

## Transforming Leave Structures: Integrating Menstrual Leave within Women-Centric Labour Rights

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### Abstract

Menstruation has historically remained an invisible and stigmatised biological reality within labour law discourse, despite its profound implications for women's participation, dignity, and equality in the workplace. Conventional leave frameworks, structured around assumptions of uninterrupted productivity and gender neutrality, fail to account for the gender-specific health needs arising from menstruation. This omission perpetuates structural inequality by forcing women to navigate workplaces that neither recognise menstrual health challenges nor provide adequate accommodations. This paper critically examines menstrual leave as a women-centric labour right situated within constitutional guarantees of dignity, equality, and just conditions of work. It argues that menstrual leave should not be perceived as a discretionary welfare benefit but as an essential component of substantive equality and work-life balance. Through a doctrinal analysis of Indian constitutional jurisprudence, labour legislation, and emerging judicial trends, the study highlights the silences within India's labour law framework regarding menstrual health. Adopting a comparative perspective, the paper analyses menstrual leave regimes in jurisdictions such as Japan, South Korea, Indonesia, and Spain, evaluating their normative foundations, implementation challenges, and gender-equality outcomes. It further engages with international labour and human rights standards to situate menstrual leave within broader discourses on reproductive justice and occupational health. The paper concludes by proposing a rights-based framework for integrating menstrual leave into Indian labour law, emphasising safeguards against stigma, discrimination, and employment precarity.

**Keywords:** Menstrual Leave, Women-Centric Labour Rights, Substantive Equality, Work-Life Balance, Labour Law Reform

### Part I – Introduction: Menstruation, Labour Law, and Structural Invisibility

Labour law has traditionally been constructed around a model of the ideal worker—one who is perpetually available, physically unencumbered, and able to conform to standardised patterns of productivity. This ostensibly gender-neutral model, however, is deeply rooted in masculine assumptions about work and the body. As a result, biological realities specific to women, including menstruation, pregnancy, and reproductive health, have historically been marginalised or addressed only through limited protective legislation. Among these, menstruation remains one of the least acknowledged dimensions of women's workplace experiences.

Menstruation affects a significant proportion of the working population for a substantial part of their lives. For many women, menstrual cycles are accompanied by symptoms such as severe pain, fatigue, migraines, and emotional distress, which can impair their ability to perform work under rigid scheduling and attendance norms. Despite this, labour law frameworks have largely treated menstruation as a private concern, external to employment regulation. This regulatory silence reflects broader societal taboos surrounding menstruation, which frame it as an inconvenience rather than a legitimate workplace issue. In India, labour welfare legislation has demonstrated a willingness to recognise gender-specific needs in certain contexts, most notably through maternity benefits. The Maternity Benefit Act, 1961, and its subsequent amendments acknowledge pregnancy and childbirth as conditions warranting state intervention to protect women's health and employment security. Judicial interpretation has further reinforced maternity benefits as flowing from constitutional guarantees of dignity and equality. However, this recognition has not been extended to menstruation, despite its recurring and predictable impact on women's health and work capacity. The absence of menstrual leave from statutory labour frameworks underscores a hierarchy of reproductive experiences, wherein childbirth is valorised as socially productive while menstruation is rendered invisible. The constitutional foundations for recognising menstrual leave as a labour right can be traced to Article 21 of the Constitution of India, which guarantees the right to life with dignity. The Supreme Court has consistently interpreted this provision to encompass the right to humane working conditions, health, and bodily integrity. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, the Court held that the right to life includes the right to live with human dignity and all that goes along with it, such as adequate nutrition, clothing, and conditions of work consistent with human dignity<sup>1</sup>. This expansive interpretation provides a normative basis for recognising menstrual health as an integral component of dignified work.

Similarly, Article 14's guarantee of equality before the law and Article 15's prohibition of discrimination on grounds of sex demand a substantive, rather than formal, approach to gender equality. Treating men and women identically in workplace policies, without accounting for biological differences that disproportionately affect women, results in indirect discrimination. The Supreme Court's equality jurisprudence has increasingly acknowledged this reality, emphasising that true equality requires differential treatment where circumstances so demand<sup>2</sup>. From this perspective, menstrual leave emerges not as a special privilege but as a corrective measure aimed at levelling the playing field.

The relevance of menstrual leave must also be understood within broader work-life balance discourse. Contemporary workplaces, characterised by heightened performance pressures and reduced tolerance for absenteeism, exacerbate the challenges faced by menstruating workers. The expectation of uninterrupted productivity often compels women to work through pain or resort to unpaid leave, thereby internalising the cost of biological processes. This dynamic reinforces gendered patterns of labour market disadvantage, including reduced productivity assessments, stigma, and career stagnation. Against this backdrop, this paper argues that the integration of menstrual leave within labour law is both a constitutional imperative and a necessity for advancing women-centric labour rights. By situating menstrual leave at the intersection of equality, dignity, occupational health, and work-life balance, the study seeks to reframe menstruation as a legitimate concern of labour regulation rather than a private inconvenience. The following sections examine the historical treatment of menstruation in labour law, analyse comparative legal models, and propose a rights-based framework for integrating menstrual leave into Indian labour legislation.

### Part II – Historical Treatment of Menstruation in Labour Regulation: Silence, Stigma, and Selective Protection

The historical development of labour law reveals a consistent pattern of regulatory silence surrounding menstruation. While labour legislation has progressively addressed issues such as wages, working hours, occupational safety, and maternity, menstruation has remained conspicuously absent from statutory and judicial discourse. This omission is not accidental but reflective of deeper socio-legal attitudes that treat menstruation as a private, shame-laden biological process unworthy of public or legal acknowledgment. As a result, labour law has evolved in ways that accommodate certain reproductive functions while systematically excluding others.

#### 2.1 Early Labour Law and the Gender-Neutral Worker Paradigm

The foundations of modern labour law were laid during the industrial era, a period characterised by mass factory employment and rigid production schedules. Early labour legislation in India and elsewhere was primarily concerned with regulating exploitative working conditions, particularly for women and children. Statutes such as the Factories Act, 1948, introduced limits on working hours, provisions for rest intervals,

<sup>1</sup> *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

<sup>2</sup> *Anuj Garg v Hotel Association of India*, (2008) 3 SCC 1.

and safeguards against hazardous work. However, these measures were framed within a protectionist paradigm that viewed women as a vulnerable class requiring special safeguards rather than as rights-bearing workers with distinct health needs.

This protectionist approach selectively recognised biological difference. Pregnancy and childbirth were eventually acknowledged as conditions necessitating legal intervention, culminating in maternity benefit legislation. Menstruation, by contrast, was excluded from regulatory consideration, possibly because it did not align with the economic logic of social reproduction that justified maternity protection. Whereas pregnancy was seen as contributing to population growth and workforce continuity, menstruation was perceived as a routine inconvenience, better managed privately than addressed through law.

The notion of a gender-neutral worker further reinforced this exclusion. Labour law assumed uniform bodily capacity and uninterrupted availability, thereby rendering invisible the cyclical health realities experienced by women. This assumption continues to inform workplace norms that privilege presenteeism and penalise bodily variance.

## **2.2 Colonial and Post-Colonial Attitudes towards Women's Labour**

Colonial labour regulation in India largely mirrored British industrial legislation, focusing on productivity, discipline, and minimal welfare. Women's bodies were regulated primarily to protect imperial economic interests rather than to advance gender equality. Post-independence labour reform retained much of this structural logic, albeit reframed within a welfare-state narrative. The Constitution of India marked a normative departure by embedding social justice, dignity, and equality as foundational values. However, the translation of these principles into labour legislation remained uneven.

The introduction of maternity benefits reflected constitutional commitments to women's health and equality. In *Municipal Corporation of Delhi v Female Workers (Muster Roll)*, the Supreme Court explicitly recognised maternity benefits as flowing from the right to life and equality, affirming that motherhood warrants social protection regardless of employment status<sup>3</sup>. Yet, this progressive recognition did not catalyse broader engagement with women's reproductive health beyond pregnancy. Menstruation remained excluded from the legal imagination, reinforcing its status as a non-issue within labour regulation.

## **2.3 Menstruation, Stigma, and the Public-Private Divide**

The legal invisibility of menstruation is deeply intertwined with cultural stigma. Menstruation has historically been associated with notions of impurity and weakness, leading to its confinement within the private sphere. Law, as a public institution, has largely mirrored this cultural reticence. The reluctance to legislate on menstruation stems not only from administrative concerns but also from discomfort with acknowledging bodily processes that disrupt normative ideals of productivity.

This public-private divide has significant implications for labour rights. By relegating menstruation to the private realm, the law effectively transfers the burden of accommodation onto individual women. Workers are expected to self-manage pain, discomfort, and reduced capacity, often through unpaid leave or silent endurance. Such expectations normalise structural disadvantage and perpetuate gendered inequities in employment outcomes.

Judicial discourse on dignity offers a counter-narrative to this marginalisation. In *Bandhua Mukti Morcha v Union of India*, the Supreme Court underscored that the right to live with dignity includes protection against conditions that degrade human worth<sup>4</sup>. Although the case addressed bonded labour, its articulation of dignity as a core constitutional value provides a normative lens through which the exclusion of menstrual health from labour law may be critiqued.

## **2.4 Early International Approaches to Menstrual Leave**

Internationally, the recognition of menstrual leave has been sporadic and often contested. Japan was among the earliest jurisdictions to introduce menstrual leave under its Labour Standards Act of 1947, granting women the right to request leave during menstruation if work was especially difficult. This provision emerged in the aftermath of World War II, reflecting both labour shortages and a welfare-oriented approach to women's employment. However, the framing of menstrual leave as optional and employer-dependent limited its transformative potential.

Other countries, such as Indonesia and South Korea, have similarly introduced menstrual leave provisions, though implementation has been inconsistent. In many cases, social stigma and fear of discrimination have discouraged women from availing such leave, highlighting the limitations of formal legal recognition without cultural change. These experiences underscore that menstrual leave must be embedded within a broader equality framework to avoid reinforcing stereotypes or marginalisation.

## **2.5 Implications for Contemporary Labour Law Reform**

The historical silence surrounding menstruation in labour law reveals the persistence of androcentric norms that prioritise uninterrupted productivity over bodily realities. This silence is increasingly untenable in light of contemporary understandings of gender equality, occupational health, and work-life balance. The selective recognition of reproductive health undermines the coherence of labour welfare frameworks and perpetuates indirect discrimination against women.

Recognising menstrual leave as a labour right requires confronting the historical biases embedded within labour regulation. It necessitates a shift from protectionist or welfare-based approaches towards a rights-based framework grounded in dignity, equality, and health. By examining how menstruation has been marginalised within labour law's historical development, this section lays the groundwork for a constitutional and comparative analysis of menstrual leave as an essential component of women-centric labour rights.

## **Part III – Constitutional Foundations of Menstrual Leave: Dignity, Equality, and Reproductive Justice**

The constitutional framework of India provides a robust normative foundation for recognising menstrual leave as an enforceable labour right. Although the Constitution does not explicitly refer to menstruation or menstrual health, its guarantees of equality, dignity, health, and social justice collectively support a rights-based approach to women-centric labour protections. A purposive interpretation of these provisions reveals that the exclusion of menstrual leave from labour regulation constitutes a form of structural inequality that disproportionately burdens women workers.

### **3.1 Article 14 and Substantive Equality in the Workplace**

Article 14 of the Constitution enshrines the principle of equality before law and equal protection of laws. Judicial interpretation has consistently moved beyond formal equality to embrace substantive equality, recognising that identical treatment of unequals may perpetuate injustice. In *State of Kerala v N M Thomas*, the Supreme Court affirmed that equality must account for existing social and economic disparities, allowing differential treatment to achieve real equality<sup>5</sup>.

Menstrual leave aligns squarely with this understanding. Women experience cyclical physiological conditions that may temporarily impair their capacity to work at full efficiency. A workplace regime that ignores these realities imposes a disproportionate burden on women, effectively privileging male-bodied norms of productivity. By refusing accommodation, such regimes indirectly discriminate against women, thereby violating Article 14.

<sup>3</sup> *Municipal Corporation of Delhi v Female Workers (Muster Roll)*, (2000) 3 SCC 224.

<sup>4</sup> *Bandhua Mukti Morcha v Union of India*, (1984) 3 SCC 161.

<sup>5</sup> *State of Kerala v N M Thomas*, (1976) 2 SCC 310.

The denial of menstrual leave is not a neutral omission but a systemic failure to recognise gender-specific needs. Substantive equality requires the law to respond to difference without reinforcing disadvantage. Menstrual leave, when framed as a health-based accommodation rather than a concession, advances this constitutional mandate.

### 3.2 Article 15 and the Scope of Protective Discrimination

Article 15(1) prohibits discrimination on grounds of sex, while Article 15(3) permits the State to make special provisions for women and children. This enabling clause has served as the constitutional basis for a range of gender-specific welfare measures, including maternity benefits, reservation policies, and protective labour legislation. In *Yusuf Abdul Aziz v State of Bombay*, the Court upheld sex-based differentiation aimed at protecting women, recognising the legitimacy of affirmative measures<sup>6</sup>.

Menstrual leave may be justified under Article 15(3) as a special provision designed to address biological realities that uniquely affect women. However, contemporary constitutional jurisprudence cautions against paternalistic interpretations of protection. In *Anuj Garg v Hotel Association of India*, the Supreme Court rejected stereotypes-based protective laws, emphasising that measures for women must enhance autonomy rather than reinforce dependency<sup>7</sup>.

Accordingly, menstrual leave must be conceptualised not as a protective indulgence but as an empowerment mechanism. When designed with safeguards against stigma and discrimination, menstrual leave enhances women's agency by enabling informed choices about health and work, consistent with the constitutional vision of gender justice.

### 3.3 Article 21: Dignity, Health, and Bodily Integrity

Article 21, guaranteeing the right to life and personal liberty, has been expansively interpreted to include the right to live with dignity, the right to health, and the right to bodily autonomy. In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, the Supreme Court held that the right to life encompasses all aspects that make life meaningful, including dignity and humane conditions of work<sup>8</sup>.

Menstrual health is an integral component of bodily integrity and overall well-being. Forcing women to work through severe menstrual pain, fatigue, or related conditions undermines their dignity and violates their right to health. The absence of menstrual leave compels women to choose between economic security and physical well-being, a dilemma incompatible with Article 21's protective scope. Judicial recognition of reproductive rights further strengthens this argument. In *Suchita Srivastava v Chandigarh Administration*, the Court affirmed reproductive autonomy as a facet of personal liberty and dignity<sup>9</sup>. Although the case concerned reproductive choice, its emphasis on bodily autonomy applies equally to menstrual health, which forms part of the broader continuum of reproductive justice.

### 3.4 Directive Principles and Labour Welfare Obligations

The Directive Principles of State Policy, though non-justiciable, inform the interpretation of fundamental rights and guide legislative action. Articles 38, 39, 42, and 43 collectively mandate the State to promote social justice, secure humane conditions of work, and provide maternity relief. Article 42, in particular, directs the State to ensure just and humane conditions of work and maternity relief, reflecting a constitutional concern for women's health in employment contexts. While Article 42 explicitly mentions maternity, its underlying rationale—protecting women's health in relation to reproductive functions—can logically extend to menstruation. The selective implementation of this directive reveals an incomplete commitment to gender-sensitive labour welfare. Courts have frequently relied on Directive Principles to expand the content of fundamental rights, as seen in *Olga Tellis v Bombay Municipal Corporation*, where the right to livelihood was read into Article 21<sup>10</sup>. A similar interpretive approach supports the incorporation of menstrual leave within labour rights, bridging the gap between constitutional ideals and workplace realities.

### 3.5 Reproductive Justice as a Constitutional Lens

The concept of reproductive justice provides a holistic framework for understanding menstrual leave as a constitutional entitlement. Reproductive justice transcends the narrow focus on reproduction to encompass the social, economic, and cultural conditions that enable individuals to exercise control over their bodies. Menstrual health is central to this framework, influencing education, employment, and participation in public life.

Indian constitutional jurisprudence has increasingly embraced intersectional approaches to rights. In *Navtej Singh Johar v Union of India*, the Supreme Court emphasised dignity, autonomy, and the right to self-expression as core constitutional values<sup>11</sup>. Applying this ethos to labour law necessitates recognising menstruation as a legitimate concern of public policy rather than a private inconvenience.

Menstrual leave, viewed through the lens of reproductive justice, emerges as a constitutional imperative rather than a discretionary welfare measure. It aligns with the transformative vision of the Constitution, which seeks not merely to formalise equality but to dismantle entrenched structures of exclusion.

## Part IV – International Human Rights Framework and Comparative Labour Law on Menstrual Leave

Although menstrual leave has not yet crystallised as a universally recognised labour right, international human rights law provides substantial normative support for its inclusion within gender-responsive employment protections. Global labour standards, health frameworks, and comparative legislative practices collectively demonstrate an emerging consensus that menstrual health is inseparable from workplace equality, dignity, and well-being.

### 4.1 International Human Rights Norms and Menstrual Health

The Universal Declaration of Human Rights affirms the right to health, dignity, and just and favourable conditions of work<sup>12</sup>. These principles have been elaborated through binding treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which obligates States to ensure safe and healthy working conditions and the highest attainable standard of physical and mental health<sup>13</sup>. Menstrual health, though not explicitly mentioned, falls squarely within the ambit of these guarantees.

The Committee on Economic, Social and Cultural Rights has clarified that the right to health encompasses sexual and reproductive health, including conditions that uniquely affect women<sup>14</sup>. Menstruation, as a recurring physiological process with potential health implications, warrants accommodation within employment frameworks. Failure to recognise this need perpetuates indirect discrimination and undermines substantive gender equality.

<sup>6</sup> *Yusuf Abdul Aziz v State of Bombay*, AIR 1954 SC 321.

<sup>7</sup> *Anuj Garg v Hotel Association of India*, (2008) 3 SCC 1.

<sup>8</sup> *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

<sup>9</sup> *Suchita Srivastava v Chandigarh Administration*, (2009) 9 SCC 1.

<sup>10</sup> *Olga Tellis v Bombay Municipal Corporation*, (1985) 3 SCC 545.

<sup>11</sup> *Navtej Singh Johar v Union of India*, (2018) 10 SCC 1.

<sup>12</sup> Universal Declaration of Human Rights 1948, arts 23–25.

<sup>13</sup> International Covenant on Economic, Social and Cultural Rights 1966, arts 7 & 12.

<sup>14</sup> CESCR, General Comment No. 22: Right to Sexual and Reproductive Health (2016).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) further strengthens this position. Article 11 of CEDAW obligates States to eliminate discrimination against women in employment and to ensure protection of health and safety in working conditions<sup>15</sup>. The CEDAW Committee has repeatedly emphasised that workplace policies must address women's biological and social realities without reinforcing stereotypes. Menstrual leave, when framed as a health-based accommodation, aligns with this mandate by enabling equal participation in the workforce.

#### **4.2 ILO Standards and Gender-Sensitive Labour Protection**

The International Labour Organization (ILO) has historically played a pivotal role in advancing labour rights through a gender-sensitive lens. While no ILO convention explicitly mandates menstrual leave, several instruments provide indirect support. The ILO's Decent Work Agenda emphasises dignity, equality, and well-being at work, recognising that productivity cannot be divorced from health<sup>16</sup>.

ILO Convention No. 111 on Discrimination (Employment and Occupation) prohibits discrimination based on sex and requires States to promote equality of opportunity and treatment<sup>17</sup>. Ignoring menstrual health needs may amount to indirect discrimination, as it disproportionately affects women's ability to perform work on equal terms. Similarly, ILO Convention No. 155 on Occupational Safety and Health underscores the obligation to adapt working conditions to workers' physical and mental capacities<sup>18</sup>.

Recent ILO reports on workplace well-being and gender equality have begun to acknowledge menstrual health as a component of occupational health. The growing recognition of psychosocial and physiological risks at work suggests a gradual shift towards more holistic labour protections that could accommodate menstrual leave within existing frameworks.

#### **4.3 Comparative Perspectives: Legislative and Policy Approaches**

Comparative labour law offers valuable insights into how menstrual leave has been conceptualised and implemented across jurisdictions. Japan was among the earliest countries to recognise menstrual leave, incorporating it into its Labour Standards Law in 1947. Article 68 permits women experiencing difficulty due to menstruation to request leave, without mandating wage compensation<sup>19</sup>. While the provision reflects post-war labour reforms, its limited utilisation highlights the importance of cultural acceptance and non-stigmatising implementation.

South Korea provides a more contemporary example. Under the Labour Standards Act, women workers are entitled to one day of unpaid menstrual leave per month<sup>20</sup>. Judicial interpretation has upheld this right as a legitimate health-based accommodation rather than discriminatory privilege. However, concerns regarding stigma and career repercussions persist, underscoring the need for complementary anti-discrimination safeguards. Spain represents a significant development in menstrual leave discourse. In 2023, Spain enacted legislation granting paid menstrual leave for women experiencing incapacitating menstrual pain, recognising menstruation as a public health issue rather than a private inconvenience<sup>21</sup>. This model situates menstrual leave within a broader framework of social security and healthcare, reducing the risk of workplace stigma. Indonesia and Taiwan also provide statutory menstrual leave, reflecting diverse cultural and legal approaches. Indonesia's Manpower Law entitles women to menstrual leave during the first two days of menstruation, though enforcement remains uneven<sup>22</sup>. These comparative experiences reveal that legal recognition alone is insufficient; effective implementation requires cultural change, awareness, and institutional support.

#### **4.4 Lessons for the Indian Context**

Comparative analysis demonstrates that menstrual leave can coexist with gender equality principles when designed thoughtfully. Jurisdictions that frame menstrual leave as a health accommodation rather than a gendered concession are more successful in mitigating stigma and discrimination. Paid leave models, integrated with healthcare systems, further reduce the risk of economic penalty for women.

For India, these examples offer instructive lessons. The absence of menstrual leave in Indian labour law reflects not a lack of constitutional or international support, but a persistent reluctance to address menstruation openly. Comparative practices underscore that menstrual leave need not undermine productivity or reinforce stereotypes; instead, it can enhance workforce participation and well-being when accompanied by safeguards such as confidentiality, anti-retaliation measures, and gender-neutral health accommodations where appropriate.

#### **4.5 Emerging Global Consensus and Normative Evolution**

While menstrual leave remains contested, global discourse increasingly recognises menstrual health as a human rights issue. International organisations, including the World Health Organization, have emphasised the importance of menstrual health management for physical, mental, and social well-being<sup>23</sup>. This evolving understanding contributes to the gradual normalisation of menstruation within public policy, including labour regulation.

The convergence of international human rights law, ILO standards, and comparative legislative practices suggests an emerging normative trajectory towards recognising menstrual leave as part of women-centric labour rights. For India, aligning domestic labour law with these developments would not only fulfil international obligations but also advance the constitutional promise of dignity, equality, and social justice.

### **Part V – Menstrual Leave in Indian Labour Law: Statutory Gaps, Judicial Silence, and Policy Debates**

Despite India's progressive constitutional jurisprudence and its extensive framework of labour welfare legislation, menstrual leave remains conspicuously absent from statutory regulation. This omission reflects deeper structural and cultural barriers that render menstruation invisible within formal labour law discourse. An examination of existing statutes, judicial engagement, and policy debates reveals the limitations of the current legal framework in addressing women's menstrual health needs at work.

#### **5.1 Existing Labour Legislation and the Absence of Menstrual Leave**

Indian labour law has historically focused on maternity as the primary site of women's reproductive labour. The Maternity Benefit Act, 1961 provides paid maternity leave and related benefits, recognising pregnancy and childbirth as conditions requiring workplace accommodation<sup>24</sup>. While the Act constitutes a significant advancement in women's labour rights, its narrow focus reinforces a binary understanding of reproductive health that excludes menstruation, a recurring and universal aspect of women's lives.

The enactment of the four Labour Codes—the Code on Wages, the Industrial Relations Code, the Code on Social Security, and the Occupational Safety, Health and Working Conditions Code—offered an opportunity to modernise labour regulation. However, none of these Codes explicitly

<sup>15</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979, art 11.

<sup>16</sup> International Labour Organization, Decent Work Agenda (ILO).

<sup>17</sup> ILO Convention No. 111 concerning Discrimination (Employment and Occupation), 1958.

<sup>18</sup> ILO Convention No. 155 concerning Occupational Safety and Health, 1981.

<sup>19</sup> Labour Standards Law of Japan 1947, art 68.

<sup>20</sup> Labour Standards Act of South Korea 1953, art 73.

<sup>21</sup> Organic Law 1/2023, Spain (on sexual and reproductive health and menstrual leave).

<sup>22</sup> Law No. 13 of 2003, Indonesia (Manpower Law), art 81.

<sup>23</sup> World Health Organization, Guidelines on Menstrual Health and Hygiene (WHO).

<sup>24</sup> Maternity Benefit Act, 1961 (India).

address menstrual health or provide for menstrual leave. The Occupational Safety, Health and Working Conditions Code adopts a general approach to workplace health, focusing primarily on physical safety and hazardous conditions<sup>25</sup>. Its failure to recognise gender-specific health concerns underscores the persistence of male-centric norms in labour regulation.

The silence of labour law on menstruation effectively privatises menstrual discomfort, relegating it to the realm of individual coping rather than collective responsibility. This legislative gap disproportionately affects women in the formal sector, who may face rigid attendance requirements, as well as those in the informal sector, where access to any form of leave is precarious.

### **5.2 Judicial Engagement: Indirect Recognition Without Legal Mandate**

Indian courts have not directly adjudicated on the question of menstrual leave as a labour right. However, judicial pronouncements on women's health, dignity, and workplace equality provide indirect support for such recognition. In *Municipal Corporation of Delhi v Female Workers (Muster Roll)*, the Supreme Court extended maternity benefits to casual and daily-wage women workers, emphasising that social justice principles must inform labour rights<sup>26</sup>. The judgment reflects a willingness to interpret welfare legislation expansively to protect women's health, even in the absence of explicit statutory provisions.

Similarly, in *Air India v Nergesh Meerza*, while the Court's reasoning has been critiqued for reinforcing stereotypes, it acknowledged that service conditions affecting women's health must be scrutinised under constitutional standards<sup>27</sup>. More recent jurisprudence has moved away from such paternalism, focusing instead on dignity and autonomy. In *Vishaka v State of Rajasthan*, the Court recognised the workplace as a site of gendered vulnerability, mandating safeguards to protect women's dignity<sup>28</sup>. Although the case concerned sexual harassment, its broader implication lies in recognising that workplaces must adapt to women's lived realities.

These decisions illustrate judicial sensitivity to gendered harms at work but also highlight the limitations of case-by-case adjudication. Without a clear statutory mandate, courts remain constrained in recognising menstrual leave as an enforceable right.

### **5.3 State-Level Initiatives and Policy Proposals**

In the absence of central legislation, menstrual leave has surfaced intermittently in policy debates and state-level initiatives. Bihar's policy of granting two days of special leave per month to women government employees, introduced in 1992, remains one of the earliest examples<sup>29</sup>. More recently, discussions in states such as Kerala have revived public interest in menstrual leave, particularly in educational institutions and public employment.

At the national level, private members' bills proposing menstrual leave have been introduced in Parliament but have not progressed into law. These proposals have sparked polarised debates, with critics arguing that menstrual leave may reinforce gender stereotypes or disincentivise employers from hiring women. Proponents counter that such arguments reflect entrenched biases rather than empirical evidence, and that similar concerns did not prevent the adoption of maternity benefits.

The policy discourse reveals a tension between equality and accommodation, often framed as mutually exclusive. This binary overlooks the possibility of designing menstrual leave in ways that promote substantive equality without reinforcing stigma.

### **5.4 Informal Sector and Intersectional Vulnerabilities**

The absence of menstrual leave disproportionately affects women in the informal sector, who constitute a significant majority of India's female workforce. For these workers, the lack of paid leave, inadequate sanitation facilities, and rigid productivity demands exacerbate menstrual hardship. The invisibility of menstruation in labour law thus intersects with class, caste, and sectoral inequalities.

The Supreme Court has recognised the State's obligation to protect informal workers in cases such as *People's Union for Democratic Rights v Union of India*, where it emphasised humane working conditions and minimum labour standards<sup>30</sup>. Extending this reasoning to menstrual health underscores the need for inclusive labour reforms that address the realities of informal employment.

### **5.5 Towards a Rights-Based Policy Framework**

The statutory and judicial silence on menstrual leave does not reflect constitutional incapacity but policy reluctance. A rights-based approach would situate menstrual leave within existing labour welfare objectives, treating it as a health accommodation rather than an exceptional privilege. Integrating menstrual leave into labour law would require harmonising health, equality, and anti-discrimination principles, drawing on comparative models and international obligations.

Recognising menstrual leave as part of women-centric labour rights would mark a shift from symbolic acknowledgment to substantive protection, aligning Indian labour law with constitutional values and global human rights norms.

## **Part VI – Menstrual Leave, Work–Life Balance, and Substantive Gender Equality**

The discourse on menstrual leave must be situated within the broader framework of work–life balance and substantive gender equality. Work–life balance policies are not merely managerial tools for productivity enhancement; they are normative instruments that reflect how labour law conceptualises the relationship between paid work, bodily health, and social reproduction. Menstrual leave, when examined through this lens, emerges as a critical mechanism for recalibrating workplace norms that have historically been structured around male bodies and uninterrupted labour capacity.

### **6.1 Work–Life Balance as a Labour Rights Paradigm**

Modern labour law increasingly recognises work–life balance as integral to workers' dignity, health, and well-being. The International Labour Organization has emphasised that decent work requires conditions that allow workers to reconcile professional responsibilities with personal and family life<sup>31</sup>. Indian courts have similarly acknowledged that humane working conditions are essential to the right to life under Article 21. Menstrual health directly affects a woman's capacity to balance work obligations with physical well-being. Dysmenorrhea, endometriosis, and other menstrual disorders can cause severe pain, fatigue, and cognitive impairment. A rigid workplace that disregards these realities imposes a hidden cost on women, compelling them to absorb physical discomfort to meet attendance and performance expectations. Menstrual leave mitigates this imbalance by legitimising rest and recovery as part of healthy work participation.

### **6.2 Substantive Equality and Gender-Neutral Productivity Norms**

The principle of substantive equality requires labour law to interrogate ostensibly neutral standards that disproportionately disadvantage women. Productivity norms premised on uninterrupted availability and physical endurance reflect male-centric assumptions about the ideal worker. Feminist legal scholars have long critiqued such norms for marginalising women's embodied experiences.

<sup>25</sup> Occupational Safety, Health and Working Conditions Code, 2020.

<sup>26</sup> *Municipal Corporation of Delhi v Female Workers (Muster Roll)*, (2000) 3 SCC 224.

<sup>27</sup> *Air India v Nergesh Meerza*, (1981) 4 SCC 335.

<sup>28</sup> *Vishaka v State of Rajasthan*, (1997) 6 SCC 241.

<sup>29</sup> Government of Bihar, Finance Department Resolution (1992) (Special Casual Leave for Women Employees).

<sup>30</sup> *People's Union for Democratic Rights v Union of India*, (1982) 3 SCC 235.

<sup>31</sup> International Labour Organization, Working Time and Work–Life Balance (ILO Report).

In *Anuj Garg v Hotel Association of India*, the Supreme Court cautioned against laws that entrench gender stereotypes under the guise of protection, advocating instead for measures that enhance women's agency<sup>32</sup>. Applying this reasoning, menstrual leave must be framed as an enabling right rather than a protective restriction. It allows women to participate in the workforce on equitable terms by acknowledging biological realities without diminishing professional competence.

Importantly, substantive equality does not mandate identical treatment but equitable outcomes. Menstrual leave operates as a corrective measure, levelling the playing field by addressing a gender-specific disadvantage. When designed with confidentiality and non-discrimination safeguards, it avoids reinforcing stereotypes about women's incapacity.

### **6.3 Menstrual Leave as a Component of Reproductive Labour Recognition**

Labour law has traditionally undervalued reproductive labour, focusing narrowly on waged work while neglecting the bodily processes that sustain it. Menstruation, as a recurring aspect of reproductive health, has been rendered invisible within legal frameworks. Recognising menstrual leave represents a symbolic and substantive acknowledgment of reproductive labour as integral to economic participation.

The Supreme Court's recognition of reproductive rights as part of personal liberty in *Suchita Srivastava v Chandigarh Administration* underscores the constitutional importance of bodily autonomy<sup>33</sup>. Extending this logic to the workplace entails respecting women's decisions regarding rest and self-care during menstruation. Menstrual leave affirms that productivity cannot be divorced from bodily integrity.

### **6.4 Work-Life Balance, Mental Health, and Workplace Well-Being**

Menstrual discomfort is not limited to physical pain; it often intersects with mental health concerns such as anxiety, stress, and mood disorders. Forcing women to conceal menstrual distress to conform to workplace expectations exacerbates psychological strain. The World Health Organization has highlighted the interdependence of physical and mental health, advocating holistic approaches to workplace well-being<sup>34</sup>. Menstrual leave contributes to mental health by reducing stress associated with presenteeism—the practice of attending work despite ill health. Presenteeism undermines productivity and well-being, particularly in environments that stigmatise health-related absences. By normalising menstrual leave, workplaces can foster a culture of empathy and openness, enhancing overall organisational health.

### **6.5 Avoiding Stigma: Design Principles for Equality-Oriented Leave**

A central critique of menstrual leave is its potential to stigmatise women or mark them as less reliable workers. This risk underscores the importance of careful policy design. Equality-oriented menstrual leave should incorporate safeguards such as voluntary utilisation, confidentiality of medical information, and protection against adverse employment consequences.

Comparative experiences demonstrate that stigma is not an inevitable outcome but a function of cultural attitudes and institutional practices. When menstrual leave is integrated within broader health and wellness policies, rather than isolated as an exceptional benefit, it is more likely to be perceived as a legitimate workplace accommodation. Labour law thus plays a crucial role in shaping social norms by legitimising menstrual health as a public concern.

### **6.6 Menstrual Leave and Transformative Constitutionalism**

Transformative constitutionalism envisions the Constitution as a living document that actively dismantles structural inequalities. Menstrual leave aligns with this vision by challenging the silence surrounding women's bodies in public spaces, including workplaces. It transforms labour law from a neutral regulator of work into an instrument of social justice.

By integrating menstrual leave into work-life balance frameworks, the law acknowledges that equality requires responsiveness to difference. Such recognition advances not only women's rights but also a more humane conception of work that values health, dignity, and sustainability.

### **Part VII – Critiques, Risks, and Counterarguments: Addressing the Menstrual Leave Debate**

Despite growing advocacy for menstrual leave, the proposal has attracted significant criticism from policymakers, employers, and even sections of feminist scholarship. These critiques typically revolve around concerns of workplace discrimination, reinforcement of gender stereotypes, economic feasibility, and administrative misuse. A rigorous evaluation of these objections is essential to determine whether they constitute valid barriers or reflect deeper structural biases embedded in labour law and workplace culture.

#### **7.1 Reinforcement of Gender Stereotypes**

One of the most frequently cited arguments against menstrual leave is that it risks reinforcing stereotypes of women as biologically weaker or less capable of sustained work. Critics argue that formal recognition of menstrual leave may entrench perceptions of women as unreliable employees, thereby undermining gender equality in hiring and promotion.

This concern, while not unfounded, conflates the **existence of biological difference** with **inferiority**. Constitutional jurisprudence has consistently rejected the notion that recognising difference necessarily undermines equality. In *Anuj Garg v Hotel Association of India*, the Supreme Court emphasised that protective measures based on stereotypical assumptions are impermissible, but accommodations grounded in empirical realities and autonomy-enhancing objectives are constitutionally valid<sup>35</sup>. Menstrual leave, when framed as a voluntary health accommodation rather than a mandatory gender-based restriction, does not diminish women's agency but enhances it.

The persistence of stigma reflects societal discomfort with menstruation rather than an inherent flaw in the policy itself. Legal silence has not eradicated stereotypes; instead, it has perpetuated invisibility. Law, as a norm-shaping instrument, has the capacity to dismantle stigma by legitimising menstrual health as a workplace concern.

#### **7.2 Employment Discrimination and Hiring Bias**

Another critique posits that menstrual leave may discourage employers from hiring women, particularly in competitive or productivity-driven sectors. This argument mirrors earlier resistance to maternity benefits, which were similarly criticised for increasing the "cost" of employing women. However, empirical and judicial experience demonstrates that such apprehensions cannot justify the denial of fundamental labour protections.

In *Municipal Corporation of Delhi v Female Workers (Muster Roll)*, the Supreme Court rejected cost-based objections to extending maternity benefits, affirming that economic considerations cannot override social justice obligations<sup>36</sup>. Applying this reasoning, potential employer bias cannot be a legitimate ground to deny menstrual leave. Instead, anti-discrimination enforcement must address discriminatory practices directly. Moreover, international experiences indicate that the presence of menstrual leave does not correlate with reduced female workforce participation. The real determinant of discrimination lies in weak enforcement of equality norms, not in the existence of gender-sensitive benefits.

#### **7.3 Economic and Productivity Concerns**

<sup>32</sup> *Anuj Garg v Hotel Association of India*, (2008) 3 SCC 1.

<sup>33</sup> *Suchita Srivastava v Chandigarh Administration*, (2009) 9 SCC 1.

<sup>34</sup> World Health Organization, *Mental Health in the Workplace* (WHO).

<sup>35</sup> *Anuj Garg v Hotel Association of India*, (2008) 3 SCC 1.

<sup>36</sup> *Municipal Corporation of Delhi v Female Workers (Muster Roll)*, (2000) 3 SCC 224.

Employers often argue that menstrual leave could disrupt productivity, especially if widely utilised. This concern assumes that productivity is maximised through continuous presence rather than effective performance. Contemporary labour studies challenge this assumption, demonstrating that presenteeism—working while unwell—reduces productivity and increases long-term health costs.

The ILO has acknowledged that worker well-being is integral to sustainable productivity<sup>37</sup>. Menstrual leave may, in fact, enhance efficiency by allowing workers to rest during periods of acute discomfort, thereby preventing burnout and absenteeism over longer durations. Paid leave models integrated within social security systems further mitigate the financial burden on individual employers.

#### **7.4 Risk of Misuse and Verification Challenges**

Concerns about misuse of menstrual leave often surface in policy debates, with critics questioning how eligibility would be verified without intrusive medical scrutiny. However, similar challenges exist for sick leave, mental health leave, and other health-based absences. Labour law generally operates on principles of trust, supplemented by safeguards against abuse.

Requiring medical certification for menstrual leave may exacerbate stigma and violate privacy. Instead, limited, self-declared leave within a capped framework can balance trust and accountability. The Supreme Court's recognition of privacy as a fundamental right in *K S Puttaswamy v Union of India* underscores the need to avoid intrusive verification mechanisms<sup>38</sup>.

#### **7.5 Feminist Divergence and Intersectional Critiques**

Feminist perspectives on menstrual leave are not monolithic. Some scholars caution that menstrual leave risks essentialising womanhood and excluding transgender and non-binary menstruators. This critique highlights the importance of inclusive policy design. Menstrual leave should be framed in gender-neutral health terms, applicable to all menstruating workers regardless of gender identity.

Intersectional analysis further reveals that the impact of menstrual leave varies across class, caste, and sector. For women in informal employment, leave without income security offers little relief. Thus, menstrual leave must be situated within broader labour reforms that address precarity and social security gaps.

#### **7.6 Reframing the Debate: From Exception to Accommodation**

Many critiques of menstrual leave stem from viewing it as an exceptional privilege rather than a reasonable accommodation. Labour law routinely accommodates health-related needs without undermining equality, as evidenced by sick leave, disability accommodations, and maternity benefits. Menstrual leave belongs within this continuum of workplace adjustments aimed at enabling equal participation.

By reframing menstrual leave as a component of occupational health and work-life balance, the debate shifts from whether women deserve special treatment to how workplaces can equitably respond to embodied diversity. Such reframing aligns with constitutional values of dignity, equality, and social justice.

### **Part VIII – Reform Proposals: Integrating Menstrual Leave into Indian Labour Law**

The recognition of menstrual leave as a component of women-centric labour rights requires more than symbolic endorsement; it demands careful legislative design that reconciles equality, dignity, and administrative feasibility. This Part proposes a rights-based framework for integrating menstrual leave into Indian labour law, drawing upon constitutional principles, comparative practices, and international obligations.

#### **8.1 Legislative Recognition Through the Labour Codes**

The most effective avenue for institutionalising menstrual leave is through explicit statutory recognition within the existing Labour Codes. Given its health-centric nature, the Occupational Safety, Health and Working Conditions Code provides a suitable legislative site. The Code's mandate to ensure safe and healthy workplaces can be expanded to include gender-sensitive health accommodations, including menstrual leave. Alternatively, menstrual leave may be incorporated under the Code on Social Security, framing it as a short-term health benefit akin to sick leave. This approach would allow wage compensation through social security mechanisms, reducing the financial burden on employers and mitigating hiring bias. Such integration would align with the Code's objective of extending social protection to diverse categories of workers<sup>39</sup>. Statutory recognition serves an expressive function, signalling that menstrual health is a legitimate concern of public policy rather than a private inconvenience. It also provides legal clarity, enabling uniform application across sectors and reducing reliance on ad hoc employer discretion.

#### **8.2 Scope, Duration, and Eligibility**

A key design challenge lies in determining the scope and duration of menstrual leave. Comparative practices suggest that limited, capped leave—ranging from one to two days per menstrual cycle—balances health needs with operational concerns. Eligibility should be based on self-declaration rather than medical certification, respecting privacy and reducing stigma.

Importantly, menstrual leave must be voluntary. Compulsory leave risks reinforcing stereotypes and restricting women's autonomy. Voluntary utilisation empowers workers to assess their own health needs, consistent with the constitutional emphasis on bodily autonomy articulated in *Suchita Srivastava v Chandigarh Administration*<sup>40</sup>.

#### **8.3 Inclusivity and Gender-Neutral Drafting**

To address concerns of exclusion, menstrual leave provisions should adopt gender-neutral language, extending eligibility to all menstruating workers irrespective of gender identity. This approach aligns with evolving constitutional recognition of gender diversity, as reflected in *National Legal Services Authority v Union of India*<sup>41</sup>. Inclusive drafting ensures that menstrual leave does not entrench binary conceptions of gender or marginalise transgender and non-binary persons.

#### **8.4 Anti-Discrimination Safeguards and Confidentiality**

Legal recognition of menstrual leave must be accompanied by robust anti-discrimination safeguards. Explicit prohibitions against adverse employment actions—such as denial of promotion, termination, or harassment—on the basis of menstrual leave utilisation are essential. These protections can be modelled on existing anti-retaliation provisions in labour law.

Confidentiality is equally crucial. Employers should be prohibited from requiring disclosure of detailed medical information or maintaining records that could expose workers to stigma. The Supreme Court's affirmation of informational privacy in *K S Puttaswamy v Union of India* underscores the constitutional imperative to protect personal health data<sup>42</sup>.

#### **8.5 Extension to the Informal Sector**

Given the predominance of informal employment in India, any menstrual leave framework must address the needs of informal workers. While direct employer-based leave may be impractical, social security schemes can provide income support during menstruation-related incapacity.

<sup>37</sup> International Labour Organization, Decent Work and Productivity (ILO Report).

<sup>38</sup> *K S Puttaswamy v Union of India*, (2017) 10 SCC 1.

<sup>39</sup> Code on Social Security, 2020 (India).

<sup>40</sup> *Suchita Srivastava v Chandigarh Administration*, (2009) 9 SCC 1.

<sup>41</sup> *National Legal Services Authority v Union of India*, (2014) 5 SCC 438.

<sup>42</sup> *K S Puttaswamy v Union of India*, (2017) 10 SCC 1.

Community-based models, public employment guarantees, and health insurance schemes offer potential platforms for extending menstrual health support beyond the formal sector.

The State's obligation to ensure humane working conditions for all workers, articulated in *People's Union for Democratic Rights v Union of India*, mandates inclusive reform that transcends formal-informal divides<sup>43</sup>.

### **8.6 Awareness, Workplace Culture, and Implementation**

Legislation alone cannot dismantle menstrual stigma. Effective implementation requires complementary measures such as workplace sensitisation programmes, gender-inclusive sanitation facilities, and access to menstrual health products. Employers and trade unions play a critical role in fostering cultures of empathy and openness.

The law's transformative potential lies not only in enforcement but in norm creation. By recognising menstrual leave, labour law can reshape societal attitudes, normalising menstruation as a routine aspect of working life rather than a source of shame.

### **Part IX – Conclusion**

The discourse on menstrual leave compels a fundamental re-examination of how labour law conceptualises equality, health, and dignity within the workplace. This paper has argued that menstrual leave is not a concessionary benefit or a form of special treatment, but a legitimate component of women-centric labour rights grounded in constitutional guarantees, international labour standards, and contemporary understandings of occupational health. Treating menstruation as irrelevant to labour regulation reflects a historically masculinised model of work that privileges uninterrupted productivity over embodied realities, thereby perpetuating structural exclusion.

The analysis demonstrates that Indian labour law, despite undergoing substantial consolidation through the Labour Codes, continues to approach women's health in a fragmented and incomplete manner. While maternity benefits have received statutory and judicial recognition as flowing from Articles 14, 15(3), and 21 of the Constitution, menstrual health remains conspicuously absent from legislative concern. This silence is not neutral; it reinforces stigma, invisibilises pain and productivity loss, and disproportionately burdens women workers, particularly those in low-paid, informal, and physically demanding occupations. Judicial recognition of dignity, humane working conditions, and bodily autonomy provides a strong normative basis for addressing this omission<sup>44</sup>.

Comparative experiences reveal that menstrual leave regimes, when properly designed, do not undermine workplace equality but rather advance substantive equality. Jurisdictions such as Japan, South Korea, and Indonesia recognise menstrual leave as a health-based entitlement, while debates in other countries increasingly frame it within occupational safety and well-being. These models underscore that the objective of menstrual leave is not segregation but accommodation—enabling menstruating workers to participate in employment on equal terms by mitigating biologically rooted disadvantage<sup>45</sup>. Importantly, the paper has shown that concerns regarding discrimination or reduced employability arise not from menstrual leave per se, but from its mischaracterisation as a privilege rather than a right.

International labour standards further strengthen the case for reform. Although the International Labour Organization has not adopted a convention specifically on menstrual leave, its normative framework on non-discrimination, occupational health, and workers with family and health-related responsibilities provides clear interpretive guidance. The principles embedded in ILO Conventions on equality and decent work, read together with World Health Organization guidelines on workplace health, support the integration of menstrual health into labour regulation as a preventive and rights-based measure rather than an individualised welfare response<sup>46</sup>.

From a constitutional perspective, menstrual leave aligns with the Supreme Court's evolving jurisprudence on substantive equality and dignity. The Court's rejection of formal equality in favour of contextual, outcome-oriented justice makes clear that identical treatment in unequal conditions perpetuates discrimination<sup>47</sup>. Recognising menstrual leave as a labour right affirms the constitutional commitment to dismantling structural barriers that impede women's equal participation in the workforce. Moreover, the right to privacy and bodily autonomy demands that such recognition be voluntary, confidential, and free from medicalised surveillance.

The paper has proposed that menstrual leave be integrated within India's Labour Codes through a health-oriented and gender-inclusive framework, preferably under occupational safety or social security legislation. Such integration must be accompanied by anti-discrimination safeguards, wage protection mechanisms, and inclusive drafting that recognises gender diversity. Crucially, reform must extend beyond the formal sector to address the realities of informal employment, where menstrual health intersects most sharply with economic vulnerability.

In conclusion, reimagining menstrual leave as a component of women-centric labour rights represents a transformative opportunity for Indian labour law. It enables a shift from productivity-centric regulation to a human-centred model of work that recognises workers as embodied individuals with legitimate health needs. Embedding menstrual leave within the legal architecture of labour rights would not only align Indian law with constitutional values and international norms, but also contribute to a more inclusive, equitable, and dignified world of work. The future of labour law, as this study contends, lies not in erasing difference, but in regulating work in ways that accommodate difference without penalty.

<sup>43</sup> *People's Union for Democratic Rights v Union of India*, (1982) 3 SCC 235.

<sup>44</sup> *Consumer Education and Research Centre v Union of India*, (1995) 3 SCC 42; *Bandhua Mukti Morcha v Union of India*, (1984) 3 SCC 161.

<sup>45</sup> International Labour Organization, *Equality at Work: The Continuing Challenge* (ILO Global Report, Geneva, 2011).

<sup>46</sup> World Health Organization, *Guidelines on Mental and Physical Health at Work* (WHO, Geneva, 2022).

<sup>47</sup> *Anuj Garg v Hotel Association of India*, (2008) 3 SCC 1; *Navtej Singh Johar v Union of India*, (2018) 10 SCC 1.