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Dr. Jaya Thakur v Government of India

2026 INSC 97 | 2026 SCO.LR (2)[1][4]

SUPREME COURT OF INDIA

Judgement Date: 30 January 2026

-Vrinda Rai

Introduction

In the case of *Jaya Thakur vs Union of India*, the apex court reiterated menstrual health as integral to life with dignity following the Article 21 of the Indian Constitution, imposing positive duty on the state. This landmark maintains the judiciary's role in enforcing substantive equality, making menstruation a justifiable right rather than a societal taboo.

A Public Interest Litigation was filed by Dr. Jaya Thakur under Article 32 of the Indian Constitution for the matter of increased number of teenage girl absentees (23% of school absenteeism according to the data of NFHS-5) and drop outs. The court observed that the main cause of this was those girls were not able to afford the sanitary products, there were no gender segregated washroom facility available at school. In addition to this there was a lack of disposal facilities to dispose of the menstrual waste and this haunted the girls because of the shame.¹

¹ KRITI SHARMA, A LANDMARK AFFIRMATION OF MENSTRUAL HYGIENE AS A CONSTITUTIONAL RIGHT, 8 INDIAN JOURNAL OF LAW AND RESEARCH 4481, 4482(2026)

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 Organization (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.²

Lack of adequate facilities created a barrier for the teenager girls to attend the school and this increases the number of teenager girl absentees as well as drop outs. According to the Article 14 of the Indian Constitution which guarantees not only formal equality but also substantive equality. This provision has been breached where state was unable to provide reasonable accommodation of biological realities. In addition to this Article 21(Dignity) and Article 21A(Education) was also breached where 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. 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 21.³ In consequence of the violation of Article 21 also violates the Article 21A where lack of proper menstruation facilities created a barrier for access in education.

The petitioner appealed in the court for the school students only. If we talk about Article 14 and 21 of the Indian constitution it guarantees equality and dignity to everyone not merely students. Providing adequate menstrual related facilities is also the right of working women who works in offices and courts. There are also some instances where women denied a decent job because of the barriers like adequate and convenient clean washroom facilities, availability of sanitary pad vending machines and vanishing of the menstrual taboo from the workplace as well. Article 21 also includes “right to work” with “right to life” as well. The Supreme Court has recognized that **the right to livelihood is an integral facet of Article 21**, particularly in cases such as *Olga Tellis*

² KRITI SHARMA , A LANDMARK AFFIRMATION OF MENSTRUAL HYGIENE AS A CONSTITUTIONAL RIGHT, 8 INDIAN JOURNAL OF LAW AND RESEARCH 4481, 4483(2026)

³ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161

v. Bombay Municipal Corporation (1985). However, there is no independent fundamental "right to work" under Article 21. The "right to work" primarily appears in Directive Principles (Article 41).

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Arguments of the Parties

Petitioner filed the Public Interest Litigation under Article 32 of the Indian Constitution. Appellant prayed

1. Provide free sanitary pad to every female child (6-12) class in government, aided and residential schools.
2. Provide separate girls' toilets with adequate water supply in all such schools.
3. One cleaner per school for toilet maintenance and hygiene.
4. Implementation of three-stage awareness programme.

Stage 1: Menstrual health, unboxing taboos and misconception.

Stage 2: Sanitization facilities and subsidized/free sanitary products.

Stage 3: Sanitary waste disposal management.

There were two concerns raised by the petitioner-

- ❖ Girls missing 4-5 days in month because they can not afford sanitary products.
- ❖ Inability to manage menstruation with dignity leads to permanent school abandonment, perpetuating cycles of poverty and illiteracy.⁵

Respondent replied that there are various schemes implemented in different states as well as at the central level. Jan Aushodhies where a pad is given to girls through vending machines which costs them rupee 1 only. Samagra siksha's vending machine for the easy access of sanitary pads. Bihar's

⁴ *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545

⁵ KRITI SHARMA, A LANDMARK AFFIRMATION OF MENSTRUAL HYGIENE AS A CONSTITUTIONAL RIGHT, 8 INDIAN JOURNAL OF LAW AND RESEARCH 4481, 4483-4484(2026)

Mukhyamantri Kishori Karyaknam. Despite of schemes states lacked monitoring and uniform standards. Being a respondent 15 states filed no affidavit which indicates the systematic indifference. Similarly, *Vikash Kumar v. UPSC* (2021) recognized reasonable accommodation as flowing from the State's positive obligation to facilitate participation of persons with disabilities.⁶ By analogy, menstrual accommodation is necessary to ensure girls' equal participation in education.

Issues Before the Court

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? 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.
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?⁷

⁶ *Vikash Kumar v/s UPSC* (2021) 5 SSC 370

⁷ KRITI SHARMA, A LANDMARK AFFIRMATION OF MENSTRUAL HYGIENE AS A CONSTITUTIONAL RIGHT, 8 INDIAN JOURNAL OF LAW AND RESEARCH 4481, 4484(2026)

Judgement

The apex court bench of J.B. Pardiwala and R. Mahadevan maintained that state does not only have the duty of formal equality but substantial equality as well. Noting that failing to accommodate basic biological realities creates systematic educational dropouts and absenteeism among girls. It recognized dignified menstrual health as fundamental right under Article 21 linking directly to the right to education article 21A and equality Article 14. Free Sanitary Products: Mandated all states, union territories, and schools to provide free, eco-friendly or oxo-biodegradable sanitary napkins to adolescent girl students. Infrastructural Standards: Directed the provision of separate, clean, and functional girls' toilets equipped with running water, privacy, and safe waste disposal/incinerator units. Support Corners: Ordered the establishment of menstrual hygiene management (MHM) corners offering essentials like emergency uniforms, clean trousers, and pain relievers. Continuing Mandamus: Imposed a continuing mandamus to monitor ground-level execution and ensure strict compliance across all government and private school systems.

Critical Analysis

Apparently, the reasoning and decision of the court is sound. Linking Article 21 with Article 21-A and Article 14 coordinates perfectly. The decision forgets the most important part where rights of teenager girls were being recognized but not the rights of working women. When Article 21 includes right to education it does also includes right to work. The Supreme Court has recognized that **the right to livelihood is an integral facet of Article 21**, particularly in cases such as *Olga Tellis v. Bombay Municipal Corporation* (1985).⁸ However, there is no independent fundamental "right to work" under Article 21. The "right to work" primarily appears in Directive Principles (Article 41). A dignified human life is recognized when it has equal excess to education as well as work. Court should also give a glance at the condition of washrooms in government offices as well as courts and the arrangements of the menstruation essentials. Many government offices do not have gender segregated washrooms even if they have the condition of those washrooms is pathetic. *Vishaka v. State of Rajasthan* (safe working environment and gender equality) Conditions of

⁸ *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545

washrooms creates a barrier for the women to opt for particular job. ⁹This infringes the right to equality, right to dignity and right to work of women. If court pass a mandamus for the government offices as well as the court to maintain the washrooms and fulfill the requirement of women it may create another level of impact.

Conclusion

The case of Jaya Thakur versus Union of India is a deal for our constitution. It says that taking care of health is very important for people to be treated equally and have access to education. The Supreme Court looked at some articles in our constitution like Articles 14, 21 and 21A. Said that the government should make sure that women have the same opportunities as men. This means the government should provide facilities for women to take care of their health.

The court made a point that not having clean and safe places for women to take care of their menstrual health is a big problem. It stops women from getting an education. Is not fair to them.. This is not just a problem in schools. Women who work also face the problems. They do not have places to take care of their menstrual health and people often look down on them.

The Supreme Court has said that everyone has the right to work and should be able to work in dignified conditions. So the government and courts should make sure that women have the facilities they need to take care of their health at work. This includes government offices and courts. Then can we say that we really believe in equal treatment for everyone. Menstrual health is a human right and we should treat it that way not just as something we do to be nice to women. The case of Jaya Thakur versus Union of India Jaya Thakur versus Union of India is a reminder that we need to do more to help women like in the case of Jaya Thakur, versus Union of India.

⁹ *Vishakha v. State of Rajasthan*, reported in (1997) 6 SCC 241