

# WHY MENSTRUAL LEAVE POLICY IN INDIA? - A SOCIO-LEGAL ANALYSIS

Maria Binny Palamattom \*

## Abstract

The demand for menstrual leave policy had been prevalent since 1920s. The requirement of the policy earns further emphasis when there requires the need to improve female reproductive and menstrual health especially when they work in the job sectors where manual work caters as the form of employment and only mode of sustenance. The policy consists of notable historical background and effective applicability which arises the hope of a fruitful policy formulation in a nation like India. The policy is sought to be introduced for the betterment of employment atmosphere for the female workers especially during their menstruation such that they are not exposed to unhealthy and unhygienic work environment. The labour codes are sought to undergo necessary insertions such that a short term leave during the menstruation of female workers monthly. However, the policy development also receives numerous criticisms in many grounds. The existent adaptation of the policy at a grass root level also seeks to be a guideline with respect to their feasibility and acceptance. Therefore, there is a need to develop the policy in a manner such that it doesn't permit exploitation or misuse in any manner but assist in a progressive and developed society such that the labour laws undergo scrutinizes which ensures the accommodation of provisions that can create better working conditions and healthy premises which ensures maximum productivity and contribution. Irrespective of the presence of the policy in several nations across the Globe, the need for the policy is continues to remain as an untouched requirement irrespective of the numerous policies that are introduced for the better living conditions of women. Statistically, 20% and above population of women face extensive pain and other ailments during their menstruation and others are left unnoticed. This often leads to serious health hazards. Moreover, the legislations in most of these countries look forward to an increased productivity and reduced absenteeism from the workforce. India, being one among the countries with the existent stigmas on Menstrual Period where the step towards Menstrual Leave Policy can profoundly become a historical step towards the betterment of women along with other policies and legislations inclusive of Maternity Leave and benefits.

**Key Words:** Menstrual Leave, Legislation, Sexism, Labour Code, Human Rights, UNFPA, Corporate Policy, Menstrual Stigma, Women Empowerment, Absenteeism

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\* Student, Christ (deemed to be university), Bengaluru.

*“Women have a predestination to suffering.” – Bela Lugosi*

## 1. Introduction

The deliberations and debates for the introduction and application of menstrual leave policy for the job sectors in India had been undergoing since time immemorial. The need for the policy at the workplaces for women gets important due to numerous reasons. This is inclusive of various reasons such as Physical ailments, Hormonal Imbalance, Absenteeism, Stigmas and Taboos attached to menstruation and the list goes on. However, the need for the policy left unnoticed and untouched at a considerable level even when India has undertaken notable steps towards the policy from the past however only at grass root level.

The feasibility, applicability, benefits, concerns, plausibility, necessity and other ground level issues can only be possibly addressed with the help of a socio-legal analysis of the nations, organizations and other institutions where the policy has become a reality and thereby employs effectively with the versatile work environments.

This is also associated with the comparative analysis with the work environments and societal backgrounds as well. Apart from the numerous positive impacts the policy can create, the number of criticisms the policy formulation has undergone shall also be scrutinized. This includes the possibility of misuse of leaves, Sexism, Inequality, Economic loss to the institutions etc. which seeks for an overview to the

need for the policy enactment in India duly countering them with the existent criticisms.

## 2. Historical Overview

The Menstrual Leave Policy consists of a prominent and noteworthy historical background dating back to 1920s. The Bolshevik Revolution that took place in Russia, in consideration of the need to ensure sexual equality, the way adopted towards this move was the recruitment of women in equal numbers to the labour force. Therefore, in association with the surveys undertaken on the working environment and needs of women at their work places, there arose an ardent need for *Protective Labour Legislations* and moreover the need to accommodate the biological constitution and function<sup>1</sup> to ensure *equity over equality or both hand in hand*.

Hence, any debates on the need to establish the leave policy cannot ignore the insights from the new Soviet Society and its emphasis on Sexual Equality and well being the workplace. This was notably in considerate to the women workers involved in the lifting and carrying of weights in the presence of excessive bleeding and muscle cramps during their menstruation. Thence, this initiative is identified as the core reason behind the development and adoption of short term monthly paid menstrual leave for women such

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<sup>1</sup> Melanie Ilic, *Soviet Women Workers and Menstruation: A research note on Labour protection in the 1920s and 1930s*, 46 EUROPE ASIA STUDIES 1410, 1409-1415 (1994).

that they are ensured of not being deprived of their basic requirements of menstruation.

They were identified to have exposed to greater difficulties irrespective of their physical inconvenience, existent during their menstruation. The numerous surveys and related findings led to the People's Commissariat of Labour (Narkomtrud) where the issues regarding the health of female workers between the age of 14-18 years in metallurgical industry exclusively. Therefore, the emphasis on the need to initiate Protective Labour Legislation led to a legislative backing back up the paid leave during menstruation in early 1930s. The Bolshevik revolution therefore precisely addressed the need to incorporate the specific requirements for women in their working environment with reference to their menstrual hygiene and reproductive health. Therefore, a paid leave of 2-3 days per month for the female workers was enacted during the early 1930s<sup>2</sup>. The developments that had occurred in Bolshevik Russia were followed by the numerous changes those were duly adopted in several other European and Asian countries.

### 2.1. Developments in Japan

Japan introduced its policy on Menstrual Leave in 1947 with the realization of the need to prioritize reproductive and menstrual health of women<sup>3</sup> at their workplac-s; especially at the industrial prospects were manual efforts had to be employed. There was however, negative

drawbacks for the policy including harassments and work pressure faced for acquiring leaves under the policy. Though still prevalent in Japan, there is lack of current research or public data available now on the updates about the policy.

The Menstrual Leave Policy is a part of *Labour Standards Law in Japan*, which is an enactment to ensure that the needs of the workers are met for improved living conditions and minimum standard of living. Under Chapter VI of the Law, Article 68 which falls under the ambit of *Measures for women whom work during menstrual periods*, where the employer is entitled to grant leave for the application of the female employee who seeks for a leave due to her menstrual leave and cannot be denied from attaining the same<sup>4</sup>.

### 2.2. Historical Take Away from Kerala Model

The absenteeism associated with the stigmas and taboos existent on the menstruation of women in different parts of the country was also reflected in the educational institutions in Kerala dating back to 1912. The Government Girl's School, Tripunithura in then princely state of Cochin, Kerala adopted the menstrual leave policy for the first time such that the students could take leave during their *period days* and could write their annual exam after the same as recorded by Historian P Bhaskaranunni in his book *Kerala in the 19<sup>th</sup> Century*<sup>5</sup>. This action was escalated at

<sup>2</sup> Melanie, *supra* note 1, at 4.

<sup>3</sup>Jessica L. Barnack- Tavlaris, Kristina Hansen, Rachel B Levitt, Michelle Reno, *Taking leave to bleed: Perceptions and attitudes towards menstrual leave policy*, 40 HEALTHCARE FOR WOMEN INTERNATIONAL 1355, 1355-1377(2018).

<sup>4</sup> Labour Standards Law, 1995, art.68, No. 107, Ministry of Labour, Institute of Labour Administration, 1995(Japan). <https://www.ilo.org/dyn/natlex/docs/WBTEXT/27776/64846/E95JPN01.htm>

<sup>5</sup> Correspondent, *Ahead of its time: This Kerala School granted menstrual leave to students way back in 1912*, THE ECONOMIC TIMES, (Aug. 20, 2017, 09: 50

the point where regular absence of students and teachers was observed by the authority in the tests undertaken in the school during the tests at the school.

This model though leaving a century behind continues to raise a check on the progress the society has made such that there had been a success in ensuring reduced absenteeism among female students and faculty due to the difficulties faced due to menstruation. The action of the School Head Master observing the frequent absence of students irrespective of the need to maintain 300 days of compulsory attendance in the school reinstated the need to inspect the reason behind the same followed by the revolutionary decision<sup>6</sup>. As the debates on the need to enact the policy have come back in a notable pace in the parliament after a century, there is ample possibility of reconsideration.

### 1. Impacts of menstruation on working women

Menstruation, unlike for privileged women who are able to avail basic requisites inclusive of ample quantity of sanitary napkins, clean and safe working environment, there are several others who don't have access to the same and have a worsened state of living especially at their workplaces. Irrespective of the physical ailments, women who are involved in manual labour lack any access to usable washrooms or sanitary napkins and lack any exemption from

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AM),  
<https://economictimes.indiatimes.com/magazines/panache/ahead-of-its-time-this-kerala-school-granted-menstrual-leave-to-students-way-back-in-1912/articleshow/60144000.cms>.

<sup>6</sup> Correspondent, *supra* note 5, at 7.

their daily work load. Being vulnerable and unnoticed, they undergo severe hardships at their workplace<sup>7</sup>. Moreover, one among the most important factors, when it comes to menstruation for working women is the need to ensure Menstrual Hygiene which is often unmanageable at workplaces with the least facilities.

### 3.1. Hardships due to menstruation at Workplace

The innumerable barriers in front of women at workplaces specifically in low and middle income countries inclusive of insufficient attention to water and sanitation which hinder women in managing their menstruation at workplace hampering their health and development. Inadequate mechanisms at workplaces and discomfort, technically calls for the need to introduce menstrual leave policy for minimum of a day per month, is definitely an overlooked issue<sup>8</sup>.

For effective management of menstruation, women pertinently require access to Water, Sanitation and Hygiene (WASH) facilities. The access to Menstrual Management Material (MHM) which are necessary to absorb or collect blood and the need to change them in privacy along with sanitary materials are purely

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<sup>7</sup>Sharrah L Vostrel, *A History of Menstrual Hygiene Technology* 189, 1 UNDER WRAPS. 105, 103-105 (2009)

<https://rowman.com/ISBN/9780739113851/Under-Wraps-A-History-of-Menstrual-Hygiene-Technology>.

<sup>8</sup> Marni Sommer et al., *Managing menstruation in the workplace: An overlooked issue in the low and Middle income countries*, 6 International Journal for Equity and Health 123, 120-124(2016). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4895811/>

compounded by the nature of their work in Low and Middle Income Countries (LMIC)<sup>9</sup>.

At rural contexts, with nearly 60% of women indulged in Agricultural and other related activities, they are placed far from their respective domains forcing them to make use of the least available facilities. On the other hand, in the urban context, the self employed workers, construction workers, workers at PWD, Industrial workers are often pushed to over-crowded places with any privacy and thereby are forced to refrain from changing the sanitary napkins or cleansing themselves irrespective of being exposed to extreme temperature and dust.

### 3.2. UNFPA on Menstruation and related issues

United Nations Population Fund (UNFPA) of United Nations Sexual and Reproductive Health Agency has been undertaking several measures to ensure the menstrual health and hygiene across the Globe. UNFPA has also addressed the numerous issues and deprivations dealt by women in their workspaces and related scenario during their menstruation and related health issues & bodily changes<sup>9</sup>. Numerous issues in relation to menstrual hardships were dealt by the UNFPA on 28<sup>th</sup> of May, observed as Menstrual Hygiene Day. The urgent need to make the population aware of the basics about menstruation, elimination of stigma and human rights associated and thereby the need for assistance to demystify the process as a whole.

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<sup>9</sup>UNFPA, *Menstruation and Human Rights, Frequently Asked Questions*, UNFPA HOME, (May 28, 2020, 10:10 AM), <https://www.unfpa.org/menstruationfaq>.

UNFPA precisely referred to the restrictions imposed on women due to the lack of access to opportunities and basic amenities at workplace. The treatment of menstrual symptoms, disorders and supplies to manage menstrual hygiene were other topics of great concern discussed. Global studies also refer to the inverse relationship between menstruation and daily wages. Moreover, the lack of facilities also raises serious concerns. Major stigmas and taboos attached along with the misconceptions are also to be handled seriously.

### 4. Menstruation and Human Rights

Menstruation and human rights are closely interlinked by ways in which unhealthy and unhygienic menstruation lead to infringement of human rights<sup>10</sup>. This obtains greater attention when State is persuasively responsible to prevent such violations through every aspect i.e. the State with reference to its duties towards the citizens has an undeniable duty to take care the basic requirements of its citizens.

The major human rights that are related to menstrual hygiene and which often denied are *Rights to human dignity, education, health, work, gender equality, health environment and above all right to life*. The ways by which these rights can be enabled are the uncompromised assurance of facilities including water, sanitation, health, education and gender equ-

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<sup>10</sup>UNFPA, *Period shame, misinformation linked to serious human rights concerns*, UNFPA NEWS, (June 7, 2018, 11:50 AM), <https://www.unfpa.org/news/period-shame-misinformation-linked-serious-human-rights-concerns>.

ality<sup>11</sup>. Therefore, above all the need to ensure menstrual hygiene can never be denied to women in the society as a whole. Hence, menstrual hygiene can be referred to as the key issue to human rights to safety, privacy and hygiene<sup>12</sup>. The increased vulnerability and violence due to existing stigmas and taboos call for a change in the legislations for women.

#### 4.1. Menstrual Leave and protected human rights

Menstrual Leave becomes a pertinent demand with reference to the hardships and human rights violations during unhealthy menstruation in many ways<sup>13</sup>. Menstruation is a natural and unavoidable biological function for reproductive process which can amount to bleeding followed by the breakage of uterine lining which continues to exist from 2-6 days per month and varies in one woman to another depending upon bodily differences.

For some women, when menstruation creates severe symptoms, for others they can be feeble in nature. Symptoms of menstruation include cramping, back pain, bloating, fatigue and changes in mood in most cases<sup>14</sup>. This is inclusive of abnormal uterine bleeding which statistically affects nearly 14-25% of women,

endometriosis, dysmenorrhea, fibroids, polycystic ovarian syndrome, premenstrual dysphoric disorder and the several other implications. There are also cases of chronic symptoms as well. However, when it comes to working women, the hardships are further increased when they have access to the least mechanisms at their workplace where their needs are ignored instead of being sufficed.

Menstrual Leave becomes a boon for women during their intense days of bleeding menstrual cramps. The legislations across the Globe prevalent on menstrual leave calls for the leave provision 1-2 days a month such that women are able to be comforted on their intense days of menstruation such that they can be provided with a paid leave provision. Most of the entities approach with the submission of the medical certificate as a proof of their medical status while others do not seek for the same. Either ways, menstrual leave ensures a better condition by providing the opportunities for the female worker to make use of the facilities at their own domains in a healthy and hygienic manner.

Another, major issue of concern is the *sexist devaluation* of menstruators. However, this attitude cannot find a room to prevent women from the basic rights they are entitled to. Rather, Menstruation being a natural biological process should be accommodated in the legislations of the nations.

There are several existent laws that are designated for the betterment of the current status of women in the society. This begins from the feminist struggles and movements dating back to centuries in attaining the key landmarks

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<sup>11</sup> Hannah Neumar, *Menstrual Hygiene and Human Rights: A bloody road to a more equal world*, 5 UNICEF 23, 23-29, (2017).

<sup>12</sup> OHCHR, *Menstrual Hygiene Day*, REPORT OHCHR, (Oct. 23, 2014, 02:09 PM), <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/MenstrualHygieneDay.aspx>.

<sup>13</sup> Jessica L. Barnack- Tavlaris, et al., *supra* note 3 at 6.

<sup>14</sup> Master-Hunter, T., & Heiman, D.L., *Amenorrhea: Evaluation and treatment*, 85 American Family Physician 1375, 1374-1382 (2006).

in women's legal history<sup>15</sup>. Such legislations include Maternal Leave Benefits, Abortion Laws, and Prevention of Domestic Violence against women etc. These are however not meant for any devaluation in the title of sexism or as a frequent basis to calculate the vulnerability but as the pathways for the betterment of the lives of women that can lead to a progressive society.

## 5. Global Scenario and Policies adopted

Irrespective of the state of the policy in India, the legislation has been welcome and has been made applicable in several countries like *Japan, Indonesia (since 1940s), Taiwan, South Korea, Vietnam, a few notable Chinese forces and Zambia*<sup>516</sup>. These countries have successfully included the policy into their respective labour codes of Public and Private Sectors. These nations have come forth with this revolutionary addition to their labour codes with the intent to better the situation of female employees at their workplaces. This gives a commendable cue for countries like India and other Asian giants to deliberate on the need to address the issues faced by workers in both public and private sectors.

### 5.1. AMWU Movement

In the history of the demands and deliberation over the need for establishing a legislation that

provide paid leaves for women during the menstruation, technically raised the Australian Manufacturing Workers Union (AMWU) movement which was led for the female workers of Toyota in Australia which was for 12 days leave/ year for the female employees which was one among the 600 improvements sought for the female employees<sup>16</sup> which was addressed as an *obvious demand* and was read along with the purpose behind the establishment of maternity leave and parental leave in the country.

The movement in Australia received International attention when it succeeded in prioritizing the demand as it is a necessary insertion in the laws and labour codes particularly when these aspects are often taken at a lighter note. On one hand we have nations that come forward with parental leave for both the parents in the birth of a child and as per the statistical record of the Organization for Economic Corporation and Development (OECD), except in the United States, all other nations in the list of 45 countries have mandated paid leave for new parents where 2 months is the least allotted time limit<sup>17</sup>. All these development are sought to realize the need to improve the working conditions and approachability to work.

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<sup>15</sup>ERIKA RACKLEY AND ROSEMARY AUCHMUTY, WOMEN'S LEGAL LANDMARKS: CELEBRATING THE VICTORY OF WOMEN AND LAW IN THE UK AND IRELAND 98-99 (Hart Publishing ed., Penguin Books 1971) (2019).

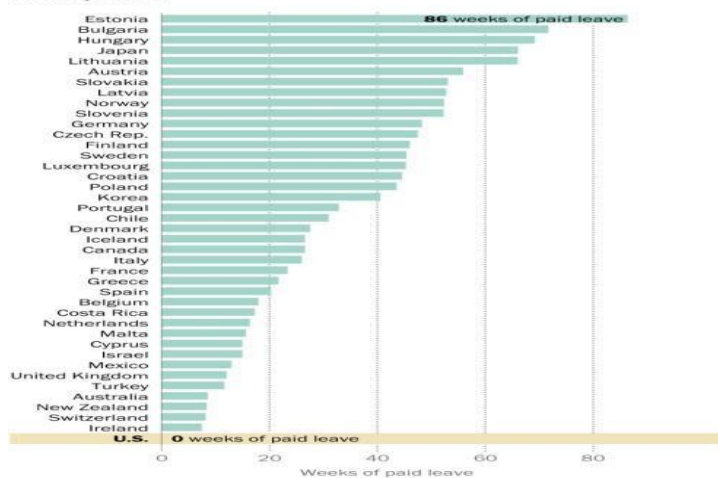
<sup>16</sup>Aneri Pattani, *In some countries women get days off for period pain*, THE NEW YORK TIMES, (June 24, 2017, 02:09 AM), <https://www.nytimes.com/2017/07/24/health/period-pain-paid-time-off-policy.html>.

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<sup>17</sup> Gretchen Livingston and Deja Thomas, *Among 41 countries, only US lacks paid parental leave*, 1 PEW RESEARCH CENTER 143, 142-150, (2019). <https://www.pewresearch.org/fact-tank/2019/12/16/u-s-lacks-mandated-paid-parental-leave/#:~:text=In%20fact%2C%20in%20six%20countries,or%20care%20of%20a%20child>

### U.S. ranks last in government-mandated paid leave for new parents

Total weeks of paid leave mandated by national government to new parents



Note: Includes maternity leave, paternity leave and parental leave entitlements in place as of April 2015. Estimates based on a "full-rate equivalent," calculated as total number of weeks of any paid leave available to a new parent, multiplied by average rate of earnings reimbursement for those weeks of leave.

Sources: Organization for Economic Cooperation and Development Family Database; PEW RESEARCH CENTER

## 5.2. Country wise menstrual leave policies

On one hand, several countries have already inserted menstrual leave as a provision in their labour codes while on the other hand several others have bills under consideration and debates for making the policy a reality, inclusive of many State Governments in India.

The Asian countries that have adopted the policy are *Japan*<sup>18</sup> under Article 68 of Labour Standards Law of the country, *Indonesia* under Labour Act No. 13, 2003, *South Korea* under Article 71 of Labour Standards Law and *Taiwan* under The Act of Gender Equality in employment. In *Europe*, on the argument that the policy might project women as *ill* and possibilities of *perpetuating sexism*, the policy was not enacted. However, *Zambia* in Africa has

made a pertinent contribution towards the need for the legislation in 2015<sup>19</sup> that had raised debates across the world.

Zambia, where female menstruation publicly is observed as a taboo came up with a notable progressive step, from which numerous nations can draw their lessons from. The provision in the country's labour law provides one day leave for female employees monthly to overcome their period pain. The grueling menstrual pain can be met with „*Mother's Day*” as the leave provision's nomenclature suggests irrespective of being a mother or not. This leave doesn't require prior information criteria to the authority but can also be communicated via a phone call as well.

## 6. India's stand on Menstrual Leave Policy

India doesn't have a uniform policy for a short term monthly menstrual leave. However, there were several legislative attempts by legislators in different parts of the country but are not yet adopted, though full-fledged deliberations continue to take place. This has been majorly challenged in association with the existent controversies with Sexism and questionability of work efficiency of women. Though, India is one among the Asian Countries that is expected to take a positive action towards the policy due to the welcoming nature with legislations existent for the betterment of the conditions of working women.

<sup>18</sup>AAP, *Female Workers ask for paid menstrual leave policy*, THE SYDNEY MORNING HERALD, (Feb. 11, 2005, 05:09 AM), <https://www.smh.com.au/national/female-workers-ask-for-paid-menstrual-leave-20050211-gdko7t.html>.

<sup>19</sup> Labour Standards Law, 1995, art.68, No. 107, Ministry of Labour, Institute of Labour Administration, (1995) Japan. <https://www.ilo.org/dyn/natlex/docs/WBTEXT/27776/64846/E95JPN01.htm>.



The positive scope of the policy majorly revolves around the prevalent labour incentives and above all the Maternity Benefit Amendment Act, 2017 which had risen the maternity leave period from 12 weeks to 26 weeks<sup>20</sup>, by amending Section 5 of the Principal Act being the *Maternity Benefits Act, 1961* and thereby became the third nation to provide the longest maternity leave. This shows the India Scenario which consists of a positive notion towards women oriented developmental laws. This will be an extremely useful motion if passed for women who experience the condition of *Dysmenorrhea* during their menstruation.

The female employees across the Globe have reviewed the policy undertaken by their respective workplace heads and Government as an extremely useful and commendable action as they are free from being overloaded with their work irrespective of their physical difficulties. However, the issue of sexism is tackled with the unavoidable applicability of Maternity and Parental Leave policies followed across the globe where a precise adoption and adaptability of the biological differences can be witnesses. Above all, in a general note, this becomes a progressive step to ensure the welfare of employees irrespective of any gender bias of claims of sexism.

### **6.1. Legislative attempts in India for the policy**

Menstrual Leave Policy has been a topic of legislative debates for a long time ever since the historical step taken in the State of Kerala in

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<sup>20</sup> Kennedy Gondwe, *Zambia Women "s off for periods" sparks debate*, BBC NEWS, Jan. 4, 2017 at A1.

1912<sup>21</sup>. This includes proposals attempted by Parliamentarian at Lok Sabha from Arunachal Pradesh Ninong Ering brought in *Menstruation Benefit Bill, 2017* as a Private Member's Bill<sup>22</sup> with the legislative intent to provide working with the benefits that can be accessed during their menstruation, inclusive of a proposal of 2 days leave/ month for both public and private sectors.

The bill, majorly focused on the emphasis of reproductive health of women, access to hygienic menstrual facilities at work place with human rights attached to it along with the reduced productivity at work during menstruation and the bill continues to be under the consideration of the Ministry of Women and Child Development.

Another noteworthy attempt was undertaken by Parliamentarian Dr. Shashi Taroor, through his parliamentary bill, *Women's Sexual Reproductive and Menstrual Rights Bill*, where women's sexual and reproductive rights were demanded for specifically. Though, the bill attempted to look forth to the *untouched, stigmatized menstrual rights* in the country inclusive of provisions to criminalize Marital Rape, Free access to sanitary napkins and amendments to medical termination of pregnancy apart from the demand for menstrual leave, it was met with criticisms of technical plausibility, feasibility and social acceptance at stake. Thence, the historically ignored and neglected topic found its place in the Parliament.

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<sup>21</sup> Maternity Benefits (Amendment) Act, No. 6, 2017(India).

<sup>22</sup> Correspondent, *supra* note 5, at 7.

The demand for menstrual leave in the state of Kerala was also echoed in the State of Kerala, where the legislative assembly member K S Sabarinathan sought to grant a period leave for female employees in all working sectors of the economy. The Chief Minister of Kerala, Pinarayi Vijayan, took up the demand as a cue and had regarded the existing taboos of menstruation as a social evil and the initiative of menstrual leave shall recognize Menstruation as a biological process that requires attention<sup>23</sup>.

## 6.2. Major contentions against the policy enactment

Irrespective of being demanded numerous times, the policy has not found its place into the policies and legislations with respect to the few controversies raised against the drafts and their provisions. Though, there are numerous physical conditions such as dysmenorrhea, nausea, heavy bleeding, cramps, and fatigue attached to the Pre-Menstrual Symptoms that can reduce the quality of work; the issue has been neglected numerous times in the nation. This is also associated to the call for an equitable approach towards the policy<sup>24</sup>.

*Sexism and Discrimination by sex* are two major criticisms that the policy faces. However, there can be institutional interference to improve the status of women in the country inclusive of their active participation with the help of affirmative action by the State, in the wider recognized perspective of Article 15(3) of the

Constitution<sup>25</sup>. This policy, hence acts as an affirmative step for the betterment of women ahead of the stigmas and taboos faced by them on the grounds of their gender since time immemorial.

The questions of Article 14<sup>26</sup> and Article 15(1)<sup>27</sup> are majorly dealt with the provision under Article 15(3)<sup>28</sup> and in addition with Article 42<sup>29</sup> where, the State is bound under DPSP with its persuasive authority to secure just and humane working conditions and maternity leave. Moreover, various legislations that are meant to create a better living for women in the society such as the Maternity Benefit Act, 1961 and the Hindu Succession (Amendment), Act, 2005 being constitutional in nature, then the menstrual leave policy can also be progressive and useful.

The contentions rose against the policy inclusive of gender inequality are met with the triumphant effect of the same policy in various developed nations and institutions. Moreover, the ideas of gender inclusiveness, gender equality, tolerance, gender sensitization are sought to work with the need to accept Menstruation as another inevitable biological process which requires due care and attention rather than being neglected from its root.

The core cause of the contentions raised in the above platforms is prominently met with the

<sup>23</sup> Chaithra V, „Menstrual leave“ an ignored issue?, DECCAN HERALD, June 18, 2019, at D3.

<sup>24</sup> Govt. of Andhra Pradesh v. P B Vijaya Kumar & Anr. (1995), 4 SCC 520 (India).

<sup>25</sup> PTI, *Kerala Government urged to grant menstrual leave to its employees*, THE WEEK, (Aug. 11, 2017, 09:58 AM), <https://www.theweek.in/content/archival/news/india/kerala-government-menstrual-leave-employees.html>.

<sup>26</sup> INDIA CONST. art. 14.

<sup>27</sup> INDIA CONST. art. 15, cl. 2.

<sup>28</sup> INDIA CONST. art. 15, cl.3.

<sup>29</sup> INDIA CONST. art. 42.

criticism of under research, compared to other arguments such as feasibility and technical possibilities. However, if comparatively analyzed with the nations and institutions that have adopted this policy into their labour codes, these argument can be sufficed with the plausibility mechanism<sup>30</sup>.

## 7. Current status of menstrual leave policy in India

India, though, doesn't possess a uniform legislation on Menstrual Leave, there a number of notable policies undertaken by Private institutions in the country. However, in the absence of any Central Government policy on Menstrual Leave, Bihar is the only Indian State that provides 2-day leave/month for its employees ever since 1992<sup>31</sup>. This is identified to be a revolutionary step undertaken in the State, though the number of female employees in the State was very less in comparison.

As a result of the number of demands raised as a result of a 32 day long strike, the demand of the women population for menstrual leave for 2 days/ month consecutively was heard in addition to the usual offs. Hence, Bihar is the first state in the country to implement the *progressive policy*<sup>32</sup>. The current notion, private work environment offers to women employees are also inspired from the menstrual leave policies introduced by business entities like Nike, by addition of the policy into its *Code of Conduct*

<sup>30</sup> Chaithra V, *supra* note 22, at 18.

<sup>31</sup> Ankita Dwivedi Johri, *Why Lalu Prasad gave nod for leave during menstruation*, THE INDIAN EXPRESS, (Aug. 31, 2020, 12:25 PM), <https://indianexpress.com/article/opinion/columns/when-bihars-women-got-period-leave-6575393/>

<sup>32</sup> *Id.* at 21.

in 2007 and Coexist, by introducing period policy for the first time in the United Kingdom to ensure a healthier work environment<sup>33</sup>.

The need for the policy a topic of full-fledged topic after the initiatives undertaken by Kerala based media group Mathrubhoomi<sup>34</sup> in 2017, 2 Mumbai based companies Culture Machine, a digital startup and Gozoop<sup>35</sup>, a digital marketing organization and Zomato<sup>36</sup>, the online platform for food delivery which resulted in nation-wide debates and appreciations for the commendable initiatives.

These organizations have set up a model and a cue for a uniform menstrual leave policy for the female both Public and Private Sector Undertakings as a part of their labour code. The paid leave hence recognizes the hardships suffered by women, out of which nearly 71% of women fail to get to know of menstruation until the first cycle, according to UNICEF<sup>37</sup>. This policy intent to eradicate the taboos and social stigmas attached to menstruation and also aim to tackle the chronic menstrual symptoms.

<sup>33</sup> Sonam Joshi, *Three Indian women with the menstrual leave benefit explain why it is important*, THE TIMES OF INDIA, Apr. 14, 2020, at E8.

<sup>34</sup> Jisha Surya, *Kerala television channel announces menstrual leave*, THE TIMES OF INDIA, (Jul 17, 2020, 08:03 PM), <https://timesofindia.indiatimes.com/city/thiruvananthapuram/kerala-tv-channel-announces-period-leave-for-staff/articleshow/59675902.cms>

<sup>35</sup> India Today Web Desk, *These 2 companies are offering first day of period leaves and women couldn't be more grateful*, INDIA TODAY, July 13, 2017, at F15.

<sup>36</sup> Geneva Abdul, *Zomato's paid leave for periods takes on a workplace taboo*, THE ECONOMIC TIMES, (Aug. 13, 2020, 08:20 AM), <https://tech.economictimes.indiatimes.com/news/startups/zomatos-paid-leave-for-periods-takes-on-a-workplace-taboo/77517530>.

<sup>37</sup> *Id.* at 22.

Therefore, the policy is an extremely beneficial step towards healthier and hygienic menstruation of women which also helps in upholding human rights.

## 8. Conclusion

Menstrual Leave policy, irrespective of being a positive legislation, which calls for affirmative steps, such that female employees at their workplaces, where they are given the *option* of availing a short term menstrual leave every month. However, the number of criticisms attached to the legislation curtails women from accessing to a healthier and hygienic environment in their workplaces, where they often lack, proper sanitary facilities, Private space, requisites and even clean water. All these shortcomings are attached to serious health issues which are either taken lightly/ neglected.

*The question of relevance* of the policy is answered by the numerous menstrual symptoms and pre menstrual symptoms women undergo and difficulties faced by them in their work places. *The question of feasibility and technical plausibility* can only be addressed by the comparative analysis which is to be undertaken with countries that have already inserted the rule in their respective labour codes.

*The question of Law inclusive of Discrimination and Implied Sexism.*, thence, *constitutionality* can be duly addressed with reference to the maternity leave policies and parental leave policies countries possess where sexual differences are not considered as discrimination but are accommodated by Law without fail.

Moreover, the policy is not meant to project menstruation as a weakness but as *an inevitable biological process* in women. When it comes to the *Medical Recognition of the requirement of leave*, the impact and symptoms of menstruation varies from one person to another, i.e. only because they are asymptomatic for some, the chronic symptoms of others cannot be denied and moreover, the leave is entitled as *optional* in nature where it is up to the choice of the employees to avail the same with/without the support of the medical certificate. Hence, Menstrual Leave Policy is a progressive step for the future women population.