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RESEARCH ARTICLE

REDEFINING MENSTRUAL EQUITY IN INDIA- PERIOD POVERTY, TAX-FREE HYGIENE PRODUCTS, MENSTRUAL LEAVE AND AFFIRMATIVE ACTIONS

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ABSTRACT

Menstrual inequality is one of the major threats faced by women across the globe. It refers to the lack of access to safe and hygienic menstruation essentials, which include hygienic sanitary products, toilets, and hand sanitization facilities. Menstrual equity aims at making these essentials easily and readily accessible to women. It also includes educating the masses regarding the significance of hygienic menstruation, removing the anathema that has been attached to menstruation. The Right to access safe and hygienic menstruation essentials is a basic human right, and it has also been guaranteed by the Indian Constitution. Articles 14 and 21 of the Indian Constitution ensure the right to equality and the right to live with dignity which is wide enough to include menstrual equity within its purview. The right to life guaranteed under article 21 also provides the right to health to every citizen of India, bringing menstrual equity within its purview. To ensure menstrual equity, the Indian government must take affirmative actions in spreading awareness regarding menstrual hygiene and implement new legislation to remove period poverty and to make menstruation essentials easily accessible to women. This paper aims to analyse the menstrual inequalities faced by women around the world with an emphasis on the Indian scenario while highlighting the importance of effective legislation in ensuring menstrual equality and providing practical suggestions for the fruitful attainment of these laws.

Keywords: Menstruation, Menstrual Equity, Menstrual Health, Period Shaming, Period Poverty, Equality, Right to Health, Constitutional Right.

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INTRODUCTION

Menstruation or periods can be defined as a cyclical discharge of the inner lining of the uterus with blood, secretions and tissue debris that recurs in non-pregnant breeding age primate females, at approximately monthly intervals and is considered to represent a readjustment of the uterus to the non-pregnant state following proliferative changes accompanying the preceding ovulation.¹ It is a global issue surrounded by a lot of misconceptions and myths. Period shaming is a widespread and nefarious act that needs to be changed. Menstruation is a natural process crucial for the female body's reproductive health and hence all social stigma and cultural beliefs that shame such a phenomenon is outright fatuous and ill-founded. However, safe and hygienic menstruation requires some essentials like hygienic sanitary products, toilets, and hand sanitization facilities. When there is a lack or shortage of these requirements, it leads to the condition called period poverty.² Hence, it deems necessary to educate people regarding the importance of menstrual hygiene and their constitutional right to health so that it enables them to persuade the government to make laws in ensuring menstrual equity, removal of period poverty and to break the stigma surrounding menstruation.

PERIOD POVERTY

Period poverty refers to the lack of access to safe and hygienic sanitary products, menstrual hygiene education, toilets, handwashing facilities, or unable to manage periods with dignity. The lack of adequate laws in providing easy accessibility and availability to menstrual essentials is a global issue affecting women and young girls. Furthermore, an effective legislative intervention is the most befitting remedy considering the adversity and urgency of the issue at hand. Only 12% of women and girls in India have access to sanitary products and the others are forced to use dirty rags and unsanitary material while menstruating, which causes various kinds of infections.³

1. The reasons for period poverty

Despite the existence of popular awareness of the subject and the surrounding issues, the matter is seldom discussed in public platforms or media. The reasons for period poverty are several. It may be the actual poverty that hinders them from purchasing sanitary products that are ineluctable for maintaining safe menstrual health. It is a very common issue faced by women and girls from low-income families who cannot afford menstrual products. However, this is not just an issue affecting women in under-developed and developing countries; it also affects women in wealthy and industrialized nations.⁴ The cost of

¹ MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/menstruation>.

² Erica Sanchez, Leah Rodriguez, *Period Poverty: Everything You Need to Know*, GLOBAL CITIZEN (Feb. 5, 2020, 9:15 PM), <https://www.globalcitizen.org/en/content/period-poverty-everything-you-need-to-know/>.

³ Lara Rutherford Morrison, *8 reasons why you shouldn't be ashamed of period shaming*, BUSTLE (Feb. 5, 2020, 9:15 PM), <https://www.bustle.com/articles/109730-8-reasons-you-shouldnt-be-ashamed-of-your-period>; *Annual Report 2011-2012*, PLAN INDIA (2012), https://www.planindia.org/wp-content/uploads/2019/09/plan_annual_report_2011-12_file-compressed.pdf.

⁴ *Supra* note 2.

purchasing sanitary products every month seems to be a consequential impediment for women belonging to low resource settings. One can imagine the effect it would cause if the sanitary products were taxed and it would be even worse if it is taxed under luxury products. There are only a few countries like New Zealand, Australia, Canada, Kenya, etc., with no tax on sanitary products.⁵ In the current era where the developments are taking place at a rapid rate and education has reached almost all corners, all nations must avoid tax on sanitary products so that it is easily available to the women population. A survey by Plan International UK, has shown that, around the world, about one in ten women could not afford protection for their period.⁶ This tells us how economic reasons stand as a barrier to access sanitary products by the female population.

Period poverty is not just limited to the inaccessibility to period products; it also includes access to washing facilities, proper management of sanitary waste products, menstrual education, and privacy about menstrual hygiene. Poor quality services like inaccessibility to clean water can also have a great impact on the menstrual health of women. Goal 6 of the United Nations 2030 Agenda for Sustainable Development focuses on clean, accessible water for all people;⁷ but according to the survey conducted by UNICEF, 2.3 billion people still lack basic sanitation services.⁸ Without having proper hand sanitization facilities, healthy management of periods at home is a massive challenge. The problem extends to schools and public places which lack proper toilets with doors that can be safely closed or facilities for the disposal of sanitary products discreetly. The WASH Poverty Diagnostics has shown that only 54% of India has a separate and usable female toilet revealing the reality of our country.⁹

Social factors affecting period poverty include the misconceptions and stigmas prevalent in the society that prevent a woman from expressing her rights to menstruation. The reason can also be the stigmatization surrounding menstruation. Several communities and populace consider menstruating women as impure and are ostracized from society during their cycles. This even prevents people from expressing their views about menstruation in public. In Western Nepal, there used to be a tradition called *chhaupadi*,¹⁰ which prohibited menstruating women and girls from entering their houses during their cycles. It also prevented them from cooking food during that period and was also forced to live in a hut or livestock shed. There

⁵ Katharina Buchholz, *Women Pay High Tax Rates for Period Supplies*, STATISTA (Feb. 28, 2020, 9:30 PM), <https://www.statista.com/chart/18194/sales-tax-rate-on-feminine-hygiene-products-in-selected-countries/>.

⁶ *1 In 10 Girls Have Been Unable to Afford Sanitary Wear, Survey Finds*, PLAN INTERNATIONAL (Feb.13, 2020, 9:30 PM), <https://plan-uk.org/media-centre/1-in-10-girls-have-been-unable-to-afford-sanitary-wear-survey-finds>.

⁷ UNITED NATIONS, <https://sdgs.un.org/goals/goal6> (last visited Jun.11, 2020).

⁸ *2.1 billion people lack safe drinking water at home, more than twice as many lack safe sanitation*, (July 12,2017) <https://www.unicef.org/press-releases/21-billion-people-lack-safe-drinking-water-home-more-twice-many-lack-safe-sanitation>.

⁹ *Water Supply, Sanitation, and Hygiene (WASH) Poverty Diagnostic Initiative Water Supply*, THE WORLD BANK (May.15, 2020, 9:20 PM), <https://www.worldbank.org/en/topic/water/publication/wash-poverty-diagnostic>.

¹⁰ *Chhaupadi and menstruation taboos*, ACTIONAID (May. 15, 2020, 9:26 PM), <https://www.actionaid.org.uk/our-work/period-poverty/chhaupadi-and-menstruation-taboos#:~:text=Chhaupadi%20is%20an%20ancient,bad%20luck%2C%20or%20ill%20health>.

are such traditions that are followed even in India.¹¹ The cultural and social influences appear to be a hurdle for the development of public knowledge on this subject. In many parts of India, culture dictates menstruation to be dirty and impure. This stigma needs to be changed.¹² These have impregnated a negative impact on women and have prevented them from expressing their views regarding menstruation. Thus, silence about menstruation can lead to ignorance and neglect, even at the policy level. It adversely affects women and girls with heightened vulnerabilities leading to period poverty and discrimination. Furthermore, the lack of active efforts to curb period poverty coupled with the inability of menstruating women to actually participate and make decisions in their own lives due to social and cultural bondage, has led to the exponential aggravation of these problems. All these misconceptions and stigmas are due to the lack of proper education and awareness programs. Hence it is safe to conclude from the plethora of issues listed above that we have created a custom-made health crisis for the menstruating female population, from the shackles of which, they are to this day struggling to break free.

2. The consequences of period poverty

According to the survey given out by UNICEF, 2.3 billion people across the globe live without basic sanitation services and in developing countries, only 27% of the people have adequate handwashing facilities at home.¹³ All of these make it difficult for young girls and women to manage their periods safely and with dignity. Various studies have shown that poor menstrual hygiene can cause physical and mental health issues. Women who experience period poverty are more likely to suffer from anxiety and depression.¹⁴ Due to the stigmatization attached to periods, and the lack of safe and hygienic products to manage periods, it is found that one in five girls drop out of schools in India after they get their periods¹⁵. Studies have shown that girls with period pain experience reduced class performance and lower attendance.¹⁶ It also affects the employment of women and their efficiency to work. Furthermore, a study conducted by the Independent has revealed that 44% of women who had experienced period poverty struggled to find a job after completing their education¹⁷. It has led women to settle for the first jobs they were offered than the ones they dreamt of. All these studies clearly reveal the extent to which period poverty has had detrimental effect on the life of women, right from their childhood to adulthood.

¹¹ Chinnabi Ranabhat, *Chhaupadi Culture and Reproductive Health of Women in Nepal*, 27(7) APJPH 785, 10 (2015).

¹² Suneela Garg and Tanu Anand, *Menstruation related Myths in India- Strategies for combating it*, 4(2), J FAMILY MED PRIM CARE 184, (2015).

¹³ *Supra* note 8.

¹⁴ Emma Elsworth, *Lack of sanitary products can have a far reaching effect on young people's life*, INDEPENDENT (Feb.18, 2020), <https://www.independent.co.uk/news/health/period-poverty-anxiety-depression-study-women-mental-health-sanitary-products-a8452581.html>.

¹⁵ Phineas Rueckert, *Period Poverty Stigma Are Keeping Girls Out of School*, GLOBAL CITIZEN (May. 30, 2020), <https://www.globalcitizen.org/en/content/menstrual-hygiene-day-education/>.

¹⁶ Mike Armour, Christina Curry, *Period Pain is impacting women at school, uni and work. Let's be open about it*, THE CONVERSATION, (Jun.28, 2019, 12:23PM), <https://theconversation.com/period-pain-is-impacting-women-at-school-uni-and-work-lets-be-open-about-it-118824>.

¹⁷ *Supra* note 9.

In various parts of the world, girls and women manage their periods with dirty rags or tree leaves, leading to severe diseases and complications. It can also lead to reproductive and urinary tract infections, showing the lack of women's access to proper health.¹⁸ The increase in period poverty and prices of menstrual products in the country, show the inefficiency of the government in protecting the health of the citizens. The inaccessibility of women to safe and hygienic menstruation is a violation of their right to health guaranteed under Article 21 of the Indian Constitution.¹⁹ The right to health is a fundamental right of every human being and the provisions of the Indian Constitution guarantee the right to health which the Indian Judiciary has upheld in several decisions.²⁰ Every citizen of India has a right to enjoy the highest standard of health. The right to health is an integral part of the right to life guaranteed under Article 21 of the Indian Constitution.²¹ Right to life means that a person should have access to all the necessity for living and health is an essential aspect of human life. The directive principles of state policy enshrined in the constitution also provides for the right to health.²² Articles 38, 39(e), 42, 47, and 48A of the Indian Constitution describing directive principles of state policy explicitly cast a duty upon the state to protect the right to health of its citizens.²³ In *Consumer Education and Research Centre v. Union of India*,²⁴ the Supreme Court held that the right to health and medical care is a fundamental right under article 21. Therefore, the state is under an obligation to ensure that the fundamental rights of women and young girls are not violated.²⁵ Consequently, the state is bound to ensure that the menstrual products are readily available and accessible to all women and young girls, in upholding the right to health guaranteed by the Indian Constitution.

3. The steps to prevent period poverty

The first and foremost step is to normalize menstruation and destroy taboos and stigmas around the natural process. Government and other public welfare organizations must take effective steps to remove the misconceptions and stigmas surrounding menstruation through education, public awareness programmes, and workshops. Government must also bring in new legislation to end practices like *chhaupadi* and declare such practices illegal.

Subsequently, efforts must be directed towards providing affordable and easily accessible menstrual sanitation and hygiene products to the women in need. It is found that women in prison are devoid of sanitary products and are deprived of hygienic menstruation. Steps must be taken to provide sanitary products free for women in prison. In America, a Bill on Menstrual Equity for All was put forward before Congress; it was the first comprehensive bill addressing the challenges faced by menstruating women and in providing free menstrual

¹⁸ Stefanie Kaiser, *Menstrual Hygiene Management*, SUSTAINABLE SANITATION AND WATER MANAGEMENT (Jun. 12, 2021, 4:36 PM), <https://sswm.info/humanitarian-crises/urban-settings/hygiene-promotion-community-mobilisation/important/menstrual-hygiene-management>.

¹⁹ *Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 922.

²⁰ *Id.*

²¹ *State of Punjab v. Mohinder Singh Chawla.*, (1997) 2 SCC 83.

²² Md. Baharul Islam, *Right to Health: A Constitutional Mandate In India*, 3(3) IJARIE (2017).

²³ INDIA CONST. art. 38, 39(e), 42, 47, 48A.

²⁴ *Supra* note 19.

²⁵ *Peoples Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

products to women in prison. The Bill contained provisions mandating employers with more than 100 employees to provide menstrual products in the workplace bathrooms. It further aimed at increasing the accessibility and availability of menstrual hygiene products by providing them for free to school students, women in detention camps, and other homeless individuals.²⁶ These provisions stand testimony to legislative advancement the US has attained in matters of menstrual equity and hygiene. A similar bill was introduced in India by Dr. Shashi Tharoor in the Parliament, containing provisions for increasing the availability and accessibility of menstrual products to women, ensuring menstrual equity for all women.²⁷ Unfortunately, it never came into force owing to political disparity prevailing in the state. The government of India must also adopt similar menstrual equity policies into its legislation irrespective of the political background of the person presenting the bill.

Government must take necessary action to prioritize menstrual equity policy. They must take steps to avoid sanitary products from being taxed and also provide free menstrual products to low-income families. They must encourage public organizations to contribute free sanitary products to publicize the idea of sanitary hygiene. Economically sound people and public organizations must be encouraged to donate sanitary products to the people lacking them. Collecting sanitary products through food banks and providing them to the ones in deficit would make a remarkable change in the society.

TAX-FREE HYGIENE PRODUCTS

In avoiding period poverty, the essential step is to make menstrual essentials easily accessible to the women population, and for doing so, it is necessary to reduce the cost of hygienic sanitary products. So, the best effective step that should be taken by the government is repealing the tax on sanitary products. This makes menstrual products cheaper and easily accessible to the masses.

Let us look into the tax system of various countries about sanitary products. In the US, sanitary products are taxed, whereas men's grooming products are not. This brought about a controversy regarding the tax system, and it was stated that the taxed products are being non-essential, implying that sanitary products are not essential.²⁸ Such a biased tax system needs to be changed. In the European Union, sanitary products are taxed under luxury items, further increasing its cost.²⁹ The ultimate aim of tax is to raise revenue for public welfare. So, when the government tax menstrual products, it is necessary to know if they are using them for the welfare of women. The UK government has used the money raised by VAT on period products into a tampon tax fund which is used to support women's organizations and charities.³⁰ It has been evidently stated time and again that a pro-active governmental

²⁶ Jennifer Weiss Wolf, *U.S. Policymaking to Address Menstruation: Advancing an Equity Agenda*, SPRINGER (July. 25, 2020), https://link.springer.com/chapter/10.1007/978-981-15-0614-7_41.

²⁷ The Women's Sexual, Reproductive and Menstrual Rights Bill, Bill No. 255, 2018.

²⁸ Alexandra Alvarez, *period poverty*, AMERICAN MEDICAL WOMEN'S ASSOCIATION (Oct. 31, 2019) <https://www.amwa-doc.org/period-poverty/>.

²⁹ Bridget J. Crawford, *Tampon Taxes, Discrimination, and Human Rights*, PACE LAW FACULTY (2017), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=2068&context=lawfaculty>.

³⁰ *Supra* note 14.

approach is the best course of action to effectively counter the issue of period poverty. A notable example in the matter has been set by Scotland by being the first country in the world to issue sanitary products free of cost to its menstruating female students.³¹ In response, countries like Canada, Kenya, Australia, and Germany have cut down the tax on sanitary pads.³² India has also made sanitary hygiene products tax-free to make them accessible to all the women in India. This was as a result of the campaign started by a group of students from Gwalior who caught the attention and support of the media and masses.³³ This should encourage more women and girls to fight for their right to menstrual equity.

LAWS IN MAINTAINING MENSTRUAL EQUITY

Article 14 of the Indian Constitution provides for equality before the law and equal protection of the law.³⁴ Equality before the law means that equals must be treated equally and there must not be any discrimination between the equals. In the case of *Indra Sawhney v. Union of India and Ors*,³⁵ the Supreme Court held that the right to equality is one of the basic features of the Indian Constitution. This concept implied equality for equals and aims at striking down hostile discrimination. The simple biological fact of menstruation should not be a barrier to gender equality or stymie women's realization of their fundamental human rights. Hence, the gender inequality women suffer against menstruation violates the right to life and dignity guaranteed by Article 21 of the Indian Constitution.³⁶ In *Maneka Gandhi v. Union of India*,³⁷ Supreme Court held that the right to life embodied in Article 21 of the Indian Constitution is not merely a physical right; it includes the right to live with human dignity. Consequently, the inaccessibility of hygienic sanitary products violates women's right to live with dignity and is, therefore, the concern of the government. Hence, the government must take necessary steps in making sanitary products available to women to protect their fundamental rights. This can be done by providing sanitary products free of cost or by providing essential hygienic products at low cost or by funding the organizations which aim at protecting women's health and hygiene.

The inaccessibility to safe and hygienic menstruation has had a detrimental effect on girls and women, compelling them to drop out of schools and the workforce, which directly violates their fundamental human rights. The right to education is a basic human right guaranteed under article 26 of UDHR³⁸ and through the agendas of UNESCO.³⁹ It aims at

³¹ Elisabeth Mahase, *Scotland becomes first country to provide free period products*, THEBMJ (Nov. 26, 2020), <https://www.bmj.com/content/371/bmj.m4613>.

³² *Supra* note 5.

³³ Asmita Joshi, *India Ends Controversial Tampon and Sanitary Napkin Tax*, GLOBAL CITIZEN (Jul. 22, 2018), <https://www.globalcitizen.org/en/content/sanitary-napkins-tax-free-india/>.

³⁴ 2 DD BASU, CONSTITUTION OF INDIA (2010).

³⁵ *Indra Sawhney v. Union of India and Ors*, AIR 1993 SC 477.

³⁶ INDIA CONST. art.21.

³⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

³⁸ Universal Declaration of Human Rights, U.N.Doc. A/RES/217(III) (Dec. 10, 1948).

³⁹ *What you need to know about the right to education*, UNESCO (Feb. 27, 2021, 9:15 PM), <https://en.unesco.org/news/what-you-need-know-about-right-education>.

the complete development of human personality, which is being hindered in the current situation. The right to work is also recognized as a fundamental right under article 23 of UDHR,⁴⁰ which is essential in maintaining one's livelihood. The violation of these rights is an international concern that has to be seriously looked into by the government. Moreover, the operation of refugee camps and detention centres harms menstrual health, which directly affects several human rights, most importantly, the right to human dignity and bodily integrity,⁴¹ guaranteed under the Universal Declaration of Human Rights. Furthermore, the absence of an equivalent reproductive process in men has led to the misstep in considering the lack of facility for women's menstrual hygiene. This originates from the failure to acknowledge the fact that menstruation is an involuntary natural occurrence which causes the person extreme pain and discomfort, and hence she should not be further penalized when already both her body and career are already taking the brunt. This disparity can be stamped out by promoting schools and public authorities to supply sanitary pads free of cost to any girl or woman in their facilities.

The lacuna existing in the current legislations in India is the inadequacy of effective laws for preventing menstrual inequity. There is no specific legislation in ensuring improved menstrual hygiene of women. This deplorable situation could be changed by implementing laws under Article 15(3) of the Indian Constitution,⁴² enabling the state to make special provisions for women and children. This provision provides protective discrimination in uplifting the status of women.⁴³ In *Government of Andhra Pradesh v. P.B. Vijaykumar & Ors*,⁴⁴ the Supreme Court described the eminence of protective discrimination in elevating the status of women. In its landmark decision, the Supreme Court urged for creating a women-friendly environment in the workplace to ensure safe menstrual hygiene.⁴⁵ The judiciary in India has always played an exemplary role in formulating laws in areas least covered by the legislation. Hence, the state must implement more women empowering laws under article 15(3) to ensure menstrual equity and thereby protect their right to equality.

MENSTRUAL LEAVE: OBJECTIVES AND FAVOURED SOLUTIONS

Menstruation is a biological cycle that happens every 28 days and may last for up to 3-5 days depending on the person. During this period about 80% of the women report menstrual-related pains that can interfere with participation in normal activities and promote emotional stress out of which 20% experience pain sufficient to compromise their daily routines.⁴⁶

What is intended by the menstrual leave policy is the provision for a few additional days of paid or unpaid leave every month for a woman, unable to work owing to menstrual pain and discomfort, without interfering with her regular entitled leave policy. This is to be made a

⁴⁰ *Supra* note 38.

⁴¹ *Id.*

⁴² INDIA CONST. art15, cl.3.

⁴³ *Government of Andhra Pradesh v. P.B. Vijaykumar & Ors*, AIR 1995 SC 1648.

⁴⁴ *Id.*

⁴⁵ *Vishakha v. State of Rajasthan.*, (1997) 6 SCC 241.

⁴⁶ Trudi M.Washl, Leaanne LeBlanc, *Menstrual Pain Intensity, Coping and Disability: The Role of Pain Catastrophizing*, 4(4) PAIN MEDICINE, 352-361 (2003).

compulsory legal provision causing strict compliance from all public and private sector employers functioning in the country. It can also be watered down to a work-from-home policy, in favour of the applicant.

1. The current global scenario

Though the concept of menstrual leave policy has been widely discussed and debated, there are fewer than 10 countries that have any form of standing legislation to support the same. Even though the laws do not perfectly fall into the laid down margins, the few remarkable attempts by the daring nations have been discussed. Indonesia and Zambia provide paid leaves for women ranging from 2 to 3 days each month.⁴⁷ Japan has been following a leave policy for menstruating women since 1947 promoting them to take leave in case of extreme pain and discomfort.⁴⁸ However, the policy only necessitates its employers to provide leaves with no provision for payment during the same.

Taiwan in 2013 amended its act of Gender Equality in Employment which guarantees women 3 days of menstrual leave a year besides the 30 days of annual leave allotted to a worker.⁴⁹ South Korea has been granting menstrual leave to its women workers since 2001; however, a recent effort to extend it to female university students had been a failure. Nations like Russia have considered the matter, yet final fruition is yet to be attained due to several varied reasons.⁵⁰ However, a similar long struggle bore fruit in Italy when the government finally passed a law to allow women suffering from dysmenorrhea, a paid leave of up to 3 days every month.⁵¹

Various Multinational corporations (MNC) have inculcated menstrual leave into their leave policies, seeing it as an effective means to increase productivity.⁵² It has been considered as a measure to synchronize work with women's natural body cycles. The code of conduct adopted by Nike in 2007 is an interesting example. Nike makes sure that its partners sign a memorandum of understanding to ensure they maintain the company standards.⁵³ Several other brands and corporations have made remarkable attempts in addressing the same but no matter how one may put it, it has not gained a popular acceptance.

2. The hurdles and limitations

Irrespective of numerous effects to normalize the biological process, menstruation is still considered taboo among a vast majority of the world's nations. Most women still find it very

⁴⁷ RACHEL B. LEVITT/JESSICA L. BARNACK, *THE PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES* 561 (Palgrave Macmillan 2020).

⁴⁸ SALLY KING, *ALIGNING PERSPECTIVES IN GENDER MAINSTREAMING* (Springer Publication 2020).

⁴⁹ Gender Equality in Employment Act, 2016 (Taiwan).

⁵⁰ Somya Abrol, *These countries are offering 'period leave' to women. Seriously. Should India follow suit?*, INDIA TODAY (Mar. 7, 2016), <https://www.indiatoday.in/lifestyle/wellness/story/peiod-leave-uk-coexist-menstrual-leave-in-india-women-employees-311634-2016-03-03>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

difficult to communicate on the subject to the opposite sex⁵⁴. Hence, when the entire process is kept secretive, it raises a relevant question as to how much a menstrual leave policy will be of help and the aspects as to its usage by women. Furthermore, it may be considered as a chance by employers to prejudice women and end up considering them as a liability over capable male employees, which may prove detrimental in the already waning female employment ratio.

Extreme period pain is only experienced in less than 20% of females, and the rest can engage in routine activities with little difficulty.⁵⁵ Further, the ones experiencing excruciating pain may make use of their sick leaves to tackle the damage is another side of negative arguments. Hence the enactment of a universal leave policy only to cater to the needs of a small section can be questionable. Another important concern is the potential discrimination that women employees may face from their male peers, considering the additional number of annual leaves that they will enjoy, which could prove fatal in an already male-dominated work environment.

Many examples could be drawn from countries already practicing the policy. In Japan for instance, since the inception of the policy in 1947, the number of women availing it has been on a constant dip. The number declined from 20% in 1960 to 13% in 1981, owing to societal pressures that frown down on them.⁵⁶ South Korea has faced constant criticism since 2001 for its policy, by men who consider it to reverse discrimination. In the fewer countries that remain like Indonesia, the policy has been poorly initiated.⁵⁷

3. The practicality in India

Considering the widely patriarchal scenario in India, any action towards an active leave policy tailor-made for women can be considered a long way from conceivable. However, there have been several remarkable initiatives to make a break. In 2017, a private member bill was introduced in the parliament by Lok Sabha MP from Arunachal Pradesh, Ninong Ering-The Menstruation Benefit Bill 2017.⁵⁸ It proposes that women working in both public and private sectors must be entitled to 2 days of paid menstrual leave every month. It also provides for better facilities to rest at the workplace during menstruation.

However, on an inquiry with the Ministry of Women and Children Development, it was informed that there was no plan to pilot legislation on the issue. The initiative has caused a spark in the need for such legislation as a measure to protect women rather than a luxury. The Bihar government has been offering a 2-day menstrual leave to female employees since

⁵⁴ *Supra* note 47.

⁵⁵ Zawn Villines, *Period Pain (dysmenorrhea) and its causes*, MEDICAL NEWS TODAY (April. 20, 2020), <https://www.medicalnewstoday.com/articles/period-pain-dysmenorrhea>.

⁵⁶ Jessica L. Barnack-Tavlaris, Kristina Hansen, Rachel B. Levitt, Michelle Reno, *Taking leave to bleed: Perceptions and attitudes toward menstrual leave policy*, 40 HEALTH CARE FOR WOMEN INTERNATIONAL, 1355-1373 (2019).

⁵⁷ *Supra* note 50.

⁵⁸ Shaheen Banu, *Menstruation Benefit Bill 2017*, IJALR (Feb. 14, 2021), <https://www.ijalr.in/2020/08/menstruation-benefit-bill-2017.html>.

1992⁵⁹ and is under popular use. Hence clarifying that even in such an unfavourable environment, such a welfare measure is possible with the right effort in the right direction. However, several concerns of discrimination and bias remain and must be addressed before such a major legislative measure can be initiated. The primary necessity would be to educate people on the need for such a measure. First, it must be the acceptance of the fact that men and women are not biologically equal and hence laws of equity must be made use of on equal grounds. Primary education is an utmost necessity to remove the taboo tag on menstruation and label it as a perfectly normal and natural process.

Just because several women can pull off remarkable feats, by working under menstrual pain, it must not example to discredit other women. The already-existing bias by certain employers against women does not require any additional.

The additional leave provided is not a luxury but a necessity because during menstruation at least 20% of women experience pain debilitating enough to hamper daily activities and may experience emotional and mental instability.⁶⁰ Allegations that such a policy may be discriminatory against men are baseless as the process of menstruation is unique only to the female body. Women in India are paid substantially less than men according to the World Economic Forum's World Gender Gap Report, which ranks India at 151 out of 156 countries for parity at wages.⁶¹ Therefore, the creation and active employment of a flexible leave policy that caters to the needs of the menstruating woman would certainly be beneficial as such an initiative could provide the confidence that women may lack while opting for full-time jobs as compared to regular half-time jobs that they may commonly resort to owing to the latter's flexibility and increased availability. The existence of an institutionalised mechanism to help them perform better and efficiently at the workplace will certainly attract more women to join the workforce and take that extra step that they were unsure of before. Flexibility is an important aspect, as, unlike other leave policies, this is highly objective as it is a means of providing necessary relief to a person in discomfort caused by an involuntary and natural occurrence beyond her control.

For the implementation to be effective, it must be introduced with other measures to increase women's participation in the workforce and enhance gender sensitization in workplaces. Because the participation rate of women in the country has declined from 36% in 2005-06 to 24% in 2015-16,⁶² these mandates popular support and awareness.

⁵⁹ Urvashi Prasad, *India needs a menstrual leave policy*, THE HINDU BUSINESSLINE (Jun. 7, 2018) <https://www.thehindubusinessline.com/opinion/india-needs-a-menstrual-leave-policy/article24105589.ece>.

⁶⁰ Kumari Chandra v. State of Rajasthan, (2018) SCC Raj 1899.

⁶¹ *Global Gender Gap Report*, WORLD ECONOMIC FORUM (2021), http://www3.weforum.org/docs/WEF_GGGR_2021.pdf.

⁶² *Female labour forces sees serioud decline*,: *Economic Survey*, MINT (Feb. 15, 2021, 10:13 PM), <https://www.livemint.com/Politics/z9EfyPgqzS575e3Bfd4o1I/Female-labour-force-sees-serious-decline-Economic-Survey.html>.

LEGAL BACKING AND AFFIRMATIVE ACTIONS

Before any legal or legislative machinery is applied, there must be proper groundwork laid down as measures to increase women's participation in the workforce and to enhance gender sensitization. Primary emphasis must be on promoting private-sector corporations to adopt similar policies and gain a level of popularity before a major government measure is instituted.

However, taking this further to a government policy may not gain much legal backing. Constitutionally equality has always been an important aspect of the Indian legal framework with 5 devoted articles for the same (14-18).⁶³ However, the provision of an additional leave policy cannot be sought through any of these provisions. However, it can only be brought about as a general welfare measure by the government with popular acceptance by the legislation, which has already failed once.

A law mandating an additional leave policy of a few additional days every month may be brought about. It must be available to menstruating women (except pregnant and menopausal women) irrespective of their nature of employment, who are under menstrual tension. Further, the legislation should provide for the exclusion of those employers, already practicing an acceptable menstrual leave policy. The act being a primary welfare measure must be a guideline for the active employers in the state. The policy can also be limited to the provision of additional options like work-from-home or provision of extra facilities for menstruating women at workplaces. A notable example in this aspect has been set by Zomato, an Indian multinational restaurant aggregator and food delivery company. The company recently introduced a menstrual leave policy for its female and transgender employees, enabling them to avail up to 10 days of paid "period leave" per year.⁶⁴ The company has referred to this as a positive measure to tackle stigma surrounding the subject in the country. It is high time for India to rise above the blind social, religious and cultural believes debauching the process of menstruation and hence such a bold move will surely pave way for more such progressive social initiatives in the future.

The Policy must be seen as an initiative to increase productivity rather than a handicap for the same. The Indian Judiciary has proved to be the harbinger of social enlightenment and gender sensitization in the current times. The recent verdict in *Indian Young Lawyers Association and Ors v. State of Kerala and Ors*⁶⁵ is a landmark step in breaking the social stigma and stating that menstruation is not pollution but just a biological action, which is involuntary.

⁶³ INDIA CONST. art.14,15,16,17,18.

⁶⁴ *Introducing period leaves for women*, ZOMATO, (May. 13, 2021, 10:51 AM), <https://www.zomato.com/blog/period-leaves>.

⁶⁵ *Indian Young Lawyers Association and Ors v. State of Kerala and Ors.*, (2019) 11 SCC 1.

RECOMMENDATION AND CONCLUSION

As Nelson Mandela has rightly said, “*Education is the most powerful weapon which you can use to change the world*”. Therefore, the first step towards menstrual equality must begin by educating the masses regarding the necessity of having access to safe and hygienic menstruation essentials. The next step must be towards introducing new laws and legislations in the country aimed at removing discrimination towards women due to the misconceptions surrounding menstruation. These steps will be a leap towards the upliftment and empowerment of women in society. It will also enable the people to liberate their mindset and break out of their narrow domestic walls, resulting in the remarkable progress of the nation. The strict implementation of laws by the government to protect the rights guaranteed by the Indian Constitution will be a precedent establishing equality of law and equal protection of the law. It will remain as Footprints in the sands of time, reminding the future generation about the importance of menstrual equity.

CONFLICT OF INTEREST

The authors declare that the research work does not have any conflict of interest and the was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.