

MENSTRUAL HYGIENE - NOT A NORM YET? - AN ANALYSIS OF *Jaya Thakur V. Union of India*

Citation – 2026 SCC OnLine SC 133

INTRODUCTION

Females, the ones who bring life to this planet, go through a totally different life as compared to that of men. In the reproductive body of females, a phenomenon known as menstruation occurs every single month after they reach the age of puberty. Menstruation has a long social history, but today, this paper will discuss a noteworthy decision of the Honourable Supreme Court of India. The court recognised the importance of sex-segregated washrooms in schools and the recognition of the right to dignified menstrual health as a fundamental right. In the recent judgement of *Jaya Thakur v. Union of India*¹ The Supreme Court held menstrual health a fundamental right under Article 21 of the Constitution², expanding the scope of rights for women and children.

FACTS

The petitioner is a social worker, and she has filed the writ of mandamus under Article 32 of the Indian Constitution³. The writ was filed in the public interest, seeking free sanitary pads for female students in classes 6 to 12 and a separate toilet for girls in all government-aided and residential schools. Additionally, she suggested that one cleaner will be responsible for managing the standard hygiene of toilets, and a 3-stage awareness programme is to be implemented, discussing awareness of menstrual health, adequate sanitation facilities, subsidised or free sanitary products, and proper waste disposal. Her writ petition seeks to address the problem regarding MHM (menstrual health management), the issue of absenteeism, and school dropouts due to a lack of proper measures.

ISSUES

- Whether the lack of proper toilets and menstrual products violates the right to equality of girl students under Article 14⁴.
- Whether the right to dignified menstrual health is covered under the scope of Article 21 of the Constitution⁵.

¹ *Jaya Thakur (Dr.) v. Union of India*, 2026 SCC OnLine SC 133

² INDIA CONST. art. 21

³ INDIA CONST. art. 32

⁴ INDIA CONST. art. 14

⁵ Supra note 2

- Whether the lack of sex based toilets and the unavailability of menstrual products violates the right to education under Article 21A⁶, and the right to free and compulsory education under the Right of Children to Free and Compulsory Education Act, 2009⁷.

ARGUMENTS

Petitioners' stance

The petitioner contended that the absence of Sex-segregated washrooms and inadequate access to menstrual products in schools undermine the girls' health and educational opportunities. They argued that these lacunae result in discrimination against female students, denying them equal participation in education and violating Article 14⁸.

They further submitted that menstrual health is a part of life and should be protected under Article 21⁹. They argued that inadequate menstrual health management also violated Article 21A¹⁰ and the right of children to free and compulsory education under the RTE Act¹¹. They sought corrective measures to ensure MHM in educational institutions across the country.

Respondents' stance

The Union of India submitted that policies concerning menstrual health management are a matter of concern that is being addressed through various ongoing schemes and policies, including Samagra Shiksha, Scheme for Promotion of Menstrual Hygiene, Promotion of MHM and Pad Kranti, etc., by the Ministry of Health, Education, and Women & Child Development. They also contended that these policies provide various forms of assistance to states to increase awareness and provide sanitary napkins.

The submissions on behalf of the state government(s) informed the court about their respective jurisdictions and the facilities provided by them for menstrual health management¹². They mentioned facilities such as sanitary napkin vending machines, awareness on menstrual hygiene, and subsidised sanitary napkins for students.

The collective argument from the respondents was that corrective measures had already been undertaken to maintain MHM. The states have submitted their ongoing policies and schemes

⁶ INDIA CONST. art. 21A

⁷ The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009 (India)

⁸ Supra note 4

⁹ Supra note 2

¹⁰ Supra note 6

¹¹ Supra note 7

¹² Nikita Dewangan, *Dr. Jaya Thakur v/s Union of India & Ors. (2026)*, RECORD OF LAW (June 16, 2026), <https://recordoflaw.in/dr-jaya-thakur-v-s-union-of-india-ors-2026/>

at the local level. This was to demonstrate that they are not alien to these issues, but actively support and are committed towards ensuring a healthy MHM.

JUDICIAL REASONING

Menstrual hygiene under Article 14

Substantive equality under Article 14¹³ ensures that equality is brought into action through affirmative actions and policies to help the historically disadvantaged community bridge the gap. Substantive equality is truly achieved when the disadvantaged are practically supported in this structurally disadvantaged system.

The court acknowledged that even in the present times, menstruation acts as a barrier to education for many female students. They also discussed the importance of state responsibility towards the management of menstrual hygiene and further expanded their concern about children with disabilities; in such cases, the difficulty in accessibility is greater. Therefore, the court held that the equal treatment without considering the biological fact of menstruation infringes substantive equality¹⁴.

Menstrual dignity under Article 21

The court recognised that dignity is natural, essential and inalienable for human existence. Similarly, the menstrual health management measures are inseparable from the right to life and dignity under Article 21¹⁵. Therefore, the unavailability of safe and hygienic menstrual management measures reduces dignity and freedom, forcing them to either stay at home, use unsafe practices or even drop out of school. The court also stated that dignity comes with privacy, and the denial of adequate menstrual products and proper availability of resources compels the girls to manage things not by convenience but through circumstances. As Article 21¹⁶ recognises the right to health, inadequate menstrual products may lead to the use of unsafe options, resulting in infections that can be harmful to health, violating the right to life. Therefore, the court held that dignified menstrual health is recognisable under Article 21¹⁷.

Participation and equality of opportunity

The court affirmed that equality is not confined to dignity, it extends to equal opportunity and participation. The lack of menstrual hygiene measures acts as a barrier to exercising the right

¹³ Supra note 4

¹⁴ Supra note 12

¹⁵ Supra note 2

¹⁶ id

¹⁷ id

to equal participation in schools. The deficit in knowledge of menstrual health among adolescent girls acts as a structural barrier to the opportunity for and equal participation of girls in education. When educational institutions lack clean washrooms and required menstrual absorbents, along with safe disposal, the girl child is compelled to not participate in schooling, sports, and extra-curricular activities. Therefore, the court held that schools not providing basic menstrual health measures infringe upon the right to life and impede a girl child's right to participate in education.

Article 21A and Right to Education

Article 21A¹⁸ of the Constitution establishes the right to education for every child. It does not merely imply education; it provides every facility that a child requires for schooling. The RTE Act¹⁹ Ensures that education is accessible, providing free and compulsory education for children aged 6 to 14. The inaccessibility of MHM disrupts attendance, hinders concentration and consequently, breaks the continuity of schooling. The court stated that section 3(2) of the RTE Act²⁰ denotes “to pay any kind of fee or charges or expenses ” It not only includes fees but also all kinds of expenses. Therefore, it must include expenses relating to washroom facilities, medical assistance and books, etc. The court also held that menstrual management measures must be mandatory norms and standards for the schools under section 19 of the RTE Act²¹. Therefore, the court ruled that menstrual hygiene is an intrinsic part of the right to education and the RTE Act²².

RATIO DECIDENDI

The right to menstrual health as an intrinsic part of the right to life and personal liberty under Article 21²³. The court stated that menstrual health is naturally connected to the body, and access to safe and effective menstrual hygiene management ensures the girl child has a standard and healthy life.

The failure to provide sex-segregated toilets and menstrual hygiene facilities in schools is a violation of substantive equality and Article 14²⁴ of the Constitution. The state is

¹⁸ Supra note 6

¹⁹ Supra note 7

²⁰ The Right of Children to Free and Compulsory Education Act, 2009, § 3(2), No. 35, Acts of Parliament, 2009 (India)

²¹ The Right of Children to Free and Compulsory Education Act, 2009, § 19, No. 35, Acts of Parliament, 2009 (India)

²² Supra note 7

²³ Supra note 2

²⁴ Supra note 4

required to take affirmative action to remove barriers faced by female students in educational institutions.

Article 21A²⁵ of the Indian Constitution provides the right to education, and it is not limited to mere enrolment of students into educational institutions, but rather it extends to every facility creating an environment free from structural impediments.

The state has the responsibility to ensure menstrual management measures in educational institutions collectively under Articles 14, 21, and 21A²⁶, and has to ensure the best interests of the children.

CRITICAL ANALYSIS

The court effectively recognised menstrual health dignity under Article 21²⁷. Under the Constitution, this was a significant step towards providing a constitutional guarantee for female students' menstrual health. This decision represents a step forward towards removing the stigma and shame around this topic by providing it constitutional protection. The decision holds significance because the court recognises the collective impact of absenteeism and school dropouts on female students. Emphasising period poverty, unsafe menstrual absorbents, and inadequate facilities, the court addresses how all of these collectively create a hindrance for girls to attend school. The inclusive interpretation of the statutes was the need of the hour.

The court's method of interpretation was inclined towards substantive equality rather than merely sticking to the text. Substantive equality is truly achieved when these policies and recognition happen to be in practical life as well. Mere equal treatment is not equality; it truly happens when the structural gaps are filled through affirmative actions. Providing the girl students with proper washrooms, menstrual products and disposal facilities contributes to affirmative action in this matter. Therefore, the state has the responsibility to bridge the gap between the equals and the unequal. Article 14²⁸ does not merely recognise individual dignity; it extends the guarantee of equal opportunity and participation to every individual²⁹.

²⁵ Supra note 6

²⁶ INDIA CONST. art. 14, 21, 21A

²⁷ Supra note 2

²⁸ Supra note 4

²⁹ Manik Tanwar & Shobha Prasad, *Dignity, Health And Article 21: Locating Menstrual Rights Within The Right To Life*, LIVE LAW (February 18, 2026), <https://www.livelaw.in/articles/menstrual-rights-right-to-life-dignity-health-523638>

The poor infrastructure and fiscal restraints towards education are already an issue. On top of that, maintaining this will be another task. But that doesn't imply that the students have to bear the cost of it. It is the responsibility of the state, and it must effectively perform it.

In the present judgment, the court interpreted section 3(2) of the RTE Act³⁰ with menstrual facilities. The Judgment noted that this right should not be a formal entitlement, and there should be "effective and continuous access to education"³¹. The inadequate facilities were identified as a barrier to free education, which expanded the right to education.

The court stated that the spirit of Article 21A³² and the RTE Act³³ is to be achieved to the fullest, which would not be the case with only sex-segregated toilets or free sanitary napkins. The decision acknowledged that this issue was far more than an infrastructural problem. The judgment challenges traditional assumptions regarding menstrual awareness; it discusses the importance of menstrual education to boys as well. It recognises that biological education of the opposite sex is equally important.

CONCLUSION

The decision in *Dr. Jaya Thakur v. Union of India*³⁴ marks a significant advancement in feminist constitutional jurisprudence by recognising menstrual dignity, the decision has expanded awareness regarding menstrual hygiene. This judgment has contributed to reducing stigma around menstruation. The judgment strengthened the principle of substantive equality by recognizing the biological differences and bridging the structural gaps. The implementation still holds a significant role, as only policies cannot fulfil constitutional promises without proper practical implementation. Unless implementation capacity is enhanced, menstrual dignity will be acknowledged in judgments but ignored in classrooms where it matters the most³⁵.

³⁰ Supra note 20

³¹ Sudhiksha Innanje, *Supreme Court directs implementation of menstrual health facilities in schools*, SUPREME COURT OBSERVER (February 18, 2026), <https://www.scobserver.in/journal/supreme-court-directs-implementation-of-menstrual-health-facilities-in-schools/>

³² Supra note 6

³³ Supra note 7

³⁴ Supra note 1

³⁵ Kavya Agrawal & Stuti Agrawal, *From Rights Recognition To Resource Deficit: Implementation Realities After Dr. Jaya Thakur v. Union Of India*, LIVE LAW (February 17, 2026), <https://www.livelaw.in/lawschool/articles/rights-recognition-resource-deficit-menstrual-health-523516>