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FROM SILENCE TO RIGHTS: RECOGNISING MENSTRUAL HEALTH AND HYGIENE WITHIN INDIA'S FUNDAMENTAL RIGHTS FRAMEWORK

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ABSTRACT:

In India, menstrual hygiene and health have transformed from being socially taboo to having become a constitutional issue of importance. The Supreme Court of India has determined that hygienic menstruation is part of the broad interpretation based on Article 21 that constitutes basic rights to equality, health, dignity, and life. Menstruation rights as basic human rights to the protection against discrimination to access products for menstruation, safe sanitation, and medical care are guaranteed by Articles 14, 15, and 21 of the Indian Constitution. This research uses a doctrinal approach to assess menstruation hygiene as part of the broader Indian framework of fundamental rights. This research considers the constitutional guarantees surrounding menstrual hygiene as well as the important court cases and the various government programs aimed at increasing awareness of menstruation, improving hygiene facilities in schools, and providing free sanitary napkins to those in need. Addressed here are the continuously evolving issues that obstruct the implementation of menstrual hygiene initiatives including, but not limited to, economic barriers, lack of awareness, social stigma as well as inadequate facilities in rural areas. Setting legal recognition of menstrual hygiene as a fundamental right has made an important move toward recognizing socio-economic status, but requires different enforcement mechanisms and policies, as well as a better public understanding of these issues, in order for menstruation health to be considered a basic human right. The research findings include adding additional provisions regarding menstrual hygiene into the constitution of a country relates to human dignity and gender justice; moving from going from no rights to have rights protects people from being denied the opportunity to have a menstrual cycle .

Keywords: Article 21, Gender Justice Human Dignity Menstrual Health Basic Human Rights Supreme Court of India and Constitutional Protection.

INTRODUCTION:

There is no tool for development more effective than the empowerment of women."

– Kofi Annan

The issue of menstruation in relation to Women's Rights (GWIE) can be considered a three-way intersection of women's rights, constitutional rights, and Public Policy (PP). Although menstruation is a natural aspect of existing, it can generate stigmas, such as

secrecy or social discrimination which may eliminate women from participating socially and/or religiously in their communities, and by restricting women's physical mobility or limiting their educational attainment levels.

Millions of women (and some men) still do not have access to adequate sanitary supplies (sanitary napkins), potable water, private toilet facilities, or sufficient credible scientific/medical information (including information about how to use sanitary supplies) related to their

reproductive health, especially rural and economically-disadvantaged areas. Beyond affecting women's physical health, period poverty may negatively impact women's mental health, workplace productivity, and retention rates in higher education programs.⁷⁶⁸The Indian constitutional framework strongly supports the identification of menstruation hygiene as a basic human right. The Supreme Court of India has used a progressive approach to judicial interpretation of Article 21 to include rights related to health, dignity, privacy and a clean environment.⁷⁶⁹When observing menstrual health together with Articles 14 and 15 (providing for equality and prohibiting discrimination against sex), menstrual health is essential for substantive equality under the law.

Additionally, under Directive Principles of State Policy (Articles 39(e), 42, and 47), the State must provide conditions conducive to good health and to improve public health. The acceptance of menstruators' rights has increased over time due to progress in judicial and policy decisions regarding their well-being.⁷⁷⁰The case of *J.K. Poonacha v. UOI* is an example of this. The Supreme Court of India directed all States and Union Territories to establish a framework to ensure free access to sanitary napkins for students at government schools and to provide separate, functioning toilets for girls at all school facilities. National programs, including the Swachh Bharat Mission and the Menstrual Hygiene Scheme, aimed to improve sanitation infrastructure for menstruators by providing materials and raising awareness of hygiene practices.⁷⁷¹The WHO has identified menstrual hygiene as a Global Development Goal that aligns with Goals 3, 5, and 6 under the 2030 Agenda for Sustainable Development, and with the provisions of the International Covenant on Economic, Social and Cultural Rights. Inclusion

⁷⁶⁸ World Health Organization & UNICEF, *Progress on Drinking Water, Sanitation and Hygiene: Special Focus on Menstrual Health* (WHO & UNICEF, 2020)

⁷⁶⁹ *Consumer Educ. & Rsch. Ctr. v. Union of India*, (1995) 3 S.C.C. 42 (India)

⁷⁷⁰ *The Constitution of India, 1950* (Art. 14, 15, 21, 39(e), 42, 47)

⁷⁷¹ Ministry of Health & Family Welfare, Gov't of India, *Menstrual Hygiene Scheme: Operational Guidelines* (2015).

of menstrual hygiene as part of India's "Fundamental Rights" improves the definition and delivery of menstrual health services and moves from a reliance upon welfare-based interventions to creating enforceable entitlements based on constitutional guarantees of equality, dignity and the right to bodily autonomy. Policy decisions regarding menstruation will be held to strict scrutiny rather than subjective standards of review.

MEANING AND CONCEPT OF MENSTRUAL HYGIENE:

Menstrual Hygiene Management (MHM) describes how women and people who menstruate should be able to manage their period at home with privacy, cleanliness, dignity, and safety. As stated by the World Health Organization (WHO) and UNICEF⁷⁷², MHM supports global public health guidelines, which specify that individuals: should have appropriate privacy to change their menstrual materials; should have access to soap and water for cleaning; should have safe, environmentally friendly means to dispose of their menstrual materials; and should have clean and safe menstrual materials for use. Therefore, to enable people to manage their period without fear, shame, or lack of knowledge, they must also have access to scientifically accurate information and education about menstruation.

Insufficient menstruation hygiene management (MHM) puts women at risk of serious health consequences, including urinary tract infections and reproduction tract infections and other gynecological conditions. The effects of inadequate MHM also have social and economic implications, in addition to health consequences. Facilities for managing menstruation are not always available, and the stigma surrounding menstruation can lead to being socially marginalized, having reduced participation in the workforce, and increased absenteeism from school. An additional aspect

⁷⁷² UNICEF & World Health Organization, *Menstrual Hygiene Management in the Context of WASH* (2014).

of systemic injustices experienced by low-income, rural, and marginalized communities is "period poverty," which occurs due to lack of finances to afford essential healthcare and menstrual products that are reasonably priced.⁷⁷³

MHM also encompasses aspects such as intersectional equality, privacy, dignity, and environmental sustainability. When private restroom facilities are unavailable within public entities such as prisons, commercial premises and educational institutions, an individual's right to personal dignity and bodily autonomy is compromised. Secondly, inappropriate disposal of menstrual wastes can lead to environmental challenges that could be solved through the use of sustainable alternatives and effective waste management systems. For those who are disadvantaged (e.g. individuals who experience disability, individuals in detention centres, transgender and gender non-conforming persons) the barriers created by a lack of access to menstrual hygiene products are compounded. Therefore, the issue of menstrual hygiene should be considered holistically, as it relates to community health, gender equity, economic equity, the environment and human rights.

METHODOLOGY:

This paper analyses menstrual hygiene under the doctrine of Fundamental Rights through an examination of Constitution-level Indian law as well as judicial decisions of the Supreme Court and other relevant frameworks/policies through a doctrinal research methodology.

HISTORICAL BACKGROUND:

Culture shame and stigma about menstruation have kept the issue of menstrual hygiene in India largely private and of little concern in both public policy and public discussion for a very long time. This trend began to change when, in 2010, the Indian government implemented the "Pad Scheme" to provide rural young women

with subsidized sanitary pads as a clear shift in public policy to address menstrual hygiene issues. Also, in 2010, the government reduced the sanitary pad excise tax; as a result, many manufacturers reduced their prices and made their products more affordable. Additionally, in 2011, the government began the Rajiv Gandhi Scheme for the Empowerment of Adolescent Girls (SABLA) to include menstrual hygiene information or reproductive health information as part of an adolescent girls' empowerment project. Also, the National Health Mission initiated the Menstrual Hygiene Scheme (MHS) in 2011.⁷⁷⁴ Initially implemented in 107 districts, rural girls between the ages of 10-19 were supplied with subsidized sanitary napkin packets branded as "Freedays" for ₹6 each. ASHA workers were responsible for distribution, education/awareness and conducting monthly community meetings about MHM & hygiene practices.

In addition, self-help groups were established with the help of the National Rural Livelihood Mission to produce low-cost sanitary pads; thereby generating livelihoods and providing access to MHM.⁷⁷⁵ MHM was incorporated as part of general sanitation initiatives through sanitation programs like the Nirmal Bharat Abhiyan which eventually merged into the Swachh Bharat Mission, which emphasized gender-specific sanitation facilities, disposal systems, and behaviour change communication.⁷⁷⁶ In 2015, the National MHM Guidelines were published which provided training tools/guidelines for stakeholders involved with MHM implementation and delineated key milestones including monitoring criteria for successful implementation. Menstrual health was integrated into adolescent health services even more so by the Rashtriya Kishor

⁷⁷³ World Health Organization, Adolescent Health and Menstrual Hygiene (WHO, 2018).

⁷⁷⁴ Rajiv Gandhi Scheme for Empowerment of Adolescent Girls SABLA, Ministry of Women and Child Development, https://wcd.nic.in/sites/default/files/1-SABLA_Schem.

⁷⁷⁵ National Rural Livelihood Mission, NRLM, <https://aajeevika.gov.in/>.

⁷⁷⁶ The Nirmal Bharat Yatra (The Great WASH Yatra) - A travelling carnival over 6 weeks spreading awareness on sanitation & hygiene in India, India Water Portal <https://www.indiawaterportal.org/articles/nirmal-bharat-yatra-great-wash-yatra-travelling-carnival-over-6-weeks-spreading-awareness>.

Swasthya Karyakram (2014).⁷⁷⁷ Studies conducted in North India from 2015–2016 found that despite having a greater level of knowledge about menstrual health, there was a still a relatively low usage of sanitary products due to issues in supply chain and affordability, as well as limited cooperation between various stakeholders.⁷⁷⁸

There also have been discussions around legislative efforts related to menstruation. The Women's Sexual, Reproductive & Menstrual Rights Bill (2018) aimed to provide menstrual equity and free access to sanitary supplies in public institutions.⁷⁷⁹ The Menstruation Benefit Bill (2017) called for paid leave while menstruating. Both of these bills provided significant opportunities for parliamentary involvement with menstrual rights, despite being unable to pass.⁷⁸⁰ In January 2026, the Indian Supreme Court recognized menstrual health and access to managing menstrual hygiene as part of the essential right to life and dignity under Article 21 of the Indian Constitution; thereby changing the Constitution of India in a revolutionary manner. The India Supreme Court also directed the following to improve menstrual hygiene in India: Programs offering free sanitary products in schools; functional restrooms in schools and public places, functional disposal systems for sanitary products; a generally organized marketing campaign to create awareness about menstrual hygiene and its importance. The 2026 ruling solidified India's transition from a welfare-oriented approach towards a right-based constitutional recognition as an enforceable fundamental right for menstruation hygiene.

⁷⁷⁷ Rashtriya Kishor Swasthya Karyakram, NATIONAL HEALTH PORTAL, <https://www.nhp.gov.in/rashtriya-kishor-swasthya-karyakram-rkssk-pg>.

⁷⁷⁸ Sudip Bhattacharya & Amarjeet Singh, How effective is the Menstrual Hygiene Scheme? An evaluation study from North India 3(9) IJCMHP 2584 2585 (2016)

⁷⁷⁹ The Women's Sexual, Reproductive and Menstrual Rights Bill 2018, No. 255 of 2018, <http://164.100.47.4/billtexts/lbills/asintroduced/2271as.pdf>.

⁷⁸⁰ The Menstruation Benefit Bill, 2017, No 249 of 2017 <http://164.100.47.4/billtexts/lbills/asintroduced/26511S%20As%20In.pdf>.

CONSTITUTIONAL RECOGNITION OF MENSTRUAL HEALTH AND HYGIENE:

Article 14 of the Indian Constitution guarantees all persons equal protection under and equal treatment by the law.⁷⁸¹ An important part of this provision is that the State must ensure that all people have access to substantive equality and not simply formal, or "bleeding," or "regular" equality to all people with respect to their menstruation health and hygiene. In order to make this happen, the State needs to consider the different biological realities of menstruating individuals when determining what type of employment, hygiene and health accommodations they are entitled to receive.⁷⁸² If these realities are not considered when creating policies or making decisions, then there is both indirect discrimination and systematic exclusion.

The Supreme Court of India ruled against policies that were based on gender stereotypes and rules regarding menstruation, by giving a broader reading to Article 14 and creating an emphasis on 'substantive' equality.⁷⁸³ This theory suggests that any policy that does not address the needs associated with menstruation, such as access to proper sanitary facilities, waste disposal, and the right to access leave on a monthly basis, can be seen to perpetuate structural inequality. The state has a responsibility to proactively implement policies and programmes, such as providing gender-sensitive infrastructure, establishing inclusive labour laws, and making free or subsidised access to menstrual products in public institutions available to everyone, which will further the purposes of Article 14 by ensuring that laws and programmes are designed to address the real social issues of society rather than continuing to perpetuate such issues. Thus, the issue of menstrual justice can be tied directly to the requirement under Article 14 that laws and programmes must be directed at solving real social problems rather than being

⁷⁸¹ Constitution of India article 14

⁷⁸² UN Women, Menstrual Health and Human Rights (UN Women, 2020).

⁷⁸³ E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3 (India).

designed to continue to perpetuate such social problems.

Article 15 : The Constitution of India prohibits discrimination against individuals based on their sex, according to Article 15 of the Constitution. Article 15(1) prohibits any form of discrimination on the basis of sex, while Article 15(3) permits the State to take special measures for women and children. Because menstruation is a natural biological function directly linked to sex, menstruation-related stigma, exclusion from educational or employment settings, and lack of access to sanitary facilities can constitute discrimination based on sex. The State may also be required by the Constitution to take affirmative action under Article 15(3) by providing menstrual leave, free sanitary products in prisons and schools, and public health campaigns aimed at addressing issues with menstrual hygiene. Therefore, the provisions of Article 15 provide constitutional justification for legislative proposals relating to menstruation, such as the Menstruation Benefits Bill, and other menstruation equity proposals represent legally permissible measures to relieve the disadvantages associated with menstruation, and are also prohibited by Article 15 of the Constitution.

Article 21: Right to Life, Right to Health, Right to Privacy, Right to Dignity

Article 21 guarantees the right to life and the freedom to act without restraint, but it has also generally been interpreted to include the right to be free from any coercion with regard to one's own body, to be treated with dignity, to have safe and accessible medical services, and to have access to sanitary facilities.⁷⁸⁴ The Supreme Court, in the case of *Maneka Gandhi v. Union of India*,⁷⁸⁵ held that the meaning of life should refer not only to existing, but also living a dignified life. In the case of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*,⁷⁸⁶ the

Court also recognized that the ability to obtain access to healthcare is part of the meaning of Article 21. The case *Laxmi Mandal v. Deen Dayal Harinagar Hospital*⁷⁸⁷ provided the legal basis for the provision of maternal health rights and claims relating to menstrual health by recognizing maternal health as a fundamental right.

Moreover, *Justice K.S. Puttaswamy v. Union of India*⁷⁸⁸ reinforced the idea that bodily autonomy, privacy, and dignity are basic rights protected under Article 21 of the Constitution. Menstrual hygiene is also covered under this protection because it requires privacy and hygienic conditions, as well as the use of safe menstrual supplies and the practice of hygiene in a stigma-free environment. Denying access to safe and affordable menstrual products, clean bathrooms, water, disposal methods, or the ability to take menstrual leave will immediately violate an individual's dignity, health, and right to bodily autonomy. Therefore, Article 21 of the Constitution provides for menstrual hygiene management as part of the right to live in a dignified manner.

Directive Principles of State Policy (DPSP) and Obligations for Menstrual Health Although Directive Principles of State Policy (Part IV) of the Constitution are not enforceable by law, they are an essential part of the governance of the nation. They provide a framework for the establishment of laws regarding public welfare and for developing current policies in a manner consistent with the fundamental principles of our democracy. Some of the Directive Principles provide a meaningful constitutional basis for the actions taken by the national government in areas concerning menstrual health and menstrual hygiene.

Workers, both men and women, have a right to healthy work environments and a right not to have to accept jobs, solely due to financial needs, that are unsuitable because of age or

⁷⁸⁴ Article 21 of constitution of india

⁷⁸⁵ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

⁷⁸⁶ *paschim banga khet mazdoor samity v. state of west bengal* (1996) 4 scc 37

⁷⁸⁷ *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, W.P.(C) No. 8853 of 2008*

⁷⁸⁸ *Justice K.S. Puttaswamy v Union of India* (2017) 10 SCC 1

physical abilities as provided by Article 39(e) of the Constitution. Those that menstruate are placed in situations that are detrimental to their health and dignity when employers do not provide restroom facilities, means to dispose of used sanitary napkins, clean sanitary facilities, or policies regarding menstruation. Therefore, the establishment of menstrual leave policies, workplace hygiene policies, and provision of hygiene products can be considered fulfilling the responsibilities of the State, as outlined in Article 39(e).⁷⁸⁹

According to Article 42 of the Constitution of Ireland, all employees should be entitled to a certain level of maternity leave as well as a fair and humane workplace.⁷⁹⁰ The concept of offering employees more compassion for their work conditions also includes women who are experiencing their period, although traditionally this issue would have been seen through the lens of pregnancy and childbirth. There is a real biological process being experienced by all women that directly affects their health, productivity, and ability to work comfortably on a regular basis. Relying on safe and sanitary restrooms, access to safe drinking water or water source(s), safe sanitary products or facilities for disposal, and flexible scheduling while experiencing extreme discomfort (menstrual) or experiencing excessive pain from bloating and/or cramps are considered humane working conditions. Article 39(e) and Article 42 together provide the constitutional foundation for labor-related measures for the menstrual health and welfare of all workers.

Additionally, Article 51A(e) of the Fundamental Duties mandates all individuals to refrain from any act that diminishes the dignity of a female. The dignity of females is diminished by inequitable employment practices as well as exclusions from social and/or religious environments due to their gender and / or menstruation-related shame. However, the Indian Constitution is committed to abolishing

such degrading practices as evidenced by educational efforts within the school-based system and through institutional reform and government-supported initiatives aimed at educating about menstruation.⁷⁹¹

Menstrual Justice - Intersectionality and Marginalization Menstrual hygiene practices differ based on your cultural background but are not necessarily available equally for all civilizations due to various factors including poverty, discrimination based on gender/ caste etc., lack of infrastructure, as well as stigma around menstruation.⁷⁹² Women of rural communities, Transgender Men, Dalits, Adivasis and Disabled individuals face many barriers that prevent proper handling of their periods; additionally, these individuals also live in poverty and therefore lack access to necessary supplies/businesses/access to education due to lack of personal cleanliness, which ultimately prevents them from productive citizenship. In addition to those groups who are marginalised by either being excluded from religious spaces or experiencing exclusion based on gender or other characteristics like caste, the courts have stated that religious facilities denying access to menstruating women violate the principles contained within the Constitution of India regarding sexual equality, dignity and the prohibition on discrimination due to biological characteristics. The same rationale exists for other forms of menstrual exclusion, such as lack of provision(s) for sanitary supplies within public agencies and/or work premises, inadequate provision(s) for leave because of the necessary time taken to substitute for plumbing failure in school bathrooms, etc.

A constitutional perspective on menstrual justice goes beyond simply recognizing menstruation symbolically; it would require significant intervention at all levels to alleviate the systemic injustices faced by those marginalized by economic class, caste/gender discrimination, and inadequate infrastructure.

⁷⁸⁹ Constitution of India 1950, art 39(e)

⁷⁹⁰ Constitution of India 1950, art 42

⁷⁹¹ Constitution of India 1950, art 51(e)

⁷⁹² Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* (3rd edn, OUP 2018) 287

Menstruation must be treated as an issue of structural organization necessitating an integrated approach using DPSPs, fundamental duties and rights from an intersectionality perspective, in addition to Legislative, Executive and Judicial functions rather than a feeling of personal irritation or inconvenience.⁷⁹³

SUPREME COURT'S RECENT JUDGEMENT ON RECOGNISING MENSTRUAL HEALTH AS FUNDAMENTAL RIGHT ⁷⁹⁴

The Supreme Court of India established the significance of menstruation-related health and hygiene as part of the basic rights protected under the Constitution in its landmark decision in **Dr Jay Thakur v. Government of India**. The public interest lawsuit was filed on behalf of a social worker to obtain court orders requiring all continually-funded and government-funded schools to: construct, maintain and provide separate functional washroom facilities for girls; provide free sanitary menstrual hygiene products to girls in grades 6-12; and conduct large-scale education campaigns on the importance of menstrual hygiene. The two-judge bench of Justices J.B. Pardiwala and R. Mahadevan asked a variety of fundamental constitutional questions, including whether or not the lack of separate washroom facilities and menstrual products for girls violates Articles 14 (equality before the law), 21 (right to life and liberty), and 21A (right to an appropriate education), and also whether the right to menstrual dignity is an included component of the right to life.

Crucial Findings of the Court Pertaining To Education .The Court found that the right to an education functions as a "Multiplier Right" since it allows for the exercise of all other fundamental rights. Education should therefore be without discrimination and available forever and be appropriate for each individual. The

Court found that when younger males do not have access to MHM, this undermines Article 21A and the RTE Act of 2009; the failure to provide access to menstrual cartridge facilities results in increased absenteeism and drop-out rates. The Court determined that access to MHM resources created the following structural barriers to education for menstruation girls and violation of the following rights:

- Article 14: makes the conditions for the menstruation boy different as compared to the menstruation boys friends with money and no menstruation.
- Article 21: violates reproductive autonomy and right to privacy, dignities, and right to health.
- Article 21A: Definition of free education under Article 21A requires eliminating financial and physical barriers to attendance.

In Article 21, it states that the Court said the right to Menstrual Health is part of the Right to Life, and that Access to Effective and Affordable Menstrual Hygiene Management (MHM) can provide the highest standard possible of Sexual and Reproductive Health.

The Court granted legally binding orders to all areas of India as follows: ⁷⁹⁵

- Schools public and private (Urban and Rural Area) must have properly working Restrooms available for both genders with water.
- The Infrastructure must have Privacy and accessible to the disabled. Water & Soap must always be available.
- All schools must provide free oxo-biodegradable Sanitary Napkins, as laid out in ASTM D-6954.
- Distribution Centers and/or Vending Machines must be established.

⁷⁹³ Pooja Pande, 'Menstruation and Structural Exclusion: A Rights-Based Perspective' (2021) 13(2) Indian Journal of Gender Studies 215

⁷⁹⁴ Dr. Jaya Thakur v. Union of India & Ors., W.P. (C) No. 1000/2022, 2026 INSC 97 (Jan. 30, 2026) (India), available at https://api.sci.gov.in/supremecourt/2022/350_23/35023_2022_7-1502_68117_Judgement_30-Jan-2026.pdf

⁷⁹⁵ Dr. Jaya Thakur v. Union of India & Ors., W.P. (C) No. 1000/2022, 2026 INSC 97 (Jan. 30, 2026) (India), available at https://api.sci.gov.in/supremecourt/2022/350_23/35023_2022_7-1502_68117_Judgement_30-Jan-2026.pdf

- MHM Corners must be established with Emergency Supplies, Lingerie, and additional changes of Clothes.
- Methods to Safely Dispose of a Variety of Materials have been outlined in the solid waste laws of your jurisdiction in order to ensure responsible and clean disposal of those items.
- The facilities have dumpster systems where waste is collected at regular intervals with covered containers.
- Schools across the country have employed the use of an integrated gender-based curriculum by both NCERT and SCERT through the inclusion of topics such as menstruation, puberty, and PCOS/PCOD. In addition to this, all staff members are required to attend training sessions on gender sensitivity, including males.
- The public has access to sanitary napkins from the Jan Aushadhi Savidha programme and can also receive support and assistance through the National Child Protection Commission's Child Help Line

Intersectional and Institutional Accountability:

The Supreme Court of India ruled in favour of menstruators by recognising that menstrual disadvantage is not only heterogeneous but also compound in nature therefore employing an explicit intersectional constitutional lens. The Court stated that girls from poorer socio-economic groups are subjected to the phenomenon of menstrual poverty” which leads to attending school less frequently and limits their ability to access sanitary absorbents. Similarly, girls who have disabilities must have access to assisted sanitation facilities, accessible restrooms and additional privacy protections; therefore they face an even greater disadvantage. The interaction between poverty, caste, sex/gender, disability location (rural) results in increased vulnerability and heightened levels of systemic discrimination.

The Court noted that, in order to achieve equity under Article 14, customized interventions and responsive infrastructure are needed; standardization alone does not provide enough support. Cultural awareness campaigns, discreet access to sanitary products for girls, and water access for remote rural schools as well as accessible washrooms for people with disabilities were all identified as key components of substantive equality. This ruling also established enhanced accountability systems at the institutional level. District Education Officers (DEOs) were ordered to conduct annual or at least regular inspections of schools with an emphasis on shortages of menstruation absorbents; water has been connected; toilets function; and how disposal works. DEOs need to obtain anonymous input (applicable to all female students) because they will be essential to ensuring that lived experiences are incorporated into the effective monitoring process. Regarding transparency, all inspection reports should be included on statutory notices required to be issued under the Right of Children to Free and Compulsory Education Act 2009.

In contrast to government controlled schools, which must comply with superior authority, unaccepted private institutions face de-recognition from both federal and state level as a result of violating these standards. As set out under the Commissions for Protection of Child Rights Act of 2005, the National and State Commissions for Protection of Child Rights have oversight jurisdiction and authority over all institutions but have the enforcement power to take action also by closely supervising various institutions within each Level, so as to create a multi-tier accountability structure that mandates Menstrual Hygiene as an institutional body rather than a policy objective.⁷⁹⁶

Judicial Mandate for Continuous Implementation and Social Change:

⁷⁹⁶ Dr. Jaya Thakur v. Union of India & Ors., W.P. (C) No. 1000/2022, 2026 INSC 97 (Jan. 30, 2026) (India), available at https://api.sci.gov.in/supremecourt/2022/350-23/35023_2022_7-1502_68117_Judgement_30-Jan-2026.pdf

The Court of Justice of India has issued a continuous mandamus to ensure that the long-term fulfillment of the right to menstrual health will be monitored by the court across states and union territories, demonstrating that significant changes in societal infrastructure require continuing oversight. This decision reinforces that the right to menstrual justice is an ongoing obligation under the Constitution and requires both ongoing assessment as well as remedying actions instead of being treated as a singular occurrence. The judgment expressed clear normative guidance on the societal treatment of menstruating individuals as well as the legal obligations of states to provide for the menstrual health of their constituents. The Court also expressed the view, in a section of the judgment dedicated to the role of males with respect to menstruation, that menstruating individuals should no longer be subject to "hushed whispers," and ordered that males receive education about menstruation to eliminate their experience of stigma and harassment, thereby engendering an acceptance of menstruating individuals within the school system.

The Court aligned menstrual hygiene with social changes and constitutional principles by treating menstruation as a community issue. The ruling changed menstrual hygiene from a charitable program to a legally protected right as defined in Articles 14, 21 and 21A (right to life, liberty/health), connecting it to dignity, reproductive rights, equality of opportunity and access to education. Therefore, this ruling signals that progress should not only be measured by the quantity of physical infrastructure, but also how effectively the government deals with removing stigmas, encouraging participation, and protecting the bodily integrity and dignity of every girl child.⁷⁹⁷

IMPLEMENTATION COMPLEXITIES:

- Inadequate infrastructure in both government- and aided-schools is one of the major roadblocks to the successful implementation of the Jaya Thakur ruling. Often the functional reality of a bathroom does not match what is on the official records that say there is a bathroom. Many school facilities are missing running water, proper doors & locks, adequate light, adequate ventilation, and effective cleaning systems. This issue is further exacerbated by the lack of dedicated female sanitation workers. Schools in rural and semi-urban areas may have physical buildings, but they do not have the necessary operational infrastructure (e.g., sanitary facilities) to ensure that menstruation is treated with dignity. "Paper compliance" is what could describe the gap between forms of compliance (i.e., formal adherence) and day-to-day utilisation and is a primary barrier to achieving the revolutionary objective of the judgement.
- Sanitary napkins and relevant sanitary facilities cannot be free of cost without a continuous source of financial support after implementation. With competing demands for funding (e.g., midday meal programs, teacher hires, digital infrastructure, classroom space) for educational funding, funding for menstrual hygiene management (MHM) neither exists therefore, schools have difficulties with taking on additional responsibilities. In addition, the intended equal constitutional obligation of the Court has been diluted by the existing differences in compliance between governments with more resources versus those with less resources.
- Logistical and procurement difficulties are created by providing free oxo-biodegradable sanitary pads. States have to ensure that they can provide transportation to distant locations, find

⁷⁹⁷ Dr. Jaya Thakur v. Union of India & Ors., W.P. (C) No. 1000/2022, 2026 INSC 97 (Jan. 30, 2026) (India), available at https://api.sci.gov.in/supremecourt/2022/350_23/35023_2022_7-1502_68117_Judgement_30-Jan-2026.pdf

manufacturers who meet the certification standards, ensure there is a constant supply of the products, and provide adequate quality control. To make matters worse, the effective distribution of these products is complicated further by inefficient bureaucratic processes, incidences of corruption, and delays in the tendering process. Because supply failures and shortages occur in many areas, girls have to use dangerous substitutes for sanitary pads. Therefore, while the policy itself may be considered progressive, there are not enough administrative resources available to properly implement the policy.

- A key component of the decision is that the manner in which menstrual waste is disposed of should match reasonable, safe, and environmentally sound practices. Unfortunately, menstruation-related wastes present both ecological and technical challenges when being disposed of. In fact, many schools do not have environmentally sustainable incinerators, segregation facilities, or covered containers to dispose of menstrual products. Improper menstruation disposal not only jeopardizes sanitary conditions but also creates a risk for pollution in the environment. Additionally, the technical skills necessary to create and manage compliant solid waste management systems are not often found at the district administration level. Consequently, while implementing menstrual justice, there is often limited environmental safeguards.
- The Court has required ongoing inspection (which may help ensure compliance) as well as the use of student feedback mechanisms. Monitoring, however, is still very inconsistent; students might not feel comfortable saying there are issues due

to the stigma associated with doing so or fear of retaliation, while teachers and administrators may not be trained to provide private surveys. Data collection systems of this nature are often divided among multiple departments and do not use a standard format, making them harder to gather and analyze. Similarly, the lack of clearly defined penalties for noncompliance makes it difficult to enforce compliance. Consequently, the ongoing mandamus may become more of a symbolic act than a transformative act unless clearly defined supervision systems and open reporting are implemented.

- While meaningful adoption has taken place, there are still many deeply entrenched taboos about menstruation that have interfered with this. Many cultures still stigmatize or shame young girls for their monthly menstrual cycle through misinformation; this causes teachers a difficult time talking to students about menstruation, especially male teachers. Male students are often unaware of the challenges girls face and often tease girls or stigmatize them. The result of these cultural attitudes is a hostile school environment in which girls feel uncomfortable asking for assistance when they need it. Legislation alone cannot change the long-standing and entrenched patriarchal practices; therefore, community involvement and continued education to raise awareness is critical.
- Schools must incorporate sexual health as part of their curriculum, according to the order. Modifying school curricula is a slow process primarily carried out by state school councils and NCERT. Even when textbooks are updated, teachers' willingness to teach the updated material will depend on their training, which is often lacking in sex education and in gender-sensitive pedagogy. It is

possible that the mandate will not be successfully implemented due to the lack of training and the lack of professional development opportunities for the teachers. In addition to updating the textbooks, transformative constitutionalism requires shifting the pedagogy of teaching sexuality towards a more holistic approach.

- Implementation architecture should consider intersectional vulnerabilities. Girls with disabilities require accessible washrooms; inclusive policies are essential for transgender and non-binary students; and barriers are compounded for economically disadvantaged students or marginalised castes. A single, unified infrastructure approach will not meet the needs of diverse populations. Without an awareness of the importance of intersectional sensitivity, inequality can continue to be reinforced in a rights-based way. Inclusion must not be an afterthought; it should be central to implementation strategies.
- According to the ruling, various entities such as school management committees, district management authorities, the state education department and Child Rights Commissions have been assigned an accountability role. However, in India, the majority of collaborative initiatives between departments tend to be dispersed instead of being directed towards achieving a certain goal. The overlapping nature of jurisdictions created by unclear lines of responsibility can often delay the implementation of initiatives. Additionally, without a state-level integrated task force or centralized nodal authority, all efforts will continue to be dispersed and lack effective coordination between urban local bodies, rural development, health and

education to facilitate effective implementation of coordination efforts.

- Instead of a one time repair to an infrastructure, the Court's directives require ongoing compliance. As such, the ability to remain stable in policy is often undermined by changing fiscal priorities, administrative transfers and changing political environments. To maintain restrooms, replenish sanitary products, and periodically train individuals requires both institutional memory and sustained political will. Without the integration of menstrual hygiene management into long-term policy frameworks and annual budget cycles, the gains may be reduced over time.
- Digital monitoring capabilities and real time data systems have become increasingly important to a modern government; however, many of the remote schools would not have sufficient technology infrastructure in place to be able to provide compliance metrics. Civil society oversight is hindered because there are no visibility dashboards or open progress reports. In addition to the fact that civil society must consider data privacy issues while collecting student voices about sensitive topics, they will also need to find ways to balance the need for confidentiality with the technological feasibility of this information as well as the transparency of the data collected. Instead of a one time repair to an infrastructure, the Court's directives require ongoing compliance. As such, the ability to remain stable in policy is often undermined by changing fiscal priorities, administrative transfers and changing political environments. To maintain restrooms, replenish sanitary products, and periodically train individuals requires both institutional memory and sustained political will. Without the

integration of menstrual hygiene management into long-term policy frameworks and annual budget cycles, the gains may be reduced over time.

SUGGESTIONS:

- Ring-fenced statutory funding for menstruation hygiene management (MHM) must have statutory obligations that supersede executive discretion; in other words, budgets for MHM must be included in legally binding budget instructions, preventing inadequate resources from being used as justification for non-compliance. Establishing dedicated grants with auditing requirements will deter institutional neglect and theft of funds.
- There should also be enforceable consequences for violating menstruation hygiene standards, including departmental liability and performance accountability for district and/or school leadership. To promote transparency and deterrence, judicially supervised compliance reports should be made publicly accessible.
- School accreditation/recognition should be contingent upon infrastructure certification having been completed, with third-party inspections occurring periodically to verify that schools have access to water, privacy, safety, and functional MHM provision. Schools not meeting even minimum standards should receive deadlines for providing corrective action.
- Through real-time digital inventory tracking systems connected to district dashboards, a centralized procurement and quality-control authority should standardize menstrual product standards, get rid of inferior suppliers, and guarantee continuous distribution.
- Menstrual waste management needs to be incorporated into municipal solid waste frameworks, along with technical training modules for school administrators and required environmental compliance checks. To guarantee ecological accountability, unsafe disposal methods ought to result in environmental fines.
- All teaching and non-teaching staff should be required to complete thorough gender-sensitization training, which should be incorporated into teacher eligibility and service regulations. Instead than being an elective awareness exercise, menstrual education needs to be institutionalized as a fundamental curriculum element.
- Governments (Federal & State) need to implement technological, private grievance resolution systems to allow direct access to reporting student issues with protections for whistleblowers. Efficacy of these grievance resolution systems should be reviewed annually through independent impact assessments, and publicly released.
- An explicit intersectional compliance checklist is necessary to assess accessibility for children with disabilities, inclusion of transgender children, and targeted intervention in districts that are socioeconomically and geographically disadvantaged.
- Finally, there must be ongoing due process through the legal system until a demonstrable standard for access, dignity, and health outcomes exists across all states. Constitutionally, menstrual hygiene compliance must be assimilated into the broader framework of the right to education.

CONCLUSION:

With the ruling on *Dr. Jaya Thakur v. India*, India's path towards substantive gender equality in the Constitution has hit a crucial landmark. The Court has shifted the discussion from silence

and stigma around menstruation to rights and accountability by recognizing the management of menstrual hygiene as core to dignity, non-discrimination, health, and educational rights. This ruling also places menstruation justice within the larger context of transformational constitutionalism, confirming that the State's obligations extend beyond simply refusing to interfere – they must take active steps to eliminate structural barriers that hinder equitable participation in education. In order for this ruling's potential to turn into reality, there must be strict implementation, ongoing funding, institutional cooperation and social awareness. In order for the infrastructure to be functional, supplies to be available, waste to be disposed of properly and classrooms to transform into places of educated, stigma-free conversation. Only then will constitutional guarantees become a reality. Ultimately, the extent to which this ruling affects lived experiences will influence its legacy more so than the strength of its language. If this ruling is implemented in both letter and spirit, it has the potential to transform menstruation health from being viewed as a "women's issue" into being viewed as an issue of equal citizenship by ensuring that all students' education, dignity, or futures are not jeopardized simply because they experience a natural biological process.

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