

REDESIGNING WORKPLACE EQUALITY: MENSTRUAL LEAVE, EMPLOYER OBLIGATIONS, AND GENDER JUSTICE

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ABSTRACT

Reproductive health rights and job equity provide a constitutional challenge in India. Despite the Ministry of Women and Child Development's refusal to approve paid menstrual leave programs and the Supreme Court's denial of related separation of powers petitions, this study addresses a crucial question: Menstrual leave: constitutional entitlement or discretionary policy? This thesis argues that India's constitution enables menstruation leave using doctrine. Based on systematic analysis of Articles 14, 15, and 21, this paper argues that these policies are consistent with reasonable classification, constitutional provisions allowing legislation aimed at women, and the liberal understanding of the right to life with dignity, including health rights. Under investigation are the non-justiciable Directive Principles—Articles 39(e), 42, and 47—which define the state's constitutional obligation to protect worker health and humane working conditions. Comparative constitutional study shows productive menstrual leave systems in Japan (founded in 1947), South Korea, Taiwan, and Spain, confirming its applicability. The pioneering implementations of Bihar (1992), Kerala, Swiggy, Zomato, and legal schools like NLIU Bhopal and HNLU Raipur assist all-India implementation. The government believes menstruation leave allows unfair job decisions, promoting gender inequity. This question contradicts it. It claims that well-designed menstrual leave policies improve constitutional equality by recognising that discrimination for similarly unequal situations is discriminatory. The report contends that menstrual leave meets constitutional equality principles by fitting biological reality and ensuring true, not just formal, equality. The research says current legal interpretations prove menstruation leave's legitimacy. Effective implementation involves rigorous gender-based employment discrimination penalties, mandatory destigmatization campaigns, and affirmative action processes to assure fair labour participation. The paper advises legislative persistence in enforcing these legislation and enhancing anti-discrimination frameworks to balance constitutional rights and physiological realities for gender eq.

Keyword: Gender Justice, Menstrual Leave, Right to Work

1. INTRODUCTION

The Ministry of Women and Child Development recently announced in Lok Sabha that there are currently no proposals being contemplated by the government to offer paid menstruation leave to women.¹ This declaration followed the Supreme Court's denial of a petition over the menstrual leave policy, emphasising the separation of powers between the judiciary and legislative, as it

pertains to a policy issue beyond the courts' jurisdiction. The statement also indicated that these rules would prove counterproductive, potentially resulting in the exclusion of women from the workforce instead of promoting their involvement. Ex-Union Minister for Women and Child Development Smriti Irani had disputed the concept of compensated menstrual leave in December of last year, characterising menstruation as not a “handicap.”² She contended

¹ ‘No plans to mandate paid menstrual leaves, announces WCD Minister’ (Ani News, 2024)
<[https://www.aninews.in/news/national/general-news/no-plans-to-mandate-paid-menstrual-leaves-announces-TheRights of Women to Menstrual Leave Bill, 2022, Bill No. \[XX\] of 2022](https://www.aninews.in/news/national/general-news/no-plans-to-mandate-paid-menstrual-leaves-announces-TheRights of Women to Menstrual Leave Bill, 2022, Bill No. [XX] of 2022)

(India).wcdminister20240726203246/#:~:text=New%20Delhi%20%5BIndia%5D%2C%20July,initiatives%20to%20promote%20menstrual%20hygiene> accessed 22 September 2025.

² The Hindu Bureau, ‘Disheartened by Union Minister Smriti Irani’s stand on menstrual leave, says BRS leader’

that its execution would hinder the objective of ensuring equal work possibilities for women, which is frequently perceived as the adverse consequence of such leaves. These examples illustrate that the Indian government remains entrenched in its conventional view on menstruation and is reluctant to offer fair treatment to financially autonomous women. Numerous individuals contend that the enactment of this "differential" treatment will impede gender equality and contravene the essence of the Constitution. Consequently, this paper will endeavour to examine the debate about the notion of menstruation leave and assess its legitimacy if enacted within the framework of constitutional law. It will additionally analyse the current statutes and judicial precedents associated with it and further examine the global standing of this provision.

2. BEYOND A WORKPLACE BENEFIT: UNDERSTANDING THE CONCEPT OF MENSTRUAL LEAVE

Menstruation is a biological occurrence that influences the daily experiences of women in both physical and psychological dimensions. It frequently results in exhaustion, queasiness, migraines, bodily discomfort, spasms, and so forth, which adversely impact the productivity and efficacy of job or academic pursuits. Despite the fact that these symptoms are deemed typical and ladies are anticipated to acclimatise to them, certain studies indicate that menstrual discomfort can be as excruciating as a myocardial infarction. Research conducted in 2013 indicated that menstrual cramps hinder the work effectiveness of 5-20% of individuals who menstruate.³ Certain menstruators experience additional complications such as Dysmenorrhea and Endometriosis, which affect their daily existence.

Consequently, menstrual leave is anticipated to address this dilemma as it enables menstruators to recuperate and prioritise their well-being. They assist in enhancing post-menstrual efficacy and foster both physical and emotional wellness.

(*The Hindu*, 15 December 2023) <
<https://www.thehindu.com/news/national/disheartened-by-union-minister-smriti-iranis-stand-on-menstrual-leave-says-brs-leader/article67642373.ece> > accessed 22 September 2025.

³ "What to know about Menstrual Leaves"
(*MedicalNewsToday*, 30 March 2023)
<[https://www.medicalnewstoday.com/articles/menstrual-](https://www.medicalnewstoday.com/articles/menstrual-leave#summary)

Despite the government's awareness of these advantages, it demonstrates an unwillingness to enact legislation. The principal reason for this may be the stigma associated with menstruation. In a male-dominated culture such as India, menstruation is frequently confronted with revulsion, animosity, and apathy. Women are anticipated to refrain from discussing it publicly, as it is perceived to stem from a transgression on their part. This pervasive stigmatisation results in a deficiency of awareness, adversely impacting women's mental health. A poll from the previous year carried out by the NGO Child Rights and You (CRY) revealed that over 12% of adolescent girls remain uninformed about the origin of menstruation, perceiving it as an illness or a divine curse.⁴ An additional factor could be the apprehension regarding the anticipated negative consequences of this policy, as it might exacerbate gender discrimination, leading to challenges for women in employment practices, remuneration, and so forth.

3. MENSTRUAL LEAVE AND CONSTITUTIONAL EQUALITY: A DOCTRINAL EXAMINATION

Critics contend that instituting menstrual leave would contravene Part III of the Indian constitution by fostering gender discrimination and regressing gender equality; however, Part III offers legal support for its enactment. The essential rights enshrined in Articles 14, 15, and 21 confer upon citizens the entitlement to equality, protection against discrimination, the right to life and personal liberty, and the right to live with dignity, respectively.

A more profound comprehension of Article 14, which encompasses the principle of equality before the law, leads us to deduce that individuals in analogous situations ought to receive comparable treatment. Individuals in varying situations ought to get disparate treatment, and given that men and women are not same, they should not be regarded uniformly. The esteemed Supreme Court, in a pivotal ruling, established the criterion of reasonable classification. According to

[leave#summary](#)> accessed 22 September 2025.

⁴ Hindu Bureau, *Close to 12% of Young Girls Think Menstruation Is a Curse from God or Caused by Disease: Study*, THE HINDU (May 28, 2023),
<https://www.thehindu.com/sci-tech/health/close-to-12-of-young-girls-think-menstruation-is-a-curse-from-god-or-caused-by-disease-study/article66900791.ece>.

this examination, the court stated that the categorisation must arise from understandable differentia and that the aim intended by the statute should be logically connected to the difference.⁵ The absence of menstruation in men demonstrates their significant distinction from menstruators, and the concept of menstrual leave is also connected to this disparity. Although Article 15 prohibits discrimination, clause 15(3) explicitly indicates that the restrictions of Article 15 do not hinder the state from enacting specific measures for women and children. Menstrual leave, if enacted, would constitute such a provision.

Moreover, this notion can be substantiated by Article 21, which encompasses the right to lead a dignified existence. It may be regarded as an augmentation of the 'Right to Health,'⁶ which was incorporated into this article via judicial interpretation in a pivotal ruling by the Supreme Court of India. Consequently, while examining the aforementioned fundamental rights, it is evident that the enactment of this specific policy regarding menstrual leaves will not contravene the constitution.

The directives established within the Directive Principles of State Policy (DPSPs) in Part IV of the constitution warrant significant consideration, as they, despite being non-justiciable, substantially assist the judiciary in constitutional interpretation. Article 37 of this section asserts that while these rights are not subject to judicial enforcement, it is the responsibility of the state to incorporate them into legislation. Furthermore, the judiciary interpreted numerous rights in an expansive manner, drawing upon the directives outlined in the Directive Principles of State Policy (DPSPs); for example, the right to basic education was incorporated as a fundamental right under Article 21A in 2002 through the 86th amendment, referencing Article 45, which pertains to the right to education as a DPSP. In a similar vein, Article 39(e) addresses the preservation of worker health, while Article 47 pertains to the obligation

of the state to enhance public health, nutrition, and living standards. Moreover, Article 42 stipulates that the government must guarantee equitable and compassionate labour conditions together with maternity benefits. Menstrual alleviation would indeed enhance the health and occupational circumstances of menstruators, predominantly women. Consequently, the legislative bodies ought to deliberate on the implementation of menstrual leave provisions, considering the pertinent Directive Principles of State Policy.

4. ANALYSIS

Numerous nations globally are implementing favourable measures on menstrual leave. Japan's position is notably progressive, having legalised it since 1947; in contrast, South Korea offers one leave per month, while Taiwan allocates three days per year for menstruation leave, which is separate from the standard 30 days of sick leave. Spain is the inaugural European nation to authorise compensated menstruation leave, which may extend from three to five days every month.⁷ Despite the fact that in some countries these provisions often go unmet and, in certain cases, are not executed effectively, these nations are nevertheless significantly more advanced in terms of menstrual leave policies compared to India.

In India, there exists no adequate legislation for menstrual leave, although the Indian Parliament has made numerous attempts to establish specific laws on the matter; for example, the Rights of Women to Menstrual Leave Bill 2022⁸ sought to grant three days of paid menstrual leave to women and transwomen, yet these efforts have not yielded results. Despite the absence of any successful nationwide implementations, this approach has attained a degree of success in certain areas. In 1992, Bihar permitted women to take two days of paid menstruation leave each month⁹, while Kerala granted menstrual leave to all female students across all educational

⁵ *Dr. Saurabh Choudhayi and ors v. Union Of India*, MANU/SC/0446/2004.

⁶ *Bandhua Mukti Morcha v. Union Of India & Others*, MANU/SC/0051/1983.

⁷ JP Associates, *Paid Menstrual Leave: A Step Towards Gender Equality*, MONDAQ (Oct. 4, 2024), <https://www.mondaq.com/india/employee-rights-labour-relations/1526006/paid-menstrual-leave-a-step-towards-gender-equality>.

gender-equality.

⁸ The Rights of Women to Menstrual Leave Bill, 2022 (India).

⁹ JP Associates, *Paid Menstrual Leave: A Step Towards Gender Equality*, MONDAQ (Oct. 4, 2024), <https://www.mondaq.com/india/employee-rights-labour-relations/1526006/paid-menstrual-leave-a-step-towards-gender-equality>.

institutions.¹⁰ Numerous commercial enterprises such as Swiggy, Byjus, and Zomato have adopted this approach, offering support to their female workforce. Numerous academic establishments such as NLIU Bhopal and HNLU Raipur have lately implemented a menstrual leave policy for their female students.

5. SUGGESTIONS

The Hon'ble Supreme Court's ruling to reject the PIL concerning menstrual leave, along with the ensuing remarks from the Ministry of Women and Child Development, has shattered the hopes of numerous individuals anticipating progressive initiatives to tackle the difficulties encountered by menstruating employees in the workplace. This position, while based on valid apprehensions over potential adverse effects such as heightened discrimination in employment or workplace interactions, also perpetuates the stigma associated with menstruation in Indian culture. Menstruation is a stigmatised topic, and neglecting the matter of menstruation leave exacerbates the silence and unease surrounding this inherent bodily function, reinforcing the notion that it should be overlooked instead than approached with empathy.

Although the apprehensions expressed by the authorities, including the potential for inadvertent discrimination against women in the workforce, hold validity, they do not warrant a lack of action. It is the constitutional obligation of the state to enact legislation that responds to the changing requirements of society, especially regarding the rights and well-being of its populace. By evading the topic entirely, the government jeopardises the continuation of a climate in which women's health issues are sidelined, so hindering the advancement of substantive discussions regarding gender equality in the workplace.

Instead than discarding the concept of menstrual leave because of associated concerns, the government need to aggressively explore methods to alleviate such risks while safeguarding the health and dignity of menstruators. This may be accomplished using a multifaceted strategy. Initially, awareness initiatives must be launched to dismantle the societal shame associated with menstruation. Normalising conversations on menstruation facilitates the resolution of

authentic health issues encountered by women and other menstruators in professional settings. Awareness initiatives can assist businesses in recognising the importance of menstrual health and motivate them to implement more inclusive workplace policies.

Secondly, rigorous legislative structures must be instituted to sanction employers who partake in gender-based discriminatory practices, guaranteeing that the implementation of menstruation leave does not hinder women's employment or progression. Such sanctions may serve as a deterrence, indicating that although menstruators are entitled to particular health-related provisions, employers are prohibited from discriminating against them on this ground.

Ultimately, the government ought to contemplate implementing proactive measures or incentives for employers who diligently strive to advance gender equality inside their organisations. This may encompass advancing women into leadership roles, guaranteeing gender equality in recruitment processes, and instituting workplace regulations that foster women's health without alienating or stigmatising them. Affirmative measures may also encompass the establishment of a more adaptable workplace, wherein compensated menstruation leave is integrated into a comprehensive suite of employee entitlements designed to enhance well-being and productivity rather than perceived as a mere concession.

By instituting these measures, the government can guarantee that menstrual leave is enacted in a manner that upholds the health and dignity of menstruators while safeguarding their employment prospects and avoiding the perpetuation of current gender disparities. This equitable strategy would also embody the evolving characteristics of Indian society and the proactive function the government had to assume in tackling new social challenges.

6. CONCLUSION

The debate surrounding menstrual leave in India signifies a pivotal moment in the country's pursuit of genuine workplace equality. The conflict between advocating for the unique bodily experiences of women and ensuring fair employment rights is not an absolute dilemma of sacrificing one principle for the other. Instead of

¹⁰ Id.

allowing apprehensions about potential job discrimination to derail essential health reforms, India should pursue a constitutional approach to promote gender equality and communal welfare.

The constitutional framework, anchored in Articles 14, 15, and 21, offers a significant legal foundation for the implementation of menstrual leave. The reasonable classification theory permits unequal treatment based on a clear distinction that has a rational connection to policy objectives, therefore making workplace accommodations for menstruation constitutionally permissible. Article 15's explicit stipulation for preferential treatment of women further shields these programs from being contested on equal protection grounds. A broad interpretation of Article 21's right to life with dignity, encompassing rights to health and fair working circumstances, offers another constitutional foundation. The Directive Principles of State Policy further substantiate this foundation by mandating acceptable working conditions and health welfare, resulting in a broad legal framework that transcends mere permissibility to constitutional obligation.

Global examples from diverse jurisdictions such as Japan, South Korea, Taiwan, and Spain demonstrate that menstruation leave regulations are neither extreme innovations nor unrealistic ideals. These international initiatives demonstrate that reconciling reproductive health concerns with broader employment fairness goals constitutes a viable policy aim rather than a mere theoretical aspiration. In India, forward-thinking states, educational establishments, and business entities have effectively implemented menstruation leave programs, offering viable models for nationwide adoption and demonstrating practicality across diverse organisational contexts.

The forthcoming strategy necessitates a bifurcated methodology: dismantling the cultural taboos around menstruation shrouded in mystery and shame while concurrently establishing robust anti-discrimination frameworks. Legal safeguards ought to encompass stringent penalties for biased employment practices, mandatory diversity disclosures, and affirmative action to ensure equitable workforce representation of women. Institutionalisation of compliance-monitoring and grievance redress systems is essential to prevent policy misuse. Rather than perceiving menstruation leave as an impediment to women's

advancement in the corporate sphere, it should be regarded as a fundamental component of genuine gender equity—one that acknowledges and accommodates biological realities rather than stifling or punishing them.

Authentic gender equality cannot be established on the fallacy of physiological uniformity; it emerges through the creation of institutional frameworks that embrace biological variety without discrimination or disadvantage. The constitutional principle of equal treatment encompasses both formal equality under the law and substantive equality in practice, with the latter recognising that treating unequal circumstances equally perpetuates disadvantage rather than alleviating it. Menstrual leave rules, when adequately protected, represent a crucial advancement in fostering workplace environments where equitable treatment and acknowledgement of human variety harmoniously coexist.

This document asserts that menstrual leave is not only constitutionally allowed but also fundamentally supported by India's constitutional assurances of dignity, health, and substantive equality. The inquiry for Indian policy-makers is not if these policies align with constitutional principles—the legal basis is clear—but whether the nation has the legislative fortitude to execute them thoroughly. The constitution is clear: true equality requires acknowledgement of differences, not ignorance of them, and demands justice via this awareness. Menstrual leave policies exemplify these constitutional principles, harmonising rights and practicalities to foster a fair, respectful, and constitutionally compliant work environment for everyone.