
FROM STIGMA TO STATUTE: THE LEGAL BATTLE FOR MENSTRUAL RIGHTS AND EQUITY

Sonakshi Singh, West Bengal National University of Juridical Sciences (WBNUJS)

INTRODUCTION

Menstruation is a biological process which takes place in females after they go through puberty. It is a process through which the body of a female prepares itself to nurture a fertilised egg. A thick lining in the uterus is created for this purpose. When the body finds out that the egg is not fertilised, the thick lining along with the egg comes out of the body through the vaginal opening. This process happens once a month.

This process is painful for a lot of women as they have to go through stomach cramps, mood swings, food cravings and plenty of discomfort. They often have to worry about carrying sanitary napkins, pain killers and most importantly, availability of proper toilets. It is concerning but even school going girls don't have proper access to these things. Specially in rural areas, a lot of girls have to miss school because of improper infrastructure and lack of availability of sanitary products. This affects both, education and health of these girls.

The stigma around periods serves as the biggest reason that females are deprived of basic period necessities. There is no awareness and no one wants to raise their voice against this injustice. Women often stay silent on these issues and hesitate to even talk about it.

This article analyses the legal aspect of the menstruation rights. These rights in India occupy a complex legal space. While article 21 recognises right to health as a part of right to life, there is no national law or provision concerning periods. Further the article will explore recent judicial judgements, specially ¹Jaya Thakur vs The Union of India. Also, discussion about workplace rights, menstrual leaves and comparison with other countries is included in this article.

¹ Jaya Thakur vs. The Union of India
(<https://indiankanoon.org/docfragment/101264378/?formInput=Menstrual%20Hygiene>)

Keywords: Menstrual rights, Menstrual health, Menstrual leave, Human rights, Workplace rights.

MENSTRUATION AND LAW IN INDIA

There is no central legislation guaranteeing menstrual rights in India. However, there are some state - level policies which recognise paid leaves for women. They are discussed below:

1. **Bihar** – Since 1992, the state government has provided paid leave of two days for female employees.² Lalu Prasad Yadav (Chief Minister of Bihar in 1992) introduced this policy in Bihar. Women employees organised a 32 days strike demanding menstrual rights and it came out as a success. However, it took years for private sector to implement it efficiently.
2. **Karnataka** – Karnataka Menstrual Leave Policy, 2025 was introduced which aimed at giving women employees time to take care of their bodies without worrying about work. It allows one day of paid menstrual leave totalling to 12 days per year. This policy covers both private and government sector employees.
3. **Odisha** – In 2024, deputy CM of Odisha, Smt. Prabhati Parida announced paid menstrual leaves for female employees. It is for both government and private sector employees. Paid leave of one day can be prevailed by the female employees either on the 1st day or 2nd day of their periods.
4. **Kerala** – The government of Kerala announced in 2023, that it will provide 3 leaves per month for students in all state universities. That brought down the mandatory attendance bar from 75% to 73% for all female students.

Menstrual Benefit Bill, 2017 was also introduced in the central legislature. However, it was never passed. The bill aimed at providing paid menstrual leaves to women along with proper infrastructural facilities. It would have been a great initiative for women to take care of themselves and take rest during the painful days of periods. It could have led to better efficiency and productivity on other days.

² <https://patnapress.com/the-chief-minister-who-pioneered-period-leave-for-women-in-bihar/>

For now, no central legislation is present to address this issue. However, some recent judgements have shed light on the rights of women. Let us analyse the latest judgement in this aspect.

DR. JAYA THAKUR VS. THE UNION OF INDIA

Dr. Jaya Thakur is a social worker who filed a PIL (public interest litigation) to demand menstrual rights by recognition of menstrual health and adequate Menstrual Hygiene Management facilities.

The petitioner raised issues regarding improper menstrual facilities violates Article 14 (right to equality), Article 21 (right to life and personal liberty), and Article 21A (right to education). These are explained below:

1. **Right to Equality** – Lack of proper gender segregated toilets and unavailability of blood absorbents violates Article 14.
2. **Right to Life and Personal Liberty** – Lack of dignified menstrual health and management violates Article 21.
3. **Right to Education** – Lack of these facilities lead to absence of girls in schools and affects equality in opportunity. It often leads to structural inequality against girls. This leads to the violation of Article 21A.

The Supreme Court held that lack of proper menstrual management facilities violates the fundamental rights (14, 21, 21A) of adolescent girls. It further recognised that girls should have access to proper gender segregated toilets, sanitary napkins and other necessary facilities. It made sanitation facilities a mandatory requirement in educational institutions under Article 21A.

This is a landmark judgement which recognises improper menstrual management as an integral issue which affects girls. Even though policies and programmes are put in place, there remain gaps in their implementation. This remains the biggest gap in India. Even if schools in urban areas implement it, will the rural schools be able to do the same? Also, will the government provide funding to these schools to ensure proper implementation? Will these facilities be put in place efficiently without corruption coming in the way?

These questions still remain lingering around. However, small steps towards period well being is what can be done according to the current situation. Hopefully, in the coming years, proper management can be expected. But it remains questionable for now.

PAID MENSTRUAL LEAVES: MUCH DEBATED TOPIC

Pros of paid menstrual leave:

Paid menstrual leaves helps in fostering a supportive work environment for women and give them time to take care of themselves.³ Around 40% of women suffer from pre - menstrual symptoms while 80% of women suffer from dysmenorrhea (menstrual cramps, nausea, fatigue and even diarrhoea). Paid leaves ensure well being of female employees and play an indecisive role in addressing the stigma around periods. Individuals can prioritize their health without taking work related stress.

Providing separate leaves for periods allows employees to use their sick leaves for other health related issues. It would ensure proper and efficient working on the side of female employees as they could use the leaves to address menstruation related issues like body ache and weakness.⁴ According to the Ministry of Labour and Employment 9.3% and 3.4% of women leave their jobs for health and social reasons, respectively. Implementing menstrual leave policies can help address the health-related absences, aiding women in managing menstrual symptoms while reducing turnover. By acknowledging and accommodating employees' circumstances, organisations can foster a more committed and stable workforce.

Cons of paid menstrual leave:

These may affect the professional and working conditions of these women. They become more prone to harassment. It may enforce traditional thinking of women being unable to work at the same capacity as men. This would in turn effect the salaries and employment opportunities of women.

According to some people, this may enforce a form of sexism implying that women require different treatment during their periods. In fact, it could enforce the thinking that women

³ Social policy research foundation

⁴ <https://sprf.in/an-analysis-of-the-pros-and-cons-of-the-menstrual-leave-policy/>

are less capable and could affect equality norms in specially the corporate sector.

However, this backward thinking is not supported by most modern individuals. Menstrual leaves should be established as a right which ensures equal participation in the society, rather than a concession suggesting women as weak individuals. Small steps can be taken to tackle such arguments. Awareness campaigns can be arranged at workplaces and schools to normalise conversation about menstruation. Legal frameworks must emphasize that menstrual leave is a supporting measure just like sick leaves or maternity leave and it does not affect the professional capacity of a person. Ultimately, dismantling this prejudice requires education, inclusive policies, and a cultural shift that sees menstrual rights as part of gender justice, not gender weakness.

COMPARATIVE PERSPECTIVE WITH OTHER COUNTRIES

Analysis of condition of menstrual rights in other countries is given below:

1. **Japan** – ⁵Menstrual leave is a legal right in Japan. Japan's approach to menstrual rights is rooted in Article 68 of the Labor Standards Law (1947), which states that if a woman finds it “exceptionally difficult” to work during menstruation and requests leave, the employer cannot force her to work. This provision, known as *seiri kyūka* (menstrual leave), was introduced in the immediate post-war era when labor unions pushed for protections for women in harsh factory conditions. The law does not mandate payment for menstrual leave—companies can decide whether it is paid or unpaid—but it guarantees the right to take time off without penalty. Importantly, the law allows flexibility: leave can be taken in full days, half days, or even hourly, depending on the severity of symptoms. Despite being a legal right, surveys show that very few women actually use it, often due to workplace stigma, embarrassment, or the fact that many employers treat it as unpaid leave.
2. **Spain** - Spain has recently emerged as a global pioneer in menstrual rights, becoming the first European country to legislate paid menstrual leave in 2023. The law allows women to take time off during painful periods, with the state social security system covering the cost rather than employers, thereby reducing the risk of workplace

⁵ <https://japan-now-news.com/post/68a81598c195c>

<https://www.politico.eu/article/bill-europe-spain-parliament-creates-first-menstrual-leave-in-europe/>

discrimination. This progressive step reframes menstruation not as a private inconvenience but as a legitimate health issue deserving of structural support. The Spanish government positioned the reform within a broader package of reproductive rights, including expanded access to abortion and contraception, signaling towards a holistic approach to gender justice. Yet, despite its groundbreaking nature, debates continue in Spain about whether such policies might inadvertently reinforce stereotypes of female fragility.

3. **South Korea** – It has had statutory menstrual leave provisions for decades, embedded in its labor laws. Women are entitled to one day of menstrual leave per month, though in practice many employers treat it as unpaid, and social stigma often discourages women from using it. Much like Japan, the existence of the right does not automatically translate into widespread utilization, as workplace cultures still carry undertones of embarrassment and bias. Nevertheless, the legal recognition itself is significant as it acknowledges menstruation as a legitimate labor rights issue and provides a framework for women to assert their needs without penalty.

Comparing these developments to India reveals a striking gap. While Spain, Japan and South Korea have codified menstrual leave into law, India remains hesitant, with only Bihar, Karnataka, Odisha, Kerala and Sikkim offering state-level leave and private companies experimenting with voluntary policies. The Supreme Court's Jaya Thakur judgment recognized menstrual health as a constitutional right, but menstrual leave was left to legislative discretion. This leaves India at a crossroads. It has judicial acknowledgment of dignity and health, yet no statutory guarantee of workplace accommodations.

CONCLUSION

In conclusion, the question of menstruation rights in India remains unresolved at the legislative level. With no central law in place, only state policies and scattered corporate initiatives provide menstrual leave, leaving the majority of women without a uniform framework of protection. The Supreme Court's **Dr. Jaya Thakur v. Union of India** judgment marked an important milestone by recognizing menstrual health and hygiene as fundamental rights under Articles 14, 21, and 21A, and mandating free sanitary pads and proper toilets in schools. Yet, the Court refrained from creating binding law on menstrual leave, deferring the matter to the legislature. The debate itself is layered, advocates highlight dignity, health, and workplace

equality, while critics warn of reinforcing stereotypes or discouraging employers from hiring women. Looking abroad, Japan and South Korea have long recognized menstrual leave in their labor laws, and Spain's 2023 reform made it the first European country to legislate paid menstrual leave. These examples show that statutory recognition is possible, even if cultural acceptance takes time. India, however, remains hesitant, caught between stigma and policy inertia. A comprehensive national law is needed to ensure menstrual rights are treated as entitlements rather than discretionary benefits, though such legislation does not appear imminent.