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BEYOND THE TABOO: MENSTRUAL HEALTH AS A FUNDAMENTAL RIGHT IN DR. JAYA THAKUR V. GOVERNMENT OF INDIA (2026)

~ Gurnika Dhillon

I. INTRODUCTION

For many schoolgirls in India, the first period still marks the point at which school becomes harder to attend. For some, it marks the point at which school ends. On 30 January 2026, a Supreme Court bench of Justices J.B. Pardiwala and R. Mahadevan confronted this problem in *Dr. Jaya Thakur v. Government of India*.[1] The Court held that menstrual health is part of the right to life with dignity under Article 21. It also held that menstrual hygiene management ("MHM") in schools is an essential part of the right to education under Article 21A.[2]

II. FACTS OF THE CASE

Dr. Jaya Thakur, a social worker, filed a public interest petition under Article 32 in 2022.[3] She sought free sanitary pads for girls in Classes 6 to 12, separate toilets for girls, a cleaner for every school and an awareness programme on menstrual health. While the petition was pending, the Union placed on record a Menstrual Hygiene Policy for School Going Girls.[4]

III. ISSUES BEFORE THE COURT

The Court framed four questions:[5]

> (i) whether the lack of gender-segregated toilets and menstrual absorbents violates the right to equality under Article 14;

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[1] *Dr. Jaya Thakur v. Gov't of India*, 2026 SCC OnLine SC 133 (India).
[2] *Id.* ¶¶ 74, 172; INDIA CONST. arts. 21, 21A.
[3] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶ 2.
[4] *Id.* ¶¶ 10-11.
[5] *Id.* ¶ 16.

(ii) whether dignified menstrual health is a protected interest under Article 21;

(iii) whether such lack violates the rights of participation and equality of opportunity under Article 14; and

(iv) whether it breaches the right to education under Article 21A and the Right of Children to Free and Compulsory Education Act, 2009 ("RTE Act").

IV. JUDGMENT AND REASONING

A. DIGNITY, PRIVACY AND ARTICLE 21

The Court began from the settled position that Article 21 protects a life with dignity and not mere survival.[6] Drawing on *K.S. Puttaswamy v. Union of India*, it treated dignity and privacy as closely linked to bodily autonomy.[7] A girl who cannot manage her period in privacy is denied the conditions for a life free of humiliation and avoidable suffering. So is one kept home because her school has no usable toilet. MHM measures are therefore inseparable from dignity.[8]

B. SUBSTANTIVE EQUALITY UNDER ARTICLE 14

The Court rejected a purely formal reading of equality. Treating boys and girls identically ignores a biological reality that affects only one group's ability to attend school. Relying on *Joseph Shine v. Union of India*, it held that Article 14 requires the State to take positive steps to remove structural and contextual barriers.[9] It also adopted an intersectional lens. Girls with disabilities face a compounded disadvantage. Denying them reasonable accommodation is itself a form of discrimination.[10]

C. ARTICLE 21A AND THE RTE ACT

Building on *Mohini Jain* and *Unni Krishnan*,[11] the Court held that the right to education extends to a child's ability to take part in schooling in a meaningful, continuous and non-discriminatory manner.[12] It read the RTE Act in that light. Section 3(2) bars any fee or charge that prevents a child from pursuing elementary education. The Court treated the cost of menstrual absorbents as exactly such a financial barrier, since a girl forced to choose between dignity and education

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[6] *Id.* ¶ 69.
[7] *Id.* ¶¶ 71-81; *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
[8] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶ 74.
[9] *Id.* ¶¶ 42-45, 55; *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).
[10] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶¶ 59-63.
[11] *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666 (India); *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645 (India).
[12] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶ 39.

is not receiving free education at all. It also read MHM facilities into the norms and standards that every school must meet under Section 19.[13]

V. DIRECTIONS ISSUED

Every school, government or private, must now provide:[14]

> (a) functional, gender-segregated toilets with water and soap, accessible to children with disabilities;
>
> (b) free oxo-biodegradable sanitary napkins meeting ASTM D-6954 standards, preferably through vending machines within toilet premises;
>
> (c) MHM corners stocked with spare innerwear, spare uniforms and disposable bags;
>
> (d) safe and environmentally compliant disposal of sanitary waste, with a covered bin in every toilet unit; and
>
> (e) gender-responsive curricula prepared by the NCERT and SCERTs, with training on menstrual hygiene for all teachers, male and female.

District Education Officers must inspect schools, preferably once a year, while obtaining anonymous feedback from students. The States and Union Territories were given three months to comply.[15] The National and State Commissions for Protection of Child Rights are to oversee implementation.[16] The Court also kept the matter alive through a continuing mandamus.[17]

VI. CRITICAL ANALYSIS

The central achievement of the judgment is that it changes the legal character of menstrual hygiene. By placing it within Articles 21 and 21A, the Court has turned it into an enforceable entitlement. The Court also did not confine "free" education to the absence of tuition fees. Following *Justice for All v. State (NCT of Delhi)* on digital devices and *Master Manjunath v. Union of India* on school uniforms, it treated any unavoidable cost that keeps a child away from school as a charge the State must remove.[18] This reasoning could later support claims against other hidden costs of schooling. The link to the RTE Act also gives the directions practical

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[13] The Right of Children to Free and Compulsory Education Act, 2009, §§ 3(2), 19, No. 35, Acts of Parliament, 2009 (India) [hereinafter RTE Act]; *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶¶ 141-151.
[14] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶ 173.
[15] *Id.* ¶¶ 174-175, 179.
[16] *Id.* ¶ 176; The Commissions for Protection of Child Rights Act, 2005, §§ 15, 24, No. 4, Acts of Parliament, 2006 (India).
[17] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶ 178.
[18] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶¶ 142-145; *Justice for All v. State (NCT of Delhi)*, 2020 SCC OnLine Del 1217 (India); *Master Manjunath v. Union of India*, 2019 SCC OnLine Kar 3101 (India).

teeth against private schools. Section 18(3) permits withdrawal of recognition for breach of the prescribed norms. The Court also made clear that the State answers for its own schools.[19] The Act's application to private institutions was upheld in *Society for Unaided Private Schools of Rajasthan v. Union of India*.[20] Equally valuable is the direction to train male teachers too, which treats menstrual health as a shared concern and not a "woman's issue". Stigma, after all, is not cured by infrastructure alone.

The decision nevertheless leaves gaps. The Court itself noted a study in which dysmenorrhoea was the most common reason girls gave for missing school during their periods.[21] Yet none of its directions deals with menstrual pain, such as basic medication or a place to rest. The choice of product is also open to question. By prescribing only oxo-biodegradable napkins, the Court left no room for reusable options such as menstrual cups or cloth pads, which create less waste. Oxo-degradable plastics break into microplastics and are banned in the European Union.[22] Scotland, by contrast, requires a reasonable choice of period products to be made available free of charge.[23] There is also a doctrinal tension. The RTE Act guarantees education only at the elementary level, up to Class 8,[24] while the directions cover every school, including Classes 9 to 12. For older students, the obligation rests on Articles 14 and 21 and on the Court's directions instead of the statute. Finally, annual inspections are a thin monitoring tool for a school system of India's size. The judgment also does not clearly divide the cost of free napkins between the Union and the States. Without fixed financial responsibility, a continuing mandamus risks becoming a continuing compliance gap.

VII. CONCLUSION

Jaya Thakur treats menstruation not as a private embarrassment but as a reality the Constitution must accommodate. It also tells every girl who missed school because her body was seen as a burden that "the fault is not hers".[25] The success of the judgment will depend less on its reasoning than on whether toilets have running water, vending machines are stocked and inspections actually take place. The Court has declared the right. Making it real is now the task of the executive.

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[19] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶¶ 148-151.
[20] RTE Act § 18(3); *Soc'y for Unaided Priv. Schs. of Rajasthan v. Union of India*, (2012) 6 SCC 1 (India).
[21] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶ 52.
[22] Directive 2019/904, of the European Parliament and of the Council of 5 June 2019, art. 5, 2019 O.J. (L 155) 1 (EU).
[23] Period Products (Free Provision) (Scotland) Act 2021 (ASP 1).
[24] RTE Act §§ 2(f), 3(1).
[25] *Jaya Thakur*, 2026 SCC OnLine SC 133, ¶ 180.