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**EDITORIAL ANALYSIS**

# The Body as Constitutional Territory — Menstrual Health and the Expanding Horizon of Article 21

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**SUBJECTS COVERED****POLITY****SOCIAL ISSUES****GS PAPERS****GS2****GS1****CURATED & WRITTEN BY****Bharat Choudhary**

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GS2

GS1



The Hindu

MAINS RELEVANCE:

GS Paper 2

GS Paper 1



## INTERVIEW ANGLE

*"The Supreme Court has declared menstrual health an integral component of Article 21's Right to Life and Dignity. Does the judicial expansion of fundamental rights go far enough in ensuring gender equity in education and public health — and what are the structural barriers to implementing the Court's directions?"*

## WHY IN NEWS

In *Dr. Jaya Thakur vs Government of India*, the Supreme Court declared the right to menstrual health an integral component of the Right to Life and Dignity under Article 21, and issued mandatory directions to all states and UTs to provide free sanitary pads, gender-segregated toilets, and menstrual hygiene management (MHM) infrastructure in every school within three months.

## ARTICLE 21 — INDIA'S LIVING CONSTITUTIONAL PROVISION

India's Constitution does not enumerate every facet of a "good life" — it provides broad fundamental rights and trusts the judiciary to interpret them in evolving social contexts. Article 21 — "No person shall be deprived of his life or personal liberty except according to procedure established by law" — has been the primary vehicle for this expansion.

**The trajectory of Article 21 expansion through landmark rulings:**

Year	Case	Right Recognised
1978	Maneka Gandhi vs Union of India	Procedure must be fair, just, reasonable (not merely formal)
1981	Francis Coralie Mullin vs Delhi	Right to live with human dignity
1996	Paschim Banga Khet Mazdoor Samity	Right to health and emergency medical care
2001	PUCL vs Union of India	Right to food
2013	Vikas Kumar vs UPSC	Right to reasonable accommodation for disability
2017	K.S. Puttaswamy vs Union of India	Right to Privacy
<b>2026</b>	<b>Dr. Jaya Thakur vs GoI</b>	<b>Right to menstrual health</b>

The 2026 ruling extends this judicial tradition: the Constitution’s silence on menstrual health is not an exclusion — it is an invitation for the Court to read fundamental dignity into the framework.

## THE SOCIAL REALITY BEHIND THE RULING

### The numbers that contextualise the Court’s intervention:

Only **57%** of Indian women and girls use hygienic menstrual protection (National Family Health Survey — NFHS-5, 2019-21)

In rural areas, the figure drops to **48%**

Among girls aged 15–24 from the lowest wealth quintile: only **42%**

**23 million girls** drop out of school every year at puberty — inadequate sanitation and period management are cited as primary factors

Only **30%** of government schools in India have functional gender-segregated toilets with privacy (UDISE+ 2024)

**The school dropout dimension:** The absence of hygienic, private facilities for menstruation management creates a powerful push-out effect on girls’ education. A girl who cannot manage her period privately and hygienically at school faces an impossible choice: miss several days each month (compounding learning loss), return home permanently, or endure stigma that corrodes her sense of belonging in the educational space.

The Supreme Court’s directions — free pads, segregated toilets, MHM corners — are not welfare measures. They are preconditions for the Constitutional guarantee of the right to education (Article 21A, inserted by the 86th Constitutional Amendment, 2002) to have material meaning for adolescent girls.

## WHAT THE COURT DIRECTED — AND WHAT IT MEANS

- 1. Free sanitary pads in every government and aided private school:** This is a public health intervention with fiscal implications. India's **Menstrual Hygiene Scheme (launched 2011, Ministry of Health)** already provides subsidised sanitary napkins through ASHAs and anganwadi workers in rural areas — but coverage has been patchy and supply chains unreliable. The Court's direction transforms a welfare programme into a constitutional obligation.
- 2. Oxo-biodegradable pads requirement:** A significant environmental dimension. India discards an estimated **12.3 billion** disposable sanitary napkins per year — almost all of which enter the solid waste stream as non-biodegradable plastic. The Court's direction for oxo-biodegradable materials is aligned with the **Plastic Waste Management Rules, 2016 (amended 2021)** and India's commitments under the Swachh Bharat Mission.
- 3. Gender-segregated toilets with water and privacy:** This direction operationalises the **Supreme Court's earlier 2015 ruling** (Rina Saha vs West Bengal) that directed all schools to provide separate toilets — a direction still unenforced in 30% of government schools a decade later. The three-month timeline signals judicial impatience.
- 4. Integration of menstrual and reproductive health into curricula:** This is the most structurally significant direction. Menstruation is still not taught in a clinical, destigmatised way in most Indian schools. The silence — whether from embarrassment or social conservatism — perpetuates the cycle of shame, inadequate hygiene practice, and dropout. Making MHM a curricular subject normalises it.

## THE IMPLEMENTATION CHALLENGE

India's federal structure creates a gap between constitutional mandates and on-the-ground reality:

Education (including school infrastructure) is on the **Concurrent List** (Seventh Schedule, List III)

States control the day-to-day functioning of government schools

**Fiscal federalism:** States with low fiscal capacity cannot absorb the capital expenditure for toilet construction and recurring expenditure for pads without Central transfers under Samagra Shiksha Abhiyan

**Historical precedent for the gap:** The Supreme Court directed mid-day meals be provided in all government primary schools in *PUCL vs Union of India (2001)*. The Mid-Day Meal Scheme (now PM POSHAN) took nearly a decade to reach full national coverage despite a court order.

**What makes this ruling potentially more effective:**

The MHM issue enjoys broader political consensus than many social justice issues

The three-month compliance timeline with a mandatory reporting mechanism is more specific than past open-ended directions

Digital accountability (linked UDISE+ database) makes verification of toilets and pads easier

## BEYOND SCHOOLS — THE WORKPLACE AND PUBLIC SPACE DIMENSION

The ruling focuses on schools, but the underlying right — to menstrual health as part of Article 21 — is not confined to educational institutions. Its logical extension has implications for:

**Workplaces:** The Maternity Benefit Act (1961, amended 2017) mandates leave but does not address menstrual health facilities

**Healthcare access:** Oxo-biodegradable pads carry a 12% GST — petitioners have long argued that taxing menstrual products is a tax on biological necessity

**Rural water access:** Menstrual hygiene is impossible without clean water — in 18% of Indian households, women travel >500 m to fetch water (JJM data, 2024)

## UPSC RELEVANCE

*Dr. Jaya Thakur vs Government of India; Article 21 expansion to menstrual health; Court directions (free pads, segregated toilets, MHM corners, oxo-biodegradable, curricula integration); Article 21A (Right to Education; 86th Amendment); Menstrual Hygiene Scheme (2011, Ministry of Health); UDISE+ (school data system); Plastic Waste Management Rules 2016/2021; Mid-Day Meal Scheme (now PM POSHAN).*

*Evolution of Article 21 through judicial interpretation; right to health as fundamental right; federal dimension of education policy implementation; PIL as instrument of social justice; gender equity in education. **GS-1:** Menstrual health and social issues; impact of sanitation on women's education and workforce participation. **GS-4:** Ethics of judicial activism vs parliamentary prerogative on social policy.*

**★ FACTS CORNER — KNOWLEDGE PEDIA**
**ARTICLE 21 — KEY EXPANSIONS:**

- 1978: Maneka Gandhi — procedure must be fair/just/reasonable
- 1996: Paschim Banga Khet Mazdoor — right to health
- 2001: PUCL vs Union of India — right to food
- 2017: K.S. Puttaswamy — right to privacy
- 2026: Dr. Jaya Thakur vs GoI — right to **menstrual health**

**ARTICLE 21A:**

- Inserted by: **86th Constitutional Amendment, 2002**
- Content: Right to free and compulsory education for children aged **6–14**
- Implemented via: **Right to Education (RTE) Act, 2009**

**MENSTRUAL HEALTH IN INDIA — DATA:**

- Women using hygienic protection: **57%** (NFHS-5, 2019-21)
- Rural: **48%**; Poorest quintile: **42%**
- Girls dropping out at puberty annually: **~23 million**
- Govt schools with functional segregated toilets: **~70%** (UDISE+ 2024)
- Sanitary napkins discarded annually: **~12.3 billion**

**COURT DIRECTIONS (DR. JAYA THAKUR):**

- Free sanitary pads in every govt and aided private school
- Gender-segregated toilets with water + privacy (3 months)
- Pads must be **oxo-biodegradable**
- MHM corners** in schools for emergencies
- Menstrual and reproductive health **integrated into school curricula**

**RELATED SCHEMES:**

- Menstrual Hygiene Scheme:** Launched 2011, Ministry of Health; subsidised napkins via ASHAs/AWWs
- Samagra Shiksha Abhiyan:** Umbrella school education programme; funds school infrastructure
- UDISE+:** Unified District Information System for Education Plus; school data system

**OTHER RELEVANT FACTS:**

- Concurrent List (List III): Education, health — both Centre and states can legislate; Central schemes need state implementation
- Seventh Schedule: Lists I (Union), II (State), III (Concurrent) — defines legislative jurisdiction
- GST on sanitary pads: **12%** (argued to be a tax on biological necessity; exemption petitions pending)
- PM POSHAN (formerly Mid-Day Meal Scheme): Covers 12+ crore school children; illustrates implementation gaps in court-directed social schemes

Sources: The Hindu, SCC Online, NFHS-5, InsightsIAS



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