## Case Details

**Title:** Dr. Jaya Thakur v. Government of India & Ors.

**Court:** Supreme Court of India, Original Civil Jurisdiction

**Date of Decision:** January 30, 2026

**Judges:** Hon'ble Mr. Justice J.B. Pardiwala and Hon'ble Mr. Justice R. Mahadevan

**Citation:** 2026 INSC 97

**Case Number:** Writ Petition (C) No. 1000 of 2022

# From Stigma to Right: Interpreting Menstrual Hygiene Management in view of Dr. Jaya Thakur v. Government of India

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## Abstract

"A period should end a sentence – not a girl's education."[1]

This case comment seeks to analyze the recent landmark Supreme Court judgment of Dr. Jaya Thakur v. Government of India (2026 INSC 97).[2] The case was a public interest litigation that sought free sanitary pads, provision and maintenance of gender-segregated toilets, and also signified the need for menstrual hygiene awareness in schools across the country. The judgment was given by a Bench comprising Justice J.B. Pardiwala and Justice R. Mahadevan, and it helps locate Menstrual Hygiene Management ("MHM") within the constitutional guarantees of equality under Article 14, dignity, privacy and health under Article 21, and also correlates the fundamental right to education under Article 21A with the Right of Children to Free and Compulsory Education Act, 2009.[3] This comment sets the decision within the broader jurisprudence on substantive equality and the right to health,

[1] Melissa Berton et al., Period. End of Sentence.: A New Chapter in the Fight for Menstrual Justice (2024).
[2] Dr. Jaya Thakur v. Government of India, 2026 INSC 97 (India).
[3] The Right of Children to Free and Compulsory Education Act, 2009, §§ 3, 8, 9, 18, 19 (India).

delves into a doctrinal analysis of the reasoning for the decision, and seeks to examine and comprehend the human dimension of a decision that speaks as much to the conscience of a nation as it does to the letter of the law.

## Key Words

Menstrual Hygiene Management, Right to Education, Article 21A, Substantive Equality, Bodily Autonomy.

## I. Statement of Facts

The petitioner in the present case is Dr. Jaya Thakur who is a social worker and the present proceedings were filed under Article 32 of the Constitution in public interest in order to seek directions for the allocation of free sanitary pads to female students studying between class 6 and class 12, separate toilets for girls in government aided and residential schools, provision of one cleaner to clean the toilets. Besides, the petition also sought some other relevant reliefs and a well-structured, three-layered programme for spreading menstrual health awareness.

In conformity to the orders of the Court dated 24.07.2023 and 06.11.2023, the Union of India filed its affidavit and the Menstrual Hygiene Policy for School Going Girls which was sanctioned by the Ministry of Health and Family Welfare. The Union of India also submitted a summary of central schemes including the Jan Aushadhi Sanitary Kendras, the Scheme for Promotion of Menstrual Hygiene, Samagra Shiksha, and the Swachh Bharat Mission.[4] In totality, thirty-six States and Union Territories placed affidavits informing about their respective schemes, comprising of a wide range of programmes starting from sanitary napkin vending machines and incinerators to cash incentive schemes and menstrual health curricula. But the Court was of the opinion, that there was no such effective implementation of the wide range of available schemes and policies which abounded only on paper.

## II. Legal Provisions Invoked

The petition invoked the following legal provisions: Article 32 of the Constitution for enforcement of fundamental rights, and rested substantively on Article 14 (equality before

[4]Dr. Jaya Thakur, 2026 INSC 97, at 8–12 (India).

law), Article 15(3) (special provisions for women and children), Article 21 (right to life and personal liberty, including dignity, privacy, and health), and Article 21A (right to education).[5]

The Court also examined the Right of Children to Free and Compulsory Education Act, 2009 ("RTE Act"), with special reference to Sections 3, 8, 9, 18 and 19 read with the Schedule, along with international instruments including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.[6]

## III. Issues

- Whether the non-availability of distinct toilets based on gender and non-access to menstrual absorbents lead to a violation of the right to equality of adolescent school going girls under Article 14 of the Constitution?
- Whether right to life under Article 21 also encompass the right to dignified menstrual health?
- Whether such unavailability of gender- segregated restrooms infringes upon the right to participation and equality of opportunity guaranteed under Article 14?
- Whether the said unavailability also breach the right to education under Article 21A, and the right to free and compulsory education under the RTE Act, 2009?

## IV. Judgment

### Precedents Considered:

The Supreme Court undertook a critical and comprehensive review of both comparative international and domestic precedents to structure the extensive framework of menstrual health as a facet of dignity, equality, and education. Some of the landmark case laws analyzed were:

[5]India Const. arts. 14, 15(3), 21, 21A.
[6]See Universal Declaration of Human Rights art. 26, Dec. 10, 1948; International Covenant on Economic, Social and Cultural Rights art. 13, Dec. 16, 1966; Convention on the Elimination of All Forms of Discrimination against Women art. 10, Dec. 18, 1979; Convention on the Rights of the Child art. 28, Nov. 20, 1989.

- **Brown v. Board of Education (1954)[7] and Plyler v. Doe (1982)[8]** — These are two landmark American decisions recognizing education as a basic tenet required to enjoy democracy, holding that denial of education inflicts a permanent and insurmountable competitive disadvantage upon a child.
- **Mohini Jain v. State of Karnataka (1992)[9] and Unni Krishnan, J.P. v. State of A.P. (1993)[10]** — These judgments are pivotal ones that concluded that the right to education necessarily flows from the right to life and human dignity under Article 21, even prior to the insertion of Article 21A.
- **K.S. Puttaswamy (Privacy-9 J.) v. Union of India (2017)[11]** — This important decision established that dignity and privacy are indelible and interrelated constitutional values where privacy is pivotal in anchoring through bodily and decisional autonomy over intimate matters encompassing reproductive and menstrual health.
- **Joseph Shine v. Union of India (2019)[12] and Janhit Abhiyan v. Union of India (2023)[13]** — These decisions established that the doctrine of substantive equality necessitates the State to address concerns relating to structural and systemic disadvantage instead of avoiding such structural discrimination.
- **Rajive Raturi v. Union of India (2024)[14] and Om Rathod v. Director General of Health Services (2024)[15]** — Anchored that accessibility and reasonable accommodation are two sides of the same coin of substantive equality under Articles 14, 19, and 21, particularly at the crossroads of disability and gender.

[7]Brown v. Board of Education, 347 U.S. 483 (1954).
[8]Plyler v. Doe, 457 U.S. 202, 221 (1982).
[9]Mohini Jain v. State of Karnataka, (1992) 3 SCC 666 (India).
[10]Unni Krishnan, J.P. v. State of A.P., (1993) 1 SCC 645 (India).
[11]K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
[12]Joseph Shine v. Union of India, (2019) 3 SCC 39 (India).
[13]Janhit Abhiyan v. Union of India, (2023) 5 SCC 1 (India).
[14]Rajive Raturi v. Union of India, 2024 INSC 858 (India).
[15]Om Rathod v. Director General of Health Services, 2024 INSC 836 (India).

## V. Issue-by-Issue Examination

### 1. Equality under Article 14: Menstruation as a Barrier to Education

It was submitted by the petitioner that the absence of gender-segregated toilets and menstrual absorbents in schools disproportionately burdens girl children that turns a routine biological process into a structural barrier to education. The Court decided that this submission has valid grounds and held that formal equality shown in order to treat all students, irrespective of their gender, identically regardless of their circumstances, is inadequate in situations where a segment of the student population faces a biological obstacle that others do not share. The Court relied on the doctrine of substantive equality anchored in Joseph Shine and Janhit Abhiyan,[16] and said that unequal treatment in the form of affirmative services for menstruating girls is not only acceptable merely but also jurisprudentially essential to place them on an equitable footing with their male counterparts.[17]

### 2. Dignity, Privacy, and the Right to Menstrual Health under Article 21

The Court decided that the right to life under Article 21 relates to not only physical survival but encompasses a life where dignity is ensured and that dignity obviously cannot exist without privacy. The Bench, while drawing extensively on Puttaswamy,[18] held that the expectation of a girl child to be able to manage menstruation in privacy and with dignity is a valid constitutional expectation, and her bodily sovereignty cannot be restricted due to dearth of resources. The judgment is important for treating menstrual health as intrinsic and essential to reproductive health and, through it, to the sanctity of the right to life itself.[19]

### 3. Participation and Equality of Opportunity

The Court observed that the absence of menstrual health management impairs school performance, resulting in absenteeism and over time, drop outs. It held that the right to equality cannot be expressed merely through non-discrimination but through the guarantee of right to participate on equitable footing in community life.[20]

[16]Joseph Shine, (2019) 3 SCC at 112; Janhit Abhiyan, (2023) 5 SCC at 89.
[17]Dr. Jaya Thakur, 2026 INSC 97, at 30–44 (India).
[18]K.S. Puttaswamy, (2017) 10 SCC at 494.
[19]Dr. Jaya Thakur, 2026 INSC 97, at 45–60 (India).
[20]Id. at 61–72.

### 4. The Fundamental Right to Education under Article 21A and the RTE Act

The Court held that free and compulsory education under Section 3 of the RTE Act is not restricted to the waiver of tuition fees but extends to the removal of every expense or condition that operates as a barrier to a child's continued attendance.[21] The absence of sanitary napkins and safe disposal mechanisms was held to constitute precisely such a barrier. Reading Section 19 of the RTE Act together with the Schedule prescribing building norms, including separate toilets for boys and girls,[22] the Court held that "barrier-free access" is not confined to the physical structure of a school building but extends to the amenities within it, and that this obligation binds government and private schools alike.[23]

## VI. Court's Decision

In a judgment authored by Justice J.B. Pardiwala, the Court allowed the writ petition and issued a comprehensive set of continuing directions:[24]

**Toilet and Washing Facilities:** The Court directed all States and Union Territories to ensure that every school, be it government or private, has to have functional, well- maintained and gender-segregated toilets with durable water connection and hand washing areas, designed for privacy and accessibility.

**Availability of Menstrual Absorbents:** Free oxo-biodegradable sanitary napkins accessible through vending machines or personnel were made a necessary provision for every school, along with the establishment of Menstrual Hygiene Management corners for provision of spare innerwear, uniforms, and disposable bags. Schools were also directed to institute environmentally compliant waste disposal mechanisms in accordance with the Solid Waste Management Rules.

**Awareness and Training:** For spreading awareness about menstruation and to initiate the process of de- stigmatization, the NCERT and SCERT were directed to introduce gender-responsive curricula in schools on menstruation and puberty. Moreover all staff as well as teachers were directed to be educated, sensitized.

Moreover, routine inspections by the District Education Officer were directed through student feedbacks and the Court entrusted the National and State Commissions for Protection of

[21]The Right of Children to Free and Compulsory Education Act, 2009, § 3 (India).
[22]The Right of Children to Free and Compulsory Education Act, 2009, § 19 read with Schedule (India).
[23]Dr. Jaya Thakur, 2026 INSC 97, at 89–104 (India).
[24]Id. at 105–178.

Child Rights with the task of supervision. The Court, having understood the sustained importance of the exercise, retained the matter as part-heard and thus, ordered a continuing mandamus with a compliance threshold of three months.[25]

## VII. Concurring / Dissenting Opinions

As the case was decided by a two-Judge Bench, [26] the judgment was unanimous. The judges suggested some other frames of reference which if endorsed, is likely to vary the Bench's future decisions. For instance, if a social realism perspective is considered, it will foster the idea that without a set out budget and legislative mandate, judicial directions will not be duly implemented and there has been numerous instances of the same when schemes have been shunned during the implementation stage.

## VIII. Critical Evaluation

**Strengths of the Judgment:**

- **Doctrinal Depth and Human Dignity:** The decision does not merely hold menstruation and menstrual hygiene as a matter of sanitation policy but also situates it within Articles 14, 15(3), 21 and 21A thus, making it constitutionally guaranteed, an experience which was otherwise characterized by fear, shame and stigma.
- **Recognition of Intersectionality:** The Court stated that menstrual poverty is not an issue of equal opportunity for girls and taking into consideration the additional challenges that girls with disabilities experience, reasonable accommodations was held to be necessary to address the needs of those who are most disadvantaged.[27]
- **Recognition of the Social Ecosystem:** That stigma surrounding menstruation is an issue that is not possible to be solved through judicial pronouncements or infrastructure alone, was highlighted in the decision by dedicating a separate section of the judgment to the awareness and engagement of men and boys. Such engagement, functions like a guarantee to the menstrual child that she should not fear classroom ridicule and that her dignity is not to be compromised.

[25]Id. at 178–179.
[26]Id. at 1–2.
[27]Rajive Raturi, 2024 INSC 858, at 42 (India).

**Limitations and Concerns:**

- **Implementation Gap:** It has been evident from the decision that implementation gaps remain a problem and such problem is likely to be repeated without a well planned budget and supervision of a dedicated body.
- **Absence of Affidavits from Several States**: There are many states and union territories which were not included to be a party to the proceedings or did not furnish adequate affidavits informing about the already available schemes before the Court, since no penalty had been attached for the non-compliance.
- **Silence on Working Women and Adult Menstruators**: There is no reference to adult working women and the judgment is restricted to adolescent girls in school.
- **Practical Sustainability of MHM Corners and Vending Machines**: The directives have not taken into consideration the regular expenses of refilling, maintaining, and repairing the infrastructure that needs to be installed.

## IX. Broader Impact

In the arena of gender justice and equality in access to education, Dr. Jaya Thakur v. Government of India is a comprehensive landmark development in the history of Indian constitutional jurisprudence, furthering the doctrine of substantive equality as expounded in cases like Joseph Shine and Janhit Abhiyan. Apart from being an important legal development, the judgment also signifies unfathomable humanity that acknowledges in each statistic about absentees in school, the child that has been convinced that she is a liability on account of her body, and in each unkempt toilet, the lost time in study, or even worse, a lost future. Whether this decision will result in working toilets, stocked vending machines, and a generation of girls who do not miss classes in silence depends entirely on the implementation mechanism and its authenticity but as a statement of constitutional guarantee and human empathy, the verdict has led to a revolutionary move away from stigma towards rights.