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Judicial realism for menstrual rights

The failure to treat menstrual hygiene as a constitutional obligation has led to systemic exclusion at schools

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The Supreme Court in the case of *Dr. Jaya Thakur v. Union of India (2026)* exposed an uncomfortable truth about India's school system: the State continues to treat menstrual hygiene as a peripheral welfare issue rather than a core constitutional obligation. This petition was filed by a social worker seeking basic but non-negotiable measures, such as free sanitary pads for girls in classes 6 to 12 and separate functional toilets in government-aided and residential schools. That such simple demands still need judicial intervention is in itself an indictment of poor menstrual and reproductive health governance in India.

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The Court correctly identified what governments have long avoided admitting. The absence of menstrual hygiene facilities does not merely inconvenience students; it actively pushes girls out of school. Absenteeism during menstruation often turns into permanent dropouts. This is not accidental. It is the foreseeable result of administrative indifference wrapped in policy language.

What makes this case stand out is the Court's refusal to accept the often-repeated defence that 'policies already exist'. It is clear that India does not suffer from a shortage of schemes; it suffers from a lack of enforcement. By grounding menstrual health in constitutional guarantees such as equality, dignity, autonomy, privacy, and education, the Court made it clear that this was not merely about welfare delivery, but rights denial.

The Court's attention to intersectionality sharpens the critique. A menstruating girl with a disability faces layered exclusion, ranging from inaccessible washrooms and the lack of assistance to social stigma. These are not marginal failures affecting a few. They reveal how public systems are designed around an imagined "default" student: male, able-bodied, and economically secure. Everyone else is expected to adjust or drop out.

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The equality analysis was further damning. Girls without access to toilets or sanitary products are disadvantaged twice – once as compared to boys, and second, as relative to girls who can afford private schools. The Court made it clear that the State could not claim to provide equal opportunity to education while allowing menstruation to become a structural barrier. This was held to be discrimination by design and not oversight.

The judgment rejected that menstrual hygiene is merely an infrastructural issue. Toilets and sanitary pads are necessary, but they are not sufficient. Schools remain deeply uncomfortable spaces for menstruating girls, shaped by silence, stigma, and ignorance. By stressing awareness and training (including the role of male teachers and students), the Court acknowledged that exclusion is cultural as much as physical.

Crucially, the judgment does something rare in social rights litigation. It does not stop at recognising menstrual dignity as part of the right to life under Article 21. It goes further and rethinks how courts should deal with social rights violations. Instead of issuing abstract declarations, vague directions, or relying solely on executive assurances, the Court designed a framework of shared accountability. District Education Officers must conduct regular inspections; Child Rights Commissions are tasked with oversight; and the Union government remains answerable for compliance.

A broken promise

Equally important is what the Court refused to do. It did not allow governments to hide behind the judicially-designed schemes or policies. The Court held that its directions establish minimum, enforceable standards that operate alongside current policies. In effect, the Court signalled that incremental progress is no defence against ongoing constitutional harm.

This case should not be dismissed as judicial overreach. It is judicial realism. Menstrual dignity is not a niche concern; it is a constitutional stress test of whether equality and education mean anything in practice.

The path forward is clear. Governments must treat menstrual hygiene as core educational infrastructure, not an optional add-on. Schools must be audited with the same seriousness as examination results and admissions. Compliance data must be public, and oversight bodies must be empowered. Most importantly, legislatures must step in to set enforceable standards so that courts are not forced to repeatedly intervene in matters of basic dignity. If the State continues to respond only after litigation, courts will continue to fill the vacuum: not out of activism, but necessity.

If adolescent girls are forced to choose between managing their bodies and staying in school, the violation is already complete. The Court has shown what serious social-rights adjudication can look like. Whether governments respond with action or wait for the next petition will determine how seriously we take the Constitution's promise of equal education. A Constitution that cannot ensure equal access for girls in classrooms is not being interpreted boldly; it is unfortunately being honoured too late.

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