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RIGHT TO BLEED WITH DIGNITY: A CASE COMMENT ON DR. JAYA THAKUR V. GOVERNMENT OF INDIA

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ABSTRACT

The recognition of menstrual health as a constitutional concern represents a significant evolution in Indian constitutional jurisprudence. In *Dr. Jaya Thakur v. Union of India & Ors.*, the Supreme Court of India acknowledged right to dignified menstrual health as an intrinsic component of the right to life under Article 21 of the Constitution. The judgment foregrounds the State's positive constitutional obligation to ensure that adolescent girls can manage menstruation in conditions of safety, hygiene, privacy, and dignity. By linking menstrual health with the rights to equality and education, the Court exposed how infrastructural deficiencies, menstrual stigma, and institutional neglect contribute to absenteeism and school dropouts among girls, thereby excluding them from equal participation in education and public life. The Court further emphasised the necessity of free access to sanitary products, comprehensive awareness programmes involving both genders, and environmentally sustainable menstrual waste-disposal mechanisms. This article undertakes an analysis of the judgment, situating it within constitutional framework of dignity, equality, bodily autonomy, and socio-economic rights. It also examines the Court's engagement with international human rights instruments and evaluates the judgment's implications for feminist constitutionalism and the enforceability of social rights in India.

INTRODUCTION

The petition in *Dr. Jaya Thakur v. Union of India & Ors.* was instituted under Article 32 of the Constitution as a Public Interest Litigation drawing attention to the absence of menstrual hygiene facilities in schools across India. The petitioner relied on empirical studies and governmental data to demonstrate that lack of access to sanitary napkins, functional toilets, continuous water supply, and safe disposal mechanisms directly contributes to school absenteeism and dropouts among adolescent girls. These deficiencies, it was argued, undermine not only public health but also the constitutional guarantee of equal access to education.

The reliefs sought included provision of free sanitary napkins for girls studying from Classes VI to XII, establishment and maintenance of gender-segregated toilets in all schools, regular upkeep of sanitation infrastructure, and structured awareness programmes on menstrual hygiene. The respondents acknowledged the existence of menstrual taboos, infrastructural gaps, and uneven implementation of existing welfare schemes. The case thus presented the Court with a constitutional question: whether these failures were mere administrative lapses or amounted to violations of fundamental rights.

The Court framed the controversy around four interrelated issues: violation of the right to life and dignity under Article 21; discrimination under Article 14; impairment of the right to education under Article 21A and the Right of Children to Free and Compulsory Education Act, 2009; and the scope of the State's positive constitutional obligations in ensuring menstrual health within educational institutions.

Menstrual Health, Dignity, and Bodily Autonomy under Article 21

At the heart of the judgment lies an expansive interpretation of Article 21. Reaffirming settled constitutional doctrine, the Court reiterated that the right to life encompasses dignity, autonomy, and self-determination. Menstrual health, the Court reasoned, is inseparable from bodily integrity and decisional autonomy. A girl's ability to manage menstruation safely, hygienically, and in privacy is foundational to her physical and mental well-being.

The absence of sanitary products, toilets, or disposal facilities compels girls to manage menstruation under degrading conditions dictated by circumstance rather than choice. Such compulsion undermines bodily control and violates personal autonomy. By linking menstrual health to the jurisprudence on privacy and reproductive autonomy, the Court

underscored that privacy is not a privilege but a minimum condition for dignified existence. The lack of private sanitation facilities in schools exposes girls to humiliation, surveillance, and anxiety, thereby eroding their constitutional right to live with dignity.

Substantive Equality and Structural Discrimination under Article 14

Rejecting a formalistic conception of equality, the Court adopted a substantive equality framework under Article 14. Menstruation, though biologically specific, becomes a site of discrimination due to social stigma, poverty, and institutional neglect. Treating girls identically to boys in educational settings—without accounting for menstrual needs—perpetuates inequality rather than remedying it. The Court's reasoning is marked by intersectional sensitivity. It acknowledged that girls from economically weaker sections and those with disabilities face compounded disadvantages: poverty restricts access to sanitary products, while inadequate infrastructure disproportionately affects those requiring accessible facilities. Denial of menstrual hygiene management was thus characterised as systemic discrimination that excludes girls from equal participation in education and public life. Equality, the Court emphasised, must be understood as accommodation of difference rather than indifference to it.

Menstrual Health and the Right to Education under Article 21A

A particularly innovative aspect of the judgment is its integration of menstrual health within the right to education. The Court clarified that "free education" under Article 21A cannot be interpreted narrowly. Education ceases to be free when hidden costs—such as expenditure on menstrual products or lack of sanitation facilities—effectively prevent attendance. Relying on empirical evidence, the Court recognised menstruation as a significant cause of absenteeism and school dropouts among adolescent girls. The absence of toilets, privacy, sanitary products, and disposal facilities compels girls to miss school during menstruation, resulting in cumulative learning gaps and eventual withdrawal from education. Importantly, the Court framed absenteeism and dropouts not as individual failures but as manifestations of structural exclusion attributable to State inaction.

Interpreting Section 19 of the Right of Children to Free and Compulsory Education Act, 2009, the Court held that the prescribed "norms and standards" must be understood substantively. These standards necessarily include functional

gender-segregated toilets, continuous water supply, privacy, accessibility for girls with disabilities, and menstrual hygiene management facilities.

Non-compliance, the Court clarified, attracts legal consequences: private schools may face derecognition, while State-run schools render the State constitutionally accountable. By doing so, the Court transformed infrastructural inadequacies into justiciable violations of statutory and constitutional rights. Invoking Article 47, the Court further reaffirmed that the State's obligations are positive in nature, requiring active facilitation of conditions necessary for the enjoyment of fundamental rights.

Menstrual Justice: Male Participation

A progressive dimension of the judgment lies in its explicit recognition of the role of men and boys in dismantling menstrual stigma. Rejecting the perception of menstruation as a "women's issue," the Court emphasised that exclusion of boys and male teachers from menstrual education perpetuates silence, ridicule, and misinformation. Teacher sensitisation programmes, including male educators, were viewed as essential to achieving substantive equality.

Equally significant is the Court's treatment of menstrual waste disposal as a constitutional concern. Improper disposal exposes girls to health risks, indignity, and environmental harm. The Court's directions for environmentally sustainable disposal mechanisms, including biodegradable products and designated disposal units, reflect a holistic understanding of dignity that extends beyond bodily autonomy to environmental and public health.

The judgment also draws normative strength from human rights instruments such as the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. By harmonising constitutional interpretation with international obligations, the Court reinforced the principle that fundamental rights must be interpreted in light of global human rights standards, particularly where dignity and equality are implicated.

Critical Appraisal

Doctrinally, the judgment represents a robust affirmation of socio-economic rights. It deepens the content of Articles 14, 21, and 21A, strengthens feminist constitutionalism, and aligns domestic constitutional law with international human rights norms. By recognising infrastructural deficiencies as constitutional violations, the Court enhanced the enforceability of rights related to health and education.

However, concerns regarding implementation remain. Education and public health involve multiple stakeholders and resource constraints. While the Court has articulated clear constitutional standards, their transformative potential depends on sustained political commitment and administrative capacity. In this context, judicial intervention appears not as overreach but as a necessary response to prolonged State neglect.

CONCLUSION

By incorporating menstrual health within Articles 14, 21, and 21A, and aligning domestic constitutional interpretation with international human rights obligations, *Dr. Jaya Thakur v. Union of India & Ors.* Constitutionalizes menstrual justice in its fullest sense. The judgment affirms that menstrual health is integral to dignity and bodily autonomy; that education is both a fundamental right and a site of social transformation; that men and boys are indispensable allies in dismantling stigma; and that infrastructure and waste disposal are matters of constitutional obligation. In doing so, the Court ensured that constitutional promises are realised in the lived realities of girls across India.

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