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MENSTRUAL LEAVE FOR WOMEN: A LEGAL AND POLICY ANALYSIS IN THE INDIAN CONTEXT

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Abstract

Menstruation is a natural biological reality for a large share of the global workforce, yet it has remained conspicuously absent from mainstream labour law debates. For a considerable number of women, the menstrual cycle brings with it symptoms that are far from trivial — severe cramps, persistent fatigue, nausea, and dysmenorrhoea that can genuinely hinder a person's ability to work effectively. In spite of this, Indian labour law has never carved out a dedicated statutory right to menstrual leave, leaving working women without any formal protection that speaks directly to this aspect of their reproductive wellbeing.

This paper takes a structured look at the legal framework around menstrual leave in India. It starts by mapping the constitutional foundations that support such a right, moves on to assess both the domestic and international legislative landscape, and then works through the competing arguments — including potential risks — before drawing conclusions. The central argument is that menstrual leave is not simply a welfare gesture; it is an obligation embedded in the constitutional values of equality, human dignity, and the right to health. The paper advocates for a state-funded, opt-in model that can accommodate the real-world concerns of both workers and employers. It draws on constitutional interpretation, judicial precedent, legislative history, and foreign law to make the case for a properly designed menstrual leave framework in India. The analysis also situates the Indian debate within a broader comparative framework, drawing on the regulatory experiences of Japan, South Korea, and Spain to extract lessons relevant to the Indian legislative context. Ultimately, the paper argues that silence is no longer a defensible legislative position on this question.

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INTRODUCTION

The relationship between biology and the law has rarely been smooth, especially when the biology in question belongs to women. Of all the physical realities that shape women's experience in the workplace, menstruation is perhaps the most consistently overlooked — dismissed as a private inconvenience or wrapped in a silence that the law has been only too content to maintain. Yet the lived reality of millions of working women tells a very different story. Over 1.8 billion people across the world menstruate, and for a significant portion of them, it is not merely uncomfortable — it is genuinely debilitating. Dysmenorrhoea, the medical term for painful menstruation, is one of the most prevalent gynaecological conditions worldwide, affecting roughly 80 per cent of menstruating individuals at some stage of their lives. For many within this group, the condition is severe enough to disrupt their ability to work, study, or carry out routine daily tasks.[1]

In India, this issue has drifted in and out of policy conversations for decades without ever making it into law. The country has passed several statutes designed to protect women in the workplace — the Maternity Benefit Act of 1961, the Factories Act of 1948, and the Sexual Harassment of Women at Workplace Act of 2013, among others — but not one of them speaks to the particular occupational burden that menstruation places on working women. This is not an oversight born of ignorance; it reflects a long-standing tendency to treat women's reproductive health as either a personal matter or one adequately handled by general leave policies, neither of which truly addresses the problem.[1]

What is at stake here goes beyond individual discomfort. At its heart, the menstrual leave debate is a debate about whether women can participate in employment on genuinely equal terms. Formal equality — the idea that all workers should be treated identically — fails to account for the physiological realities that put menstruating workers at a structural disadvantage when leave frameworks make no room for those realities. Substantive equality, by contrast, recognises that treating unequal situations identically only entrenches existing disadvantage. The demand for menstrual leave must be understood in this light: not as a request for special treatment, but as a requirement for genuine workplace parity.

1 The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India); The Factories Act, 1948, No. 63, Acts of Parliament, 1948 (India); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

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The Indian Constitution offers a solid framework for this argument. Article 21's guarantee of life and personal dignity has long been read to include the right to health. Article 14's guarantee of equality before the law permits legislative classification where a rational basis exists for it. Article 42 calls on the State to secure just and humane conditions of work. Taken together, these provisions do not merely permit legislative action on menstrual leave — they arguably require it. The real question is not whether such a right can be justified in principle, but how it should be designed in practice.

The paper is organised as follows. Part II sets out the legal rules and frameworks — domestic and international — that bear on this question. Part III examines the competing arguments, including both the case for menstrual leave and the legitimate concerns raised against it. Part IV presents conclusions and specific policy recommendations.

RULE: LEGAL FRAMEWORK

Constitutional Provisions

The Constitution of India, 1950 says nothing explicitly about menstrual leave, but several of its provisions have been given content through judicial interpretation in ways that create a plausible constitutional foundation for such a right. Article 21 is the most direct starting point. The Supreme Court has, over several decades, read the right to life to include the right to health — not merely as an abstract entitlement, but as an active obligation on the State to take steps that protect the health and dignity of its citizens in their working lives. This reading provides the clearest constitutional hook for menstrual leave.[2]

Article 14's equal protection guarantee is also relevant. The Court has consistently held that not all distinctions in law are unlawful — only those that lack a rational connection between the basis for classification and the purpose it serves. A law that provides menstrual leave specifically to those who menstruate clears this bar without difficulty: the basis for the distinction is biological, and the purpose — protecting health and promoting real equality at work — is plainly legitimate. There is, in other words, no constitutional obstacle to Parliament making this distinction.[3]

Article 42, found among the Directive Principles of State Policy, instructs the State to provide just and humane working conditions. Though the Directive Principles are not directly

2 INDIA CONST. art. 21.
3 INDIA CONST. art. 14; INDIA CONST. art. 42.

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enforceable, the Supreme Court has long held that they must shape how fundamental rights are interpreted, and that laws enacted in pursuance of them carry constitutional weight. The Maternity Benefit Act itself was shaped by this directive. It would be entirely consistent with this tradition for Parliament or a state legislature to enact menstrual leave legislation on the same basis.

Existing Statutory Framework in India

The Maternity Benefit Act, 1961 remains the centrepiece of India's legal protections for working women's reproductive health. It provides twenty-six weeks of paid leave for women in establishments with ten or more workers, and offers protections against dismissal and hazardous work assignments around pregnancy and childbirth. While it represents a meaningful legislative acknowledgment that reproductive health is a workplace concern, its scope is limited to pregnancy — it has no application to the monthly experience of menstruation.[4]

The Factories Act, 1948 imposes a range of health and safety obligations on employers — separate sanitation facilities, rest areas, and restrictions on overnight work for women — but these are environmental protections, not leave entitlements. The Sexual Harassment of Women at Workplace Act, 2013 addresses a different, though related, dimension of women's workplace experience. Neither statute touches on menstrual leave.

At the state level, Bihar stands alone. Since 1992, Bihar has extended two days of special casual leave each month to women government employees on account of menstruation — the only state in India to have done this through any formal mechanism. The policy has operated quietly for over three decades, attracting neither replication by other states nor any known constitutional challenge.[5]

Legislative Proposals at the National Level

Several private member bills have been introduced in Parliament over the past decade seeking to establish a statutory right to menstrual leave, though none has yet been enacted. The Menstrual Benefits Bill of 2017 and a follow-up in 2018 both proposed two days of paid leave per month for female employees and students. More recently, the Menstruation Benefits

4 The Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India); Maternity Benefit (Amendment) Act, 2017, No. 6, Acts of Parliament, 2017 (India) (extending leave from 12 to 26 weeks for certain establishments).
5 Government of Bihar, Special Casual Leave for Women Government Employees, Department of Personnel and Administrative Reforms Order (1992).

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Bill of 2023, tabled by MP Supriya Sule, has returned the issue to the parliamentary agenda. The repetition of these attempts reflects a growing legislative awareness that the existing framework falls short, even if the political will to act has not yet solidified.[6]

At the level of higher education, Kerala became the first state to extend menstrual leave to female university students — a development that is significant because it frames the issue not purely as a labour welfare matter but as a right that attaches to participation in any formal institutional context, whether educational or occupational.

Corporate Sector Initiatives

In the absence of any legislative requirement, a handful of private employers have moved ahead voluntarily. Zomato's 2020 announcement of ten days of paid period leave annually attracted considerable public attention and prompted similar moves from other companies, including Swiggy. These initiatives are welcome, but their limitations are obvious. They are entirely discretionary, reached only by employees of progressive and well-resourced firms, and do nothing for the far larger population of women working in small establishments, the gig economy, or the informal sector — where menstrual health is rarely spoken of and virtually never accommodated.

International Legal Framework

India's obligations under international law are also worth noting. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993, requires state parties to take active steps against workplace discrimination on the basis of sex and to ensure women's access to health services. CEDAW does not mention menstrual leave explicitly, but its broad mandate against sex-based discrimination in employment provides a treaty-level foundation for the argument.[7]

Several countries have enacted statutory menstrual leave provisions. Japan has had such a provision since 1947, when its Labour Standards Act first granted leave to workers for whom menstruation made work unduly difficult. South Korea has a comparable provision under its Labour Standards Act. Spain, in 2023, became the first European country to legislate on this issue, introducing paid leave for incapacitating menstrual conditions, with costs borne by the

6 The Menstruation Benefits Bill, 2017, Bill No. 280-C of 2017 (India); The Menstruation Benefits Bill, 2018, Bill No. 303-C of 2018 (India); The Menstruation Benefits Bill, 2023, Bill No. 175 of 2023 (India) (introduced by MP Supriya Sule).

7 Convention on the Elimination of All Forms of Discrimination Against Women art. 11, Dec. 18, 1979, 1249 U.N.T.S. 13 (ratified by India on July 9, 1993).

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national social security system rather than by employers. These examples show that the concept is both legally viable and practically manageable when designed thoughtfully.[8]

ANALYSIS

The Constitutional Case for Menstrual Leave

The constitutional argument for menstrual leave draws on a reading of Articles 21, 14, and 42 together. The Supreme Court's health jurisprudence under Article 21 is the most immediate source of support. In Consumer Education and Research Centre v. Union of India and B.K. Parthasarathi v. Government of Andhra Pradesh, the Court affirmed that the right to life includes the right to health, and that both the State and employers carry obligations in this regard. Applied to the context of menstruation, this line of authority makes it difficult to justify a framework that is simply silent about a physiological condition that affects the health and working capacity of a substantial share of the female workforce.[9]

The reproductive rights dimension adds further weight. The Supreme Court's recognition in Devika Biswas v. Union of India that reproductive rights are an integral part of the dignity and autonomy protected by Article 21 is directly relevant here. The right to manage one's own reproductive health — which includes the right to take rest during menstruation without financial penalty — falls comfortably within this understanding. A framework that compels women to choose between their health and their income, in an area where the Constitution guarantees both dignity and the right to health, is one that calls for scrutiny.[10]

The equality argument under Article 14 is equally compelling. A formal equality model, which distributes general leave without reference to physiological differences, produces structurally unequal outcomes: a woman who draws on sick leave during her period is left with fewer entitlements for other health needs than a male colleague who faces no comparable biological cost. This is the kind of structural disadvantage that substantive equality — the real goal of Article 14 — is meant to address. The Court's purposive approach

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8Labour Standards Act, art. 68 (Japan) (first enacted 1947, providing seirikyuka or menstrual leave); Labour Standards Act, art. 73 (S. Kor.) (as amended); Ley Organica 1/2023, de 28 de febrero, por la que se modifica la Ley Organica 2/2010 (Spain) (introducing paid menstrual leave from March 2023).

9 Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42 (India); B.K. Parthasarathi v. Government of Andhra Pradesh, AIR 2000 AP 156 (India).

10 Devika Biswas v. Union of India, (2016) 10 SCC 726, para. 48 (India) (holding that reproductive rights form an inseparable part of personal liberty under Article 21).

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in Deepika Singh v. Central Administrative Tribunal to the interpretation of maternity and welfare legislation supports this reading.[11]

The Counter-Arguments and Their Limitations

Opponents of mandatory menstrual leave raise several objections that deserve honest engagement rather than dismissal. The most commonly cited is the risk of employer discrimination in hiring. The concern is a rational one: if women come with an additional statutory leave obligation, employers may — consciously or not — prefer male candidates, worsening women's position in the labour market. There is some empirical backing for this concern from studies of mandatory maternity benefit regimes in various countries. But the solution is not to abandon the right — it is to design the entitlement so that the cost falls on a social insurance fund rather than on individual employers, as Spain has done. India's own Employees' State Insurance scheme demonstrates that this kind of state-funded occupational benefit is administratively workable here too.[12]

The second objection is perhaps more philosophically interesting: that menstrual leave stigmatises menstruation by institutionalising the idea that women are periodically incapacitated. There is something to this. A policy that treats all menstruating women as needing rest, regardless of their actual experience, risks reinforcing exactly the kind of assumptions that feminists have long fought against. The answer, however, lies in design rather than abandonment. An opt-in model — one that allows employees to choose whether to use menstrual leave when they need it, without compulsion or presumption — preserves individual agency and avoids the paternalism that critics rightly object to.

The third objection concerns verification. How can an employer confirm that an employee is menstruating? Must leave be available only to those with diagnosed conditions like endometriosis or PCOS, or to all menstruating employees? These are real administrative questions, but they are not uniquely difficult. Most jurisdictions that have enacted menstrual leave provisions simply extend the entitlement to all menstruating employees on the basis of self-declaration, applying the same practical logic used for general short-term sick leave. A straightforward self-certification mechanism, similar to that used in some maternity provisions, would be adequate in most cases.

11 Deepika Singh v. Central Administrative Tribunal, (2022) 11 SCC 1 (India) (affirming substantive equality in interpretation of maternity and parental benefit legislation).
12 Rania Gihleb et al., The Economic Consequences of Menstrual Leave Policies, IZA Discussion Paper No. 16459 (2023) (examining the employment effects of mandatory menstrual leave provisions in comparative jurisdictions).

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Judicial Developments and Their Relevance

There is no Supreme Court ruling directly addressing menstrual leave, but the surrounding judicial landscape points clearly in one direction. The Court's expansive reading of Article 21 to include health rights, its recognition of reproductive rights as fundamental in Devika Biswas, its endorsement of substantive equality analysis in gender-based welfare cases, and its landmark direction in Vishaka v. State of Rajasthan that employers must ensure a safe and dignified working environment for women — all of this suggests that the judiciary would likely be receptive to a well-designed legislative provision on menstrual leave, were such a provision to be challenged. The National Commission for Women has similarly called for legislative action, highlighting that the current mix of isolated corporate policies and a single state-level administrative order is not an adequate national response to what is a nationwide issue.[13]

The Informal Sector Problem

The most serious and least-discussed gap in the current debate is the almost complete absence of any framework — voluntary or otherwise — that reaches women in informal employment. India's informal economy is the primary source of work for most of the country's female workforce: domestic workers, farm labourers, construction workers, street vendors, and home-based piece-rate workers, among others. For these women, any menstrual leave framework that depends on a formal employer-employee relationship is essentially irrelevant.[14]

A genuinely equitable menstrual leave policy must grapple with this problem head on. Direct cash transfers, contributory social insurance mechanisms, or community health programmes administered through local self-government institutions could provide a route to coverage for informal workers. Any legislative proposal that sidesteps this dimension will end up doing what much of India's existing labour law already does — extending meaningful protection to a minority of workers in formal employment while leaving the most economically vulnerable without recourse.

13 Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India) (laying down guidelines for prevention of sexual harassment and affirming women's right to a safe and dignified working environment).
14 International Labour Organization, Women and Men in the Informal Economy: A Statistical Picture 18-22 (3d ed. 2018) (noting that over 80% of India's female workforce is engaged in informal employment).

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Comparative Law Lessons

The experience of other countries provides both encouragement and caution. Japan's provision, which dates back to 1947, has had limited real-world impact: because the leave is unpaid and carrying significant social stigma attached to its use, relatively few eligible workers actually take it. This is an important lesson — the formal existence of a legal right is not the same as its effective exercise. The conditions under which a right can be used — whether it is paid, how socially accepted it is to claim it, what the practical consequences of doing so are — determine its actual value.

South Korea's experience similarly illustrates that design choices matter: the country's shift from paid to unpaid menstrual leave predictably reduced uptake. Spain's 2023 model represents the most sophisticated current example: it limits the entitlement to those with clinically recognised incapacitating conditions, funds the leave through social security, and thereby addresses both the over-inclusion concern and the employer liability concern at once. Whether Spain's model can be transplanted directly to India is debatable — the social security infrastructure and the scale of informal employment are very different — but it provides a useful blueprint from which an India-specific framework can be constructed.

CONCLUSION AND RECOMMENDATIONS

The analysis presented in this paper leads to a clear conclusion: the case for menstrual leave in India is both constitutionally sound and practically necessary. The present absence of any legal framework leaves millions of working women without protection for a physiological condition that genuinely affects their health and productivity. That absence sits uneasily alongside constitutional commitments to equality, dignity, and the right to health — commitments that the State is obliged to make real in the lives of ordinary citizens. It is also worth noting that the economic case for menstrual leave has often been underplayed in Indian policy discourse. Productivity losses attributable to untreated dysmenorrhoea and the broader category of menstruation-related ill health are significant. Research from multiple jurisdictions consistently indicates that presenteeism — attending work while unwell — carries hidden economic costs that exceed those of absenteeism, both for the individual worker and for organisations as a whole. A legal framework that enables women to rest on the days they genuinely need to, without fear of financial penalty, is therefore not merely a welfare measure but a rational investment in workforce productivity. The argument that menstrual leave is economically unaffordable rests on a partial accounting of costs that

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ignores the long-term benefits of a healthier, more productive, and more equitably included female workforce.[15]

At the same time, the analysis is clear that design matters enormously. A poorly constructed menstrual leave policy can inadvertently harm women by reinforcing stereotypes, reducing their attractiveness to employers, or simply failing to reach those who need it most. With that in mind, the following recommendations are offered as guidance for legislative action.

First, Parliament should enact a dedicated Menstrual Leave and Reproductive Health at Work Act, or at a minimum amend the Maternity Benefit Act, 1961 to include menstrual leave as a distinct entitlement. The leave should be structured as opt-in — employees may self-declare their need for leave without submitting medical evidence for each occasion — and should be available for at least two days per month.

Second, the financial cost of menstrual leave should be carried by the State through a dedicated social security mechanism, not by individual employers. Placing the cost on employers creates a rational incentive to discriminate against women in hiring decisions. The Employees' State Insurance scheme, or an analogous contributory fund, could serve as the vehicle. This approach mirrors what Spain has done and addresses the hiring discrimination concern at its source.

Third, the legislation should explicitly extend coverage to women in informal employment, through mechanisms adapted to the absence of a formal employment relationship. Direct benefit transfers, self-certification schemes administered at the local government level, or contributory community health funds are possible approaches. Legislation that limits its reach to formal sector employees will entrench rather than challenge the inequalities already embedded in Indian labour law.

Fourth, the legislation should require mandatory workplace sensitisationprogrammes aimed at reducing the stigma around menstruation in occupational settings. A legal right is only as effective as the social environment in which it can be exercised. Without a parallel effort to normalise menstrual health as a legitimate workplace concern, even a well-designed legal entitlement risks being underused.

15 Erin Shannon et al., Period Poverty: A Mixed-Methods Study on Menstrual Health, Workplace Productivity, and Labour Force Participation, 12 BMC Women's Health 241, 248 (2022); see also Supriya Panda, Menstrual Health and Labour Force Participation in India: An Empirical Assessment, 58 Econ. & Pol. Wkly. 34, 39 (2023).

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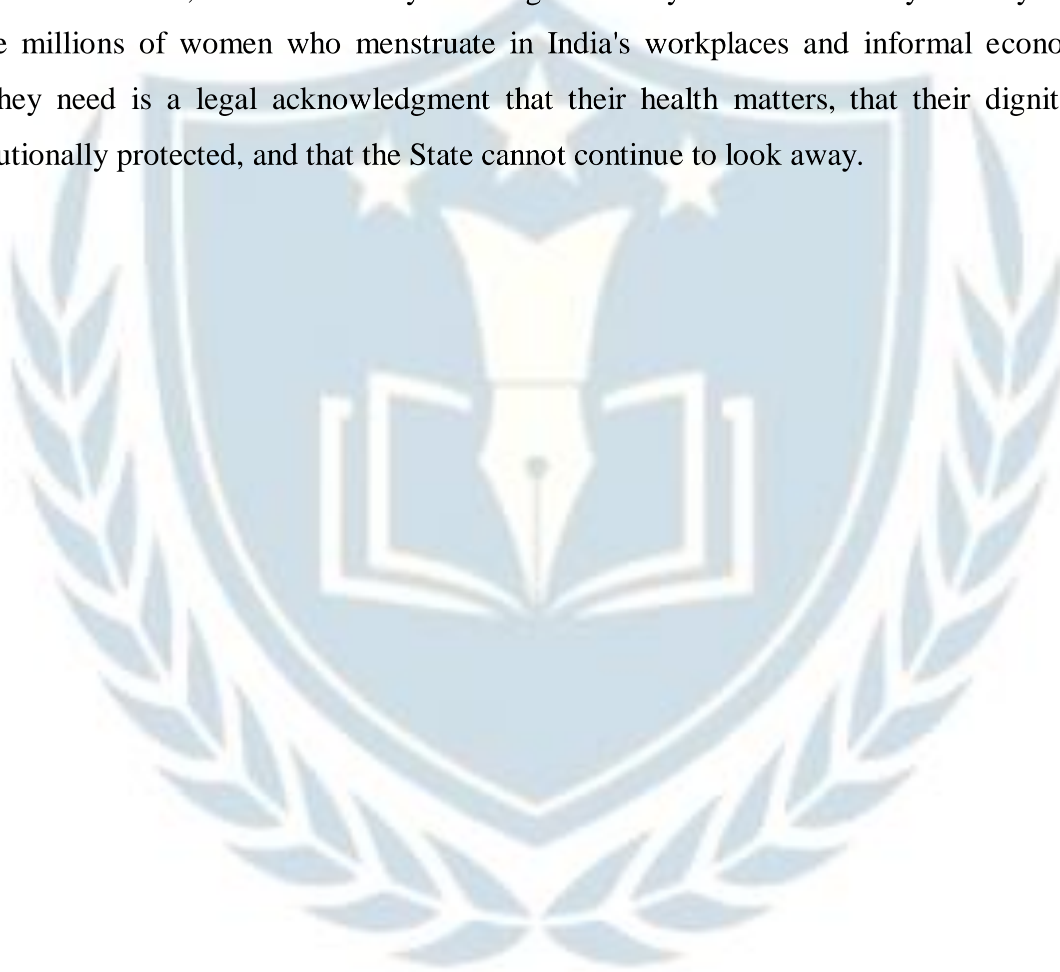
Fifth, an independent monitoring and review mechanism — perhaps administered by the National Commission for Women — should be established to track implementation, assess the law's impact on women's employment outcomes, and recommend course corrections where needed.

To close, menstrual leave is not about accommodating weakness. It is about acknowledging difference — and recognising that the law has an obligation to account for that difference in building institutions that all citizens must use. Equality is not achieved by pretending everyone is the same; it is achieved by ensuring that everyone has what they actually need. For the millions of women who menstruate in India's workplaces and informal economy, what they need is a legal acknowledgment that their health matters, that their dignity is constitutionally protected, and that the State cannot continue to look away.



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