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Analysis of Menstrual Benefit Bill, 2017 and Applicability of a Menstrual Benefit Policy in India

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ABSTRACT

According to statistics, it has been observed that during menstrual periods, the number of absentees increase in schools and girls are unable to manage their performance as well. In the case of workplace we find similar circumstances wherein there is an imbalance in the quality of work by women. Poor access to menstrual hygiene and resources are still very important issues at hand which calls for equality of status in workplace. Adverse conditions and extreme activity situations also play a very detrimental role for women in workplace. Striking feature is that still in India issues related to menstruation are a taboo which further worsens the situation. The society as it stands today is surely not well balanced and there are a lot of gender gaps. One of the most important issue which covers a lot of people is whether a policy of menstrual benefits for women would strike the balance in society. Assuming the worse situation where gender gap widens to the extreme situation, it is an imminent issue for India to rediscover the untouched, analyse the divergences that are a result of it and correct the inequalities through a plan of action for a better future ahead.

I. INTRODUCTION

Menstruation is a purely biological process which women undergo from puberty to menopause. During this process women go through a lot of discomfort. The rate of discomfort ranges from slight discomfort to very severe discomfort for women. Nearly 20 % of women suffer from very uncomfortable symptoms which might range from menstrual cramps, fever, weakness to pre-menstrual syndrome(PMS).Excepting these there are even more serious diseases that are related to it including endometriosis. Research shows that it affects the daily activities with reduced concentration at workplace. In 2017, Ninong Ering, a member of parliament from Arunachal East introduced the private member bill in the Lok Sabha -the Menstruation Benefit

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Bill. The bill ensures to provide two days of menstrual leave for women associated with any establishment registered with appropriate government and students above class eight studying in a government recognised school. Every woman employee working in the establishment during her menstruation shall be entitled to thirty minutes of rest period twice a day for not more than four days during menstruation in a month.²

(A) Research Objectives

- To examine if the Menstrual Benefits Bill, 2017 is sufficient to tackle all the issues related to the same and whether they adhere to the responses of women at workplace from different spheres of life.
- To study the response of other nations and their implementation of their respective Menstrual Benefit Policies and it's imminent need in India.
- To study whether a Menstrual Benefit Policy can bridge or widen the gender gap.

(B) Hypothesis

1. Is the Menstrual Benefit Bill, 2017 inclusive of various factors which would be effective to India?
2. Would a Menstrual Benefit Policy create disproportionality in the society or otherwise?
3. Will a Menstrual Benefit Policy bring justice and equity to women and facilitate their well-being?

(C) Review of Literature

As the situation demands, after the declaration of a 10 day period leaves in a year by Zomato, it has furthermore triggered the society to deliberate and discuss it at large. According to the CEO of Zomato, this decision was taken as a step to remove the taboo related to menstruation in India and also to restore gender equality. Contrary to such situation, the Menstrual Benefit Bill, 2017 introduced by a Member of Parliament was tabled without having any discussion on that. This goes on to state the insensitivity of the legislature towards this pertinent issue that caters to the well being and healthy living of citizens.

As mentioned in the Resolution of the World Health Assembly, it states that workplaces need to widen their scope of initiatives for taking care of the health of the employees. Sufficient health facilities should be given to employees to reduce the number of absentees at

²The Menstrual Benefits Bill, 2017, 249 of 2017, Cl. 5

workplace.³It seeks to build a nexus between the employee and the employer for increasing efficiency at workplace. It states that optimum care for the healthy well being of the employee is the primary concern for the employers.

Women face daily problems due to menstruation related difficulties. They face a lot of discrimination related to this taboo. According to a report by the UNFPA (United Nations Population Fund), even bathroom breaks are penalised at workplaces in certain parts of the world.⁴Lack of water and sanitation facilities lead to extreme difficulties for women. There is sheer discrimination that women face at workplace which builds divergences in the respective places creating more conflicts and disputes. The efforts of this organisation to restore menstrual hygiene and help the vulnerable also should act as a curtain call for the Government to pay equal attention to the issue at hand.

The UNICEF in a report states that 71% of young women in India remain unaware of periods until their first cycle which adds to the predicament of posing a threat to the health status of women. This is often a fact that we overlook, the unpredictability of the circumstance poses a lot of challenges to women at workplace. Keeping this in mind, in the state of Bihar itself, government employees are given two extra days of period leave. In Japan, Article 68 of the Labour Standards Law states "When a woman for whom work during menstrual periods would be specially difficult has requested leave, the employer shall not employ such woman on days of the menstrual period."⁵ Article 73 of the LSA of South Korea entitles women of physiologic leave at work. In Taiwan , the Act of Gender Equality in Employment gives upto 33 days of medical leaves for women. In Zambia, women can also take one day of period leave in a month as stated by their Labour Law. In Europe ,the proposal by the Parliament of Italy to frame a Menstrual policy also caused a lot of deliberations in the Continent about how menstrual health affects women. Surely in a patriarchal society, we often speak about gender equality. We acknowledge that the world we live in is a men-centric world where the workplaces are also dominated by patriarchal framework, not complying to them would lead to the firing of women workers from their jobs. Quite often, menstruation is described as a disease which makes it even more difficult for conservative societies like India to discuss and deliberate on it. Though there has been a positive response from the Government by the introduction of the Janausadhi scheme which has given sanitary pads to five crore women at the price of Rs. 1.⁶This cannot

³ World Health Organisation (WHO), Occupational Health, Worker's Health:Global Plan of Action, CN.30/SC.4/2007/WHA60.26(May 23,2007)

⁴ The right to work, May 31,2021, available, <https://www.unfpa.org/menstruationfaq> (Last visited May 31, 2021)

⁵ The Labour Standards Law, 1947, Art. 68 (Japan).

⁶ Ministry of Chemical and Fertilisers, May 31,2021 available, <https://pib.gov.in/PressReleasePage.aspx?PRID=1632082>(Last visited May31,2021)

be set as a standalone example, more focus needs to be on their well being and providing the sufficient facilities at workplace. Breaking the taboo that is prevalent in India and channelising effective policies to the right direction is the need of the hour. A policy or a plan of action for restoring menstrual benefits to the women is an imminent need and that is what shall be discussed at length in this paper.

II. RECOGNISING THE PREDICAMENT THAT MENSTRUAL PERIODS POSES TO WOMEN AT WORKPLACE

As per the Rig Veda, menstruation signifies every woman's guilt for killing Brahmanas in their previous births, which comes to haunt them every month. Therefore during that time of the month, a woman is required to exclude herself from society and observe complete isolation. She is banished from the kitchen, temples or even her own resting space into a ghostly and potentially secluded corner of the house, where she could remain invisible.⁷ Would it be really unfair to say that in traditional India, women are predominantly used to domestic and religious activities and since today much of that notion has changed and women are equally in the forefront of nation building process, that a legislation regarding Menstrual Benefits is the need of the hour.

Initially what we need is to recognise the fact that women during their menstrual periods undergo through extreme discomfort. According to a research by the World Bank in September 2019, 50% of women at workplace undergo dysmenorrhoea and also suffer from various other symptoms. This not only poses a considerable threat to them but also reduces their working capacity. All the more in India, menstruation being a taboo is not freely discussed and that does not exclude our legislature as well. The Bihar state government recognised the right to Menstrual Leaves for teachers in government schools by way of a notification. The Parliaments of Japan, Taiwan, Zambia and South Korea already has a policy for menstrual leaves for women and after a thorough feedback from several persons whose workplaces allow such leaves are very satisfied and contented. This issue has also been ratified by the United States Department of Labour as something which is definitely worth discussing. Similar trends are seen as well in cases of the countries under the European Union. 23.6% of women in India are at workplace and this situation which is the imminent need for the society.

III. BREAKING STEREOTYPES AND BRIDGING GENDER GAPS IN THE SOCIETY

The belief that menstrual equity is a beginning step on the path to gender equity motivates the

⁷ SUNEELA GARG, MENSTRUATION RELATION MYTHS IN INDIA 184(2014)

belief of an activist and attorney Jennifer Weiss-Wolf, who has said, "Our issues aren't all the same, but whether you're dissecting it by poverty or gender or any issues that affect things like access, participation, equality, justice, democracy all those things. In other words, by focusing on the basic needs of menstruators, the architects of law and society can find a way to address every single issue that impacts gender equity. Menstrual equity, then, is "the ground we all need to stand on." Among most feminist legal theorists, there is a firm belief that the genders are symmetrically located on all questions of law and policy. In fact, Williams, a liberal feminist, argues that "we can't have it both ways, we need to think carefully about which way we want to have it".⁸ On the other hand, the radicals argue that such a conception of equality is based upon similarity rather than justice, which requires the world to become gender neutral thereby prescribing recognition of gender itself. Mackinnon explains that such a definition could cause a slow death of feminism. Accepting status quo as neutrality renders privileged men to be the benchmark leaving women as the exceptions.

Since menstruation is exclusionary to woman, its imagery is plagued with biological determinism and elements of sexism. Biological determination is a formula that utilises scientific enquiry as a tool to explain roles of people in the society.

For instance, during Victorian era, scientists explained women's lack of intellectual and physical capacity as a consequence of the size of their brains and general physique. A blow to this came in the 19th century, when feminists began critiquing the neutrality, which any scientific enquiry claimed to be viable. One of them indicated a lack of scientific interest in understanding woman's issues such as menstrual discomfort.⁹ The advent of puberty is a moment for celebration in rural India. In South India, women wear a red mark on their forehead to mark the aftermath of her first menstruation. The absence of a mark on post-pubescent women is ominous, signifying that either she is menstruating or at best has been widowed. However, in the midst of all the chaos, menstruation remains the indicator of the purity-impurity dichotomy which forms the bedrock of the Hindu society. Venturing into the history of our society as far as 1912, there was a school in the state of Cochin which allowed students to take menstrual leaves during their examinations.¹⁰ It's ironic indeed that after a century we are still discussing about its viability and our legislature is yet to deliberate on it. In India, we accept that we live in a highly patriarchal society where gender gaps widen to the extremes and there has been very less efforts by the Governments to bridge the gaps. Many are of the opinion

⁸ Williams, *Equality's Riddle: Pregnancy and the Equal Treatment Special Treatment Debate*, 13 N.Y.U. REV. L. & Soc. CHANCE 325, 1984-85, 369.

⁹ Evelyn Fox, *Feminism and Science*, 7(3) SIGNS 589, 1982, 590

¹⁰ P. BHASKARANUNNI, KERALA IN THE 19TH CENTURY (1988)

that a Legislation which allows menstrual leaves to women at workplace would further widen this gap. On this note , going beyond the gender roles, a menstruation policy is something which is a rectification of the atmosphere at workplaces. More than that it fits well as far as the suitable working conditions are laid out by the Parliament of India or the International Labour Organisation (ILO).It is a step ahead not only to bridge their gaps but also a positive move to bring about justice and proper balance in the work culture. This doesn't make anyone weaker but rather breaks the stereotype that the society nourishes.

IV. HOW A PRODUCTIVE LEGISLATION OR AMENDMENTS TO PRE-EXISTING LEGISLATIONS BY THE PARLIAMENT WOULD HELP THE SOCIETY AT LARGE

When it comes to pregnancy related leaves, we have seen how the Maternity Amendment Act, 2017 has increased the duration of maternity leave from existing 12 to 26 weeks. This is also an amendment which the current regime publicly boasts of and it is accepted by the society at large. The question arises that if maternity laws could be changed, then why not menstrual leaves? Numerous policies now address to a woman's needs during menstruation. This includes easy availability of sanitary napkins, construction of toilets. Socially, the urban working class has witnessed what could be characterized as a 'menstrual revolution' with tampons, menstrual cups and reusable sanitary napkins flooding the pharmaceutical sector. That's not something which would benefit the vulnerable anyway with the Government being numb when it comes to menstrual policies. The Labour Act in India provides for 12 days of medical leave for men and women at workplace. A unilateral increase in the number of days for medical leave would be discriminatory and especially since menstruation is not a disease. Thus an overall increase in the number of days for all would lead to misuse of these leaves by some people and that would affect the efficiency of work. In this context what could also be discussed is the existing Menstrual Benefits Bill, 2017. The bill prescribes a 4 day leave for women at workplace and schools and it also states that for women opting work to leave would be allowed thirty minutes of break twice a day for 4 days. Though this bill is flexible, there are lot of technicalities and viabilities which need to be discussed. Any Menstrual Benefit Legislation must look into the matter of protection of privacy because if datasheets are maintained for Menstrual leaves, an employer could have access to information which are private to an individual. Thus privacy should be a prime concern for the lawmakers and a proper framework should be made which looks into this matter. Thus any policy should not pose an inherent risk to privacy and dignity of an individual. Thus the information regarding the female worker should be strictly confidential and the access should be to an appointed female officer of the workplace. Data

also should be updated and revised to benefit the cause of the employees. It should be a viable and all encompassing legislation which looks into all possible aspects.
