
MENSTRUAL LEAVE IN INDIA: A SOCIO-LEGAL EXAMINATION OF RIGHTS, EQUALITY, AND WORKPLACE POLICY

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Introduction

“We believe men and women are born equal. But it’s not enough to say it. We have to act on it.”
— Deepinder Goyal, CEO, Zomato (on launching menstrual leave policy in 2020)¹

In August 2020, food delivery giant Zomato became one of the first major Indian companies to introduce a menstrual leave policy, granting up to 10 paid leaves per year to menstruating employees. While the move was widely celebrated as progressive, it also ignited a contentious debate: should menstruation be treated as a health challenge requiring policy accommodation, or does such special treatment reinforce gender-based stereotypes and discrimination?

This is not a question limited to India. Globally, the issue of menstrual leave has gained renewed traction. Spain, in 2023, became the first European country to pass a law granting three to five days of paid menstrual leave per month, a policy hailed as a breakthrough in reproductive rights.²

Meanwhile, countries like Japan and Indonesia have had menstrual leave laws in place for decades, albeit with limited use due to workplace stigma.

Despite the biological and medical reality of menstruation affecting nearly half the population, silence and shame continue to surround the topic, especially in professional spaces. The workplace, often shaped by patriarchal norms, treats menstruation as a private, taboo subject rather than a legitimate issue of health, dignity, and productivity. As a result, women frequently

¹Deepinder Goyal, Why Menstrual Leaves, ZOMATO BLOG (Aug. 8, 2020), <https://blog.zomato.com/why-menstrual-leaves>.

² Spain Approves Menstrual Leave, a First in Europe, BBC NEWS (Feb. 16, 2023), <https://www.bbc.com/news/world-europe-64650997>.

manage severe cramps, fatigue, and emotional stress while conforming to an environment designed around male-centric standards of “productivity”.³

India does not currently have any central legislation mandating menstrual leave, although Bihar has offered two days of menstrual leave per month to state employees since 1992.⁴

In absence of a uniform policy, initiatives like those by Zomato remain exceptions rather than the rule. Furthermore, attempts to legislate on this matter such as the Menstrual Benefit Bill, 2017, introduced by MP Ninong Ering have not advanced beyond parliamentary discussion.

This article argues that menstrual leave must be viewed through a socio-legal lens not merely as a welfare measure, but as a policy at the intersection of gender justice, labour rights, and workplace equity. It explores whether such leave genuinely enhances women’s participation and comfort in the workplace, or whether it unintentionally exacerbates employment bias and gender stereotypes. The paper evaluates Indian and international frameworks, examines the legal gaps and constitutional implications, and suggests a way forward that balances dignity with non-discrimination.

Menstruation and Labour: The Missing Conversation

“Despite affecting nearly 336 million menstruating individuals in India alone”⁵ menstruation remains largely invisible in labour law and workplace policies. This omission is especially jarring considering that up to 20% of women experience menstrual symptoms severe enough to interfere with daily activities, including work. Medical research confirms that menstrual disorders are not trivial. Dysmenorrhea, a clinical term for painful periods, affects nearly 45% to 95% of menstruating women globally.

Additionally, disorders like endometriosis, which affects 1 in 10 women worldwide, cause pelvic pain that can be severely debilitating, especially during menstruation.⁶

³ Rituparna Chatterjee, *Why We Need Menstrual Leave in India*, AL JAZEERA (Aug. 12, 2020, 10:00 AM), <https://www.aljazeera.com/opinions/2020/8/12/why-we-need-menstrual-leave-in-india>.

⁴ Department of Personnel and Administrative Reforms, *Circular on Menstrual Leave*, Circular No. 07/7/1992 (Issued on July 7, 1992) (India).

⁵ *Menstruation in India: Out of Sight, Out of Mind*, UNICEF INDIA (2021), <https://www.unicef.org/india/what-we-do/menstrual-health>.

⁶ World Health Organization, *Endometriosis: Key Facts*, WHO (2023), <https://www.who.int/news-room/fact-sheets/detail/endometriosis>.

Yet, in most workplaces, these medical conditions are either ignored or downplayed, forcing women to either suffer silently or risk being seen as "less committed" if they speak up. This silence disproportionately affects working-class women engaged in manual labour, domestic work, and informal sectors who lack access to menstrual products, clean toilets, or the ability to request leave without losing income.

A 2022 study by Swasti Health Catalyst found that over 71% of women in India's informal sector have no access to paid sick leave, let alone menstrual leave.⁷

Even in formal employment, where women may have sick leave provisions, these are often gender-neutral policies that fail to accommodate gender-specific health realities. The idea of "productivity" continues to be defined around male physiology treating the monthly physiological needs of menstruators as inconvenient or unmentionable.

This erasure reflects a deeper systemic issue: the lack of integration between health rights and labour rights. When policies fail to recognize menstruation as a legitimate ground for workplace accommodation, they implicitly suggest that women must conform to an environment designed around male norms, rather than allowing the workplace to evolve into a more inclusive, equitable space.

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⁷ Swasti Health Catalyst, *Health and Livelihoods of Informal Women Workers in India*, RESEARCH BRIEF (2022), <https://swastihc.org/publications/>.

Legal Framework in India

Despite menstruation being a routine biological function with significant physical and psychological impacts, India does not have any central legislation that mandates menstrual leave across public or private sectors. Unlike maternity leave, which is codified and legally protected, menstrual leave remains policy-dependent and non-enforceable, leaving its implementation largely at the discretion of employers or state authorities.

Factories Act, 1948

The Factories Act, 1948 is one of India's oldest labour laws focused on regulating the working conditions in factories. While it lays down provisions related to the health and safety of workers including provisions for adequate sanitation, restrooms, and working hours it makes no mention of menstruation or menstrual leave.⁸ The law thus reflects the gender-neutral or rather gender-ignorant nature of early industrial legislation in India, rooted in a time when the workforce was predominantly male.

Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 guarantees women paid leave for childbirth and medical conditions arising out of pregnancy. However, it is limited to maternity-related circumstances and does not extend to menstrual health or cyclical leave. Although the Act is significant in affirming women's right to reproductive health, it implicitly classifies menstruation as outside the scope of workplace concern, reinforcing the invisibility of menstruating bodies in law.⁹

Labour Codes (Post-2020 Consolidation)

Following the consolidation of Indian labour laws into four Labour Codes in 2020, there was an expectation that gender-responsive provisions might be introduced. However, none of the Codes including the Code on Social Security, 2020 or the Occupational Safety, Health and Working Conditions Code, 2020 make any reference to menstrual leave or menstrual health as

⁸ The Factories Act, 1948, No. 63, § 2(m) (India).

⁹ The Maternity Benefit Act, 1961, No. 53, § 5 (India).

a distinct category.¹⁰ This legislative silence continues to keep menstruating persons out of the policy framework, despite growing public discourse around the issue.

State-Level Exception: Bihar's Progressive Step

The only state in India to institutionalize menstrual leave is Bihar, which has, since 1992, granted two days of special leave per month to women government employees for reasons including menstruation. Issued through a state government resolution rather than a legislative act, the policy is available under the category of "Special Casual Leave" and is granted without the need for medical documentation. However, the absence of similar initiatives in other states or at the national level leaves this policy as an outlier, rather than a trendsetter.

Private Bills: The Menstrual Benefit Bill, 2017

In 2017, Member of Parliament Ninong Ering introduced the Menstrual Benefit Bill in the Lok Sabha as a Private Member's Bill. The Bill proposed two days of paid menstrual leave every month for both public and private sector female employees and mandated better menstrual hygiene facilities in workplaces.¹¹ While the proposal received public attention and applause from activists, it was not taken up for discussion or passage, exemplifying how menstrual health remains a low legislative priority.

In summary, the legal vacuum around menstrual leave in India is stark. Despite growing societal conversations and scattered corporate efforts, labour laws remain blind to menstrual realities, perpetuating gendered workplace inequities. The absence of legal guarantees places the burden of accommodation on individual employers, leaving millions of women especially in low-income or informal sectors without meaningful recourse.

Arguments in Favour of Menstrual Leave

1. Confirming Gender Equality and Substantive Equality

Menstrual leave can facilitate a shift from formal equality (treat everyone alike) to substantive equality, appreciating varied biological and social conditions of individuals. Men and women

¹⁰ Occupational Safety, Health and Working Conditions Code, 2020, No. 37 of 2020 (India).

¹¹ Menstrual Benefit Bill, 2017, Bill No. 155 of 2017, introduced by Ninong Ering, Lok Sabha, http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/155_2017_LS_Eng.pdf (India).

might seem equal in the eyes of the law, but equality of fact demands that women be offered accommodations that allow their equal participation in the labor market. Article 15(3) of the Constitution of India allows positive discrimination in favor of women and children, backing targeted policies such as menstrual leave.

2. Validation of Invisible Labour and Pain

Menstrual conditions such as dysmenorrhea or endometriosis tend to get patronized or minimized. A menstrual leave policy would provide institutional recognition to these health issues, just as maternity leave acknowledges childbirth as a valid medical issue. It also recognizes that women's body experiences have been historically absent from policy-making and labour legislation.

3. Enhanced Productivity and Mental Health

Granting rest during painful times can actually enhance long-term productivity, as women are more likely to report back to work more concentrated and healthy. Research has indicated that workers who have access to health-promoting policies exhibit higher loyalty and lower absenteeism in the long term.

4. A Step Towards Workplace Inclusivity

Instituting menstrual leave policies also provides an opportunity to initiate discourse around office cleanliness, sanitary facilities, and gender sensitivity, which are presently lacking. It can also make way for trans men and non-binary individuals, who menstruate but are even more invisible in policy.

Arguments Against Menstrual Leave

1. Reinforcement of Gender Stereotypes

Critics also think that menstrual leave could inadvertently perpetuate the perception that women are physically weaker or less capable than men. This may fuel long standing patriarchal beliefs that perceive menstruation as hindering rationality or work ethic.

2. Hiring Discrimination

Employers in male-dominated sectors might consider menstrual leave to be an additional expense or "inconvenience," resulting in reduced rates of employment for women. This is a realistic apprehension in India, where even maternity leave has occasionally been invoked as a justification for gender-differentiated employment discrimination.

3. Tokenism Over Structural Change

Certain scholars and activists argue that menstrual leave, though symbolic, can serve to divert attention away from more pressing issues such as the lack of clean toilets, access to sanitary products, or menstrual health education. Under such circumstances, leave alone is not enough; it becomes a tokenistic gesture and not a breakthrough policy.

4. Risk of Misuse and Policy Ambiguity

Absent medical or ethical guidelines, menstrual leave policies might be abused or inevitably administered. Zomato's policy, for instance, has no medical requirement but this flexibility also poses problems of implementation in companies with less enlightened HR structures.

Comparative Perspectives

The debate on menstrual leave is not unique to India. Several countries have experimented with menstrual leave laws or policies over the years, each reflecting their unique social, cultural, and economic contexts. By comparing India's current status with nations like Japan, Spain, and Indonesia, we gain insights into the implementation challenges and societal responses that can inform future policy making in India.

Japan: Early Adopter, Low Utilization

Japan introduced menstrual leave as early as 1947, under Article 68 of the Labour Standards Act, allowing women to take time off during menstruation if working would be difficult.¹² Even though Japan legally allows menstrual leave, social stigma in workplaces means that most

¹²Labour Standards Act, Act No. 49 of 1947, art. 68 (Japan).

eligible employees hesitate to use it. Surveys indicate that many women fear judgment from male colleagues or being perceived as weak or lazy.

Japanese companies are not legally required to pay for menstrual leave, which further reduces uptake. As a result, the policy exists more as a symbolic recognition of menstrual health rather than a practically empowering tool. The Japanese experience underscores a critical lesson: legal recognition alone does not dismantle workplace stigma.

Spain: Progressive Reform with Global Attention

In a landmark move, Spain passed a law in February 2023, becoming the first European country to grant paid menstrual leave as part of broader reproductive rights reforms.¹³ The legislation allows women to take three to five days of paid leave per month in cases of disabling menstrual pain, certified by a doctor.

This reform was hailed as a victory for gender equality and bodily autonomy, but it also sparked criticism from conservative groups and employers, who feared that it might reinforce stereotypes or affect women's employability.¹⁴ However, Spain's bold legislative step offers a model for structured, medical-based menstrual leave rooted in public healthcare and supported by legal safeguards.

Indonesia: Uneven Implementation Amid Legal Provisions

Indonesia's Labour Law (2003) entitles women to two days of menstrual leave per month, without requiring medical proof.¹⁵ In reality, enforcement remains irregular—especially across private companies, where awareness and compliance are both low. Many companies either ignore the provision or require unnecessary proof, making it difficult for women to assert their rights.

Moreover, due to lack of monitoring mechanisms and fear of employer retaliation, the uptake remains low. Like Japan, Indonesia's example demonstrates that without strong enforcement

¹³ Spain Approves Menstrual Leave, a First in Europe, BBC News, Feb. 16, 2023, <https://www.bbc.com/news/world-europe-64650997>.:contentReference[oaicite:4]{index=4}

¹⁴ Aina J. Khan, Spain Passes Law Granting Paid Menstrual Leave, THE NEW YORK TIMES, Feb. 16, 2023.

¹⁵ Labour Law, Act No. 13 of 2003, art. 81 (Indonesia).

and cultural support, legal provisions risk becoming ineffective.

India can draw multiple lessons:

- From Japan and Indonesia: A legal provision is not enough awareness, enforcement, and de-stigmatization are equally crucial.
- From Spain: State-supported, medically guided paid leave with healthcare backing can set global standards for menstrual justice.
- India's current state reflects policy paralysis: with no central law and only isolated initiatives (like in Bihar and Zomato), a national conversation is urgently needed.

Thus, while menstrual leave may be globally rare, the emerging global momentum offers India a chance to craft a socially sensitive, legally robust framework tailored to its diverse workforce.

Constitutional and Socio-Legal Lens

The question of menstrual leave in India cannot be meaningfully addressed without invoking the constitutional rights framework, particularly those enshrined in Articles 14, 15, and 21. Together, these provisions form the bedrock of India's commitment to equality, non-discrimination, and dignity principles directly relevant to the recognition of menstruation as a legitimate concern in the workplace.

Article 14: Equality Before Law

Article 14 guarantees equality before the law and equal protection of laws to all persons.¹⁶ On its face, this suggests that no group should be treated differently based on biological or social distinctions. However, the Supreme Court has consistently interpreted Article 14 to include the principle of reasonable classification where different treatment is permissible if it is based on an intelligible differentia and has a rational nexus to the objective sought to be achieved.

Applying this logic, a menstrual leave policy designed specifically for those who menstruate does not violate Article 14. On the contrary, it advances substantive equality by accommodating

¹⁶ India Const. art. 14.

biological realities that impact only certain individuals, thereby leveling the playing field.

Article 15: Prohibition of Discrimination

Article 15(1) prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex, or place of birth, while Article 15(3) empowers the State to make special provisions for women and children.¹⁷

A menstrual leave policy, although gender-specific in its application, qualifies as a protective measure aimed at correcting structural disadvantages faced by women and menstruators in the workforce. As such, it is constitutionally permissible and even encouraged under Article 15(3). The constitutional provision does not require gender neutrality in all policies, but rather supports equity-based interventions to address systemic inequalities.

Article 21: Right to Life, Health, and Dignity

Article 21, which protects the right to life and personal liberty, has been expansively interpreted to include the right to health, the right to work with dignity, and the right to humane conditions at the workplace.¹⁸ In this context, denying leave to menstruating employees who suffer from acute pain or discomfort could be viewed as a violation of their right to health and dignity. It forces individuals to either endure pain silently or risk stigma by disclosing private health issues in unsupportive environments.

Feminist Legal Theory: Formal vs. Substantive Equality

Feminist legal scholars have long argued that treating everyone identically under the law may seem fair, but it often fails to acknowledge systemic disadvantages thereby sustaining inequality rather than resolving it often perpetuates inequality, especially when laws ignore the specific needs and realities of women and gender minorities. Substantive equality, on the other hand, acknowledges these differences and seeks to remedy systemic disadvantage through affirmative policies.

¹⁷India Const. art. 15, cls. 1, 3.

¹⁸ India Const. art. 21.

Menstrual leave embodies this principle of substantive equality, recognizing that equal treatment does not always mean identical treatment. A truly inclusive workplace is one that understands biological diversity and adapts policies accordingly, rather than forcing women and other menstruators to conform to male-centric standards of productivity.

Way Forward

Recognising the socio-legal urgency of menstrual leave is only the first step; translating it into effective, equitable, and inclusive policy requires nuanced reform. Rather than a one-size-fits-all mandate, a balanced framework can ensure that menstrual leave promotes empowerment, not exclusion. The following recommendations offer a roadmap:

1. Menstrual Leave as Optional, Not Mandatory

To avoid reinforcing stereotypes that women are inherently weaker or need special treatment, menstrual leave should be made optional, giving menstruators the autonomy to decide whether or not to avail it. This preserves choice, while also protecting against blanket generalisations that could negatively impact women's employability.

2. Medical Certification with Privacy Safeguards

In cases of chronic menstrual disorders such as endometriosis or PCOS requiring occasional medical certification can help prevent misuse. However, such requirements must come with strict privacy protections. Disclosure of sensitive medical information must not become a basis for workplace gossip, bias, or discrimination. Organisations should adopt confidential HR protocols, including designated female officers or self-declaration models with minimal documentation.

3. Use of Gender-Neutral Language

While the discourse on menstrual leave often focuses on women, it is essential to acknowledge that trans men, non-binary, and gender-diverse individuals also menstruate. Hence, any future legislation or workplace policy must use inclusive language, such as "menstruating persons" or "menstruators," rather than "women employees," to avoid excluding marginalized identities from legal recognition and support.

4. Integrate Menstrual Health into Workplace Norms

Menstrual leave should not exist in isolation. It must be part of a larger commitment to menstrual equity, which includes:

- Ensuring clean, accessible washrooms
- Providing free or subsidised sanitary products
- Offering workplace awareness workshops to destigmatize menstruation
- Training HR departments and managers on gender-sensitive policy implementation.

Such measures will help shift the workplace culture from one of silence and shame to one of support and dignity.

By embracing a comprehensive, intersectional approach, India can move from fragmented and symbolic gestures toward a meaningful recognition of menstrual rights within its socio-legal structure.

Conclusion

The discourse on menstrual leave sits at the crossroads of gender justice, labour reform, and constitutional equality. It is not merely about allowing time off, it is about acknowledging pain, removing stigma, and respecting the lived experiences of menstruating individuals in the workplace. However, menstrual leave must not become a tokenistic policy that reinforces exclusion or gender-based bias. If designed and implemented carelessly, it could inadvertently harden stereotypes that women are less efficient or a liability to hire.

What India needs is not only a policy, but a cultural shift, one that understands menstruation not as an obstacle to professionalism, but as a natural biological process deserving of respect and accommodation. It is time for the legal system, the workplace, and society at large to ask:

Are we building a truly inclusive workforce, or simply creating another stereotype in a progressive disguise?

The answer will define the future of gender equity in India's workplaces and beyond.