



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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TWO COURTS, ONE QUESTION: IS MENSTRUAL LEAVE A RISK OR A RIGHT?

- *Ananya Yaduvendu*

“Healthy citizens are the greatest asset any country can have”.

- **Winston Churchill**

For countless women, menstruation is not merely a monthly biological process; it is often accompanied by intense pain, exhaustion, discomfort, and emotional distress. Yet, despite these lived realities, many are expected to continue working as though nothing has changed, silently enduring physical suffering for fear of being judged as weak or less capable. Menstrual leave is, therefore, not a demand for special treatment but a recognition of women's dignity, health, and humanity. By acknowledging these biological realities, society moves closer to achieving genuine equality founded on empathy, fairness, and constitutional values.

The recognition of menstrual leave has recently emerged as one of the most debated issues in India, raising important questions about equality, dignity, and workplace rights. While many advocate for its recognition as a legal entitlement that accommodates the biological realities faced by women, others argue that such a policy may inadvertently reinforce gender stereotypes and create barriers to women's employment. This debate has gained judicial significance with the Karnataka High Court recognizing menstrual leave as an aspect of constitutional dignity and equality, whereas the Supreme Court has expressed concerns over its possible adverse consequences. This article critically examines whether menstrual leave should be viewed as a constitutional right or a potential workplace risk by comparing the reasoning adopted by both courts.

HIGH COURT VIEW:

The Karnataka High Court in *Chandravva Hanamant Gokavi v. State of Karnataka*¹, does not create a new fundamental right to menstrual leave. Instead, the Court recognises menstrual leave as an aspect of substantive equality, dignity, and humane working conditions under Articles 14 and 21, while directing the effective implementation of the Karnataka Government's Menstrual Leave Policy and emphasising awareness, especially in the unorganised sector. This ruling makes Karnataka a pioneering state in India for this workplace right by officially granting a paid menstrual leave policy.

The Court's central reasoning is that menstrual leave is not a special concession or preferential treatment, but a necessary step to achieve real equality. It states that equality under the Constitution cannot always mean identical treatment; rather, constitutional equality requires recognition of biological differences where those differences create genuine disadvantages. Consequently, menstrual leave is described as "not a plea for privilege, but an assertion of dignity, fairness and humane understanding."

The Court therefore adopts the doctrine of substantive equality, which recognises that treating unequals identically may itself produce inequality. Women who experience pain, fatigue and discomfort during menstruation require reasonable accommodation to enjoy equal participation in the workplace.

The factual foundation of the judgment is equally significant. The petitioner was employed as a hotel labourer performing physically demanding tasks including cleaning utensils, serving food and other manual work. The Court records that such work becomes particularly burdensome during menstruation because menstruation is often accompanied by pain, fatigue and physical discomfort.

The petitioner argued that denial of even minimal rest during menstruation makes working conditions harsh and inhumane, particularly for women in the unorganized sector who lack bargaining power. The Court accepted that these realities justify the State's intervention through policy measures.

¹ Chandravva Hanamant Gokavi v. State of Karnataka 2026 SCC OnLine Kar 2479

MENSTRUAL LEAVE IS SUPPORTED BY CONSTITUTIONAL VALUES UNDER ARTICLE 21

A major part of the judgment traces the constitutional foundation for menstrual leave. First, the Court relies upon *Shailendra Mani Tripathi v. Union of India*², where the Supreme Court held that menstrual leave involves complex policy considerations and requested the Union Government to consider framing a model policy while clarifying that States remain free to formulate their own policies. The Karnataka High Court uses this decision to demonstrate that the Supreme Court acknowledged menstrual leave as a legitimate subject of governmental action rather than judicial prohibition.

Secondly, the Court places considerable reliance on *Jaya Thakur (Dr.) v. Union of India*³. Referring particularly to paragraphs 69–74 extracted in the judgment, it explains that Article 21 protects the right to live with dignity, and dignity cannot remain an abstract constitutional ideal. The State bears a positive obligation to facilitate conditions that preserve dignity. Since lack of menstrual support subjects menstruating persons to humiliation, stigma and avoidable suffering, menstrual health measures become an unavoidable component of Article 21.

Thus, the Court reasons that menstrual leave derives constitutional legitimacy from the broader guarantee of dignity rather than from any express constitutional provision.

IMPORTANCE OF THE KARNATAKA LAW COMMISSION'S RECOMMENDATIONS

The Court gives substantial weight to the Karnataka Law Commission's report because it addresses several objections commonly raised against menstrual leave.

The Commission acknowledged concerns regarding misuse, possible discrimination during recruitment and promotions, and employer resistance. However, it rejected these as sufficient reasons to deny menstrual leave. Instead, it recommended a balanced framework, including flexible work arrangements, work-from-home options where feasible, self-certification instead of mandatory medical certificates, and extensive sensitization of employers. It further emphasized that prioritizing women's health is a hallmark of an egalitarian society and that forcing attendance despite severe discomfort actually reduces productivity. The Court accepts

² Shailendra Mani Tripathi v. Union of India 2023 SCC OnLine SC 228

³ Jaya Thakur (Dr.) v. Union of India 2026 SCC OnLine SC 133

these recommendations as demonstrating that menstrual leave can coexist with workplace efficiency.

GOVERNMENT POLICY REFLECTS INFORMED LEGISLATIVE JUDGMENT

The Court carefully notes that Karnataka's policy was not introduced arbitrarily. Before issuing the Government Order, the State constituted an expert committee consisting of doctors, labour representatives, employers, industrial associations, academics and social workers. Public consultation revealed that a majority of stakeholders supported the policy.

The Government therefore introduced one day of paid menstrual leave per month, up to twelve days annually, without requiring medical certification. The Court treats this consultative process as evidence that the policy is a rational and well-considered welfare measure rather than an arbitrary governmental decision.

NEED TO DISMANTLE MENSTRUAL STIGMA

The Court also relies on the Gujarat High Court's observations in *Nirjhari Mukul Sinha v. Union of India*⁴, which recognized that menstruation has historically been surrounded by social stigma, myths and exclusion. The Gujarat High Court had held that forcing women to disclose their menstrual status violates privacy and dignity, while menstrual taboos adversely affect education, employment, health and mental well-being. By referring to this judgment, the Karnataka High Court emphasizes that menstrual leave is also a means of combating social discrimination associated with menstruation.

EXTENSION TO THE UNORGANIZED SECTOR

Perhaps the most important contribution of this judgment is its discussion of women employed in the unorganized sector. The Court notes that although the Government Orders primarily regulate the organized sector, women working in domestic work, hotels and other informal occupations are often more vulnerable. Relying upon Supreme Court decisions concerning maternity benefits and social security for unorganized workers, the Court reasons that welfare measures cannot remain confined only to formal employment.

However, the Court recognizes practical limitations. Instead of immediately extending mandatory regulation to every informal workplace, it directs the State to undertake comprehensive sensitization, awareness campaigns and facilitative measures so that both

⁴ Nirjhari Mukul Sinha v. Union of India R/WRT PETITION (PIL) NO. 38 of 2020, disposed on 26-2-2021

organized and unorganized sectors progressively implement the policy. The Court concludes that while legislation can regulate the organized sector, the unorganized sector requires sustained awareness, empathy and compliance-building efforts.

The reasoning of the Karnataka High Court rests on four interconnected constitutional principles:

1. Article 21 protects dignity, and menstrual health is an inseparable component of dignified living.
2. Substantive equality under Article 14 requires accommodation of biological differences, rather than identical treatment.
3. Menstrual leave promotes humane working conditions, particularly for women engaged in physically demanding labour.
4. Effective implementation, awareness and inclusion of the unorganized sector are essential for translating constitutional values into workplace reality.

Thus, this judgment frames menstrual leave as a constitutional accommodation that advances dignity, equality and workplace justice, while respecting the State's role in policy-making and implementation rather than judicially legislating a new statutory entitlement.

SUPREME COURT VIEW:

The Supreme Court's decision in *Shailendra Mani Tripathi v. Union of India*⁵, 2023 SCC OnLine SC 228, does not decide whether menstrual leave is a fundamental right. Nor does it reject the idea of menstrual leave. Instead, the Court holds that the issue falls within the domain of public policy, requiring consultation and executive decision-making rather than judicial intervention.

The factual foundation of this judgement revolves around petitioner filed a writ petition under Article 32 seeking a direction to all States to frame a policy granting menstrual leave for female students and working women under the Maternity Benefit Act, 1961⁶.

⁵ Shailendra Mani Tripathi v. Union of India 2023 SCC OnLine SC 228

⁶ Maternity Benefit Act, 1961

JUDGEMENT

The Court observed that menstrual leave involves policy dimensions, which require balancing several administrative, social and legislative considerations. Therefore, instead of issuing a writ directing all States to introduce menstrual leave, it held that the appropriate course was for the petitioner to submit a representation before the Union Ministry of Women and Child Development, which could take an appropriate decision.

REASONING OF THE COURT

The Supreme Court's reasoning is brief but significant:

1. Policy matters belong to the Executive

The Court recognized that introducing menstrual leave is not merely a legal question, but a matter involving governmental policy. Such decisions require consideration by the executive authorities rather than direct judicial orders.

2. Judicial restraint

Instead of framing a nationwide policy itself, the Court exercised judicial restraint. It declined to legislate through judicial directions and left the matter to the competent Ministry.

3. No rejection of menstrual leave

Importantly, the Court did not hold that menstrual leave is unconstitutional or undesirable. It also did not recognize menstrual leave as a fundamental right. It simply held that the decision should first be taken by the Government after appropriate consideration.

FINAL OUTCOME

The Supreme Court disposed of the petition by directing the petitioner to submit a representation to the Union Ministry of Women and Child Development, which would consider the matter appropriately. No mandatory directions were issued to either the Union or the States to implement menstrual leave.

SIGNIFICANCE

The judgment is significant because it establishes that, as of 2023, the Supreme Court viewed menstrual leave primarily as a policy issue rather than an enforceable constitutional entitlement. Unlike the later Karnataka High Court decision in *Chandravva Hanamant Gokavi v. State of Karnataka*, which connected menstrual leave with dignity and substantive

equality under Articles 14 and 21, the Supreme Court in *Shailendra Mani Tripathi* refrained from entering the constitutional merits and confined itself to directing the executive to examine the issue at the policy level.

CONCLUSION

Menstrual leave is an essential measure that acknowledges the genuine physical and emotional challenges many women face during menstruation. Its objective is not to reduce productivity but to foster a healthier, inclusive and more equitable work environment. When implemented, reasonable safeguards and flexibility will lead to improved morale and productivity, acknowledging that menstrual health policies reflect a commitment to dignity and substantive justice, which will ultimately benefit employers and employees.