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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **MENSTRUAL LEAVE FOR WOMEN IN INDIA:** **LAW AND POLICY**

AUTHORED BY - DR. VIKAS POONIA<sup>1</sup>

## **ABSTRACT**

Menstruation is a biological process that occurs every month for most teenage girls, women, transgender people, and those who identify as non binary. Even though menstruation is a perfectly normal bodily function, it is cloaked in taboo because of the negative impression. Menstruating women are discouraged from using necessary goods like sanitary napkins, pads, and cups because shame is essential to periods in our society. Most women endure excruciating cramping on the first day of their periods. First-day-of-period leave is an essential notion in this debate. According to World Health Organization (WHO) menstrual hygiene as “the articulation, awareness, information, and confidence to manage menstruation with safety and dignity with adequate water, agents, and spaces for washing and bathing, and disposal with privacy and dignity”. The "Menstruation Benefits Bill, 2017" is discussed in detail in this paper. A correct direction may be a law forcing all organizations to give menstrual leave or period leave. The menstruation benefits law aims to give women two paid days of menstrual leave per month in the public, private sectors and 8<sup>th</sup> class girls and improve facilities for menstrual rest in the workplace. Menstruation leave is paid or compensated in several other nations, including the developing and developed country. A doctrinal basis study is used in this research paper. The bill's advantages and disadvantages are discussed also.

**Key Words:** - Menstrual Period, Leave, Law And Policy, Bill.

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## INTRODUCTION

"Agreed, women can achieve the same things as men with patience and hard work, and our gender does not have to prevent us from achieving our professional aspirations." On the other hand, periods are a fact of life. " Indira Nooyi serves as President and CEO of Pepsico.

Female labor force participation has been declining alarmingly in India. Women in India face various barriers on their path to work and independence, including engrained gender conventions, cultural worries about women seeking jobs, and so on. Inadequate sanitation and hygiene and a lack of access to water are significant barriers for disadvantaged women. Due to societal limitations, women in India are less educated than men. As a result, employment opportunities in the future are severely limited.

In 2017, India's female labor force participation rate (FLFPR) fell lowest since independence. According to the World Bank, India has one of the lowest FLFLPRs globally, except in some parts of the Arab world (World Bank, 2017). The service sector has grown in importance for urban women, growing from 35.7 percent in 1977-78 to 60.7 percent in 2017-18. Historically, women have concentrated in low-wage industries such as teaching and nursing, which provide little promotion chances. Compared to men, neither urban nor rural women significantly increased their engagement in the secondary sector. Menstruation is also a significant barrier for women in highly educated settings. While menstruation may be a pleasurable and natural process for some women, others struggle with severe conditions such as PCOS, PCOD, and ovarian cysts. Pregnancy-related benefits and paid maternity leave are now available, but both are woefully inadequate. As a result, in addition to modifying institutional help for maternity-related problems, paid menstrual leave should be adopted to encourage women to enter the formal labor market. Additionally, businesses must be incentivized to recruit women via these programs.<sup>2</sup>

A woman's decision to work is significantly influenced by her familial, marital, educational, and social status. Women seldom decide to continue working alone daily.<sup>3</sup> As a result, targeted initiatives by all major stakeholders - the government, corporate sector, media, and civil society – are necessary

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<sup>2</sup>Nikore, Mitali. "Where are India's working women." Irrational Economics| Lifestyle, the times of India. Date (2019).

<sup>3</sup> Nikore, Mitali. "Where are India's working women? The fall and fall of India's female labour participation rate." London School of Economics South Asia Blog, Retrieved from <https://blogs.lse.ac.uk/southasia/2019/10/22/where-are-indias-working-women-the-falland-fall-of-indias-female-labour-participation-rate> (2019).



to increase women's participation in and retention in the labor force. Menstruation is a factor that affects women's ability to work. Menstruation still has a significant stigma in India, with women lacking basic hygiene training and being ignored at that time.<sup>4</sup>

Female students at an institute in Bhuj, Gujarat, were recently scrutinized by teachers to see if they were on their periods. The hostel warden complained to the principal that some of these students had violated hostel regulations or conventions by entering the kitchen, touching other guests, and violating the shrine.<sup>5</sup> Even though we live in the twenty-first century, these norms are scrupulously adhered to. Ironically, the older female household members impose comparable restrictions on the younger female members. Surprisingly, this occurred in a classroom environment.

The paper will examine the benefits of menstrual health and paid menstrual leave, as well as international best practices. It will conclude with a policy framework for India to emulate other developed countries to increase efficiency and eliminate gender discrimination in the workplace and employment.

## **IN HISTORY, A MENSTRUAL LEAVE**

In India, business strategies and programs have shifted to a maternity-centric approach. The Maternity Benefits Act requires women to take paid maternity leave throughout their pregnancy and immediately following childbirth. Even so, though, such initiatives are lacking. The Maternity Act (Amendment) 2016 places the whole expense of maternity leave squarely on employers, deterring women from entering the formal sector. Additionally, gender-related policies get less than 1% of the government's budget, illustrating the lack of resources to execute regulations. To address this issue, the government is considering establishing the Maternity Leave Incentive Scheme, which would reimburse employers for seven weeks' wages if they recruit women earning up to INR 15,000.00 per month and provide them with 26 weeks of paid maternity leave.<sup>6</sup>

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<sup>4</sup> Swani, Rehmata. "Labor Resilience: Paid Menstrual Leave and Women's Economic Empowerment in India." *International Journal of Social Science and Economic Research* 5 (2020).

<sup>5</sup> saumya rastogi, it's 2020 and menstruation still remains a huge taboo in india, she the people (oct. 5,2020, 10:30 am), <https://www.shethepeople.tv/top-stories/opinion/menstruation-taboo-india-gender-issues/>

<sup>6</sup> Swani, Rehmata. "Labor Resilience: Paid Menstrual Leave and Women's Economic Empowerment in India." *International Journal of Social Science and Economic Research* 5 (2020).

There has been some debate and discussion in India about overpaid menstrual leave. The Menstruation Benefit Bill, sponsored by a Member of Parliament from Arunachal Pradesh, has produced no practical results or further discussion about its implementation. Menstrual leave is currently available to employees in several countries. In 1947, Japan passed a law allowing women suffering from severe menstruation to take days off work.<sup>7</sup> Similarly, South Korean women began receiving menstrual leave in 2001. Nike and other firms have adopted similar policies. Indonesia, South Korea, and Taiwan all have policies comparable to Indonesia's.<sup>8</sup> These policies do not exist in Europe or the United States, and efforts to enact them have been met with fierce opposition. Since 2015, women in Zambia have been legally entitled to one day off each month, called "Mother's Day," due to their menstrual leave legislation. If a female employee is denied access to this policy, she has the right to bring a lawsuit against her employer. This practice is enshrined in South Africa's labor regulations.<sup>9</sup>

In India, the state of Bihar has granted two days of paid vacation to female employees since 1992. Women are allowed to work on whichever two days of the month they like without defending their choice. A few private companies, such as Culture Machine, a media organization located in Mumbai, have just begun to provide menstrual leave.

Consequently, despite some concerns that menstrual leave is condescending or demeaning to women, it will benefit many women and ensure their equal and complete participation in the labor force. Additionally, it contributes to reducing menstrual stigma and promotes free dialogue in a formal setting. It would also alleviate discrimination against women who cannot optimally due to menstrual-related health difficulties. While one may argue against the necessity of a period leave policy, the problem with these arguments is that they only reinforce long-held stereotypes and contribute little to advancing the gender equality discourse constructively and equitably.<sup>10</sup>

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<sup>7</sup> pathak et al, , "the maternity leave incentive scheme, 2018: blessing in the pipeline for working women in india", india corporate law, retrieved from <https://corporate.cyrilamarchandblogs.com/2018/11/maternity-leave-incentive-scheme-2018-blessing-pipeline-working-women-india/> 2018

<sup>8</sup> prasad, u. "india needs a menstrual leave policy", hindu business line, retrieved from <https://www.thehindubusinessline.com/opinion/india-needs-a-menstrual-leave-policy/article24105589.ece> 2018

<sup>9</sup> worley, w. "the country where all women get a day off because of their period", independent, retrieved from <https://www.independent.co.uk/news/world/africa/zambia-period-day-off-women-menstruation-law-gender-womens-rights-a7509061.html> 2017

<sup>10</sup> prasad, u. "india needs a menstrual leave policy", hindu business line, retrieved from <https://www.thehindubusinessline.com/opinion/india-needs-a-menstrual-leave-policy/article24105589.ece> 2018

## **LEAVE FOR A PERIOD THAT IS CONSTITUTIONALLY VALID.**

Any Bill that the Legislature desires to examine must be legally sanctioned and constitutionally legitimate. The Menstruation Benefit Bill was tabled in the Lok Sabha in 2017. (Lower House of Parliament). People around the country are discussing whether such a provision is permissible, if it is discriminatory or whether the bill is constitutionally defective. To prevent the challenged legislation from being discriminatory or impeding equality, Article 15 of the Constitution prohibits the state from discriminating against a citizen-based on religion, race, caste, sexual orientation, place of birth, or any combination of these characteristics. Clause 3 of Article 15 (Article 15(3)) contains an exemption to the law, which states explicitly that nothing in Article 15 precludes the state from passing special laws or regulations for the protection and nurturing of women and children in society. The legislation argues that a woman's physical structure and ability to perform parental duties disadvantage her in the struggle for life. Therefore, her physical well-being becomes a public responsibility to protect her strength and vitality.<sup>11</sup>

The Directive Principles of State Policy, often known as the state's aims, are contained in Part IV of the Indian Constitution. In other words, every policy must be developed, keeping in mind the Directive Principles of State Policy. While these are not basic and are not legally enforceable, they are crucial in developing legislation and policy architecture. Although the provisions of this part are not enforceable by a court, the concepts set out therein are vital to the country's government, and it is the state's responsibility to respect these principles when enacting legislation, as provided for in Article 37 of the Indian Constitution.<sup>12</sup>

## **MENSTRUATION BENEFITS BILL 2017**

This is a private bill introduced in January 2017 by Congress Member of Parliament Ninong Ering, who represents Arunachal Pradesh in the Lok Sabha. The bill's objective is to provide women working in the public and private sectors with two days of paid menstruation leave and some workplace rest facilities. This type of paid menstruation leave has been adopted in several countries to empower women. However, this bill was not implemented in India due to several concerns.<sup>13</sup>

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<sup>11</sup> Muller v. Oregon, 52 l.ed. 551

<sup>12</sup> indian constitution. art. 32

<sup>13</sup> <https://www.ijalr.in/2020/08/menstruation-benefit-bill-2017.html> accessed 2 march 2022

## **BACKGROUND OF THE BILL**

As previously noted, Ninong Ering, an Arunachal Pradesh Congress Member of Parliament and Lok Sabha Member of Parliament, proposed the menstruation benefit bill in 2017. Erin enquired in the Lok Sabha if the ministry of women and children's development had made any preparations for the notion of paid menstrual leave, to which the ministry answered that they had not, instead outlining several awareness-raising implications for teenage girls. Erin then made his presentation of the measure. Additionally, he added that period discomfort is "almost as severe as having a heart attack" and that there is a rising need in India for stricter female labor restrictions, implying that this policy may contribute to developing a more women-friendly environment.

Private legislation is legislation presented by a member of parliament who is not a minister, and the majority of these pieces of legislation have not yet been implemented. A private bill may be introduced by either the ruling or opposition party.<sup>14</sup>

### **The fundamental objective of the Act**

India's demand for stricter labor laws has gained popularity, allowing women to work in a more comfortable environment. Menstrual leave has been one of the most requested types of paid leave for women. Females also require rest periods or menstrual breaks and enough resources to provide a safe work environment for women. The media and civil society organizations are increasingly addressing menstrual difficulties via campaigns and petitions for menstrual leave.<sup>15</sup>

### **Significant provisions of the bill**

Ninong Ering, an Arunachal Pradesh Lok Sabha Member of Parliament, proposed the Menstruation Benefits Bill as a private member's bill in 2017. It is a law that would provide facilities for female employees at their places of employment during menstruation and other associated difficulties. The measure includes a section on gender-sensitive employment.

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<sup>15</sup> menstruation benefits bill 2017

### **Appropriateness of the Act**

Section 2 of the Bill deals with the Act's application. The Act is stated to apply to the following: Each establishment, whether public or private, such as a factory, mine, or plantation. This also applies to firms that employ personnel who perform equestrian, acrobatic, or other activities. Every business or facility that hired or employed ten or more people on any given day throughout the preceding twelve months.

Self-employed individuals and those working in the unorganized sector often have less than ten workers.<sup>16</sup>

### **Menstrual leave is a protected right under federal law.**

This clause entitles women to paid leave throughout their menstrual cycles. Women who work in registered establishments or are students in or above Class VIII are entitled to a four-day paid vacation or absence from school during menstruation. However, if a woman decides to work rather than take paid leave, she may do so and will be entitled to statutory overtime pay.<sup>17</sup>

### **Additionally, the Bill of Rights includes**

Any woman employed in a business is entitled to a 30-minute break twice daily during her menstruation. However, such rest periods cannot exceed four days in any single cycle. Additionally, the bill requires all businesses with 50 or more employees to provide a creche, either separately or in conjunction with other facilities. The establishment is expected to inform the lady of these advantages in writing or electronically during the initial meeting with the institution.<sup>18</sup>

the Act acknowledges menstruation. It states that all women must have the right to self-perception of their menstruation to qualify for the bill's benefits. Suppose a woman has difficulty utilizing the benefits provided by this bill. In that case, she may seek redress from the Internal Complaints Committee established under the Sexual Harassment of Women at Workplace (Prevention,

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<sup>16</sup> Section 2

<sup>17</sup> Section 4

<sup>18</sup> Section 5

Prohibition, and Redress) Act, 2013, or any other comparable grievance redressal committee established in the establishment.<sup>19</sup>

### **Punishment**

The bill details the consequences of non-compliance with the bill's requirements. Whoever:

It denies a female employee leave for menstruation.

It disallows a woman to take her monthly break.

Refuses to grant the bill's request for a break period or recreational facilities.

According to the bill, this is a crime. According to the law, such a person faces a minimum of one month in prison and a maximum of three months in prison, and a fine of not less than ten thousand rupees or fifty thousand rupees.<sup>20</sup>

### **Menstrual Leave: What Is Its Significance?**

Culture Machine, a media company, developed a menstrual leave policy that allows female employees to take one day every month. Another media company, Gozoop, quickly followed suit. It is critical to note that both of these firms are Indian, indicating that the country's enterprises have begun to provide a healthy work environment for their employees and enforce labor regulations in a gender-neutral manner. Even Bihar permits women to take two days off for menstruation under 'Special Casual Leave.' All of this serves to remind the country that menstrual leaves are not unheard of in India.

Menstruation is a natural biological process that helps maintain a woman's body healthily. However, it is accompanied by agonizing agony and anguish. Nausea, fever, weakness, lack of focus, exhaustion, and poor emotional control are just a few of the unpleasant symptoms that might impair a woman's performance. Certain ladies are on the edge of fainting due to their extreme circumstances. This needs government recognition so that all employees, even female ones, feel valued. While not all women experience this agony and suffering, the majority do, which is critical for the government to consider when enacting legislation.

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<sup>19</sup>Section 8

<sup>20</sup> Section 10

A business that puts its employees' needs first will have happy employees, which will boost the organization's overall efficiency. Consequently, a menstrual benefits bill in the long term will benefit both the employer and the employee. The government must develop a framework for gender equity in the country, and this measure is a necessary starting step. As a result of this, inclusion and advancement are conceivable.

### **Objections to the Bill's**

Even though the Menstruation Benefits Measure was introduced for various reasons, the government is hesitant to enact the measure owing to broad opposition, including some from women themselves. There have been various disagreements about whether or not to enact the bill, and opponents have presented several critical arguments. Take into account all of the criticisms leveled regarding the bill's implementation:

**Inhibiting inclusion:** The rule may prove to be a futile attempt at female inclusiveness, as it will result in women working four fewer days per week. This might be detrimental to women since they may miss critical meetings, make poor judgments, and fall behind on their work. Congresswoman Priyanka Chaturvedi stated that women's participation could not be ensured by enacting exclusive regulations but rather by enacting inclusive ones that allow women to blend in. Equal opportunities, not biological concessions, should be requested.

**Gender Bias:** Some women fear that such a law may subject them to discrimination in the workplace. Because enterprises would be required to grant more leave to women, this law may result in gender bias in the hiring process, as businesses will prefer males over females. Even while working, women may have delayed advancements, less engagement, and lower incomes than their male colleagues. This might result in their workplace alienation in the worst-case situation.

**Menstruation as a disease:** The legislation directly violates women's primary demand that menstruation is considered a normal biological phenomenon. The bill's contents imply that menstruation is a disease or condition requiring women to take time off. This will increase, rather than eliminate, the centuries-old taboo around menstruation.

**This is not a universal issue:** menstruation affects them uniquely because all women have unique harmonic systems. Some women may have no menstrual symptoms, while others may have significant discomfort. As a result, if the law permits, a woman who does not experience monthly discomfort may take menstruation leave. The majority of women can perform their jobs to their full capabilities throughout menstruation.

Apart from the possibilities specified in the bill, the government may pursue a range of other options. Companies may allow women to work from home for a day or two during their menstrual cycle. This will not jeopardize their careers and take their health concerns into account. Businesses that cannot offer work-from-home opportunities may take one day off rather than four. Opponents contend that eliminating sanitary napkin taxes would be more practical and make them more affordable for women.<sup>21</sup>

## **SCENARIO INTERNATIONAL FOR MENSTRUAL LEAVE POLICY**

For the first time in an extended period, Communist Russia embraced menstruation leave following World War I. The Russian system was in use during the 1920s—women laborers sought its abolition since it was no longer essential, and as a result, firms chose "less expensive" and "more solid" male personnel (occasionally terminating female specialists and replacing them with men). Japan made menstrual abstinence a public policy following WWII. In the mid-1950s, Indonesia and South Korea (still a part of the Japanese Empire) took appropriate measures. The fact that excessive labor can occasionally result in a missed or postponed monthly cycle was used to argue that specific industries were inappropriate for women or that women required a few days off during their period "for public wealth." As a result, menstrual leave evolved into a form of protective 'parenthood.' In a few countries, women were forced to retire upon marriage and were prohibited from working night shifts or jobs deemed too dangerous or unsuitable for them. Since the 1970s, East Asian menstrual leave regulations have been supported because they aid women experiencing severe period discomfort or excessive leakage rather than focusing exclusively on public fertility.<sup>22</sup> Taiwan, for example, enacted the

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<sup>21</sup> <https://blog.ipleaders.in/should-the-menstrual-benefit-bill-be-passed/>

<sup>22</sup> priya bhalerao and aayush shah, menstrual leave – regressive or progressive? international journal of law management & humanities [issn 2581-5369] volume 3 | issue 5 2020



Gender Employment Act in 2002, enabling women with severe menstrual symptoms to request one day of leave per month. Certain countries provide unpaid menstruation leave or compensate for it via rules. Given that one in every five women feels significant menstrual discomfort that impairs daily activities, several countries, including the following, provide paid menstrual leave:

- a) In 2003, Indonesia approved legislation consolidating many of the country's fundamental labor standards, overriding or replacing several previous laws and regulations. Despite requests for women to be excluded, it contained passages ensuring their special protection. According to Article 81, 'Female workers/laborers who report experiencing discomfort during their menstrual cycle are not required to report to work on the first and second days of menstruation (1).'<sup>23</sup>
- b) In South Korea, women who take menstrual leave but do not use it are compensated.
- c) Three days of sick leave each month are not considered ill in Taiwan. In 2002, Taiwan's Act on Gender Equality in Employment was amended to include menstrual leave, enabling female representatives to request time off for menstruation.
- d) Each month, Zambian women are permitted one day off. Zambian women are entitled to one day of menstrual leave every month. Mother's Day is named because it celebrates women's capacity to become mothers.
- e) In 2017, Italy introduced a measure in parliament establishing a Menstruation Leave Strategy, which would require employers to provide three paid days per month to female employees experiencing painful periods if a clinical declaration from a specialist is presented.
- f) In Mexico, women who work in government courts are entitled to one day of menstrual leave if they are experiencing significant problems. However, the agreement does not specify whether this day is provided once a year or once a month.
- g) In Chile, a bill is being introduced to allow women diagnosed with endometriosis or dysmenorrhea to take paid leave.
- h) They have expressly stated Article 68 of their labor laws that Article 68. When a woman asks to leave because working during her menstrual period would be highly inconvenient, the employer shall refrain from hiring her on menstrual period days.<sup>24</sup>

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<sup>23</sup> kuntala lahiri-dutt and kathryn robinson, 'period problems' at the coal face, 89 fr 108 (2008) [https://crawford.anu.edu.au/pdf/staff/rmap/lahiridutt/ja3\\_kld\\_robinson\\_period\\_problems.pdf](https://crawford.anu.edu.au/pdf/staff/rmap/lahiridutt/ja3_kld_robinson_period_problems.pdf)

<sup>24</sup> labour standards law (law no. 49 of 7 april 1947) <https://www.ilo.org/dyn/natlex/docs/webtext/27776/64846/e95jpn01.htm#a064> accessed 3 march 2022

Similar policies do not exist in Europe or the United States of America, where introducing them is underway.<sup>25</sup>

## CONCLUSION

Everything should not be examined through the premise that women should be treated similarly to men everywhere. Men and women are naturally unique from one another and should never be compared in any way. Simultaneously, 90% of women have some discomfort during their periods, and the majority also experience dysmenorrhea, a severe disorder. Periods should not be considered an illness since they are a natural occurrence of the human body. This is not an embarrassing situation because it is a normal part of any woman's life. Awareness exercises might be devised to fight conventional thinking. India is not an exception to this rule. Numerous nations, including India, grant menstruation leave. Women will be granted ten days of menstrual vacation each year, Zomato, a food delivery business, announced recently. Furthermore, why not another bodily process called menstruation, when women's rights legislation such as the Maternity Benefit Act has emphasized gender equality, gender inclusion, and gender sensitization? This measure must be passed to ensure that women attain their full potential.

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<sup>25</sup> prithivi raj, antra pandit, implementation menstrual leave policy in india: an empirical study, nat. volatiles & essent. oils, 2021; 8(5): 2317-2322