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**EDITORIAL ANALYSIS**

# Menstrual Health as a Fundamental Right — Expanding Article 21 and the State's Obligation to Dignity

 **INDIAN EXPRESS**

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

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# Menstrual Health as a Fundamental Right — Expanding Article 21 and the State's Obligation to Dignity

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GS2

GS1



The Indian Express

MAINS RELEVANCE:

GS Paper 2

GS Paper 1



## INTERVIEW ANGLE

*"The Supreme Court declared menstrual health a Fundamental Right under Article 21. Critics argue the court is overstepping by directing specific welfare measures. Proponents argue the state has failed to act and judicial intervention is necessary. Where should the line be drawn between judicial activism and judicial overreach in social rights?"*

## WHY IN NEWS

The **Supreme Court of India** (Justice J.B. Pardiwala and Justice R. Mahadevan) declared **menstrual health a Fundamental Right** under **Article 21** in **Dr. Jaya Thakur v. Government of India** (decided January–February 2026), directing the state to provide **free sanitary napkins in government schools for Classes 6–12** with oversight by NCPCR. The ruling expands the judicial interpretation of the Right to Life to include bodily dignity and menstrual healthcare.

## THE RULING: WHAT THE COURT SAID

The Supreme Court held that **menstrual health** — encompassing access to clean sanitary products, sanitation facilities, and freedom from shame and stigma — is part of a woman's **Right to Life with Dignity** under **Article 21** of the Constitution.

### Specific directions:

Free sanitary napkins to be provided in all **government-aided schools for Classes 6–12**

Adequate, gender-separated **toilet facilities** in schools

Oversight by **District Education Officers** and the **National Commission for Protection of Child Rights (NCPCR)**

States to submit compliance reports to the court

**Why the court acted:** Despite government schemes (Menstrual Hygiene Management under Swachh Bharat Mission-Grameen), implementation is patchy. **School dropout rates among girls** spike at puberty — partly attributable to absence of sanitary products and private toilet facilities. The court found that the state’s failure to address this violated girls’ fundamental right to pursue education with dignity.

## ARTICLE 21: INDIA’S MOST EXPANSIVE FUNDAMENTAL RIGHT

**Article 21** reads: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

This brief formulation has been expanded by the Supreme Court over 75 years into one of the world’s most comprehensive constitutional rights. Key expansions:

Case	Year	Right Recognised
<i>Maneka Gandhi v. Union of India</i>	1978	Procedure must be fair, just, reasonable
<i>Olga Tellis v. Bombay Municipal Corporation</i>	1985	Right to livelihood as part of right to life
<i>CESC v. Subhash Chandra Bose</i>	1992	Right to health
<i>Unni Krishnan v. State of AP</i>	1993	Right to education (till age 14)
<i>Subhash Kumar v. State of Bihar</i>	1991	Right to pollution-free environment
<i>MC Mehta v. Union of India</i>	1996	Right to live in a pollution-free environment
<i>Paschim Banga Khet Mazdoor Samity</i>	1996	Right to emergency medical treatment
<i>Dr. Jaya Thakur v. GoI</i>	2026	Menstrual health as right to dignity

The expansion of Article 21 is India’s **living constitutionalism** in action — courts reading the fundamental right to life to encompass all conditions necessary for a dignified human existence.

## THE MENSTRUAL HYGIENE CRISIS IN INDIA

### Data points:

Only **12%** of India’s ~355 million menstruating women use sanitary napkins (NSSO data); others use cloth, ash, sand, or newspaper

**23 million girls** drop out of school annually at menarche (puberty) partly due to lack of sanitary facilities (Dasra NGO estimate)

Over **70% of rural women** suffer from reproductive tract infections linked to use of unhygienic menstrual material (Action India)

Only **40%** of government schools have girl-specific toilets (UDISE data)

### Policy landscape before the ruling:

**Menstrual Hygiene Management (MHM) Policy, 2015** — guidelines for schools; not mandatory

**Swachh Bharat Mission — MHM component** — provides subsidised pads at ₹6 per pad in rural areas

**Rashtriya Kishor Swasthya Karyakram (RKSK)** — adolescent health programme; includes menstrual health component

**Free Menstrual Hygiene Scheme** — some states (Kerala, Rajasthan, Odisha) independently distribute free pads

The Supreme Court's direction makes **free provision mandatory** in government schools — creating enforceable obligations rather than aspirational guidelines.

## JUDICIAL ACTIVISM VS. JUDICIAL OVERREACH

The ruling reignites an old debate:

### In favour of judicial intervention:

Parliament and state legislatures have had decades to act; inaction on menstrual hygiene in schools is a demonstrable policy failure

Article 21 jurisprudence has always been expansive — the court is applying established precedent, not creating new law

Socioeconomic rights are real rights, not just directive principles — children's education and health are justiciable

### Against:

Courts directing specific welfare measures (free napkins, toilets) enter policy territory — resource allocation, procurement, state finances

The **separation of powers doctrine** suggests these are legislative, not judicial, decisions

Judicially mandated programmes may be poorly implemented and monitored — court orders do not automatically translate to delivery

The Supreme Court has navigated this by assigning **institutional oversight** (NCPCR, District Education Officers) rather than retaining direct supervision — a pragmatic middle path.

## NCPCR'S ROLE

The **National Commission for Protection of Child Rights (NCPCR)** — a statutory body under the Commissions for Protection of Child Rights Act, 2005 — is tasked with monitoring compliance. NCPCR has powers to examine, inquire, and recommend action on child rights issues. Placing menstrual health compliance under NCPCR institutionalises it within the child rights framework.

## UPSC RELEVANCE

*Article 21 (Right to Life); key SC cases expanding Article 21; Dr. Jaya Thakur v. GoI (2026); NCPCR (established 2007); Menstrual Hygiene Management (Swachh Bharat Mission); RKSK (Rashtriya Kishor Swasthya Karyakram).* **Mains GS-2:** Expansion of Fundamental Rights through judicial interpretation; women's rights and access to health; judicial activism vs. overreach; NCPCR role; socioeconomic rights in India. **GS-1:** Status of women in India; gender disparity in education (school dropout at menarche); social taboos around menstruation. **Essay:** "The Supreme Court's expansion of Article 21 is not judicial overreach — it is constitutional fidelity to human dignity." **Interview:** Discuss the tension between socioeconomic rights and available state resources — can courts direct specific welfare expenditure under Article 21?

## ★ FACTS CORNER — KNOWLEDGEPEDIA

### SC RULING ON MENSTRUAL HEALTH:

Case: **Dr. Jaya Thakur v. Government of India** (January-February 2026)

Bench: **Justice J.B. Pardiwala + Justice R. Mahadevan**

Right: Menstrual health = Fundamental Right under **Article 21**

Direction: Free sanitary napkins (Classes 6-12) + toilet facilities; oversight by **NCPCR**

### KEY ARTICLE 21 EXPANSIONS:

Maneka Gandhi (1978): Procedure must be fair and just

Olga Tellis (1985): Right to livelihood

CESC (1992): Right to health

Unni Krishnan (1993): Right to education (till 14)

Subhash Kumar (1991): Right to clean environment

### NCPCR:

Full form: National Commission for Protection of Child Rights

Established: **2007** | Act: Commissions for Protection of Child Rights Act, 2005

Chairperson appointed by: Central Government

### MENSTRUAL HYGIENE — KEY DATA:

Only **12%** of menstruating women in India use sanitary napkins

**23 million girls** drop out of school at menarche annually (Dasra estimate)

40% government schools have girl-specific toilets (UDISE)

### RELEVANT GOVERNMENT SCHEMES:

MHM Policy (2015): Guidelines for schools (non-mandatory)

Swachh Bharat Mission — MHM: Subsidised pads at Rs 6/pad (rural)

RKSK (Rashtriya Kishor Swasthya Karyakram): Adolescent health programme

### OTHER RELEVANT FACTS:

Article 47 (DPSP): State to raise nutrition and public health standards

Article 15(3): State can make special provisions for women and children

RTE Act 2009: Mandates toilets and drinking water in schools (Art. 15-16)

Gujarat Labour Law Amendment 2026: Women permitted night shifts — separate but related progress on women's workplace rights

Sources: Indian Express, AffairsCloud

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