
THE RIGHT TO SIT: ENFORCED STANDING AS A DIGNITY AND OCCUPATIONAL-HEALTH HARM, AND THE ENFORCEMENT VACUUM IN INDIA'S SHOPS-AND- ESTABLISHMENTS REGIME

Vishakh KV & Vaishnavi Tiwary, Alumnus, Symbiosis Law School, Nagpur

ABSTRACT

Across India's retail floors, salespersons stand for entire shifts, frequently by employer instruction rather than by any demand of the task. Two States, Kerala and Tamil Nadu, have answered by writing a right to sit into their shops-and-establishments statutes. This article advances three claims. First, enforced standing is a genuine dignitary and occupational-health harm that Indian constitutional doctrine already recognises in substance, so the right to sit is not a legislative novelty but the belated extension to shop workers of a welfare norm that factory workers have held since 1948. Second, the two seating statutes diverge on the single question that decides whether a worker is any better off, enforceability: Kerala tied its seating section to a monetary penalty, whereas Tamil Nadu left its widely celebrated section 22-A outside the clause that lists the provisions carrying a sanction. Third, neither Tamil Nadu's 2025 penalty overhaul nor the coming-into-force of the Occupational Safety, Health and Working Conditions Code, 2020 closes the resulting gap; a coverage hole for small shops persists, the Tamil Nadu right remains textually unsanctioned, and no reported authority has construed either seating provision. The article reads the primary texts closely and proposes a narrow, self-executing remedy rather than another declaration of principle.

I. Introduction

The campaign that produced India's first right to sit began not in a courtroom or a legislature but on a shopping street in Kozhikode, where a saleswoman who asked to use the toilet was told to control herself or drink less water.¹ The grievance was ordinary and, for that reason, revealing: the worker's body, its need for rest and relief, had been treated as an inconvenience to be managed away. Prolonged standing sits at the centre of that same complaint. In large textile and jewellery showrooms, and in countless smaller shops, staff are required to remain upright for shifts of nine to twelve hours, often forbidden even to lean against a wall while no customer is present. The rule is not dictated by the work. It is a discipline imposed on the body, and it is the discipline, rather than the task, that the seating statutes are meant to unwind.

This article is about a small piece of furniture and a large question of enforcement. The furniture is the stool that Kerala and Tamil Nadu now require every shop to provide. The question is whether the requirement means anything. A right that the law announces but does not equip with a remedy is, from the worker's standpoint, indistinguishable from no right at all. The argument here is that the Indian right to sit, in the form it has actually taken, sits uncomfortably close to that line, and closest of all in the very State whose statute is most often praised.

The article defends three claims. **First**, enforced standing is a cognisable dignitary and occupational-health harm, and the constitutional materials needed to recognise it already exist; the right to sit is therefore best understood not as an innovation but as the overdue extension to shop workers of a welfare guarantee that factory workers have enjoyed since the Factories Act, 1948. **Second**, the two state statutes that create the right diverge on enforceability in a way that has gone largely unremarked: Kerala wired its seating section into the penal clause of its Act, while Tamil Nadu did not, leaving section 22-A as a duty in search of a sanction. **Third**, the developments of late 2025, Tamil Nadu's overhaul of its penalty chapter and the entry into force of the Occupational Safety, Health and Working Conditions Code, 2020, do not cure the vacuum; they rearrange it. Small shops remain outside the national Code, the Tamil Nadu seating duty remains textually unsanctioned, and the enforcement architecture is drifting from

¹Belinda Liversedge, *Tamil Nadu's Shop and Showroom Workers Get Legal 'Right to Sit'*, BRITISH SAFETY COUNCIL INDIA (2021), <https://www.britsafe.in/safety-management-news/2021/tamil-nadu-s-shop-and-showroom-workers-get-legal-right-to-sit>. Cited for narrative background only.

inspection towards facilitation.

The build of the argument follows those claims. Part II sets out the harm, drawing on the peer-reviewed occupational-health literature and on the dignitary strand of Article 21 jurisprudence. Part III traces the constitutional and statutory lineage of the seating norm and shows that it is old, not new. Part IV is the core: a close reading of Kerala's section 21B and Tamil Nadu's section 22-A, and of the penalty provisions that decide their fate. Part V examines the post-2025 landscape and identifies what remains uncovered and unenforced. Part VI proposes a remedy. Throughout, the strongest version of the opposing view is stated before it is answered, and where the law is genuinely unsettled the article says so rather than manufacturing certainty.

II. The Harm: Enforced Standing as Injury to Body and Dignity

A. What the occupational-health evidence shows

The claim that standing all day is bad for the body is intuitive, but intuition is not evidence, and the seating statutes rest on an implicit empirical premise that deserves testing. The most useful synthesis is a review by Waters and Dick, researchers at the United States National Institute for Occupational Safety and Health, who surveyed the literature on prolonged occupational standing. They report that it is associated with a set of outcomes that are neither trivial nor speculative: lower-back and leg pain, cardiovascular problems, physical fatigue, and adverse pregnancy outcomes.² The physiological pathway is not mysterious. Standing still pools blood in the lower limbs, raises venous pressure and, over a working day, increases leg volume and orthostatic load; this is why the injury accrues with hours of static standing rather than with the mere act of standing. The cardiovascular findings are the most developed. A study of South Korean workers found that standing for more than four hours a day was associated with markedly elevated odds of varicose veins, with reported odds ratios of roughly three for women and near eight for men.³ Longitudinal work on the Danish workforce points the same way, linking standing occupations to varicose-vein pathology over time.⁴

²Thomas R. Waters & Robert B. Dick, *Evidence of Health Risks Associated with Prolonged Standing at Work and Intervention Effectiveness*, 40 REHABILITATION NURSING 148, 148 (2015).

³Jeong-Wook Bahk et al., *Relationship Between Prolonged Standing and Symptoms of Varicose Veins and Nocturnal Leg Cramps Among Women and Men*, 55 ERGONOMICS 133 (2012), as reported in Waters & Dick, *supra* note 2, at 153.

⁴Finn Tüchsen et al., *Standing at Work and Varicose Veins*, 26 SCAND. J. WORK ENV'T & HEALTH 414 (2000).

Two features of this evidence matter for the legal argument. The first is dose. The harm is a function of duration; it is the *prolonged* and uninterrupted character of the standing, not standing as such, that the studies indict. That is precisely the condition the seating statutes target, because their mischief is the shift-long ban on sitting rather than the occasional need to stand. The second is that the pregnancy-related findings, associations with pre-term birth and related outcomes,⁵ fall disproportionately on a workforce that in the retail and textile sectors is substantially female. The harm is therefore not evenly distributed, which is why the campaigns that produced these statutes were led by women workers and framed in the language of dignity as much as of health.

It is right to be candid about the limits of this evidence. Much of it is observational, drawn from cross-sectional or cohort studies in which confounding cannot be excluded, and the effect sizes vary across populations and measurement methods. A sceptic could fairly say that the literature establishes association rather than a clean causal dose-response curve, and that the interventions studied, such as mats, insoles and sit-stand furniture, show modest and sometimes only subjective benefit. That caution is warranted. But it does not rescue enforced standing, for two reasons. The precautionary logic of occupational-health regulation does not demand proof to a criminal standard before a cheap and reversible protection is required; and the intervention at issue here, permitting a worker to sit when no task requires standing, carries essentially no countervailing risk to the worker. The asymmetry between a well-evidenced downside and a costless remedy is what makes the case for a seat, whatever residual uncertainty remains in the epidemiology.

B. The dignitary dimension

Health is only half of the harm. The other half is dignitary, and it is the half the statutes' own language reaches for when they speak of avoiding an 'on their toes' situation. A rule that forbids sitting even when there is nothing to do, that treats a worker leaning against a wall as an infraction, communicates something beyond indifference to physical strain. It asserts that the worker's time and posture belong to the employer in their entirety, that visible availability is owed regardless of whether it is useful. Indian constitutional doctrine has a vocabulary for this. Article 21's guarantee that no person shall be 'deprived of his life or personal liberty

⁵Waters & Dick, *supra* note 2, at 148, 159.

except according to procedure established by law’⁶ has long been read to protect a life of dignity rather than mere animal existence, and the directive principles instruct the State to secure ‘just and humane conditions of work’ and ‘a decent standard of life’.⁷

The obvious objection is that the directive principles are, by the Constitution’s own terms, ‘not enforceable by any court’.⁸ Article 37 makes them fundamental to governance yet withholds justiciability, so an appeal to Articles 42 and 43 cannot, by itself, generate a right a worker can sue on. That objection is correct as far as it goes, and it explains why the seating statutes are necessary: they convert a non-justiciable aspiration into a statutory duty. But the objection understates how far the courts have already carried the dignitary principle into the justiciable domain. In *Consumer Education & Research Centre v. Union of India*, the Supreme Court held that the health and vigour of a worker are an integral facet of the right to life, reasoning that ‘life’ in Article 21 ‘does not connote mere animal existence or continued drudgery through life’ but includes ‘hygienic conditions in work place’.⁹ Drawing on *Bandhua Mukti Morcha*, the Court traced the right to live with human dignity to the directive principles concerning the health and strength of workers and just conditions of work.¹⁰ The occupational-health context of that case was asbestos rather than seating, and one should not pretend the two are equivalent in gravity. But the doctrinal move, reading worker health and dignity into Article 21 through the directive principles, is general, and it supplies the constitutional backdrop against which the seating statutes should be read: not as gratuitous largesse but as legislation giving concrete content to an already-recognised constitutional concern.

III. A Norm Older Than It Looks: The Statutory Lineage of the Seat

The right to sit is routinely described as a new right. In an important sense it is not. Indian labour law has required seating for standing workers for more than seventy years; what was missing was coverage, not principle. Section 44 of the Factories Act, 1948 provides that ‘[i]n every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work’.¹¹ The resemblance between

⁶INDIA CONST. art. 21.

⁷INDIA CONST. art. 42; INDIA CONST. art. 43.

⁸INDIA CONST. art. 37.

⁹Consumer Educ. & Research Ctr. v. Union of India, (1995) 3 SCC 42, ¶¶ 24, 27 (India).

¹⁰Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161, 183–84 (India), quoted in Consumer Educ. & Research Ctr., supra note 9.

¹¹Factories Act, 1948, § 44, No. 63, Acts of Parliament, 1948 (India).

that language and the state seating provisions enacted decades later is not coincidental; the newer statutes borrow its architecture almost verbatim, down to the clause about taking advantage of an opportunity which may occur in the course of the work, and Kerala even keeps the Factories Act's reference to 'workers'.

The gap the state statutes fill is one of scope. The Factories Act reaches factories, and the shop-floor workers at the heart of the seating campaigns, salespersons in textile and jewellery showrooms, are not factory workers. They fall instead under the State shops-and-establishments Acts, a body of legislation historically preoccupied with opening and closing hours, weekly holidays, and the payment of wages, and largely silent on the ergonomics of the sales counter. For those workers the welfare guarantee that factory labour had held since 1948 simply did not exist. The Kerala and Tamil Nadu amendments are, in substance, an attempt to close that coverage gap by importing the factory norm into the shops regime.

The national picture has since shifted in a way that reinforces the point. The Occupational Safety, Health and Working Conditions Code, 2020, which subsumed the Factories Act and twelve other statutes and whose provisions were brought into force with effect from 21 November 2025,¹² retains the seating norm. Section 24(1) requires the employer to provide such welfare facilities as may be prescribed, 'including— ... sitting arrangements for all employees obliged to work in a standing position'.¹³ The continuity of wording across the Factories Act, the state amendments and the Code confirms that the seat is a settled feature of Indian welfare legislation. What varies, and what the rest of this article is about, is not whether the norm exists but whom it reaches and what happens when it is ignored.

The comparative frame tells the same story of a familiar norm unevenly implemented. The seating requirement is a standard feature of international labour standards: Article 14 of the International Labour Organization's Hygiene (Commerce and Offices) Convention, 1964 provides that 'sufficient and suitable seats shall be supplied for workers and workers shall be

¹²Provisions of the Occupational Safety, Health and Working Conditions Code, 2020 were brought into force with effect from 21 November 2025, and the Occupational Safety, Health and Working Conditions (Central) Rules, 2026 came into force on 8 May 2026. See *Enforcement Dates of Labour Codes*, SCC ONLINE BLOG (Nov. 26, 2025), <https://www.scconline.com/blog/post/2025/11/26/enforcement-dates-of-labour-codes-legal-news/>.

¹³Occupational Safety, Health and Working Conditions Code, 2020, § 24(1), No. 37, Acts of Parliament, 2020 (India).

given reasonable opportunities of using them'.¹⁴ India has not ratified that Convention, so the obligation binds it only as an aspiration rather than as treaty law; the point is not that India is bound to provide seating by international law, but that in doing so, where it has, it moves towards a norm the international community settled sixty years ago.

IV. Two Statutes Up Close: Why Kerala's Seat Has Teeth and Tamil Nadu's May Not

A. Text, coverage and reach

Only two States have enacted an express right to sit in their shops-and-establishments statutes. As at 4 July 2026 no other State has followed, a point the Union Government itself confirmed when asked in Parliament.¹⁵ This is a genuine legislative fact rather than a gap in the research: the right to sit is, for now, a Kerala and Tamil Nadu phenomenon, and workers in the shops of other States enjoy no equivalent statutory guarantee except to the extent the national Code reaches them.

Kerala moved first. The Kerala Shops and Commercial Establishments (Amendment) Act, 2018 inserted section 21B, 'Seating facilities', which provides that '[i]n every shop and establishment suitable arrangements for sitting shall be provided for all workers so as to avoid 'on their toes' situation throughout the duty time, so that they may take advantage of any opportunity to sit which may occur in the course of their work'.¹⁶ Tamil Nadu followed in 2021. Its section 22-A, also headed 'Seating facilities', provides that '[t]he premises of every establishment shall have suitable seating arrangements for all employees so that they may take advantage of any opportunity to sit which may occur in the course of their work and thereby avoid 'on their toes' situation throughout the working hours'.¹⁷ The two provisions are near-twins, though not identically worded: Kerala speaks of 'all workers' and Tamil Nadu of 'all

¹⁴Convention Concerning Hygiene in Commerce and Offices (No. 120) art. 14, adopted July 8, 1964, entered into force Mar. 29, 1966.

¹⁵Reply of the Ministry of Labour and Employment to a Lok Sabha question on 'right to sit' legislation (2022) (stating that, among the States, only Kerala and Tamil Nadu had legislated for seating facilities).

¹⁶Kerala Shops and Commercial Establishments Act, 1960 (Kerala Act 34 of 1960), § 21B ('Seating facilities'), inserted by the Kerala Shops and Commercial Establishments (Amendment) Ordinance, 2018 (Kerala Ordinance 50 of 2018), § 6, in force 4 October 2018, and carried into the replacing amending Act; see also Kerala Shops and Commercial Establishments (Amendment) Bill, 2018 (Bill No. 163 of 2018), cl. 5. The Bill text is quoted above; the originating Ordinance printed the phrase as 'on the toes'.

¹⁷Tamil Nadu Shops and Establishments Act, 1947, § 22-A, No. 36, Acts of Tamil Nadu State Legislature, 1947 (India), as inserted by the Tamil Nadu Shops and Establishments (Amendment) Act, 2021, § 2, No. 25, Acts of Tamil Nadu State Legislature, 2021 (India), Tamil Nadu Government Gazette Extraordinary, No. 465 (Oct. 4, 2021).

employees'. Each applies to 'every' shop and establishment, without a worker-number threshold, and each fastens on the same mischief, the shift-long ban on sitting.

Reach is worth pausing on, because the seating right is only as wide as the class of persons it protects, and here the two statutes are worded differently. Tamil Nadu's section 22-A protects 'all employees', the term its Act defines; Kerala's section 21B protects 'all workers', a term the Kerala Act does not separately define and which it appears to borrow from the Factories Act. Kerala's 2018 amendment did, in the same breath, touch the definition of 'employee', though not by adding the apprentice, who was already included; it empowered the Government to declare further classes of persons to be employees, a power aimed at bringing agency-engaged security staff within the Act.¹⁸ That drafting attention is welcome, but it also exposes a limit that neither statute confronts. Much retail labour at the margin is engaged through contractors or on informal terms, and whether such a person is a 'worker' or 'employee' of the establishment for the purposes of the seating duty is left to construction rather than settled expressly. A right that a shop can sidestep by relabelling its salesforce is a right with a soft edge, and the seating provisions do nothing special to harden it. This is not a fatal objection, since the operative definitions are capacious, but it is an honest one: the statutes secure the seat for the recognised worker and leave the disguised or contracted one to argue about status first.

B. The 'shall provide, may sit' problem

Before turning to penalties, one textual feature of both provisions deserves attention, because it limits the right from the inside. Each statute uses a mandatory verb for the employer and a permissive one for the worker. The employer 'shall' provide seating; the worker 'may' take advantage of an 'opportunity to sit which may occur in the course of' the work. Commentators have noted that this construction guarantees the furniture but not the rest: the stool must exist, yet whether the worker may actually sit depends on an 'opportunity' that the statute neither defines nor allocates to the worker to determine.¹⁹ An employer who provides a stool but places

¹⁸Kerala Shops and Commercial Establishments Act, 1960, § 2(6), as substituted by Kerala Ordinance 50 of 2018, § 3 (and Bill No. 163 of 2018, cl. 2): 'employee' 'includes an apprentice or any class of persons as the Government may, by notification in the Gazette, declare to be an employee for the purposes of this Act'. The apprentice was already within the pre-2018 definition; the amendment added the power to notify further classes, aimed at agency-engaged security staff. See Statement of Objects and Reasons, Bill No. 163 of 2018.

¹⁹For a representative statement of this drafting critique, see *Empowering Workers: An In-Depth Analysis of Seating Rights and Welfare Measures Under the Shop and Establishment Act*, MONDAQ (Feb. 8, 2024), <https://www.mondaq.com/india/employee-rights-labour-relations/1422046>. Cited for the argument advanced, not as primary authority.

it in a distant storeroom, or who treats every moment on the floor as one in which no ‘opportunity’ has arisen, complies with the letter while defeating the purpose.

The strongest defence of the drafting is that a categorical right to sit at will would be unworkable in a service setting, where attending to a customer plainly requires standing, and that the ‘opportunity’ language is a sensible way of confining the right to moments when sitting does not compromise the work. There is force in that. A cashier cannot process a queue from a chair placed out of reach, and a rule indifferent to the demands of the task would invite its own evasions. But the defence proves less than it claims. The same permissive language appears in the Factories Act, where it has coexisted for decades with a workable seating culture, which suggests the problem is not the words but the absence of anything compelling employers to read them in good faith. The ‘opportunity’ clause is tolerable where a credible enforcement mechanism polices bad-faith denial. It is corrosive where none exists, because it hands the employer both the duty and the discretion to decide when the duty bites.

C. The decisive divergence: penalty architecture

The difference that matters between the two statutes is not in the seating sections at all. It is in what each legislature did, or did not do, to the penalty clause. Kerala, when it inserted section 21B, also amended section 29, the penal provision, to bring the new section within the sanction. The 2018 amendment expressly inserted the figure ‘21B’ into the enumerated list in section 29(1A) and raised the applicable fines, so that a contravention of the seating duty became punishable in the same way as the Act’s other substantive obligations, subject to a proviso capping the fine at two thousand five hundred rupees per worker.²⁰ Whatever the practical shortfalls of Kerala enforcement, and there are many, the statute is internally complete: it states a duty and attaches a consequence to its breach.

Tamil Nadu did not do the equivalent. Its penalty clause, section 45, punishes ‘[w]hoever contravenes any of the provisions of’ an enumerated list of sections.²¹ When Tamil Nadu enacted the seating duty in 2021 it passed, on the same day, a companion amendment that re-

²⁰Kerala Shops and Commercial Establishments Act, 1960, § 29(1A), as amended by Kerala Ordinance 50 of 2018, § 7 (and Bill No. 163 of 2018, cl. 6); the amendment inserted the figure and letter ‘21B’ into the enumerated list and substituted the fine ceilings (first offence up to one lakh rupees; second or subsequent up to two lakh rupees), subject to a proviso capping the fine at two thousand five hundred rupees per worker employed.

²¹Tamil Nadu Shops and Establishments Act, 1947, § 45, No. 36, Acts of Tamil Nadu State Legislature, 1947 (India).

opened section 45 and substituted a fresh list of penalised sections reading ‘sections 3, 7 to 11, 13 to 23, 25, 26, 29 to 41, 47, 47-A and 50-A’.²² Section 22-A does not appear in that list by name. The legislature thus had the penalty clause open before it, at the very moment it was creating the seating duty, and did not expressly bring the seating duty within the sanction, in pointed contrast to what Kerala had done three years earlier.

Whether that omission leaves section 22-A wholly unsanctioned turns on an unresolved question of construction, and intellectual honesty requires stating both readings. On one reading, the range ‘13 to 23’ captures every provision positioned within that numerical span, and because section 22-A sits between sections 22 and 23 in the sequence of the Act, its contravention is already penalised; on this view Kerala’s express amendment was belt-and-braces and Tamil Nadu’s silence is harmless. On the competing reading, a range expressed in whole numbers does not automatically absorb a distinct, letter-suffixed section inserted later by amendment, and such a section must be named to be caught.

The competing reading is stronger than it first appears, and the strength comes from the statute’s own drafting. The very list in section 45 that omits section 22-A does not confine itself to whole-number ranges; it expressly names the letter-suffixed sections ‘47-A’ and ‘50-A’. A drafter who takes the trouble to name 47-A and 50-A plainly knows how to include a letter-suffixed section when inclusion is intended. On the maxim *expressio unius est exclusio alterius*, the deliberate naming of some letter-suffixed sections, coupled with silence as to 22-A, supports the inference that 22-A was not meant to be within the penalty net, notwithstanding the ‘13 to 23’ range. That is not a certainty. It is an inference, and a court could reject it in favour of the more generous reading. But it is a respectable inference, and the decisive point for present purposes is that no reported judgment has resolved the question either way as at 4 July 2026. The enforceability of Tamil Nadu’s celebrated seating right therefore rests on an unlitigated ambiguity, which is itself a form of enforcement vacuum: a worker cannot know, and an inspector cannot confidently assert, that a breach of section 22-A carries any consequence at all.

A defender of the Tamil Nadu scheme might respond that the ambiguity is academic, since even Kerala’s fully-sanctioned provision is widely flouted, so the presence or absence of a

²²Tamil Nadu Shops and Establishments (Amendment) Amendment Act, 2021, § 3, No. 26, Acts of Tamil Nadu State Legislature, 2021 (India) (substituting the enumeration of penalised sections in § 45 of the principal Act).

formal penalty changes nothing on the ground. There is uncomfortable truth in that, and Part V takes the enforcement shortfall seriously on its own terms. But the response concedes the article's point rather than defeating it. If a right with a penalty is already so weakly enforced, a right whose penalty is doubtful is weaker still, and the doubt is gratuitous: it could have been removed by a single line naming section 22-A, exactly as Kerala named section 21B. The contrast between the two statutes is instructive precisely because it isolates a drafting choice that cost nothing to get right and was not got right.

V. The Vacuum After 2025: Rearranged, Not Removed

A. Tamil Nadu's new penalty chapter

Tamil Nadu revisited its penalty regime in 2025. The Tamil Nadu Shops and Establishments (Amendment) Act, 2025, Tamil Nadu Act 39 of 2025, assented to on 6 June 2025, substituted the whole of Chapter IX and reframed enforcement around a 'Penalties and Adjudicating Mechanism', replacing criminal fines with penalties imposed by an adjudicating officer not below the rank of Joint Commissioner of Labour, with appeal to an Appellate Authority not below the rank of Additional Commissioner of Labour and recovery of the penalty as an arrear of land revenue.²³ This is a meaningful modernisation of the machinery. It is not, however, a cure for the specific defect identified above, for two reasons. The certified gazette text of the substituted penalty provision carries forward the same enumeration of penalised sections, again reading 'sections 3, 7 to 11, 13 to 23, 25, 26, 29 to 41, 47, 47-A and 50-A', and again does not name section 22-A while continuing to name the letter-suffixed sections 47-A and 50-A. The interpretive ambiguity identified in Part IV is thus re-enacted rather than resolved, and re-enacted on the very reading of the drafting that the ambiguity turns on. The reform was a further occasion on which the legislature had the penalty clause open and declined to add the one section whose omission this article flags. One qualification is required for candour: the 2025 Act provides that it comes into force on such date as the State Government appoints by notification, so the new adjudicating machinery becomes operative only upon that notification rather than upon assent; whether it has issued does not affect the argument, however, because section 22-A is absent from the penalised list under both the 2021 substitution and the 2025 re-

²³Tamil Nadu Shops and Establishments (Amendment) Act, 2025, Tamil Nadu Act No. 39 of 2025, published in the Tamil Nadu Government Gazette Extraordinary (India) (assented to on 6 June 2025), § 2 (substituting Chapter IX, 'Penalties and Adjudicating Mechanism'). The substituted § 45(1) penalises contraventions of 'sections 3, 7 to 11, 13 to 23, 25, 26, 29 to 41, 47, 47-A and 50-A'; § 22-A is not named. By § 1(2) the Act comes into force 'on such date as the State Government may, by notification, appoint'.

enactment. The 2025 Act improves the process by which sanctions are imposed while leaving unsettled whether the seating duty is a sanctionable obligation at all.

B. The national Code as a new floor

The more consequential development is national. With the Occupational Safety, Health and Working Conditions Code, 2020 in force from 21 November 2020 and its Central Rules from 8 May 2026,²⁴ a seating obligation now exists at the national level through section 24(1), quoted above. For the first time, shop and commercial-establishment workers outside Kerala and Tamil Nadu have a statutory seating guarantee, and within those two States the national Code overlays the existing provisions. A natural objection to this article's thesis is therefore that the vacuum has been filled from above: the Code supplies what the State statutes lacked, and the divergence between Kerala and Tamil Nadu is now a historical curiosity.

The objection is serious and partly right, but it overlooks coverage and design. On coverage, the Code's welfare obligations attach to establishments meeting its worker threshold, generally ten or more workers,²⁵ whereas the State seating provisions apply to 'every' shop without any such threshold. The small stand-alone shop, the two- or three-person outlet where a lone saleswoman stands all day, is the paradigm case that produced the seating campaigns, and it is precisely the case the national Code does not reach. Within Kerala and Tamil Nadu those small shops remain governed only by the State provisions, with all the enforceability problems already described; outside those States they now fall into a gap between a State Act that says nothing about seating and a national Code that does not apply to them. The Code raises the floor for larger establishments while leaving the smallest and most vulnerable workplaces where they were.

On design, the Code frames the seating duty as a welfare facility 'as may be prescribed', delegating its content to rules, and it embeds enforcement in an inspection model that the Code itself reorients towards facilitation. The statutory office is the 'Inspector-cum-Facilitator', and the reform rhetoric surrounding the Code emphasises self-certification, third-party audit and a lighter regulatory touch. Whatever the merits of that model for ease of doing business, it is not obviously suited to policing a duty like seating, whose breach is silent, continuous and unlikely

²⁴See supra note 12.

²⁵Occupational Safety, Health and Working Conditions Code, 2020, § 2(1)(v) & § 3, No. 37, Acts of Parliament, 2020 (India) (threshold of ten or more workers for the general definition of 'establishment').

to be self-reported by an employer or, for fear of dismissal, by the worker. A facilitative inspectorate that visits rarely and audits on paper is poorly placed to detect a stool kept deliberately out of reach.

C. What remains uncovered and unenforced

Putting the pieces together, the position as at 4 July 2026 is not the absence of law but a patchwork whose seams are the problem. Factory and larger-establishment workers hold a seating right under the national Code; shop workers in Kerala and Tamil Nadu hold one under their State Acts; small-shop workers elsewhere hold none. In Tamil Nadu the State right may or may not carry a penalty, an ambiguity that two legislative opportunities have failed to remove. And across all of these regimes, the practical enforcement record is thin. No reported judgment has construed either section 21B or section 22-A as at the date of this article, which means that neither provision has yet been tested, interpreted or applied by a court; field reportage four years after the Tamil Nadu law suggests that in practice seating is frequently unavailable at the counter even where nominally provided.²⁶ The absence of litigation is not proof that the statutes work smoothly. It is more plausibly a symptom of the vacuum: a worker will not sue over a stool, least of all under a provision whose penalty is uncertain, and no other actor has the incentive or standing to do so.

It is worth naming the weakest link in this article's own argument. The claim that non-enforcement flows from the statutory design cannot be proved directly, because the counterfactual, a well-drafted seating penalty vigorously enforced, does not exist anywhere in India to be compared. Kerala's sanctioned provision is also weakly enforced, which shows that a penalty is not sufficient for compliance. The honest position is therefore narrower than a claim that drafting causes non-enforcement: it is that a clear, self-executing sanction is a necessary condition for enforcement, that Tamil Nadu lacks even that, and that the enforcement culture surrounding both statutes must change if the right is to be more than nominal. The recommendations that follow are framed to that narrower, defensible claim.

VI. What Would Actually Help

The remedy suggested by this analysis is deliberately modest, because the case for the seat is

²⁶Kavya Dubey, *Right to Sit, But Do They?*, DT NEXT (Nov. 5, 2025), <https://www.dtnext.in/news/tamilnadu/right-to-sit-but-do-they-851984>. Field reportage, cited for illustration only.

strongest when the intervention is cheapest. Four measures follow from the argument.

The first is a one-line fix in Tamil Nadu: amend section 45 to name section 22-A among the penalised sections, exactly as Kerala named section 21B in section 29. This removes the interpretive ambiguity at a stroke and costs the State nothing. It is the clearest instance of a defect that can be cured without controversy, and it should be uncontroversial precisely because it merely makes explicit what the more generous reading already assumes.

The second is to close the small-shop coverage gap. Because the national Code stops at its worker threshold, the protection of the smallest workplaces depends on State law, and States other than Kerala and Tamil Nadu have enacted nothing. The direct route is for those States to add a threshold-free seating provision to their shops-and-establishments Acts on the Kerala model, sanction included. The seating campaigns' own demand for a national standard is the more ambitious version of the same idea, and it could be met by prescribing, under the Code, that the seating welfare facility applies to shops and commercial establishments regardless of worker number.

The third is to make the duty self-executing rather than inspection-dependent. A seating obligation policed only by rare visits from a facilitative inspectorate will fail for the structural reasons given above. A better design pairs the substantive duty with a low-friction complaint mechanism that does not require the worker to litigate, for example a right to complain to the adjudicating officer with protection against retaliatory dismissal, so that the cost of enforcement does not fall on the person least able to bear it. The dignity rationale and the retaliation problem are two sides of one coin: workers do not sit because they fear the consequences of sitting, and a remedy that ignores that fear will not be used.

The fourth is to address the 'opportunity to sit' loophole through guidance rather than fresh primary legislation. Rules or departmental guidance could specify that seating must be provided at or adjacent to the workstation rather than in a remote storeroom, and that the burden lies on the employer to justify a denial of seating by reference to the demands of the specific task. This preserves the sensible core of the 'opportunity' language, that a worker attending to a customer must stand, while denying employers the discretion to define the opportunity out of existence.

A cost-based objection must be met head-on, because it is the objection employers actually

make. Providing stools, it is said, imposes expense and clutters selling space, and mandating seating interferes with the legitimate managerial interest in an alert and available salesforce. The expense point is weak on its own facts: a stool is among the cheapest items of workplace equipment, and the reversibility of the intervention, a worker stands when the task requires and sits when it does not, means the managerial interest in availability is preserved rather than defeated. The deeper managerial claim, that a seated worker looks idle and deters custom, is really an aesthetic preference dressed as a business necessity, and it is exactly the preference the statutes were enacted to override. The Constitution's concern for just and humane conditions of work does not yield to an employer's wish that labour appear tireless.

VII. Conclusion

The right to sit is a small right that carries a large lesson about how rights fail. The harm it addresses is real: prolonged standing injures the body and, in the shop-floor form it takes, injures dignity, and Indian constitutional doctrine already contains the materials to recognise both. The norm is not new; factory workers have held it since 1948, and the State amendments and the national Code have carried it, almost word for word, into the wider world of shops. What the two State experiments reveal is that a right is only as good as its remedy. Kerala equipped its seating duty with a sanction; Tamil Nadu, for all the acclaim its statute received, left the sanction to inference, and re-enacted the doubt in 2025 when it could have removed it. The national Code, now in force, raises the floor for larger establishments but leaves the smallest shops, the very workplaces the campaigns were about, in a gap between State silence and a threshold they do not meet.

None of this counsels despair, and none of it requires grand reform. The measures that would help are narrow: name the section, close the threshold gap, spare the worker the burden of litigating, and deny employers the discretion to define the seat away. The argument of this article has been that the vacuum is a matter of design rather than of principle, and design is corrigible. The worker in Kozhikode who was told to drink less water asked for very little. The law has, at last, half-answered her. The task now is to finish the sentence.