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Case Commentary - Shailendra Mani Tripathi v. Union of India (2026)

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Introduction:

Shailendra Mani Tripathi v. Union of India (2026) was a landmark ruling that introduced the critical debate regarding menstrual equity in the Indian workplace. Through this case, the topic was brought up before the Supreme Court of India to request that paid menstrual leave be awarded to all employed women and students based on constitutional Articles 21 and 15(3). After consideration, the Supreme Court decided to dismiss the petition on March 13, 2026, deciding to allow the matter to remain within the remit of the executive by not passing a positive mandamus to provide such rights. In essence, this ruling can be seen as one where the judiciary exercised judicial restraint pragmatically and constitutionally. Realising that implementing such a sweeping legislative directive would tilt incentive structures in favour of female employees at the expense of reducing employment opportunities for the latter, the Court made the right choice of allowing economic policy-making to remain within the remit of the executive.

Facts of the Case:

The litigation has been brought before the apex court by Advocate Shailendra Mani Tripathi, who has filed a public interest litigation (PIL) under Article 32 of the Indian Constitution demanding a mandamus writ from the Union of India and all states for framing a national uniform policy on paid menstrual leave. The major argument for filing the PIL was based on the fact that menstruation is the physiological basis of maternity. Therefore, since the state protects pregnancies via the Maternity Benefit Act, 1961, it is also incumbent upon it to address the biological aspects of menstruation prior to conception.

The process took a few years. Initially, in 2023, the Supreme Court rejected the plea and advised the petitioner to present the case to the Ministry of Women and Child Development. Meanwhile, there was some sort of incremental progress where some states such as Odisha and Karnataka had already adopted their policies on paid menstrual leave. But on the grounds that no central legislation meant a huge discrepancy in different parts of the country, the petitioner turned to the apex court once again. And thus, finally, the writ petition was disposed of in the Supreme Court on March 13, 2026.

Issues:

For the consideration of the problem of the maintainability and constitutionality of the petitioners' claim, the following specific issues came before the Supreme Court:

1. If the constitutional guarantee of life with dignity in Article 21 of the Constitution, read along with the constitutional power to make provisions in respect of women in Article 15(3), amounts to the basic right to a uniform policy of paid menstrual leave for working women/girls throughout the country.
2. Whether the court order for the imposition of such a policy is violative of the separation of powers principle by infringing on the exclusive sphere of the legislature and executive for making policy decisions.
3. Whether the enactment of compulsory protective labour legislation for working women leads to a self-defeating market disincentive under Article 14.

Arguments:

Petitioner:

According to the counsel representing the petitioner, forcing women and students to work/attend classes despite experiencing severe dysmenorrhoea is unconstitutional in relation to Article 21, which refers to human dignity, and Article 42, which obligates the state to ensure humane conditions of work. To emphasise this point, the petitioner cited several treaties, namely the ‘Convention on the Elimination of All Forms of Discrimination against Women’ (CEDAW), requiring elimination of any disadvantageous biological effects associated with the woman’s condition in the workplace. In addition, according to the counsel, equality guaranteed under Article 14 of the constitution does not mean merely legal or formal equality but rather substantive equality by treating “unequals differently”.

Respondent (Union of India):

In contrast to the Petitioner’s stand, the Union of India contended that providing menstrual leave is a multifaceted socio-economic policy decision rather than being a fundamental right issue. The government contended that a policy like this would have significant and far-reaching ramifications for the economy of the country and needed consultations at various levels. The respondent maintained that imposition of such stringent measures through a statute fully funded by the employers would be detrimental to the working of private organisations, especially small and new firms. Such measures, argued the respondent, could be demotivating for women and adversely impact their participation in the workforce.

The Judgement:

On March 13, 2026, the bench headed by Chief Justice Surya Kant and Justice Joymalya Bagchi decided to dispose of the writ petition. Denying issuance of a favourable mandamus for implementing a national paid leave policy, the court ordered the Ministry of Women and Child Development to consider representations made by the petitioner. It was strongly recommended that the concerned authority study the viability of developing a “Model Policy” after holding consultations with concerned parties.

The ratio decidendi of the judgement centres around institutional limitations and constraints: the Supreme Court ruled that devising intricate labour laws and policies is exclusively an executive and legislative responsibility and not judicial in nature.

According to the Bench's objections to the case in question, implementation of a stringent and obligatory statute may result in a "double-edged sword" scenario. It was pointed out by the Court that compelling the private entities to cover the expenses associated with obligatory leaves might inadvertently make female employees "financial liabilities". As far as this problem is concerned, the court suggested that it might compel private organisations to avoid hiring women as their workers or deprive women of the possibility to assume important responsibilities within their companies. At the same time, the Bench commended progressive steps taken voluntarily by certain states and corporate companies; nevertheless, it declined to implement the obligatory state policy in question.

Critical Analysis:

An apt example where the concept of judicial pragmatism comes into play is 'Shailendra Mani Tripathi vs. Union of India' (2026). It effectively brings out the limitations of the capabilities of the institution within the context of separation of powers. While judicial deference to executive decision-making may be portrayed by commentators as judicial abdication in light of the celebrated judgement in 'Vishaka v. State of Rajasthan', the difference in contexts cannot be overstated. In 'Vishaka', the Court took an initiative to create guidelines for an area that had remained unaddressed by legislature with regard to workplace safety measures. Yet, this contrast fails to appreciate an important element of law here because 'Vishaka' was concerned with a negative right to be protected from sexual abuse, while the present case involves implementation of a positive right, dependent on economic considerations. Such matters need a considerable amount of financial modelling, which courts are ill-suited to undertake.

The hesitancy of the institution in making a move towards such a judgement is based on some hard facts of the market. In their defence against the judgement, critics often cite the example of the successful attempt to increase the maternity leave from ten weeks to twenty-six weeks under the 'Maternity Benefit Act, 1961', against all odds. Why cannot a similar judgement be made for menstrual equality? they ask. This question finds its answer in the different nature of both risks: while maternity leave is a clear biological phase that ends, periods will recur month after month.

The reality of the economics involved in such a case highlights one's vulnerability in falling into the trap of the 'formal versus substantive equality'. While the assertion of Chief Justice Surya Kant that mandating leaves will "reinforce stereotypes that women are not at par with men" appears to be based on formal equality, where equality is treated purely formally, irrespective of any biological differences, it is actually an attempt at protecting substantive equality.

This contradiction is evident when comparing this judgement with Dr Jaya Thakur v. Union of India (2026). In Dr Jaya Thakur's case, the court comfortably found access to MH&H in school settings to be a fundamental right under Article 21, which states it should be guaranteed in the form of free infrastructure for sanitation. The judiciary could comfortably secure physical infrastructure and dignified rights against the state. But mandating paid labour rights against employers without causing major market distortion would be impossible.

Finally, imposing a mandatory requirement through statutory means would ignore a very large informal sector problem. With a growing participation rate of females in the workforce crossing 41%, most of these females would continue working in the informal sectors, such as agriculture and construction, on daily wages. A statutory obligation of providing menstrual products and facilities for such informal employees would always be a far-fetched proposition. Rather, it would be an elite workplace facility in the formal sector while restricting female employment opportunities even further. Dismissing a mandatory judicial mandate in this case does not mean denying menstrual justice but recognising reality.

Conclusion:

In conclusion, the decision by the Indian Supreme Court to overturn a judicial ruling in Shailendra Mani Tripathi v. Union of India was a constitutionally valid move because, in any case, socio-economic reorganisation should fall solely within the realm of policymaking by the executive branch of government. Nevertheless, at times, the discourse employed by the justices did veer into an almost paternalistic stance, with the risk of medicalising an innate biological process. The way to menstrual justice in the future should not take the form of a punitive, draconian statutory order that places all the blame on employers. Instead, India must explore state-sponsored economic models, which can be similar to Spain’s social security system complemented by workplace accommodation schemes such as telecommuting and wellness rooms.