A JURISPRUDENTIAL EXEGESIS OF MENSTRUAL ACCOMMODATION IN INDIA: RE-CHARACTERISING PHYSIOLOGICAL INEVITABILITY AS A CONSTITUTIONAL IMPERATIVE

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ABSTRACT

This paper proposes a constitutional re-evaluation of menstrual accommodation in India, contesting the dominant perspective that regards menstrual leave as a matter of legislative discretion or employer goodwill. It contends that the persistent inability to accommodate menstruation in the workplace represents a breach of substantive equality, dignity, and health, thereby infringing upon the fundamental rights enshrined in Articles 14, 15, and 21 of the Constitution of India. The paper fundamentally argues that workplaces that are neutral disregard the physiological considerations associated with sex, where these considerations bring structural disadvantage to a particular sex.

Moving one step further from the usual policy explanations, the paper argues that menstrual accommodation is not an optional welfare policy, but rather a standard of equality flowing from the constitution itself. While it acknowledges that courts can't set specific standards of menstrual accommodation, it must step in when there are none at all. This is further operationalised through a four-figure constitutional test for testing whether any accommodation exists at all. This brings structure to the usually abstractly argued argument, creating enforceable rules within the constitutional limitations.

The paper further addresses issues related to judicial restraint, economic viability, stereotyping, and administrative abuse, illustrating that these criticisms are associated with implementation rather than constitutional legitimacy. By comparing different countries' approaches, the paper shows that menstrual accommodation is not impossible to implement or incompatible with constitutional governance, especially in India's changing constitutional framework. The paper ultimately asserts that the denial of menstrual accommodation signifies not constitutional silence but constitutional failure, and that genuine workplace equality necessitates the acknowledgement of physiological differences as a valid constitutional issue.

Keywords: Menstrual Leave, Constitutional Law, Substantive Equality, Transformative Constitutionalism, Article 21, Dignity, Indirect Discrimination, Workplace Accommodation, Bodily Autonomy, Indian Supreme Court.

1. Introduction: The Dialectic of Biology, Law, and Constitutional Identity

The recent judicial reticence of the Supreme Court of India, manifested in its declination to entertain a Public Interest Litigation (PIL) seeking a national policy on menstrual leave, has precipitated a critical jurisprudential conundrum.[1] In deferring the matter to the domain of legislative policy, the Court,[2] While ostensibly adhering to the doctrine of separation of powers, has perpetuated a legal status quo wherein a fundamental biological reality for nearly half the population is relegated to the periphery of constitutional concern. This strategy denies menstrual accommodation recognition as a benefit offered by an employer or legislation since they have structured it in a manner that it qualifies as a non-derogable constitutional right. This paper holds that this is an ethically wrong position that can never be harmonised with the transformative ideals and the guarantees of equality enshrined in the Constitution of India.

Most legal stories never mention menstruation because it has been tabooing culturally since time immemorial, based on purity and pollution beliefs. These taboos reveal menstruation to be a shameful experience to be swept under the carpet, and not a public-health problem that needs to be advocated.[3] This silence has been the mode for constructing the contemporary workplace, fashioned upon the male-constructed notion of the body, based on the assumption that there is an ideal worker who does not have to suffer the torturous body rhythm of bodily transformation. People feel their pain in the form of cramps, endometriosis, and PCOS is thus minimized as these are a bother. She has to go through painful physical and psychological suffering, resisting a legal and economic system that punishes them by withholding wages, sick leave and diverting professional progress.

For this paper, references to "women" are employed in a constitutional and sociological sense to reflect the sex-linked nature of menstruation within existing legal frameworks. At the same time, the analysis recognises that menstruation is not exclusively experienced by cisgender women, and that constitutional protections against discrimination and dignity loss extend to all

[1] R. Casais, Spain Passes Law for Paid Menstrual Leave, EL PAÍS (Feb. 16, 2023).
[2] *Anuj Garg v. Hotel Ass'n of India, (2008) 3 SCC 1 (India).*
[3] R. Dasgupta, *Menstrual Taboos: A History of Silence in India* (Zubaan Books 2019).

individuals who menstruate. This clarification does not alter the doctrinal analysis, which remains anchored in sex-based disadvantage under Articles 14 and 15, but ensures conceptual precision in identifying the beneficiaries of menstrual accommodation.

The first substitute is that there is a need for menstrual accommodation as a substantive equality measure, a cornerstone of India's constitutional project. The paper argues that when Articles 14, 15 and 21 are interpreted harmoniously, a clear foundation arises for the right to menstrual accommodation, which is grounded in settled Indian jurisprudence. What carries this argument forward is transformative constitutionalism, which allows for affirmative action to support marginalised groups. This perspective of change reveals that policies appearing neutral but disproportionately harming menstruating individuals constitute indirect discrimination. This paper will utilise diverse methodologies to validate this assertion. In Section 2, we begin a detailed doctrinal analysis of the constitutional triptych by looking at Articles 21, 14, and 15 in a new way to show that they all need physiological accommodation. This is carried forward in section 3, which examines the foundational arguments against menstrual accommodation, countering them from various dimensions. Section 4 further expands into the analytical framework, drawing comparative jurisprudence from international jurisdictions and aligning them with India’s realities. Finally, Section 5 concludes this doctrinal analysis into an enforceable framework, a binding policy from a constitutional mandate.

This paper shall attempt to make three contributions to the Indian constitutional scholarship. Firstly, it attempts to reconceptualise menstrual accommodation as a grounded argument of substantive equality. It extends this beyond matters of legislative benevolence or labour policy, extending the doctrine of reasonable accommodation beyond its traditional grounding in disability jurisprudence. Secondly, it attempts to offer a unified doctrinal analysis of Articles 14, 15 and 21, arguing that these provisions work together to give birth to positive obligations upon the state to account for biological difference if neglect causes a systemic disadvantage. Thirdly, the paper shall attempt to reframe the prevailing debate of menstrual accommodation as a neutral policy choice by applying the anti-subordination principle. This shall demonstrate that denial of menstrual accommodation constitutes a form of indirect sex-based discrimination. Employing doctrinal constitutional analysis, the paper will engage comparative legal study to demonstrate that dignity and equality can be held as constitutional commitments without policy overreach.

2. The Constitutional Triptych: A Jurisprudential Foundation for Physiological Accommodation

The foundation for the argument of menstrual accommodation doesn't require the invention of new jurisprudence. It can be drawn from a purposive interpretation of existing fundamental rights under the Constitution. The Indian judiciary's tradition of breathing life into the constitutional text provides the necessary hermeneutic tools to address this jurisprudential lacuna.

At this juncture, it is crucial to clarify the nature of the constitutional claim advanced in this paper. The paper creates a distinction between the argument that the Constitution has mechanisms that mandate a uniform and judicially imposed model of menstrual leave and the idea of menstrual accommodation flowing directly from the Constitution. The paper also doesn't suggest that courts shall engage in judicial overreach through policymaking. The claim the paper advances is that the Constitution imposes a minimum equality-based obligation upon the state. This obligation is to ensure that workplace regimes do not turn hostile to one gender and penalise individuals for a physiological condition intrinsic to sex. This penalisation can often result in loss of dignity, health compromise or structural disadvantages. The exact modalities of accommodation remain within the purview of the legislature and executive design. However, the failure to provide any reasonable accommodation at all constitutes a breach of Articles 14, 15, and 21. In this sense, menstrual accommodation is a constitutional mandate and not a random policy decision.

2.1 Article 21: The Expansive Ontology of Life, Dignity, and Bodily Autonomy

Article 21 uses a robust framing, saying that no person shall be deprived of his life and personal liberty according to procedure established by law. Gautham Bhatia, a scholar, addresses the article as a "repository of rights." The landmark case of Maneka Gandhi v. Union of India (1978)[4] initiated this change by affirming that the right to life encompasses not only physical existence but also the right to live with human dignity. The link to menstrual health and Article 21 is obvious if one interprets Article 21 purposively. Severe menstrual pain (dysmenorrhea) or chronic conditions such as endometriosis are not minor problems for an individual. There are severe health issues that can significantly hinder an individual's physical and cognitive

[4] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

functions. Making an employee work under such stress is a direct attack on their physical integrity and a violation of their freedom. It turns the person into a tool, making them just a part of the production process whose physical pain is less important than the needs of capital. This is the complete opposite of living with dignity. The relationship between dignity and autonomy was established in the Supreme Court's judgment in K.S. Puttaswamy v. Union of India (2017).[5] Forcing individuals to work through pain significantly impacts their personal autonomy.

Furthermore, the Supreme Court in *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996)[6] unequivocally held that the **right to health** is an integral component of the right to life. This is further bolstered by India's commitments under international law, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." A workplace environment that functionally penalises employees for attending to a recurring, acute health condition is one that actively undermines this right. It creates a coercive choice between health and livelihood, a choice that no citizen in a constitutional democracy should be forced to make.[7] When leaves are denied due to a legitimate health issue, which is further linked to a biological process, this can be considered an infringement of the right to health. This extends to the violation of dignity under Article 21.

2.2 Article 14: From Formalistic Parity to the Imperative of Substantive Equality

Article 14 guarantees that everyone is treated the same by the law and that everyone is protected by the law. The Indian judiciary has long recognised that the traditional Aristotelian idea of formal equality, where equals are treated equally, is not enough to deal with deep-seated, structural inequalities. As a result, the law has slowly moved toward the idea of substantive equality, which says that to really achieve equality of opportunity and outcome, people and groups often need to be treated differently to fit their needs. A workplace policy that provides an equal amount of sick leave to all employees, regardless of sex, seems neutral on the surface and therefore follows a strict reading of Article 14. However, this is precisely the sort of policy that the doctrine of **indirect discrimination** is designed to address. As articulated by Sandra

[5] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[6] *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37 (India).
[7] Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton Univ. Press 2019).

Fredman, a facially neutral policy can have a disproportionately adverse effect on a particular group protected by equality provisions.[8] A uniform leave policy disproportionately burdens menstruating individuals.

Hence, Individuals are forced to use their general leave provisions for a recurring illness related to their biological process. This weakens their safety net in comparison to their peers. This creates a systemic disadvantage.

This failure to account for differences constitutes a breach of the state's positive duty to provide **reasonable accommodation**. While the concept was developed most robustly in disability rights jurisprudence, its underlying logic is universal to the project of substantive equality. The Supreme Court's judgment in *Jeeja Ghosh & Anr. v. Union of India & Ors.* (2016) [9]affirmed that reasonable accommodation is an indispensable facet of equality. The principle is adaptable; when a neutral rule puts a big burden on a certain group because of their natural traits, the principle of equality requires a change or accommodation to make sure they can fully and equally participate. Not allowing menstrual leave is the same as keeping a workplace designed for one default human model, which goes against the substantive equality guarantee in Article 14. The goal is not to create a new privilege, but to remove a barrier that is unfair to everyone.

2.3 Article 15: Deconstructing Discrimination "On the Grounds of Sex" and the Anti-Subordination Principle

Article 15(1) says clearly that the government can't treat men and women differently. A superficial analysis might lead to the mistaken counter-argument that menstrual leave is not discriminatory against men, but rather a particular accommodation for women, potentially constituting reverse discrimination. This argument doesn't get what discrimination is or what Article 15 is supposed to do. Article 15 is not only meant to stop differentiation; it is also meant to support the anti-subordination principle, which means getting rid of hierarchies that put one group above another. Article 15 does more than just protect against direct harm. It has rules and systems that make things harder for people based on their gender, as shown in the case of Anuj Garg v. Hotel Association of India (2008).[10] Menstruation is inextricably linked to sex in a biological sense. To penalise it, by forcing work through pain, by causing depletion of general

[8] Sandra Fredman, Substantive Equality Revisited, 14 INT'L J. CONST. L. 712 (2016).
[9] *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 (India).
[10] ibid at 6.

sick leave, or by creating a chilling effect on career progression, is to penalise an individual for a characteristic intrinsically tied to their sex.

This constitutes a form of "sex-plus" discrimination, where a policy disproportionately affects a subgroup of a protected class. So, giving women time off for their periods is not a favour; it is a necessary anti-discrimination measure to make sure that the biological differences between men and women do not lead to economic or social disadvantages at work. Article 15(3) implicitly allows for "special provisions for women and children" to fix problems that have been around for a long time. This is a direct application of the principle of positive action. This provision should not be construed as a paternalistic exception, but rather as a constitutional mechanism for achieving substantive equality.

Further, the paper argues that Article 15(3) must now be viewed as a narrow exception to general equality under Article 14 or as a licence for preferential treatment. Article 15(3) is an enabling provision that permits and necessitates differential treatment to equal out the structural disadvantages in society. Reading along with Articles 14 and 21, the article facilitates substantive equality by providing for affirmative action where formal neutrality might not have achieved the goal of an equitable society. Menstrual accommodation follows the same logic, providing for the removal of a disadvantage that would otherwise allow a biological difference to be grounds for discrimination. This interpretation of Article 15(3) provides that the article isn't reactive but proactive, and not detached from equality's substantive aims.

2.4 A Constitutional Test for Menstrual Accommodation

To present the doctrinal analysis of an enforceable constitutional mechanism, the paper proposes a four-pronged test. The test assesses when the absence of menstrual accommodation violates Articles 14, 15, and 21. The framework is not a mechanism for a specific policy, but rather establishes a policy floor with constitutional thresholds beyond which workplace arrangements become impermissible. Firstly, the court must delve into and determine whether a workplace policy, while appearing neutral on the surface, goes on to impose a disproportionate burden on individuals who menstruate. The inquiry is more about impact rather than intent, being consistent with equitable treatment under Article 14. Secondly, the court must establish that the alleged burden arises from a recurring physiological condition intrinsically linked to sex, rather than from individual choice or episodic illness. This will ensure that accommodation is linked to a biological condition, which is inevitable and not for

general inconveniences. Thirdly, there must be an assessment of the extent to which the absence of accommodation results in loss of dignity, health compromise or structural disadvantage. This assessment must factor in loss of sick leaves, coercion to work under threat of termination and any other consequences stemming from being unable to work during the time of illness. This will directly relate to dignity and health jurisprudence under Article 21.

Fourthly, the State or the employer must bear the burden of proof to demonstrate that reasonable accommodation is infeasible. This must not include mere assertions of administrative inconvenience, speculative economic costs, or risk of delayed delivery of work. It must have concrete reasons for the same. The employer must also demonstrate that using alternative methods, such as flexible working arrangements, limited leaves are infeasible or unsuitable. Where the mentioned conditions are satisfied, refusal to provide menstrual accommodation is a breach of constitutional rights. This test preserves the separation of powers doctrine by providing enough freedom for the executive and legislature to decide on modalities, just mandating presence subject to judicial review.

3. Deconstructing the Counter-Arguments: A Scrutiny of Paternalism, Pragmatism, and Preconceptions

The opposition to institutionalising menstrual leave is typically rooted in a triad of concerns: that it reinforces paternalistic stereotypes, poses an insurmountable economic and administrative burden, and is susceptible to misuse. These worries come from real-world concerns, but they don't hold up under close legal or moral scrutiny and can't be used to take away a constitutional right. In the Dworkinian sense, a constitutional right must always be more important than policy concerns.[11]

An objection that stands as a legitimate concern towards constitutionalising of menstrual accommodation comes from the doctrine of separation of powers. The argument stands as such that matters of leave, workplace regulation and labour welfare are concerns of the legislative and executive domain, and interference into them risks judicial overreach. The Supreme Court in J State Of U.P And Others v. Jeet S. Bisht and Another[12] said that judicial intervention is inappropriate when it intrudes into policy or legislative domains, unless legality is at stake.

[11] Ronald Dworkin, *Taking Rights Seriously* (Harvard Univ. Press 1977).
[12] *State of U.P. v. Jeet S. Bisht*, No. 2007 INSC 656 (India May 18, 2007).

The same has been echoed in multiple other judgments.[13]

However, this objection must be entertained with a certain degree of nuance. In Indian constitutional jurisprudence, the distinction between policy formulation (domain of legislative competence) and protection of minimal constitutional rights (within the scope of judicial review) has been recognised. The Indian judiciary has intervened in policy matters concerning the right to food,[14] shelter,[15] environmental protection,[16] and access to healthcare.[17] This shows that courts won't abdicate their duty to protect fundamental rights even if it means limited and justified interference into the policy domain.

To specify, the claim here is not for courts to nail down the policy to its minute details, but to recognise that the lack of menstrual accommodation, even though gender neutral, leads to dignity loss and structural inequality, and cannot gain the defence of judicial deference in light of fundamental right violations. Hence, the reluctance to entertain a PIL on menstrual leave appears as a substantive rejection of the constitutional question involved. Judicial restraint doesn't stop courts from enforcing basic constitutional guarantees of dignity and freedom. Hence, judicial intervention in the case of menstrual accommodation is not a deviation but rather an extension of already established jurisprudence.

3.1 The Spectre of Stereotyping and Paternalism: Conflating Accommodation with Incapacity

Many scholars like Indira Jaising have given a feminist point of view, arguing that menstrual accommodation arguments often assume the idea of female of being the weaker sex, less dependable or periodically incapacitated.[18] This argument is used to deny them opportunities in high-stakes environments. This argument overall tries to fit women into a men-tailored space, rather than accommodating women. This viewpoint has moral and theoretical challenges, making patriarchal structures strong because women have to hide their weaknesses.

The system that keeps people out doesn't have to change; only the person does. Catharine MacKinnon says that real equality doesn't mean being the same; it means fighting against the

[13] *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117 (India).
[14] *People's Union for Civil Liberties v. Union of India*, (2001) 7 SCC 549 (India).
[15] *Chameli Singh v. State of Uttar Pradesh*, (1996) 2 SCC 549 (India).
[16] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India).
[17] *Consumer Educ. & Research Ctr. v. Union of India*, (1995) 3 SCC 42 (India).
[18] Indira Jaising, Special Treatment or Equal Opportunity? The Menstrual Leave Debate, THE LEAFLET (Mar. 8, 2021).

systems of power that see differences as weaknesses.[19]

Second, this argument conflates **accommodation with incapacity**. Providing leave for a debilitating medical condition is a standard practice and is not perceived as a sign of general incompetence. Dysmenorrhea is a recognised medical phenomenon. Accommodating it is a matter of health and safety, analogous to providing ergonomic chairs to prevent musculoskeletal injury or allowing breaks for diabetic employees to manage their insulin. It is about *enabling* individuals to participate fully and function optimally over the long term, not about cordoning them off as fragile. The narrative must be decisively shifted from one of weakness to one of equitable health management.

3.2 The Economic Burden and Implementation Anxieties: A Myopic Calculus

This is perhaps the most frequently cited pragmatic objection. Employers, particularly in small and medium-sized enterprises (SMEs), express concern over the financial strain of additional paid leave and the logistical complexities of managing workforce availability, arguing it could disincentivise the hiring of women.[20]

This argument is based on a limited and incomplete economic analysis that overlooks several important factors:

- **The Costs of Inaction**: It doesn't take into account the high hidden costs of "presenteeism," which is when employees are physically present but can't do their jobs because they're sick. An employee who is in a lot of pain is clearly less productive, more likely to make mistakes that cost money, and more likely to get hurt. The total loss of productivity from presenteeism, along with higher rates of employee turnover and burnout, may be more than the direct cost of giving someone a day or two off.[21]

- **Nuanced Policy Design**: The constitutional right to menstrual accommodation does not require a strict, uniform policy. The application of the right may be complex. Models can include a small number of paid or unpaid days, making flexible or remote work

[19] Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard Univ. Press 1987).
[20] FED'N OF INDIAN CHAMBERS OF COM. & INDUS., *Report on the Economic Impact of Proposed Labour Law Changes* (2022).
[21] WORLD HEALTH ORG., *Guidelines on Health and Safety in the Workplace* (2019).

options official, or state-funded leave programs, which take some of the burden off employers.

- **Fundamental Rights vs. Economic Efficiency**: Most importantly, a fundamental right cannot be used as a bargaining chip in the name of economic efficiency. Pragmatic considerations are pertinent to policy formulation; however, they cannot serve as a basis to nullify a constitutional entitlement. The whole history of labour rights, from the 8-hour workday to minimum wage laws, has been a fight against these very arguments that say they can't be done.

3.3 The Potential for Misuse and Administrative Feasibility: A Paternalistic Fallacy

The last common objection is the fear that this kind of leave policy would be abused a lot and turn into an extra vacation. This argument is both paternalistic and not consistent. A small number of people can misuse any type of leave policy, such as sick leave, casual leave, and so on. But we don't get rid of sick leave just because some people might pretend to be sick. The answer is not to deny a right to everyone, but to create a strong but not intrusive administrative design that balances trust with accountability. It is possible to create systems that require little documentation for long-term conditions like endometriosis or PMDD and allow for a set number of self-certified leave days each year. The claim that administration is hard is an argument for better administrative solutions, not for taking away a right.

4. Comparative Jurisprudence and Policy Models: A Global Canvas

A look at how other countries handle menstrual leave shows that there are many different policies, which could be helpful for India. Although no single model is flawless, global experiences indicate that institutionalising menstrual accommodation is both achievable and socially advantageous, thereby refuting numerous speculative counterarguments.[22]

[22] R.B. Levitt & J.L. Barnack-Tavlaris, Addressing Menstruation in the Workplace: The Menstrual Leave Debate, in *THE PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES* 561 (Chris Bobel et al. eds., Palgrave Macmillan 2020).

Table 1: Comparative Analysis of Global Menstrual Leave Policies

Country	Year Introduced (approx.)	Policy Type & Legal Basis	Key Features & Implementation	Critiques & Observations
Japan 🇯🇵	1947	**Statutory Right (Unpaid)**	Employees can request leave for "especially difficult" periods; largely unpaid.	Very low uptake due to social stigma, a culture of overwork, and the financial disincentive of unpaid leave. Often considered a symbolic but practically defunct right (Dalton, 2019).[23]
Indonesia 🇮🇩	1948 (rev. 2003)	**Statutory Right (Paid)**	Provides for 1-2 days of paid leave at the start of the menstrual cycle.	Implementation is notoriously inconsistent. There are widespread reports of companies discouraging their use, requiring intrusive medical checks, or simply refusing to comply (ILO, 2018)[24].
South Korea 🇰🇷	1953 (rev. 2001)	**Statutory Right (Unpaid)**	One day of unpaid leave per month. If not taken, the employee is entitled to additional pay.	Usage declined precipitously after the provision was changed from paid to unpaid for many firms in 2004. Debates persist about its impact on gender dynamics and hiring bias (Kim, 2017).[25]
Zambia 🇿🇲	2015	**Statutory Right (Paid)**	One day of leave per month ("Mother's Day") without needing a medical reason.	The informal name is criticised as heteronormative and exclusionary, but the no-questions-asked policy is reported to be widely used and culturally accepted, promoting trust (BBC News, 2017).[26]

[23] E. Dalton, The Emptiness of a Right: Low Uptake of Menstrual Leave in Japan, 4 J. ASIAN LAB. STUD. 88 (2019).
[24] INT'L LAB. ORG., *Workplace Policies and Women's Health in Southeast Asia: A Comparative Report* (2018).
[25] H. Kim, Menstrual Leave in South Korea: The Long Road to Implementation and Acceptance, 29 KOREAN J. GENDER & L. 45 (2017).
[26] *Zambia's Controversial "Mother's Day" Holiday*, BBC NEWS (Jan. 4, 2017).

Granular Analysis and Lessons for India

The global evidence provides several critical lessons for crafting an Indian framework.

- **The Need for a Paid Component:** Maybe the reason that unpaid leave doesn't work is that it isn't so much a right as it is a luxury, as in Japan and South Korea. Most employees barely have the resources to carry the weight of unpaid leave, particularly lower-income earners. A paid component will thus be gargantuan, so an Indian model succeeds and is just.

- **State Intervention Reducing Employer Burden**: The Spanish model would be a pertinent solution to the economic burden issue. It is gradually turning into a state-sponsored leave, that is, it converts the cost into a collective problem, viewing menstrual health as a normal health issue and not a business issue. This model will remove the fear of the SMEs taking the maximum burden and reduce the chances of discrimination during recruitment.

- **Balancing Trust and Accountability:** Mother's Day questions do not exist in Zambia, and a simple one in comparison to the US. Spain does a medicalised one, whereby it requires the doctor's note. The Zambian model, a model that inspires confidence and minimises administrative barriers, the Spanish one provides a stronger safeguard for accusations of abuse and legally recognises severe menstrual cramps as an actual medical condition. An Indian model can possibly borrow a hybrid model to take on a certain number of self-certified days per year, with the option for medically-certified leave for longer durations or for employees with diagnosed chronic conditions like endometriosis.

- **The Indispensability of Cultural Sensitisation:** The low uptake in some East Asian countries is often attributed not just to policy design but to a workplace culture that prizes endurance and stigmatises taking any form of leave. This highlights the need for any legislative action in India to be accompanied by robust, state-sponsored public awareness campaigns to normalise menstruation and the concept of menstrual accommodation, ensuring that the law translates into lived reality.

The comparative approach explained above is not relevant as it must be transplanted into the

Indian legal canvas, but rather provides examples and case studies of how constitutional systems respond to challenges of differences and equality. The Indian Constitution strives on protecting this balance, placing greater reliance on substantive equality and affirmative action than many other local jurisdictions. The comparative study displays that menstrual accommodation, contrary to popular opinion, is neither unworkable, impractical, nor conceptually out of tune with modern governance. Articles 14, 15 and 21 ask a central question, which is not if accommodation is possible, but whether the lack of it is consistent with the fundamental rights enshrined in the constitution.

5. Charting a New Trajectory: From Policy Discretion to Constitutional Mandate

Menstrual leave is a cause awaiting adjudication in a Grey legal universe and synthesising the policy reforms in India.

The Hon'ble Supreme Court rejected a public interest litigation (PIL) based on the grounds of separation of powers.[27] This is, however, not to be interpreted as a final judgment in matters legal. Instead, it is a reason to bring it before the lawyers, activists and lawmakers by developing a sound argument to say that menstrual accommodation needs to be embedded into our constitution.

As this essay has suggested, there is already the suggestion of a menstrual leave requirement implied in generous, purposive constructions of Articles 14, 15, and 21. The justification is simple: Article 21, the right to life with dignity, to bodily integrity and health, Article 14, the right to substantive equality, to reasonable accommodation of biological differences, and Article 15, the prohibition of discrimination, to impose remedial measures eradicating systemic disadvantages against sex. These principles taken together should have a basis for an extremely effective, cohesive constitutional argument. Deprivation of menstrual leave is not an act of passivity; it is inactivity that perpetuates discrimination and makes work environments discriminatory towards a large number of individuals by nature.

The Path Forward: A Multi-pronged Strategy

Recognising menstrual leave as a constitutional right doesn't mean that the courts have to put

[27] S. Chaudhuri, Dignity in the Workplace: Menstrual Leave as a Constitutional Question, 57 ECON. & POL. WKLY. 24 (2022).

in place a strict, one-size-fits-all policy right away. Instead, it means creating a constitutional principle that all future state actions must follow. There must be more than one way to move forward:

1. **Action by the government based on the Constitution**: Parliament should pass a national framework law on menstrual accommodation. It is important that this law not be seen as a kind gift, but as a law that the state must follow to meet its obligations under Part III of the Constitution. It should be flexible, with different ways of putting it into action that can be used in different parts of the economy. It could even include state-funded programs to help small and medium-sized businesses.

2. **Re-evaluation by the courts and clear doctrine**: The Supreme Court may have more chances in the future to look at this issue again. A future petition, maybe one that is more focused or comes from a specific case of an employee being punished for taking time off for menstrual health, could give the Court the right facts to make a final decision that supports the constitutional principles laid out here and makes the law clearer.

3. **Integration into Broader Labour and Health Codes**: The principles of menstrual accommodation should be clearly included in current and future labour codes as an important part of health and safety and anti-discrimination rules. It shouldn't be seen as a separate issue, but as part of a larger effort to make workplaces more responsive to gender issues.

Conclusion

Ultimately, the debate over menstrual leave is a litmus test for the maturity and soul of India's constitutional democracy. It challenges us to move beyond the desiccated formalism of procedural equality and embrace a more empathetic, inclusive, and substantively just vision of citizenship. It asks whether our legal and economic structures are capable of accommodating the full spectrum of human biological experience, or whether they will continue to operate on a default template that excludes, marginalises, and penalises.

To frame menstrual leave as a mere policy choice is to trivialise the pain, dignity, and fundamental rights of millions. To recognise it as a constitutional imperative is to affirm that

in the Indian Republic, equality is not a platitude to be recited, but a reality to be lived in our homes, in our communities, and, most critically, in our workplaces. The time has come to cease the debate on *whether* and commence the deliberation on *how*. The constitutional compass, guided by the polestar of justice, points in only one direction.