MENSTRUAL LEAVE IN INDIA: WORKPLACE PROTECTION OR A NEW BARRIER TO GENDER EQUALITY?

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ABSTRACT

Menstruation is a natural biological process that can significantly affect women's physical well-being, workplace participation and productivity. Despite increasing recognition of menstrual health as a matter of dignity and workplace welfare, menstrual leave remains a contested issue in India. While paid or protected menstrual leave may provide women with necessary support during periods of pain and discomfort, concerns have also emerged regarding its potential to reinforce gender stereotypes, influence recruitment practices and create unintended barriers to women's equal participation in employment. This article critically examines menstrual leave in India from the perspective of labour law, constitutional equality and workplace protection. It analyses the existing legal and policy framework concerning menstrual health, equality and non-discrimination, while examining the competing arguments surrounding the introduction of a statutory menstrual leave entitlement. The article further explores whether menstrual leave should be understood as a protective labour measure, an equality-enhancing accommodation, or a policy that may inadvertently reproduce gender-based disadvantages. Through a doctrinal and analytical approach, the study seeks to identify the legal and policy challenges associated with menstrual leave and proposes an inclusive framework that protects menstrual health and dignity without compromising the principles of substantive equality and equal opportunity in employment.

Keywords: Menstrual Leave, Menstrual Health, Labour Law, Gender Equality, Workplace Protection, Women Workers, Constitutional Equality, Non-Discrimination, Equal Opportunity, Employment Law, Workplace Accommodation.

I. INTRODUCTION:

Menstruation is a natural biological process that may affect women's physical well-being and participation in the workplace. Menstrual pain, fatigue and related symptoms can make regular work difficult, particularly where workplaces lack adequate sanitation, privacy and appropriate support. Therefore, menstrual health is increasingly being viewed as an issue of workplace welfare, dignity and equality, rather than merely a private health concern.[1]

From a labour-law perspective, menstrual leave raises the question of whether women workers require specific workplace protection or accommodation. Indian labour law has recognised the need for protective measures in situations involving particular conditions faced by women workers. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, the Supreme Court recognised maternity benefits for women employed on a casual or muster-roll basis, reflecting the importance of welfare-oriented labour protection.[2]

However, menstrual leave also raises concerns regarding gender equality. A women-specific leave entitlement, if poorly designed, could reinforce stereotypes that women are less productive or reliable employees and may consequently affect recruitment, promotion and other employment opportunities. This concern can be examined in light of *Air India v. Nargesh Meerza*, where the Supreme Court invalidated discriminatory conditions of service based on pregnancy,[3] and *Anuj Garg v. Hotel Association of India*, where the Court emphasised that protective measures should not become a basis for restricting women's employment opportunities.[4]

The constitutional framework is equally relevant. Articles 14, 15 and 16 guarantee equality and non-discrimination, while Article 21 protects dignity and Article 42 directs the State to secure just and humane conditions of work.[5] The challenge is therefore to balance women's need for workplace protection with their right to equal participation and opportunity in employment.

The issue has gained increasing legal and policy attention in India, including through the Supreme Court's consideration of menstrual-leave petitions and the publication of its White

[1] World Health Organization, *Menstrual Health*, World Health Organization.
[2] *Municipal Corp. of Delhi v. Female Workers (Muster Roll)*, (2000) 3 SCC 224, 231–33.
[3] *Air India v. Nargesh Meerza*, (1981) 4 SCC 335, 356–57.
[4] *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1, 13–14.
[5] INDIA CONST. arts. 14, 15, 16, 21, 42.

Paper on Menstrual Leave in November 2025.[6] These developments highlight the need for a careful examination of how menstrual leave may be incorporated into India's labour and employment framework.

Against this background, this article examines whether menstrual leave can function as a meaningful labour-welfare protection while avoiding unintended consequences for gender equality and equal employment opportunities. It seeks to identify a balanced legal framework that recognises menstrual health, dignity and workplace welfare without reinforcing gender-based discrimination.

A. Research Gap

Existing literature on menstrual leave in India primarily focuses on menstrual health, workplace welfare and gender justice. However, limited legal research examines the issue at the intersection of labour protection and substantive gender equality. In particular, insufficient attention has been given to whether menstrual leave, while protecting women from menstrual-related workplace difficulties, may unintentionally reinforce gender stereotypes and affect recruitment, promotion and employment opportunities. This study seeks to address this gap by analysing menstrual leave through constitutional principles, labour-law jurisprudence and workplace equality, while exploring a framework that protects menstrual health without creating unintended barriers to gender equality.

B. Research Methodology

This study adopts a doctrinal and analytical research methodology. It examines primary sources including the Constitution of India, relevant labour laws, judicial decisions and government policy documents. Secondary sources such as books, research articles, reports and scholarly literature on menstrual health, labour law and gender equality are also analysed. Relevant judicial decisions concerning women's employment, workplace dignity and protective labour measures are examined to assess whether menstrual leave can be reconciled with the principles of equality and non-discrimination. The study is qualitative in nature and does not involve primary empirical data.

[6] Supreme Court of India, Centre for Research & Planning, *White Paper on Menstrual Leave* (Nov. 2025).

II. MENSTRUATION, LABOUR AND WORKPLACE EQUALITY

Menstruation is a natural biological process, yet its impact on women's participation in paid employment has historically received limited attention in workplace regulation. Menstrual symptoms such as pain, fatigue, headaches and discomfort may affect attendance and work performance, particularly where workplaces lack adequate sanitation, privacy and access to menstrual hygiene facilities.[7]

From a labour-law perspective, workplace equality does not necessarily require identical treatment in every circumstance. Substantive equality recognises that workers may require appropriate measures to overcome conditions that create genuine barriers to equal participation. In this context, menstrual health can be considered as a workplace concern where the absence of adequate support may affect a worker's ability to participate effectively in employment.

The relationship between menstruation and employment also extends beyond the question of leave. Workplace conditions, access to sanitation, availability of menstrual hygiene products, flexibility in working arrangements and the ability to seek appropriate rest or medical assistance can influence women's experience and participation in the workforce.[8] Therefore, menstrual-related workplace protection should be viewed as part of the broader objective of ensuring humane and dignified working conditions.

At the same time, treating menstruation exclusively as a condition requiring special treatment may create concerns relating to workplace equality. A policy that assumes all women experience menstruation in the same manner may reinforce gender stereotypes or create perceptions that women are less available or productive employees. Such perceptions may have consequences for recruitment, promotion and other employment opportunities.

The issue therefore involves a balance between recognising biological realities and preventing biological differences from becoming a basis for discrimination. Menstrual leave may provide meaningful support for workers who experience significant menstrual symptoms, but the design of such a measure is equally important. A framework that protects menstrual health while maintaining confidentiality and preventing discriminatory employment practices may

[7] World Health Organization, *Menstrual Health*, World Health Organization.
[8] International Labour Organization, *Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work* (2022).

better reconcile workplace accommodation with equality.

Further, menstrual experiences differ considerably among individuals. While some workers may experience minimal disruption, others may experience severe symptoms that temporarily affect their ability to work. A uniform entitlement may therefore not adequately address the diverse needs of workers. Flexible working arrangements, adequate sanitation, rest facilities and access to leave where necessary may provide alternative or complementary forms of workplace accommodation.

Accordingly, menstrual health should be examined within the wider objectives of labour law, including worker welfare, dignity, decent working conditions and equality of opportunity. The subsequent discussion examines how these principles are reflected in India's constitutional and labour-law framework and whether existing legal protections provide an adequate basis for addressing menstrual-related workplace concerns.

III. CONSTITUTIONAL AND LABOUR LAW FRAMEWORK IN INDIA

The constitutional framework of India provides an important basis for examining menstrual-related workplace protection. Article 14 guarantees equality before the law, while Article 15 prohibits discrimination on the ground of sex. Article 16 ensures equality of opportunity in public employment. Further, Article 21 protects the right to life and personal dignity, and Article 42 directs the State to secure just and humane conditions of work.[9]

Indian labour law has also recognised the need for protective measures for women workers. The Maternity Benefit Act, 1961, for instance, provides statutory protection relating to maternity and reflects the welfare-oriented approach of labour legislation towards women's health and employment.[10] The Occupational Safety, Health and Working Conditions Code, 2020 also provides for provisions concerning the health, safety and welfare of workers.[11]

Judicial decisions have strengthened the relationship between gender equality and workplace protection. In *Air India v. Nargesh Meerza*, the Supreme Court struck down discriminatory conditions of service imposed upon women employees.[12] In *Vishaka v. State of Rajasthan*, the

[9] INDIA CONST. arts. 14, 15, 16, 21, 42.
[10] Maternity Benefit Act, 1961, No. 53 of 1961, India Code.
[11] Occupational Safety, Health and Working Conditions Code, 2020, No. 37 of 2020, India Code.
[12] *Air India v. Nargesh Meerza*, (1981) 4 SCC 335.

Court recognised workplace safety and dignity as integral to women's fundamental rights.[13] In *Anuj Garg v. Hotel Association of India*, the Court further emphasised that protective measures should not be based on gender stereotypes that restrict women's employment opportunities.[14]

These principles are relevant to menstrual leave because any proposed legal entitlement must protect women's health and dignity while remaining consistent with equality and non-discrimination. Thus, the constitutional and labour-law framework provides the foundation for evaluating whether menstrual leave can operate as a legitimate workplace protection without creating unintended barriers to women's employment.

IV. EVOLUTION OF MENSTRUAL LEAVE POLICIES IN INDIA

The discussion on menstrual leave in India has gradually developed from workplace initiatives and State-level measures into a broader question of national labour policy. One of the earliest significant examples is Bihar, which introduced menstrual leave for women employees in the public sector, providing a monthly period of leave. In recent years, some private-sector organisations have also introduced menstrual leave or flexible workplace measures. These initiatives have contributed to public debate on whether menstrual leave should remain an employer-level benefit or be recognised through a uniform statutory framework.

The issue subsequently reached the Supreme Court. In 2024, the Court considered a petition seeking directions to the Union and State Governments regarding menstrual leave and observed that the matter involved important policy considerations requiring examination by the appropriate authorities.[15]

The debate has continued to develop through institutional research and policy discussions. The Supreme Court's Centre for Research and Planning published a White Paper on Menstrual Leave in November 2025, reflecting the increasing legal and policy attention given to menstrual health and workplace accommodation in India.[16]

[13] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
[14] *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1.
[15] *Shailendra Mani Tripathi v. Union of India*, W.P. (C) No. 327 of 2024, Order (S.C. July 8, 2024).
[16] Supreme Court of India, Centre for Research & Planning, *White Paper on Menstrual Leave* (Nov. 2025).

The evolution of these initiatives demonstrates that India has moved from isolated workplace or governmental measures towards a broader discussion on whether menstrual-related protection should form part of the country's labour-policy framework. However, the absence of a uniform statutory entitlement continues to leave the scope and form of menstrual leave open to policy debate.

V. MENSTRUAL LEAVE AS WORKPLACE ACCOMMODATION

Menstrual leave may be understood as a form of workplace accommodation intended to address difficulties that menstruating workers may experience during employment. Such accommodation may include paid or unpaid leave, flexible working hours, remote work, rest facilities and access to appropriate sanitation and menstrual hygiene facilities.

The purpose of accommodation is not to provide preferential treatment but to enable workers to participate effectively in employment despite circumstances that may temporarily affect their ability to work. In this context, menstrual-related accommodation can contribute to workplace dignity, health and employee welfare.[17]

However, a uniform mandatory leave entitlement may not be appropriate for every worker, as menstrual experiences and symptoms vary considerably. A flexible framework allowing workers to access appropriate support according to their individual needs may therefore provide a more inclusive approach.[18]

The Supreme Court's recent engagement with menstrual health also demonstrates the increasing recognition of menstrual-related concerns within constitutional and policy discourse. In 2026, the Court recognised menstrual hygiene as connected with the right to life and directed measures relating to menstrual hygiene management in educational institutions.[19] This development strengthens the broader understanding that menstrual health requires institutional support rather than being treated solely as a private matter.

Accordingly, menstrual leave should be considered as one component of a broader menstrual-related workplace accommodation framework**,** alongside flexible work arrangements, adequate

[17] International Labour Organization, *Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work* (2022).
[18] Supreme Court of India, Centre for Research & Planning, *White Paper on Menstrual Leave* (Nov. 2025).
[19] *Radhika S. v. State of Tamil Nadu*, W.P. (C) No. 1000 of 2025, Order (S.C. Jan. 30, 2026).

facilities and protection against discrimination. Such an approach can provide meaningful support while allowing employers and workers to adopt measures suited to different workplace circumstances.

VI. THE EQUALITY PARADOX: PROTECTION VS. GENDER STEREOTYPING

Menstrual leave presents a difficult balance between protection and equality. While menstrual-related accommodation may promote substantive equality by recognising genuine workplace difficulties, a women-specific entitlement may also create the perception that women are less productive, less reliable or less capable of sustained employment.[20]

Such perceptions may affect recruitment, promotion and career advancement. The ILO has recognised that gender stereotypes and discriminatory assumptions can continue to influence women's equal participation and progression in employment.[21]

However, equality cannot mean ignoring genuine differences. Requiring a worker experiencing severe menstrual symptoms to work without reasonable support may provide formal equality but fail to achieve substantive equality. The objective should therefore be accommodation, not paternalism. A balanced approach should protect menstrual health without presenting menstruation as a weakness. Flexible working arrangements, adequate sanitation, menstrual hygiene facilities and confidential accommodation can support workers while reducing the risk of stereotyping.

Ultimately, menstrual protection should strengthen women's equality at work, not become a reason to question their equality.

VII. TOWARDS AN INCLUSIVE FRAMEWORK FOR MENSTRUAL-RELATED WORKPLACE ACCOMMODATION

A sustainable approach to menstrual leave should move beyond a simple women-specific leave entitlement and adopt a broader framework of menstrual-related workplace accommodation. Such a framework should recognise menstrual health as a legitimate workplace concern while

[20] *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1, 13–14.
[21] Int'l Labour Org., *Gender-Responsive National Employment Policies: A Path for Gender Equality* (2025).

ensuring that accommodation does not become a source of discrimination.[22]

First, workplaces should provide reasonable flexibility, including leave where genuinely required, flexible working hours and remote work where the nature of employment permits.

Second, adequate sanitation, privacy and access to menstrual hygiene facilities should form part of basic workplace welfare.[23]

Third, the use of menstrual-related accommodation should remain confidential and should not influence recruitment, promotion, remuneration or other employment decisions.

The framework should also be inclusive, flexible and non-stigmatising. Not every menstruating worker experiences the same symptoms or requires leave during every menstrual cycle. Therefore, a rigid uniform entitlement may be less effective than a system that allows workers to access appropriate support according to their circumstances. Such an approach is consistent with the broader constitutional objective of enabling women to participate equally in public and professional life. The Supreme Court's recent recognition of menstrual hygiene as an aspect of dignity and the right to life further supports the need for institutional measures addressing menstrual health.[24]

Accordingly, menstrual protection should not be treated as an isolated leave benefit. It should form part of a gender-responsive and dignity-based workplace framework that protects health, preserves equal opportunity and prevents biological differences from becoming professional disadvantages.

VIII. RECOMMENDATIONS

A balanced approach to menstrual leave in India requires protection without creating a new form of workplace discrimination. The following measures may be considered:

1. Adopt a flexible accommodation framework: Menstrual-related leave should be available where genuinely required, while allowing flexible working hours or remote

[22] Supreme Court of India, Centre for Research & Planning, *White Paper on Menstrual Leave* (Nov. 2025).
[23] International Labour Organization, *Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work* (2022).
[24] *W.P. (C) No. 1000 of 2022*, Judgment (S.C. Jan. 30, 2026).

work where the nature of employment permits.[25]

2. Ensure workplace facilities: Employers should provide adequate sanitation, privacy, clean toilets and access to menstrual hygiene facilities as part of workplace welfare.[26]

3. Protect confidentiality and non-discrimination: Information regarding the use of menstrual-related accommodation should be treated confidentially and should not influence recruitment, promotion, remuneration or other employment decisions.

4. Promote awareness: Employers should create a workplace environment where menstruation can be discussed without stigma or embarrassment. Awareness programmes may help reduce gender stereotypes and misconceptions surrounding menstrual health.[27]

5. Adopt a gender-responsive but non-stereotyping policy: Any future statutory framework should protect menstrual health while ensuring that such protection does not become a justification for treating women as less capable or less committed workers.

Thus, India should move towards menstrual protection rather than merely menstrual leave—a framework that combines health, dignity, flexibility and equality at the workplace.

IX. CONCLUSION

Menstrual leave raises an important question at the intersection of labour welfare, dignity and gender equality. While menstrual-related difficulties may justify workplace accommodation, a rigid women-specific leave entitlement may also create unintended stereotypes about women's ability and commitment to work.

The Indian legal framework should therefore move beyond the simple question of whether women should receive menstrual leave. The more important question is how menstrual health can be accommodated without turning biological difference into professional disadvantage. The Supreme Court's recent attention to menstrual health, together with its White Paper on

[25] Supreme Court of India, Centre for Research & Planning, *White Paper on Menstrual Leave* (Nov. 2025).
[26] *W.P. (C) No. 1000 of 2022*, Order (S.C. May 25, 2026) (recognising menstrual hygiene as a facet of Article 21 and directing institutional measures).
[27] *W.P. (C) No. 1000 of 2022*, Judgment (S.C. Jan. 30, 2026) (directing measures concerning menstrual hygiene awareness and education).

Menstrual Leave, reflects the growing importance of this issue within India's legal and policy discourse.

A balanced framework should combine reasonable leave, workplace flexibility, adequate menstrual hygiene facilities, confidentiality and protection against discrimination. Such an approach would recognise menstrual health as a legitimate workplace concern while preserving women's equal opportunity and participation in employment.

Ultimately, menstrual leave should not be viewed merely as a concession to women. It should be understood as a question of dignity, substantive equality and decent work. India's future labour policy should therefore strive not merely to give women a few additional days of leave, but to create workplaces in which menstruation does not become either a source of stigma or a barrier to equality.