
DR JAYA THAKUR V. GOVERNMENT OF INDIA: A LANDMARK AFFIRMATION OF MENSTRUAL HYGIENE AS A CONSTITUTIONAL RIGHT [CITATION: 2026 INSC 97]

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ABSTRACT

“In *Dr Jaya Thakur v. Government of India* (2026 INSC 97), the Supreme Court of India elevated menstrual hygiene management (MHM) to a constitutional entitlement, interpreting Articles 14, 21, and 21A to mandate state action against menstrual barriers to girls' education. Arising from a PIL highlighting NFHS-5 data (23% school absenteeism) and the dropout crisis, the Court addressed systemic failures in sanitary products, gender-segregated toilets, and disposal facilities, despite various schemes.

Framing issues around substantive equality (Article 14), dignity/privacy (Article 21), and education (Article 21A/RTE Act), the judgment rejected formal equality in favour of the "reasonable accommodation" of biological realities. Menstrual health emerged as integral to life with dignity, imposing positive state duties.

Further, by reading Article 21A alongside the Right of Children to Free and Compulsory Education Act, 2009, the Court underscored the State's positive duty to remove financial and infrastructural barriers that impede access to education.

While transformative in constitutionalising MHM, critiques note implementation gaps, funding inequities, and limited scope (schools only). This landmark affirms the judiciary's role in enforcing substantive equality, turning menstrual exclusion from a social taboo to a justiciable right.

The article argues that this ruling reinforces the transformative promise of the Constitution by affirming that biological realities cannot justify exclusion and that genuine equality demands structural accommodation rather than formal sameness.”

Keywords: Menstrual Hygiene Management, Substantive Equality, Education, Dignity, Privacy

'A period should end a sentence, not a girl's education'

A quote by Melissa Berton's poignant now invoked by the Supreme Court in ***Dr Jaya Thakur v. Government of India***, captures the essence of a landmark judgment. India's Supreme Court has long been a vanguard in expanding the horizons of fundamental rights, weaving socio-economic realities into the fabric of Articles 14, 21, and 21A. The judgment delivered on February 2026 by Justices J.B. Pardiwala and R. Mahadevan in Writ Petition (C) No. 1000 of 2022 exemplifies this tradition.

The case emerged against a backdrop of alarming statistics: the National Family Health Survey (NFHS-5) revealed that 23% of girls miss school during menstruation, with significant numbers dropping out entirely. The World Bank noted that in Africa, 1 in 10 girls abandon education due to menstrual-related barriers. In India, despite numerous government schemes, uneven implementation and persistent stigma perpetuated this cycle of exclusion.

A public interest litigation (PIL) was filed by Dr Jaya Thakur under Article 32 of the Constitution. It deals with the systemic exclusion of teenage girls from school because they cannot afford sanitary products or access to clean sanitation facilities.

The petition highlighted two interconnected crises: (1) *absenteeism* - girls miss 4-5 days monthly during menstruation due to lack of sanitary products and facilities, disrupting learning; and (2) *dropouts* - inability to manage menstruation with dignity leads to permanent school abandonment, perpetuating cycles of poverty and illiteracy.

Petitioner's Prayers included:

1. Issue a mandamus directing respondents to provide free sanitary pads to every female child studying Classes 6-12 in government, aided, and residential schools.
2. Issue a mandamus directing respondents to provide separate girls' toilets with adequate water supply in all such schools.
3. Issue a mandamus requiring one cleaner per school for toilet maintenance and hygiene.
4. Direct implementation of a three-stage awareness programme:

Stage 1: Awareness about menstrual health, unboxing taboos and misconceptions.

Stage 2: Provision of adequate sanitation facilities and subsidised/free sanitary products, especially in disadvantaged areas.

Stage 3: Ensuring efficient, sanitary disposal of menstrual waste (incinerators/composters)

Government Response:

The Union of India (Respondents 1-3) and 25 States/Union Territories (Respondents 4-39) filed affidavits detailing extensive schemes in their respective areas, such as Jan Aushadhi's Rs. 1 pads, Samagra Shiksha's vending machines, and state initiatives (e.g., Bihar's Mukhyamantri Kishori Swasthya Karyakram).

However, implementation gaps persisted -15 states/UTs filed no affidavits, indicating systematic indifference. States that have schemes lacked monitoring mechanism and uniform standards. Rural-urban disparities persisted, incinerators in cities, open pits in villages. Awareness remained tokenistic, and taboos survived.

About Menstruation:

The Supreme Court contextualised the constitutional issues by recognising menstruation as a natural biological process, the monthly discharge of blood and mucosal tissue from the uterine lining through the vagina at roughly 28-day intervals, occurring post-ovulation when fertilisation does not happen. Menarche (first menstruation) occurs between ages 8 and 15, making Classes 6-12 (ages 11-17) the critical school period.

Menstrual Hygiene Management (MHM) is defined by the Ministry of Drinking Water and Sanitation as, *(i) Articulation, awareness, information, and confidence to manage menstruation safely and with dignity using safe, hygienic materials with (ii) adequate water, soap, and private spaces for washing and bathing and (iii) dignified disposal of used menstrual absorbents with privacy.*

The World Health Organisation (2012) further elaborates: MHM requires clean menstrual materials (changeable in privacy), access to soap and water for body hygiene, safe/convenient disposal facilities, and understanding of menstrual cycles, enabling management without

discomfort or fear.¹

Issues:

The Supreme Court framed the following issues for consideration:

1. Article 14 Violation (Access): Whether the unavailability of gender-segregated toilets and non-access to menstrual absorbents violates the right to equality before law and equal protection for adolescent girl students under Article 14 of the Constitution?
2. Article 21 Violation (Dignity): Whether dignified menstrual health, comprising access to clean absorbents, adequate sanitation, and safe disposal, constitutes a fundamental aspect of the right to life and personal liberty under Article 21 of the Constitution?
3. Article 14 Violation (Participation & Opportunity): Whether the lack of menstrual hygiene facilities and sanitation infrastructure denies adolescent girls equal protection and equality of opportunity enshrined under Article 14?
4. Article 21A Violation (Education): Whether unavailability of gender-segregated toilets and non-access to menstrual absorbents violates the fundamental right to education under Article 21A and Right of Children to Free and Compulsory Education (RTE) Act, 2009?

Analysis:

Substantive equality as the constitutional lens

The traditional view of equality often boils down to "treating women the same as men." But this runs into trouble when it insists on the understanding that women must be treated exactly like men if they are to gain equality with men.²

Article 14 of the Indian Constitution embodies not merely **formal equality**, but **substantive equality**, which requires the State to dismantle structural and social barriers that impede equal

¹ UNICEF, *Guidance on Menstrual Health and Hygiene* 8 (Mar. 2019).

² IWRAW Asia Pacific, *Substantive Equality, CEDAW Principles – Overview* (accessed Feb. 25, 2026), <https://cedaw.iwraw-ap.org/cedaw/cedaw-principles/cedaw-principles-overview/substantive-equality/>.

enjoyment of rights. Read together with Articles 15 and 16, Article 14 imposes a positive duty upon the state to enable meaningful participation of disadvantaged groups.

Equality of opportunity: what constitutional demands

Equality of opportunity does not demand rigid sameness. Instead, it intends to provide uniform opportunities to develop the desired skills to stand on an equal footing.³ As Nobel economist Amartya Sen observed: “*Equal consideration for all may demand very unequal treatment in favour of the disadvantaged.*”⁴

The Court conceptualised **equality of opportunity** in three dimensions:

1. **Equal Start** – Individuals with similar potential must be afforded equal conditions for survival and development, unaffected by social class (Rawlsian principle).
2. **Equal Access to Opportunities** – Mere recognition of equal starting points is insufficient; the process of accessing opportunities must be free from impediments.
3. **Recognition of Natural Differences** – Natural and biological differences must be respected, and social structures must adapt to them rather than penalise individuals for them.

When schools fail to provide toilets, absorbents, or disposal facilities, girls are compelled to remain absent or drop out. The absence of menstrual hygiene management (MHM) facilities converts a natural biological process into a structural barrier, directly undermining girls’ ability to participate in education on equal footing.

Such conditions create **de facto discrimination**, where girls are formally admitted to schools but are denied equal access to education. The right to equality in education includes removing obstacles to access and retention.

In *Navtej Singh Johar v. Union of India* (2018),⁵ the Constitution Bench held that equality demands “**inclusion of all and exclusion of none.**”

³ Sandra Fredman, *Substantive Equality Revisited*, 14 INT’L J. CONST. L. 723, 723– (2016).

⁴ Amartya Sen, *Inequality Reexamined* 1 (Harvard Univ. Press 1992).

⁵ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

Similarly, *Vikash Kumar v. UPSC* (2021)⁶ recognised **reasonable accommodation** as flowing from the State's positive obligation to facilitate participation of persons with disabilities. By analogy, menstrual accommodation is necessary to ensure girls' equal participation in education.

In *State of Karnataka v. Appa Balu Ingale* (1995 Supp (4) SCC 469),⁷ the Court ruled that denying equal opportunity strips away equal status and dignity. According to this theory, the absence of menstrual pads, restrooms, and a secure disposal method amounts to a systematic denial of equal opportunity, which is against Article 14.

Given that menstrual barriers disproportionately exclude girls from education, the State is under a **positive obligation** to remove these barriers. Articles 14, 15, and 16 do not merely prohibit discrimination; they require affirmative measures to ensure equal participation.

The failure to provide MHM facilities thus constitutes a violation of Article 14 by perpetuating structural disadvantage, denying equal opportunity, and undermining the constitutional promise of substantive equality.

Dignity, Privacy, and Bodily Integrity as the core of Article 21

Article 21 guarantees not mere animal existence, but the **right to live with dignity**, encompassing health, privacy, bodily integrity, and autonomy. Menstrual health is inseparable from dignity, as it implicates bodily processes, privacy, and freedom from humiliation and degradation.

In *Justice K.S. Puttaswamy v. Union of India* (2017),⁸ the Court recognised privacy as a constitutionally protected right, including **decisional autonomy over one's body and reproductive health**. Privacy is inextricably linked with dignity. As a corollary, the right to privacy entails a duty on the State not only to refrain from violating privacy but also to take the necessary measures to protect the privacy of an individual.

Forcing adolescent girls to use unsafe materials such as rags or ash or compelling them to manage menstruation without private toilets or disposal facilities subjects them to indignity,

⁶ *Vikash Kumar v. Union Public Service Commission*, AIR 2021 SC 2447.

⁷ *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469.

⁸ *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161.

shame, and health risks. Such conditions are incompatible with the constitutional vision of a dignified life under Article 21.

In *Bandhua Mukti Morcha v. Union of India* (1984),⁹ the Court held that the right to live with dignity draws content from the Directive Principles, including access to health and education. Menstrual health, therefore, falls squarely within the protective ambit of Article 21.

Menstrual health is thus not a matter of charity or convenience but a constitutional entitlement flowing directly from Article 21. It imposes a positive obligation on the State to protect dignity, privacy, bodily integrity, and health. Any institutional arrangement that forces girls to manage menstruation in unsafe or degrading conditions is, therefore, incompatible with the constitutional vision of a life lived with dignity and violates the guarantee of the right to life and personal liberty.

Education is the convergence point of equality and dignity

Article 21A guarantees every child between the ages of 6 and 14 the right to free and compulsory education. The Right to Education serves as a building block to ensure that every child has his or her right to get a quality elementary education. It is referred as a “multiplier right’ meaning that it opens the gate to the enjoyment of other rights.¹⁰

Research indicates that a majority of girls lack information about menstruation before menarche,¹¹ leading to fear, absenteeism, and dropouts. In *Mohini Jain v. State of Karnataka* (1992),¹² the Court held that the right to education flows from the right to life and dignity. This position was reaffirmed in the *T.M.A. Pai Foundation*,¹³ Insofar as primary education is a fundamental right.

The RTE Act¹⁴ reinforces this constitutional mandate. **Section 3** prohibits financial barriers to education - the costs of menstrual products operate as such barriers. **Section 19** mandates

⁹ *Bandhua Mukti Morcha v. Union of India*, 1984 AIR 802.

¹⁰ UNESCO & Right to Education Initiative, *Right to Education Handbook* (2019), https://www.right-to-education.org/sites/right-to-education/files/resource%20attachments/RTE_UNESCO_Right%20to%20education%20handbook_2019_En.pdf (last visited Feb. 25, 2026).

¹¹ Shantanu Sharma et al., *Menstrual Hygiene Preparedness Among Schools in India: A Systematic Review and Meta-Analysis of System and Policy Level Actions*, 17 INT’L J. ENVIRON. RES. PUB. HEALTH 647 (2020).

¹² *Mohini Jain v. State of Karnataka*, 1992 AIR 1858.

¹³ *T.M.A. Pai Foundation v. State of Karnataka*, AIR 2003 SC 355.

¹⁴ The Right of Children to Free and Compulsory Education Act, 2009, Act No. 35, 2009, Acts of Parliament (India).

compliance with prescribed norms and standards, which necessarily include inclusive sanitation infrastructure.

International law, read through Article 51(c), further strengthens this obligation. Article 26 of the UDHR, Article 13 of the ICESCR, CEDAW, and CRC uniformly mandate the elimination of de facto barriers to girls' education. In *Vishaka v. State of Rajasthan*,¹⁵ the Court held that international conventions could inform constitutional interpretation where domestic law is silent.

Comparative jurisprudence, particularly *Brown v. Board of Education*¹⁶ and *Plyler v. Doe*,¹⁷ underscores that denial of access to education places children at permanent disadvantage. Menstrual barriers operate as **de facto segregation**, excluding girls from education.

All schools, whether run by the appropriate Government or privately managed, must act in accordance with the norms and standards laid down in Section 19. In case of a school not established, owned, or controlled by the appropriate Government or the local authority is found to be in contravention of the provisions of the RTE Act, it would be de-recognised, and the consequences therefrom would follow. Insofar as a school established, owned, or controlled by the appropriate Government or the local authority is found to be in contravention of the provisions of the RTE Act, the State would be held accountable.

Role of men in menstruation

Besides addressing these infrastructural issues, the Supreme Court underscored the pivotal role of men in promoting menstrual hygiene. It clarified that the absence of proper facilities alone, such as menstrual hygiene products or gender-segregated toilets, will not suffice. The real challenge lies in the pervasive environment surrounding a girl's education. Men play a multifaceted role in menstrual hygiene and awareness for school-going adolescent girls. Male teachers can integrate accurate, stigma-free information into curricula while ensuring staff maintain clean, hygienic toilets. Meanwhile, male peers and classmates must be educated about the biological realities to cultivate empathy and extend practical support.

Enacting laws is insufficient; their effective implementation remains the core hurdle, hindered

¹⁵ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

¹⁶ *Brown v. Board of Education*, 347 U.S. 483 (1954).

¹⁷ *Plyler v. Doe*, 457 U.S. 202.

by deep-rooted attitudes and societal norms we are reluctant to abandon. Menstruation must cease to be a taboo discussed only in hushed whispers.

Directions issued:

The operative portion issues time-bound directives: *Free biodegradable pads* (Classes 6-12) via mid-day meals or vending machines; *separate, functional girls' toilets* with water and cleaners, *MHM curriculum integration*; *incinerators/composters*, states/UTs form oversight committees; *annual audits*, *awareness via ASHA workers*, peers, and men's involvement.

Non-compliance invites contempt, with Centre funding via 15th Finance Commission grants.

While the Supreme Court's directions are robust, critiques highlight vague monitoring, echoing RTE's uneven rollout (only 60% school compliance per ASER 2025), no funding formula burdening poorer states, a school-only focus ignoring colleges/workplaces, and inadequate cultural interventions against rural stigma. Litigation-wise, it enables PIL challenges to deficient facilities and tests the justiciability of positive rights amid fiscal federalism.

Conclusion:

Dr. Jaya Thakur v. Government of India is a landmark case that acknowledges menstruation hygiene as a problem of substantive equality, dignity, and educational access rather than charity or policy discretion. The Supreme Court upheld that biological realities cannot serve as justifications for exclusion and that constitutional equality necessitates accommodation rather than sameness by interpreting Articles 14, 21, and 21A collectively. In addition to recognising school as the crucial arena where gendered inequality is most evident, the ruling places menstrual health at the centre of the right to life with dignity, privacy, and bodily integrity.

Even though there are still problems with implementation and economic asymmetries, the Court's time-limited orders turn menstruation hygiene from a social issue that has been ignored into a constitutional duty that may be enforced against both the State's inaction and the apathy of institutions.

Ultimately, the verdict confirms the transformative promise of the Constitution: that no girl's education, dignity, or future may be hampered by silence, stigma, or institutional.