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Beyond Hygiene: Menstrual Leave, Policy Gaps, Stigma, Labour Rights, Equality

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ABSTRACT

India's existing approach to menstruation remains fragmented, hygiene-centric, and legally inadequate. While a few states have introduced menstrual leave policies, the absence of a national framework leaves most menstruating individuals without meaningful workplace accommodations or protection from discrimination. This article argues that menstruation must be understood as a substantive equality issue rather than a private or sanitary concern, drawing on Articles 14, 15, 21, and 42 of the Constitution and the doctrine of reasonable accommodation. Through comparative analysis of global menstrual policies in Spain, Indonesia, Japan, South Korea, and Scotland, the piece demonstrates that menstrual justice is both administratively feasible and aligned with international labour standards. The article further highlights the risks of stigma, hiring bias, and privacy concerns, and explains why these do not justify rejecting menstrual accommodation but instead demand careful policy design. It concludes by proposing a rights-based national menstrual justice framework that includes statutory menstrual leave, workplace accommodations, anti-discrimination protections, and stigma-reduction measures, arguing that such reforms are necessary to ensure dignity and equal participation in education and employment.

KEYWORDS

Menstrual justice, labour law, gender equality, welfare gaps, comparative policy

INTRODUCTION

Menstruation is a biological reality, and public discourse around

the same has expanded globally; however, when we talk about initiatives and policies surrounding the same, the scope is strikingly narrow. In India, menstruation policies are primarily focused on and viewed through the lens of hygiene and health issues rather than addressing it as an equality issue. The central and state-level policies focus on providing free sanitary napkins, raising awareness, and sensitisation programmes. While these are not unimportant or irrelevant, these initiatives fail to acknowledge the recurring physiological burdens that menstruators carry in schools, colleges, and workplaces. As a result, menstrual policies remain absent from employment policies and other sectors.

Menstruation does not only come with physical pain, including abdominal cramps, breast tenderness, leg soreness and back pain, but also other symptoms such as mood swings, hot flushes, fatigue, etc, which are often never taken into consideration. Women also experience premenstrual syndrome, usually referred to as PMS, which comes with symptoms such as irritability, depression and nervousness, beginning around a week before their actual bleeding starts, affecting their overall productivity. Every one in 3 women are unable to carry on with their day-to-day activities owing to menstrual symptoms. Dysmenorrhea is the medical term used to describe excruciating periods affecting around 50%-90% of women worldwide, and these extreme symptoms were seen to be more prevalent amongst adolescent women, with over 20% reporting it to be severe enough for them to be unable to get out of bed.

Even after experiencing all these symptoms every month, women have to manage it along with their school, college work and meet deadlines without any reasonable accommodations being provided to them. The absence of statutory provisions creates an uneven playing field. Women have to adhere to the neutral rules and regulations of strict attendance, workplace deadlines, rigid work hours, and lack of rest provisions, which produce disproportionate burdens on menstruating workers and constitute indirect discrimination under Articles 14 and 15 of the Constitution.

This article argues that the menstrual justice framework should not be limited to a welfare scheme or a hygiene issue, but must be integrated into the constitutional domain of equality and dignity, where it firmly belongs.

THE LEGAL VACUUM

India's legal standing on menstrual policy remains highly fragmented and incapable of providing adequate protection to menstruating workers and students.

- Bihar introduced its menstrual policy in 1992, which allows two days of leave every month.
- In 2023, Kerala allowed menstrual leave for women in the workplace and institutions.
- Odisha announced its menstrual leave policy for government workers in 2024.
- Karnataka has recently introduced its menstrual policy in both the government and private sectors, which provides one day of paid leave to women.

These are the only states in India that have their own menstrual policy in place. There is no set standard at the central level, nor are there any guidelines that the states are required to adhere to. While these states have adopted a progressive stance, it creates a geographical inequality amongst the same sex living in the same country. While some are granted paid leave every month, menstruating workers in other states have to depend upon their sick leaves or are totally at the mercy of their employers for leave or even worse, to not have any adverse inference to be drawn against them on this basis. Instead of ensuring uniform protection for all menstruators, the rights and accommodations they receive depend entirely on the state in which they reside.

In states without a menstrual policy, employers may, at their discretion, choose not to provide leave to those who need it. They might view it as an additional cost or burden that they decide not to bear. This can lead to widening the gap between regions with forward-looking labour standards and those without them. Advocating for or pushing employers in such states to implement menstrual leave policies might lead them to avoid employing women altogether.

Although attempts were made at the central level to implement a menstrual policy, they were never successful.

- The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022, introduced in Lok Sabha by Shri Shashi Tharoor as a private member's bill, aims to grant women in public, private, and educational institutions three days of menstrual leave per month and to provide them with free menstrual products by government institutions. Even though the bill had some problems, such as lacking anti-discriminatory safeguards and placing the entire financial burden of paid leaves on employers, which could create bias in their minds. Even this did not get past the introductory stage.

- Draft Menstrual Hygiene Policy 2023- introduced by the Ministry of health and family welfare, the primary focus was to improve access to sanitary products, safe disposal mechanisms and sensitisation programmes for adolescents.

This Bill suffers the same problem of being hygiene-focused and not substantively dealing with the biological differences and the reasonable accommodations that are required.

In the absence of any recognised frameworks, menstruating workers are compelled to work in discomfort and endure the pain or use their sick leaves. The entire structure and system is built upon the non-menstruating male worker as the norm, and others are supposed to just fit in.

The vacuum can even extend further with employers negatively penalising menstruating workers, or being biased towards hiring or promoting them, citing productivity concerns. There are no anti-discriminatory measures in place, keeping menstruating workers at a deeper disadvantage, even after not being provided with any leave.

This is another reason apart from cultural stigma and stereotypes surrounding menstruation that women often do not disclose the reason behind their taking leave, as it might result in an adverse inference being drawn against them. These are generally implicit assumptions that create fear of bias in women.

This concealment, rather than being helpful, is counterproductive to both the women and the employer, different from what is contemplated by the women, forcing their day and tasks through the excruciating pain, affecting their body and symptoms by worsening them while also affecting their productivity, which has a direct impact on their work, focus and deadlines.

These harms are exponentially increased when caste, class, and gender identity intersect. Dalit women, Adivasi women, queer menstruators, and trans men face compounded stigma and are usually denied even informal support. For gig and informal workers, menstruation affects nothing less than basic survival, since lack of sanitation infrastructure makes menstruating in public spaces humiliating or dangerous. In each of these contexts, menstruation becomes a site of structural discrimination precisely because the law refuses to engage it as such.

WHY MENSTRUATION MUST BE LEGALLY RECOGNISED AS AN EQUALITY ISSUE

Menstruation must be recognised as an equality concern requiring a shift from formal equality to substantive equality. Its limitation to just hygiene and welfare schemes often overlooks and places the biological difference as a personal and bodily burden to be borne by the menstruating population without any reasonable accommodations for the same.

Article 14 of the constitution recognises that even neutral practises can be discriminatory and equal practises can also result in unequal outcomes. The constitution is based on the principle of substantive equality, which is equality among the equals; thus, rules made keeping in mind only the non-menstruating population must not be required to be followed by those who menstruate. Norms structured keeping in account just one part of the population is a straightforward case for indirect discrimination.

Article 15 further strengthens this argument as it not only prohibits discrimination on the grounds of gender and sex but also requires special provisions to be made for the disadvantaged. Thus, reasonable accommodations in the form of menstrual leave policies must be made, not to provide any preferential treatment but to counter the disadvantages due to the neutral norms and structures.

In the case of *Vikas Kumar Jain V. Union of India* the Supreme Court ruled that providing reasonable accommodation is a constitutional requirement where specific individuals face disadvantage or predictable barriers to participation and the degree of disability can be no ground to deny the same. Thus, menstruation which is foreseeable and results in significant disadvantage must also be dealt in the same manner.

Article 21 which is right to personal life and liberty reinforces the need to treat menstruation as a matter of rights. Period pain, discomfort and emotional imbalances directly affect bodily integrity and autonomy. Article 42 which accounts “just and humane conditions of work” as a condition further mandates that workplaces account for diverse bodily needs.

In the case *Sampurna Behura v. Union of India* the Supreme Court affirmed the state's duty to provide health facilities, holding that denying menstrual leave infringes on women's right to health (Article 21).

Treating menstruation as a site for reasonable accommodation is thus legally consistent and constitutionally compelled.

WHERE INDIA STANDS GLOBALLY

A comparative view puts in perspective how far India lags behind and how limited the policy imagination has been. Spain's 2023 reform offers one of the clearest models for India: state-funded menstrual leave, based on medical certification, ensures that workers can seek accommodation without fear of employer backlash, as the cost is borne by public insurance rather than employers, substantially reducing the risk of hiring discrimination. India has not contemplated such a funding mechanism.

Japan and South Korea have had menstrual leave for many decades, and their experience highlights an important point that leave alone is insufficient without a corresponding cultural shift. Despite official entitlements, uptake remains extremely low owing to fears of stigma, judgment, and reprisal. This raises one important lesson: that rights be accompanied by anti-stigma measures and workplace education.

Indonesia's statutory two day menstrual leave provides an example of straightforward, national recognition, although, as described above, it is imperfectly implemented. It is nonetheless proof that national legislation on the matter is not only possible but politically achievable. Scotland, in turn, takes a dignity-based model, framing menstruation as a broad social concern—quite apart from a narrow issue of workplace policy—since it ensures free menstrual products in public institutions and embeds dignity as a matter of policy principle. This approach, accordingly, illustrates well the value of framing menstruation as an issue of rights rather than as a welfare provision.

A similarity running through these jurisdictions is that menstrual justice requires a mix of legal entitlements, institutional accommodations, cultural transformation, and economic design—all of which are absent in India today.

BUILDING INDIA'S MENSTRUAL JUSTICE ARCHITECTURE

A robust framework of guidelines is required at the central level to be uniformly followed by all states. Menstrual leave should be an option for employees, allowing those who do not feel the need to take it or those who can easily manage their symptoms to choose to work during their menstruation. The discretion is shifted from the employer so that this right is not dependent on his generosity.

Additionally, when work pressure is high, deadlines are tight, or due to extreme symptoms, the leave extends beyond a day, home options must be provided so that the hustle and bustle of travelling can be avoided, and work can be carried on from the

comfort of one's own home.

The paid leaves must be state-funded, as it does not place the entire pressure on the employer and thus avoids discrimination in their hands, owing to them bearing the entire burden.

These leaves must be confidential, and the privacy of the person taking these leaves must be respected. A no-questions-asked, private, and confidential mechanism must be devised. Similar to the way casual leaves are recorded, wherein a certain number of casual leaves are provided to employees every year, and when they use their leave, there needs to be no reason recorded.

Workplace accommodations must also be codified. PMS symptoms can be experienced one week before the actual period, or the period may begin at work; thus, rest spaces, availability of all sanitary products, and remote working options must be provided.

Anti-discrimination practices must be mandatorily incorporated into the labour law. Clear prohibitions on menstrual-based hiring or promotion bias, penalties for retaliation, and confidentiality obligations must be integrated into labour law. These protections ensure that menstrual leave and accommodation do not become grounds for workplace exclusion.

Finally, stigma reduction reforms, such as awareness campaigns and sensitisation programs, must be implemented.

COUNTERARGUMENTS AND RESPONSES

Critics argue that having a menstrual policy in place will reinforce the stereotype of women being the weaker gender or term them as less efficient or less productive. This argument is based on the outdated concept of equality, where the "one size fits all" principle is applied, which can also be called formal equality. One policy is created keeping in mind just one sect of the population and everyone else is just supposed to follow it. However, substantive equality does not mean forcing all to follow male-centric policies; it recognises the biological differences and the reasonable accommodations that must be made to ensure equal participation. Functioning through pain can not be a marker for equality. Accommodation is not an admission of inferiority it is a means of removing structural barriers that prevent many menstruators from competing on equal terms.

Secondly, concerns are raised about hiring bias. While this is a genuine problem, it can be effectively tackled through proper policies and mechanisms, as mentioned above. When these paid

leaves are funded by women, the employers are not disincentivised from hiring women. Spain's recent reform is a strong example: menstrual leave is treated as a medical right funded by the State, not as an employer burden, thereby reducing the risk of gendered hiring discrimination.

Thirdly, it is argued that menstrual leaves are redundant as there is already an option of sick leaves. To begin with, menstruation is not an illness but requires rest or a reduced workload every month, which is natural and known. Sick leaves are or medical leaves are for emergency illness which are unpredictable moreover it requires documentation of reasons and again documenting menstruation as a reason may lead to hiring bias. It also prevents women from exhausting their sick leave for a recurring need, leaving them without support during actual illness.

Privacy concerns can be addressed through well-designed administrative procedures. Workers should never be required to disclose intimate details of their menstrual cycle to supervisors. Many countries, and some private companies in India, allow menstrual leave to be self-certified no medical documentation or justification required. Confidential, HR-level digital systems can ensure that disclosure remains voluntary and respectful of privacy.

Finally, concerns about misuse or absenteeism, even when leaves are not required, are common to all forms of leave, including sick leave and casual leave as well. These can be addressed through normal HR safeguards, but denying an entire gender a necessary accommodation is not the way out.

These criticisms highlight the need for a more comprehensive policy framework, rather than abandoning the entire accommodation altogether.

CONCLUSION

Menstruation is a normal biological phenomenon, but India's legal framework still considers it marginal. It is ironic how India has such a detailed framework on maternity rights and policy but the first step of pregnancy, which is menstruation, has such a narrow scope and no piece of legislation surrounds it

Menstruation needs to be recognized as an issue of equality and not of hygiene to ensure that menstruators are given the same opportunities in work as well as education.

Already, other nations have engaged efforts in ensuring that menstruation is taken care of through legislative acts, state-

backed leave systems, policies that ensure dignity, as well as office policies that cover the issue comprehensively. It is evident that menstrual justice is feasible and does not contradict development practices. Similarly, India stands firmly on a foundation that provides for equality, dignity, as well as humane work conditions.

Menstrual justice is more than a series of state actions or optional benefits that can be adopted or disregarded. Menstrual justice is about the need for a rights-based approach that must encompass issues like menstrual leave, work accommodations, non-discrimination, and destigmatization. These issues would not result in special rights; they would provide the space for women to achieve true equity as women remain India's biggest ambition for labor force engagement. Menstrual justice is more important than it seems.