
The Feasibility of Menstrual Leave as Human Resource Policy in India: A Gender Perspective

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Abstract

Feminists have come a long way in accomplishing the establishment of woman's identity in public sphere. However, her biologically determined factors continue to question her existential value in workplace. Menstruation, being one such factor, is often used to condition her work experience. The lack of empathy towards this invisible conditioning intensifies the pre-existing discriminatory environment against her. The proposed article begins with an analysis of the advocacy networks and campaigns for menstrual leave. It also highlights the contentions raised by the groups of supporting as well as opposing stakeholders. Further, it examines certain examples of organizations which have welcomed menstrual policy and facilitated it for their female employees.

Keywords: Gender, Employment, Human Resource Policy, Discrimination, Menstruation, Leave, Equality, Compatible workplace.

Introduction

Generally, workplaces have faultless disembodied workers, one that can work tirelessly, is hyperproductive and doesn't have any needs outside of getting the job done. Such idealistic perception of workers is sought to be translated into reality, in some cases, at the cost of fundamental compatibility of workplace for employees. Menstruation is one of the victims of such incompatible approaches. While Article 15 (1) prohibits any discrimination basis of religion, race, caste, sex and place of birth, the policy related to menstrual leave gets protected under Article 15 (3) which is an exception to the former provision and allows special provisions and measures for women and children. India is ranked poorly at 108th place among 144 countries as per the World Economic Forum's Global Gender Gap Index (World Economic Forum 2020). It suggests that despite the robust economic growth, rising incomes, dropping fertility rates and advances in female literacy, there is a decline in the female labour force participation in India to be more specifically almost 19.6 million women dropped out of the workforce during just eight years (Luis 2018).

This article is an attempt to create a nexus between the feminist agenda of securing fairer, more accessible, and more secure workplaces for women and their right to work. It tries to encapsulate the evolving jurisprudence behind the demand of having "Paid Menstrual Leave" (PML) for menstruating people in various countries. It traces how this demand is also one to make the labour/employee rights of women more equitable. It talks about "period positivity" or "menstrual positivity" as an enhanced outcome of the advocacy for PML as it further advances the argument of seeing the bodily and reproductive differences of the gendered minorities, especially women, as something that requires equitable protection of policy and law and not is determined biologically and othered. The article further discusses and applauds the leading and noteworthy examples of some business groups/startups/corporates which have adopted menstrual policies for the relief of their menstruating employees. It appraises all the contentions for and against having a menstrual policy at workplace and finally concludes with a note in favour of PML.

Legislative Trajectory of Paid Menstrual Leave and The Feminist Question-International and Indian Contexts

Gloria Steinem's satirical essay "If Men Could Menstruate" published in the October 1978 issue of Ms. Magazine depicted how a natural reproductive process like menstruation which is considered stigmatized because it is associated with women's bodies, would become positive and worthy of attention and pride if it were associated with men's bodies (Steinem 1978). This was also a time when a wave of feminist discourse surrounding women's reproductive rights, bodily autonomy and about desexualising women's

bodies was on the rise. While debates surrounding rights of women in the workforce were triggered by the “feminisation of work and economy”, literature concerning elevating women’s oppression in private as well as public spheres. The discussion on menstrual leave must be understood in the context of the fact that in various societies menstruation has been used to marginalize and oppress menstruating people through courses of objectification and philosophy of sexism (Bordo 1993: 309; Fredrickson and Roberts 1997). It is only in the previous few decades that conversations surrounding paid menstrual leave (PML) gained momentum at wider global scale. The groups that set the tone for the advocacies for menstrual leave were majorly grass root level movements, feminist campaigns, and civil society activists. As far as the jurisprudence of the idea of PML goes, it considers not just evolving gender justice arguments but also the rich history of the workers’ movement where in question women worker’s health becomes an important issue.

The advocacies have been around since the 1920s when they were introduced in Russia, followed by Japan in 1947 and Indonesia in 1948. After the First World War, there was a resurgence in the female workforce in most of Europe and elsewhere (Goldin 1991). Menstrual leave was first briefly implemented in some factories in Russia during this phase of time. In 1922 and 1931, the Soviet Union introduced special protective labour laws through national policy that set out the terms for menstrual leave (Ilic 1994). The Bolshevik menstrual policy was directed at women working in factory jobs, providing them with two to three days of paid leave during menstruation. Menstrual leave was also as a policy designed to “protect the health of women workers in order that they should be able to fulfil their reproductive and maternal functions” (Ibid).

Japan made menstrual leave a national policy directly after the Second World War in 1947. In the 1950s, was followed by Indonesia and South Korea (previously part of the Japanese Empire) (Desai 2021). In the Japanese case, the campaigns were led by women workers, who crusaded for the policy. They contended that it enabled women to seek equality in the workplace and speak openly about their bodies and gain social recognition as workers. Indonesia became the third country to implement a national policy for menstrual leave in the early 20th century. Originally, the policy was brought into force in 1948 and then restructured in 2003 as part of a legislative reform process (Ibid).

The Chinese government implemented the *Law of the People's Republic of China on the Protection of Rights and Interests of Women* in October 1992. It required employers to be aware of women's physical “fitness” for work and provide “special protection” during menstruation (Baird and Colussi 2021). While this legislation did not provide explicitly for menstrual leave, it did consider menstruation as an important factor regarding workplace health and safety, incorporating women's periods within a broader legislative framework emphasizing pre and post-natal health (Ibid).

In such context, *Shri Ninong*, a Member of Parliament from Arunachal Pradesh, presented *Menstruation Benefit Bill, 2017*, through his right of Private Members Bill. The bill proposed to provide benefits to female workers in the form of relief during menstruation every month (Hati 2021). It included females from class eighth in a school to all working women until they experience menstruation which mostly lasts up to the age of 45-50 years. The Bill hardly received any attention in the Parliament; however, its provisions were advanced in nature. It suggested a total of 24 days of paid leave in a year to every menstruating woman employed in any establishment recognized by the government. Additionally, female students from and above eighth standard were also included in the ambit of the bill to provide compulsory leave to menstruating girls.

The Bill also provided for self-perception of menstruation, seeking to remedy the central issue with every menstrual leave policy, which pertains to the determination or requirement of medical certificate to prove commencement of the menstruation cycle. It ascertained a compulsory rest period of 30 minutes twice a day, for menstruating female employees for the working days of the cycle. However, the bill had been sidelined in the Parliament, and no subsequent development took place to enforce the Bill. Such a complete lack of recognition of a basic requirement of women, makes their integration into the workforce difficult, as women cannot function to best of their ability in that period.

Reflections On Menstrual Positivity and Paid Menstrual Leave

The concept of “menstrual positivity” has come around in recent times. The concept dispels misconceptions, superstitions, and sexist stereotyping about menstruation (Koskeniemi 2021). Paid Menstrual leave could arguably enhance the tenets of period positivity in several ways. It counters conventional economic understandings of the rational and disembodied (male) worker and highlights period-specific needs in the labour force. Menstrual leave could revolutionize workplace gender relations where it aims to disrupt the gendered order and displace androcentric ideals of the rational, ideal worker.

The literature surrounding menstrual positivity also draws connection between destigmatising menstruation by also talking more about women’s hygiene, sanitation and health (Kasenko, 2019). These discussions also include democratising the idea of gender by bringing the focus on the point that gender is a social and

not a biologically determined identity of a person. By bringing in the same sensibility, it also furthers the contention that “menstruating people” are not homogenous categories but could also include members of the LGBTQA+ communities (Gupta & Parimal 2023). The advocacies surrounding paid menstrual leave have brought into focus the fact that the menstrual experience for menstruating people is not restricted to just “pain”. The ordeal surrounding menstruation could go much beyond physical and corporeal suffering, and that is, extending to psychological, emotional, and mental discomfort.

Glimpse Into the Establishment of Menstrual Leave: Select Examples

India can be new, and somehow, a reluctant party to the concept of menstrual leave. However, it has also seen some sincere efforts made by various states to enable menstrual leave. Bihar is one such prominent example which began in 1992 by providing two days of paid menstrual leave (termed as ‘Special Casual Leave’) every month to female employees with no expectations of substantiating the reasons. Other than Bihar, Kerala has developed the practice of granting menstrual leave to female students in schools since 1912. India, being home to social revolution, proudly witnessed women joining the workforce at a higher pace than ever before and competing with men. In this context, it is essential to analyse compatibility of human resource management policies rolled out by some of the corporate organizations to address the particular needs of female workers. This article also focuses on a few case studies where female workers are provided with menstrual leave to inculcate a gender-inclusive workplace.

Culture Machine figures among the group of companies which started with the practice of paid menstrual leave. The group also includes other entities such as *Gozoop*, *W&D*, *Magzter*, *Industry ARC*, *Swiggy*, *BYJUS’S*, *Mathrubhumi* and *Zomato*.

Culture Machine: It is a Mumbai-based digital company which started in 2017 with the practice of allowing First Day of Period (FoP) Leave to the female worker.

Gozoop: It is a digital marketing-based company which followed the FoP policy and started the same for its female employees.

Wet & Dry: It is Delhi based company which manufactures female hygiene products and it allows two days’ leave a month to female employees. It also gives the option of working from home during menstruation.

Magzter: It is a Chennai-based digital magazine company which joined the league of FoP and allowed its female employee in a race to shun taboos around menstruation.

Industry ARC: It is a Hyderabad-based marketing company which allows unpaid leave for a maximum of two days during menstruation in order to acknowledge the contributions of female employees to the growth of company.

Swiggy: It is a popular online food delivery company which provides two days off from a month to female delivery partners to ensure a minimum earnings guarantee during menstruation and to usher in female strength for delivery-related jobs.

Byju’s: It is the leading educational app which provides twelve-period leaves for a year in order to encourage female tutors to join the academic community.

Mathrubhumi: It is a media organization which allows female employees to work from home on the first day of period in order to cope with the twin stress of work and menstruation.

Zomato: It is a Gurugram-based food delivery company which allows ten days’ period leave in a year to menstruating employees in order to eradicate the stigma around menstruation and it encourages female employees to avail of the same freely and openly.

The above-mentioned case, though not exhaustive, reflects the ray of hope for welcoming menstrual leave as a workplace norm. However, given the stigmatized effect of menstruation, it may fall into the trap of restricting women from asking for this leave due to prying eyes of co-employees (Chawla 1994).

In addition to the initiatives of corporate entities, some positive glimpses can be made into the position of menstrual leave in other countries. Many East Asian countries including Taiwan have passed menstrual leave bills in order to improve public fertility. Considering the severity of menstruation pain, several nations have started with menstruation policies.

- Taiwan provides three days’ leave in a month for menstruation.
- Italy provides three days’ leave for menstruation.
- South Korea allows compensation to women for unused menstrual leaves.

- Indonesia provides menstrual leave for two days.
- Japan allows female workers to take rest time in the event of severe menstrual cramps or issues.

Additionally, several other nations, including Chile, Mexico, Zambia etc. have introduced provisions regarding menstrual leave. However, there exist no such laws in a developed nation like U.S.A.

Contesting Deliberations for Menstrual Leave

India has witnessed hard-won entry of women into public employment and the enactment of various women-centric laws. Although a woman was able to make an entry into economic independence, such independence is distorted due to hardships faced by her while working in employment. The atmosphere of employment is sought to be regulated by various legislative and policy measures, however, it relegates her biological needs, such as menstruation, to her personal (or gender) disadvantage. In order to comment upon the desirability and feasibility of menstrual leave as a human resource management policy, it is essential to understand both the promises and dangers of menstrual leave. This segment unravels some of the major arguments opposing the leave and arguments opposing such leave.

Challenging The Menstrual Leave

The idea of menstrual leave is often seen as a threat to gender neutrality, women empowerment, and economic productivity. It is equally dragged into the arena of misuse of leaves by employees. It is claimed to be reinforcing the stereotype of women as physically weak, swinging the mood, and fluctuating in work efficiency. It makes explicit the physical weakness of the women due to menstruation which is currently impliedly fixed using medical leave. It can fortify the stereotypical assumption that every menstruating person is unreliable and fragile. The requirement of menstrual leave, as argued, instead of promoting female workforce might discourage the human resource team from employing the female worker as prospective liability, just as in case of maternity leave (Tavlaris 2019).

Additionally, menstrual leave is attacked based on 'eligibility' criteria as it intrudes into the physical privacy of an employee. The employee who is unwilling to share menstrual information and bodily functions will be required to disclose the fact in order to avail of the leave. Another opposition to menstrual leave comes from feminist angle, and it argues that women have fought to be considered equal assets for employers and the recognition of menstrual leave is likely to disturb this equality of worth. It may be inimical to the efforts to shun the sexist assumptions about non-male human resources and widen the gender gap. The introduction of the Bill related to menstrual benefits in India was subjected to similar line of arguments. Some of the arguments were as follows:

- **Gender bias** –Menstrual leave will expose them to unnecessary gender bias and as a result companies would prefer hiring men over women. Also, somehow women are hired, face slower upgrades.
- **Hamper inclusivity** –Menstrual leave can hamper inclusivity as women can miss out on important meetings or agreements during this tenure.
- **Not considered as universal problem** – Every woman has different harmonic structure which as a result makes them face menstruation in different manners. Also, most women can perform their job or work even during the time of menstruation.
- **Availability of other options** – There are other options alternative to menstrual leave, such as, working from home, providing rest time, and increasing availability of menstrual products.

Favouring The Menstrual Leave

John Guillebaud (2016) concluded from research into menstruation that period pain can be as *bad as having a heart attack*. In yet another study on Dysmenorrhea, painful periods, it was explained by the researchers that period pain could be severe sufficient to interfere with daily activities (Das 2019). The feasibility of menstrual leave, to a greater extent, is influenced by the acknowledgement of the pain underlying menstruation and the need of a 'compatible' workplace for menstruating employees. The term compatibility refers to catering to the special needs of employees. Majority of female workers suffer at workplace in terms of logistics, threat to safety, engagement in unorganized sector, and inadequate maternity leave, and they discolour the compatible workplace and human management policy. Non-recognition of menstrual pain will add to such an 'incompatible' mode of managing and respecting human resources (Kaur 2020).

In response to the contention that menstrual leave may discredit the worth of an employee, it can be counter-argued that such a consequence is stereotype-driven and perception based. The worth of menstruating employees cannot be determined by two days' leave in a month, rather, it depends on the culture of workplace and its contribution to the growth of an entity. It is decorated with credibility by positive examples of menstrual leave welcomed by various corporate entities and countries discussed above. The argument that menstrual leave will impact economic productivity at workplace can be countered with the

help of studies which prove that productivity level of female is low during menstruation for some women, and thus, refusing menstrual leave actually amounts to forcing the menstruating employee to work in skeleton capacity which goes against the basic tenet of human resource management (Augustine 2018).

Refusal of menstrual leave must be discouraged in the context of medical toll that menstruation takes on a person. United States of America witnessed high number of deaths due to toxic shock syndrome induced by long use of tampons. This can also be related to the medical side effects developed due to exerting and overusing menstrual products while working in workplace. Such medical unease becomes one of the major reasons for declining female workforce participation rate in India.

Menstrual leave acknowledges the physical worth of the employee as a human resource, and it provides an opportunity to respond to the medical need which replenishes the energy (just like earning leave and casual leave) post such response the employee is able to assume the responsibilities assigned with higher efficiency and activeness fully. It must be realized that such menstruation phase requires the person to be in comfort zone where peculiar physical and mental needs can be catered to. Workplace cannot definitely be considered a place equivalent to comforting place. By acknowledging menstrual pain and the resultant need to leave, a small gesture of valuing the human resource can be ensured which will bring in visible and huge impact on the productivity of female employees.

Carving Out an Appropriate Path: Path of Inclusivity

Undoubtedly, there is a biological difference between men and women, and this difference does not percolate into their economic worth of them. However, this biological requirement must be respected by the human resource managers and catered to while rolling out the policy for employees. One such requirement is menstruation-related policy. Menstruation not only causes physical stress, but it also leads to mental stress. This stress then becomes worse for any menstruating person. It leads to the twin stress of work and body. However, needs of menstruating employees are not formally and systematically recognized in India which reflects the insensitivity to this human resource (Ellen 2020).

While it can be agreed that every person does not have same experience of menstruation and might not require leave for it, the menstrual pain of other employees cannot be overlooked. In the context of both sides of arguments which map the effects of menstrual leave, it is advisable to discuss and carve out the menstrual leave policy which is sensitive to the need of menstruating employees and having medical problems, like Endometriosis, Dysmenorrhea, Polycystic Ovary Syndrome and others which lead to severe pain and makes the menstruation process difficult (Sommer 2016).

While such policy may be flawed and might be prone to shortcomings as reflected in the arguments opposing menstrual leave, it could prove to be a significant step towards complete and welcome integration of female employees into workplace and ensuring real women empowerment. At the same time, it is not required to be a compulsory policy measure, but rather choice based. Such policies related to menstrual leave should be drafted in balanced way which filters the cases of blatant misuses, such as compensating for the backlog of work. Further, in order to respect the privacy of employees the details related to record of menstrual leave must be made accessible only to the human resource department of employer (Aggarwal 2017).

Likewise, there is equally a pressing need to provide standard menstrual hygiene services, such as cleaning rooms and products, such as sanitary napkins and disposer machines, in the workplace for menstruating employees who choose not to avail of the leave. It is to be understood that granting menstrual leave does not necessarily mean a complete loss of productivity for any woman or complete loss of business, in fact, menstrual leave can also allow every woman to work from home which has been the norm during this pandemic. Thus, the focus must be on providing employee comfort and flexibility without hampering work efficiency or productivity.

In our country, unfortunately, the word 'period' or 'menstruation' itself is viewed with raised eyebrows and silence. Such an environment makes it much more difficult for menstruating employees to carry the threefold burden of menstruation, stigmatization, and workplace. If menstrual leave finds a place in human resource policy of employers, it shall reduce, to great extent (even though cannot substitute the pain), the stigmatization and workplace-related stress for a period. Proposing 'Menstrual Leave' as part of human resource policy might be filtered as difficult step, but nevertheless, it is a much-needed change in the right direction.

Conclusion

“Both woman and man can achieve the same thing with their intellect and work. Nothing including gender can preclude the recognition of sameness except periods.”

Even though menstrual cycle helps in ensuring good health for every woman, irrespective it also brings symptoms of illness, fever, dizziness, impaired energetic control, lack of concentration etc. Whether menstruation is normal or severe, several women face debilitating conditions including PCOS, PCOD etc.

which makes this natural process even worse (Mathur 2008). It is necessary to point out that India's female participation in the workforce is the lowest in the world, as per World Bank estimates and we rank below Nepal, China, Bhutan and Bangladesh as well (Bagri, 2022). Menstrual leave for women can become one of the remedies to cure such a rapidly declining female workforce participation rate in India. One of the major setbacks in the labour statutes of the country, which makes it incompatible with the need of women, is the lack of recognition of paid menstrual leave for every female employee.

As per the study by UNICEF, one out of every two girls are deprived of menstrual hygiene or sanitary napkins (Chothe 2014). Women activists and employees feel that it is high time that we recognize and normalize menstrual leave as one of the necessities and rights of every woman, thus breaking this stigma. The underlying intent of all employers revolves around arguments that menstrual leave hampers work efficiency. In fact, providing menstrual leave will make the work environment inclusive and flexible for every woman thus boosting productivity and work efficiency. It is generally believed that period right is against Article 15(1) of the Constitution. However, Article 15(3) simultaneously empowers every state to make special provisions regarding women or children. Moreover, Article 14 and Article 21 of the Constitution empower and provide every woman to live with human dignity. It can be submitted that the feasibility of menstrual leave requires a fundamental change in the way human resource management regime is viewed in the Indian subcontinent. It is suggested that menstrual paid leave should be recognized as human resource management policy and elevated to the statutory books wherein government can share the financial responsibility alongside employer as welfare state. In furtherance of this, the Menstruation Benefits Bill must be redrafted and reconsidered. Menstruation, a natural phenomenon experienced by half of the race of humankind and not recognized and given unpaid respect and is considered as taboo in society. It is normal for every woman to bear menstrual cramps and discomfort on regular cycles which becomes significant and unbearable most of the time on the first day of menstruation (Blush Originals 2017).

The human resource policies of an employer reflect its nature and preferences. Thus, its definition of compatible workplace must also transform with the social revolution. Women have successfully been able to join the workforce with the help of the removal of barriers by policies such as crèche, maternity leave, travel facilities etc. but now it is high time for employers to respect and maintain that vigour by ensuring a 'compatible' workplace. Inclusion of menstruation-sensitive leave in its human resource management tactic will be a major path to achieve. It must be noted that lack of menstrual leave in an organization is reflective of the fact that human resource codes are fundamentally designed to suit male employees and aversive to non-male employees. Lastly, at the cost of repetition, following measures are recommended:

- Workspace can be made more gender-sensitive and more inclusive where menstruating employee is given breaks, whenever necessary.
- Work from home should be given as an option as this will not hamper work efficiency and will also lead to productive outcomes.
- Stricter measures should be taken against those employers who in the name of menstruation try to harass or embarrass any female employee.
- Menstrual leave should be allowed to an employee for the first day of period. Such leave may be accompanied by policy conditions, no backlog of cases etc., to ensure efficiency in work.

It can be concluded that the incorporation of suggestions for reforms in the existing framework of labour statutes would aid in bringing gender neutrality and equality to the establishments.

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