



The Legal Paradigm of Menstrual Leaves Policy in the United Arab Emirates, Kuwait, and Afghanistan

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Author's contribution

The sole author designed, analysed, interpreted and prepared the manuscript.

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ABSTRACT

Most legal regimes have failed to provide paid menstrual leave for women during employment, and this failure is due to several factors. Primarily, “menstruation” is very private. In some societies, it is still a taboo and degrading practice; employed women do not like to discuss it with their employers, mainly (who are men). The present study examines the legal framework and challenges of menstrual leave in the United Arab Emirates, Kuwait, and Afghanistan. The existing article ponders three specific research questions: Is the menstrual leave a blessing or a curse? Should employ women be entitled to period leave under an Islamic regime? How effective are the legal frameworks and the regulatory types of laws in the above three states? The study is employed doctrinal legal research in which normative approaches were to evaluate the literature to acquire the required legal propositions. The literature gathered and used in this study will include secondary, primary, and legal documents. This qualitative exploration aims to analyse the national principles on recognising menstrual policy, which is scarce. This is unlike the situation in Indonesia, Russia and Spain. To cope up with such scarcity, this study mined any type of relevant statutes that the UAE, Kuwait and Afghanistan have enacted and published, including written (manifestos, books, and articles on labour issues. Furthermore, the study is limited to the legal system of the aforementioned states. The study is expected to help women empowerment, create legal awareness, highlight right health in the light of right under the statutory laws.

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1. INTRODUCTION

Islamic law and sharia law concerning menstrual leave policy should not be confused with the countries that practice it. Like other states, women in the UAE, Kuwait, and Afghanistan are pivotal in transforming work on various platforms, including health, education, media, art, commerce, the aerospace industry, and multiple services. However, the above three states have taken this matter with little credence. Statutory (Positive) laws and Islamic laws differ in some Muslim countries; some states have no longer been identified as religious states, like Kazakhstan, Turkmenistan, [1] Uzbekistan [1] Tazhek [1], Kyrgyz, [1] and Somaliland [1]. Some lived according to traditions or laws and veered from strict orthodoxy and regulations of Muslim Sharia law. The Qur'an and Sunna are, therefore, vital sources. The fikh is a theological framework that relies on the infallibility of sources that have been revealed or acknowledged as such. The fikh, as a body of law, does not meet the current necessity of the Muslim community. Many Islamic states still reaffirm their allegiance to Islamic principles in their rules and constitutions. However, strict orthodoxy is practised and followed in many Islamic nations. Muslim law recognises the legitimacy of the legislative action taken by the ruling body and has extensively used it. Today, many Muslim countries admit the legality of legislative activities, which have been widely applied, for instance, the appointment of female judges in many countries, even in Afghanistan during the Hamid Karzai and Ashraf Ghani regimes. Obtaining a judicial divorce is another framework considered out of the orthodoxy box. Many states of the Muslim continue to affirm in their laws and often in their constitution and their adherence to the principle of Islam. The study is dwelled that menstruation is a human rights issue and a theological aspect. Today Most Islamic states failed to adopt the period leave policy. In order to get an insight into the menstrual leave policy in another country, the study briefly highlights the legal position of Menstrual leave in Indonesia. The study argues that legislating menstrual leave is a crucial step toward accepting the natural physiological disparities among workers and making accommodations for those differences through structural changes that adapt the workplace to women's particular requirements.

Muslim women face menstrual pain due to an inefficient health system not getting paid period

leave. Men and women differ in physical, biological, psychological, and sociological characteristics. Menstruation, pregnancy, childbirth, nursing, and menopause are just a few reproductive issues only women go through. Employment and health issue are governed by law, and many businesses violate the rules, for example, by failing to address the menstruation issue in the employment contract or by refusing to grant women access to paid menstrual leave [2].

Interestingly, the menstrual paid leave policy for women is encouraged by legislation in several Asian nations (including Indonesia, Japan, Taiwan, and South Korea); however, even though the United Emirates of Arab (UAE) Kuwait is a civilized state which is hosting a large number of Multinational companies (MNCs) but they have failed to adapt the menstrual leave regulations. Likewise, the situation of women in Afghanistan is different from other Islamic states. Afghan women live in a dominant male society, where the structure of life is based on a patriarchal ethos. Some say that women's privacy and dignity would be violated if such legislation is adopted in Islamic states. It would reinforce existing stigmas against women who take menstruation holidays, negating the policy's intended advantages.

2. DISCOURSE

To begin with, menstruation in Islam is called "*the Haiz*" (menses), Quran, has explicitly mentioned in 2:222, which prohibits men from sexual intercourse during a woman's menstruation until she is not cleansed [3]. Furthermore, it prohibits a Muslim male from divorcing his wife during her menses. Quran exempts Muslim women from observing fast or offering prayers. Moreover, it clearly instructs Muslim women to maintain proper hygiene [4].

The issue of menstruation has been discussed in *Sahih Muslim* [5] (Islamic Hadith) Book 3, No. 0577 to 0581. There are instances in the Prophet Mohammad (PUH) that say that a woman, during menstruation, ties a waist wrapper over her body. Menstruation has not been dealt with stigma and taboo, which today Muslims do. Considering Quran instruction and Hadith narrative, Muslims are obliged to follow the same. 666 verses out of 177 deal with women's status and rights [6]. However, the

issue of the period in the Islamic states has been stigmatized, so Muslim females feel guilty about disclosing it as a maternal right. The study is based on the ratiocination of principles' *Petito Principia*' and has a lengthy legal exposition to ponder the questions. Neither the rich states nor the poor Muslim countries could answer to the menstrual leave policy (except Indonesia). To remedy this and to explain some apparent discrepancies in the doctrine of the infallibility of Muslim women, an *ijma* must be established unanimously.

In reality, Muslim countries could prescribe *Hadd* (Punishment) for women but deny menstruation as a maternity right. Most Islamic states are exclusively governed by Muslim law, although it is the authority proclaimed in principles upon customs and legislation. Even though menstruation affects half of the Muslim population, why has it remained taboo? Why do Islamic principles not consider the colour of menstruation as a maternity right? Menstruation is still taboo and stigmatised in the above Islamic countries. For instance, employed females coworkers seek sanitary pads and painkillers in the office while speaking quietly and in a confidential manner. When a young girl experiences her first period, it is common for her to stare down in astonishment and anxiety in various Muslim cultures. Whatever the mitigating circumstances, the result is always the same: a taboo that creates a lack of awareness about menstrual health. There have been several instances where ladies did not understand menstruation till they reached menarche. This shows minimal discussion of the subject, even between mother and daughter. In other words, a young girl in primary and secondary school can not access menstrual health education. However, in most Islamic countries, males typically govern, dictate, and regulate female health.

3. INDONESIA

The Republic of Indonesia is a southeast Asian state, whereas half of the Indonesian people, nearly 13,700, are inhabited in the islands. Indonesia is a constitutional republic with an elected parliament and appointed judiciary. The president, his (er) minister(s), has far more power than the parliament and judiciary. The government operates under a 1945 constitution based on the doctrine of *Pancasila* (five) principles), defined in the constitution as "a belief in the one Supreme God. The spirit of the Indonesian Consitution is based on

the doctrine of Just and civilized society; the unity of Indonesia; the inner wisdom of deliberation for democracy through representatives; and social justice for the Indonesian people."

According to Indonesian Labour Law 2003 [7] female employees/labourers who experience menstrual pain and inform the employer about it are not required to report to work on their first and second days of menstruation. Additionally, the business entities still compensate those who miss work due to their first and second menstrual period. The first and second days of a woman's period are granted two days of leave each month in Indonesia. This legislation aligns with a culture that promotes time spent away from work because Indonesian employees typically receive an extended break. Indonesian employees have fifteen paid holidays yearly compared to the eleven public holidays observed in the United States. Employees are entitled to 100% of their wages during the first four months of sick leave and 50% during the following four months. Employees receive 1.5 months of paid time off for maternity leave, which is also a considerable benefit [8]. Those who experience miscarriages are granted paid leave for one and a half months, determined by a doctor's medical statement. Although the menstrual leave policy in Indonesia appears to be effective in writing, several corporations' enforcement methods show that it is not. According to labour law, Indonesian-employed women can also request menstruation and breastfeeding leave [9]. These provisions were left over from Dutch colonial law but also struck a harmony with Indonesian sensibilities [9]. A controversial problem for feminism worldwide—how to attain gender equity while respecting gender differences—is illustrated in the political struggle in Indonesia over menstrual leave, culminating in legislative reform in 2003 [9].

4. THE UNITED ARAB EMIRATES (UAE)

The UAE's constitution was provisionally adopted at independence in 1971 and made permanent in 1996, establishing a federal government that leaves much power to Emirate. There is no political party, and there is no popular election. The government has executive, judiciary, and legislative branches. The executive enjoys the dominant position. The legal system is based on *Sharia* (Islamic Law) but incorporates elements of western legal systems in such areas as commercial law. However, many legal disputes

are decided by local customary practices under the supervision of the rulers of each Emirate. Article 16 [10] of the UAE constitution stipulates that the state shall protect childhood and motherhood.

Art. 25 [10] stipulates that there shall not be any discrimination, and the state shall maintain equality among its citizens. The constitution above is silent on menstrual leave and maternity rights. Despite UAE being a developed and civilized society, it is expected to have a period leave policy. Other gulf countries may take inspiration from this positive approach.

The UAE does not have a legal framework that grants paid menstrual leave. However, doctors have urged UAE companies to follow Spain's model and give women's employees a menstrual break [11]. Dr. Ahmed states, [12]. "*Period pain is a common phenomenon, just like childbirth.*" Menstrual leave ought to be accepted if we can have paid leave for mothers. Implementing menstruation leave could increase employee productivity.

5. THE UAE LABOUR LAW

Article 29, No woman shall be employed in any establishment that is dangerous to her physically, mentally, and morally.

Art. 30 [13] stipulates paid leave for forty-five days as maternity leave, including the pre and postnatal period. Provided that she has worked more than a year, and if a woman has worked less than a year shall be entitled to leave with half pay. Furthermore, a female employee shall be considered absent from work without payment on the exhaustion of hundred consecutive days [14]. She can resume work on producing a medical certificate the competent health authorities issued. The certificate indicates that the said sickness results from pregnancy or delivery. Likewise, in Art. 31 [13], a female employee who is breastfeeding her kid gets extra two additional breaks per day, neither of which may exceed half an hour, in addition to any required rest periods for the first 18 months after delivery. These two additional breaks will not result in a pay decrease because they will be regarded as part of the working hours.

Art. 82 [13], the employer must be notified within two days if an employee becomes sick at work, but it is not the consequence of an accident. The employer must then take a prompt action to

determine the illness. Article 83 [13], the employees do not entitle to paid sick leave on the following [15].

1. During the probationary period
2. If the employee exceeds three months of probationary leave and falls sick, she will be entitled to sick leave, but it should not exceed 90 days; it will be calculated in the following manner;
 - a) *The first 15 days with full payment,*
 - b) *The next thirty days with half pay, and*
 - c) *Subsequent leave will pay without any charge.*

Article 85 [13], amended by Federal Law (12) of 1986, grants discretion to the employer to terminate the employee who failed to resume after the stipulated leave. However, this labour law does not have provisions for the menstrual leave.

6. KUWAIT

In its Preamble, the Constitution of Kuwait [16] stipulates social justice Art.7 states justice, compassion, and equality, the pillar of equality and nondiscrimination bins for all Kuwaiti citizens. Art. 15 deals with the right to health and a healthy being; the constitution calls upon the state to facilitate a sound healthcare system to prevent disease [17]. Likewise, Art. 42 of the said constitution prohibits forced labor. The Kuwait government must look at the international convention to protect the right of women in the case of menstrual leave at the workplace. However, the Kuwait constitution neither explicitly nor impliedly deals with maternity or women's health. Thus, the Constitution is the *grundnorm* [18] of the state; it has to deal with the equality of men and women explicitly; however, it should pay respect to the physical and biological diversities.

Kuwait, unlike other countries, grants some 'Statutory Leave'[19]. Accordingly, according to Article 24, [20] a working mother who is pregnant and gives birth is entitled to a separate, compensated maternity leave of 70 days. According to Article 69, [20] an employee is entitled to the following sick leave annually—initial 15 days at full salary. Succeeding ten days at three-quarters pay, following ten days at three-quarters pay, ten days at half payment, ten days at quarter pay, and 30 days without pay. (Unpaid sick leave). According to article 70, [20] the

employees are entitled to thirty days of annual leave subject to the condition that employees have worked not less than six months with the employer. Art. 75, [20] an employee may be given a paid academic leave by their company to pursue a higher degree in their field of employment, provided that they return to their jobs and stay with them for a similar period, which should not be more than five years. However, if the employee is to return, he/she has to reimburse the remuneration paid to him. According to Art. 76, [20] a worker who has worked for the same business for two years straight is eligible for 21 days of paid leave to do *Hajj*(pilgrimage) if he has never done so. Art. 77, [20] Muslim working women who lose their husbands are entitled to four months and ten days of paid "*iddat leave*" starting on the day of the loss. A working non-Muslim lady who lost her husband is entitled to a 21-day paid leave. Similarly, a three-day special leave, known as compassionate leave, may be granted by the employer to an employee in the event of the death of a first- or second-degree relative. In light of the above provision, we could conclude that although Kuwait has a liberal labour law, it still does not have a requirement to grant paternity leave and menstrual leave. Since it is a welfare state, the goal of social justice can be obtained by amending the labour and adding menstrual leave as an element of maternity leave.

7. AFGHANISTAN

The constitution is the vessel, vehicle, and visage of fundamental rights. The present regime does not have a law to protect women's rights concerning the menstrual leave policy. To appreciate the situation of working women, it is better to remove the "*roadblock*" to her social, economic, and health constraints. This study has dwelled on this because a state can not bring a "*Cosmetic Change*" in the provision of labour law. To exemplify this contention that amending the provision of labour law does make justice. Suppose the purpose of the state is to unearth standard policies and principles protecting the health and well-being of women. In that case, it should be necessary that there should neither be incorrect inclusion nor wrought exclusion. Afghanistan found that a lack of facilities and knowledge is a significant factor for girls miss school frequently during this time, sometimes even dropping out altogether. The 2016 study's most startling conclusion was that 70% of females avoid bathing or showering while menstruating out of concern for infertility.

Additionally, more than half of Afghan schoolgirls had never heard of menstruation before having their first period, which left them astonished and terrified when it did. In addition, most adolescent girls in Afghanistan never talk about their periods; they are still within the box of shame and privacy. Afghan girls are not educated about menstrual hygiene in schools or at home.

Traditional Afghan society views a girl as prepared for marriage and childbearing when she begins her "menarche." [21]. Girls see menarche in and out of school as a marker of girls' preparedness for marriage because it denotes girls' transition to adulthood. As a result, girls are often reported to have been hiding their periods from family members out of concern that their families would prevent them from attending school or marrying them off [22]. Conflict and poverty also hurt menstruation. For instance, during the US withdrawal, 25% of Afghan girls reached the USA were their period without necessities [23]. Imagine a military camp like Qatar, composed of men and women, and it might have been difficult for females in a place that lacks waste management, water supply, and basic sanitary necessities. The status of menstruating women will be more pathetic than in other states. Whether it is a natural disaster, an unnatural disaster, or a significant refugee crisis, if women menstruate, her period will probably still occur when war or a problem emerges [24].

8. CONCLUSION

To conclude, the industrial sector is expanding in the UAE and Kuwait, accompanied by an increase in the proportion of women employed there. As more women enter the workforce each year, more women assume dual roles—those of a woman in the house and a woman in her job. The defense against menstrual leave rules is that since not all women must take time off during their period, a specific protocol for it is superfluous and overly inclusive. The study establishes that a legal affirmative action program needs to favor all working women; it is also a need-based and comprehensive policy; that addresses the challenges and the inability of women to work during their period. The existing work advocates that menstrual leave should be normalized and that Islamic states should not ignore the principles of the Quran about menstruating women. The study argues that there should not be nominal equality, which aims for merely gender blindness, but actual and

substantive equality requires such transformation. The labor laws of the UAE and Kuwait address maternalist protection provisions as gender-specific rights for female employees related to their maternity roles. However, non of the UAE, Kuwait, and Afghanistan have highlighted the necessity of a menstrual paid leave policy for women employees.

CONSENT

It is not applicable.

ETHICAL APPROVAL

It is not applicable.

COMPETING INTERESTS

Author has declared that no competing interests exist.

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