

EXPLORING MENSTRUAL LEAVE AS A HUMAN RIGHT: NURTURING GENDER EQUALITY

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Abstract

This paper delves into various aspects of the concept, including its intersection with gender equality, human rights, workplace rights, reproductive rights, dignity, and respect. The abstract highlights the significance of menstrual leave in recognizing the unique challenges faced by individuals with menstrual cycles and emphasizes its role in creating inclusive workplaces and societies. It also admits the complexities surrounding the implementation of such policies and the importance of striking a balance between accommodating specific needs and avoiding perpetuation of gender stereotypes. Hence, the study provides a thoughtful and well-rounded analysis of the topic's implications and potential impact.

Keywords: Menstrual Leave, Human Rights, Gender Equality, Workplace Rights, Reproductive Rights and Dignity and Respect

INTRODUCTION

In the ongoing pursuit of gender equality and the realization of human rights, the concept of "menstrual leave" has emerged as a dynamic and thought-provoking topic. Menstrual leave, a form of leave tailored to individuals who experience menstruation, addresses the unique challenges posed by this natural physiological process.²³ This progressive concept not only acknowledges the specific needs of those with menstrual cycles but also engages in a broader dialogue about human rights, gender equality, and the evolving landscape of workplace policies.

At its core, the idea of menstrual leave recognizes the intricate intersection of biology and society. Menstruation, a fundamental aspect of reproductive health, has historically

been shrouded in silence and stigma.²⁴ However, as societies strive to break free from outdated gender norms and stereotypes, the recognition of menstruation as a normal, biological process gains momentum. Menstrual leave takes this recognition a step further by addressing the tangible physical and emotional challenges that can accompany this period, acknowledging the need for individuals to manage their well-being effectively.

Central to the discourse on menstrual leave is the concept of human rights. Human rights inherently demand that every individual be treated with dignity, respect, and equality, irrespective of gender.²⁵ Granting menstrual leave aligns with these principles by providing individuals with a means to manage their

²³ Camilla Quental, Pilar Rojas Gaviria and Céline del Bucchia, 'The Dialectic of (Menopause) Zest: Breaking the Mold of Organizational Irrelevance' (2023) 30 *Gender, Work & Organization* 1816.

²⁴ Mary Olson and others, 'The Persistent Power of Stigma: A Critical Review of Policy Initiatives to Break the Menstrual Silence and Advance Menstrual Literacy' (2022) 2 *PLOS Global Public Health* e0000070.

²⁵ Jyothsna Latha Belliappa, 'Menstrual Leave Debate: Opportunity to Address Inclusivity in Indian Organizations' (2018) 53 *Indian Journal of Industrial Relations* 604.

health and well-being without compromising their livelihoods. By acknowledging that menstrual cycles can impact an individual's capacity to function optimally, societies affirm the right to health and bodily autonomy.²⁶

However, the discussion about menstrual leave is not without complexities. Some critics contend that formalizing such policies might inadvertently reinforce gender stereotypes, suggesting that individuals with menstrual cycles are inherently less capable in the workplace. Striking a balance between acknowledging specific needs and avoiding the perpetuation of stereotypes is a crucial consideration when crafting policies related to menstrual leave.

The introduction of menstrual leave also intersects with broader discussions about workplace policies and practices. A workplace that offers menstrual leave reflects an ethos of empathy and inclusivity.²⁷ By granting individuals the flexibility to address their physical and emotional challenges, organizations create an environment where employees feel valued and understood. Additionally, such policies can mitigate presenteeism, enhance overall productivity, and foster healthier workplace dynamics.

Moreover, menstrual leave can be seen as an integral component of the larger gender equality movement. By acknowledging and accommodating the challenges of menstruation, organizations demonstrate their commitment to dismantling traditional gender norms that have often marginalized women and perpetuated gender-based disparities. This step toward equality is not only a matter of policy but also a cultural transformation that reflects the evolving understanding of gender roles and the empowerment of all individuals.²⁸

Henceforth, the concept of menstrual leave transcends the realm of biology and reaches into the heart of human rights and gender equality discussions. It represents a tangible step toward creating inclusive societies and workplaces that respect and support the diverse needs and experiences of individuals. As the conversation around menstrual leave evolves, it continues to shape a more equitable future where individuals are empowered to thrive without compromising their health or well-being.

GENDER EQUALITY

Gender equality involves ensuring that all individuals, regardless of their gender identity, have equal opportunities, rights, and treatment in all aspects of life. A significant facet of this endeavor is acknowledging and addressing the distinct experiences and challenges that different genders face.²⁹ One impactful way of promoting gender equality is through the implementation of menstrual leave policies.

Menstrual leave signifies a progressive shift in workplace culture by recognizing the biological realities that many women and individuals with menstrual cycles encounter each month.³⁰ Menstruation is not merely a routine bodily function; it can bring about a range of physical and emotional changes that might impact a person's overall well-being and their ability to engage fully in work and other activities. By granting menstrual leave, society acknowledges the intrinsic right of every individual to manage their health and wellness without compromising their professional or personal lives.

This measure seeks to bridge the gender gap by addressing an issue that predominantly affects one gender, thereby fostering a more equitable and inclusive society. Menstrual leave acknowledges that menstrual cycles can vary

²⁶ Olson and others (n 2).

²⁷ Sayed Qudrat Hashimy, 'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' (2023) 1 Trinity Law Review.

²⁸ Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (2022) 5 International Journal of Management and Humanities 1270.

²⁹ Sayed Qudrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (14 December 2022) <<https://papers.ssrn.com/abstract=4308596>> accessed 17 August 2023.

³⁰ Sayed Qudrat Hashimy, 'Exploring Menstrual Leave in Islamic Jurisprudence: Cultural and Religious Perspectives' (2023) 6 3457.

significantly in terms of intensity and discomfort, and it accommodates those who might experience severe pain, fatigue, or other symptoms that could hamper their daily functioning. In doing so, it counters the historical dismissal of these challenges as insignificant or unworthy of consideration.

Moreover, providing menstrual leave goes beyond the confines of the workplace. It extends its impact to educational institutions, where young individuals may struggle with managing their academic responsibilities during menstruation, and to community activities, where people might hesitate to engage fully due to discomfort or health-related concerns. This inclusivity amplifies the message that gender equality is not confined to the boardroom or policy discussions but permeates every facet of society.

As more organizations and societies adopt menstrual leave policies, they set a precedent for recognizing and accommodating the diverse needs of their members. This shift promotes a culture of empathy, understanding, and support, which in turn can foster increased productivity, mental well-being, and job satisfaction among all individuals. It sends a powerful message that promoting gender equality is not about making exceptions, but about acknowledging and adapting to the realities that shape people's lives.³¹

NON-DISCRIMINATION

At the core of human rights principles lies a resolute stance against all forms of discrimination, emphasizing the need to uphold the dignity and equality of every individual. This commitment is particularly evident when considering discrimination based on gender or biological characteristics.³² These principles enshrine the idea that each person should be

treated fairly and without prejudice, regardless of their inherent qualities.

One specific facet of this commitment pertains to the issue of menstrual leave. Menstruation, a biological process experienced by a significant portion of the population, has historically been met with silence and stigma.³³ However, a broader understanding of human rights highlights the importance of addressing and rectifying this imbalance.

Denying the provision of menstrual leave could be analyzed through the lens of discrimination. By failing to acknowledge the unique challenges and physiological realities faced by individuals with menstrual cycles, an organization or society inadvertently perpetuates a cycle of inequality. The absence of suitable provisions could lead to discomfort, pain, and compromised well-being, further exacerbated by societal norms that have often downplayed or dismissed these concerns.³⁴

In this context, the introduction of menstrual leave isn't merely about acknowledging the biological differences between genders, but rather about ensuring equal treatment and opportunities for all. It aligns with the principles of non-discrimination by recognizing that the needs of individuals vary and that accommodating these variations is essential to fostering an inclusive and just environment.

Moreover, offering menstrual leave aligns with broader efforts to achieve gender equality. It not only addresses a physiological aspect often overlooked but also contributes to reshaping societal attitudes towards gender roles and expectations. By actively valuing the well-being of those who experience menstruation, organizations send a powerful message that gender-based biases are being actively challenged.

³¹ 'Could "menstrual Leave" Change the Workplace?' - BBC Worklife' <<https://www.bbc.com/worklife/article/20220426-could-menstrual-leave-change-the-workplace>> accessed 17 August 2023; *ibid*.

³² Sayed Quadrat Hashimy, 'Menstrual Leave Dissent and Stigma Labelling: A Comparative Legal Discourse' (2022) 5 Issue 6 Int'l J.L. Mgmt. & Human. 1270.

³³ Hashimy, 'Menstrual Leave Dissent and Stigma Labelling' (n 7).

³⁴ Rachel B Levitt and Jessica L Barnack-Tavlaris, 'Addressing Menstruation in the Workplace: The Menstrual Leave Debate' in Chris Bobel and others (eds), *The Palgrave Handbook of Critical Menstruation Studies* (Palgrave Macmillan 2020) <<http://www.ncbi.nlm.nih.gov/books/NBK565643/>> accessed 17 August 2023.

HEALTH AND WELL-BEING

The pursuit of health and well-being is an intrinsic human right that encompasses not only the absence of illness but also the presence of physical, mental, and emotional vitality.³⁵ Recognizing this right is crucial to fostering a society that values the holistic welfare of its individuals. A significant aspect of this perspective involves acknowledging the challenges and needs associated with menstrual cycles, which can encompass a spectrum of physical and emotional experiences.³⁶

Menstruation, a natural physiological process for many individuals, is accompanied by a variety of symptoms that can profoundly impact their daily lives.³⁷ Physical discomfort, such as cramps and fatigue, and emotional fluctuations, including mood swings and irritability, are not uncommon during this phase. By granting the option of menstrual leave, societies and organizations actively acknowledge and respect the fact that these symptoms can, at times, interfere with an individual's ability to function optimally.

The provision of menstrual leave aligns seamlessly with the principle of health and well-being. It recognizes that individuals should not be compelled to suppress or endure their physical and emotional challenges but instead be offered an avenue to address and manage them. This approach underscores the understanding that an individual's productivity and contribution are not solely determined by their ability to soldier through discomfort but also by their capacity to maintain a state of overall well-being.³⁸

Furthermore, offering menstrual leave goes beyond addressing immediate physical and emotional needs. It signifies a commitment to long-term health and prevention. By allowing individuals to take time off during their menstruation, organizations demonstrate their support for responsible self-care practices. This, in turn, encourages individuals to prioritize their health, fostering a culture that values not just output but also the overall vitality of its members.

From a broader societal perspective, integrating menstrual leave into policies speaks volumes about gender equity. Menstrual cycles are a biological reality experienced by a significant portion of the population, and acknowledging the potential disruptions they bring reinforces the message that a diverse workforce is valued and accommodated. This acknowledgment contributes to challenging traditional gender norms and carving a path towards more inclusive workplaces.

REPRODUCTIVE RIGHTS

Reproductive rights represent a fundamental aspect of human autonomy and agency, encompassing the freedom to make informed decisions about one's reproductive health and well-being. Beyond the immediate context of reproductive choices, these rights are intricately linked to broader concepts of gender equality, bodily autonomy, and social justice. In this light, the connection between menstrual health and reproductive health is undeniable, as both intersect to shape an individual's overall well-being.³⁹

Menstrual health forms an integral part of reproductive health. The menstrual cycle is a key indicator of reproductive function, signaling not only the potential for fertility but also reflecting the overall balance of hormonal and physiological processes. Any disruptions or

³⁵ Lawrence C Becker, 'Eudaimonistic Health: Complete Health, Moral Development, Well-Being, and Happiness' in Lawrence C Becker (ed), *Habilitation, Health, and Agency: A Framework for Basic Justice* (Oxford University Press 2012) <<https://doi.org/10.1093/acprof:oso/9780199917549.003.0004>> accessed 17 August 2023.

³⁶ *ibid.*

³⁷ Sayed Quadrat Hashimy, 'Legal Paradigm of Menstrual Paid Leaves Policy in India: A Jurisprudential Discourse' (10 March 2023) <<https://papers.ssrn.com/abstract=4383915>> accessed 17 August 2023.

³⁸ Varnika Chaudhary & Vaibhav Pratap Singh, 'Lettering Menstrual Leave In the Constitution' (15 February 2023)

<<https://www.livelaw.in/lawschoolcolumn/lettering-menstrual-leave-in-the-constitution-221613>> accessed 17 August 2023.

³⁹ Vijayan K Pillai and Rashmi Gupta, 'Reproductive Rights Approach to Reproductive Health in Developing Countries' (2011) 4 *Global Health Action* 10.3402/gha.v4i0.8423.

irregularities in the menstrual cycle can provide insights into an individual's reproductive health status. As such, the ability to monitor and manage one's menstrual cycle is crucial for both understanding and safeguarding reproductive health.⁴⁰

The provision of menstrual leave contributes to the broader landscape of reproductive rights by recognizing the significance of menstrual health. Just as access to contraception, prenatal care, and family planning services are essential components of reproductive rights, the option to take menstrual leave acknowledges the importance of accommodating the natural rhythms of the body. This accommodation aligns with the principles of bodily autonomy, allowing individuals to manage their reproductive health in a manner that is supportive of their overall well-being.

By granting individuals the flexibility to address the physical and emotional challenges associated with menstruation, organizations effectively empower them to take charge of their reproductive health. This empowerment extends to decisions related to fertility, family planning, and overall self-care. When individuals are able to manage their menstrual cycles without undue stress or discomfort, they are better positioned to engage in informed and confident reproductive decisions.

Furthermore, the inclusion of menstrual leave as an extension of reproductive rights reflects a commitment to gender equality. Menstruation is a unique biological experience predominantly associated with individuals who identify as women, and the availability of menstrual leave acknowledges the specific challenges they face. This recognition challenges traditional gender norms, emphasizing that workplaces and societies must adapt to the diverse needs and experiences of their members.

⁴⁰ Julie Hennegan and others, 'Menstrual Health: A Definition for Policy, Practice, and Research' 29 *Sexual and Reproductive Health Matters* 1911618.

WORKPLACE RIGHTS

The concept of workplace rights embodies the principles of fairness, dignity, and respect within the context of employment. These rights encompass a range of considerations, including fair compensation, safe working conditions, and equal opportunities. However, as our understanding of well-being evolves, it becomes evident that workplace rights extend beyond the basics to include provisions that promote the physical, mental, and emotional health of employees. Menstrual leave, in this regard, emerges as a powerful tool to contribute to a more inclusive and supportive work environment.⁴¹

Accommodating the needs of employees is a pivotal aspect of a truly inclusive workplace. Menstrual leave, as a means of addressing the challenges and discomfort associated with menstrual cycles, aligns perfectly with this principle.⁴² By acknowledging and allowing for the varying needs and experiences of individuals, organizations demonstrate their commitment to valuing every employee's well-being, regardless of gender.

The introduction of menstrual leave helps mitigate the phenomenon of presenteeism, which occurs when employees come to work despite being unwell. This behavior often results from the fear of repercussions, such as negative performance evaluations or a perceived lack of dedication. Presenteeism not only compromises the health of the individual but also the overall productivity and efficiency of the workplace. Menstrual leave provides a structured solution that encourages employees to prioritize their health, reducing the likelihood of presenteeism and its adverse effects on both individual well-being and workplace performance.

⁴¹ '12. Resolving Human Rights Issues in the Workplace | Ontario Human Rights Commission' <<https://www.ohrc.on.ca/en/iv-human-rights-issues-all-stages-employment/12-resolving-human-rights-issues-workplace>> accessed 17 August 2023.

⁴² 'The Concept of Menstrual Leave' <<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/employment-law-alert-2-may-2023-the-concept-of-menstrual-leave.html>> accessed 17 August 2023.

Moreover, granting menstrual leave contributes to the creation of a healthier work environment. When employees feel that their physical and emotional well-being is genuinely valued, they are more likely to engage in a positive and productive manner. The availability of menstrual leave fosters a culture of open communication, where employees are comfortable discussing their needs without fear of judgment or stigma. This contributes to a more transparent and empathetic workplace culture, where employees are empowered to take care of themselves and, in turn, contribute their best to the organization.

From a productivity perspective, menstrual leave can have positive implications as well. By allowing individuals to manage their menstrual-related challenges and recuperate when needed, organizations effectively enhance overall efficiency. Employees who are well-rested and supported in managing their symptoms are likely to exhibit higher levels of concentration, creativity, and problem-solving skills.⁴³ This, in turn, contributes to the organization's performance and competitiveness in the long run.

DIGNITY AND RESPECT

The principles of dignity and respect form the bedrock of an equitable and compassionate society, underpinning the recognition and valuing of each person's intrinsic worth and individuality. In the context of menstrual leave, these principles take on a profound significance as they reflect the acknowledgment of the unique experiences and needs associated with menstruation.⁴⁴

When organizations provide menstrual leave, they convey a message of profound respect for individuals' bodily autonomy and personal journeys. By granting individuals the agency to

manage their menstrual cycles, organizations affirm that every person's experience is valid and should be supported without judgment or stigma. This acknowledgment of the natural and important role that menstruation plays in an individual's life resonates with the principles of dignity and respect, fostering an environment where individuals are empowered to care for their overall well-being.⁴⁵

Nevertheless, discussions and debates about the implementation of menstrual leave highlight the complexities surrounding this topic. Some concerns are rooted in the potential reinforcement of gender stereotypes. Critics worry that formalized menstrual leave policies might inadvertently suggest that individuals with menstrual cycles are inherently less capable in the workplace, perpetuating the idea that they need special allowances due to their gender. These concerns underscore the delicate balance required when introducing policies aimed at addressing gender-specific needs.

There are also apprehensions about potential abuses or challenges in implementing and verifying the need for menstrual leave. The fear that some employees might exploit this policy or that tracking and verifying the authenticity of leave requests could be problematic adds a layer of complexity to the discussion. These concerns emphasize the importance of designing policies with clear guidelines and mechanisms that prevent misuse while providing genuine support.

The global approach to menstrual leave is multifaceted and varies based on cultural, regional, and organizational nuances. Some countries, like Japan, Indonesia, and South Korea, have implemented formal menstrual leave policies to varying degrees. Others might rely on flexible work arrangements or informal understandings between employees and

⁴³ Aashraya Seth, 'An Argument for Menstrual Leave in India' *The Times of India* <<https://timesofindia.indiatimes.com/blogs/nonpartisan-perspectives/an-argument-for-menstrual-leave-in-india/>> accessed 17 August 2023.

⁴⁴ 'Human Dignity and Judicial Interpretation of Human Rights | European Journal of International Law | Oxford Academic' <<https://academic.oup.com/ejil/article/19/4/655/349356>> accessed 17 August 2023.

⁴⁵ 'Human Dignity and Judicial Interpretation of Human Rights | European Journal of International Law | Oxford Academic' <<https://academic.oup.com/ejil/article/19/4/655/349356>> accessed 17 August 2023.

employers to accommodate menstrual-related needs.

The broader conversation about menstrual leave is intricately woven into discussions about gender equality and workplace rights. It demands a balanced approach that considers the need to support individuals without perpetuating stereotypes, while also addressing potential challenges in implementation. Finding this equilibrium is essential in creating policies that uphold dignity and respect, ensuring that every individual's unique experiences and needs are acknowledged and accommodated. Ultimately, the journey toward comprehensive and thoughtful menstrual leave policies is a reflection of society's commitment to fostering inclusivity, empowerment, and fairness for all.

CONCLUSION

The exploration of menstrual leave as a human right within the framework of gender equality, workplace rights, reproductive rights, dignity, and respect has revealed a multifaceted and complex landscape. The concept of menstrual leave transcends mere biological considerations, emerging as a symbol of progress, inclusivity, and social transformation. As societies strive for greater gender equality and the realization of human rights, the provision of menstrual leave emerges as a tangible step toward nurturing a more equitable world.

At its core, menstrual leave embodies the principle that each individual's unique experiences and challenges should be acknowledged and respected. By providing the flexibility to address the physical and emotional impact of menstruation, organizations and societies affirm their commitment to valuing well-being over traditional norms of stoicism and suppression. This acknowledgment resonates with the broader principles of human rights, which demand that every individual be treated with dignity, respect, and equality.

The introduction of menstrual leave challenges traditional gender norms and stereotypes that

have historically marginalized women and perpetuated gender-based disparities. While there are concerns about potential reinforcement of stereotypes, the careful crafting of policies can strike a balance between addressing specific needs and avoiding unintended consequences. The evolving conversation around menstrual leave underscores the importance of designing policies that empower individuals without compromising their capabilities or perpetuating biases.

In the pursuit of gender equality, menstrual leave emerges as a dynamic and meaningful tool. It recognizes the unique challenges faced by individuals with menstrual cycles and offers a means to bridge the gender gap, fostering a more inclusive and supportive society. Moreover, it extends its impact beyond the workplace to educational institutions and community activities, underscoring that gender equality is a pervasive aspiration that influences all facets of life.

The integration of menstrual leave within the broader landscape of workplace rights further reinforces its significance. By mitigating presenteeism and promoting a culture of empathy and understanding, organizations create environments where employees are valued for their holistic well-being. This not only enhances individual job satisfaction and productivity but also contributes to a healthier and more inclusive workplace culture.

The provision of menstrual leave also aligns with the principles of reproductive rights, acknowledging the integral role of menstrual health in overall well-being. It empowers individuals to make informed decisions about their reproductive health, fostering a sense of agency and autonomy. As organizations accommodate the natural rhythms of the body, they actively contribute to dismantling gender-based biases and reshaping societal attitudes.

In the end, the concept of menstrual leave epitomizes the ongoing evolution of human

rights and gender equality discussions. Its implementation calls for a careful and thoughtful approach that considers diverse perspectives, challenges, and opportunities. As the discourse surrounding menstrual leave continues to evolve, it reflects society's commitment to creating a more just, inclusive, and empathetic world where every individual can thrive without sacrificing their health or well-being.

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LEGAL EDUCATION



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