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PAID MENSTRUAL LEAVE POLICIES: COMPARATIVE LEGAL PERSPECTIVES AND THE NEED FOR STATUTORY RECOGNITION IN INDIA

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Abstract:
The discourse on gender-sensitive labour rights has increasingly recognized menstruation as a legitimate ground for workplace accommodation, leading several jurisdictions to introduce paid menstrual leave policies. This paper critically examines the legal frameworks governing menstrual leave in select countries such as Japan, Indonesia, South Korea, Spain, and Zambia, highlighting their scope, implementation mechanisms, and socio-legal impact. Through a comparative analysis, the study evaluates whether such policies advance substantive equality or inadvertently reinforce gender stereotypes within the workforce. In contrast, India lacks a comprehensive statutory framework recognizing menstrual leave, with only fragmented private sector initiatives and pending legislative proposals such as the Menstruation Benefit Bill failing to materialize into law. The paper identifies key lacunae in Indian labour jurisprudence, including the absence of explicit recognition of menstrual health as a workplace concern and the over-reliance on general welfare provisions. It further argues that the incorporation of paid menstrual leave within Indian labour law is essential to achieving constitutional goals of equality, dignity, and health under Articles 14, 15, and 21. The study concludes by recommending a balanced, rights-based legislative model that ensures inclusivity, prevents discrimination, and aligns with international best practices.

Keywords: Menstrual Leave, Labour Law, Gender Equality, Comparative Law, Workplace Rights.

1. INTRODUCTION

1.1 Background and Rationale

Menstruation is a universal, recurring biological process experienced by an estimated 1.8 billion people globally every month, yet it remains one of the most systematically neglected concerns in the domain of occupational health and labour law (World Health Organization, 2022). For a significant proportion of menstruating individuals, the experience extends well beyond routine physiological inconvenience. Clinical conditions such as primary dysmenorrhea — characterised by severe cramping, nausea, vomiting, and fatigue — affect between 50% and 90% of women of reproductive age globally (de la Iglesia Aza & Solymosi-Szekeres, 2025; Macgregor et al., 2023). More debilitating disorders, including endometriosis, adenomyosis, and polycystic ovarian syndrome, impose additional burdens that directly compromise an individual's capacity to engage meaningfully in paid work. Epidemiological research has consistently documented significant rates of absenteeism and presenteeism attributable to menstrual symptoms, with one large-scale study reporting that dysmenorrheic working women recorded an absenteeism rate of 39.5%

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and an overall work impairment rate of 96.4% compared to their non-dysmenorrheic counterparts (Al-Azhar University Hospital Study, cited in PMC, 2024). Another cross-sectional study found that women with dysmenorrhea were 50% more likely to report poorer work performance and twice as likely to report work absence (Dysmenorrhea, Workability, and Absenteeism Study, *Journal of Women's Health*, 2023). Against this empirical backdrop, the failure of labour law frameworks to formally acknowledge menstruation as a legitimate ground for workplace accommodation represents a gap that is both legally consequential and socially unjust.

The discourse on gender-sensitive workplace rights has progressively evolved to recognise that formal equality — treating all workers identically — is insufficient to achieve substantive equality when one group of workers faces a biologically specific burden that the other does not. This principle, long embedded in accommodations for pregnancy and maternity, increasingly finds its logical extension in the recognition of menstrual health. Several jurisdictions have responded to this imperative by enacting statutory paid menstrual leave policies. Japan codified the world's first such provision in 1947; Indonesia followed in 2003; South Korea, Zambia, and others have since adopted varying models; and most recently Spain enacted Europe's first statutory menstrual leave in 2023 (de la Iglesia Aza & Solymosi-Szekeres, 2025; Wikipedia, 2025). Internationally, the United Nations Human Rights Council (2021) has formally recognised menstrual hygiene management as a matter of human rights and gender equality, lending normative weight to the proposition that menstrual health concerns are a legitimate subject of legal protection.

India, despite its constitutional commitments to equality, dignity, and health under Articles 14, 15, and 21 of the Constitution of India (1950), and despite possessing a large female workforce, has not enacted any central legislation recognising menstrual leave. Multiple private member bills — including the Menstruation Benefits Bill (2017), the Women's Sexual, Reproductive and Menstrual Rights Bill (2018), and the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill (2022) — have each failed to progress into law (Drishti IAS, 2023). In January 2023, the Supreme Court of India, in *Shailendra Mani Tripathi v. Union of India* [2023 SCC OnLine SC 228], declined to issue directions mandating nationwide menstrual leave, holding that such matters fall within the legislative and executive domain, while directing the petitioner to approach the Ministry of Women and Child Development (LiveLaw, 2025). The Union Government's own messaging has been ambivalent, with a senior minister stating publicly in December 2023 that menstruation "is not a handicap" and does not warrant a specific policy (RSRR, 2024). These developments underscore a fundamental tension within Indian policy between a progressive constitutional mandate and a legislative vacuum reinforced by social stigma and economic anxiety about labour market implications.

This paper situates itself at the intersection of comparative labour law, constitutional law, and gender justice. It argues that the continuing absence of statutory recognition of menstrual leave in India constitutes a failure of substantive equality, a deficit in occupational health protection, and an inconsistency with the country's international human rights obligations. The study undertakes a critical comparative analysis of legal frameworks in Japan, Indonesia, South Korea, Spain, and Zambia to extract lessons for an appropriately designed Indian legislative model. It further examines existing constitutional provisions, judicial pronouncements, and fragmented state-level and corporate initiatives to assess the current state of menstrual health jurisprudence in India, ultimately recommending a balanced, rights-based statutory framework.

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1.2 Research Objectives

The paper is guided by the following specific objectives:

- To examine and critically compare the statutory frameworks for menstrual leave across select jurisdictions, including their scope, eligibility criteria, payment mechanisms, and enforcement architecture.
- To evaluate the extent to which existing international models advance substantive gender equality or risk entrenching stigma and employment discrimination.
- To identify the key lacunae in Indian labour law and constitutional jurisprudence with respect to menstrual health as a workplace concern.
- To propose a rights-based legislative model for statutory paid menstrual leave in India that is inclusive, non-discriminatory, and consistent with international best practices.

1.3 Significance of the Study

This study makes several contributions to existing scholarship. First, it provides a timely comparative legal analysis at a moment when menstrual leave has become a subject of active legislative debate across multiple jurisdictions. Second, it fills a specific gap in Indian labour law scholarship, which has been slow to engage with menstrual health as a discrete legal category distinct from general sick leave or maternity benefit frameworks. Third, by grounding its analysis in both constitutional theory and empirical health data, it bridges disciplinary divides that often keep legal scholarship insulated from the lived realities its prescriptions are intended to address. Finally, in light of Karnataka's landmark Cabinet approval in October 2025 of a comprehensive menstrual leave policy covering both public and private sectors — making it the first Indian state to mandate paid menstrual leave across all sectors (DLA Piper GENIE, 2025) — this study offers a critical lens through which such state-level innovations may be evaluated and potentially extended to the national legislative stage.

1.4 Methodology

This study adopts a doctrinal and comparative legal methodology. The primary legal materials analysed include statutory texts, legislative debates, subordinate regulations, judicial decisions, and constitutional provisions drawn from India, Japan, Indonesia, South Korea, Spain, and Zambia. Secondary materials include peer-reviewed articles from legal, public health, and social sciences journals; policy reports from international organisations such as the UN Human Rights Council and the World Health Organization; and legislative records from the Indian Parliament. Comparative analysis follows the functional method, examining how each jurisdiction has responded to the same social problem of menstrual health at work, in order to identify convergent principles and divergent approaches that may inform an optimal policy design. The study proceeds from the premise that law is not merely a technical instrument but a normative apparatus that either entrenches or dismantles structures of gendered disadvantage.

2. CONCEPTUAL FRAMEWORK: MENSTRUAL HEALTH, SUBSTANTIVE EQUALITY, AND LABOUR RIGHTS

2.1 Defining Menstrual Leave in Law

Menstrual leave, as a legal concept, refers to a category of statutory or contractually granted leave that entitles menstruating employees to take time off work during their menstrual period, either generally or specifically in cases of medically significant pain or impairment (Cook & van den Hoek, 2023). In legal frameworks across jurisdictions, this entitlement is typically framed in one of two ways: as a universal entitlement for all menstruating employees during the first one or two days of their cycle, regardless of

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the severity of symptoms (as in Indonesia and South Korea), or as a condition-specific accommodation available only to those who experience clinically disabling symptoms such as dysmenorrhea or endometriosis (as in Spain and partially Japan) (de la Iglesia Aza & Solymosi-Szekeres, 2025). The distinction carries significant legal and normative implications. Universal models reflect a broader acknowledgement of menstruation as a labour rights issue requiring structural accommodation; condition-specific models, by contrast, assimilate menstrual leave into the existing sick-leave paradigm, treating it as a medical rather than a gender-equality issue.

The conceptual tension between these two framings mirrors broader debates within feminist legal theory about whether gender-specific legal provisions advance or undermine equality. Proponents of universal menstrual leave argue that recognising the specific physiological realities of menstruating workers is essential to substantive equality — that is, equality of outcome rather than merely equality of treatment (Fredman, 2016, as cited in de la Iglesia Aza & Solymosi-Szekeres, 2025). Critics, including some feminist scholars and trade unions, contend that singling out menstruation as a basis for differentiated treatment risks reinforcing the perception of women as less reliable employees and may create perverse incentives for employers to discriminate in hiring (Euronews, 2023; RSRR, 2024).

2.2 Menstrual Health as a Human Rights Concern

International normative frameworks increasingly situate menstrual health within the matrix of human rights. The UN Human Rights Council's Resolution A/HCR/47/L.2 (2021) formally acknowledged menstrual hygiene management as a human rights issue intersecting with gender equality, the right to health, sanitation, and non-discrimination. The World Health Organization's definition of menstrual health, adopted in 2022, goes beyond hygiene to encompass access to information, sanitation infrastructure, diagnosis and treatment of menstrual disorders, and supportive social environments (WHO, 2022, as cited in Workplace Menstrual Product Policies Study, 2025). This expansive framework conceptualises the workplace as a site where menstrual health obligations fall not merely on the individual employee to manage privately, but on employers and the state to accommodate structurally.

This rights-based framing is particularly relevant in constitutional systems such as India's, where the right to health is read into Article 21 as a dimension of the right to life and personal liberty (Francis Coralie Mullin v. Union Territory of Delhi, 1981; Paschim Banga Khet Mazdoor Samity v. State of West Bengal, 1996). If the right to life encompasses a right to live with dignity and to enjoy good health, then the systematic denial of workplace accommodation to menstruating individuals who experience debilitating pain represents not merely a policy gap but a potential constitutional deficit. Similarly, under the equal protection clause in Article 14 and the prohibition of discrimination on grounds of sex under Article 15(1), the failure to provide any statutory recognition of a condition exclusively experienced by women raises justiciable concerns, particularly in light of the substantive equality jurisprudence developed by the Supreme Court of India in cases such as *Navtej Singh Johar v. Union of India* (2018).

2.3 Presenteeism, Productivity, and the Economic Case

Beyond rights arguments, the empirical literature on workplace productivity provides a compelling economic rationale for menstrual leave policy. "Presenteeism" — the phenomenon of attending work while suffering impairment — is increasingly recognised as a significant cost driver in occupational health literature. Cook and van den Hoek (2023) found, in a cross-sectional survey of 668 employed individuals with dysmenorrhea, that symptom severity was directly associated with period pain presenteeism, with

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psychological and organisational factors mediating the relationship between menstrual pain and actual disclosure to supervisors. Their findings suggest that in the absence of formal policy frameworks, employees continue to work impaired rather than disclose their condition and seek relief, due to fears of stigma and career consequences. Leon-Larios et al. (2024) similarly documented in a cross-sectional study of Spanish women that menstrual pain had significant effects on work absenteeism and daily activity impairment, providing foundational epidemiological evidence that directly informed Spain's 2023 legislative intervention. In the Japanese context, Yoshino et al. (2022) conducted a prospective observational study demonstrating that untreated dysmenorrhea measurably reduced health-related quality of life and work productivity among Japanese women, reinforcing the case for institutional rather than purely pharmaceutical responses.

Critically, the economic case for menstrual leave is not merely descriptive but normative: it challenges the assumption, implicit in employer resistance to such policies, that the total cost of providing menstrual leave exceeds the cost of the productivity losses, medical expenditure, and talent attrition associated with managing menstrual symptoms in silence. Hennegan et al. (2022) documented, in a cross-sectional survey of 435 women in Ugandan workplaces, that unmet menstrual health needs were significantly associated with reduced work performance and impaired wellbeing, suggesting that the absence of policy imposes real costs on workers and employers alike. In India, where approximately 355 million women menstruate monthly (United Nations Population Fund estimate), the macroeconomic implications of an unaddressed menstrual health burden in the workforce are substantial, though they remain largely undocumented in the absence of a formal policy framework that would generate measurable data.

2.4 The Stigma Dimension and Its Legal Relevance

A persistent obstacle to the legislative recognition of menstrual leave, in India and elsewhere, is the social stigma that continues to surround menstruation. Garg and Anand (2015) documented the prevalence of menstruation-related myths and cultural taboos in India, illustrating how stigma operates not merely at the social level but penetrates institutional behaviour, causing women to avoid seeking accommodation or disclosure. This stigma-driven silence has direct legal relevance: it means that existing general-leave provisions, even where technically available, are not functionally accessible to menstruating workers who fear the social cost of disclosure. The legal system's failure to name and acknowledge menstrual health as a discrete category of workplace concern effectively codifies stigma into law by treating a condition experienced exclusively by women as invisible.

The Conversation's analysis of global menstrual leave policies (2026) confirms that both Taiwan and South Korea face significant implementation deficits, with many employers refusing to implement regulations properly or demanding intrusive proof that undermines employee dignity. This observation underscores a critical point for legislative design: formal enactment is insufficient without accompanying anti-discrimination protections, privacy safeguards, and enforcement mechanisms. The mere act of legislative naming — of formally recognising menstrual health as a subject of labour law — performs an important normative function in dismantling institutional stigma, provided the legislation is designed with sufficient procedural care to prevent the naming from becoming a new axis of discrimination in hiring and promotion decisions.

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3. COMPARATIVE LEGAL ANALYSIS OF MENSTRUAL LEAVE FRAMEWORKS

3.1 Japan: The Pioneer's Paradox

Japan holds the distinction of being the first country in the world to formally codify menstrual leave as a statutory labour right, doing so through Article 68 of the Labor Standards Act of 1947 (Act No. 49 of April 7, 1947). The provision states that where a woman for whom work during menstrual periods would be *especially difficult* has requested leave, the employer shall not employ that woman on days of the menstrual period. The historical impetus for this provision is instructive: female conductors at the Tokyo Municipal Bus Company, lacking access to restrooms during extended shifts, found themselves unable to work during menstruation without significant physical risk, and organised labour union action resulted in the legislative intervention (Berkeley Political Review, 2021). The law was thus originally a practical accommodation for industrial conditions, not a philosophical statement about reproductive health rights.

The structural deficiencies of Article 68, however, have become more apparent over time. Most critically, the provision does not mandate *paid* leave; it merely prohibits the employer from forcing a menstruating employee to work if she has requested leave. Whether the leave is compensated depends entirely on individual employment contracts or company-level collective agreements. As of 2020, only approximately 30% of Japanese companies offered full or partial salary to employees availing menstrual leave (The Conversation, 2026). Furthermore, the law does not specify a maximum number of leave days, nor does it establish a clear procedure for claiming leave, leaving implementation entirely at the employer's discretion. The result has been a striking gap between legal provision and social practice. A survey published in early 2022 found that fewer than one in ten women experiencing severe menstrual pain actually used the provision, with respondents citing reluctance to disclose symptoms to predominantly male supervisors, stigma, and the absence of a clear institutional procedure as barriers to take-up (Tokyo Weekender, 2023; The Conversation, 2026). Japan's experience thus offers a cautionary tale for legislative design: a statutory right that is silent on remuneration, process, and anti-stigma protection is unlikely to be meaningfully exercised.

3.2 Indonesia: Universal Access, Invisible Implementation

Indonesia enacted Article 81 of the Manpower Act No. 13 of 2003, entitling women experiencing pain during menstruation to two days of leave on the first and second days of their menstrual cycle. Crucially, this provision is broader in scope than Japan's, in that it is available to any woman with painful menstruation rather than being confined to cases where work is "especially difficult." This represents a shift toward a more universal model of menstrual leave, conceptually closer to a labour entitlement than a medical accommodation.

However, despite its comparatively wider framing, Article 81 suffers from profound implementation deficits. The provision is embedded within the broader Manpower Act without dedicated enforcement mechanisms, anti-discrimination safeguards, or employer guidance. It remains widely unknown to both workers and employers, particularly in the informal and service sectors (The Modern Hypatia, 2022). While it may benefit factory workers and those in formal blue-collar employment where leave requests are more institutionalised, women in white-collar professional environments frequently report feeling too embarrassed or professionally vulnerable to invoke the provision (Barcelona Metropolitan, 2024). Indonesia's experience underscores a further structural limitation common to several early menstrual leave frameworks: the absence of companion provisions — on privacy protection, prohibition of discriminatory adverse action, and employer education obligations — renders formal statutory recognition ineffective in practice.

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3.3 South Korea: Entitlement with Financial Incentive

South Korea's approach under Article 71 of the Labor Standards Act is distinctive in coupling menstrual leave entitlement with a financial incentive structure. Female employees are entitled to one day of menstrual leave per month, and, notably, are entitled to receive *additional pay* if they choose *not* to take the leave to which they are entitled (Wikipedia, 2025; The Modern Hypatia, 2022). This inverted incentive design — compensating employees for waiving their leave right — was intended to provide flexibility, but it has been widely critiqued for effectively incentivising employees to work through menstrual pain in exchange for financial compensation, thereby undermining the provision's health-protective purpose.

Implementation challenges in South Korea mirror those in Japan. Cultural expectations of productivity, combined with social stigma around menstruation, mean that uptake of the entitlement remains low relative to the eligible workforce. Trade unions and women's rights organisations have criticised both the additional-pay model as prioritising economic output over health, and the absence of meaningful enforcement mechanisms as leaving the provision largely dependent on employer goodwill (de la Iglesia Aza & Solymosi-Szekeres, 2025). South Korea's model nonetheless illustrates an important policy design consideration: the manner in which financial incentives are structured can either support or undercut a provision's health-protective goals.

3.4 Zambia: The "Mother's Day" Provision

Zambia's Section 54(2) of the Employment Act (Chapter 268, as amended 2015) provides female employees one day of paid leave per month, colloquially termed "Mother's Day," without requiring medical certification or detailed justification. As one of the very few African jurisdictions to legislate menstrual leave, Zambia's provision is notable for its simplicity and universal accessibility — there are no clinical prerequisites, no documentation requirements, and no employer discretion over eligibility.

The political reception of the provision in Zambia was divided. Critics characterised it as unnecessary or as an opportunity for abuse by women who were not genuinely symptomatic, reflecting the persistent cultural stigma attached to menstrual accommodation in the workplace (The Modern Hypatia, 2022; Wikipedia, 2025). Substantively, however, Zambia's model represents the clearest articulation of menstrual leave as a universal entitlement rooted in labour rights rather than medical accommodation — an approach that, while vulnerable to employer resistance in practice, avoids the privacy invasion and dignity concerns associated with requiring clinical proof of menstrual pain.

3.5 Spain: Europe's First Statutory Framework and Its Lessons

Spain enacted Ley Orgánica 1/2023 on February 28, 2023, which came into force on June 1, 2023, becoming the first European country to legislate paid menstrual leave (Euronews, 2023; American Bar Association, 2023). The law, which amended the earlier Organic Law 2/2010 on sexual and reproductive health, provides paid leave for employees experiencing *incapacitating secondary menstrual conditions* — a condition-specific model requiring medical certification by a physician. Employees' wages during such leave are covered by the social security system at 75% of earnings up to a monthly cap, a design choice intended to shift the financial burden from employers to the state and thereby reduce employer-driven discrimination in hiring (AOL, 2025). The law passed by 185 votes to 154, with the ruling socialist coalition providing the majority and conservative parties voting against, citing fears of workplace marginalisation of women (Euronews, 2023).

Spain's first-year implementation data reveal the paradox that characterises condition-specific models globally. Between June 1, 2023, and April 2024, menstrual leave was recorded only 1,559 times — an

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average of 4.75 uses per day in a workforce of over 21 million (Days for Girls, 2024; People Management, 2024). By February 2025, cumulative uptake stood at only 2,668 claims, far below the Ministry of Equality's own estimate that approximately 60,000 women might have incapacitating symptoms (The Conversation, 2026). The Spanish Ministry confirmed that uptake had "stabilised month by month" and that there had been "no avalanche" of claims (Days for Girls, 2024). The low uptake is attributed to multiple overlapping factors: the requirement for medical diagnosis restricts access to those with formally diagnosed conditions; lack of awareness among general practitioners and workers impedes access; and residual fear of workplace discrimination — even in the absence of documented evidence of such discrimination — creates a chilling effect on claims (Days for Girls, 2024; The Conversation, 2026).
Spain's model nonetheless makes a critical conceptual contribution: by routing compensation through the social security system rather than employer payroll, it structurally decouples the cost of menstrual leave from the employment decision, providing a design template with direct relevance to India's debates about labour market discrimination risks.

3.6 Comparative Synthesis

Across the five jurisdictions examined, several convergent findings emerge. First, formal statutory recognition does not automatically translate into effective workplace accommodation without companion provisions on privacy, anti-discrimination protection, enforcement, and employer sensitisation. Second, the condition-specific model, while narrowing the scope of entitlement, risks under-inclusion and replicates the medicalisation of a biological process. Third, the financial mechanism — whether universal pay continuation, social security subsidy, or unpaid leave — is not merely an administrative detail but a determinative factor in shaping both employer behaviour and employee willingness to claim. Fourth, and most consistently, social stigma functions as the primary de facto barrier to uptake regardless of the model adopted, suggesting that legislative design alone is insufficient without concurrent investment in workplace culture change and public health communication.

4. INDIA'S LEGAL LACUNAE AND THE CONSTITUTIONAL IMPERATIVE

4.1 The Statutory Vacuum

India's existing labour law architecture contains no provision that explicitly recognises menstrual health as a distinct workplace concern. The four Labour Codes enacted between 2019 and 2020 — the Code on Wages (2019), the Code on Industrial Relations (2020), the Code on Social Security (2020), and the Occupational Safety, Health and Working Conditions Code (2020) — collectively represent the most comprehensive overhaul of Indian labour law in decades, yet none includes any provision for menstrual leave, menstrual hygiene facilities, or gender-sensitive occupational health policies (Record of Law, 2025). The Maternity Benefit Act, 1961, while providing 26 weeks of paid maternity leave and additional protections for pregnant and nursing workers, is confined to pregnancy and post-natal care and does not extend to recurring menstrual health concerns. The Equal Remuneration Act, 1976, addresses pay parity for equal work but does not engage with the fact that menstruating women performing "similar work" may not be doing so under "similar working conditions" — a distinction with direct constitutional relevance under Article 14 (RSRR, 2024).

The Menstruation Benefits Bill, 2017, the Women's Sexual, Reproductive and Menstrual Rights Bill, 2018, and the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022 each proposed three days of paid menstrual leave per month, but none proceeded beyond the private member bill stage in Parliament (Drishti IAS, 2023; LawArticle, 2025). This legislative inertia is

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particularly striking given that, at the sub-national level, Bihar has maintained a government employee menstrual leave policy since 1992, Odisha provides menstrual leave provisions, Kerala has allowed attendance relaxation in educational institutions, and Karnataka's Cabinet approved, in October 2025, a landmark policy entitling women in all sectors — government and private — to one day of paid menstrual leave per month, totalling 12 days annually, requiring no medical certificate (DLA Piper GENIE, 2025; Lexology, 2025). Karnataka's policy, now challenged before the Karnataka High Court in *Management of Avirata AFL Connectivity Systems Ltd. v. State of Karnataka*, W.P. No. 36659/2025 (Karn. H.C. Dec. 18, 2025), raises urgent questions about the adequacy of state-level Government Orders as vehicles for fundamental rights protection, particularly regarding enforceability for remote workers and those in unorganised sectors (LiveLaw, 2025).

4.2 Constitutional Foundations and Judicial Posture

The constitutional case for statutory menstrual leave in India rests on a triangulated reading of Articles 14, 15, and 21, reinforced by Article 42's directive to the state to secure just and humane conditions of work. Article 14's guarantee of equality before the law and equal protection of the laws has been interpreted by the Supreme Court to require substantive, not merely formal, equality. Formal equality — treating menstruating and non-menstruating workers identically — ignores a biologically specific burden that falls exclusively on one group and thereby perpetuates structural disadvantage. Article 15(3) explicitly permits the state to make special provisions for women, providing direct constitutional warrant for gender-specific leave accommodation (RSRR, 2024; Vision IAS, 2024; LawArticle, 2025). Article 21's right to life and personal liberty, expansively interpreted by the Supreme Court to encompass the right to health in *Unni Krishnan v. State of Andhra Pradesh* (AIR 1993 SC 2178) and the right to live with dignity in *Francis Coralie Mullin v. Union Territory of Delhi* (AIR 1981 SC 746), provides a further constitutional foundation: the denial of menstrual accommodation to workers who experience debilitating symptoms impairs not merely their work performance but their right to a dignified and healthy existence. In *Consumer Education and Research Centre v. Union of India* [(1995) 3 SCC 42], the Court explicitly held that the right to health and humane working conditions is integral to Article 21 (Record of Law, 2025).

The Supreme Court's engagement with menstrual leave has been characterised by empathy for the cause combined with firm judicial restraint. In *Shailendra Mani Tripathi v. Union of India* (2023), the Court declined to issue a mandamus, directing the petitioner to approach the Ministry of Women and Child Development. In July 2024, on the petitioner's return, the Court asked the Union Government to take a policy decision. Most recently, in March 2026, on the third petition in the series, the Bench — led by Chief Justice Surya Kant — expressed specific concern that mandatory menstrual leave could backfire by making women appear "costly" to employers, thereby reducing female labour force participation (Business Standard, 2026; Onmanorama, 2026). The Court once again disposed of the petition by directing the competent authority to consider a policy framework in consultation with all stakeholders (Business Standard, 2026). While the Court's caution about perverse labour-market incentives is substantively legitimate, its repeated deferral to the executive without providing normative guidance perpetuates the very vacuum that generates repeated litigation.

4.3 The Informal Sector and Structural Exclusion

A dimension of India's menstrual leave deficit that receives insufficient attention in mainstream legal discourse is its disproportionate impact on informal sector workers, who constitute approximately 90% of India's female workforce (Ministry of Statistics and Programme Implementation, 2024). Women in

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construction, agriculture, domestic work, and the gig economy are entirely outside the scope of any current menstrual leave provision — whether statutory, state-level, or corporate — and are also the least likely to have access to basic menstrual hygiene facilities at their worksites (Record of Law, 2025). For these workers, the absence of menstrual accommodation is not merely an issue of lost income during painful days; it implicates the constitutional guarantee of dignified working conditions under Articles 21 and 42. Furthermore, the exclusion of gig workers from the definition of "employee" under the Labour Codes — which allows platform aggregators to avoid compliance with welfare provisions including those under the Maternity Benefit Act — creates a stratified system of menstrual health rights in which access to protection is inversely correlated with labour market vulnerability (LiveLaw, 2025). Any meaningful legislative framework must address this structural exclusion as a matter of constitutional priority.

5. CONCLUSION AND SUGGESTIONS

The comparative and constitutional analysis undertaken in this paper yields a set of firm conclusions. First, the international record demonstrates unambiguously that menstrual leave policies, when thoughtfully designed, do not generate the mass disruptions predicted by critics. Spain's experience — with fewer than 2,700 claims in its first 20 months of operation in a workforce of 21 million — illustrates that fears of wholesale abuse are empirically unfounded (The Conversation, 2026). Second, the Japanese, Indonesian, and South Korean experiences establish with equal clarity that formal statutory recognition without paid entitlement, anti-stigma infrastructure, and enforcement architecture produces a "paper right" that functions primarily as symbolic acknowledgement rather than substantive protection. Third, the constitutional analysis confirms that India's statutory silence on menstrual leave is not a neutral legislative choice but a failure of substantive equality — one that concentrates biological disadvantage in the bodies of women workers while the law looks away.

The Supreme Court's repeated concern that mandatory menstrual leave might reduce female employment is not without merit as a policy consideration. However, this concern is not a reason to abandon legislation but a reason to design it carefully. Spain's social-security funding model directly addresses this concern by removing the cost of menstrual leave from the employer's balance sheet. Karnataka's no-medical-certificate model addresses the privacy and dignity concerns associated with clinical proof requirements. These design solutions are available to Indian legislators. The challenge is political will and legislative priority, not technical impossibility.

Based on the foregoing analysis, this paper recommends the following measures:
First, Parliament should enact a central Menstrual Health and Workplace Dignity Act that provides a statutory minimum of two paid menstrual leave days per month for all workers, including those in the organised, unorganised, and gig sectors. The entitlement should be universal and require no medical certification, following the Zambia–Karnataka model, to avoid privacy violations and reduce the chilling effect of clinical gatekeeping.

Second, the financial mechanism for paid menstrual leave should be structured through a dedicated contribution to the Employees' State Insurance Corporation (ESIC) or an equivalent social security mechanism, ensuring that leave wages are reimbursed to employers. This would remove the financial disincentive to hiring women workers and directly address the Supreme Court's labour-market discrimination concern.

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Third, the legislation must include explicit anti-discrimination provisions prohibiting adverse employment action — including refusal of promotion, assignment of less favourable terms, or termination — on grounds of menstrual health or menstrual leave usage. The burden of proof for such discrimination should be reversed, consistent with the approach taken in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Fourth, the Act should extend its protections explicitly to gig and platform workers by adopting a functional definition of "worker" that does not exclude those in non-standard contractual arrangements. This is essential to prevent the creation of a two-tier menstrual rights framework that protects formal sector employees while leaving the most economically vulnerable women unprotected.
Fifth, the legislation should mandate employer obligations beyond leave entitlement, including the provision of adequate menstrual hygiene facilities at all workplaces, mandatory menstrual health literacy programmes as part of internal sensitisation requirements, and designated support mechanisms for employees experiencing severe conditions such as endometriosis and adenomyosis.

Sixth, enforcement should be integrated into the existing framework of the Labour Inspection Commissionerate and Grievance Redressal Committees, with additional oversight powers vested in the National Commission for Women to monitor implementation and publish annual compliance reports.
The argument that menstrual leave cannot be legislated because India is not ready, or because the social attitudes are not yet aligned, reverses the proper relationship between law and society. Law does not merely reflect existing social values; it shapes them. The Maternity Benefit Act, the Equal Remuneration Act, and the Sexual Harassment Act each faced resistance on grounds of anticipated employer non-compliance and cultural unreadiness, and each has contributed — however imperfectly — to the normative transformation of Indian workplaces. Menstrual leave legislation would continue this trajectory. India's constitutional promise of equality, dignity, and health demands nothing less than a statutory framework that names menstrual health as a legitimate workplace concern, provides meaningful economic protection to those who experience it, and treats the bodies of women workers with the legal seriousness they have long been owed.

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