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A quarterly insight to the POSH Law!

By V.P Shintre & Associates

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POSH LIVE brings to you updates and information relating to matters of sexual harassment irrespective of the gender and age. This is an effort to create awareness about laws relating to sexual harassment and any form of discrimination.

Right to Bleed and The Need for Paid Menstrual Leave

Introduction

For the longest time, patriarchy and rigid social structures have pushed women to the sidelines not because they lack capability, but because systems were built without empathy or understanding of their realities. Workplaces were rarely designed as spaces where women could experience growth, comfort, and success simultaneously. Instead, they were structured around a narrow, one-size-fits-all idea of productivity.

Over time, society, governments, and lawmakers have begun acknowledging women's biological realities and have introduced protective measures to ensure that unavoidable biological conditions do not undermine their right to work, live with dignity, and build careers.

These legal interventions are not "special treatment"; they are corrective steps toward fairness. Menstruation is one such biological condition that deserves to be addressed in workplaces, just as maternity leave is. The conversation around period leave is still sensitive in India, where menstruation continues to carry stigma. Though awareness has improved, thanks in part to social media and increased public discourse, the subject still remains difficult to address openly.

The Need

Paid menstrual leave is not about "special treatment"; rather, it is about equity ensuring that a recurring biological process does not affect a person's finances or career.

For a significant percentage of women, menstruation involves conditions like dysmenorrhea, endometriosis, or PCOS, which can include severe pain, migraines, nausea, fainting, and extreme fatigue.

GOOD TO KNOW!

NCW (National Commission for Women) - Women Helpline 14490

With an objective to help the women in registering complaints and provide psychological support, the NCW has taken initiative to start this Helpline. Any woman or girl (above 18 yrs) in distress seeking help can call this helpline. The helpline is staffed by Psychological Counsellors trained in Mental Health and Counselling institutions.

Objectives of this Helpline

1. To provide Digital Complaint Registration System for women in distress through trained counsellors
2. To facilitate psychological counselling or referral to the appropriate agencies such as -
 - Police
 - Hospitals
 - District Legal Service Authority (DLSA)
 - Protection Officer (PO)
 - One Stop Crisis Centre (OSC)
3. To provide information about the appropriate support services, government agencies, etc.

Without a specific paid leave policy, women often have to choose between using sick leave or annual leave just to manage pain every month, without actually getting adequate time to rest. Especially in daily wage jobs, taking a day off during periods means a direct loss of income.

The Supreme Court of India in Dr. Jaya Thakur Vs. Government of India and others, identified, the menstruation or right to bleed as a part of Fundamental Right under Article 21. It stated that, *"In our considered view, MHM (Menstrual Hygiene Management) measures are inseparable from the right to live with dignity under Article 21. We say so because dignity cannot be reduced to an abstract ideal, it must find expression in conditions that enable individuals to live without humiliation, exclusion, or avoidable suffering. For menstruating girl children, the inaccessibility of MHM measures subjects them to stigma, stereotyping, and humiliation."*

If we have to relate this principle at workplaces, adopting Period Leave will guarantee the women this part of Fundamental Right

Origin of Menstrual Leave Policies

Japan introduced menstrual leave under Article 68 of the Labor Standards Act in 1947, making it one of the first countries in the world to provide a national legal framework for what was termed "Physiological Leave" (Seiri Kyuka). The article states that if a woman finds it "especially difficult" to work during her menstrual period and requests leave, the employer cannot force her to work.

The policy emerged from several post-World War II challenges. Many workplaces at the time factories, mines, and bus stations lacked basic sanitation, private toilets, or clean water, making period management physically difficult for many women. Female conductors working for the Tokyo Municipal Bus Company often had long shifts with almost no access to restrooms. For these women, managing a period while working was not merely uncomfortable, it was physically and hygienically impossible.

After Japan's defeat in World War II, the country underwent a massive social and legal overhaul. Women were entering the workforce in record numbers to help rebuild the economy, yet working conditions remained extremely harsh.

Although the law still exists today, its usage has significantly declined from roughly 20% in 1965 to less than 0.9% today. Many women avoid taking the leave altogether. One major reason is that requesting the leave often requires directly informing a supervisor who is frequently male which many women find embarrassing or uncomfortable. Additionally, in Japan's high-pressure work culture, taking "special" leave is often viewed as a sign of weakness or a lack of commitment to the team.

Menstrual Leave in India

In India, Bihar was the pioneer state in introducing paid menstrual leave. In 1992, the state government implemented a policy allowing two days of paid menstrual leave per month, although it currently applies only to government employees.

Some other states such as Kerala, Karnataka, Odisha, and Sikkim have also explored or introduced menstrual leave policies in certain sectors.

While the intention to introduce paid period leave is visible across countries and states, several technical and societal challenges make its implementation difficult.

In March 2026, the Supreme Court of India disposed off a writ petition seeking menstrual leave for women in all establishments. However, the said writ petition was disposed off stating concern that "Nobody will give them responsibilities, even in judicial services, a normal trial will not be assigned to them"

This reflects the broader societal hesitation surrounding the subject.

Challenges in Implementing Period Leave

- 1. Hiring Bias and Employability Gap:** Employers especially in Small and Medium Enterprises (SMEs) often worry about the financial burden of paying for additional leave while also potentially having to hire temporary replacements or cope with reduced productivity.
- 2. The “Weakness” Narrative:** Providing special leave reinforces the outdated idea that women are “biologically weaker” or less capable than men, potentially giving a “scientific” justification for discriminatory attitudes.
- 3. The “Outing” Problem:** To avail of the leave, an employee may effectively have to disclose their menstrual cycle to their manager. In many Indian workplaces, where supervisors are predominantly male, this can lead to significant discomfort and under-utilization of the benefit.
- 4. The “Honesty” Scrutiny:** Another concern revolves around verifying the need for leave. Unlike a visible injury such as a broken arm, menstrual pain is subjective. This creates fears of either potential misuse by employees or intrusive monitoring by employers
- 5. Gender Bias in Hiring:** Women may be perceived as weaker or costlier employees than men, which can silently influence hiring decisions particularly in roles that demand strict deadlines or uninterrupted availability.
- 6. Lack of Clear Legislative Backing:** In India, despite the introduction of the new labour codes, there is currently no specific legislation mandating menstrual leave. Apart from broader constitutional principles supporting equality and dignity, there is little statutory clarity on this issue. From a compliance perspective, organizations may therefore lack clear direction on implementing such policies.

The concerns discussed above such as the “weakness” narrative and the perception that women may be less reliable employees, thereby contributing to hiring bias point to a deeper structural prejudice within workplaces. Refusing to acknowledge a legitimate biological need merely because of anticipated misuse or social discomfort reflects an underlying distrust in women within the public and legal imagination. Basing policy decisions on the possibility of hypothetical misuse, rather than on actual workplace data or lived realities, is both unsettling and counterproductive to the goal of achieving substantive equality.

While reflecting on the stigma and social conditioning around menstruation, in the recent judgement by Supreme Court, **Dr. Jaya Thakur Vs. Government of India and others; mentions** – *“Time is over ripe that we recognize menstrual health as a shared responsibility rather than a woman’s issue. Awareness must not be limited to girls, but extends to boys, parents, and teachers. When menstruation is discussed openly in schools, it ceases to be a source of shame. It is recognized as what it is, a biological fact. Needless to say, it must be seen as a collective effort rather than a constitutional pull.”* Although this statement, with the context of the Judgement is given for the school environments; however, the implication is equally true at work environments. The present Judgement recognizes that right to menstrual hygiene as a part of fundamental right to life with dignity and privacy. It also lays its strong foot on role of men in building the congenial environment in schools. Yet, Ironically the same Court rejects a petition seeking menstrual leave for working women and female students with the judges saying if they were to make such a law, “no-one will hire women”. The judgements state the ideal scenarios however, in reality, there have been instances where women have been asked to show the proofs when applied for period leave. To change this, there has to be a social and cultural shift through education and open communication.

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Conclusion

While we may not be “fully there” yet, that does not mean the demand for statutory period leave is excessive, it is not. At its core, the issue is about acknowledging that biological well-being should not become a professional disadvantage. Expecting women to simply “push through” discomfort, pain, or medical conditions in the name of equality ignores lived realities. Real equality sometimes requires accommodation.

Yes, implementing period leave comes with challenges, concerns about misuse, operational feasibility, and social perception. But these challenges are not unresolvable. The solution lies in a balanced approach: thoughtful legislation, clear organizational policies, and most importantly, a shift in mindset among managers, colleagues, and even women themselves.

We cannot keep calling something a “big ask” simply because society has normalized ignoring it. Creating inclusive workplaces means adapting systems to people, rather than forcing people to shrink themselves to fit the system.

NEWS CORNER

Maharashtra Women’s Commission orders POSH Audits at workplaces in Maharashtra

Maharashtra Women's Commission Chairperson has directed all district collectors and divisional commissioners to audit internal committees against workplace sexual harassment in government and private offices across the state within a month. The aim is to ensure proper implementation of the Sexual Harassment of Women at Workplace Act, 2013, which makes it compulsory for all offices to have an internal committee to handle complaints of sexual harassment.

The commission said that during visits and from complaints received, several problems were found.

Many offices do not have internal committees, some panels exist only on paper, there is little awareness about the law, members are not trained, annual reports are not submitted and required display boards are missing, it noted.

Officials have been told to check whether internal committees are properly formed and working.

NEWS CORNER

No action is permissible under POSH Act where allegation is not proved – Bombay High Court

The Bombay High Court examined the scope and limits of Internal Committee constituted under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In this significant judgement, the court held that once the ICC concludes that allegations of sexual harassment are not substantiated, employers cannot proceed with punitive action through parallel disciplinary mechanisms. The court underlined that the ICC is a quasi-judicial authority under the law, and its findings cannot be casually disregarded or overridden by employers through internal disciplinary routes.

The Court observed that the jurisdiction of the Committee is confined strictly to determining whether the conduct complained of falls within the definition of sexual harassment under the Act. Upon recording a negative finding, the Committee is bound by Section 13(2) to recommend closure of the complaint with no action against the respondent.

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Advocate Vaishali Bhagwat, is amongst the first technology lawyers in the country with prior qualification and working experience in the field of Computer Science, Cyber Defense and Information Assurance.

Her work also focuses on women and children's rights and has worked extensively on cases relating to violence against women and children including sexual violence. Vaishali is an external member on various ICC committees and has conducted several complex inquiries relating to sexual harassment at workplace. POSH awareness and capacity building workshops conducted by her are rich in content as she discusses various cases and draws on her experience dealing with inquiries and POSH related court litigation including criminal cases.

Vaishali has advised several organizations across varied sectors on POSH compliance, safety in virtual workplaces, cyber safety and is also regularly invited as an expert speaker/ panelist on this subject by various organizations providing POSH services

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