.

In the year 2016, Sweden implemented a progressive policy wherein women are granted the opportunity to avail themselves of paid menstrual leave. This policy specifically caters to those women who endure the discomfort of cramps during their menstrual cycle, affording them the privilege of taking a respite for a duration of three days.

In accordance with the provisions set forth in Article 14 of the Act of Gender Equality in Employment at Workplace⁶, it is stipulated that employees are entitled to avail themselves of a day of leave during the menstrual cycle. However, it is important to note that during said leave, there shall be a reduction of 50% in the remuneration received by the employees.

In a significant development, Spain, on the auspicious date of February 16th, 2023, has emerged as the pioneering European nation to enact a legislation mandating the provision of paid menstrual leave to all women enduring acute physical distress. This progressive law grants women the entitlement to avail themselves of a period ranging from three to five days, during which they shall receive remuneration for their absence from work.

It is not solely the aforementioned nations that bestow the privilege of paid menstrual leave. In light of the absence of menstrual leave as a statutory provision within the labor legislation of the United States, it is noteworthy to observe that certain corporate entities, including Nike and Coexist, have taken it upon themselves to implement internal policies pertaining to menstrual leave.

NIKE - It is worth noting that Nike, a prominent sportswear brand with global reach, has notably incorporated a menstrual leave policy within its code of conduct as early as 2007. All business partners are legally bound to adhere to the aforementioned policy, a contractual obligation that is duly confirmed through the execution of a memorandum.

Coexist, an establishment situated within the esteemed community of Bristol in the United Kingdom, is the subject of discussion at hand. Coexist, as an avant-garde establishment within the United Kingdom, has boldly challenged the prevailing menstrual stereotype and taboo by pioneering the implementation of menstrual policies within the workplace. This commendable

⁵ The Employment Code Act, No.3 of 2019, <https://www.sconline.com/blog/post/2023/03/07/looking-beyondthe-law-the-case-of-menstrual-leave-in-india/>

⁶ The Employment Code Act, No.3 of 2019, <https://www.sconline.com/blog/post/2023/03/07/looking-beyondthe-law-the-case-of-menstrual-leave-in-india/>

initiative, rooted in a deep commitment to prioritizing the well-being of women, has effectively fostered an environment conducive to their health and flourishing within the realm of work.

La Collective, a French cooperative, has implemented a policy wherein female employees are granted a designated day of leave to accommodate their menstrual cycles.

The esteemed Australian Gender Equality Agency, specifically the Victorian Women's Trust, has implemented a commendable policy wherein female employees are granted a generous allocation of 12 days of remunerated leave to address matters pertaining to menstruation and menopause. On the one hand, it is worth contemplating the rationale behind the absence of legislative measures in India pertaining to menstrual leave, particularly in light of the country's labor force participation rate for female workers, which stands at an estimated 32.8%.⁷

III. POSITION IN INDIA

The Indian government, in its pursuit of enhancing female engagement within the labor force, has undertaken multifarious measures. The establishment in question has diligently implemented a multitude of policies and codes with the explicit intention of ensuring that female employees are afforded an equitable and congenial milieu within which to carry out their professional duties. In the illustrious legal precedent of **S. L. Bhagwati vs. Union of India and Ors.**,⁸ a seminal case that transpired in 1992, the esteemed Supreme Court rendered a verdict in favor of the rights of working women to be granted remunerated leave during their menstrual cycles, thereby affording them the opportunity to attend to their well-being. The esteemed Supreme Court, in its profound deliberations, has posited that women ought to be endowed with the prerogative of menstrual leave as an inherent entitlement, a notion that has been advanced since the year 1992. However, regrettably, the practical realization and enforcement of this principle have been lacking in efficacy.

The Code on social security in the year 2020 encompasses provisions pertaining to the disbursement of social security benefits in the event of infirmity, incapacity, childbirth, and other related circumstances. The Maternity Benefits Act of 2017 duly confers upon women the privilege of availing themselves of a period ranging from 12 to 26 weeks of remunerated leave, accompanied by supplementary maternity benefits. Unmarried women, as well as surrogate women, are both afforded the opportunity to avail themselves of the benefits associated with maternity leave. In the event of a miscarriage, it is imperative to note that a woman is entitled

⁷ Ministry of Labour and Employment, Labour Force Participation Rate (LFPR) of women shows an increasing trend as per the annual PLFS reports, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1908961>

⁸ 1989 AIR 2088, 1989 SCR (3)1010

to a period of paid leave for a duration of up to 45 days. This entitlement extends beyond the scope of maternity leave, thereby ensuring that appropriate support and time for recovery are provided to the affected individual. The provision of maternity benefits within the confines of the workplace assumes a paramount significance in the preservation and protection of the overall well-being and physical state of women. In the present matter, it is pertinent to note that even the biological phenomenon of menstruation possesses a direct correlation to matters concerning an individual's state of health. It is of utmost significance for women who experience profound anguish or in instances where women are afflicted with Polycystic Ovary Syndrome (PCOS) to diligently observe and adhere to a regimen of adequate repose.

In accordance with the provisions set forth in the venerable Factories Act of 1948, it is incumbent upon us to acknowledge that one of the principal objectives enshrined within said legislation is the provision of an environment conducive to the promotion and maintenance of optimal health and sanitation standards within the confines of the workplace. The aforementioned provisions encompass the establishment of distinct sanitation facilities and restrooms designated for women, the implementation of predetermined working hours for women, the allocation of a weekly day of respite for women, and the assurance of sufficient safeguards during nocturnal work shifts, among other measures. In the realm of labor, it is worth noting that there exist several other propitious legislative measures catering to the interests of women in the workforce. These include, but are not limited to, the Equal Remuneration Act and the Minimum Wages Act, among others.

IV. MENSTRUAL BENEFIT BILL, 2017

There has been considerable discourse surrounding the incorporation of menstruation policies into labor legislation; but, thus far, their implementation has proven unsuccessful in our nation. The Menstrual Advantages Bill 2017 was initially proposed by Shri Ninong Ering, a member of parliament, as a private member bill in the Lok Sabha. Its purpose is to establish provisions for women to get specific advantages related to menstruation in both workplace and educational settings. The Member of Parliament (MP) further proposed that this legislation would establish a working environment that is conducive to the well-being of women, as well as the implementation of labor regulations specifically designed to protect and promote the welfare of female workers. Section 2 of the aforementioned Bill delineates the broad scope of its applicability, encompassing all establishments within the territorial boundaries of India, including but not limited to mines, factories, companies, and self-employed individuals operating in unorganized sectors. This inclusive approach extends to establishments irrespective

of their ownership, whether they are privately owned or under government control. The proposed measure provides coverage for all female employees within the facility mentioned in the bill, as well as female students who are enrolled in classes above the 8th grade. The primary objective of the bill is outlined in section 4, whereby it grants women the entitlement to menstrual leave. This provision allows female employees to avail of a maximum of four days of paid leave during their menstrual cycle, in addition to any other benefits they may already receive. Nevertheless, in the event that a woman expresses a desire to engage in employment rather than taking time off, she is permitted to do so and is eligible to receive additional compensation for the extra hours worked, as determined by the established rate. This measure offers additional benefits to women, including a provision for a 30-minute break twice a day throughout their menstrual cycle for a duration of four days, as well as the availability of creche facilities. This legislation additionally grants every woman the entitlement, as outlined in section 8, to exercise autonomy over her own perception of menstruation, thereby enabling her to access the associated benefits.⁹

In the event that women encounter any challenges in accessing the advantages outlined in this legislation, they have the option to seek resolution by approaching the complaint committee established under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, or any other Grievance Redressal Committee. The legislation additionally stipulates that anybody failing to offer the benefits outlined in this law may be subject to penalties as outlined in section 10. The individual in question will face a sentence of incarceration ranging from a minimum of one month to a maximum of three months, in addition to a monetary penalty ranging from a minimum of ten thousand to a maximum of fifty thousand.

Although the measure in question was not deliberated upon, it was introduced at the Budget session of the Arunachal Pradesh Legislative Assembly in the year 2022. However, the bill was subsequently rejected on the grounds that menstruation was deemed a "unclean topic"¹⁰. Furthermore, despite garnering significant support, the bill faced opposition from various individuals, including women themselves. For instance, Priyanka Chaturvedi, the spokesperson for the Congress, expressed the view that exclusive policies aimed at promoting women's participation are unnecessary. Instead, she argued for the implementation of inclusive policies

⁹ Menstruation Benefit Bill, 2017. <http://164.100.47.4/billstexts/lsbilltexts/asintroduced/2651LS%20As%20In.pdf>

¹⁰ Akanksha Kuller, the unfortunate non-debate on menstrual leave in Arunachal Assembly, Read more at: <https://www.deccanherald.com/opinion/the-unfortunate-non-debate-on-menstrual-leave-in-arunachal-assembly1096126.html>

that provide equal opportunities, rather than making concessions based on biological differences.

V. OBJECTIONS AGAINST THE MENSTRUAL BILL

The implementation of menstrual leave may potentially impede inclusivity, as the provision of a four-day absence could result in women missing crucial meetings, struggling to meet performance targets, and experiencing a decline in productivity.

This circumstance may potentially engender a disincentive for employers to engage in the act of hiring female workers. The potential ramifications of their employment being contingent upon the concession of a four-day period are manifold, as it may adversely impact their prospects for advancement, active involvement, and remuneration.

A proposition for granting paid leave specifically for menstruation would inadvertently cast menstruation in the public eye as a malady or medical condition, rather than recognizing it as a fundamental and inherent biological process.

The subjective experience of pain varies among individuals of the female gender, and over the course of time, women have diligently persevered through such pain, steadfastly maintaining their commitment to productivity and the delivery of high-quality work. In the present scenario, it can be argued that a four-day absence from work can have adverse consequences on the individual's ability to retain their employment, impede their prospects for career advancement, and potentially impact their remuneration.

The aforementioned bill is in direct opposition to the principles espoused by the ideology of feminism, which advocates for the equitable treatment of individuals regardless of their gender. The provision of remunerated leave in response to a woman's physiological cycle may potentially engender a perception of vulnerability and inadequacy within the male workforce and employer community. The aforementioned circumstance may potentially give rise to a manifestation of gender bias within the confines of the professional environment.

VI. PUBLIC INTEREST LITIGATION FOR PAID MENSTRUAL LEAVE

In the month of January in the year 2023, a Public Interest Litigation (PIL) was duly submitted before the esteemed Supreme Court of India. The PIL was presented before a panel of three learned judges, namely Chief Justice of India D.Y. Chandrachud, Justice PS Narasimha, and Justice JB Pardiwala. The petitioner, Advocate Shailendra Mani Tripathi, sought the intervention of the court in directing the various state governments of India to formulate comprehensive policies pertaining to the provision of paid menstrual leave to female employees

and female students. The petitioner emphasized the necessity of adhering to the provisions enshrined in Section 14 of the Maternity Benefits Act of 1961. The counsel's contentions assert that the dismissal of Menstrual leave is in violation of Article 14, a matter that will be expounded upon in greater detail within the subsequent sections of this article. The PIL in question brings to light the rejection of the Women's Sexual, Reproductive and Menstrual Rights Bill¹¹, which, alongside the menstrual benefits bill, aimed to ensure that sanitary napkins are readily available to all women in their places of work or education. This bill, introduced by Dr. Sashi Tharoor in 2018, was regrettably dismissed, thereby underscoring the enduring societal stigma surrounding menstruation in Indian society. The PIL additionally references the Central Civil Services (CCS) leave rules, which have incorporated provisions for Child Care Leave, catering to both female and male employees (commonly known as paternity leave), enabling them to attend to the needs of their children until they reach the age of 18¹².

In a manner akin to the indispensable nature of maternity leave, the implementation of menstrual leave is equally imperative. It is incumbent upon a society predominantly governed by the male gender to grasp the arduous circumstances faced by women in the workforce. However, it is imperative to note that the esteemed Supreme Court, in its wisdom, deemed it fit to dismiss the Public Interest Litigation (PIL) on the grounds that the matter concerning paid menstrual leave is within the purview of the Union Government's jurisdiction, rather than falling under the purview of the judiciary. The court, in its wisdom, has directed the petitioner to duly submit a representation before the esteemed Union Ministry of Women & Child Development.

VII. CONSTITUTIONAL VALIDITY OF THE MENSTRUAL BENEFIT BILL, 2017

The concept of menstrual rights, while not explicitly recognized as a fundamental right, falls within the purview of the right to health. It is pertinent to note that Article 39(e) of the Directive Principles of State Policy mandates the states to guarantee the health and safety of workers, irrespective of gender. Henceforth, it is imperative to engage in a discourse pertaining to the persisting matter of menstrual leave and the inherent entitlements that accompany it.

1. Article 14

According to Article 14¹³ of the Indian constitution, the state cannot deny anyone the right to equality before the law or equal protection of the laws within India. The legislation requires authorities to treat citizens equally and offer equal protection and equality before the law.

¹¹ THE WOMEN'S SEXUAL, REPRODUCTIVE AND MENSTRUAL RIGHTS BILL, 2018
<http://164.100.47.4/billstexts/lsbilltexts/AsIntroduced/2271as.pdf>

¹² Rule 43-C of the Central Civil Services (Leave) Rules, 1972

¹³ INDIAN CONST Art.14 "right to equality".

Article 14 does not mandate equal legislation for men and women. If an exclusive law is necessary for protection and benefits society, it does not violate article 14. A menstrual leave cannot be considered discriminatory because women and men have biological differences. The Maternity Benefits Act 2017 is unique to women due to the unique circumstances of motherhood. Since menstruation is a biological condition exclusive to women and transgenders, the Menstrual Benefits Bill is considered discriminatory. Article 14 emphasizes equitable treatment in equal conditions, not unequal ones. In 1974, the Supreme Court ruled in **E.P. Royappa v. State of Tamil Nadu**¹⁴ that the right to equality is dynamic. The constitution clearly allows the state to create legislation for the safety and empowerment of women and children. Dismissing the Menstrual Benefit Bill 2017 would violate the right to equal treatment. A right to paid menstrual leave is a basic health and welfare demand for women, given the discomfort and anguish associated with menstruation and its unique circumstances in the workplace.

2. Article 15(1)

According to Article 15(1) of the constitution, the state cannot discriminate against citizens based on religion, race, caste, sex, or place of birth.

Article 15(3) of the constitution allows for particular laws to safeguard women and children. The Supreme Court supported this in Government of **Andhra Pradesh vs P.B. Vijayakumar & Anr, 1995**¹⁵. The article highlights legislation that supports working women, including the Maternity Benefits Act 2017, Sexual Harassment of Women at Workplace Act 2013, and Equal Remuneration Act 1976. The necessity for paid menstruation leave does not infringe article 15(1), as do these laws. Paid menstrual leave recognizes women's efforts at work despite pain, promoting their involvement and safeguarding their health and cleanliness.

3. Article 21

Indian Constitution Article 21¹⁶ guarantees life and personal liberty¹⁸. The right to life encompasses various rights, including health, education, shelter, privacy, pollution-free air and water, social justice, economic empowerment, workplace hygiene, and leisure. Therefore, the right to health is integral to the right to life. According to **Consumer Education and Research Centre V UOI**¹⁷, the Supreme Court recognized the right to health and medical aid for workers during or after retirement as a basic right under article 21 of the Constitution. During

¹⁴ 1974 SCC (4) 3

¹⁵ 1995 SCC (4) 520

¹⁶ INDIAN CONST Art.21 "right to life"

¹⁷ 1995 SCC (3) 42

menstruation, encouraging a woman to work with pain and suffering violates her right to health under article 21 of the constitution. Additionally, few employers offer sanitation, separate restrooms, clean working conditions, or menstrual alternatives. The impact is a violation of women's menstrual health while working.

VIII. CRITICISMS

The primary issue at hand regarding the contentious matter of women who oppose the concept of menstrual leave pertains to the potential ramifications of reduced recruitment of female employees, hindered career advancement opportunities, and the perceived contradiction with feminist principles, as it may inadvertently perpetuate gender-based prejudice. Certain individuals of the female gender hold the belief that the introduction of a distinct legislative measure pertaining to menstrual leave would serve to reinforce the perception of menstruation as an ailment or predicament, rather than recognizing it as a customary biological occurrence. The individuals in question propose that, in the context of remunerated menstrual leave, the option to engage in remote work may be considered if the nature of the occupation permits such arrangements. Alternatively, a day of absence may be deemed appropriate. It is worth noting that the provision of three to four working days of compensated leave could potentially dissuade employers from actively seeking to employ female personnel.

The proponents of the bill perceive it as a progressive measure aimed at recognizing and destigmatizing the concept of menstruation, thereby fostering an environment where open discussions on the subject are no longer considered taboo. In accordance with the assertions made by Mariam Dhawale, the esteemed general secretary of the All-India Democratic Women's Association (AIDWA), it is imperative that due consideration be given to the needs of women in the formulation of policies, particularly in instances where they are actively engaged in socio-economic endeavors. This is owing to the undeniable reality that the physical condition of being a woman is an inherent aspect that cannot be disregarded or evaded.¹⁸ According to a study, it has been observed that a significant percentage ranging from 45% to 95% of women experience dysmenorrhea, mood swings, and a lack of concentration during their menstrual cycle.¹⁹ These factors have been found to have a profound and detrimental effect on their overall productivity. In the present matter, it is advisable to consider the implementation of a menstrual leave provision within the framework of labour legislation. This proposition

¹⁸ Samriddhi Sakunia, *Why Period Leaves are Necessary and Need Policy Intervention*, <https://theleaflet.in/whyperiod-leaves-are-necessary-and-need-policy-intervention/>

¹⁹ Sonia Ponzio, Aidan Wickham, Ryan Bamford, Tara Radovic, Liudmila Zhaunova, Kimberly Peven, Anna Klepchukova, and Jennifer L Payne, *Menstrual cycle-associated symptoms and workplace productivity in US employees: A cross-sectional survey of users of the Flo mobile phone app*, Doi: 10.1177/20552076221145852

stems from the recognition that engaging in work during the menstrual cycle can have a discernible impact on productivity, thereby undermining the efficacy of said work. Furthermore, in light of the fundamental entitlement of each individual to the preservation of their well-being and the pursuit of a life characterized by respect and honor, it becomes imperative for the governing authorities to confront the matter of menstrual leave policies within the framework of labour legislation.

IX. CONCLUSION

In a nation where the topic of menstruation remains a societal taboo even in contemporary times, the introduction of the menstrual bill in the year 2017, despite its subsequent dismissal, has undeniably fostered a heightened consciousness surrounding matters pertaining to menstrual health and the predicaments faced by women in both professional and educational settings. Whilst the highest court of the land has indeed recognized the right to health as a fundamental right enshrined within Article 21 of the constitution, it is regrettably conspicuous that the aforementioned court has chosen to remain reticent on the issue of effectuating the provision of menstrual leave. The aforementioned discourse has elucidated the dualistic nature of the introduction of menstrual leave, wherein its advantages and disadvantages have been expounded upon. It is worth noting that notwithstanding the observed rise in literacy rates and the commendable decline in female infanticide, there has been a persistent decline in the female labour force from 2004 to 2018, with figures dropping from 42.7% to 23.3%. This decline may plausibly be attributed to the presence of unsatisfactory and inhospitable working environments that lack fundamental amenities necessary for the health and safety of women. In light of the aforementioned circumstances, it is arguable that the implementation of a remunerated menstrual leave policy could serve as a viable solution to address the prevailing issue of declining workforce participation and absenteeism among female employees. Such a measure would not only afford a favorable prospect for fostering a congenial and equitable work environment, but also contribute to the amelioration of prevailing challenges.
