White Paper on MENSTRUAL LEAVE

Prepared by

Centre for Research and Planning

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Prepared by

Centre For Research And Planning (CRP)

Contributors

Dr. Anurag Bhaskar, Additional Registrar-cum-Director, CRP

Manushree Nair, Junior Court Assistant, CRP

Vrishti Shami, Consultant (Research), CRP

Basima P., Junior Court Assistant, CRP

Apurva Ambasth, Research Assistant, CRP

Sneha Shrivastav, Office Assistant, CRP

Dishita Kapoor, Office Assistant, CRP

Cover Designed by

Ajayendra Nath Tripathi, Consultant (Technology), CRP

Dishita Kapoor, Office Assistant, CRP

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1. Introduction

1.1 Background

With the average menstruating age spanning from 12 years to 51 years, nearly 1.8 billion people menstruate every month.[1] During this period, menstruating persons experience varying degrees of discomfort including cramps, nausea, fatigue, bloating, body pain, along with emotional symptoms like mood swings, anxiety, and depression. In some instances, conditions such as Polycystic Ovary Syndrome (PCOS),[2] heavy bleeding (menorrhagia)[3] and endometriosis[4] can cause further discomfort. Other health issues associated with menstruation can also include dysmenorrhea,[5] premenstrual syndrome (PMS),[6] and perimenopause[7] and menopause[8] related

[1] UNICEF, Guidance on Menstrual Health and Hygiene (2019), https://www.unicef.org/wash/menstrual-hygiene.

[2] PCOS is a complex multigenic disorder and is the most common endocrine disorder in women of reproductive age worldwide. It is associated with multiple comorbidities, including infertility, obesity, cardiovascular risks, endometrial cancer etc. Shukla A, Rasquin LI and Anastasopoulou C, 'Polycystic Ovarian Syndrome'(2025) StatPearls [Internet] National Library of Medicine https://www.ncbi.nlm.nih.gov/books/NBK459251/.

[3] Menorrhagia is the most common type of abnormal uterine bleeding characterised by heavy and prolonged menstrual bleeding. The bleeding may be so severe and can interrupt daily activities. 'Menorrhagia' Columbia University Irving Medical Center https://www.columbiadoctors.org/treatments-conditions/menorrhagia.

[4] "Endometriosis, a complex disorder in women of reproductive age, is characterized by the presence of extrauterine endometrial tissue, pelvic pain, dysmenorrhea and infertility." Nandita Palshetkar, Key Practice Points on Endometriosis. A FOGSI President's Initiative- Key Practice Points: Indian Perspective (2019), Science Integra.

[5] "Dysmenorrhoea, or painful menstruation, is defined as a severe, painful cramping sensation in the lower abdomen. It may be accompanied by headache, dizziness, diarrhoea, a bloated feeling, nausea and vomiting, backache and leg pains. Primary dysmenorrhoea occurs in the absence of recognizable pelvic pathology and commonly begins when the ovulatory menstrual cycle starts." El-Gilany A-H, Badawi K., and El-Fedawy S, 'Epidemiology of Dysmenorrhoea among Adolescent Students in Mansoura, Egypt,' (2005) 11(1-2) Eastern Mediterranean Health Journal 155-163.

[6] PMS is the cyclical occurrence of symptoms that are severe enough to affect certain elements of life and that occur in a predictable and consistent manner in relation to the menses. Ismaili E and others, 'Fourth Consensus of the International Society for Premenstrual Disorders (ISPMD): Auditable Standards for Diagnosis and Management of Premenstrual Disorder' (2016) 19 Archives of Women's Mental Health 953–958.

[7] The menopausal transition can be gradual, usually beginning with changes in the menstrual cycle. Perimenopause refers to the period from when these signs are first observed and ends one year after the final menstrual period.World Health Organization. "Menopause." WHO, 16 Oct. 2024, www.who.int/news-room/fact-sheets/detail/menopause

[8] Menopause is marked by the end of monthly menstruation (also known as a menstrual period or 'period') due to loss of ovarian follicular function. This means that the ovaries stop releasing eggs for fertilization. World Health Organization. "Menopause." WHO, 16 Oct. 2024, www.who.int/news-room/fact-sheets/detail/menopause

issues. These factors can hinder menstruating persons in their lives, especially in professional settings, affecting their productivity, attendance and general wellbeing. However, despite advancements in gender equality and employee welfare at the workplace, policy discussions on menstruation remain limited, with little acknowledgement that menstrual health forms an essential aspect of menstruating persons' overall wellbeing.

1.2 Structure

This white paper intends to acknowledge menstruation as a legitimate facet of menstruating persons' health and allow employees[9] to take time off without fear of judgement or being stereotyped. The paper iterates how such an initiative will create a culture of empathy and respect within organisations in addition to promoting equity.

It takes into consideration international as well as Indian practices, health studies, and other examples to highlight the benefits of providing menstrual leaves in the workplaces. Although certain nations and organisations have undertaken some measures in this direction, the idea is still viewed with apprehension and applied unevenly across different regions and sectors.

The paper also acknowledges the obstacles associated with executing these measures, and provides a sample policy which may be implemented across workplaces, including the Supreme Court of India. Thus, the goal of this white paper is to fill the current gap on menstrual leaves and offer policymakers, employers, and stakeholders frameworks backed with research to support informed decision-making.

[9] Includes women and other individuals who menstruate.

2. Menstrual Health and Menstrual Leaves

2.1 What is Menstrual Health?

UNICEF defines Menstrual Health and Hygiene as follows:

> "*Menstrual health and hygiene (MHH) encompasses both [Menstrual Hygiene Management] and the broader systemic factors that link menstruation with health, well-being, gender equality, education, equity, empowerment, and rights. These systematic factors have been summarised by UNESCO as accurate and timely knowledge, available, safe, and affordable materials, informed and comfortable professionals, referral and access to health services, sanitation and washing facilities, positive social norms, safe and hygienic disposal and advocacy and policy*." [10]

This definition was expanded on by the United Nations Population Fund (UNFPA) in its report, wherein it stated that menstrual health is not the mere absence of disease or infirmity, but the complete state of physical, social and mental wellbeing.[11]

These definitions highlight how menstrual health necessitates a holistic approach, which is not just limited to proper access to menstrual hygiene products and clean and private restrooms. Thus, in order to truly achieve menstrual health, its psychological and social dimensions must be addressed as well. Creating a conducive workplace environment is one such aspect which needs to be focussed on. This includes cultivating a culture which normalises conversations on menstruation, as well as

[10] United Nations Children's Fund, Guidance on Menstrual Health and Hygiene UNICEF (2019).
[11] United Nations Population Fund, Menstrual Health and Hygiene Management for Persons with Disability UNFPA (2022). https://india.unfpa.org/sites/default/files/pub-pdf/final_mhhm_-_for_persons_with_disability.pdf

introducing flexible work arrangements to accommodate the needs of all menstruating employees. Menstrual leaves are a crucial step in this regard, which can foster positive attitudes towards menstruation and challenge the societal stigma associated with it.

2.2 Stereotypes Against Menstruating Persons

The rate of female labour force participation (FLFPR) in India, indicating women who are employed or seeking employment, has remained under the global average of 47% for multiple years. The most recent Periodic Labour Force Survey for 2021-22 indicates only 32.8% of all women in the main working age group (15 years and older) in India participate in the workforce.[12] Similarly, data from 2016 collected by the Ministry of Labour and Employment suggests that only 35.7% of all transgender persons participate in the labour force in urban settings in India.[13] These statistics show that while women and transgender persons form a significant portion of the Indian workforce, current employment and societal conditions must be amended to encourage more women and transgender persons to join the workforce.

Persons who menstruate have always been subject to stereotypes, within society as well as at workplaces. Typically, there exists a combination of gender-based discrimination at the workplace that menstruating persons experience on a daily basis. For instance, a psychological study revealed that women whose menstrual status was divulged were viewed as less competent.[14] It is also to be noted that women and transgender persons are often underrepresented in senior management as well as

[12] Directorate General of Employment, Employment Statistics in Focus –April 2023: Female Labour Utilization in India (Government of India 2023).
[13] Ministry of Labour and Employment Labour Bureau, Sixth Annual Employment-Unemployment Survey Report, (2016-2017).
[14] Roberts Tomi-Ann, Jamie L Goldenberg, Cathleen Power and Tom Pyszczynski ‘‘Feminine Protection’: The Effects of Menstruation on Attitudes towards Women’ (2002) 26(2) Psychology of Women Quarterly 131–139.

decision making positions. Moreover, it is a common practice to question their authority, commitment and assertiveness.

Reports also suggest that menstruating persons, especially women, often opt out of the workforce or prefer part-time jobs due to the menstrual discomfort they experience.[15] Additionally, a real and practical constraint for women to achieve high-level positions in the workplace is the disproportionate responsibility they still have for raising children and performing household tasks.[16] Women face the added responsibility of domestic work, caregiving, and are thus already at a disadvantage at workplaces.

2.3 Structural Intersectionality and Exclusion of Transgender Persons

Legal theorist Kimberlé Crenshaw's foundational work on intersectionality highlights how individuals experience discrimination in overlapping and compounding ways when multiple systems of power converge to result in multiple marginalised identities.17 Crenshaw argues that systems of power such as patriarchy, race, caste, class, and transphobia operate simultaneously to produce forms of subordination rather than exist in isolation to one another.18 She identifies the phenomenon of intersectional erasure, which occurs when legal and policy frameworks fail to recognise or address the needs of people who exist at multiple marginalised

[15] Biresaw Wassihun Alemu, Michael Waller and Leigh R Tooth, Association between Menstrual Disorders and Women's Workforce Participation: A Systematic Review, (2025) 11(12) Heliyon https://www.sciencedirect.com/science/article/pii/S2405844025018559.
[16] Wirth Linda, Women in Management: Closer to Breaking Through the Glass Ceiling? International Labour Organization, Sectoral Activities Programme, Geneva (1997).
[17] Kimberele Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics (1989) University of CHicago Legal Forum 139.
[18] Kimberele Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43 Stanford Law Review 1241.

crossroads.19 Thus, intersectionality provides a critical lens helping frame policies including those around labour protections and menstrual leave for those whose lived realities do not conform to gender-normative categories.

Legal scholar Margaret E. Johnson develops on Crenshaw's theory and conceptualises "structural intersectionality" as the ways in which multiple systems of oppression, such as patriarchy, casteism, transphobia, and classism, intersect to shape access to rights and resources.[20] Within the framework of Labour Laws in India, the category of "working woman" has been a subject of state protection, as evident in the grant of maternity benefits and workplace safety laws[21]. However, this category remains exclusionary as transgender and non-binary persons who menstruate are rendered invisible, both linguistically and institutionally, since menstruation itself is coded as a female biological function.[22]

Empirical and ethnographic studies have demonstrated that transgender and gender-diverse menstruators navigate menstruation through secrecy, shame, and dysphoria, amplified by the absence of inclusive policy recognition.[23] In India, where workplace infrastructures are already stratified by caste and class, this invisibility compounds existing vulnerabilities.

Transgender persons in India continue to face systemic discrimination in employment despite the Supreme Court's recognition of their rights in ***National Legal Services***

[19] Emily Fornof, Nile Pierre and Canela Lopez, 'Kimebrele Crenshaw: Race Scholar Speaks on Erasure of Women of Colour' The Tulane Hullabaloo (4 October 2017) https://tulanehullabaloo.com/30450/intersections/kimberle-crenshaw-3/.
[20] Margaret E. Johnoson, 'Menstrual Justice,' (2020) UCLA Law Review.
[21] The Maternity Benefit Act, 1961; The Sexual Harassment of Women at Workplace (Prevention, prohibition and Redressal) Act, 2013.
[22] Rydstorm K, 'Trans Men and the Politics of Menstruation' in Bobel Chris and others(eds), The Palgrave Handbook of Critical Menstruation Studies (Palgrave Macmillan) (2020).
[23] UNFPA and WaterAid India, Menstrual Health Management for Transgender Persons in India (2022).

Authority (NALSA) v. Union of India (2014).[24] The *NALSA* judgment affirmed the constitutional right to self-identify one's gender and mandated state action to ensure social inclusion. This was followed by the Transgender Persons (Protection of Rights) Act, 2019, which provides protection from discrimination and unfair treatment in recruitment, promotion and termination. However, workplace policies have remained overwhelmingly focused on cisgendered women, with menstrual health being entirely absent from trans-inclusive practices.[25]

Transgender men and non-binary menstruators continue to face barriers including lack of access to gender-neutral toilets, fear of outing or ridicule when requesting menstrual products, and severe gender dysphoria when forced to manage menstruation in public or female-only spaces.[26] The lack of institutional recognition of their needs often leads to absenteeism, self-medication, or withdrawal from formal employment.

2.4 Inclusion of Transgender and Gender-Diverse Menstruators

In India, the framework regarding menstrual leaves has been conceptualised primarily through a heteronormative perspective which associates menstruation exclusively with women's health. The result of such discourse is the reproduction of exclusionary hierarchies in law and policy, where only certain bodies are recognised as capable of menstruating and therefore deserving of workplace accommodations. However, true menstrual justice would involve de-gendering the discourse on menstruation and the adoption of a framework which focuses on the experiences of transgender and gender-diverse menstruators. UNICEF emphasised on the same in its "Guidance on Menstrual Health and Hygiene" as well, wherein it defined the term "**menstruator"** as

[24] (2014) 5 SCC 438.
[25] UNFPA and WaterAid India, Menstrual Health Management for Transgender Persons in India (2022).
[26] Ibid.

a person who "*menstruates and therefore has menstrual health and hygiene needs – including girls, women, transgender and non-binary persons.*"[27]

2.5 Why Menstrual Leaves?

The structural challenges discussed above highlight the need for inclusion of a menstrual leave policy. Since menstrual leaves allow a menstruating person to take time off 'if they are unable to attend work due to menstruation',[28] the enactment of such a policy may prove beneficial since it would prevent low productivity and dropouts due to menstrual discomfort. Granting Menstrual Leaves would also be imperative since it would:

(a) **Address the health requirements of menstruating persons during symptoms such as cramps and fatigue, which significantly impact their quality of life:** Institutionalising leaves for menstruating persons experiencing discomfort would offer them the opportunity to speak up about their menstrual cycle-related health issues, and to take time to recover or seek treatment.[29]

(b) **Reduce "presenteeism":** Presenteeism is the phenomenon of "being at work despite being sick, working more than the time assigned on a particular job, not fully engaged in work, recorded as present but not in work assigned and overactive and hyperactive in the assignment".[30] Presenteeism has been

[27] UNICEF, Guidance on Menstrual Health and Hygiene UNICEF (2019).
[28] Rachel B Levitt and Jessica L Barnack-Tavlaris 'Addressing Menstruation in the Workplace: The Menstrual Leave Debate' in Chris Bobel and others (eds), The Palgrave Handbook of Critical Menstruation Studies, (Palgrave Macmillan) (2020) 701–718.
[29] Dennerstein Lorraine and others 'The Effect of Premenstrual Symptoms on Activities of Daily Life' (2009) 94(3) Fertility and Sterility 1059–64 https://doi.org/10.1016/j.fertnstert.
[30] Werapitiya Chandani, HHDNP Opatha and RLS Fernando, 'Presenteeism: Its Importance, Conceptual Clarifications, and a Working Definition' (2016) 7(2) International Journal of Scientific & Engineering Research 1489–1495 www.ijser.org.

found to be a greater contributor to loss of productivity than absenteeism due to menstruation-related symptoms.[31] Providing menstrual leave can contribute to reducing presenteeism for menstruating persons, thus ensuring optimum productivity.

(c) **Boost productivity by creating a positive work environment:** As mentioned above, menstrual leave policies result in enhanced efficiency and healthier workplace dynamics. Thus, enacting such policies would result in a more conducive environment for all menstruating persons.[32]

(d) **Remove stigmas and stereotypes around menstrual health:** Institutionalising menstrual leaves will foster awareness about reproductive health and reproductive rights. Policies related to menstrual health drafted in the context of diverse communities have emphasised destigmatisation of menstruation as one of their stated objectives.

(e) **Result in a more equitable work environment:** Recognising menstruation as a bodily function rather than a gendered condition ensures that workplace protections are equitable and constitutionally compliant. For menstrual leave to advance equality, its framework must explicitly acknowledge that menstruation is not exclusive to cisgender women. Policies must therefore adopt inclusive terminology that recognises all employees who menstruate, rather than presuming gendered categories.

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[31] Schoep ME and others, 'Productivity Loss Due to Menstruation-Related Symptoms: A Nationwide Cross-Sectional Survey Among 32,748 Women (2019) 9 BMJ Open.

[32] Biresaw Wassihun Alemu, Michael Waller, Leigh R Tooth, Association between menstrual disorders and women's workforce participation: A systematic review, (2025) 11(12) Heliyon https://www.sciencedirect.com/science/article/pii/S2405844025018559.

3. Constituent Assembly Debates

The Constituent Assembly Debates reveal that Article 15(3) was consciously crafted as an enabling provision to permit the State to introduce targeted protections in response to the specific social and biological vulnerabilities faced by women. B.N. Rau, the Constitutional Adviser, resisted proposals to delete this clause, emphasising *that "special provision would be required in the case of employment of women and children in factories and mines",* [33]thereby grounding Article 15(3) in the need to address material conditions affecting women's participation in public life. Rau's approach was rooted in a substantive-equality vision: that gender-based disadvantage arising from physiological differences or structural discrimination required affirmative legislative space. His reasoning provides historical legitimacy for contemporary measures addressing menstrual-related barriers to labour-force participation.

During the debates, K.T. Shah expressly characterised Article 15(3) as permitting "discrimination in favour of women and children", justified because certain groups suffer "disabilities or handicaps" arising from long-standing social practices.[34] He noted that "real equality of citizens" demands special treatment for those whose lived conditions impede equal status, explaining that equality must not be "equality of name only or on paper only, but equality of fact."[35] Shah also acknowledged that certain biological conditions had historically justified protective measures for women, not as paternalistic restrictions but as safeguards ensuring their "betterment" and long-term well-being.[36] His articulation directly resonates with the rationale for menstrual leave:

[33] Constituent Assembly Debates, Vol IV (2004) 29 (B.N. Rau's Opinion on Draft Article 9(2)).
[34] CAD, Vol VII, 7.62.89 (K.T. Shah).
[35] CAD, Vol VII, 7.62.93.
[36] CAD, Vol VII 7.62.90.

a measure acknowledging the embodied realities of menstruation while facilitating substantive equality in the workplace.

In contrast, attempts to expand the clause to include Scheduled Castes and "backward tribes" were rejected by Dr B.R. Ambedkar, who warned that such an amendment might enable segregationist practices contrary to the integrative purpose of equality provisions.[37] Dr Ambedkar's intervention clarifies that Article 15(3) was designed as a narrowly tailored provision responding to gender-based concerns, particularly those arising from biological processes and gendered labour conditions rather than a general tool for all forms of social backwardness. The framers thus understood Article 15(3) as enabling targeted, non-segregative protections for women in recognition of their specific physiological and social disadvantages.

Taken together, the debates demonstrate that Article 15(3) was intended to empower the State to respond to embodied gendered experiences, such as menstruation that directly affect equality of opportunity. Measures like menstrual leave fall squarely within this constitutional intention: they address a biological process that produces tangible barriers to participation while neither diminishing equality nor segregating women, but rather fulfilling the founding objective of enabling substantive equality. The historical materials therefore provide clear constitutional justification for gender-inclusive menstrual leave as a legitimate exercise of Article 15(3)'s protective scope.

[37] CAD, Vol VII, Ambedkar on Amendment No. 323.

4. Constitutional Provisions

Currently, there is no comprehensive legal framework in India to permit menstrual leave. However, the legal foundation for this policy can be based on multiple constitutional provisions, which include:

(a) Article 21: Protection of life and personal liberty

> *"No person shall be deprived of his life or personal liberty except according to procedure established by law."*[38]

The right to life guaranteed under Article 21 has been interpreted to include the right to health as stated by the Supreme Court in judgments like ***Bandhua Mukti Morcha v. Union of India,***[39] ***Consumer Education & Research Centre v. Union of India,***[40] ***and Virender Gaur v. State of Haryana.***[41] Menstrual leaves are an extension of this right since they would contribute towards the physical and mental wellbeing of menstruating persons during their menstrual cycles.

(b) Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Article 15(3) stipulates that:

> *"(3) Nothing in this article shall prevent the State from making any special provision for women and children."*[42]

[38] The Constitution of India, art. 21.
[39] (1984) 3 SCC 161.
[40](1995) 3 SCC 42.
[41] (1995) 2 SCC 577.
[42] The Constitution of India, art. 15 (3).

Thus the State can make special provisions for women and children. Menstrual leave would be included in this provision as it enables the State to cater to the unique needs of women while upholding the principle of non-discrimination.

Although Article 15(3) expressly empowers the State to make special provisions for "women and children", the constitutional mandate does not limit protective labour or welfare measures only to cisgender women. The Supreme Court in ***National Legal Services Authority v. Union of India***[43] affirmed that discrimination on the ground of "sex" in Articles 15 and 16 includes discrimination on the basis of gender identity. Emphasis was placed that transgender persons have historically been denied equal access to public spaces, employment, social and economic opportunities, and that the State is constitutionally obligated to adopt affirmative measures to remedy this exclusion and secure their dignity and equal status. Read with Articles 14, 21 and the Directive Principles of State Policy (DPSP), *NALSA* makes clear that policies addressing menstruation must not reinforce gender stereotypes or restrict benefits to cisgender women alone but also extend the same to all those who menstruate.

(c) Article 41: Right to work, to education and to public assistance in certain cases

> *"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of*

[43] (2014) 5 SCC 438.

unemployment, old age, sickness and disablement, and in other cases of undeserved want."[44]

While the Article does not explicitly mention menstrual leave, it is a part of the Directive Principles and thus serves as a guideline for the government to make laws that promote social welfare. For many employees, menstruation can be painful and a cause of discomfort. Hence, granting leave would address the *"undeserved want"* and ensure proper working conditions for such employees within the workforce.

(d) Article 42: Provision for just and humane conditions of work and maternity relief

"The State shall make provision for securing just and humane conditions of work and for maternity relief."[45]

This Article is a part of the DPSPs and mandates that the State must make just and humane conditions available at the workplace. The Article also mentions maternity relief. Arguments for menstrual leave can be based on Article 42, suggesting that it provides a constitutional basis for providing favourable working conditions and benefits related to women's health, which can be extended to menstrual leave.

(e) Article 43: Living wage, etc., for workers

"The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers,

[44] The Constitution of India, art. 41.
[45] The Constitution of India, art. 42.

agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."[46]

The Article mandates that the State must ensure fair and equitable conditions of work for all employees. This includes providing a living wage, maintaining working conditions that guarantee a decent standard of life, and enabling their right to all the social and cultural opportunities. The provision of menstrual leave, in this context, aligns with these very principles mentioned within the Constitution. Such measures play a pivotal role in assuring menstruating persons respect and dignity, which in turn, would contribute to a decent standard of life as stated within the DPSPs.

These provisions have laid the framework for a comprehensive menstrual leave policy to be enacted across all workplaces. This understanding has further been strengthened by the jurisprudence on dignity and equality in the workplace developed by the Supreme Court.

[46] The Constitution of India, art. 43.

5. Jurisprudence on Dignity

The Constitution envisions a society where equality is an important feature, while taking into account how women and other gender minorities have been historically disadvantaged. The judiciary has played a key role in realising this vision by expanding the interpretation of the Fundamental Rights, such as under Articles 14, 15, 19, and 21. This has posed a catalyst in aligning our domestic principles with international human rights standards. There are various landmark judgments from India which focus on evolving policies, which spans across national barriers and affirms that mere biological and social differences cannot justify unequal treatment or exclusion.

In ***Vishaka v. State of Rajasthan***,[47] it was held that the right to life under Article 21 includes the right to live with dignity, which in the context of working women means the guarantee of a safe and secure workplace. Without such an environment, the constitutional right to carry on any occupation, trade, or profession (Article 19(1)(g)) loses meaning.

> **"*3.*** *…The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity.*
>
> ***
>
> ***7.*** *In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in*

[47] (1997) 6 SCC 241.

Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till Parliament enacts legislation to expressly provide measures needed to curb the evil."

In ***Suchita Srivastava v. Chandigarh Administration***,[48] the Supreme Court acknowledged the right of women to make reproductive choices and considered it a facet of Article 21 of the Constitution.

"***22.*** *There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's*

[48](2009) 9 SCC 1.

right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children."

In ***Justice K.S. Puttaswamy (Retd.) v. Union of India***,[49] the Supreme Court recognised the constitutional right of women to make reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution. The Court further iterated that these rights form part of a woman's right to privacy, dignity, and bodily integrity.

*"**82.** ….In the view of the Court : (Suchita case [Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1 : (2009) 3 SCC (Civ) 570] , SCC p. 15, para 22)*

> *"22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating.*

[49] (2017) 10 SCC 1.

The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices."

The Court noted that the statute requires the consent of a guardian where the woman has not attained majority or is mentally ill. In the view of the Court, there is a distinction between mental illness and mental retardation and hence the State which was in charge of the welfare institution was bound to respect the personal autonomy of the woman.

In ***Indian Young Lawyers Associations v. State of Kerala***,[50] it was observed that:

> "***357.*** *….The social exclusion of women, based on menstrual status, is but a form of untouchability which is an anathema to constitutional values. As an expression of the anti-exclusion principle, Article 17 cannot be read to exclude women against whom social exclusion of the worst kind has been practiced and legitimized on notions of purity and pollution. Article 17 cannot be read in a restricted manner. But even if Article 17 were to be read to reflect a particular form of untouchability, that article will not exhaust the guarantee against other forms of social exclusion. The guarantee against social exclusion would emanate from other provisions of Part III, including Articles 15(2) and 21.*"

In ***Nirjhari Mukul Sinha v. Union of India***,[51] the Gujarat High Court took up a PIL arising from the 2020 Bhuj incident where 68 girls were subjected to humiliating strip checks to verify their menstrual status. The petitioners sought directions to prohibit exclusionary practices against menstruating women and to frame laws or guidelines ensuring their dignity and equality. The Court noted that such practices violate Articles 14, 15, 17, 19, and 21 of the Constitution. Recognising menstruation-related stigma, myths, and their discriminatory social impact, the Court observed that exclusion on the basis of menstrual status is unconstitutional and detrimental to women's dignity, health, and opportunities:

[50] (2019) 11 SCC 1.
[51] R/WRIT PETITION (PIL) NO. 38 of 2020 order dated 26.02.2021.

"***10.*** *It is further submitted that the Social exclusion of women on the basis of their menstrual status is incidental to the proclamation of menstrual status of women. Women have a right over their bodies. The menstrual status of a woman is an attribute of her privacy and person. Requiring a woman and/or following practices that require a woman to reveal her menstrual status is infringement of her right to privacy. She further submitted that the exclusion affects the victimized woman's dignity, results in denial of equal opportunities in the fields of education, work, religion and everydayness of life, instills a feeling of being inadequate and unequal. Such a state of mind is likely to affect mental health of women infringing right to health, resulting in violation of fundamental Rights.*"

In ***Shalini Dharmani v. State of Himachal Pradesh and Ors***,[52] which involved a matter where the petitioner, who was an Assistant Professor, had a son who was suffering from a rare genetic disorder and required constant care and attention. The petitioner had exhausted all her leaves due to his treatment. The Principal of the Government College informed the petitioner that since the State of Himachal Pradesh had not adopted the provisions of Child Care Leave, such leave could not be sanctioned to her. The Supreme Court stated that:

*"**7.** The participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15*

[52] 2024 SCC OnLine SC 653.

and 21 of the Constitution; besides Article 19(1)(g). The State as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the work force. The provision of Child Care Leave to women sub-serves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force. Otherwise, in the absence of a provision for the grant of Child Care Leave, a mother may well be constrained to leave the work force. This consideration applies a fortiori in the case of a mother who has a child with special needs. Such a case is exemplified in the case of the petitioner herself. We are conscious of the fact that the petition does trench on certain aspects of policy. Equally, the policies of the State have to be consistent and must be synchronise with constitutional protections and safeguards."

The Supreme Court held that women's participation in the workforce is a constitutional entitlement which is protected under Articles 14, 15, 19(1)(g), and 21, and not a matter of privilege. The Court stated that the absence of adequate policies at the workplace, such as Child Care Leave, can lead to women employees withdrawing from the employment. As a result, the State was directed to review its policy to bring it in line with the constitutional principles and the Rights of Persons with Disabilities Act to ensure that women are not disadvantaged due to caregiving responsibilities.

These judgments can be seen as extending to the issue of menstrual leave as well, which concerns women's health, integrity and equality at their places of employment. It must be noted here that although the judgements mention the term 'women' the

protection of these rulings must be accorded to all menstruating persons. Judgments such as these support the formulation of Menstrual Leave Policies, in turn assuring the employees that biological differences do not lead to exclusion and discrimination, and in turn, reduced representation in the workforce.

Most recently, in ***Jane Kaushik v. Union of India***,[53] the Supreme Court, while adjudicating upon discrimination against transgender persons in workplaces, held,

> *"**97. iii. Enhancement of voice and participation.***
>
> *A fundamental requirement of substantive equality is the elimination of structural and institutional discrimination to achieve true participation in social settings by the community being discriminated against. Articles 14, 15 and 16 of the Constitution respectively provide a framework for equality that translates into participation of communities situated at the fringes of society and mandate that the constitutional vision of inclusion of different and diverse voices be achieved. Such a constitutional mandate flows not only from the equality provisions contained in Articles 14, 15 and 16 respectively but also from the broader themes of freedom of speech, expression and participation enshrined in Article 19 along with the right to a dignified social life contained in Article 21. The fundamental right to equality, fundamental freedoms and the right to life together ensure and aspire for meaningful participation and expression of the minorities."*
>
> ***

[53] 2025 INSC 1248.

179. It is a matter of grave constitutional concern that members of the transgender community continue to encounter systemic barriers in the ordinary conduct of their lives. Their daily existence is marred by a pattern of discrimination that operates across domains: beginning with the hurdles pertaining to recognition in official records, extending to harassment at public spaces, exclusion from educational and employment opportunities, and summing up in social ostracism and violence. A chain of precedents from various High Courts reveals a disturbing continuum of prejudice. We cannot but express our dismay towards the intrusive surveillance of transgender persons, policing of their identities, and an institutional indifference that often results in denial of dignity. Despite the authoritative pronouncement in NALSA (supra), the reality of the transgender person remains one of stigma. The workplaces question their capability, educational institutions hesitate to include them and the law, though well-intentioned, falters in its implementation."

Furthermore, the Court ordered the formation of an Advisory Committee, which would formulate an Equal Opportunity Policy for transgender persons. The Policy is required to specify practical arrangements such as infrastructural accommodation, security provisions and necessary amenities to ensure transgender employees can work with dignity. The Policy is also required to guarantee that all service conditions are applied equally to transgender employees. The Court also ordered the Union to create its own Policy within three months of the Committee's submission of its policy. The Court's ruling in this case can be extended to menstrual leaves, since they concern the dignity

of all menstruating persons in workplaces, including transgender persons, and directly affects their equality of employment.

Analysis

The body of constitutional jurisprudence emerging from these judgments establishes that women and transgender persons possess enforceable rights to equality, dignity, bodily autonomy, health, privacy, and meaningful participation in the workforce. The Supreme Court has consistently recognised that biological processes and gendered social disadvantages cannot justify exclusion, discriminatory treatment, or structural barriers at the workplace. Moreover, the Supreme Court imposes a positive obligation on the state and institutions to create conditions in which all workers, particularly those historically marginalised, can participate on an equal footing. Through Articles 14, 15, 16, 19 and 21, the Court has articulated a framework that requires workplaces to be safe, dignified, and accommodating of diverse physical and social realities.

Read together, these rulings establish that equality at work must be formal and substantive. Menstrual leave would be an extension of these constitutional guarantees. It would ensure that the lived experiences of menstruating persons do not result in unequal access, diminished opportunities, or withdrawal from the workforce. Accordingly, all menstruating persons have a constitutionally recognised right to workplace conditions that affirm dignity, health, privacy and equality.

6. Policy Framework

Introduction of Menstrual Leave policies aligns with fundamental rights like Articles 14 and 21, which speak of Right to Equality and Right to Life respectively. At the national level, there is no law yet which talks about menstrual leave in India; there is no centralised direction for “paid menstrual leave” either. There have been measures like a Draft Menstrual Hygiene Policy 2023 and The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022.

5.1 National Policies

(i) **Menstruation Benefits Bill, 2017**

The Menstruation Benefits Bill, 2017, presented in the Lok Sabha by Shri Ninong Ering, aimed to grant women in public and private sectors two days of paid leave each month during their menstrual cycle. The Bill also suggested providing rest areas at work to alleviate the discomfort experienced by women during their menstrual periods. The objects and reasons mentioned medical studies which emphasised on the fact that menstrual pain could be as severe as a heart attack, hindering women's productivity at work, particularly during the initial two days of their cycle. The Bill highlighted India's history of progressive actions, referencing a school in Kerala that introduced menstrual leave in 1912, and observed that certain Indian firms had already implemented menstrual leave policies. However, the Bill could not be passed.

(ii) **Women’s Sexual, Reproductive and Menstrual Rights Bill, 2018**

The Women’s Sexual, Reproductive and Menstrual Rights Bill, 2018 was presented in the Lok Sabha as a private member’s bill by Dr. Shashi Tharoor.

It majorly focused on three areas, namely sexual, reproductive, and menstrual health. The Bill aimed to make marital rape a crime and to guarantee that a woman's consent could not be inferred from aspects like attire, previous behaviour or caste. It additionally suggested changing the name of the Medical Termination of Pregnancy Act, 1971 to the Legal Termination of Pregnancy Act. Regarding menstrual rights, it advocated for the provision of free sanitary napkins to girls in educational institutions via an amendment to the Right to Education Act and mandated that public organisations guarantee the free access to sanitary products. However, the Bill could not be passed.

(iii) The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022

This was a private member bill by Shri Hibi Eden proposing paid menstrual leave of three days in any government establishment. This was proposed for working women as well as female students. In addition to granting paid leave, it proposed free access to menstrual health products irrespective of status or region.[54] This Bill took into consideration the needs of women, girls and trans people:[55]

> *"It is intended to remove any barriers which stop women, girls and trans people accessing female health and hygiene products – items which are essential to the health, hygiene and*

[54] Eden, Hibi, The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill (2022) Bill No. 276 of 2022, Lok Sabha.
[55] Eden, Hibi, Statement of Objects and Reasons, The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill (2022) Bill No. 276 of 2022, Lok Sabha.

wellbeing of those who has crossed menarche till the period of menopause.

The idea behind the proposed Bill is that certain circumstances make access to sanitary products difficult for women and trans people. These include homelessness, coercive, controlling and violent relationships and health conditions such as endometriosis.

This bill provides for the novel idea of a type of leave where women and trans women may have the option of taking a paid leave for three days from their workplace during the period of menstruation. Here 'leave' shall mean full entitlement of a women to complete wages during the period of menstruation subject to maximum of 3 days per month for a working women and of 3 days for a non-working women including students."

(iv) Draft Menstrual Hygiene Policy 2023

This Policy, proposed by the Ministry of Health and Family Welfare, ensures support through the entire menstrual journey, recognising the needs of women which might vary from person to person from menarche to menopause with special focus on providing support to the underserved and vulnerable population. It also focuses on assuring access to menstrual hygiene resources and addressing their special needs.[56] The draft for this policy is still pending.

[56] Press Information Bureau, Government of India 'Update on Access To Menstrual Hygiene Facilities' (15 Dec. 2023) pib.gov.in/PressReleasePage.aspx?PRID=1986698..

The ***Handbook on Combating Gender Stereotypes***[57] published by the Supreme Court of India recommends ways to avoid using harmful gender stereotypes. It explains that stereotypes are often unconsciously ingrained through social and cultural conditioning, making them difficult to recognise. However, relying on such stereotypes can distort objectivity, perpetuate discrimination, and undermine justice. The Handbook therefore encourages judges not only to avoid stereotypes but also to actively challenge and dispel them. It aims to raise awareness by explaining what stereotypes are, showing how they appear in judicial language, and suggesting alternative, stereotype-free expressions.

Although the Handbook does not explicitly discuss menstruation, this understanding of stereotypes and their detrimental effects can be extended to menstruation and menstruating persons. Assumptions about menstruation often frame menstruation as a source of weakness, impurity, and diminished capability, leading to unequal treatment, especially in the workplace. Challenging these narratives is essential to ensuring that legal reasoning remains fair and free from discriminatory assumptions.

There are multiple policies deduced by the government such as ***Rashtriya Kishor Swasthya Karyakram,*** which focuses on educating all and distributing menstrual hygiene products free or at subsidised rates, and the ***Jan Aushadhi Suvidha Sanitary Napkin*** are primarily aimed at menstruating women and girls. But, there seems to be a gap within all these government schemes as they are all directed at “adolescent girls and women” and nowhere talk about transgender persons.[58]

[57] Supreme Court of India, Handbook on Combating Gender Stereotypes (16 August 2023).
[58]Tibrewala Muskan, ‘Transgender Persons and Structural Intersectionality: Towards Menstrual Justice for All Menstruators in India’ (2014) IX(2) Indian Journal of Medical Ethics.

5.2 State Level Policies

Considering these realities, Indian states, such as Bihar (since 1992), Odisha (Finance Department), the High Court of Sikkim, and Kerala government, have adopted menstrual leave provisions. However, in the broader government sector, a comprehensive and comprehensive policy remains absent.

Bihar

The Bihar Vikas Mission, in their Human Resource Manual have mentioned about "Special Leaves" for Women Employees (Contractual) irrespective of their location. They are granted 2 days' leave every month, which would lapse if not availed in a particular month.[59]

Kerala Government

The Kerala Government has introduced menstrual leave for female trainees in Industrial Training Institutes (ITI) as well as universities. In 2023, a Government Order was issued as per which attendance policy for female students at universities was revised to 73% so as to include menstrual leave, along with a maximum of 60 days of maternity leave for female students above the age of 18.[60] In a Government Order issued in November 2024, female trainees at ITIs are entitled to two days of menstrual leave per month. The female trainees are allowed to compensate for any shortfall in the 80% attendance requirement through shop floor training.[61]

[59] Bihar Vikas Mission, Human Resource Manual (Patna, Bihar State Building Construction Corporation Campus, Hospital Road, Rajvanshi Nagar, 800023).
[60] Government of Kerala, Government Order: Menstrual Leave and Maternity Leave for Female Students, GO (Manuscript) No. 33/2023/HEDN.
[61] Government of Kerala, Government Order: Menstrual Leave for Female Industrial Trainees GO (Ordinary) No. 1231/2024/LBR, Labour & Skills Department (28 Nov. 2024).

Odisha

The Finance Department of the Government of Odisha through an Office Memorandum mentions Additional Casual Leaves in favour of women Government Employees. This was extended up to 10 days in a calendar year and, over and above the existing 10 days of Casual Leave and 5 days of Special Casual Leave.[62]

High Court of Sikkim

The High Court of Sikkim grants 2-3 days menstrual leave in a month to the women employees of the Registry, provided they approach the Medical Officer attached to the High Court first and obtain the latter's recommendation for such leave. The leave account will not be debited on availing such leaves.[63]

Karnataka

Karnataka has become the first State in India to introduce a menstrual leave policy covering both government and private sector employees, following an expert committee's recommendation. After the approval of Cabinet in October 2025, the Government Order issued by the Department of Labour and Employment in November 2025 ensures one day paid menstrual leave per month, totalling 12 days annually for women in the age group of 15 to 52 across all employment sectors in permanent, contract or outsourced workforce.[64] Employees are required to inform their manager and/or Human Resources Department after availing the leave, and these leave

[62] Government of Odisha, Finance Department, Office Memorandum: Additional Casual Leave in Favour of Women Government Employees, No. 694A/F, FIN-CS2-ALW-0006-2024 (12 March 2024).
[63] High Court of Sikkim, Notification: Menstrual Leave for Women Employees in the High Court Registry, No. 24/HCS (27 May 2024).
[64] 'Karnataka government notifies menstrual leave policy with a day's leave a month' The Hindu (12 November 2025). https://www.thehindu.com/news/national/karnataka/karnataka-govt-notifies-menstrual-leave-policy-with-a-days-leave-a-month/article70272362.ece.

requests are to be treated with utmost confidentiality. Therefore, no medical certificates are required.

5.3 Educational Institutions of India

Various educational institutions across the country have also introduced menstrual leaves for female students. These institutions include:

(i) **NALSAR University of Law (Hyderabad):** The University introduced "The Menstrual Leave Policy 2023"[65] which is a student-led initiative. This policy provides one day leave per month to every student who identifies themselves as a menstruating individual, provided in no case will the total attendance requirement be less than 67% inclusive of any medical leave. Students can directly claim this through the examination office. No medical proof is required apart from self-declaration to claim Menstrual Leave.

(ii) **National Law University Delhi (NLUD):** The policy is called "NLU Delhi Students Menstrual Leave Policy 2024".[66] It allows one day leave every calendar month and will lapse if not used in a particular month. The students are entitled to avail benefits upon securing 67% attendance in an actual ongoing semester and no such benefits can be claimed during examination. In order to claim the leave, students can submit a filled-in-leave form to Girls Hostel Warden and after due verification it is forwarded to the Registrar for approval. This policy also proposed the formation of a Review Committee consisting of Dean (Academic Affairs), Dean (Student Affairs) and one faculty member for smooth redressal of grievances.

[65] NALSAR University of Law, 'The Menstrual Leave Policy' (2023).
[66] National Law University, Delhi, 'NLU Delhi Students Menstrual Leave Policy' (14 October 2024).

(iii) **Panjab University (Chandigarh):**[67] The University allows one day leave per calendar month where teaching has taken place for at least 15 days. A maximum of four days leave is allowed per semester, also in no case is such leave admissible during examination. Students can easily claim the benefit of this leave by filling up a self-declaration form available at the departmental office. This leave is to be approved by the Chairperson/Director.

(iv) **National Law Institute University, Bhopal:**[68] NLIU Bhopal provides menstrual leave to all menstruating students. The University allows students to take a maximum of 6 'deemed attendance' days per subject, per semester for menstrual comfort. This leave can be claimed for 2 classes per subject per month provided they are within a five-day span. However, for the students suffering from PCOS, they can claim leave without following this monthly schedule by getting a medical certificate from the university doctor to the student section. Students can easily claim the benefits by filling up a designated form and submitting it with the Student Section.

(v) **Hidayatullah National Law University (HNLU):**[69] Named as HNLU-Menstrual Leave Policy 2024, the policy allows students to take one day of deemed attendance once per calendar month during teaching days. A student undergoing a menstrual cycle is eligible for a deemed attendance. Unused leaves are non-cumulative. Menstrual leave is not granted during examination days, except in case of hospitalisation or rest prescribed by University Doctor. To claim the benefits, students can submit a self-declaration form to the Student

[67] Panjab University, Circular: Grant of Menstrual Leave to Girl Students, Office of Dean of University Instruction, No. 1531/1631-DUI/DS (10 Apr. 2024).
[68] National Law Institute University, Bhopal, 'Policy for Menstrual Leave at NLIU, Bhopal' (2024).
[69] Hidayatullah National Law University, 'HNLU-Menstrual Leave Policy' (2024) (With Effect from 01 July 2024).

Welfare Officer within 7 days of taking leave. Any denial or complaint related to this policy will be entertained by the Student Welfare Officer.

(vi) **Maharashtra National Law University, Aurangabad (MNLU):**[70] This policy is named as The Maharashtra National Law University, Aurangabad Menstrual Leave Policy, 2024. The policy covers every mensurating student of the University. It allows students to take one day leave each month of an Academic Semester of the University; the leaves are non-cumulative. Students can avail not more than four Menstrual Leave per Academic Semester of the University, provided further that in no case shall such menstrual leave be availed during the written examination or viva-voce, duly notified by the University. To claim this leave, a self-declaration form is to be submitted in the Office of Academic Committee of the University and University Examination Committee within 7 days from the date of leave.

An analysis of the Bills and policies outlined above indicates that although efforts have been made to recognise menstrual needs at the institutional level, there is no uniform national framework yet. Additionally, although policies have been implemented at the State level and in some educational institutions, these measures are varied and differ significantly in scope and eligibility. As a result, protections differ significantly across contexts and may not consistently include all menstruating persons. The creation of a harmonised policy would therefore benefit menstruating persons by securing workplace rights uniformly.

[70] Maharashtra National Law University, Aurangabad, 'The Maharashtra National Law University, Aurangabad Menstrual Leave Policy' (2024).

7. International Discourse

7.1 International Instruments

The recognition of menstrual leave within the framework of the right to work finds persuasive support in international human rights law. The Universal Declaration of Human Rights (UDHR) guarantees the right to work and to just and favourable conditions of employment.[71] Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR)[72] and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[73] obligates State Parties to eliminate discrimination in employment and to ensure equality of opportunity and treatment in the workplace.

Historically these instruments have been interpreted to protect women's rights primarily in relation to pregnancy, childbirth, and childcare.[74] This approach has facilitated the development of maternity and parental leave regimes under both domestic and international labour standards, reflecting an understanding of the right to work recognising the distinct biological and social realities of women rather than assuming a purely formal equality with men.[75]

However, this framework remains narrowly focused on motherhood, leaving other reproductive and post-reproductive processes such as menstruation and menopause outside the ambit of workplace protection.[76] Applying Sandra Fredman's substantive

[71] Universal Declaration of Human Rights, UNGA Res 217A(III), arts 23-24.
[72] International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, arts 6-7.
[73] Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS, art 11.
[74] Megan Campbell and others, 'A Better Future for Women at Work,' (2018) 1 University of Oxford Human Rights Hub Journal 1.
[75] Sandra Fredman, 'Engendering Socio-Economic Rights' in Anne Hellum and Henriette Sinding Aasen (eds), Women's Human Rights: CEDAW in International, Regional and National Law (CUP 2013) 217.
[76] Sydney Colussi, Elizabeth Hill and Marian Baird, 'Reproductive Leave - An Expanding Approach to Work and Care,' in At A Turning Point: Work, Care and Family Policies in Australia, (Sydney University Press) (2023).

equality framework, it is argued that to truly "engender" the right to work, international and domestic legal regimes must acknowledge menstruation and menopause as integral to the realisation of substantive gender equality in employment.[77]

Recent developments at the international level reinforce this position. In 2022, the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO) explicitly recognised menstruation as a *human rights, gender equality, and public health issue*.[78] The OHCHR noted that prevailing stereotypes portraying menstruating individuals as "unreliable" perpetuate discrimination in workplaces and hinder women's advancement, while the WHO urged the creation of environments where menstruation is seen as "positive and healthy", not as a source of shame.[79] These acknowledgements signal a shift in international attention from pregnancy-centric protections toward a broader and inclusive recognition of reproductive health and equality across the life course.

Accordingly, incorporating menstrual leave provisions within domestic frameworks in India aligns with the State's obligations under ICESCR and CEDAW to ensure equality in employment through reasonable accommodation of biological difference. It represents a substantive approach to equality, one that dismantles structural barriers to economic participation of menstruating persons and recognises menstruation as warranting legal and institutional recognition.

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[77] Sandra Fredman, 'Engendering Socio-Economic Rights' in Anne Hellum and Henriette Sinding Aasen (eds), Women's Human Rights: CEDAW in International, Regional and National Law (CUP 2013) 217.

[78] OHCHR, 'High Commissioner for Human Rights Statement on Menstrual Health' (2022) https://www.ohchr.org/en/statements/2022/06/high-commissioner-human-rights-statement-menstrual-health.

[79] World Health Organisation, 'WHO Statement on Menstrual Health and Rights' (2022) https://www.who.int/news/item/22-06-2022-who-statement-on-menstrual-health-and-rights.

7.2 Comparative Perspective

Menstrual leave as a legal institution began in the twentieth century in different parts of the world, but the stated intentions of the policies differed wildly, with most focussing on the reproductive role of women to various extents, for instance, South Korea, Zambia, erstwhile Soviet Union and Indonesia.[80]

Legal-level protection, in **Japan**, has been guaranteed for menstruating women since 1947. Article 68 of the *Labor Standards Act* (Act No. 49 of 7 April 1947) requires the employer to allow a woman employee to avail leave during the menstrual cycle, as and when requested. This policy is known as '*Seiri Kyuka*'. The policy has been in place since 1947; it was started because Japanese Labour Unions (JLU) demanded it in the year 1920. The employer has wide discretion on factors like the number of hours/days are to be given, and whether it should be paid time off or not as the wording of the legislation implies that no pay is payable for this period, as it is up to the employer to decide whether or not to treat the days of menstrual leave as paid leave. As per the data from the Japanese Ministry of Labour for 2020, 30% of companies voluntarily provide full or partial pay for employees who take menstrual leave.

A startling result of the survey is that only 0.9% of the women workers concerned take advantage of menstrual leave.[81] This has been taken as an inspiration by various other countries, who have incorporated such provisions within their legal framework. Japanese trade unions have also emphasised that menstrual leaves ought to be

[80] Solymosi-Szekeres, Bernadett, 'A Global Analysis of Menstruation-Friendly Working Practices Through an Evaluation of International Examples' (2025) 60(1) Review of European and Comparative Law 27–47 https://doi.org/10.31743/recl.18086.

[81] Solymosi-Szekeres, Bernadett, 'A Global Analysis of Menstruation-Friendly Working Practices Through an Evaluation of International Examples' (2025) 60(1) Review of European and Comparative Law 27–47 https://doi.org/10.31743/recl.18086.

provided not just in case of “painful” menstruation, but also in cases without symptoms as the goal was to protect women’s fertility.[82]

In **Indonesia**, under Article 81 of Indonesia’s *Manpower Law,*[83] female workers who experience discomfort and pain during menstruation are expected to inform their employer and are not obligated to report to work on the first two days of their menstrual cycle. The law further stipulates that the implementation of this provision must be regulated through a work agreement, company regulation, or collective labour agreement, thereby situating operational discretion at the enterprise level.[84] Under the 1948 Labour Act, menstrual leave was first recognised and was granted as an automatic entitlement to two days’ leave. However, the law was amended by the 2003 legislation, which introduced the conditional requirement of “feeling pain” and prior notification, effectively shifting from a statutory entitlement to an employer-regulated framework.[85]

The amendment also ushered in ambiguity regarding the status of the menstrual leave from being an automatically paid one, wherein Article 93(2) states that workers who are ill due to menstruation are entitled to wages, a position supported by the International Labour Organization’s Gender-Sensitive Labour Inspection Guide, which interprets the leave as paid when the worker cannot perform her duties due to menstrual pain.[86] The employer acts as the approving authority, to whom the employee must provide a prior intimation, although there is no requirement of medical certification. The right is applicable to both public and private sectors, but its realisation

[82] Dan, Alice J ‘The Law and Women’s Bodies: The Case of Menstruation Leave in Japan’ (1986) 7 (1–2)Health Care for Women International, 13–26.
[83] Indonesia, Act Concerning Manpower (Law No. 39 of 2003), art. 81.
[84] Indonesia, Act Concerning Manpower (Law No. 39 of 2003), art. 81.
[85] Darin Atiandina, ‘The Implementation of Menstrual Leave Rights for Female Workers in Indonesia’ (2023) ISS MA Research Paper, Erasmus University.
[86] International Labour Organization, Gender-Sensitive Labour Inspection Guide (2024).

remains contingent upon the companies' internal regulation policies.[87] Moreover, many private companies limit the entitlement of employees and treat it as unpaid leave, reflecting weak enforcement.[88]

In **South Korea**, the entitlement to one day of "physiological leave" per month for female employees is grounded in the *Labour Standards Act*[89] which provides one day of paid menstrual leave to women employees in the workplace every month. The scheme was originally introduced in 1953 as a paid leave for women workers under the policy of "protecting mothers", and was revised in 2007, changing the nature of leave from paid to from paid to unpaid, and made prior application by the woman concerned a necessary condition for receiving the benefit.[90] However, the entitlement remains unconditional upon length of service, employment status or company size, and whenever a female employee files a claim to the leave, the employer must grant the same.[91] While the statute allows fines or criminal sanctions for employers who deny the leave, actual usage is low and surveys indicate utilisation rates to have fallen under 20% among eligible women, likely due to stigma, lack of awareness and the unpaid nature of the leave.[92]

In **Taiwan**,[93] female employees are entitled to three days leave in a year (with a cap of one leave in a month). Any leave exceeding such three special leaves will be deducted from their available sick leaves. The pay for menstrual leave is in line with

[87] Alinear Indonesia, 'Menstrual Leave Rights for Women Workers You Need to Know' (2023).
[88] RF Rachmawati, 'Juridicial Analysis of the Implementation of Menstrual Leave for Female Workers' (2022).
[89] South Korea, Labour Standards Act (1953), art. 73.
[90] Solymosi-Szekeres, Bernadett 'A Global Analysis of Menstruation-Friendly Working Practices Through an Evaluation of International Examples' (2025) 60(1) Review of European and Comparative Law, 27–47. https://doi.org/10.31743/recl.18086.
[91] Seoul Metropolitan Government, A Notebook on the Labour Rights of Foreign Workers (2015).
[92] K Price, 'Periodic Leave' (2024) 12(2) Eurasian Journal of Social Sciences; Menstrual Leave – An Entitlement Men Reject, The Korean Times (30 October 2012), https://www.koreatimes.co.kr/lifestyle/others/20121030/menstrual-leave-an-entitlement-men-reject.
[93] Act of Gender Equality in Employment, art 14.

that of sick leave, at a rate of 50 percent of daily pay which is considered as a half pay leave.[94] And in total, women employees will have 33 sick leaves a year, if the said menstrual leaves are to be considered within the same spectrum.[95] This policy is often described as a measure to promote the birth rates within the nation. However, it has been found through a study that Taiwanese women rarely take menstrual leave due to a lack of flexibility, the need for medical certification and inadequate information on how to apply.[96]

In **Zambia**,[97] since 2015, female employees have been given one day's leave every month without having to produce a medical certificate or give reason to the employer. The law calls it 'Mother's Day', but it applies to every working woman and it is commonly understood that this leave is to be availed during menstruation.[98] This needs to be read in the context of the patriarchal culture of Zambia, where women are considered primary caregivers irrespective of their marital status.[99]

On 1 June 2023, **Spain**[100] became the first European nation to introduce the concept of menstrual leaves as part of its legal regime through the *Organic Law 1/2023* that modifies the *Organic Law 10/2010* on sexual and reproductive health.[101] Under this,

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[94] Solymosi-Szekeres, Bernadett 'A Global Analysis of Menstruation-Friendly Working Practices Through an Evaluation of International Examples'(2025) 60(1) Review of European and Comparative Law, 27–47. https://doi.org/10.31743/recl.18086.

[95] Solymosi-Szekeres, Bernadett 'A Global Analysis of Menstruation-Friendly Working Practices Through an Evaluation of International Examples'(2025) 60(1) Review of European and Comparative Law, 27–47. https://doi.org/10.31743/recl.18086.

[96] Baird Marian, Elizabeth Hill and Sydney Colussi 'Mapping Menstrual Leave Legislation and Policy Historically and Globally: A Labor Entitlement to Reinforce, Remedy or Revolutionize Gender Equality at Work?' (2021) 42(1) Comparative Labor Law & Policy Journal 187–225.

[97] The Employment Code Act, No.3 of 2019.

[98] Kennedy Gondwe, 'Zambia women's "day off for periods" sparks debate' BBC News (Lusaka, 4 January 2017) https://www.bbc.com/news/world-africa-38490513

[99] Ibid.

[100] 'Spain Becomes the First European Nation to Pass Law Permitting Menstrual Leave' The Economic Times, (21 February 2023) https://economictimes.indiatimes.com/news/new-updates/spain-passes-law-for-menstrual-leave-becomes-europes-first-country-to-give-special-leave/articleshow/98013125.cms?from=mdr, accessed 13 November 2025.

[101] Daniel Pérez del Prado, 'Women's Health and Labour Law: Novelties from Spain' (2024) 286.

the female employees with a diagnosed menstrual condition can take menstrual leave.[102] Spain follows a social security approach, whereby the costs of menstrual leave are covered by the social security system instead of employers. The law recognises menstrual health as 'an inherent part of the right to sexual and reproductive health', and also provides for leave covering secondary disabling menstruation.[103]

7.3 Analysis

A review of comparative legal regimes demonstrates that menstrual leave is a labour protection that has existed for nearly a century. Early models in Japan, Indonesia, South Korea, Taiwan and Zambia were shaped by notions of safeguarding fertility and women's reproductive roles. The low utilisation rates in Japan, Taiwan and South Korea reflect how stigma, employer discretion, and unpaid leave conditions have hindered meaningful realisation of the entitlement. However, in the last decade, the international narrative has shifted to questions of workplace equality. This shift is driven by the evolution of international human rights law from the traditional focus on international labour protections on pregnancy and maternity to address the full spectrum of reproductive and bodily processes that affect workers, including menstruation, premenstrual disorder, and menopause. International instruments now reject earlier notions that regarded menstruation as a taboo outside the scope of labour regulations. For India, this trajectory is insightful since it paves the way to ensure non-discriminatory work conditions through reasonable accommodations.

[102] Samuel Petrequin, 'A year on, Spain's "historic" menstrual leave law has hardly been used. Why?' The Guardian (4 June 2024) https://www.theguardian.com/world/article/2024/jun/04/spain-historic-menstrual-leave-law-hardly-used-period-pain-endometriosis
[103] Daniel Pérez del Prado, 'Women's Health and Labour Law: Novelties from Spain' (2024) 286.

8. Issues and Challenges

An analysis of the international and national policies reveals that the following challenges may persist while enacting menstrual leave policies:

(i) **Identification of Sanctioning Authority:** It is pertinent to clearly define the authority who would be responsible for sanctioning of the menstrual leaves. It should be clearly specified as to whether the power to approve the leaves would rest with the immediate supervisor, or the administration. The failure to specify this may result in difficulty and reluctance among employees to seek such leave.

(ii) **Determination of Number of Leaves:** Deciding the appropriate number of menstrual leaves to be allowed per month would be one of the major deciding factors. While it is important for the policy to provide the required support to employees experiencing difficulty due to menstruation, it is also to be ensured that administrative efficiency and workflow are not adversely affected.

(iii) **Privacy:** With the implementation of a menstrual leave policy, raise concerns relating to the right to privacy of employees availing these leaves. Any requirement that makes an individual disclose or substantiate their menstrual status in order to avail leave would constitute an intrusion into their personal privacy which is safeguarded under Article 21 of the Constitution of India. The Gujarat High Court in ***Nirjhari Mukul Sinha v. Union of India***[104] emphasised that compelling women to reveal their menstrual status infringes upon their right to privacy and dignity. To address such privacy concerns, the policy should consist of a self-declaration provision under which the employees will be able to avail menstrual leave without any medical certificates or reports, unless necessary. Records pertaining to these

[104] R/WRIT PETITION (PIL) NO. 38 of 2020 order dated 26.02.2021.

leaves shall be maintained through confidential and secure processes which would be accessible only to the concerned departments. The organisation may also undertake periodic awareness programmes in order to prevent stigma or bias and to ensure that such leaves are treated at par with other forms of leaves, without any discrimination and prejudice.

(iv) **Prevention from Humiliation and Stereotyping:** A prominent challenge with respect to the implementation of menstrual leave policies is the risk of stigma, stereotyping and humiliation of the employees who avail such leaves. Social taboos that are deeply ingrained and the misconceptions around menstruation may pave the way to workplace bias, typecasting, or the perception that menstruating employees are less capable or less committed to their work. Such attitudes would lead to violation of the principles of equality and dignity enshrined under Articles 14, 15, and 21 of the Constitution and undermine the very objective of the policy. In order to prevent such outcomes, the policy shall recommend a respectful and non-discriminatory workplace culture, wherein menstrual leaves would be considered as normal and as a part of exercising one's right to health. Hence, it is critical that a right balance is maintained between recognising physiological needs and maintaining optimum workflow. Hence, the number of leaves should be carefully calibrated to ensure sensitivity, effective implementation and fairness.

9. Sample Policy

This White Paper proposes two alternative policy frameworks for institutional menstrual leave, each grounded in constitutional values of dignity, substantive equality, and workplace inclusiveness, but differing in their method of implementation.

Model A provides 12 additional casual leaves to all menstruating employees, in addition to the 8 leaves they are entitled to, thereby expanding the pool of casual leave to 20 days annually. By extending the number of casual leaves, this model does not require employees to disclose the menstrual or health-related reasons for availing such leave. This model prioritises privacy, reduces the risk of workplace stereotyping and gender-based comments, and offers a more inclusive framework for all menstruating persons, including transgender men and non-binary individuals, who may not wish to reveal gender identities or health conditions

Model B, by contrast, adopts an explicit menstrual-leave approach, granting one designated paid day of leave per month specifically for menstruation-related symptoms. This model emphasises visibility and formal recognition of menstrual health needs, thereby aiming to normalise menstruation within professional settings and address the longstanding invisibilisation of menstruating persons' health concerns.

While Model A foregrounds recognition and explicit accommodation, Model B focuses on dignity, autonomy, and minimising stigma through confidential utilisation.

Given that both models share the same underlying normative commitments, all definitions, preliminary explanations, and general provisions up to the "Entitlement" section remain identical for both policies. Only from the point of entitlement onward do the two models diverge in their operational logic, with Model A adopting a privacy-

protective expanded casual-leave structure and Model B following an explicit menstrual-leave structure. Both models represent distinct but constitutionally grounded pathways for institutionalising menstrual leave within workspaces.

Both models are constitutionally rooted in Article 15(3) and advance the objectives of gendered equality, dignity and workplace fairness, yet they embody different strategies for achieving these aims. This White Paper recognises the legitimacy of both approaches and provides detailed operational frameworks for institutions to select the model best detailed operational frameworks for institutions to select the model best aligned with their constitutional commitments, workforce demographics and organisational culture.

The sections that follow set out these differences clearly so that institutions may choose the model most compatible with their constitutional obligations, administrative capacity, and workplace culture.

Model A

(a) Purpose

This Policy will focus on allowing 20 casual leaves (8 already provided+12 additional casual leaves) per year to menstruating persons to manage symptoms of menstruation, thereby ensuring equal and dignified treatment in the workplace. It aims at understanding and acknowledging the physical and emotional toll that menstruation takes on a woman's body. The purpose will be to protect the health, dignity and well-being of menstruating individuals.

(b) Definitions

This Policy will define the conditions under which employees can take paid time off from work for health reasons pertaining to menstruation, which can affect an employee's ability to perform at their job efficiently.

(i) **Employee:** For this model, employee includes all menstruating persons engaged by the requisite institution, whether permanent or contractual, including cisgendered women, adolescent girls, transgender persons, and non-binary persons, between 18 years to 52 years of age, provided that the age bracket may be extended up to 55 years upon submission of a medical certificate issued by a registered medical practitioner.

(ii) **Day:** Day means a "working day".

(iii) **Eligible Period:** Employees shall be entitled to a total of 20 casual leaves in a calendar year. No more than 8 casual leaves may be taken consecutively in a year. After availing 8 consecutive casual leaves, the employee shall thereafter be eligible only for one casual leave per month, and any such monthly leave not availed shall lapse and shall not be carried forward.

(iv) **Immediate Supervisor:** The immediate supervisor will be the officer to whom the employee directly reports and who is responsible for reviewing, approving and forwarding the employee's leave requests. The Immediate Supervisor may also be the reviewing authority in instances where the employee requests an extension of the age bracket.

(v) **Confidentiality:** The Immediate Supervisor and other employees will have an obligation to ensure that the employee's privacy and dignity are safeguarded.

(c) Entitlement

(i) All employees experiencing menstruation, including permanent and contractual employees, shall be entitled to menstrual leave as per this policy.

(ii) The leave shall apply irrespective of designation or group.

(iii) Casual leaves may be availed as a full day or a half day, depending on the severity of the condition and the employee's preference.

(iv) Employees should apply for casual leaves through the official channel and notify their Immediate Supervisor at the earliest possible time.

(v) Availing of casual leaves by employees should not affect their salary, continuity of service, evaluation of their performance or other benefits.

(d) Access and Documentation

(i) Employees are not required to declare the purpose of their casual leaves. Intimation by the employee will be considered sufficient to apply for a single day casual leave in a calendar month. No medical certificate shall be required for the same.

(ii) In case of emergency, the employee shall convey about the CL on the same day verbally, via mail, text message or any other mode.[105] However, intimation through formal channels shall be completed within 48 hours to maintain proper records.

(iii) Other employees are to refrain from asking about cycle dates, past history or other personal details related to this as such queries would go against the policy of confidentiality.

(e) Operational Safeguards

(i) Use of casual leaves would not affect Annual Confidential Report (ACR), transfer, training or assignment decisions of the employee.

(ii) While employees are not required to intimate their supervisors regarding their menstrual health, supervisors shall not make any adverse or discriminatory remarks against such employees if they disclose such information.

(f) Support for PCOS and Other Conditions

Employees shall be allowed to take breaks between work, in order to accommodate symptoms like fatigue and menstrual cramps.

(g) Grievance Redressal

A committee shall be constituted with three officers of the organisation in order to address issues arising such as discrimination, stereotyping, denial, ridicule or breach of confidentiality. This committee will ensure resolution within 15 working days.

[105] The idea of prior notification is not feasible for most people as the exact date cannot be predicted. The cycle would depend on factors including asymptomatic health conditions, stress etc.

(h) Training and Communication

(i) A mandatory annual training shall be consulted for all the employees (permanent, probationers or contractual) which will disseminate information on handling requests, scheduling rosters as per the availability of employees and maintain confidentiality.

(ii) An official circular to be published explaining why the policy exists referring to dignity and right to health, how it works and how to follow privacy safeguards.

(i) Monitoring and Review

(i) There should be an annual review by a committee formed specifically for this purpose which will include an officer of the organisation, a medical officer, and two staff representatives, of which one should be a woman.

(ii) The review is done using anonymous metrics and to be kept confidential.

(iii) If the committee comes across any misuse, the individual employee to be contacted for one-on-one conversation by the committee and necessary actions to be taken.

Model B

(a) Purpose

This policy creates a separate category of menstrual leave, and entitles all menstruating employees, whether contractual or permanent, to avail a **one-day Symptoms-Based Health Leave** to protect the health, dignity and well-being of menstruating individuals.

(b) Definitions

This Policy will define the conditions under which employees can take paid time off from work for health reasons pertaining to menstruation, which can affect an employee's ability to perform at their job efficiently.

(i) **Menstruation**: It is a natural biological process experienced by all menstruating persons, involving periodic shedding of the uterine lining, usually once in a month for 3-7 days,[106] depending on various physiological factors.

(ii) **Menstruating Persons:** Menstruating persons are persons who experience menstruation, including cisgendered women, adolescent girls, transgender men, non-binary, and agender individuals, among others.

(iii) **Menstrual Leave:** Paid leave granted to an employee who is experiencing menstruation-related symptoms that affect their ability to work.

(iv) **Employee:** lincludes all menstruating persons engaged by the requisite institution, whether permanent or contractual, including cisgendered women, adolescent girls, transgender persons, and non-binary persons, between 18 years to 52 years of age, provided that the age bracket may be extended up to 55 years upon submission of a medical certificate issued by a registered medical practitioner.

[106] Might vary in case of people suffering from PCOS and other conditions.

(v) **Day:** Day means a "working day".

(vi) **Medical Certificate** (if applicable): It refers to a written document issued by a registered medical practitioner, certifying that the employee is experiencing menstrual-related health conditions which necessitate leave from work.

(vii) **Eligible Period:** Employees will be eligible for a day off every month as casual leave i.e., a maximum of 12 such leaves in a year, in addition to the casual leaves they are entitled to. The age bracket for availing these leaves will be between 18 years to 52 years of age. The age bracket may be extended up to 55 years upon submission of a medical certificate issued by a registered medical practitioner.

(viii) **Immediate Supervisor:** The immediate supervisor will be the officer to whom the employee directly reports and who is responsible for reviewing, approving and forwarding the employee's leave requests.

(ix) **Confidentiality:** The Immediate Supervisor and other employees will have an obligation to ensure that the employee's privacy and dignity are safe guarded.

(x) **Menstrual Health Conditions**: Menstrual health conditions refer to physical or psychological symptoms arising from the menstrual cycle that may affect an employee's ability to perform regular work duties. These may include, but are not limited to, dysmenorrhea (painful periods), menorrhagia (heavy bleeding),[107] premenstrual syndrome (PMS), premenstrual dysphoric disorder (PMDD),[108] fatigue, nausea, migraines, or other related medical conditions as certified by a registered medical practitioner.

[107] 'Menorrhagia is defined as bleeding that exceeds 8 days in duration on a regular basis.' Rajini Priya and Syed Razia Sultana, 'A Study on Cases of Menorrhagia: Demography, Etiology, Management and Follow Up' (2021) 5(5) International Journal of Clinical Obstetrics and Gynaecology 24–27.

[108] 'PMDD is a severe form of PMS manifested by more intensified emotional symptoms affecting a subset of menstruating women with a disease burden compared to other depressive disorders.' Carlini SV and Deligiannidis KM, 'Evidence-Based Treatment of Premenstrual Dysphoric Disorder: A Concise Review' (2020) 81(2) Journal of Clinical Psychiatry 6789.

(xi) **Casual Leave (CL):** All eligible employees shall be entitled to 8 days of Casual Leave per calendar year, usable for short-notice personal, domestic, or administrative reasons.

(xii) **Symptoms-Based Health Leave (SHL):** All eligible employees shall further be entitled to 12 days of Symptoms-based Health Leave per calendar year, accruing specifically to address shirt-duration health needs that may require intermittent leave, including but not limited to:

- Menstrual pain, heavy bleeding, or related symptoms,
- Endometriosis, PCOS/PCOD flare ups,
- Gender-affirming care related discomfort or dysphoria,
- Any cyclic, episodic, or chronic symptom where disclosure of the underlying condition is not necessary.

(c) Entitlement

Employees can only avail **one SHL per month.** These additional SHLs shall be treated on par with ordinary CL for all service purposes, save for the specific modalities contained in this Policy. Such leave shall lapse at the end of each month and shall not be accumulated, encashed, or carried forward under any circumstances.

(d) Eligibility

All employees defined under this policy shall automatically be entitled to the additional 12 SHLs under this Policy, irrespective of designation, post, or contractual/permanent status. Furthermore, the SHL shall be eligible to avail regardless of gender identity and biological characteristics. Moreover, no medical

declaration, certification, or disclosure of cause shall be required for availing the monthly SHL.

(e) Utilisation

(i) The SHL may be availed as a full day or a half day at the employee's discretion, depending on the severity of the health condition experienced.

(ii) Such SHL may only be taken on the day of the health condition or its immediate aftermath.

(iii) Employees shall intimate their Immediate Supervisor or in-charge officer at the earliest possible time through formal or informal means (verbal, email, text message, or other official communication channels).

(iv) No employee shall be required to disclose the specific health condition, symptoms, or personal medical details underlying the leave request.

(f) Operational Safeguards

(i) No adverse inference shall be drawn from the use of SHL for purposes of ACR, transfer, training, or assignment.

(ii) Supervisors shall not make discriminatory or adverse comments should an employee voluntarily disclose their health condition.

(g) Anti-Misuse Measures

(i) **No Accumulation or Pooling:** The 12 days of SHL shall be strictly non-accumulative and non-poolable. These cannot be combined or clubbed with CLs, or carried forward across months.

(ii) **No Consecutive Stacking:** These leaves shall not be availed consecutively in a manner resembling long leave. Ordinarily, only one such SHL may be availed per month unless supported by a general medical note certifying temporary incapacity.

(iii) **General CL Cap:** The existing rule providing the ceiling that no more than 8 ordinary CLs may be taken at once shall continue to apply. The SHLs under this Policy cannot be used to bypass this cap.

(h) Support for Menstrual Health, PCOS, and Related Conditions

(i) Employees experiencing severe symptoms (including PCOS, PMDD, dysmenorrhea, or other chronic conditions) may request reasonable adjustments, including short breaks or flexible hours, subject to supervisory approval.

(ii) Supervisors shall accommodate such requests without requiring disclosure of sensitive medical details.

(i) Grievance Redressal

A Grievance Committee comprising three officials from the institution shall address complaints relating to discrimination, breach of confidentiality, stereotyping, denial of leave, or retaliatory action. Complaints shall be resolved within fifteen working days.

(j) Training and Communication

(i) Annual training shall be conducted for all employees (permanent, probationary, and contractual) on privacy protections, handling of CL requests, and roster management.

(ii) An official circular shall be issued explaining the purpose, scope, and privacy safeguards of this Policy.

(k) Monitoring and Review

(i) An annual review shall be conducted by a committee comprising: one official, one medical officer, and two staff representatives (one of whom shall be a woman).

(ii) Reviews shall rely solely on anonymous, non-identifying data and shall remain confidential.

(iii) Where misuse is suspected, the concerned employee may be invited for a confidential one-on-one interaction before administrative action is considered.

(l) Policy Compliance

This Policy shall be mandatorily implemented across all relevant units. Non-compliance may attract administrative action under the appropriate service rules.

(m) Access and Documentation

(i) **Intimation:** Employees availing the SHL need only intimate their Supervisor of their absence. The purpose of the leave need not be disclosed.

(ii) **Emergent Need:** In emergencies, same-day verbal or electronic intimation shall suffice, provided formal intimation is completed within 48 hours.

(iii) **Privacy:** Supervisors and staff shall not make intrusive enquiries into an employee's health condition, cycle dates, medical history, or any personal information related thereto.

(n) Medical Certificate Requirement

A medical certificate shall not be required for availing the additional monthly SHL. A certificate may be requested only in the following circumstances:

(i) Where an employee seeks to avail more than one day of CL in a month due to severe or incapacitating health conditions. A short medical note certifying

"temporary incapacity" shall suffice without any requirement of disclosing medical history;

(ii) Where the employee seeks to combine CL with other categories of leave (such as medical leave) under service rules;

(iii) Where a pattern of leave use suggests persistent misuse, and only after prior advisories have been issued.

10. Recommendations

In light of the foregoing analysis, it is recommended that the organisations, both government and private, formulate and adopt a comprehensive Menstrual Leave Policy as part of their institutional commitment towards equality, inclusivity, and the holistic well-being of their employees. The policy should recognise menstrual health as an important facet of workplace welfare grounded in the constitutional guarantees of equality, dignity and humane working conditions.

It is imperative that all employees who menstruate are provided a dignified and accessible mechanism to avail menstrual leave without facing stigma, professional disadvantage, or financial loss. Menstrual leave may be integrated within the existing framework of leave policy, allowing employees to avail a fixed number of days off per month in a manner that ensures privacy and confidentiality. The process of availing such leave should not require disclosure of gender identity or medical details, thereby upholding the right to self-identification affirmed in ***NALSA v. Union of India***.[109]

The policy should adopt inclusive terminology, referring to “employees who menstruate” rather than gendered categories, and ensure that all internal communication, forms, and circulars reflect this inclusive approach. The linguistic and procedural degendering of menstruation will align the policy with the Supreme Court’s constitutional vision of substantive equality.

In furtherance of this policy, organisations must also promote awareness and sensitivity through periodic workshops and informational sessions. These initiatives should focus on dispelling stigma around menstruation, fostering empathy among the

[109] (2014) 5 SCC 438.

workforce and ensuring that all employees irrespective of their gender identities feel respected and supported in exercising their rights.

By adopting such a policy, the organisations will demonstrate a proactive commitment to equitable and inclusive workplace practices, ensuring that every employee can contribute meaningfully without compromising health, comfort, or dignity.

11. Conclusion

The recognition of menstrual leave within workplaces will mark a crucial progressive step towards guaranteeing equality, well-being and dignity to all individuals who menstruate. Such acknowledgement would uphold the constitutional values of equality, protection from discrimination and an assurance of humane working conditions under Articles 14, 15, 21, and 42 of the Constitution of India.

Menstrual leave is not a matter of privilege, but a recognition of a biological and physiological reality that directly impacts workplace participation and productivity. By integrating such leave within institutional policy, organisations would move beyond formal equality to embrace affirmative inclusion acknowledging differential needs in the workplace without stigma or disadvantage.

Fundamentally menstrual leave policy embodies social equity, human rights, and health rights. By enacting such an inclusive policy framework, institutions can progress towards achieving the constitutional promise of fairness, dignity, and equality in the workplace ensuring that every employee is supported in both body and mind.

The Supreme Court can be a pioneering institution in this regard and implement menstrual leaves for all the concerned court employees. The adoption of a degendered and intersectional menstrual leave policy will place the Supreme Court as a model institution, setting a precedent for both public and private employees across India.