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MENSTRUAL HYGIENE, A CONSTITUTIONAL RIGHT- CASE COMMENTARY ON DR. JAYA THAKUR V UOI

By Lakshika Sharma

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

Standard Citation: 2026 INSC 97

Date of Judgment: 30 January 2026

Bench: Justice J.B. Pardiwala and Justice R. Mahadevan

Case No.: Writ Petition (Civil) No. 1000 of 2022

INTRODUCTION

Nature has always showcased its beauty and its needs in the most magnificent ways. Its manifestation has proved to be extremely balancing for the existence of life. Biologically men and women are different and it is absolutely important to recognise, understand and accept such differences. The biological phenomena of menstruation is one such reality which unfortunately comes with absence of hygiene management facilities in a lot of cases. As a result of such absence, there exists a huge number of barriers not just to equal participation but also dignity and education. The recent Supreme Court's judgment as on 30th January, 2026 in W.P (C) No. 1000 of 2022, is significant towards the broad understanding of Indian jurisprudence, recognising the constitutional implications of such reality as under Article 14 as well as 21.

Initially introduced as a Public Interest Litigation as presented under Article 32 of the constitution, asking basic hygiene management requirements. The requests including seeking of sanitary pads for girl students of those studying in Class VI to XII, along with separate

toilets for girls in aided, government as well as residential schools, with an added effort of proper management of such washrooms and finally extensive efforts towards awareness programs that are concerned with health both physical as well as mental and also hygiene of the students. However, the court took a broad view of the issue of unavailability and looked beyond it to inculcate dignity, substantive equality, accessibility, dignity, reproductive health as well as fundamental right to education. Thereby, the court took cognisance of issues that usually get unnoticed but are otherwise the by-product of such a difficult environment.

FACTS AND BACKGROUND

A social worker who is also the petitioner in the present case, approached the apex court seeking directions to the Union of India, States as well as Union Territories for taking the responsibility of maintaining sufficient facilities in the school. The plethora of demands included cleaners for toilets, proper toilets, sanitary pads, subsidised menstrual products as well as sanitary disposal provisions. The detailed examination by court recognised it as an issue with broader dimensions and a broader definition realising the different definitions at international and national level, understanding Menstrual Hygiene Management (MHM), to include suitable absorbents, washing provisions, water, safe disposal, awareness, etc. A stricter approach was given to menstrual poverty and its wide manifestations. It was acknowledged by the government that there still exists cultural and social taboos with further aggravation by the issue of unavailability. The Union government placed the Menstrual Hygiene Policy for School Girls, along with other schemes for Promotion of Menstrual Hygiene, Swachh Vidyalaya, Sanagra Shiksha, and similar other measures along with other state introduced schemes.

ISSUES BEFORE THE COURT

The issues included:

- Connection between accessibility to Menstrual hygiene management with the fundamental rights as under Article 14, 21 as well as 21A.
- Whether unavailability of menstrual hygiene management facilities constitute a barrier to exercise of right to education.

- Whether menstrual hygiene should be looked upon through the principle of substantive equality.
- Whether such provisions are to be extended to children with disabilities as well as those requiring accommodation.
- Appropriate standards for schools and their compliance mechanism

CONSTITUTIONAL FRAMEWORK

SUBSTANTIVE EQUALITY AS PROVIDED BY ARTICLE 14

The important aspect of judgment also includes substantive equality to menstrual hygiene. The view of the court remained that formal equality does not suffice the purpose, explaining that the needs of mensurating and non mensurating students differ widely. Thus, the court recognised it to be a question of equality of opportunity. It is consistent with **Joseph Shine v. Union of India**¹ where elimination of discrimination was required. The Court further relied on **Jane Kaushik v. Union of India**², understanding that disadvantage must be seen intersectionally.

MENSTRUAL HEALTH AS ASSOCIATED WITH DIGNITY AND PRIVACY AS UNDER ARTICLE 21

The concept of MHM is not a separate provision from the right to live with dignity. The absence of safe and adequate facilities can lead to experiencing humiliation, stigma, and avoidable sufferings by female students thereby making it an issue of privacy as well as body autonomy. The court concluded that the right to life under Article 21 is inclusive of the right to menstrual health. The privacy jurisprudence as developed in **K.S. Puttaswamy (Retd.) v. Union of India**³. The Court further linked menstrual hygiene to **privacy and bodily autonomy**. Managing menstruation requires the ability to change menstrual products, wash, dispose of used products and seek assistance without unnecessary exposure or embarrassment.

1. (2019) 3 SCC 39

2. (2026) 1 SCC 336

3. (2017) 10 SCC 1

RIGHT TO EDUCATION AS OF ARTICLE 21A

One of the most thought after aspects of the judgment remains the expanded view of education from being not just simply being part of educational institutions but also explicit use of it. The court relied upon the judgment of **Devesh Sharma v. Union of India**⁴, emphasising quality education as part of the right to education. Thus, all these facilities facilitate quality education thus guaranteeing the right to education.

INTERSECTIONALITY BETWEEN MENSTRUATION AND DISABILITY

The judgment also deals with menstruating girls with disabilities. The court relied upon **Rajive Raturi v. Union of India**⁵, which considered accessibility to be an integral part of enjoyments of rights as in synchronisation with Article 14,19 as well as 21. Thus, valuing accessibility to be primary in facilitating better safety, the court gave recognition to another vulnerable section. The court further considered **Om Rathod v. Director General of Health Services**⁶, which emphasised and provided for reasonable accommodation as provided for under **Rights of Persons with Disabilities Act, 2016**.

RIGHT TO EDUCATION

The court emphasised on Section 3,8,9 as well as 19 of the Right to Education Act as well as the relevant schedules. The sections provide for the right infrastructure in the school, establishing standards and rules consistent with a barrier-free access. Financial constraints were denied to be a reason for non compliance.

Reliance was placed upon the decisions of the court as in **Radha Shekhawat v. State of Rajasthan**⁷, which recognised lack of adequate infrastructure as in violation of right to education and recognised the obligation of states to check for compliance.

4. (2023) 18 SCC 339

5. (2024) 16 SCC 654

6. 2024 SCC OnLine SC 3130

7. 2015 SCC OnLine Raj 3428

THE VERDICT

The judgment follows not just remedies but recognised constitutional rights offering elaborate directions. The Supreme court gave direction to all union territories as well as states, requiring them to ensure that each school in the territory either private or government, should possess managed, usable and gender segregated toilets with proper connections. Toilets must be secured for privacy as well as made accessible inclusive of children with disabilities.

The court further directed that schools should provide for oxo-biodegradable sanitary pads with no cost i.e. free of cost and should be made available easily for all. Further, MHM corners, with proper equipment as well as materials, other disposable bags, spare uniform as well as proper guidance. All these should provide for safe as well as hygienic disposal consistent with rules as provided for in Solid Waste Management Rules. Further, necessary gender responsive curriculum was asked to be included in NCERT as well as SCERTs with right guidance for students and teachers.

Directions were given to District Education Officer (DEO) to conduct regular and timely inspections, further asking the National Commission for Protection of Child Rights (NCPCR) and the State Commissions for Protection of Child Rights (SCPCR) were asked to check for implementation.

CRITICAL ANALYSIS

The judgment portrayed a progressive approach towards topics of taboo. Menstrual hygiene should not be considered a small issue and the judgment converted the same from a welfare issue to a one considering rights based constitutional issue, where any violation can be in direct violation of the fundamental rights.

The court took a bold approach of substantive equality, allowing for neutral infrastructure to be inclusive and accommodative. It further incorporates intersectionality, realising that equality is not limited to a single tangent and has to be provided for identical treatment.

However, the judgment only proves to be a true changer if implementation follows its declaration. Even though provisions have been made with compliance duty obligated upon institutions yet if proper scrutiny is not incorporated then rights will still get violated.

Judicial directions with legislative provisions and executive implementations can prove to be extremely helpful for long term success. It must though be remembered that mere implementation and infrastructure could still fail if stigma persists, thus awareness must follow and provide pathways.

CONCLUSION

The judgment in this particular case is an eye opener for the world and provides for significant step towards development of the society as a whole. Menstrual hygiene must be talked about and looked for to allow people to find innovative solutions to issues that might prove detrimental to the young girls of our beautiful country. A right is meaningful as and when the conditions necessary for its fulfilment are made available for in reality. Rejecting the formal equality, allows for an equality that is more providing and makes true difference. Therefore, the society should be given all opportunities to work towards its fulfillment of being a better one.