

MENSTRUAL LEAVE IN INDIA: A TOOL OF SUBSTANTIVE EQUALITY OR A REINFORCEMENT OF GENDER STEREOTYPES?

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ABSTRACT

Law is not a static command but a living social instrument that evolves with changing social consciousness. One of the most significant contemporary debates reflecting this evolutionary character of law in India is the question of menstrual leave. For decades menstruation was treated as a private matter confined to the domestic sphere and largely excluded from legal and policy discourse. However growing awareness regarding women's health workplace equality and dignity has brought menstrual leave into the mainstream of constitutional and labour law discussions. This paper examines menstrual leave as an example of law functioning as social engineering where customary practices constitutional principles and modern welfare objectives converge. It analyses the jurisprudential foundations of law as a dynamic tool explores the role of custom as a source of law and critically examines the constitutional framework under Articles 15, 39, 42, 46, 47, and 51A e of the Indian Constitution¹. The paper further evaluates the Supreme Court's approach to menstrual leave as a policy matter the recent enactment of a mandatory menstrual leave law in Karnataka and the broader implications of such policies for gender equality workplace dignity and non discrimination. It argues that while menstrual leave has the potential to advance substantive equality its success depends on careful policy design that avoids reinforcing gender stereotypes. Ultimately the paper situates menstrual leave within India's constitutional vision of social justice and inclusive development.

KEYWORDS

Menstrual Leave Social Engineering Customary Law Gender Equality Directive Principles
Workplace Justice

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¹ Constitution of India, 1950

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INTRODUCTION

Law is deeply intertwined with society. As societies transform in response to economic development scientific knowledge and changing moral values the law must adapt to reflect these shifts. This idea is central to the jurisprudential understanding of law as social engineering where legal rules are instruments to balance competing social interests and promote social welfare. In India this dynamic nature of law is particularly visible in the expansion of labour welfare legislation gender justice measures and constitutional interpretations that respond to lived realities.

One such evolving area is the recognition of menstruation as a legitimate concern within workplace and educational environments. For generations menstruation was surrounded by silence stigma and social taboos. Women were expected to manage pain discomfort and health complications without institutional support. In recent years however menstrual health has emerged as a public discourse issue grounded in rights dignity and equality. The demand for menstrual leave reflects this shift from silence to recognition².

The debate gained national prominence in 2023 when a public interest litigation sought a uniform right to menstrual leave across India for working women and students. The Supreme Court declined to grant such relief holding that menstrual leave is a matter of policy best left to the legislature and executive. Despite judicial restraint policy developments continued at the state level culminating in Karnataka becoming the first Indian state to enact a mandatory menstrual leave law in late 2025.

This paper examines menstrual leave not merely as a labour welfare measure but as an illustration of law responding to social change. It situates the issue within jurisprudential theory constitutional mandates customary practices and contemporary policy challenges thereby demonstrating how law evolves as society becomes more aware of gender specific needs.

LAW AS SOCIAL ENGINEERING JURISPRUDENTIAL FOUNDATIONS

The concept of law as social engineering is most prominently associated with Roscoe Pound who viewed law as a tool to harmonize competing interests within society. According to Pound the function of law is to achieve social order by balancing individual social and public interests

² Roscoe Pound, *An Introduction to the Philosophy of Law* (Yale University Press 1922).

through reasoned legal mechanisms. Law therefore cannot remain rigid or disconnected from social realities.

Earlier jurists such as Henry Maine and Eugen Ehrlich also emphasized the evolutionary nature of law. Maine observed that societies progress from status to contract and that law evolves from customs to codified rules. Ehrlich introduced the idea of living law arguing that the real law governing society is found not only in statutes and judgments but also in social practices and norms that people actually follow.

In the Indian context this theory resonates strongly. Many legal reforms have emerged from social movements and changing societal values including abolition of untouchability recognition of live in relationships criminalization of sexual harassment at the workplace and expansion of reproductive rights. Menstrual leave fits within this trajectory. It represents an attempt to translate social awareness regarding women's health into legal and policy frameworks³.

The growing discourse around menstrual leave reflects a recognition that formal equality often fails to account for biological differences and lived experiences. Treating unequal situations equally can perpetuate injustice. Law as social engineering therefore requires responsive measures that address substantive equality rather than mere formal parity.

CUSTOM AS A SOURCE OF LAW AND MENSTRUAL PRACTICES

Custom is one of the oldest and most organic sources of law. Long before formal legislation communities regulated conduct through shared practices beliefs and norms. In India customary law has played a crucial role particularly in matters relating to family property and social relations⁴.

Traditional Indian societies across regions recognized menstruation as a period requiring rest and reduced physical exertion. In many communities women were relieved from heavy labour restricted from certain activities and provided separate spaces intended for comfort and recovery. While some of these practices were rooted in patriarchal notions others functioned as informal mechanisms of health protection in the absence of medical knowledge and labour regulations.

³ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Harvard University Press 1936).

⁴ Henry Sumner Maine, *Ancient Law Its Connection with the Early History of Society and Its Relation to Modern Ideas* (Oxford University Press 1861).

These practices were not codified as legal rights but operated as social norms. With modernization and entry of women into formal workplaces these customary accommodations disappeared without being replaced by institutional safeguards. The result was that women continued to work under conditions designed around male bodies and experiences.

The contemporary debate on menstrual leave can be viewed as an attempt to reinterpret and transform these customary practices through the lens of constitutional values health science and gender equality. What was once an informal social accommodation is now being reconsidered as a potential legal entitlement. This reflects Maine's observation that law often evolves by adapting customs to meet contemporary needs.

CONSTITUTIONAL FRAMEWORK FOR MENSTRUAL LEAVE

Article 15 (3) and Substantive Equality

Article 15 of the Indian Constitution prohibits discrimination on grounds of sex. Clause 3 however empowers the State to make special provisions for women and children. This provision recognizes that identical treatment may not result in equality when structural and biological differences exist. Menstrual leave can be justified under Article 15 3 as a special provision aimed at achieving substantive equality rather than privilege⁵.

The Supreme Court has consistently upheld affirmative measures for women under Article 15 3 provided they advance equality and dignity. Menstrual leave when framed as a health and welfare measure aligns with this constitutional objective.

Directive Principles of State Policy

The Directive Principles of State Policy in Part IV provide a strong constitutional foundation for menstrual leave policies.

Article 39 directs the State to secure adequate means of livelihood equal pay for equal work and protection of the health and strength of workers. Menstrual leave directly relates to protecting women's health and ensuring that biological realities do not undermine their ability to participate equally in the workforce⁶.

Article 42 mandates the State to ensure just and humane conditions of work and maternity relief. While maternity relief has been legislatively recognized through the Maternity Benefit

⁵ Constitution of India, art 15 cl 3.

⁶ Constitution of India, art 39.

Act 1961 menstrual health remains largely unaddressed⁷. Extending humane working conditions to include menstrual health is consistent with the spirit of Article 42⁸.

Article 46 requires the State to promote the interests of weaker sections and protect them from exploitation. Women particularly those in informal and contractual employment often lack the bargaining power to seek accommodations for menstrual health. State intervention through policy becomes essential in such contexts⁹.

Article 47 imposes a duty on the State to improve public health and standards of living. Recognizing menstrual health as a public health issue rather than a private inconvenience aligns with this directive.

Article 44 though primarily concerned with a Uniform Civil Code reflects the broader constitutional commitment to gender justice and equality across legal domains reinforcing the need for progressive policies affecting women¹⁰.

Fundamental Duties:

Article 51A e obligates citizens to renounce practices derogatory to the dignity of women. Stigmatizing menstruation or forcing women to endure pain and discomfort silently can be viewed as undermining dignity. Policies that acknowledge menstrual health contribute to fulfilling this constitutional duty¹¹.

JUDICIAL APPROACH TO MENSTRUAL LEAVE

In 2023 a public interest litigation sought a uniform menstrual leave policy across India for women employees and students. The Supreme Court declined to issue directions holding that menstrual leave involves complex policy considerations including economic impact workplace dynamics and administrative feasibility. The Court emphasized that such matters fall within the domain of the legislature and executive.

While the decision reflects judicial restraint it does not negate the legitimacy of menstrual leave as a policy goal. Rather it reinforces the constitutional scheme of separation of powers where

⁷ *Maternity Benefit Act 1961*.

⁸ Constitution of India, art 42.

⁹ Constitution of India, art 46.

¹⁰ Constitution of India, art 44.

¹¹ Constitution of India, art 51A cl e.

courts recognize social issues but defer to democratic processes for policy formulation. The judgment also left the door open for legislative experimentation at state and institutional levels.

STATE POLICY DEVELOPMENT THE KARNATAKA MODEL

The enactment of a mandatory menstrual leave law by the State of Karnataka in late 2025 marks a significant milestone in the evolution of labour welfare and gender justice in India. It represents the first instance where a State has transformed the idea of menstrual leave from a matter of private employer discretion into a legally enforceable right. This development reflects the growing recognition that women's biological realities cannot be ignored within formal workplace structures that were historically designed around male norms.

Under the Karnataka policy all eligible women employees between the ages of eighteen and fifty two are entitled to one paid day of menstrual leave per month amounting to twelve days annually. The scope of coverage is particularly notable as it extends beyond permanent employees to include contractual and outsourced workers employed in establishments governed by labour laws. The leave is granted in addition to existing statutory and other forms of leave ensuring that menstrual health is not subsumed under general sick or casual leave.¹²

From a constitutional standpoint the Karnataka legislation finds strong support in the Directive Principles of State Policy. Article 39 obligates the State to protect the health and strength of workers while Article 42 mandates the provision of just and humane conditions of work. By acknowledging menstruation as a legitimate workplace health concern the State has taken a step toward fulfilling these constitutional directives. The policy also advances the objective of Article 47 which places a duty on the State to improve public health and standards of living.

The law can further be justified under Article 15 clause 3 of the Constitution which permits special provisions for women. Menstrual leave in this context is not a form of preferential treatment but a measure aimed at achieving substantive equality. Treating men and women identically without accounting for biological differences may perpetuate structural disadvantage. The Karnataka model therefore reflects a shift from formal equality to a more nuanced understanding of equality grounded in lived realities.

However the introduction of a statutory menstrual leave policy also raises important concerns. One major challenge lies in implementation. Without robust enforcement mechanisms there is a risk that employers may comply formally while informally discouraging women from

¹² Government of Karnataka, Notification on Menstrual Leave for Women Employees, 2025.

availing the leave. Subtle forms of discrimination such as biased performance assessments reduced opportunities for advancement or reluctance to hire women may emerge if menstrual leave is perceived as a burden.

Privacy and dignity are equally critical considerations. If accessing menstrual leave requires disclosure of intimate personal details or medical certification it may reinforce stigma and undermine the very purpose of the policy. For menstrual leave to function as a tool of empowerment it must be implemented in a manner that respects autonomy confidentiality and dignity.

Despite these challenges the Karnataka legislation serves as an important policy experiment within India's federal framework. It demonstrates how States can act as laboratories of reform by responding to social needs even in the absence of central legislation. The effectiveness of this model will depend on administrative sensitivity awareness building and continuous evaluation but it undoubtedly sets a precedent for future policy development across the country.

MENSTRUAL LEAVE WORKPLACE EQUALITY AND STIGMA

Menstrual leave occupies a complex position within the broader discourse on workplace equality. On one hand it represents a progressive acknowledgment of women's health needs and an attempt to correct structural inequalities embedded in formal work environments. On the other hand it raises concerns about reinforcing stereotypes that have historically limited women's participation and advancement in the workforce. Understanding this duality is essential to evaluating the true potential of menstrual leave as a tool of social justice.

From an equality perspective menstrual leave recognizes that biological differences can have real consequences for workplace participation. Severe menstrual pain fatigue migraines and related symptoms affect a significant number of women and can impair concentration productivity and physical endurance. When workplaces are structured around uninterrupted attendance without accommodation women are forced to choose between health and performance. Menstrual leave addresses this imbalance by treating menstrual health as a legitimate workplace concern rather than a private burden.

By acknowledging menstruation within labour policy menstrual leave advances the principle of substantive equality. Equality does not require identical treatment in all circumstances but demands that relevant differences be accommodated to ensure equal opportunity. In this sense menstrual leave aligns with constitutional commitments to dignity health and humane working

conditions. When implemented sensitively it can contribute to higher productivity reduced absenteeism and improved employee morale.

However the concern that menstrual leave may unintentionally reinforce gender stereotypes cannot be dismissed. A separate leave category specifically labeled for menstruation may perpetuate the perception that women are weaker less reliable or more costly employees. Such perceptions can influence hiring decisions promotions task assignments and evaluations even if they are not openly expressed. The fear of being judged or sidelined may discourage women from availing the leave even when they genuinely need it.

Stigma surrounding menstruation further complicates the issue. Despite increased awareness menstruation continues to be associated with silence embarrassment and discomfort in many professional settings. If menstrual leave requires explanation disclosure or documentation it may expose women to invasive scrutiny or ridicule. This undermines workplace dignity and contradicts the very objective of the policy.

These concerns highlight that the effectiveness of menstrual leave depends heavily on policy design and implementation. Integrating menstrual leave within broader health or wellness leave frameworks can reduce the risk of singling out women. Providing flexibility allowing self certification and ensuring confidentiality can help normalize menstrual health without forcing disclosure. Sensitization of employers and colleagues is equally important to dismantle entrenched biases.

Ultimately menstrual leave should not be viewed in isolation but as part of a larger commitment to inclusive and humane workplaces. When framed within a gender sensitive yet equality oriented framework menstrual leave can function as an enabling measure rather than a stigmatizing label. The challenge lies in ensuring that the law promotes empowerment without reinforcing the very hierarchies it seeks to dismantle.¹³

WAY FORWARD

The debate on menstrual leave presents an opportunity to rethink workplace policies through the lens of substantive equality dignity and public health. Moving forward the focus must shift from whether menstrual leave should exist to how it can be designed and implemented in a manner that genuinely advances gender justice without reinforcing stereotypes.

¹³ Supreme Court of India, Order in *Public Interest Litigation on Menstrual Leave*, 2023.

First menstrual leave policies must be embedded within a broader framework of health and wellness at the workplace. Rather than treating menstruation as an exceptional condition a flexible health based leave system can accommodate a range of physical and mental health needs while preserving privacy. Such an approach ensures that women are not singled out while still receiving necessary support.

Second policy design must prioritize dignity and confidentiality. Access to menstrual leave should not require intrusive disclosures or mandatory medical certification. Self reporting mechanisms coupled with trust based systems can reduce stigma and encourage women to utilize the leave without fear of judgment or professional disadvantage.

Third awareness and sensitization are crucial for successful implementation. Employers supervisors and coworkers must be educated about menstrual health and constitutional principles of equality and dignity. Without cultural change even well intentioned laws risk remaining symbolic or being undermined in practice.

Fourth special attention must be given to women in informal and vulnerable employment. Contractual daily wage and outsourced workers often face the greatest barriers to accessing health related benefits. Effective enforcement monitoring and grievance redressal mechanisms are essential to ensure that menstrual leave does not remain confined to privileged sectors of employment.

Finally the federal structure of India provides space for experimentation and learning. State level initiatives such as the Karnataka model should be closely studied and refined based on empirical outcomes. A gradual evidence based approach can inform future national policies ensuring that menstrual leave evolves as a sustainable and inclusive legal reform.

CONCLUSION

Menstrual leave in India illustrates the dynamic nature of law as a form of social engineering. Rooted in customary practices informed by constitutional values and shaped by contemporary understandings of health and equality it reflects the law's capacity to respond to changing social realities. What was once an unspoken and marginalized experience has now entered the realm of legal and policy discourse.

The constitutional framework particularly Articles 15 clause 3 the Directive Principles of State Policy and Article 51A e provides strong normative support for policies addressing menstrual health. Judicial restraint in treating menstrual leave as a policy matter underscores the

responsibility of legislatures and governments to translate social awareness into concrete legal protections.

The Karnataka menstrual leave law represents a significant step in this direction demonstrating how State intervention can recognize biological realities while striving toward substantive equality. At the same time concerns regarding stigma discrimination and implementation reveal that legal reform alone is insufficient without thoughtful design and social acceptance.

Ultimately menstrual leave should be understood not as a concession but as a measure aimed at ensuring dignity humane working conditions and equal opportunity. Its success will depend on whether the law can balance accommodation with equality and protection with empowerment. As Indian society continues to evolve menstrual leave stands as a powerful example of how law adapts to human needs reaffirming its role as an instrument of justice and social transformation.

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