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THE FUNDAMENTAL RIGHT TO MENSTRUAL HEALTH: A CONSTITUTIONAL RECOGNITION

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Abstract

The Supreme Court in its landmark judgment in *Dr. Jaya Thakur v. Government of India* held that menstrual health is an indispensable aspect of Right to Life and Personal Liberty under Articles 21 Constitution of India. The judgment delivered by a two-judge Bench, affirmed that menstrual hygiene is an essential component of menstrual health, and the latter cannot be realised unless effective measures are taken to meet the former. This case note examines the constitutional reasoning adopted by the Honourable Court and particularly how the Court interpreted the right to menstrual health as an integral facet of the rights to life, equality and free and compulsory education under Articles 21, 14 and 21A, respectively. It further examines how the principles evolved in the Supreme Court's earlier jurisprudence on the rights to life and free and compulsory education informed the Court's recognition of the right to menstrual health and hygiene. The note argues that while the judgment marks a significant advancement in the protection and recognition of rights of the young girls, bridging the gap between judicial intent and effective implementation at the grassroots level remains a critical issue in Indian society. By critically evaluating the principles laid down in the judgment and its contribution to the Indian jurisprudence, this case note highlights the dire need to strengthen Menstrual Health Management (MHM) in schools for girl children.

Keywords – Right to Life; Menstrual Health; Menstrual Hygiene; Human Rights; Right to Equality.

I. INTRODUCTION

Every individual has the fundamental right to live with dignity, which is guaranteed by the Constitution of India. However, this right continues to be undermined for many adolescent girls due to the lack of adequate menstrual hygiene infrastructure and management. According to WHO/UNICEF Joint Monitoring Programme , menstrual health management is defined as the availability of clean menstrual management materials to absorb or collect menstrual blood, access to soap and water for washing the body, having means for the disposal of used menstrual absorbents with privacy and dignity and having adequate knowledge of the menstrual cycle.[1] This lack of menstrual health management facilities compels many adolescent girls to adopt unsanitary practises, like using old clothes, ash or straw as menstrual absorbents and creates difficulties in the safe and hygienic disposal of menstrual waste, thereby affecting their menstrual hygiene as well as exposing them to a long-term reproductive health complications. Consequently, there is a high rate of absenteeism among school-going girls during their menstrual cycle, which over time, contributes to increased school dropout rates and adversely affects their educational attainment.

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[1] World Health Organization (WHO) & United Nations Children's Fund (UNICEF), *Consultation on Draft Long List of Goal, Target and Indicator Options for Future Global Monitoring of Water, Sanitation and Hygiene* 12–13 (WHO/UNICEF Joint Monitoring Programme 2012).

India is home to an estimated 116 million adolescent girls, making up about 18% of the female population, yet menstrual poverty remains a persistent socio-economic and public health concern. Many schools in India lack the proper infrastructure and management necessary for a conducive environment where school-going girls can attend the classes without any obstacles. Lack of separate washrooms for girls and boys, unavailability of menstrual absorbents, lack of clean water for personal hygiene, non-availability of disposal mechanism of the menstrual absorbents and the prevalence of different taboos associated with menstruation impede adolescent girl's right to free, compulsory and quality education. All these impediments leave the school-going girls at a different starting point from that of a boy, thereby limiting their overall opportunity later in life. Despite several policy initiatives undertaken by the State, such as, Menstrual Hygiene Scheme (MHS) launched in 2011 whereby it aimed to support rural adolescent girls aged 10 to 19 years by providing subsidised pack of sanitary napkins through Accredited Social Health Activists (ASHA workers),[2] or, the Menstrual Hygiene Policy for School-Going Girls approved in 2024, which aims to ensure that every school-going girl has access to safe, affordable and dignified menstrual hygiene,[3] the gap between policy objectives and implementation is yet to be bridged.

Moreover, judicial discourse on menstrual health management has, over the years, evolved through the broader interpretation of constitutional rights, such as the rights to life, dignity, equality, and education, without directly recognising menstrual health as a constitutional right. However, this legal landscape underwent a significant transformation, as the Supreme Court in its landmark judgment in *Dr. Jaya Thakur v. Government of India (2026)* recognized menstrual heath as an integral part of Article 21, and affirmed it as a fundamental right guaranteed by the Constitution of India.[4] The two-judge bench affirmed that the Right to life under Article 21 of the Constitution includes right to menstrual health and access to safe, effective, and affordable menstrual health management facilities. The Court directed that effective measures should be undertaken by the State, as this helps a girl child in the attainment of the highest standard of sexual and reproductive health. Moreover, the Court highlighted the adverse consequences of inadequate menstrual health management facilities on school-going girls, as the lack of access to menstrual health management facilities results in the violation of several constitutional rights, particularly the right to quality education guaranteed under Article 21A.

This case note examines the constitutional reasoning adopted by the Supreme Court in recognising menstrual health as a fundamental right, and analyses the judgment's contribution towards bridging the gap between constitutional guarantees and their effective implementation at the grassroots level.

[2] Ministry of Health & Family Welfare, Government of India, *Menstrual Hygiene Scheme (MHS)*, National Health Mission (2011).

[3] Ministry of Health & Family Welfare, Government of India, *Menstrual Hygiene Policy for School-Going Girls* (Nov. 2024).

[4] *Dr. Jaya Thakur v. Government of India*, 2026 INSC 97 (India).

II. FACTS OF THE CASE

The present case arose from a Public Interest Litigation (PIL) filed under Article 32 of the Constitution by Dr. Jaya Thakur, seeking directions to the Union and State Governments to ensure effective menstrual health and hygiene management facilities and to secure the constitutional rights of women and adolescent girls.[5] The petition was instituted against the backdrop of the lack of adequate menstrual health and hygiene management facilities in schools which resulted in high rates of absenteeism and school dropout among adolescent girls. Moreover, the lack of menstrual health management facilities such as unavailability of menstrual absorbents, lack of safe and sanitary means for disposal of menstrual absorbents, lack of water for personal hygiene and lack of separate toilets for the girls and boys, posed a serious risk to the overall reproductive health of the young girls.

The petition sought, inter alia, the issuance of appropriate order or directions to the Union and State Governments to ensure the provision of free sanitary pads to the girl students who are studying from 6th to 12th class, establishment of separate toilet for girls in all government, aided and residential schools, the appointment of one sanitation staff in all schools for maintenance of school toilet, and the implementation of a three-stage menstrual health awareness programme.[6]

Accordingly, the principal questions before the Hon'ble Court were whether the lack of adequate menstrual health management facilities, including the absence of gender-segregated toilets and access to menstrual absorbents, violated the rights to equality under Article 14, and education under Article 21A of the Constitution, as well as the objectives of the Right of Children to Free and Compulsory Education Act, 2009.[7] The Court was also called upon to determine whether the right to dignified menstrual health forms an integral part of the right to life and dignity under Article 21 of the Constitution of India.[8]

III. JUDGMENT

The Supreme Court, in a unanimous judgment held that the right to life under Article 21 of the Constitution includes right to menstrual health.[9] The Court further issued a continuing mandamus directing the Union to ensure the compliance of the directions and guidelines issued by this Court. Moreover, the Court observed menstrual health as a shared responsibility of the society rather than a woman's issue alone, and urged the authorities to implement awareness drives across the society, not only limited to girls, but it must extend to boys, parents and teachers.[10]

The Court's recognition of menstrual health as a constitutional right was not founded on a single provision of the Constitution, but rather on an integrated constitutional approach, where the Court interpreted menstrual health in conjunction with the rights to life and dignity under Article 21, equality under Article 14 and education under Article 21A of the Constitution, as well as the statutory framework under Right of children to Free and Compulsory Education Act, 2009. The Court further

[5] *Dr. Jaya Thakur*, supra note 4, ¶ 2.
[6] Id. ¶ 2.
[7] Id. ¶ 16.
[8] Id. ¶ 16.
[9] Id. ¶ 172.
[10] Id. ¶ 170.

recognised that the right to menstrual health cannot be realised in isolation, rather it's true realisation depends upon the fulfilment of multiple interconnected guarantees. Accordingly, the Court's reasoning may therefore be examined through the following constitutional and statutory dimensions:

THE RIGHT TO DIGNIFIED MENSTRUAL HEALTH AS AN INTEGRAL PART OF RIGHT TO LIFE UNDER ARTICLE 21

The Court recognised menstrual health as an integral part of right to life under Article 21 by adopting an expansive interpretation of Article 21 of the constitutional guarantees of life and personal liberty. The Court recognised that the right to life encompasses not mere survival but also the rights to live with dignity, privacy, health and bodily autonomy. In support of its reasoning, the Court relied on several precedents that have laid down the principles governing different facets of right to life.

Human dignity forms an important aspect of human existence, as it enables an individual to make free and informed decision concerning their lives. In *K.S. Puttaswamy v. Union of India* (2017) the Supreme Court held that human dignity is an inseparable part of the Constitution and it is the realisation of this right that the collective wellbeing of the community can be achieved.[11] Similarly, in *M. Nagaraj v. Union of India*, the Supreme Court held that the State owes a positive obligation not only to protect human dignity but to facilitate it and dignity as a right cannot be simply taken away, as it exists in every human being by the virtue of being human.[12] Thus, the absence of safe and hygienic menstrual management measures undermines dignified existence of the adolescent girls by compelling them to resort to adopt unsafe menstrual practices or to remain absent from the school.

The Court further observed that dignity cannot be meaningfully realised in the absence of privacy, bodily autonomy, and health. Privacy enables an individual to make free and informed choices regarding matters that are intimate and personal and which affect their future development. A girl child's right to decide how and where menstrual care should be carried out, and the liberty to exercise such care, free from any interference and unnecessary restrictions, forms an integral part of both the right to privacy and bodily autonomy guaranteed under Article 21 of the Constitution. Moreover, the right to health forms an importance facet of the right to life under Article 21 and it extends to the right of a menstruating girl. Health does not merely include the absence of disease or infirmity but, it is defined as state of physical, mental and social wellbeing. In *Independent Thought v. Union of India (2017),* the Supreme Court held that the good health is not limited to physical well-being rather it also includes the creation of conducive environment for the development of an individual, particularly for a girl child to grow into a healthy woman, capable of exercising her choices and to pursue her education without societal and institutional barriers.[13]

Drawing upon these constitutional principles, the Court concluded that the State bears a positive obligation under Article 21 to protect the rights to health, privacy, dignity and bodily autonomy, more particularly in relation to adolescent girls and menstruating women.[14] The lack of access to these measures violates the right to reproductive health, as it compels a girl to resort to unhygienic methods which can lead to reproductive health issues. Also, the Court drew support from Article 47

[11] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[12] *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.
[13] *Independent Thought v. Union of India*, (2017) 10 SCC 800.
[14] *Dr. Jaya Thakur*, supra note 4, ¶ 93.

of the Constitution, which casts a duty on the State to improve the public health facilities and condition for all people, reinforcing the positive obligation to ensure adequate menstrual hygiene management facilities.[15] Therefore, the lack of menstrual hygiene management facilities impedes the effective realisation of the right to life and personal liberty under Article 21 of the Constitution.

MENSTRUAL HEALTH MANAGEMENT AND THE RIGHT TO EQUALITY UNDER ARTICLE 14.

The Court held that the lack of adequate menstrual health management facilities violates the right to equality guaranteed under Article 14 of the Constitution. It observed that the right to equality is not confined to formal equal treatment but extends to ensuring that every individual is able to participate in society on equal terms. The lack of menstrual health management measures acts as a significant barrier to girls' participation in schools, as the failure to provide clean washrooms, menstrual absorbents and safe disposal mechanisms results in higher rates of absenteeism or drop-out from schools. Consequently, lack of these measures impairs girl's ability to participate equally in school, society and activities that are easily accessible to other children, thereby undermining her right to equality of opportunity. In State of Karnataka v. Appa Balu Ingale, the Supreme Court recognised that the denial of equal opportunities in any aspect of life is denial of equal status and it further impedes equal participation in society.[16]

Thus, the Court highlighted that the absence of menstrual hygiene measures not only promotes gendered disadvantage by converting a biological reality into a structural exclusion but also impedes a girl child's right to participate in education, equal opportunity to compete and to realise her potential throughout her life.[17] Drawing upon these principles, the Court concluded that the absence of adequate menstrual health management measures for girls and women violates their right to equality guaranteed under Article 14 of the Constitution.

MENSTRUAL HEALTH MANAGEMENT AS AN ESSENTIAL COMPONENT OF THE RIGHT TO EDUCATION UNDER ARTICLE 21A.

The Court held that the lack of adequate menstrual health management facilities violates the right to education guaranteed under Article 21A of the Constitution. It observed that the right to education is not limited to mere access to schools but also includes the right to receive education in a safe, healthy and dignified environment that enables a child to participate effectively in the learning process. The absence of adequate menstrual health management facilities such as unavailability of menstrual absorbents, clean water, gender-segregated toilets and safe disposal mechanisms compels menstruating girls to stay away from school for several days each month, thereby impeding their right to quality education. Additionally, the Court drew support from Section 3 of the Right of Children to Free and Compulsory Education Act, 2009, which stipulates that every child of the age of six to fourteen years shall have the right to free and compulsory education.[18] Drawing upon this statutory framework, the Court held that any condition that forces a girl child to choose between

[15] Id. ¶ 98.
[16] *State of Karnataka v. Appa Balu Ingale*, 1995 Supp. (4) SCC 469.
[17] *Dr. Jaya Thakur*, supra note 4, ¶ 126.
[18] Id. ¶¶ 144-146.

dignity and education cannot be regarded as just and equitable.[19] The Court further observed that, all these restrictions limit a girl child's opportunities for participation and representation in society and hinders her ability to challenge social hierarchies thereby impeding her overall growth and development. In Devesh Sharma v. Union of India, the Supreme Court held that the fundamental right to education must be meaningful and of good quality and anything less than that should not be called education.[20]

Thus, drawing upon these principles, the Court held that the lack of adequate menstrual health management facilities not only undermines the young girl's right to meaningful and quality education, but also impedes their future opportunities and growth. Additionally, the Court recognised that the State owes a positive obligation to provide adequate facilities for the growth and development of young girls, where they can realise their full potential without any obstacle or unnecessary interferences.

DIRECTIONS ISSUED BY THE COURT

The Court did not confine itself to the recognition of menstrual health as a constitutional right. Rather, it issued a series of directions to ensure the effective implementation and enforcement of this constitutional guarantee at the grassroots level.

With regards to toilet and washing facilities, the Court directed all States and Union Territories to ensure that every school whether government-run or privately managed, in both urban and rural areas, must have functional, gender segregated toilets to ensure privacy and accessibility.[21] Additionally, the Court directed all States and Union Territories to ensure that every school, whether government-run or privately managed, provides oxo-biodegradable sanitary napkins free of cost to girl students and establish safe, hygienic and environmentally compliant mechanism for the disposal of menstrual absorbents. Further, the Court issued directions to the National Council of Education Research and Training (NCERT) and the State Council of Education Research and Training (SCERT) to incorporate gender-responsive curricula, on menstruation, puberty and other related health concerns, with particular focus on eliminating the societal stigma and taboo prevalent in the society with regard to menstrual health and hygiene.

To ensure effective implementation and accountability, the Court issued a continuing mandamus directing the Union Government to monitor compliance with its directions by all States and Union Territories.[22] The Court further ordered that it must be the duty of the Union Government to inform the Court about whether all the States have complied with the Court's direction, thereby retaining supervisory jurisdiction over the implementation of its directions. Thus, the Court not only recognised menstrual health as a fundamental right under Article 21 but also adopted an implementation-oriented approach by issuing directions to ensure the effective realisation of that right at the grassroots level.

[19] Id. ¶ 146.
[20] *Devesh Sharma v. Union of India*, 2023 SCC OnLine SC 985.
[21] *Dr. Jaya Thakur*, supra note 4, ¶ 173.
[22] Id. ¶ 178.

IV. ANALYSIS

"We wish to communicate to every girl child, who might have become a victim of absenteeism because her body was perceived as a burden, that the fault is not hers." [23]

Dr. Jaya Thakur v. Government of India marks a landmark judgment in the evolution of human rights jurisprudence in India. By recognising menstrual health as an integral facet of the right to life and personal liberty guaranteed under Article 21 of the Constitution, the Supreme Court has transformed what was traditionally perceived as a public health and welfare concern into a constitutionally enforceable right. Several schools in India lack adequate menstrual health management facilities even though various policies have been implemented by the State to eliminate the barriers which affect health, education, dignity, and overall well-being of adolescent girls. Yet the effective implementation of the policies remains a major challenge in the effective realisation of the provisions of these policies. In *Dr. Jaya Thakur v. Government of India,* the Supreme Court has taken a step further by recognising menstrual health as a constitutionally enforceable right and not merely as a public welfare duty. Moreover, the Court has also issued several directions to the Union and the States to ensure that its directions and guidelines are being effectively implemented at the grassroots level. The significance of the judgment lies not merely in recognising a new constitutional right but in redefining menstrual health as an important precondition for the effective realisation of existing fundamental rights.

One of the most significant strengths of the judgment lies in the Court's recognition that the right to menstrual health cannot be realised in isolation. Rather, its effective realisation is intertwined with the realisation of several other fundamental rights, particularly the rights to life, equality and education guaranteed under the Constitution. The right to life under Article 21 has been read expansively by including various dimensions such as right to health, privacy and dignity, which have been recognised as an important element of the right to life itself. By locating menstrual health within these constitutional guarantees, the Court has ensured that the right to menstrual health derives its legitimacy from a well-settled constitutional principle rather than in isolation, disconnected from other fundamental rights.

Another notable contribution of the judgment lies in the Court's recognition that the lack of adequate menstrual health management facilities constitutes a violation of the rights to equality and education guaranteed by the Constitution. Rather than viewing violation of menstrual health in isolation, the Court acknowledged that its denial has a direct impact on the effective realisation of several other fundamental rights. This integrated approach reflects the principle of substantive equality, which requires the State to address structural disadvantages that prevent an individual's growth and development, by implementing affirmative actions aimed at eliminating such barriers. Additionally, by recognising menstrual health as a constitutionally enforceable right, the Court ensured that a biological difference does not become a basis for educational exclusion or an impediment to the growth and development of adolescent girls. It also reinforced the constitutional ideal of social justice embodied in the Preamble by affirming that no individual should be denied equal opportunities on account of biological or gender-specific differences. In doing so, it upholds the

[23] Id. ¶ 180.

Constitution's commitment to an inclusive and just society where every individual can realise their full potential.

Another significant aspect of the judgment is its inclusive approach, where the Court recognised that the effective realisation of the right to menstrual health can only be achieved by the equal and active participation of young boys, male teachers and male staffs. By this approach, the Court recognised the need for the elimination of the deep-rooted attitudes and norms which persist within our society against menstruation. More importantly, it affirmed the idea of menstrual health as a shared responsibility of the society rather than a woman's issue alone. This aspect of the judgment highlighted that until the whole society is sensitised about menstruation, the institutional and legal efforts would remain underutilised.

Thus, the judgment establishes an important constitutional framework, however its true realisation ultimately depends on the effective implementation by the Union and the States. While the issuing of a continuing mandamus is a welcoming step towards ensuring accountability and compliance, persistent institutional and structural barriers, may limit the effective implementation at the grassroots level. Moreover, implementation is likely to remain challenging in the rural and economically weaker regions due to entrenched social stigma, prevailing taboos around menstruation, and the limited reach of awareness programmes. Therefore, while the judgment lays a strong constitutional principle, its transformative potential can only be fully realised by the effective and consistent implementation by the authorities.

V. CONCLUSION

In conclusion, *Dr. Jaya Thakur v. Government of India* marks a significant step towards the evolution of India's constitutional jurisprudence by recognising menstrual health as an important facet of right to life and personal liberty guaranteed under Article 21 of the Constitution. Moreover, the judgment not only recognises menstrual health as a constitutionally enforceable right but also establishes its extricable relationship with several other fundamental rights, including the rights to equality, education, dignity and health, while acknowledging the interconnected nature of their effective realisation. Nevertheless, despite these judicial efforts, persistent institutional, structural ad societal barriers continue to pose significant challenges to the effective realisation of the right to menstrual health. Ultimately, the judgment lays a strong constitutional foundation for advancement of gender justice and ensuring that menstruation is no longer treated as a source of exclusion but as an issue of dignity, equality and constitutional rights.