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The Debate on Paid Menstrual Leave at The Workplace: Issues and Challenges in the 21st Century

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Abstract

A woman as a creation of nature is biologically different from a man and menstruation is one of them. Though it is a biological issue, normal menstruation is a sign of good reproductive health for a woman, but society tagged it as taboo and impure. In this 21st century, India failed to address the problem where women are acutely participating in the workforce and contributing to the national economy. Menstruation is a natural biological phenomenon, but it affects a woman psychologically and physically and at workplaces, it hampers productivity as well as violates the fundamental right to health and right to sanitation enshrined under Article 21 of the Constitution of India. The debate of the right of women to paid menstrual leave is not new to the nation, for the first time in India in 1992 the State of Bihar implemented a policy of two days of paid menstrual leave at the workplace and later the State of Kerala also implemented this policy for students. Nowadays, several institutions from the private sector have implemented this initiative of menstrual leave. At the national level, three Private Bills regarding the menstrual benefit of women were introduced in Indian Parliament in 2017, 2018 and 2022 but failed. If seen globally, several countries like Japan, Indonesia and so on have implemented this policy but in India, it is far away to be implemented and providing constitutional and natural justice to women. This paper focuses on various issues and challenges to women's rights to menstrual leave at the workplace in the present time.

Keywords: Women's Rights, Workplace, Menstrual Period, Menstrual Leave.

I. Introduction:- Menstruation is a common biological and natural phenomenon rather than sickness or disease through which women must go through half of their life. But during menstruation or the period cycle, they suffer from cramps, severe lower abdominal pain, back pain etc., though it varies from person to person. Women are biologically different from men but in the workplace, women are expected to perform like men. The menstruation women go through is neglected, tagged as taboo and impure, stigmatised in society and even denied providing paid menstrual leave due to various reasons like discriminatory practices or the risk of hiring women at work. According to Periodic Labour Force Surveys, the female labour force participation rate increased from 18.6 per

cent in 2018-2019 to 25.1 per cent in 2020-2021 which emphasises the rising female participation in the workforce and asserts their contribution to the Indian economy. This survey denying the myth about women's gender-based disadvantages recommends inclusive participation in almost every field for inclusive economic growth in India. International Monetary Fund estimated that women's equal contribution to India's workforce shall boost the Gross Domestic Product by 27 per cent and by 2025 it will become \$700 billion to India's GDP. Hence, for inclusive growth of India's economy, it is important to address the biological differences between men and women and to provide them justice with paid menstrual leave at workplaces because the right to health is a fundamental right under Article 21 of the Constitution of India and as the existing system of the workplace has been designed for men so by making a comprehensive change in the male-dominated labour force it will be just to recognise the menstrual benefit policy.

II. Evolution of Period Leave in India:- The debate on paid menstrual leave is going on for a long period. Though India had the concept of period leave since 1912 in Travancore and Cochin (Now the State of Kerala) yet women were not so fortunate to access their private life with liberty during the period cycle. Even in this 21st century they are being prevented from entering puja places as well as kitchens and have even been presumed to be impure for a long time. In *Smt. Bhagawati and Anr. v. Union of India* the Supreme Court of India argued for women's health, taking care of their health and their children as well as menstrual leave. But for the first time in India menstruation got legal recognition by the State of Bihar in 1992 where at the end of an almost three months long battle with the then government they agreed to provide 2 days of paid menstrual leave for government employees in a month up to 45 years of age. After Bihar, recently the State of Kerala has also followed the same policy for students and implemented menstrual leave in higher education as well as schools.

To trace out the legislative intent on menstrual leave in 2017 a private bill 'The Menstruation Benefit Bill' was introduced in the Parliament of India by the then Minister of Parliament Ninong Ering from Arunachal Pradesh but failed. The Bill argued for 24 days of paid menstrual leave in a year for those employees or workers working under any registered establishment under central or state government though it is the discretion of that employee and even if the woman wishes to work during menstruation she will be paid for overtime. It further provides provisions for students who are studying above class VIII shall take four days' leave for the period cycle. In 2018 another private bill 'Women's Sexual, Reproductive and Menstrual Rights Bill' was introduced in the parliament but further failed to become law. In 2022 also a bill namely 'Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill' was introduced but was further disregarded by the House. The essence of these Bills was providing three days of paid or unpaid menstrual leave in a month for female employees or workers as well as for students. The bill was based on a research report showing that 40 per cent of students fail to attend classes during the period cycle and 65 per cent of students feel the severe impact of menstruation on their daily activities.

Among the private sectors, in 2020 Zomato announced 10 days of menstruation leave in a year and following the same several other private companies, like Swiggy, Byjus and so on, provided paid menstrual leave to their employees. Recently, on 24th February 2023, the Supreme Court of India, in a public interest litigation seeking implementation of paid

menstrual leave, opined that the Apex Court is not the appropriate forum to address this issue rather the petitioner can approach the Union Ministry of Women and Child Development for asking them to frame policy. Hence, there is not any union legislation to address paid menstruation leave in India now whether paid or unpaid leave at the workplace neither for employees or workers nor for students though several attempts have been made at the Parliament of India as well as before the highest court of India but nowhere it becomes successful.

III. Global Scenario on Paid Menstrual Leave:- The concept of paid menstrual leave before the international community is as old as the Independence of India. After the second world war, this policy was first adopted by Japan in 1947, where it has been told that if women at work undergo menstruation, then they can take leave during those days of the period cycle. Indonesia implemented this period of leave in 2003 where female workers or labours who undergo menstruation and due to pain, they are not able to attend work then a maximum of 2 days' leave then they can take, and no employer can compel to them join without their volition. In 2021, South Korea implemented a labour law providing that whenever a female worker suffers from menstruation and if she claims to leave then she will be allowed to take one day of period leave in a month. In Taiwan, it is allowed for women workers to take menstrual leave for a maximum of 3 days in a year, whenever they think fit, but exceeding the prescribed three days limit the extra leave shall be counted as sick leave. In Zambia, female workers are allowed to take one day's leave for menstruation but for that, they do not need to produce any medical certificate for a claim. Recently, in Spain, a law has been passed by the government recognising three to five days of menstrual leave, but it must be based on medical recommendations. Hence, the global scenario is witnessing that whether developed or developing countries implement paid menstrual leave these countries succeed to address the need of half of their population.

IV. Rationality of Paid Menstrual Leave in India:- The concept of paid menstrual leave signifies that whenever a woman employee or worker undergoes the period cycle and if she is needed leave for painful menstruation then she can claim it, now whether it should be based on a medical certificate or not is a matter of policy like Zambia which claims for it, unlike Japan or Spain. However, the rationality of paid menstrual leave can be discussed through the following heads.

IV.I Basic Right to Health:- Right to health is a fundamental right provided under Article 21 of the Constitution of India. Biologically women are different from men and naturally, they will have different bodily problems unlike men hence, menstruation is one of them which may cause heavy lower abdominal pain, dysmenorrhea and so on. Though every woman may not suffer from a painful period cycle yet those who go through this painful process the same can be equated to a heart attack. Another study favouring period leaves found that the average bleeding during menstruation is 30-40 ml while heavy menstrual bleeding may lead to 80 ml per period cycle which may cause blood clotting problems, hormonal issues, polyps, fibroids etc. Zheng Qinwen, a Chinese tennis player who loses the French Open title due to a menstrual cramp stated "I wish I can be a man", this statement is enough to claim how a woman goes through such a painful period cycle. However, in India menstruation is not a topic for public discussion for which women are tagged as impure and stigmatised, hence right to health and privacy is also a fundamental

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right provided under Article 21 of the Constitution of India signifies the dignified life of a person.

IV.II Good Productivity as Well as Economical Perspective:- It is well known that during menstruation a woman must go through bleeding which causes discomfort at work those who undergo light menstruation but who suffer from painful menstruation can concentrate at work and consequently it hampers the good productivity. While on the other hand, if menstruation leaves are provided, they make it up in their next days because of the kind relation between employer and employees. Hence, if equal opportunity is provided to women based on their biological structure their participation will increase and then automatically the Indian economy will boost for instance, International Monetary Fund found that women's equal participation in India's workforce can boost the Gross Domestic Product at 27 per cent and by 2025 it will arrive at \$700 billion to India's GDP. Women's participation in the workforce is now 25.1 per cent and if the facilities like menstrual leave for affected women are provided then it will attract the workers and will help to retain those talented employees in the work. Despite that, it will help to grow good productivity and diversity of gender at the workplace will also assist in economic growth.

IV.III Legal Perspective:- If it is tried to find out the existence of the concept of paid menstrual leave for women under the Constitution of India number of provisions are there to assert the claim. Article 14 says all are equal before the law but for those who are belonging to the disadvantaged group of people, the law must provide them equal protection. Articles 15 and 16 protect against discrimination based on gender as well as Article 15(3) empowers the government to make special laws providing reasonable reservation for women because women's biological structure and duties of maternal performance place them in the disadvantaged group of people which puts challenge for their subsistence. Article 21 guarantees the right to life with dignity, the right to health, sanitation etc. In *Delhi Labour Union v. Union of India & Others*, a petition has been filed seeking 4 days of paid menstrual leave but Delhi High Court rather than allowing any relief directed the central and state government to look into the matter. Article 42 of Directive Principles of State Policies provides that government must ensure a just and appropriate environment of work at the workplace and this provision emphasises the claim of paid menstrual leave under the Constitution. In *Keshavananda Bharati v. State of Kerala*, the Supreme Court held that DPSP and FRs can work together, and government can implement those guidelines provided under PART IV of the Constitution.

IV.IV Right to Self-Perception:- The present employment system has been structured for men where women mostly prove to be unfit except few introductions like maternity leave etc. The distinctive biological features of women demand a new environment where they can adapt themselves comfortably. In the case of menstruation what a woman feels a man does not feel the same on the other hand, in this process a woman must suffer from a breach of privacy, menstrual diseases as well a lacking a hygienic environment at the workplace. Hence, to realize their personality the right to self-perception is necessary for this patriarchal society.

V. Challenges:- There are several arguments favouring paid menstrual leave but there are also several challenges to it. For instance, when the existing labour law provides sick leave then what is the need for a separate law for menstrual leave; if it is implemented it can be a ground for discrimination based on gender against men, etc. Further, the

following discussion will make vividly clear what are the challenges of paid menstrual leave in its implementation.

V.I Discriminatory Measure:- One of the major challenges of paid menstrual leave is that it will increase gender biases because Article 14 of the Constitution of India guarantees equality before the law and if this claim is accepted then non-menstruating genders shall be discriminated against because menstruation is a biological and natural thing of the reproductive process.

V.II Sick Leave Versus Preiod Leave:- Menstruation is not a disease, it is a mere biological process a woman goes through. The Maternity Benefit Bills of 2017 and 2022 fail to convince the same to the members of the lower House. However, there are provisions for sick leave as well as maternity leave under labour laws and civil service rules so, the existing leave policy is enough to combat the problem.

V.III Hampering Inclusivity:- The Bill (2022) demanded 3 days of menstrual leave which hampers inclusivity because within 3 days a lot can happen i.e., an important meeting etc. After a long journey of gender-based discrimination, the state should not go on the same path and to make it happen every gender must get that opportunity without hampering the inclusivity at the workplace/

V.IV Menstrual Pain Is Not Universal Problem to All:- Menstruation may not always be painful to all because it differs from person to person based on harmonic structure. Basically, it affects young girls and women mostly and gradually it becomes normal and generally after around 45 it becomes closed. Hence, it can be said that it is not a universal problem, so it does not have any specific legal provision to be created.

V.V Risk at Hire: - It is argued, by those who are not in favour of paid menstrual leave, that it will unnecessarily prejudice employers and increase the risk to hire them. In a PIL seeking paid menstrual leave the CJI mentioned that if the employers are compelled to provide paid menstrual leave, this may disincentivise the employers from hiring women at the workplace.

V.VI Women Should Compete Men to Remain in the Race:- Women are already suffering from stigmatisation about menstruation, and this policy shall further lead them to far away from the competition with men in the workplace. Women are still struggling to become the counterpart of men so that they can demand equal treatment and status. Even in jobs where there is a need for travel and fieldwork works men are preferred over women for decades. Hence overall, this policy will not be beneficial to get existence in this patriarchal society if one wishes to take privileges rather than compete.

V.VII E-Shram:- Till 31st December 2022, in the E-Shram portal a total of 28.5 crore worker from the unorganised sector have registered their name of which 52.80 per cent was female workers. So, if the menstruation leave policy is accepted then those who are working in the unorganised sector would be left out and will not get the advantage.

VI. Conclusion:- At the end of the discussion it can be said that the claim of paid menstrual leave has its pros and cons. There are several arguments in favour of paid menstrual leave i.e., this policy has been recognised by several countries; in India, recognised by the State of Bihar provides two days of paid leave; Kerala's policy of menstruation towards students; recognised by several companies to their employees; to provide the right to health to women etc. On the other hand, there are several arguments against paid menstrual leave i.e., it is discriminatory on the ground of gender; it can

hamper the inclusivity at the workplace; painful menstruation is not common to all; it shall raise the risk of hiring women at work; menstruation is a biological process, not a disease and women should become the better counterpart of men rather than a weaker section etc. However, several attempts have been made to implement the menstrual benefit policy in The Parliament of India in 2017, 2018 and 2022 but all were disregarded by the house. Seeking implementation of paid menstrual leave a PIL, Shailendra Mani Tripathi v. Union of India and Others, has been filed before the Supreme Court where it dictated the petitioner "...Having regard to the policy dimension in the case, the petitioner may approach the Women and Child Ministry to file a representation". Further, the Apex court mentioned that it falls under the policy domain hence petitioner can represent this issue before the Union Ministry of Women and Child Development. Hence, it can be said that the topic is not so important to notice and vice-versa. Because Bihar's policy on menstruation is still going on since 1992 without any disruption which is witnessing the assertion on menstrual leave while the Apex Court, as well as Parliament, are not giving it so much importance. It is also the reality that painful menstruation is not common to all, women are already getting maternity benefits as well as sick leave which are the points of discouragement for employers for not hiring women at work. But it is also a fact that women go through bleeding, cramp etc., during menstruation, even at workplaces they are provided with a just and reasonable environment of sanitation. The right to privacy is also breached because of its tag as an impure stigma. However, by overcoming all these hurdles still, women must be the better counterpart of men to find existence in this patriarchal society.

Suggestions:- After a thorough discussion on this topic, the following suggestions can be made to combat the problem:

- The Menstrual Benefit Bill can be implemented but instead of 3 days 1 day leave in a month could be the right way to address the problem because the degree of pain is not common to all.
- But if someone suffers from extreme pain or cramps, a maximum of 3 days' leave can be provided but it must be based on a medical certificate.
- If it is found that the residence of the employee is far away from the workplace, then the opportunity to work from home can be offered for a maximum of 2 days.
- Those who do not need to travel to reach the workplace can be provided with a comfort zone to work, a restroom if needed, and a just and proper environment for sanitation or disposal of napkins or protecting their health and privacy.

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