

RIGHTS WITHOUT REMEDY

The Case for a Menstrual Leave Law in India

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Abstract : India recognises menstrual health as a facet of constitutional dignity yet has never enacted a menstrual leave law. This paper argues that the resulting gap between right and remedy — entitlements affirmed by courts and offered piecemeal by states and employers, but unsupported by any enforceable statute — is the central defect in India's approach to menstrual welfare. It traces the country's fragmented landscape from Bihar's 1992 policy through the student-focused measures in Kerala, the public-and-private extensions in Odisha, and Karnataka's comprehensive 2025 Menstrual Leave Policy, whose contested government order and subsequent High Court litigation expose the fragility of reform pursued through executive instruction rather than legislation. Situating the question within Articles 14, 15(3), 21, 39(e) and 42 of the Constitution and the jurisprudence of *Jaya Thakur v. Union of India* and *Shailendra Mani Tripathi v. Union of India*, the paper examines the Supreme Court's reluctance to mandate a national policy — and the discrimination anxiety underlying it — alongside the medical reality of dysmenorrhoea, endometriosis and polycystic ovary syndrome among Indian women. It takes seriously the strongest objections to menstrual leave, including hiring discrimination, stigma, biological essentialism and the exclusion of the informal-sector majority, and draws comparative lessons from Japan, South Korea, Indonesia, Taiwan, Zambia and Spain, where low utilisation demonstrates that statutory design determines statutory effect. It concludes with a framework for a national law — paid, flexible, minimally intrusive, gender-inclusive and paired with anti-discrimination protection — that would convert a patchwork of discretionary policies into an enforceable right.

Index Terms — Menstrual leave, labour law, Article 21, reproductive rights, gender and employment, India, menstrual justice.

I. A POLICY WITHOUT A LAW

In November 2025, the Government of Karnataka did something no Indian state had done before. It issued an order granting women employees aged eighteen to fifty-two — across factories, shops, commercial establishments, plantations, beedi units and motor transport undertakings — one paid day of leave each month on account of menstruation, up to twelve days a year. For the first time, the entitlement reached beyond the public payroll into the private economy: garment workers stitching for global brands, women in IT parks, employees of multinationals and small enterprises alike.¹

Within weeks, two employers' associations had dragged the order into the High Court, arguing that an executive instruction could not lawfully compel private businesses to do anything.² The court initially stayed the order, then recalled the stay at the government's request, and finally, in early 2026, came down emphatically on the side of the policy. Menstrual health, dignity, privacy and bodily autonomy, the Karnataka High Court held, are part of the right to life under Article 21 of the Constitution. It directed the state to implement the policy without dilution and to extend protection, somehow, to the vast informal sector the order had left untouched.³

The episode is a near-perfect miniature of where India stands on menstrual leave. There is energy and intent. There are pioneering states, headline-grabbing companies and sympathetic judges. There is a constitutional vocabulary — dignity, equality, bodily autonomy — that maps cleanly onto the issue. And yet, at the centre of it all, there is a void where a law should be. Karnataka's breakthrough rests on a government order, not a statute. That distinction is not a technicality. It is the whole problem.

India today has menstrual leave policies. It does not have a menstrual leave law. The difference between the two is the difference between a promise and a right — and it is the reason the conversation keeps circling back to the same unresolved question: who, exactly, is obliged to let a woman rest when her body has made working a form of suffering, and what happens to them if they refuse?

II. WHAT IS MENSTRUAL LEAVE?

Menstrual leave, or period leave, is a workplace or institutional policy that allows people who menstruate to take time off — paid, unpaid, or in the form of rest breaks — during their cycle when pain or discomfort interferes with their ability to function. It

¹Karnataka High Court Mandates Strict Enforcement of Menstrual Leave Policy, DLA PIPER GENIE (2026), <https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2026/karnataka-high-court-mandates-strict-enforcement-of-menstrual-leave-policy>; *Liberty to Bleed: Menstrual Leave Policy*, LIVE LAW (Dec. 18, 2025), <https://www.livelaw.in/articles/menstrual-leave-in-karnataka-legal-validity-and-workplace-rights-analysis-513758>.

²*Liberty to Bleed: Menstrual Leave Policy*, LIVE LAW, *supra* note 1 (noting writ petitions in *Mgmt. of Avirata AFL Connectivity Sys. Ltd. v. State of Karnataka*, W.P. No. 37122/2025, and *Bangalore Hotels Ass'n v. State of Karnataka*, W.P. No. 36659/2025, and the interim stay of Dec. 9, 2025, later recalled).

³*Chandravva Hanamant Gokavi v. State of Karnataka* (Karnataka High Court 2026) (India); *see also Karnataka High Court Mandates Strict Enforcement of Menstrual Leave Policy*, DLA PIPER GENIE, *supra* note 1; *India: Karnataka High Court Directs the Implementation of the Menstrual Leave Policy*, L&E GLOBAL (Apr. 21, 2026), <https://leglobal.law/2026/04/21/india-karnataka-high-court-directs-the-implementation-of-the-menstrual-leave-policy/>.

is not a holiday. It is a recognition that for a significant share of the population, menstruation is not a benign monthly event but a recurring medical episode that can be genuinely incapacitating.

The medical name for that pain is dysmenorrhea, and it is one of the most common health complaints among people of reproductive age. The American College of Obstetricians and Gynecologists estimates that around half of all menstruating people experience it.⁴ For many, the cramping, fatigue, nausea, migraines and lower-back pain are manageable with rest or over-the-counter medication. For a substantial minority, they are not.

Dysmenorrhea comes in two forms. Primary dysmenorrhea is pain without an underlying disease — the body's own inflammatory chemistry turned against it. Secondary dysmenorrhea is pain caused by a condition such as endometriosis, adenomyosis, fibroids or polycystic ovary syndrome. The second category matters enormously for the policy debate, because it means that menstrual pain is not always something to be powered through with a paracetamol and a stiff upper lip. Sometimes it is the visible symptom of a serious, often undiagnosed, chronic illness.

This is the biological reality that menstrual leave policies attempt to address. The argument for them is not that menstruation is a disability — it is not — but that the pain it can produce is real, predictable, and currently absorbed almost entirely in silence by the people who experience it, at a cost to their health, their dignity and their economic participation.

III. THE INVISIBLE EPIDEMIC

If menstrual pain were rare, the case for a national policy would be weak. It is not rare. In India, studies place the prevalence of dysmenorrhea somewhere between sixty and eighty percent of menstruating women — a condition more common than diabetes or obesity, and one that goes almost entirely unmeasured in official health statistics.⁵ Even the more conservative estimates, which put the figure at twenty to thirty percent for clinically significant pain, describe a problem affecting tens of millions of working-age women every single month.

Behind the dysmenorrhea sits a layer of serious gynaecological disease. Endometriosis — in which tissue resembling the uterine lining grows outside the uterus, causing chronic pelvic pain, debilitating periods and, frequently, infertility — is estimated to affect around forty-two million women in India, part of roughly a quarter of a billion worldwide.⁶ Its hallmark in the Indian context is delay: because society has trained women to treat severe period pain as normal, and because the condition can only be definitively diagnosed through surgery, the average woman waits the better part of a decade — eight to ten years — for a correct diagnosis.⁷ Polycystic ovary syndrome, which disrupts cycles and compounds pain, is increasingly described by clinicians as an impending public-health crisis among young Indian women.

What does all of this cost? The honest answer is that nobody knows precisely, because India has never tried to measure it. But the contours are visible. Roughly one in five young women is estimated to miss school or college each month because of period pain.⁸ Among those who stay, the cost takes the quieter form of “presenteeism” — being physically present but functioning far below capacity, distracted and exhausted by pain that colleagues cannot see and policies do not acknowledge. Research on working women elsewhere has found absenteeism and presenteeism rates among those with dysmenorrhea that dwarf the figures for almost any other common condition, and there is no reason to think India is different.⁹

The deeper point is one about visibility. A back injury sustained at work triggers compensation, leave and a chain of institutional empathy. A monthly, chronic, sometimes disabling pain that strikes half the workforce triggers nothing — no entitlement, no recognition, often not even a vocabulary that allows it to be named out loud. The pain is invisible not because it is mild but because the institutions that govern work were built by and around people who do not experience it. Menstrual leave, at its core, is an attempt to make that invisible burden visible, and to stop asking women to carry it alone and unacknowledged.

IV. A PATCHWORK, NOT A POLICY

India's engagement with menstrual leave is older than most people assume, and more fragmented than almost any other area of labour welfare. The earliest gestures came not from the state but from individual institutions: a Kerala school is recorded as having granted menstrual accommodations to students as far back as 1912, allowing girls who were menstruating during examinations to sit them later.¹⁰

⁴Indian Company Zomato Offers Period Leave for Employees, TODAY (Aug. 12, 2020), <https://www.today.com/health/indian-company-zomato-offers-period-leave-employees-t189227> (citing the American College of Obstetricians and Gynaecologists' estimate that roughly half of menstruating people experience dysmenorrhea).

⁵The Invisible Epidemic: How Dysmenorrhea Is Becoming India's Biggest Health Crisis in 2026, PAINFUL PERIODS (Mar. 4, 2026), <https://www.painfulperiods.in/stories/prevalence-of-dysmenorrhea-in-india/>.

⁶Endometriosis and Inflammatory Immune Responses: Indian Experience, NAT'L LIBR. MED. (PMC No. 7615030), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7615030/> (estimating endometriosis affects approximately 42 million women in India and 247 million worldwide).

⁷The Invisible Epidemic, PAINFUL PERIODS, *supra* note 5 (noting an eight- to ten-year diagnostic delay for conditions such as endometriosis and adenomyosis, and a developing PCOS crisis among young Indian women).

⁸*Id.* (estimating that nearly one in five young women miss school or college each month because of menstrual pain).

⁹See *Dysmenorrhea Among Working Women and Its Effect on Their Work Productivity and Activity Impairment*, NAT'L LIBR. MED. (PMC No. 12500489), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC12500489/> (finding markedly elevated absenteeism and presenteeism among working women with dysmenorrhea).

¹⁰Menstrual Leave Policy in India, DAKSHAYANI VELAYUDHAN DIGITAL ARCHIVE, <https://dvda.in/menstrual-leave-policy-in-india/> (recording menstrual accommodations for students in a Kerala school as early as 1912).

The modern story begins in 1992, when Bihar — then under the chief ministership of Lalu Prasad Yadav — introduced a policy granting female government employees, including contractual staff, two days of special leave each month.¹¹ For three decades, Bihar's quiet, unglamorous provision stood as the only meaningful menstrual leave entitlement in the country. It is still cited, accurately, as India's pioneer.

Then, in the 2020s, the dam began to crack. In January 2023, Kerala's Higher Education Department extended menstrual leave to female students across state universities and affiliated institutions, relaxing the mandatory attendance threshold from seventy-five to seventy-three percent to accommodate it, and granting students above eighteen up to sixty days of maternity leave. The following year, the state widened the policy to female trainees in Industrial Training Institutes.¹² Kerala's approach was distinctive: it targeted the campus rather than the workplace, on the theory that normalising menstruation in education would carry forward into working life.

In August 2024, Odisha became the first state to extend menstrual leave explicitly to both public and private sectors, announcing a one-day-per-month entitlement that could be taken on the first or second day of the cycle.¹³ The Sikkim High Court, around the same period, introduced provisions for women in its own institutional orbit.¹⁴ And then came Karnataka in 2025 — first the Cabinet's approval in October, then the contested government order in November — which set out to do what no state had attempted: a comprehensive, enforceable, twelve-day annual entitlement spanning the organised private sector, complete with the promise of penalties for employers who refused.¹⁵

Lay these out side by side and the pattern is unmistakable. Bihar covers government staff and gives two days. Kerala covers students and gives flexible leave with relaxed attendance. Odisha covers public and private employees and gives one day on a fixed day of the cycle. Karnataka covers a broad swathe of the organised private sector and gives twelve days a year. The eligibility ages differ. The documentation requirements differ. The enforceability differs. A woman's right to rest during her period in India depends entirely, and arbitrarily, on which state she happens to work in, which sector she happens to occupy, and whether she happens to be a student or an employee.

This is not a policy. It is a patchwork — a scatter of well-meaning, locally negotiated exceptions to a national rule of silence. And a patchwork, by its nature, leaves most people uncovered.

V. THE PRIVATE SECTOR EXPERIMENT

If the states moved slowly and unevenly, a handful of private companies moved first and made the most noise. In 2017, a Mumbai-based digital media firm, Culture Machine, introduced a "First Day of Period" leave and circulated a video that briefly made the idea a national talking point. But it was Zomato, the food-delivery giant, that turned period leave into a genuine corporate moment in August 2020, when its chief executive Deepinder Goyal announced ten days of paid period leave a year for all menstruating employees, explicitly including transgender staff.¹⁶

Goyal's framing was deliberate and, for a corporate communication, unusually candid. There should be no shame attached to applying for the leave, he wrote; menstrual cramps are painful for many women, and supporting people through them was a precondition for building a culture of trust. The policy drew the predictable split of reactions — praise from those who saw a major employer normalising a taboo, criticism from those who feared that any "special" category of leave for women would mark them out as costlier and less reliable hires.

Other firms followed in fits and starts — Byju's, the Kerala newspaper group Mathrubhumi, and Culture Machine before them — but the private-sector experiment has remained exactly that: an experiment, voluntary and reversible, concentrated in white-collar urban workplaces and dependent entirely on the goodwill of individual founders.¹⁷ A policy a CEO grants in a celebratory email can be withdrawn in a quieter one. And the women who most need protection — the garment worker on a production line, the domestic worker, the agricultural labourer — work nowhere near a company with a progressive HR department.

¹¹A Brief History of Menstrual Leaves — From Bihar to Spain, BE ME (May 12, 2023), <https://www.bemewoman.com/blogs/be-me/a-brief-history-of-menstrual-leaves-from-bihar-to-spain>; Karnataka's Landmark Menstrual Leave Policy: How It Compares with Other Indian States, THE LOGICAL INDIAN (Oct. 11, 2025), <https://thelogicalindian.com/karnatakas-landmark-menstrual-leave-policy-how-it-compares-with-other-indian-states/>.

¹²Karnataka's Landmark Menstrual Leave Policy, THE LOGICAL INDIAN, *supra* note 11; Menstrual Leave Policy in Indian States and Other Countries, ONMANORAMA (Mar. 14, 2026), <https://www.onmanorama.com/upsc/current-affairs/2026/03/14/menstrual-leave-policy-in-india.html>.

¹³Period Leaves: Odisha Announces One Day Menstrual Leave Policy for Women Workers, BUSINESS TODAY (Aug. 15, 2024), <https://www.businesstoday.in/india/story/period-leaves-odisha-announces-one-day-menstrual-leave-policy-for-women-workers-441653-2024-08-15>.

¹⁴Karnataka's Landmark Menstrual Leave Policy, THE LOGICAL INDIAN, *supra* note 11; Menstrual Leave Isn't a Privilege. It's a Right India Has Ignored for 78 Years, THE QUINT (Oct. 24, 2025), <https://www.thequint.com/opinion/menstrual-leave-karnataka-not-a-privilege-right-national-policy>.

¹⁵Karnataka Introduces Menstrual Leave Policy 2025 for All Sectors, DLA PIPER GENIE (2025), <https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2025/karnataka-introduces-menstrual-leave-policy-2025-for-all-sectors> (Cabinet approval of Oct. 9, 2025).

¹⁶This Indian Company Just Introduced a Period Leave Policy, GLOBAL CITIZEN (Aug. 12, 2020), <https://www.globalcitizen.org/en/content/zomato-announced-paid-period-leave-india/>; Indian Company Zomato Offers Period Leave for Employees, TODAY, *supra* note 4; see *Whose Productivity Counts? Gender, Work, and the Menstrual Leave Debate*, IMPRI (May 21, 2026), <https://www.impriindia.com/insights/gender-work-and-the-menstrual-leave-debate-2026/> (on Culture Machine's 2017 policy).

¹⁷*Whose Productivity Counts?*, IMPRI, *supra* note 16 (reporting Zomato's claimed improvement in female-employee retention and subsequent adoptions by Byju's and Mathrubhumi).

The corporate experiment proved the concept is workable and that the sky does not fall when women are allowed to rest. What it could never do is make the right universal. Only a law can do that.

VI. THE CONSTITUTIONAL CASE, AND THE LEGAL VACUUM

Here is the paradox at the heart of the Indian debate: the constitutional materials for a menstrual leave right are not just available, they have already been assembled by the courts — and yet no enforceable national entitlement exists.

The starting point is Article 21, the right to life, which Indian courts have long read expansively to include the right to live with dignity.¹⁸ In *Jaya Thakur v. Union of India*, the Supreme Court explicitly recognised menstrual health and hygiene as inseparable from a woman's dignified existence, bodily autonomy, privacy and reproductive health.¹⁹ The Karnataka High Court, upholding the state's menstrual leave policy in 2026, built directly on this foundation, locating the entitlement not in administrative discretion but in a cluster of constitutional provisions: Article 21's guarantee of dignity; Article 15(3), which permits the state to make special provisions for women; Article 39(e), which directs the state to protect workers' health; and Article 42, which requires just and humane conditions of work.

The court also dealt squarely with the objection that always shadows this debate — that treating women differently violates the equality guarantee of Article 14. It rejected the argument with precision. Men and women are equal before the law, the court reasoned, but they are biologically distinct; acknowledging that distinction in matters of health and bodily autonomy does not betray equality but gives it substance. Formal equality that ignores biological difference is not equality at all; it is merely the male body installed as the default human, with everyone else expected to conform or suffer in silence. A demand for menstrual leave, the court concluded memorably, is not a plea for privilege but an assertion of dignity.²⁰

The legislative scaffolding is just as suggestive. India already accepts, through the Maternity Benefit Act of 1961 and its 2017 expansion to twenty-six weeks of paid leave, that the female reproductive body imposes costs that the workplace must accommodate rather than penalise.²¹ If the law can recognise pregnancy and childbirth as legitimate grounds for protected leave, the question is not whether menstruation can be recognised but why it has not been.

And there is no shortage of legislative attempts. The Menstruation Benefits Bill of 2017, introduced by the parliamentarian Ninong Ering, was the first to put menstrual leave before the legislature. It was followed by Shashi Tharoor's Women's Sexual, Reproductive and Menstrual Rights Bill in 2018, the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill in 2022 — which proposed three days of paid leave for women and transgender people — and a 2023 proposal along similar lines.²² Every one of them was a private member's bill. Not a single one became law. Private member's bills in India almost never do; they are vehicles for raising an issue, not for resolving it. Their graveyard is, in itself, an indictment of how seriously the issue has been treated.

So the situation is this. The Constitution supports a menstrual leave right. The courts have said as much. The reproductive body is already a recognised category in labour law. Bills have been drafted repeatedly. And still there is no statute — only a scatter of state orders whose legal force, as the Karnataka litigation has now exposed, is open to challenge the moment an employer decides not to comply.

VII. THE COURT THAT WOULD NOT ACT

The natural place to resolve a constitutional question is the Supreme Court, and the issue has indeed reached it — more than once. The outcome each time has been the same: sympathy without a remedy.

In *Shailendra Mani Tripathi v. Union of India* in 2023, an advocate petitioned the court to direct the central and state governments to frame a model menstrual leave policy, arguing that the absence of such leave left a legal vacuum and violated the rights to dignity, health and equality. The court declined. It held that framing such a policy was a matter for the executive and legislature, not the judiciary, and that issuing a “positive mandamus” — a judicial command to create a law — would intrude on functions the Constitution assigns elsewhere. It disposed of the petition with a direction that the petitioner take the matter to the Ministry of Women and Child Development.²³

When the issue returned in 2025, the court went further, and its reasoning revealed the deeper anxiety that has paralysed national action. Mandatory menstrual leave, the bench worried, could backfire on the very women it was meant to help. If employers were legally required to grant paid leave to menstruating staff, they might quietly decide that women were a costlier, more complicated hire — and respond by hiring fewer of them, passing them over for leadership and promotion, or assuming they would be frequently

¹⁸INDIA CONST. art. 21; ID. art. 14; ID. art. 15, cl. 3; ID. art. 39, cl. e; ID. art. 42.

¹⁹*Jaya Thakur v. Union of India* (India 2023) (recognizing menstrual health and hygiene as part of the right to live with dignity under article 21), discussed in *India: Karnataka High Court Directs the Implementation of the Menstrual Leave Policy*, L&E GLOBAL, *supra* note 3.

²⁰*Chandravva Hanamant Gokavi v. State of Karnataka*, *supra* note 3 (grounding the policy in articles 15(3), 21, 39(e), 42 and 162, rejecting the article 14 objection, and characterizing menstrual leave as “not a plea for privilege, but an assertion of dignity”).

²¹THE MATERNITY BENEFIT ACT, 1961, No. 53, Acts of Parliament, 1961 (India); THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017, No. 6, Acts of Parliament, 2017 (India) (extending paid maternity leave to twenty-six weeks).

²²THE MENSTRUATION BENEFITS BILL, 2017 (India); THE WOMEN'S SEXUAL, REPRODUCTIVE AND MENSTRUAL RIGHTS BILL, 2018 (India); THE RIGHT OF WOMEN TO MENSTRUAL LEAVE AND FREE ACCESS TO MENSTRUAL HEALTH PRODUCTS BILL, 2022 (India); see *Menstrual Leave in India — Latest Trends & Perspectives*, BCP ASSOCIATES (Apr. 3, 2024), <https://bcpassociates.com/menstrual-leave-in-india-latest-trends-perspectives/>.

²³*Shailendra Mani Tripathi v. Union of India*, 2023 SCC OnLine SC 228 (India); see *Supreme Court Declines Mandatory Menstrual Leave Policy*, ODISHA PLUS (Mar. 16, 2026), <https://odisha.plus/2026/03/supreme-court-menstrual-leave-policy-india/>.

absent. Rather than mandate, the court praised the voluntary initiatives of states like Bihar, Kerala and Odisha and of private companies, and again steered the question toward the government's discretion.²⁴

The concern is not frivolous, and it deserves to be taken seriously rather than dismissed. But the court's posture drew sharp criticism. Commentators argued that the judgment was myopic and reductive — that it reduced a question of justice to a calculation of employer convenience, and that it placed the burden of avoiding discrimination on women themselves by denying them a benefit, rather than on a legal system that ought to prohibit the discrimination directly.²⁵ There is, after all, something circular about refusing to grant women a right on the grounds that granting it might lead employers to discriminate against them. The logical response to anticipated discrimination is to outlaw the discrimination, not to withhold the right.

The court's reluctance also rests on a separation-of-powers principle that, in the abstract, is sound: a constitutional court should not legislate. But the practical consequence has been a kind of institutional buck-passing. The judiciary points to the legislature. The legislature, through a written reply in the Lok Sabha by the Minister for Women and Child Development, has stated plainly that there is no proposal under consideration to make paid menstrual leave mandatory for all workplaces.²⁶ The executive points back to the states. The states, as Karnataka has discovered, lack the clear statutory authority to bind private employers, and their orders are litigated the moment they try. Everyone agrees the issue is real. No one with the power to settle it is willing to do so.

VIII. THE HARD QUESTIONS THE DEBATE MUST ANSWER

A serious case for a menstrual leave law cannot simply wave away the objections to it. They are substantive, and the strongest arguments against the policy come not from people hostile to women's interests but from people genuinely worried about women's outcomes.

The first and weightiest is the discrimination concern the Supreme Court raised. India has a live, recent cautionary tale: when maternity leave was extended to twenty-six weeks in 2017 — one of the most generous mandates in the world — there was credible evidence that some employers simply became more reluctant to hire women of childbearing age.²⁷ A menstrual leave mandate could plausibly add another line to the ledger of perceived "costs" of employing women, in a country where female labour force participation is already among the lowest in the world. To pretend this risk does not exist would be dishonest.

The second is stigma and privacy. Menstruation remains a deep taboo across much of India, discussed openly by some younger workers but shrouded in shame for many. A policy that requires a woman to declare, in effect, "I am menstruating" in order to claim a day off can feel less like liberation than exposure. There is a real fear among women that taking the leave will see them labelled unreliable, their productivity quietly questioned, their absences resented by male colleagues who see only a benefit they do not receive. A right that people are too embarrassed or too afraid to use is not much of a right.

The third is a more philosophical critique, and it comes largely from within feminism rather than against it. To carve out a special category of leave defined by the menstruating body, the argument runs, risks reinforcing the oldest and most damaging stereotype of all: that women are biologically governed, their reliability hostage to their hormones, their bodies a problem to be managed. Essentialising women as their reproductive function, on this view, hands ammunition to exactly the people who have always wanted to keep them out of serious work.

The fourth, and in the Indian context perhaps the most damning, is the question of who actually benefits. More than eighty percent of working women in India — by some counts above ninety percent — are in the informal sector: agricultural labour, domestic work, construction, home-based piecework, street vending. They have no formal employer, no HR department, no payslip, no social security, no maternity benefit and no realistic prospect of menstrual leave under any of the policies on the books.²⁸ Every existing Indian menstrual leave provision applies to the organised sector. The result is a bitter irony: the women with the most physically punishing jobs, the least control over their conditions and the worst access to toilets and clean water — the women, in short, for whom menstruating at work is hardest — are precisely the women these policies do not reach. A reform that benefits salaried professionals while leaving the informal majority untouched risks becoming a symbol of progress that deepens the inequality it claims to address.

None of these objections is a reason to do nothing. But each is a reason to do the thing carefully — and each points toward a specific feature that a well-designed law would need to have. The discrimination risk argues for pairing leave with enforceable anti-discrimination protections. The stigma problem argues for minimal disclosure and no medical-certificate requirement. The essentialism critique argues for flexible, opt-in framing rather than a paternalistic mandate. And the informal-sector gap argues, above all, for a national statute with the reach and the funding mechanisms that no state government order can muster.

²⁴*Menstrual Leave in India*, DRISHTI IAS, <https://www.drishtias.com/daily-updates/daily-news-analysis/menstrual-leave-in-india> (summarizing the Court's concern that a mandatory entitlement could discourage the hiring and advancement of women); *Whose Productivity Counts?*, IMPRI, *supra* note 16.

²⁵*Is India Ready for Menstrual Leave? SC Judgment Triggers Nationwide Debate*, THE WEEK (Mar. 30, 2026), <https://www.theweek.in/news/health/2026/03/30/is-india-ready-for-menstrual-leave-sc-judgment-triggers-nationwide-debate.html> (criticizing the judgment as "myopic and reductive" on menstrual justice).

²⁶*Period Leaves: Odisha Announces One Day Menstrual Leave Policy for Women Workers*, BUSINESS TODAY, *supra* note 13 (quoting the Minister of Women and Child Development's written reply in the Lok Sabha that no proposal to mandate paid menstrual leave for all workplaces was under consideration).

²⁷*Liberty to Bleed: Menstrual Leave Policy*, LIVELAW, *supra* note 1 (drawing the comparison to employer responses after maternity leave was extended to twenty-six weeks).

²⁸*Menstrual Leave Isn't a Privilege*, THE QUINT, *supra* note 14 (over ninety percent of working women in the informal sector); *Whose Productivity Counts?*, IMPRI, *supra* note 16 (placing the informal female workforce at 81.8 percent).

IX. WHAT THE REST OF THE WORLD HAS LEARNED

India is not entering uncharted territory. A small group of countries has had menstrual leave on the books for decades, and their experience offers something more useful than inspiration: a set of concrete lessons about what works, what fails, and why.

Japan was the pioneer, introducing menstrual leave in its Labour Standards Act as early as 1947, allowing women in physically demanding work to take time off.²⁹ South Korea grants one day of menstrual leave a month, though typically unpaid. Indonesia, since 2003, has allowed up to two days of paid leave per cycle without requiring advance notice. Taiwan, under its 2002 gender-equality-at-work legislation, provides up to three days a year, paid at half the normal wage. Zambia, since 2015, has offered women one day a month — known colloquially as “Mother’s Day” — with no medical certificate and no prior notice required, a design that maximises dignity by minimising scrutiny.³⁰ And in February 2023, Spain became the first European country to legislate menstrual leave, granting up to three days (extendable to five) for incapacitating menstruation, certified by a doctor and paid through the social security system.³¹

The most important lesson from this group is sobering: passing the law is the easy part. Across Japan, South Korea and Taiwan, take-up has been persistently, strikingly low.³² The reasons recur with grim consistency. Stigma keeps women from claiming a benefit that requires them to announce their menstruation to a manager, often male. Employers fail to implement the rules, sometimes refusing the leave outright, sometimes demanding intrusive proof that undermines the dignity the policy was meant to protect. Partial pay — the half-wage model in Taiwan, the unpaid day in South Korea — turns the leave into a financial penalty that only the relatively secure can afford to take. The lesson is not that menstrual leave fails, but that a menstrual leave law written without attention to stigma, pay and enforcement becomes a dead letter: a right that exists on paper and almost nowhere else.

The design choices matter enormously, and the global record sorts them cleanly. Requiring a doctor’s note, as Spain does, builds in a verification step that may reassure employers but erects a barrier — of cost, time and embarrassment — that suppresses use and is largely impractical for the kind of recurring, predictable pain the policy targets. Zambia’s no-questions-asked model maximises dignity but raises employer fears of abuse. Vietnam took the strangest path of all, in places offering women a financial incentive not to take their menstrual leave — a design that quietly converts a health entitlement back into a productivity bonus and reveals how easily these policies can be hollowed out.³³

The composite lesson for India is clear. A law that wants to be used, rather than merely admired, should make the leave paid, keep the disclosure minimal, dispense with medical gatekeeping for ordinary monthly leave, attack the stigma head-on through public framing, and build enforcement teeth so that the entitlement does not evaporate at the discretion of the employer. The countries that legislated and then forgot to do these things ended up with statistics, not change.

X. WHY A POLICY IS NOT ENOUGH

It would be easy to look at Karnataka and Odisha and the corporate pioneers and conclude that India is muddling its way toward menstrual justice without needing a national law — that organic, bottom-up progress is doing the job. The Karnataka litigation is the clearest possible refutation of that comfortable view.

The moment Karnataka tried to bind private employers through a government order, employers’ associations went to court arguing, with some legal force, that an executive instruction cannot impose obligations on private parties the way a statute can. A government order issued without legislative backing occupies an uncertain legal space: if an employer simply ignores it, the consequences — penalty, prosecution, anything at all — are murky.³⁴ The High Court ultimately upheld the policy, but the very fact that the question was live, contested and resolvable only through expensive litigation tells you everything about the fragility of the policy route. Every state that follows Karnataka can expect the same fight. Every woman relying on such an order does so on contested ground.

A statute solves problems a policy structurally cannot. It creates uniformity, so that a woman’s right does not depend on her postcode. It carries clear enforceability, with defined penalties and procedures, so that compliance is not a matter of employer goodwill. It can reach the informal sector through funding mechanisms — a social-security model, like Spain’s, where the state rather than the individual small employer bears the cost — that no state order can establish. It can be paired in the same instrument with anti-discrimination protections that directly answer the Supreme Court’s central fear, making it unlawful to refuse to hire,

²⁹*What Is Menstrual Leave, and Which Countries in the World Have It?*, FREE PERIODS CANADA (Oct. 27, 2023), <https://www.freeperiods.ca/blog/what-is-menstrual-leave-and-which-countries-in-the-world-have-it>; *Beyond the Controversy of Period Leave*, GREEN NETWORK ASIA (Sept. 24, 2025), <https://greennetwork.asia/brief/beyond-the-controversy-of-period-leave/> (Japan having provided menstrual leave under its Labour Standards Act since 1947).

³⁰*Menstrual Leave: Stigma and Uncertainty Mean These Progressive Measures Are Being Underused Around the World*, THE CONVERSATION (Mar. 13, 2026), <https://theconversation.com/menstrual-leave-stigma-and-uncertainty-mean-these-progressive-measures-are-being-underused-around-the-world-271449>; *Beyond the Controversy of Period Leave*, GREEN NETWORK ASIA, *supra* note 29 (South Korea, one unpaid day per month; Indonesia (2003), two days; Taiwan (2002), three days per year at half pay; Zambia (2015), one day, no certificate).

³¹*Spain: Could Spain’s New Menstrual Leave Inspire Other Countries?*, AM. BAR ASS’N (June 6, 2023), https://www.americanbar.org/groups/labor_law/publications/ilelc_newsletters/issue-spring-2023/spain/ (three days, extendable to five, certified by a physician and paid through social security at seventy-five percent of earnings).

³²*Menstrual Leave: Stigma and Uncertainty*, THE CONVERSATION, *supra* note 30 (documenting low utilization, non-implementation by employers, and demands for intrusive proof in Japan, South Korea and Taiwan).

³³*The Pros and Cons of Menstrual Leave Policies in the Workplace*, DAYS FOR GIRLS INT’L (Apr. 21, 2026), <https://www.daysforgirls.org/blog/the-pros-and-cons-of-menstrual-leave-policies-in-the-workplace-what-organizations-should-know/>; *Menstrual Leave: Stigma and Uncertainty*, THE CONVERSATION, *supra* note 30 (Vietnam’s incentive structure).

³⁴*Liberty to Bleed: Menstrual Leave Policy*, LIVELAW, *supra* note 1 (a government order without statutory enactment leaves the consequences of non-compliance uncertain).

promote or retain a woman because she is entitled to menstrual leave. And it can settle the federal confusion in which the judiciary, the legislature, the executive and the states each insist the responsibility lies with one of the others.

Above all, a law changes the moral status of the entitlement. A policy is a favour the powerful extend and can retract. A law is a right the powerful owe and cannot. That shift — from grace to obligation, from gift to guarantee — is the entire point. India has spent more than three decades demonstrating, through Bihar and Kerala and Odisha and Karnataka and Zomato, that menstrual leave is workable, popular and constitutionally sound. What it has not done is take the final step of making it a right that belongs to every woman as a matter of law, rather than a benefit that reaches some women as a matter of luck.

XI. WHAT A GOOD INDIAN MENSTRUAL LEAVE LAW WOULD LOOK LIKE

The objections to menstrual leave are not arguments for inaction. They are a design brief. A national law written with the global lessons and the domestic critiques in mind would look quite different from a blunt mandate, and would answer the strongest concerns directly rather than ignoring them.

It would make the leave **paid**, because an unpaid or half-paid entitlement, as Taiwan and South Korea have shown, is a penalty dressed as a right and excludes precisely the lower-income women who need it most.

It would make it **flexible and opt-in** rather than fixed and prescriptive — usable on any day of the cycle, claimable by those who need it and ignorable by those who do not — so that it accommodates the enormous variation in how menstruation is actually experienced and avoids the paternalism of assuming all women are incapacitated on schedule.

It would require **minimal disclosure and no routine medical certificate**, treating ordinary monthly leave the way Zambia does, so that women are not forced to choose between their privacy and their pain, and so that the recurring nature of the condition is not pointlessly re-litigated every month.

It would be **paired with statutory anti-discrimination protection**, making it explicitly unlawful to deny employment, promotion or fair treatment on the basis of a person's entitlement to menstrual leave — the direct legislative answer to the Supreme Court's worry that the benefit could become a pretext for bias.

It would be funded in a way that **reaches the informal sector**, through a social-insurance or state-supported model that does not place the entire cost on small employers and that creates some mechanism — however imperfect — to extend protection to the agricultural labourers, domestic workers and home-based workers who make up the overwhelming majority of India's working women and who are currently invisible to every policy on the books.

It would be **gender-inclusive in its drafting**, covering transgender men and non-binary people who menstruate, as the better corporate policies already do, rather than tying the right to legal womanhood.

And it would come **bundled with the infrastructure that makes the leave less necessary in the first place** — clean and accessible toilets, menstrual products, private spaces, water — because the goal is not to send women home but to make work survivable during menstruation, and leave is only the most visible part of a much larger question of whether workplaces are built for the bodies that actually occupy them.

A law with these features would not be a perfect instrument. No law is. But it would convert India's scattered, contested, luck-dependent patchwork into a coherent national right, and it would do so while taking seriously the very real risks that have, until now, served mostly as excuses for doing nothing.

XII. MENSTRUAL JUSTICE, NOT MENSTRUAL CHARITY

The deepest reframing the debate needs is to stop treating menstrual leave as a kindness and start treating it as justice. Charity is discretionary, hierarchical and revocable; it positions women as recipients of generosity. Justice is owed, equal and enforceable; it positions women as holders of rights. The language matters, because it determines whether the entitlement survives the next change of management, the next budget cut, the next chief executive less enlightened than the last.

Menstrual justice, as its advocates frame it, is not satisfied by a day off written into an employee handbook. It asks why no Indian labour law defines pain as a legitimate trigger for rest when it arrives monthly and predictably, even as it recognises pain from injury. It asks why the women in the most physically brutal jobs, with the least dignity and the worst facilities, are the ones every policy forgets. It insists that the ability to manage menstruation with dignity is not a perk for the salaried but a right whose accessibility should not depend on class, caste, sector or the goodwill of an employer.

The cost of continuing to do nothing is not neutral. It is paid every month, in millions of small, invisible instalments: in the student who misses an exam, the line worker who faints rather than ask for a break she has no right to take, the professional who hides her endometriosis behind a vague claim of feeling unwell, the woman whose serious illness goes undiagnosed for a decade because everyone, including herself, was taught that this is simply what a body like hers must endure. None of this appears in a productivity report. All of it is real.

India has done the hard intellectual work already. Its courts have located menstrual dignity in the Constitution. Its states have proven the policy workable. Its companies have shown the sky does not fall. The world has supplied a manual of mistakes to avoid. What remains is the simplest and most difficult step of all: to write the right into law, and to mean it. A country that can guarantee twenty-six weeks of maternity leave can find the will to guarantee a woman the right to bleed in peace. The only thing missing is the decision to do it.

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