



## LEGAL PERSPECTIVES ON RECOGNIZING MENSTRUAL LEAVE AS A FUNDAMENTAL WOMEN'S RIGHT UNDER LABOR LAWS

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### I. INTRODUCTION

The authors of this study critically examines the legal lacunae surrounding menstrual leave in Tamil Nadu, a state distinguished by its high literacy rate and strong work ethic. She argues that the absence of specific statutory provisions addressing menstrual health in labour laws necessitates a comprehensive policy framework. Given the potential for unintended consequences arising from entrenched gender biases, she advocates for a balanced approach that integrates menstrual leave with alternative measures such as workplace health policies, flexible work arrangements, and improved access to menstrual healthcare. She underscores the necessity of a progressive legislative and policy framework that upholds employee well-being while aligning with Tamil Nadu's commitment to education, productivity, and equitable labour rights. Menstrual leave refers to a statutory or policy-based provision allowing employees to take leave during menstruation without penalty. While several international jurisdictions have recognized menstrual leave as a workplace right, Indian labour laws lacks a specific framework addressing menstrual health in employment policies. The absence of statutory protection leads to workplace discomfort, reduced productivity, and potential gender-based discrimination. Given that maternity benefit and various sickness benefits s are already enshrined under labour laws, there is a pressing need to integrate menstrual leave into the legislative framework to uphold women's health rights and ensure workplace equity

#### A. Menstrual Health: A Fundamental Right and a Shared Responsibility

The normal monthly shedding of blood and tissue from the lining of the uterus (womb) when pregnancy does not occur. During menstruation, menstrual blood and tissue flow from the uterus through the cervix and pass out of the body through the vagina. Menstruation usually occurs about every 28 days (except during pregnancy) and lasts 3 to 5 days, but this can vary from person to person. It normally starts during puberty and ends at menopause. Also called menses and menstrual period<sup>2</sup>

Menstrual health is a state of complete physical, mental, and social well-being in

relation to the menstrual cycle, not just the absence of illness or discomfort. Ensuring menstrual health means that women, girls, and all individuals who menstruate can experience the following seven dimensions throughout their lives:

1. **Access to Information and Medical Care** – Everyone who menstruates should have accurate, age-appropriate knowledge about menstruation, self-care, and hygiene. Understanding the menstrual cycle helps break myths and misinformation, empowering individuals to manage their health with confidence. No one should suffer in silence due to lack of awareness, resources, or societal

taboos. Timely diagnosis and treatment are essential.

## 2. **Dignified Menstrual Management** –

No one should struggle to access safe, affordable, and effective menstrual products. Clean sanitation facilities with proper disposal methods should be available in schools, workplaces, and public spaces, ensuring privacy and hygiene.

## 3. **Freedom from Discrimination and Stigma** –

Menstruation is a natural bodily function, not something to be hidden or ashamed of. Breaking the silence around periods means creating open conversations at home, in schools, and in society, so no one feels isolated or judged.

## 4. **Equal Participation in Daily Life** –

Menstruation should never be a barrier to education, work, or social activities. Schools and workplaces must be inclusive, allowing individuals to manage their periods comfortably and without fear of exclusion or embarrassment.

## 5. **Implementation of Menstrual Leave Policies**–

Recognizing that menstrual symptoms can significantly impact daily activities and work performance, implementing menstrual leave policies is essential for promoting gender equality and supporting the health needs of menstruating individuals. Such policies allow employees to take paid or unpaid leave during menstruation when symptoms hinder their ability to work effectively

## 6. **Supportive Policies and Resources** –

Governments and institutions must prioritize menstrual health by including it in healthcare, education, and labour policies. Menstrual products should be affordable, if not free, and workplaces should recognize the need for menstrual leave where necessary.

## 7. **A Shared Responsibility** –

Menstrual health is not just a women's issue—it concerns everyone. Families, communities, and policymakers must work together to ensure that menstruation is treated with dignity and

respect, creating a world where no one is held back because of their period.

## B. Menstrual leave

Menstrual leave is a workplace policy that grants employees time off during menstruation to manage severe symptoms without compromising job security. A study in 2016<sup>3</sup> indicate that dysmenorrhea (severe menstrual pain) is a leading cause of absenteeism among females of reproductive age. Conditions such as endometriosis, adenomyosis, and pelvic inflammatory disease (PID) can exacerbate symptoms, including nausea, vomiting, headaches, dizziness, and fatigue,<sup>4</sup> making it challenging to fulfill work obligations.

Providing menstrual leave ensures employees are not pressured to work while experiencing debilitating symptoms, allowing them time to rest, seek treatment, and return to work with improved productivity. Employers can also support menstrual health by offering flexible work arrangements, such as reduced hours or remote work, ensuring a more accommodating and inclusive workplace. Menstrual leave policies vary across different regions and workplaces. Some companies provide one paid leave day per month, while others offer the option to work from home on designated days. Additionally, certain workplaces have introduced “well-being rooms,” allowing menstruators to take breaks and manage their health during working hours<sup>5</sup>. Various countries have also implemented distinct national menstrual leave policies. such as Japan<sup>6</sup>, China<sup>7</sup>, Taiwan<sup>8</sup>, Indonesia<sup>9</sup>, South Korea<sup>10</sup> taking it as a precedent a developing country can oblige itself for such implementation in its transformation into developed country.

Integrating menstrual health into labour laws is crucial for ensuring workplace equity and fulfilling constitutional and legislative mandates.<sup>11</sup>. However, there is no corresponding provision for menstrual leave, despite its significant impact on women's participation in the workforce. Several labour laws, including the Factories Act, 1948<sup>12</sup> and

Shops and Establishments Acts of various states, regulate working conditions, but none explicitly address menstrual health.. Legal scholars argue that statutory menstrual leave would align with global best practices and ensure uniform protection for women across industries, reinforcing their right to a fair and inclusive work environment<sup>13</sup>.

## II. LEGAL LACUNAE IN IMPLEMENTATION

India's labour legislation, including the Factories Act, 1948, and the Code on Social Security, 2020, does not incorporate menstrual health considerations, leading to inconsistencies in policy adoption across sectors. The lack of a uniform legal framework results in limited workplace accommodations, absence of confidentiality protections, and heightened risk of employment bias. Notably, informal sector workers, daily wage labourers, and gig workers remain entirely excluded from any legal entitlement to menstrual leave, further widening the gap in statutory protections.

According to *The Palgrave Handbook of Critical Menstruation Studies*<sup>14</sup>, menstrual leave remains a controversial policy. The authors emphasize the need for careful implementation to prevent unintended consequences, such as reinforcing sexist attitudes, contributing to menstrual stigma, and exacerbating workplace discrimination. The absence of a statutory framework governing menstrual leave in Tamil Nadu and India raises significant concerns regarding its implementation, potentially resulting in workplace discrimination, reinforcement of menstrual stigma, and perpetuation of gender biases. The lack of explicit legislative provisions on menstrual health within labour laws creates ambiguity, leading to implicit bias in recruitment, promotions, and leadership opportunities. Furthermore, the absence of confidentiality safeguards in menstrual leave policies may compel employees to disclose sensitive health information, thereby exposing them to privacy violations and workplace discrimination.

Confidentiality in menstrual leave policies is imperative due to the prevailing societal stigma and cultural taboos surrounding menstruation, which distinguish it from maternity leave. While maternity leave is a universally recognized entitlement with clear statutory protections, menstruation remains a recurring and individualized physiological phenomenon often subjected to societal bias. Regular disclosure of menstruation in the workplace may expose employees to negative perceptions, professional disadvantages, and implicit biases regarding their reliability and competence. Ensuring confidentiality in menstrual leave requests is essential to safeguarding employee privacy, mitigating stigma, and preventing workplace discrimination.

Moreover, in the absence of robust anti-discrimination measures, menstrual leave policies may inadvertently contribute to workplace stigma, thereby adversely affecting hiring practices and career advancement opportunities for menstruators. Current legislative provisions fail to mandate flexible work arrangements, workplace accommodations, or privacy safeguards, thereby impeding effective implementation. A standardized legal framework that integrates menstrual leave within broader workplace health policies, incorporates anti-discrimination safeguards, ensures confidentiality in leave requests, and mandates flexible work arrangements is essential to fostering equitable and non-discriminatory access to menstrual leave.

### A. Absence of a uniform policy on menstrual leave in Indian labour laws.

Our Constitution is always concerned about the protection of the vulnerable as it is committed to the principle of inclusiveness. Prioritising women's health and safety is the primary sign of a civilized and egalitarian society. Many of developing and developed countries are taking the happiness index to evaluate the good governance of their state. As our country is also looking forward to such new scales for



measuring the well-being of the people, we should also think about such revolutionary ideas out of the traditional way of thinking

Either menstrual leave must be formally included under Article 42, ensuring a nationwide statutory mandate, or Tamil Nadu should take independent legislative action, following the precedent set by other states like Bihar<sup>15</sup> has granted two days of special leave since 1992, Odisha<sup>16</sup> provides 12 additional casual leave days annually, Kerala<sup>17</sup> extends menstrual leave to female students and ITI trainees, and Karnataka<sup>18</sup> is considering a proposal for six days of paid leave to recognize menstrual health as an essential labour right. The Indian Constitution, under Article 42<sup>19</sup>, directs the state to provide just and humane working conditions, which already extends to maternity benefits under the Maternity Benefit Act, 1961. The concept of menstrual leave is an expansion of article 21<sup>20</sup>, the right to life under the constitution of India; one should not be expected to work during menstruation, because of the menstrual pains, and the body being weak and vulnerable, basic sanitation problems like lack of proper sanitary facilities, lack of clean, safe, and private facilities for women, and lack of adequate menstruation alternatives result in the infringement of their basic right to health and also human right to health.

### **B. Analysis of existing labour laws for menstrual leave integration**

The existing labour laws already provide a foundation for workplace accommodations based on health and gender-specific needs, but menstrual health remains a legal lacuna. Integrating menstrual leave under Article 42 as a welfare measure, either through amendments to the Maternity Benefit Act or state-specific changes to the Shops and Establishments Act, would ensure gender-equitable labour rights. Tamil Nadu, known for labour law advancements, has the opportunity to set a precedent by formally recognizing menstrual leave, bridging the gap in India's labour law framework.

**Factories Act, 1948:** The Factories Act focuses on regulating the working conditions of labourers, including provisions for health, safety, and welfare. Under Section 19, it mandates sanitary facilities for women, recognizing gender-specific workplace needs. However, it does not acknowledge menstrual health as a factor affecting productivity and well-being. The Act already enforces rest intervals and working-hour limitations for women in certain cases (e.g., night shifts), which sets a precedent for including menstrual leave as a necessary welfare measure.

**Employee State Insurance Act :** Integrating menstrual leave within the existing framework of the ESI Act U/s 46<sup>21</sup> would provide comprehensive support to menstruating employees. By treating menstrual leave as a health-related benefit, similar to sickness or medical leave, employees would receive necessary time off while reducing stigma. Guidelines could specify one or two days per month of leave, with wages provided at a percentage (typically 70-80%) similar to sickness benefits under the ESI Act. This integration would strengthen employee welfare policies and foster a more inclusive and supportive work environment.

**Maternity Benefit Act, 196:** Enacted under Article 42 of the Constitution, this Act ensures paid maternity leave, recognizing childbirth as a condition requiring workplace accommodation. Section 5 provides 26 weeks of paid leave, while Section 8 mandates financial benefits to ensure women are not economically disadvantaged. If maternity leave is justified on biological grounds, menstrual leave should also be integrated under this framework, as both involve physiological conditions affecting work. The failure to do so creates an inconsistency in labour welfare laws, neglecting a significant health concern.

**Shops and Establishments Act:** This state-specific law governs employment conditions in commercial workplaces, allowing states to tailor policies. Bihar and Kerala have used this



flexibility to grant menstrual leave, while states like Tamil Nadu lack such provisions. The absence of a uniform policy results in unequal access to menstrual leave, disproportionately affecting women in states without such benefits. Tamil Nadu, with its history of progressive labour policies, can either lead in reform or advocate for central legislation ensuring uniform implementation.

### III. JUDICIAL PERSPECTIVE

In **Shailendra Mani Tripathi v. Union of India**<sup>22</sup>, the petitioner sought a directive under Article 32 of the Constitution for all states to frame a policy granting menstrual pain leave for female students and working women under the Maternity Benefit Act, 1961. The Supreme Court observed that the issue involved policy considerations and declined to pass a judicial directive. Instead, the Court directed the petitioner to submit a representation to the Union Ministry of Women and Child Development, which was deemed the appropriate authority to consider and decide on the matter. The petition was accordingly disposed of.

While the Supreme Court's concern about potential workplace discrimination is valid, the solution should not be denying menstrual leave altogether, but rather ensuring its structured implementation within labour laws. The same concern was raised before the enactment of maternity benefits, yet the Maternity Benefit Act, 1961 did not discourage women's employment. Instead, it created a legal obligation for employers to support female employees, fostering an inclusive work environment.

The judiciary can play an important role in interpreting the Constitution and ensuring that laws are consistent with fundamental rights. In this case, the Supreme Court could have taken a more proactive stance in framing the issue within the context of constitutional rights and women's equality. Instead of deferring to the executive, the Court could have recognized the need for legislative action while emphasizing the urgency and importance of the issue. This

decision raises concerns because the issue of menstrual pain leave involves the broader rights of women, potentially touching on their fundamental right to equality and non-discrimination under Articles 14, 15, and 21 of the Constitution. Given that the matter relates to women's health, dignity, and their ability to participate equally in education and employment, the Court could have used its constitutional mandate to ensure justice by directing the government to enact a policy or amendment under the Maternity Benefit Act, 1961, or to bring menstrual leave under the purview of labour laws. It could have issued guidelines or a direction to the government to urgently consider the inclusion of menstrual leave within labour laws. Such an approach would have ensured that the matter was addressed promptly, even if the ultimate responsibility for lawmaking rested with the legislature. The Court could have used its power of judicial review to ensure that the government took timely action to protect the rights of women.

The recognition of the third gender<sup>23</sup> was based on constitutional principles of equality and dignity, acknowledging the rights of individuals, hormonal and biological changes beyond the male-female binary and has given protection<sup>24</sup>. Similarly, menstrual leave should be considered a basic right for women, as it addresses their health and well-being. Just as gender recognition was crucial for equality, menstrual leave is essential for ensuring that women are not discriminated against due to natural biological processes. Both issues, rooted in the principles of equality and non-discrimination, require timely legal recognition to uphold women's fundamental rights.

### IV. GOVERNMENT BILLS AND LEGISLATIVE INITIATIVES

#### A. Right to Menstrual Hygiene and Paid Leave Bill, 2019

The Bill<sup>25</sup> was introduced by Congress MP M.S. Jothimani from Tamil Nadu, sought to mandate three days of paid menstrual leave for women

employed in establishments registered under the government. The bill further emphasized the obligation of the state to ensure menstrual health and hygiene in workplaces, thereby recognizing menstrual well-being as an essential aspect of labour rights. However, the bill did not progress beyond the preliminary stage of legislative consideration, primarily due to policy deliberations concerning its enforceability, economic implications for employers, and the potential risk of exacerbating gender-based workplace discrimination..

### **B. Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022**

The bill<sup>26</sup> was introduced by Congress MP Hibi Eden from Kerala, proposed the provision of three days of paid menstrual leave for women and transwomen across all workplaces, alongside ensuring free access to menstrual health products such as sanitary pads, tampons, and menstrual cups. Additionally, the bill sought to extend menstrual leave benefits to female students in educational institutions, thereby recognizing menstrual health as a critical workplace and 2022, by Shri Hibi Eden M.P., Bill No. 276 of 2022, BILL to provide the right to paid leave during the period of menstruation for working women, menstrual leave for female students and free access to menstrual health products including menstrual cups, tampons and sanitary pads irrespective of status or region and for matters connected therewith or incidental thereto. educational concern. The bill aimed to align Indian labour policies with global gender-sensitive standards. However, it was not taken up for discussion in Parliament due to prevailing concerns regarding its economic feasibility and potential social ramifications..

### **C. Schemes and Initiatives:**

Though Tamil Nadu has not yet enacted a menstrual leave law, recent initiatives indicate growing advocacy for such a policy. The DMK's 2024 election manifesto pledged to push for a law mandating menstrual leave, emphasizing

gender equality and women's welfare. Additionally, the Tamil Nadu Postgraduate Teachers' Association (TNPgTA) submitted a proposal to the Chief Minister in 2024, urging the implementation of paid menstrual leave for female educators to enhance their well-being and productivity. Further, the Makkal Needhi Maiam (MNM) Women's Wing has called for menstrual leave for female students, drawing inspiration from Kerala's initiative, which extends menstrual and maternity leave to students in colleges and universities. MNM leader Mookambika Rethinam has urged the government to introduce a pilot program to assess the feasibility and impact of menstrual leave on students' well-being and attendance. These efforts reflect increasing recognition of menstrual health as an essential policy consideration, laying the groundwork for potential legislative action in Tamil Nadu..

The Ministry of Health & Family Welfare's scheme entitled "Scheme for Promotion of Menstrual Hygiene among Adolescent Girls in Rural India" promotes Menstrual Hygiene among adolescent girls in the age group of 10-19 years in rural areas as part of Adolescent Reproductive Sexual Health. As per information provided by States/UTs 3,13,255 Anganwadis and 3,69,461 Schools are implementing the scheme with a view to promote Menstrual Hygiene practices in the rural areas.

The ASHA workers play an instrumental role in promotion of the scheme. They are responsible for distributing the sanitary napkin packs at a subsidized rate of Rs. 6/- for a pack of 6 napkins and arranging monthly meetings with the adolescent girls in their area to deliberate on various health issues including menstrual hygiene management.

Under Pradhan Mantri Bhartiya Janaushadhi Pariyojana (PMBJP), Government has launched Jan Aushadhi Suvidha Sanitary Napkins at Rs. 1/- per pad for women to ensure easy availability of the menstrual health services at affordable prices. Awareness generation among adolescent girls in schools about safe and





hygienic menstrual health practices are done through the existing service delivery and health promotion mechanisms in schools. Further, IEC and BCC activities are carried out by the States/UTs to create awareness among the adolescent girls and other stakeholders as per the proposals received in the Programme Implementation Plan (PIPs) of the respective State/ UT under National Health Mission<sup>27</sup>.

The Tamil Nadu Government Order<sup>28</sup> represents a significant policy advancement in menstrual hygiene management (MHM), aiming to ensure equitable access to menstrual health resources for adolescent girls and women in the state. Expanding upon earlier initiatives that primarily targeted rural areas, this order extends the Menstrual Hygiene Programme (MHP) to adolescent girls in urban areas and women inpatients in government health institutions. A key component of the policy is the free distribution of sanitary napkins through government health facilities, schools, and community programs, ensuring that economic barriers do not prevent access to essential menstrual products. Additionally, the policy prioritizes awareness and education, with Accredited Social Health Activists and health workers conducting educational sessions to dispel myths, promote proper menstrual hygiene practices, and reduce stigma associated with menstruation. Recognizing the environmental challenges posed by menstrual waste, the government has also introduced safe disposal mechanisms, including the installation of incinerators in schools, health institutions, and public spaces to ensure hygienic and sustainable waste management. The implementation of the program falls under the purview of the Director of Public Health and Preventive Medicine, with dedicated funding allocated for product procurement, distribution, training, and awareness campaigns. By integrating menstrual health into broader public health and gender-inclusive policies, Tamil Nadu's initiative is expected to enhance menstrual health outcomes, foster social acceptance, and promote sustainable

menstrual hygiene practices. This policy underscores the state's proactive approach in addressing menstrual health as a fundamental public health and human rights issue, setting a precedent for other regions to follow.

## V. INTERNATIONAL POLICIES ON MENSTRUAL LEAVE

### A. WHO on Menstrual Health

Menstrual health has long been overlooked in major international policies, but thanks to the relentless efforts of grassroots activists, especially from the Global South, it is finally getting the attention it deserves. Millions of people who menstruate still struggle with shame, lack of access to menstrual products, inadequate sanitation, and limited education on the subject. Barriers that violate their basic rights to health, education, and dignity. Menstruation is not just a hygiene issue; it is a human rights and public health issue that impacts physical, mental, and social well-being. While some governments have taken steps, like removing taxes on menstrual products or providing supplies to vulnerable groups, this is just the beginning. Schools, workplaces, and public spaces must create an environment where menstruation is openly discussed and properly supported, without stigma. Governments must go beyond product access and integrate menstrual health into policies, budgets, and broader sexual and reproductive health programs, particularly for those in humanitarian crises. Recognizing menstrual health as a fundamental right is not just about improving access. It's about ensuring that no one is held back because of a natural bodily function<sup>29</sup>.

### B. Integration of Menstrual Leave And Health as Basic Human Rights

Menstrual health is intrinsically linked to several fundamental human rights, including the rights to health, education, work, and non-discrimination. International human rights instruments provide a robust framework for advocating policies that address menstrual

health in the workplace. Recognizing menstrual leave as a fundamental right is essential to uphold women's health, dignity, and equality in the workplace. Menstruation, a natural biological process, can cause significant discomfort and health challenges for many women, impacting their ability to perform professional duties effectively. Implementing menstrual leave policies acknowledges these challenges and provides necessary support, ensuring that women are not compelled to work under distressing conditions. Such policies not only promote gender-sensitive work environments but also challenge longstanding stigmas associated with menstruation, fostering a culture of openness and respect. By institutionalizing menstrual leave as a basic right, societies can advance toward genuine gender equality, recognizing and accommodating the unique health needs of women in professional settings. This approach aligns with broader human rights principles that advocate for non-discrimination and the right to just and favorable working conditions for all individuals.

**Right to Health :** The International Covenant on Economic, Social and Cultural Rights<sup>30</sup>

recognizes everyone's right to "the enjoyment of the highest attainable standard of physical and toward granting economic, social, and cultural rights (ESCR) to individuals, including labour rights and the right to health, education, and an adequate standard of living mental health." This encompasses access to essential healthcare services and the underlying determinants of health, such as adequate sanitation and hygiene facilities. Ensuring menstrual health is integral to this right, as inadequate facilities and stigma can lead to adverse health outcomes. The World Health Organization (WHO) emphasizes that menstrual health should be recognized and addressed as a health and human rights issue, not merely a hygiene concern<sup>31</sup>.

**Right to Education :** Menstrual health significantly impacts the right to education. The

Convention on the Rights of the Child<sup>32</sup> mandates that state parties recognize the right of the child to education. However, inadequate menstrual health management can hinder this right, as many girls miss school during their periods due to lack of facilities or societal stigma. Addressing menstrual health in educational settings is essential to ensure uninterrupted access to education for all students.

**Right to Work and Just and Favorable Working Conditions :** The Universal Declaration of Human Rights<sup>33</sup> and the ICESCR underscore the right to work and to just and favorable working conditions. This includes the right to safe and healthy working environments. Accommodating menstrual health needs in the workplace aligns with these provisions by ensuring that menstruating individuals can work in conditions that respect their health and dignity. The UN Human Rights Council has adopted resolutions emphasizing the importance of menstrual health, calling upon states to ensure access to adequate facilities, information, and products for effective menstrual hygiene management<sup>34</sup>.

**Right to Non-Discrimination and Gender Equality:** The Convention on the Elimination of All Forms of Discrimination Against Women<sup>35</sup> obligates states to eliminate discrimination against women in all areas, including employment. This entails recognizing and addressing gender-specific health concerns, such as menstruation, to achieve substantive equality. Implementing workplace policies that accommodate menstrual health needs helps dismantle barriers that perpetuate gender inequality and discrimination.

## VI. SCIENTIFIC APPROACH FOR MENSTRUAL LEAVE UNDER LABOUR LAWS

Scientific research underscores the necessity of menstrual leave. Studies published in BMJ (2021) and the ACOG<sup>36</sup> indicate that 20-25% of women experience severe dysmenorrhea, often leading to fatigue, nausea, and concentration difficulties, making it challenging to work



efficiently<sup>37</sup>. Furthermore, a YouGov India (2019) survey revealed that over 50% of working women struggle with menstrual discomfort at work, yet most hesitate to take sick leave due to stigma or fear of professional repercussions<sup>38</sup>. Studies have shown that menstrual symptoms can significantly impact productivity, with many women reporting the need to take days off due to severe discomfort<sup>39</sup>. A study found that 38% of women reported being unable to perform all their regular daily activities during their menstrual period and found that common menstrual symptom<sup>40</sup>s, such as stress and fatigue, significantly impacted their daily lives, including work performance. Another study highlighted that poor access to sanitation facilities and the need to conceal menstruation due to stigma adversely affect women's work experiences.

International studies present a different perspective where in 2019 study by TNO Netherlands found that structured menstrual leave policies reduced unplanned absenteeism and increased overall efficiency, as employees were better able to manage their health<sup>41</sup>. Spain's 2023 policy implementation demonstrated that flexible, optional menstrual leave did not significantly affect employment rates but rather fostered a more inclusive workplace<sup>42</sup>.

For India, a balanced approach is essential introducing optional, legally protected menstrual leave without making it mandatory could prevent discriminatory hiring practices. Coupled with policies ensuring non-discriminatory workplace environments, awareness campaigns, and

1979 - aims to eliminate discrimination against women in all forms, ensuring women's equal enjoyment of human rights and fundamental freedoms across political, economic, social, cultural, and civil spheres access to menstrual health products, menstrual leave can be effectively integrated into labour laws, promoting gender-sensitive work environments while maintaining economic stability.

## VII. RECOMMENDATIONS

1. The Indian government should consider establishing a uniform menstrual leave policy to ensure consistent entitlements across all states, promoting equity among working women nationwide. In the absence of a national policy, Tamil Nadu can take the lead by enacting state-specific legislation that grants menstrual leave, setting a precedent for other states to follow.
2. Current labour laws should be revised to incorporate provisions for menstrual leave and related health benefits, similar to maternity benefits. This integration would provide a legal foundation for menstrual leave, ensuring its recognition and enforcement.
3. Menstruating individuals should have the right to take leave or opt for work-from-home arrangements during menstruation without the need for prior approval. This policy would respect privacy and reduce potential embarrassment or discrimination.
4. Implement educational initiatives to dismantle taboos surrounding menstruation and address workplace discrimination. Raising awareness can foster a supportive environment and counteract unfounded objections that have led to the rejection of menstrual leave policies.
5. Menstrual leave should receive recognition comparable to maternity benefits, acknowledging the physiological challenges faced by women and ensuring they are supported in the workplace during menstruation.

The author's suggestion mandate that the menstrual health, including access to menstrual products and menstrual leave, be integrated into existing labour laws under a dedicated provision or chapter. This approach would ensure that the issue is effectively addressed within the established legal framework, without the need for isolated legislation. Strengthening current laws to include these provisions would close any existing

loopholes and offer a more robust and comprehensive solution to the matter of menstrual health.

### VIII. CONCLUSION:

The implementation of menstrual leave in Tamil Nadu represents a critical advancement in fostering gender-inclusive labour policies, in accordance with the broader framework of workplace rights and health benefits. By addressing existing legal gaps and ensuring effective enforcement through necessary legislative amendments, employer incentives, and public awareness campaigns, Tamil Nadu has the potential to establish a precedent for progressive labour reforms within India towards its transformation into developed country. The integration of menstrual leave into the existing labour law structure, akin to maternity benefits, will promote workplace equity, enhance productivity, and safeguard women's health without perpetuating gender-based biases. A well-crafted policy, supported by Supreme Court directives and relevant government schemes, will effectively bridge the divide between legal recognition and practical implementation, thereby ensuring the realization of sustainable and inclusive labour rights.

### END NOTES

1. Malik Sabana is a 4th-year BCom LLB (Hons) student specializing in international law and intellectual property rights at The Tamil Nadu Dr. Ambedkar Law University – School of Excellence in Law
2. Definition of Menstruation in National Cancer Institute of United States
3. Chen CX, Kwekkeboom KL, Ward SE. Beliefs About Dysmenorrhea and Their Relationship to Self-Management. *Res Nurs Health*. 2016 Aug;39(4):263–76. doi: 10.1002/nur.21726. Epub 2016 May 13. PMID: 27177093; PMCID: PMC7509811.
4. <https://www.medicalnewstoday.com/articles/312661#menstrual-symptoms>
5. Rachel B. Levitt and Jessica L. Barnack-Tavlaris." Chapter 43 Addressing Menstruation in the Workplace: The Menstrual Leave Debate"
6. LABOUR Standards Act (1947) – Grants menstrual leave if working is difficult; unpaid and at employee's request.
7. Provincial LABOUR Regulations – Some provinces allow 1–2 days leave with a medical certificate; implementation varies
8. Act of Gender Equality in Employment – Provides 3 days of menstrual leave annually, paid at half-wage
9. Manpower Act No. 13 (2003) – Allows 2 days of leave per month during menstruation; employer discretion in enforcement
10. LABOUR Standards Act – Grants 1 day of menstrual leave per month; employers face fines for non-compliance.
11. The Maternity Benefit Act, 1961, ensures financial and job security for women during maternity, recognizing reproductive health as a workplace concern.
12. The Factories Act, 1948, regulates working conditions, including health, safety, and welfare of workers, but lacks explicit provisions for menstrual leave.
13. Asha Bhandari, "Efficacy of Menstrual Leave in the Workplace: Law and the Changing Discourse on Gender in India," *SAGE Journals* (2023), available at [journals.sagepub.com](https://journals.sagepub.com).
1. Addressing Menstrual Stigma: The Case for Implementing Menstrual Leave as a Legal Provision in India," *SSRN Papers* (2023), available at [papers.ssrn.com](https://papers.ssrn.com)
2. Menstrual Justice: A Missing Element in India's Health Policies," *NCBI Bookshelf* (2021), available at [ncbi.nlm.nih.gov](https://ncbi.nlm.nih.gov)
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15. Govt. of Bihar, 1992 Policy—The Print
  16. The office memorandum supersedes finance department O.M No 6466/F dt. 12.03.2024
  17. Minister for General Education and Labour V. Sivankutty on Thursday announced two days of menstrual leave a month for women trainees in industrial training institutes (ITIs) in the State—The State government has already sanctioned period leave for women students in universities. An order of the Labour and Skills department issued on Thursday said the Kerala State Industrial Trainees' Council 2022 had appealed for menstrual leave for the women trainees citing the physical discomfort and mental stress experienced by them during periods. This forced them to take leave, affecting their attendance, and making them ineligible to appear for examinations. The Students Federation of India State committee too had submitted a petition in this regard. The Training director then appointed a committee to look into the issue. The committee recommended that the trainees could be sanctioned period leave, the order said
  18. Govt. of Karnataka, 2024 Proposal—SCC Online
  19. Article 42 of the Indian Constitution mandates the state to provide just and humane work conditions; By integrating menstrual leave aligns with this directive, just as maternity benefits are recognized under LABOUR laws.
  20. Article 21 of the Indian Constitution
  21. Section 46 of Employee State Insurance Act 1948
  22. Writ Petition (Civil) No. 24 of 2023, CORAM- HON'BLE THE CHIEF JUSTICE, HON'BLE MR. JUSTICE J.B. PARDIWALA, HON'BLE MR. JUSTICE MANOJ MISRA
  23. National Legal Service Authority vs Union Of India & Ors on 15 April, 2014
  24. Transgender Persons (Protection of Rights) Act, 2019.
  25. THE RIGHT TO MENSTRUAL HYGIENE AND PAID LEAVE BILL, 2019 By MS. S. JOTHIMANI, M.P Bill No. 292 of 2019- BILL to provide the right to menstrual hygiene facilities, health benefits and paid leave to women during menstruation and for matters connected therewith or incidental thereto
  26. THE RIGHT OF WOMEN TO MENSTRUAL LEAVE AND FREE ACCESS TO MENSTRUAL HEALTH PRODUCTS BILL,
  27. Update on Menstrual Hygiene Practices by Ministry of Health and Family Welfare on 02 FEB 2024 3:12PM by PIB Delhi Release ID: 2001822
  28. G.O. No. 543, 2020, Tamil Nadu Health and Family Welfare Department
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