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Karnataka HC on Menstrual Leave: Article 21, Substantive Equality, and the Workplace Health Frontier

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Karnataka HC on Menstrual Leave: Article 21, Substantive Equality, and the Workplace Health Frontier

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WHY IN NEWS:

The **Karnataka High Court** directed the state government to strictly implement its menstrual leave policy — granting **one paid day of leave per month** to women employees aged **18–52** — and held that menstrual health is a fundamental right linked to **Article 21** (Right to Life and Dignity). The Court extended the policy’s reach beyond formal employment to **unorganised sector workers and daily-wage women**, citing the doctrine of **substantive equality** under Articles 14 and 15(3).

WHAT THE KARNATAKA POLICY PROVIDES

Karnataka’s menstrual leave policy (developed through a series of executive orders and the pending Karnataka Menstrual Leave and Hygiene Bill, 2025):

ELEMENT	PROVISION
Leave entitlement	One paid day per month
Age coverage	Women employees aged 18–52
Carry-forward	Cannot be carried forward; lapses if unused
Documentation	No medical certificate required
Salary impact	Full pay; not deducted from other leave entitlements
Coverage	Initially government employees; extension to private and unorganised sector via HC ruling

Karnataka joined a small set of Indian states with formal menstrual leave provisions:

- **Bihar** — pioneer; introduced 2-day menstrual leave in 1992 for women government employees.
- **Kerala** — provided menstrual leave for students in higher education (2023).
- **Karnataka** — workplace policy.
- **Sikkim, Odisha** — partial provisions in specific institutions.

THE COURT'S CONSTITUTIONAL REASONING

1. Article 21 — Right to Life with Dignity

The Court held that **menstrual health is integral to the right to life and dignity** under Article 21.

Constructive elements of this reasoning:

- The right to health is a recognised facet of Article 21 — established in cases like *Bandhua Mukti Morcha v. Union of India* (1984) and *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (1996).
- Menstrual health is a specific dimension of women's health that the formal-equality framework (treating men and women identically) does not adequately address.
- Workplace policies designed without menstrual considerations create a “hidden penalty” on women workers — a violation of dignity.

2. Article 14 + Article 15(3) — Substantive Equality

The Court invoked **substantive equality** — the doctrine that equality requires recognition of and accommodation for relevant differences:

- **Article 14** — guarantees equality before law and equal protection.
- **Article 15(1)** — prohibits discrimination on grounds including sex.
- **Article 15(3)** — empowers the State to make special provisions for women and children.

The doctrine recognises that **formal equality (treating everyone identically) can perpetuate substantive inequality** when starting positions differ. Menstrual leave is therefore not preferential treatment but corrective accommodation.

3. Reference to Dr. Jaya Thakur Litigation

The Court referenced the ongoing PIL trajectory in the Supreme Court (the *Dr. Jaya Thakur* line of litigation seeking national menstrual leave policy) and aligned its reasoning with the broader judicial conversation on menstrual rights jurisprudence.

4. Extension to Unorganised Sector

The Court's most consequential move was extending menstrual leave protection beyond formal employment to:

- **Daily-wage women workers** in construction, agriculture, domestic work.
- **Self-employed women** in informal settings.
- **Anganwadi and ASHA workers** — particularly significant given their role in maternal and child health.

The Court held that limiting menstrual leave to formal-sector employees would **defeat the constitutional purpose** since the vast majority of Indian women work in the unorganised sector.

THE POLICY DEBATE: FOR AND AGAINST

Supportive Arguments

- **Health basis** — dysmenorrhoea (painful menstruation) and PMS affect 50–80% of menstruating women; severe symptoms warrant rest.
- **Workplace participation** — women’s labour force participation in India remains low (~37% in 2024); supportive policies may improve retention.
- **Dignity dimension** — women routinely work through menstruation while concealing it; explicit acknowledgment shifts workplace culture.
- **Productivity argument** — short leave for genuinely incapacitating menstrual symptoms may improve overall productivity vs forced presenteeism.

Critical Arguments

- **Discrimination risk** — employers may penalise women in hiring/promotion decisions if menstrual leave is mandated, reversing the intended effect.
- **Medicalisation concern** — treating menstruation as a “condition requiring leave” may reinforce stigma.
- **Implementation challenges** — particularly in small enterprises and unorganised sector where compliance monitoring is weak.
- **Universal vs targeted approach** — some argue for general medical leave that women can use for menstrual reasons, rather than menstrual-specific leave.

Global Comparators

COUNTRY	MENSTRUAL LEAVE POLICY
Spain	First EU country to legislate menstrual leave (2023)
Japan	Menstrual leave provision in labour law (1947) — but rarely used due to stigma
South Korea	Monthly menstrual leave (1953)
Indonesia	2 days monthly menstrual leave (1948)
Zambia	“Mother’s Day” — one day monthly off (legal entitlement)
India	State-level pilots; no national legal mandate yet

THE WORKPLACE REFORM DIMENSION

Beyond menstrual leave specifically, the ruling signals a **broader workplace gender-justice direction**:

- 1 **Menstrual hygiene products** — ensuring sanitary product availability in workplaces.
- 2 **Restroom infrastructure** — adequate, clean, gender-segregated facilities.
- 3 **Dispelling workplace taboos** — sensitisation training for managers and colleagues.
- 4 **Pay equity** — separate but related concern of equal pay for equal work.
- 5 **Maternity and paternity leave** — already covered by Maternity Benefit Act, 1961 (amended 2017).

WAY FORWARD

For the ruling to translate into workplace transformation:

- 1 **State-level legislation** — converting executive orders into **statutory** entitlements with enforcement mechanisms.
- 2 **Compliance monitoring** — labour inspector training; **whistleblower** protection for complainants.
- 3 **Awareness campaigns** — destigmatising menstruation in workplace culture.
- 4 **Employer cost compensation** — particularly for small enterprises, government compensation for menstrual leave costs may aid compliance.
- 5 **National framework** — eventually, a central statute providing baseline entitlement applicable across India.

UPSC RELEVANCE

PAPER	ANGLE
GS-2 – Polity	Article 21, Article 14, Article 15(3); High Court’s expansive interpretation; substantive equality jurisprudence
GS-1 – Society	Women’s labour force participation; gender stigma; workplace culture
GS-2 – Social Justice	Women’s health rights; informal sector welfare; substantive vs formal equality
GS-2 – Governance	State-level workplace regulation; labour codes interface; inspector framework
GS-4 – Ethics	Workplace dignity; institutional duty of care; gender-justice ethics
Mains Keywords	Karnataka High Court, menstrual leave, Article 21, substantive equality, Article 15(3), Dr. Jaya Thakur PIL, unorganised sector workers, Maternity Benefit Act, dysmenorrhoea, workplace gender justice

FACTS CORNER

ITEM	DETAIL
Court	Karnataka High Court
Leave entitlement	1 paid day per month
Age coverage	Women employees aged 18–52
Constitutional anchor	Article 21 (Right to Life with Dignity)
Equality basis	Article 14 + Article 15(3)
Karnataka Bill (pending)	Karnataka Menstrual Leave and Hygiene Bill, 2025
First Indian state with policy	Bihar (1992 – 2 days/month)
Maternity Benefit Act	1961 (amended 2017) – 26 weeks paid maternity leave
Indian women LFPR (2024)	~37%
First EU country with policy	Spain (2023)
Earliest national menstrual leave	Japan (1947)

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