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## MENSTRUAL LEAVE: A STEP TOWARDS AN INCLUSIVE GROWTH

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### ABSTRACT

India is a country known to have been very empathetic towards the children and the women. Our ancient scripture writers have held the women in high esteem and spoken in volumes about how they should be protected from the onslaught of day-to-day mundane life, menstruation being one of them. During the earlier times, a woman was given 3 days of complete rest owing to her fragile physical condition while she was menstruating. Though we touted it to be discriminatory, yet we have understood in the long run that it was done to protect her health. Science has established that if a menstruating woman goes near the fire for cooking or other purposes, the heat will stimulate her body to produce more progesterone thus increasing her bleeding, hence the advised rest. But, the modern women who has her calling in the employment for gain cannot afford the luxury of taking 3 days of leave during her menstruation, because of which she should be given the privilege of availing menstrual leave. The state should initiate suitable measure in this regard.

**Keywords :** Mensural Leave, Woman Right, Mensuration Cycle, Health Discrimination

### INTRODUCTION

The Chief Justice of India, His Lordship, Dr. Justice D Y Chandrachud, on the occasion of the 31st Annual Convocation of National Law School of India University, Bengaluru, on 26th August 2023, whilst addressing the gathering, spoke about Gender Equality and Social Inclusivity in Law Practice and stressed on open conversations about the menstruation and its related problems faced by the women, than pretending that these issues don't exist at all in the society. It took the Chief Justice of India to open up & prod us to address the issue of menstruation like any other issue and not deprecate it as a social taboo. On 13<sup>th</sup> December 2023, Smt Smriti Irani, Hon'ble Union Minister for Women and Child Development, in an answer to a question in the parliament, observed that neither menstruation nor menstruation cycle is a handicap and is a part of natural life of any woman and does not call for a leave. But she also quipped that it is her personal opinion. Should her personal opinion deprive the entire working women clan of their rightful entitlements. It is appalling to see the Minister for women being so casual in her remark about the problem suffered by the women which depicts her lack of empathy towards the genuine challenges faced by them. We do understand that it is a natural process, yet debilitating. The medical practitioners also caution against the 'one size fits all' approach. For some ladies, it may be easy to get on with the mundane chores and tasks but others may suffer extreme symptoms which may demand hospitalisation.

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After attaining the age of puberty, every woman goes through a biological and reproductive conditioning known as Menstrual Cycle or Period. Even today, in the majority of Indian households, it is incongruous to speak about it and always kept hushed under wraps so that menfolk don't get to know about it. Menstruation and issues related to it continues to be swept under the carpet. A very natural process in the life of a female is denounced to be a social barrier for her to mingle with others, carry on day today activities like eating, cooking, sleeping arrangements and visiting the places of worship. Although we have kept abreast of all the latest developments & evolved in all walks of life and socially, we have marched towards a better society in the corridor of civilisation devoid of evils which distresses the ladies, we still hesitate to address this issue as any other common issue. During my childhood, I remember there was a practice of allowing 3 days of compulsory rest when a female family member menstruated, though in those days, the activity of the majority of the ladies primarily hovered around the house hold chores and tending to the needs of the family. Not many women were the bread winners in a family unlike today where she has to strike a balance between her personal life and work. The modest modern life in the urban areas, demands both the husband and the wife to work for gain, only to make both ends meet. When a lady returns from work, there is another set of obligations waiting to be attended by her. In the melee, we have completely numbed ourselves and overlooked the basic needs of a working women which includes her Right to health in the form of Menstrual Leave (ML), who relentlessly contribute her might both to the family and the society.

### WHAT IS MENSTRUATION?

On attaining puberty, the female body release many hormones which will result in physical changes and get her body ready for child bearing. The menstrual cycle prepares the female body for pregnancy every month and in case she is not, makes a female get her period. The menstrual cycle is controlled by the ever-fluctuating levels of female hormones including Progesterone and Oestrogen released by the ovaries. These two hormones build up the lining of the uterus and keeps it ready for implanting a fertilised egg(embryo). But if there is no fertilised egg, the uterus lining which is called endometrium<sup>1</sup> breaks down and bleeds to expel the same in the form of the menstrual fluids.

The kind and level of discomfort suffered by the menstruating women is varied and depends on each individual. Menstruation is a different ordeal for different menstruator. Hormonal changes during the second half of the menstrual cycle, called the luteal phase, may cause a low mood and irritability in some ladies. The studies have established that all menstruating women suffer from one or the other kind of difficulty/discomfort during their periods which include Menorrhagia<sup>2</sup>, Dysmennorhea<sup>3</sup>, fever, mood swings, low in energy levels, depression, anxiety, etc. These physical discomforts can result in psychological distress which can manifest in increased interpersonal conflicts and interfere with mundane activities for few days in a month. But regrettably, in India, the prevalent Labour laws do not expressly provide for either unpaid

<sup>1</sup> The endometrium is the innermost layer of the uterus

<sup>2</sup> Heavy bleeding, including prolonged menstrual periods or excessive bleeding during a normal-length period.

<sup>3</sup> It is also known as menstrual cramps and usually occurs when uterus contracts to shed its lining.



or paid ML and much to the delight & relief of the employers, they are not legally required to provide ML to its employees. According to the Cleveland Clinic which is recognised in US and other parts of the world, 15% of the women suffer from menstrual cramps which affect their ability to carry out the day today activities thus affecting their efficiency and production.

## HISTORY OF ML

A Japanese statute which dates back to 1947, legally requires an employer to allow a woman employee to avail leave on days of the menstrual cycle as and when requested<sup>4</sup>. Way back in 1912 itself, Kerala had a ML Policy for students, which provided ML to its students during the annual examinations. Such students were permitted to write the exam at a later date<sup>5</sup>. In 1992, the Government of Bihar issued a notification granting 2 days of 'Special leave' per month to the female employees who work in state owned establishments. This practice continues till date. The Human Resource Manual<sup>6</sup> implemented by Bihar Vikas Mission<sup>7</sup> also makes reference for such special leave for female employees.

In 2017, Mr Ninong Ering<sup>8</sup>, introduced a Private Member's Bill titled Menstruation Benefit Bill, 2017 in the Lok Sabha to provide for paid ML of 4 days/month to women employees working in an institution registered under the appropriate government. Apart from this, the Bill also proposed other allied benefits and provided for Grievance Redressal Mechanism. But the Bill was not tabled at all. Subsequently, Mr Ering, as a Member of Legislative Assembly, again tabled the same Bill in Arunachal Pradesh Legislative Assembly during the Budget Session, only to be withdrawn later for reasons best known to him. This was followed by Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022, which proposed 3 days of paid ML for women and transwomen, seeks to extend the same even for students is yet to become an Act.

In January 2023, an Advocate Shailendra Mani Tripathi, who had witnessed his working mother's discomfort during her menstrual days, filed a Public Interest Litigation in the Apex Court seeking ML both for working women and the female students. The petition entreated that all the states adopt a policy that allows the female students and the working women to avail leave if they experience menstrual pain. The petition went further and sought to include this provision in the Maternity Benefit Act of 1961. But the Supreme Court opined that this is a policy issue which falls under the domain of the government and declined to consider the petition. However, the court suggested the petitioner to submit a representation to the Union Ministry for Women and Child Development to take the appropriate decision in this regard.

<sup>4</sup> Labour Standards Law [Law No 49 of 7 April 1947]...

<sup>5</sup> <https://www.sconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

<sup>6</sup> Ahead of its time! This Kerala school granted ML to students way back in 191...

<sup>7</sup> <https://www.sconline.com/blog/post/2023/03/07/looking-beyond-the-law-the-case-of-menstrual-leave-in-india/>

<sup>8</sup> [https://bvm.bihar.gov.in/Application/uploadDocuments/download/Document20220325\\_134819.pdf](https://bvm.bihar.gov.in/Application/uploadDocuments/download/Document20220325_134819.pdf)

<sup>9</sup> A body formed by the State Government for implementation of various schemes

<sup>10</sup> A former Lok Sabha Member of Parliament from Arunachal Pradesh



## ML IN OTHER COUNTRIES

It is heartening and remarkable to note that many countries have acknowledged that menstruation is a vulnerable and discomfort issue suffered every month by the women, due to which steps have been initiated to indemnify the same. These countries are of the view that this humanitarian approach will boost the health of women and improves the productivity and quality of the work. South Korea provides 1 day ML in a month. Japan provides 2 days leave in a month in case a female worker has menstrual cycle or such symptoms. Taiwan allows 3 days ML per month for which the women employees need not give any reasons. In 2020, Scotland and France marched one step ahead of all countries by providing free sanitary pads and free tampons and other related period products to the menstruating women. Kenya and South Africa have made the tampons tax free and they provide free period products and sanitation products to the school going girls and to the other menstruating women, free sanitary pads are provided.

## ML AND THE INDIAN CONSTITUTION

Though Article 14 of the Indian Constitution provides for Equality before law, reasonable classification to certain classes is allowed. Article 15(3) enables the State to make special provision for women and children. Though our Constitution provides for protective discrimination in favour of women, we have not made a provision for ML. Article 21 very clearly says that Right to life does not connote mere animal existence but a life with dignity and Right to health is one of the unenumerated Rights under Article 21. As the UN has already noted menstrual health falls very much under public health. Article 42 of the Indian Constitution enjoins the State to provide for just and humane condition of work and maternity relief, which implies that humane conditions should be created for women employees at the work place. Article 47 casts a duty on the State to raise the level of nutrition and the standard of living and to improve public health.

## JUDICIAL RESPONSE SUPPORTING THE NEED FOR ML

In *Anushree V. R. vs. Government of NCT of Delhi* (2015), the Hon'ble Delhi High Court ruled that menstrual pain and cramps can be considered a valid reason for availing leave and the employers cannot discriminate against women who avail leave during menstruation. This ruling of the court emphatically supports the argument for the introduction of ML as a legally one.

In *National Human Rights Commission vs. State of Arunachal Pradesh* (2017), the National Human Rights Commission (NHRC) endorsed that the state government provide ML to female government employees. This recommendation of the NHRC, implies that ML is a human right of the women and the same should be provided by the state.

  
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## NEED FOR ML

We do concur that the flip side of introducing paid ML is that it discourages the employers from recruiting more women, which warrants the formulation of a uniform ML policy. It is encouraging to know that many industry players in the country have begun to frame special internal protocols for extending MLs for their employees. Menstruation has become a burning yet unattended issue in the country. The patriarchal notion is that sick leave is anyway available for ladies and they can avail the same during their periods. But sorry, menstruation is not sickness but is a natural process and is a pivot in regulating her reproductive health. Reproductive health which is unique to the female gender needs to be nursed appropriately at the right time to have healthy citizenry.

The workplace practices are constantly evolving and it is very important to adapt to them. The decision of the court in *Vishaka and others vs The State of Rajasthan and others*<sup>9</sup> was a path breaking judgement and paved a way for a safe & pleasant working environment, bereft of sexual harassment for women employees at the work place. A ML Policy for women employees will boost the morale of the working women & can metamorphosise the work place into a more desirable one.

## WAY FORWARD

For the better and the uniform framework and the implementation of the policy on ML at all levels, the following existing labour laws should be suitably amended to make the ML its integral part.

**The Maternity Benefit Act, 1961:** The Act provides for Maternity Leave which also includes a provision for leave during illness connected with pregnancy, child birth / miscarriage. ML can be treated as a prelude to the leave provided under this Act as it takes care of the reproductive health of the women.

**The Employees State Insurance Act, 1948:** The main focus of this Act is to provide social security benefits to the employees. This Act needs to be amended to make provision for ML.

**The Factories Act, 1948:** This Act mainly deals with the infrastructure of the factory to ensure safety, hygiene and wellbeing of workers at the workplace. It emphasises on providing clean and proper sanitary conditions including separate toilets for men and women. Section 75(b) of the Act provides that if an employee is unfit in terms of health, he or she may not be permitted to work until he or she is fully fit. For females, menstruation can be one such state of health which makes her unfit to work. ML could be deemed to be a way forward for promoting the welfare and health of the women workers in factories.

<sup>9</sup> AIR 1997 SC 3011



The Equal Remuneration Act, 1976: This Act provides for pay parity between men and women workers thus promoting gender equality. This could further be accentuated by the introduction of ML.

Companies Act, 2013 - Schedule (vii) part (iii) of Companies Act guides that the company can undertake some specified activities in their quest for attaining the mandatory Corporate Social Responsibility (CSR). On an examination of the various activities that can be embarked upon by a company under CSR- promoting health care, promoting gender equality and empowering the women find a mention. In pursuance of the same, providing ML for female employees can be one of the moves which demonstrates their responsibility/commitment towards the society at large.

## CONCLUSION

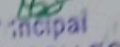
In India, some of the companies like Byju's, Swiggy and Zomato have exhibited their compassion towards menstruating female employees by adopting ML policies. In the month of October 2023, National Academy of Legal Studies and Research, Hyderabad officially introduced a ML Policy for its students on campus. As per the policy, the students are not required to produce any medical proof but only the self-certification to claim the ML. As per the students' request in 2022-23, Dharmashastra National Law University, Jabalpur allows its female students to take leave during menstrual cycle and the leaves will be approved by the office. Right to health which is an unenumerated Right guaranteed under Article 21 includes Menstrual health. WHO calls for Menstrual Health to be recognized, framed and addressed as a health and human rights issue, not a hygiene issue.<sup>10</sup> There can be a ML policy permitting either 12 days of ML for the entire year or a full day's leave each month or 2 half day leaves every month with no question/proof asked. The Employers and Managers should be sensitised to fight the embarrassments/inhibitions and to be able to communicate with women employees without any hesitation.

The government should make the sanitary pads and other allied period products tax free which makes it affordable to everyone, thus facilitating the women in maintaining hygiene/health during their periods. Sanitary napkin vending machines should be installed in the workplace at convenient places for womenfolk. For the proper disposal of the used sanitary pads, the government should insist on the employers to instal incinerators at rest rooms earmarked for ladies' staff. The ladies rest rooms at the public places should be equipped with incinerators. This will reduce the soil pollution caused by indiscriminate disposal/dumping of the used sanitary napkins. Infrastructural changes which is supportive of managing menstruation with dignity and comfort at workplaces, schools and public places should be initiated.

Building an inclusive work environment is the need of the hour when half of the workforce is made up of women. The Researcher strongly believes that this is high time we addressed this issue, as it not only concerns the women but the society at large. It is time that the taboo surrounding the Menstruation and the patriarchal approach to the same be put an end to and the

<sup>10</sup> <https://www.who.int/news/item/22-06-2022-who-statement-on-menstrual-health-and-rights>

inclusive growth is achieved. The legislators should admit that it is not only the men who are the stake holders in the nation building but women also contribute equally. Senior Advocate at the Supreme Court, Smt Indira Jaising remarked, 'a law along these proposed lines is not a far-fetched dream, as India has come a long way from a time when lawyers could not even bring themselves to say the word menstruate in court'. Yatra naryastu puhyante ramante tatra Devata<sup>11</sup> is a Sanskrit phrase that translates to "Where women are honoured, divinity blossoms". The Researcher only prays that the government/state honours the working women by permitting ML. The Researcher does not apprehend opposition for this step from any quarter as this will protect the interest of the entire women clan which includes our mother, wife and sisters. This initiative will not only boost the efficiency of the women work force but will also allow her to work during the periods to support herself and her family.

  
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<sup>11</sup> Manusmriti