

It's Centre's call, says SC on menstrual leave policy

Petitioner can approach the Ministry of Women and Child Development, says Bench, which also flagged the concern that such leave can act as a 'disincentive' for those who want to hire women

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The Supreme Court said on Friday that there are different "dimensions" to menstrual pain leave, which though being a biological process, may also act as a "disincentive" for employers from engaging women in their establishments.

A three-judge Bench led by Chief Justice of India D.Y. Chandrachud asked the petitioner to approach the Union Ministry of Women and Child Development Ministry to frame a policy.

The court was hearing a petition filed by Shailendra Mani Tripathi, represented by advocate Vishal Tiwari, seeking a direction to States to frame rules for granting menstrual pain



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D.Y. CHANDRACHUD
Chief Justice of India

leave for students and working women.

Caution note

However, the court was also intrigued by a caveat filed by a law student, Anjale Patel, represented by advocate Satya Mitra, who raised a flip side to such a move.

"The law student says that if you compel employers to grant menstrual pain leave, it may operate as a de facto disincentive

for employers to engage women in their establishments... This has a policy dimension," Chief Justice Chandrachud observed.

Mr. Tiwari said menstruation was a biological process and women should not be discriminated against in educational institutions and workplaces.

"We are not denying it... But the student says that is what employers may do in actual practice. There are

different dimensions to the issue, we will leave it to the policy makers. Let them first formulate a policy, we will consider it then," Chief Justice Chandrachud said.

"Having regard to the policy dimensions involved in the matter, we are of the considered view that the petitioner make a representation to the Ministry of Women and Child Development, which may take an appropriate decision on the grievance of the petitioner," the court recorded in its order.

Mr. Tiwari said Bihar and Kerala are the only States that allow menstrual pain leave. He had sought a direction from the court under Section 14 of the Maternity Benefit Act, 1961.

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Section 14 deals with appointment of inspectors and says appropriate governments may appoint such officers and may define the local limits of jurisdiction within which they shall exercise their functions under this law.

The plea said countries like the United Kingdom, China, Wales, Japan, Taiwan, Indonesia, South Korea, Spain and Zambia were already providing menstrual pain leave in one form or the other.

“Ironically, the most disappointing aspect in the direction of respecting the rights of working women, is that in spite of a provision under section 14 of the Maternity Benefit Act, 1961, that there will be an inspector for a particular area to monitor the implementation of provisions, no government in India has created the post of inspectors, forget about the appointment of such inspectors,” the plea claimed.

It said the various provisions of the 1961 Act recognise and respect motherhood and maternity of working women.

“In spite of provisions to take care of women in difficult stages of her maternity, the very first stage of the maternity, the menstrual period, has been knowingly or unknowingly ignored by society, the legislature and other stakeholders in society except a few organisations and State governments,” the petition said.