



BETWEEN RECOGNITION AND REALITY: A SOCIO-LEGAL ANALYSIS OF MENSTRUAL RIGHTS IN INDIA

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ABSTRACT

*Over the centuries, there has been considerable progress in the emancipation of women in India. Legislative milestones, judicial interventions, and grassroots movements have collectively chipped away at centuries of institutionalised inequality. The Supreme Court's judgment of January 30, 2026, in *Dr Jaya Thakur v. Union of India* marks one such milestone. By holding that menstrual health and hygiene are integral to the right to life, dignity, and education under Articles 21 and 21A of the Constitution, the Court made the State legally accountable for the menstrual realities of its women. However, accountability on paper and in practice are two distinct concepts and a major point where welfare policies fall short, especially in the largest democracy and the most populous nation in the world. This research article examines the gap between constitutional promise and lived reality. It traces the constitutional foundations that made the 2026 judgment doctrinally possible, analyses its reasoning and directions in detail, and maps the legislative landscape that surrounds it, like the Right to Education Act, to the conspicuous silences of the Code on Social Security. It underscores how caste, class, and geography determine who actually benefits from constitutional recognition, and critically examines the Supreme Court's contemporaneous refusal in March 2026 to mandate workplace menstrual leave. Drawing on comparative frameworks from Scotland, Spain, Japan, and Nepal, the article reflects on the lack of synchrony between constitutional promise and reality.*

Keywords: Menstrual Rights, Constitutional Jurisprudence, *Dr Jaya Thakur v. Union of India*, Socio-Legal Analysis, Intersectionality.

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INTRODUCTION

The stigma around menstruation is deeply personal to almost all women in India. She is made to sit separately, where no one can sit with her. She cannot touch anyone, enter the kitchen or even fetch water when she needs it if no one is around. The bedding is an uncomfortable synthetic material that is easier to wash. The towel needs to be washed daily, the utensils in which she has her food are washed by her separately, and food is given to her from afar, almost as if there are some sinister radiations coming from her body.

All this amazed and, to some extent, traumatised me. For a young rebel like myself, it was unacceptable to treat such an integral process, which is responsible for giving life, as a sin, as a crime that a woman commits every month. What is it? To bleed heavily, which is definitely not a choice, to experience terrible pain and a roller-coaster of emotions. The expression of pain is met with disgust, with mothers calling one 'weak'. No one is to blame for being taught such an evil thing, but every woman who lets it carry on and perpetuates this cycle of hate is a criminal.

A woman encompasses immense power, the power to heal, to bring life, to carry the sacred feminine energy and wisdom. Her power made her dangerous, an undefeatable force. And some kind of control was needed to tame her, lest she would become undefeatable, and the men in the society would have to hide their faces. I am reminded of a dialogue in the famous Alia Bhatt movie, Gangubai Kathiawadi, "Arey jab shakti, sampati aur sadbuddhi yeh teeno hi aurtein hai, toh in mardo ke kiss baat ka guroor?" The woman is complete, but society didn't like that. That is why they made women hate themselves and feel impure during menstruation. There is this joke: if men had periods, we would have a National PMS Holiday. In order to channelise and express this anguish, shock, surprise and shame at the state of our society, I have researched thoroughly and presented this project.

Menstruation, a natural biological process experienced by approximately 336 million people in India, continues to be surrounded by stigma, myths, and deep-rooted misconceptions. While medical science recognises menstruation as a vital indicator of reproductive health, cultural and religious narratives have long shaped public perception and social norms in ways that have caused and continue to cause measurable harm. These narratives, passed down through generations, have contributed to restrictive practices, educational exclusion, and a sustained silence in public discourse that makes an ever-pervading issue drift into oblivion.

In the Indian context, menstruation is deeply intertwined with tradition, faith, and social structure. Many communities impose restrictions on menstruating individuals, barring them from religious spaces, kitchens, and social interaction. These beliefs stem from historical interpretations of purity and pollution. These are understandings that, as this article will demonstrate, are neither textually mandated by the Vedic scriptures they claim to derive from, nor constitutionally defensible in a republic founded on equality and dignity. At the same time, evolving perspectives driven by education, grassroots advocacy, and increasingly judicial intervention are gradually challenging these taboos, encouraging a more informed and inclusive approach to menstrual health.

On 30th January, 2026, in *Dr. Jaya Thakur v. Union of India*, the Supreme Court of India held that menstrual health and hygiene are integral to the right to life, dignity, and education guaranteed under Articles 21 and 21A of the Constitution. The judgment delivered by Justices J.B. Pardiwala and R. Mahadevan directed all States and Union Territories to provide free eco-friendly sanitary napkins, functional gender-segregated toilets, and vending machines in government and government-aided schools for girls in classes 6 through 12. It transformed menstrual health from a matter of State beneficence into a matter of constitutional obligation. A girl denied access to these facilities can now approach the High Court or the Supreme Court and demand compliance. This move was like a deep exhale from generations of women and young girls who had to leave their education or function in total shame of their biology due to the onset of menstruation.

For a young woman with dreams and vision, this is just the beginning and most certainly not the final accomplishment of equality through equity in India. The judgment's scope is limited to school-going girls, leaving adult women, rural women, Dalit women, and women in the informal economy outside its immediate reach. Its implementation depends on State governments whose administrative capacity varies enormously and whose political will has historically been unreliable on women's health issues. The related debate on workplace menstrual leave, which was refused by the Supreme Court in March 2026 because mandatory leave might discourage employers from hiring women, remains unresolved.

This article undertakes a rigorous socio-legal analysis of the legal evolution of menstrual rights in India. It traces the doctrinal evolution that made the 2026 judgment possible, analyses the judgment's reasoning and directions in detail, maps the existing legislative framework and its gaps, examines the intersectional dimensions of menstrual inequality across caste, class,

geography and engages critically with the menstrual leave debate. It draws on comparative jurisprudence from several nations. Finally, it concludes with an honest assessment of what constitutional recognition has accomplished and what social change must now follow.

ANALYSIS

The Sociology of Menstrual Stigma in India: In India, the mere mention of the topic of menstruation has been taboo in the past and even to this date, the cultural and social influences remain a formidable hurdle to the advancement of knowledge on the subject.¹ This is not only a sociological problem but also a constitutional one. A society that cannot speak openly about menstruation cannot build the legal infrastructure necessary to protect the rights of those who menstruate. In this sense, the silence and stigma are preconditions for the State's persistent inaction over this ever-pervading issue that affects about 50% of its population.

The origin of this myth dates back to the Vedic times and is often linked to Indra's slaying of Vritras.² It has been declared in the Vedas that the guilt of killing a brahmana appears every month as menstrual flow, as women had taken upon themselves a part of Indra's guilt. Further, in the Hindu faith, women are prohibited from participating in normal life while menstruating. She must be "purified" before she is allowed to return to her family and the day-to-day chores of her life. However, scientifically it is known that the actual cause of menstruation is ovulation, followed by a missed chance of pregnancy that results in bleeding from the endometrial vessels and is followed by preparation of the next cycle. Therefore, there seems to be no reason for this notion to persist that menstruating women are "impure."³

Women across India face a range of daily restrictions during menstruation simply because they are menstruating. Not entering the "puja" room is the major restriction among urban girls, whereas not entering the kitchen is the main restriction among rural girls during menstruation. Menstruating girls and women are also restricted from offering prayers and touching holy books. The underlying basis for this myth is also the cultural beliefs of impurity associated with menstruation. It is further believed that menstruating women are unhygienic and unclean, and hence the food they prepare or handle can get contaminated. According to a study by

¹ Suneela Garg and Tanu Anand, 'Menstruation Related Myths in India: Strategies for Combating It' (2015) 4(3) *Journal of Family Medicine and Primary Care* 184

² Manju Kaundal and Bhopes Thakur, 'A Dialogue on Menstrual Taboo' (2014) 26(1) *Indian Journal of Community Health* 5

³ Rajanbir Kaur, Kanwaljit Kaur and Rajinder Kaur, 'Menstrual Taboos and Social Restrictions Affecting Good Menstrual Hygiene Management Among Reproductive Age Group Female Students' (2022) 9(2) *International Journal of Community Medicine and Public Health* 312

Kumar and Srivastava in 2011, participating women also reported that during menstruation, the body emits some specific smell or ray, which turns preserved food bad. And, therefore, they are not allowed to touch sour foods like pickles.⁴ However, as long as general hygiene measures are taken into account, no scientific test has shown menstruation as the reason for the spoilage of any food in making.

Cultural norms and religious taboos on menstruation are often compounded by traditional associations with evil spirits, shame and embarrassment surrounding sexual reproduction. In some cultures, women bury their cloths used during menstruation to prevent them from being used by evil spirits.⁵ The damage it has done to the self-perception of generations of Indian women is incalculable and has never been named as a rights violation, until now.

A life giver, the purest of the pure, is shamed and made to feel impure about her own physiological processes. Such taboos about menstruation present in many societies impact on girls' and women's emotional state, mentality and lifestyle and most importantly, health. Over 23% of girls in India drop out of school after the onset of menstruation. The gender-unfriendly school infrastructure, the absence of clean private sanitation facilities, and the lack of adequate menstrual protection options together constitute an environment hostile to the educational participation of half the student population. Over 77% of menstruating girls and women in India use old cloth, often reused. A further 88% resort to using ash, newspapers, dried leaves, or husk sand as absorbents. Poor protection and inadequate washing facilities increase susceptibility to reproductive tract infections, the odour of menstrual blood exposes girls to stigma and harassment, and the cumulative effect on mental health is severe. These are not abstract welfare concerns. They are violations of the right to health, dignity, and education that Article 21 and Article 21A of the Constitution are now understood to guarantee.⁶

People often cite ancient mythological texts to defend their viewpoints and label them as their religious duty. That argument must be confronted directly as the texts themselves dismantle it. Hinduism's original scriptures do not condemn menstruation as impure. Instead, they suggest reverence, acceptance, and even a divine connection to this natural process. Rigveda 10.85.30 (The Wedding Hymn) refers to menstruation as a sign of fertility, associating it with a woman's

⁴ Arvind Kumar and K.N. Srivastava, 'Cultural and Social Practices Regarding Menstruation Among Adolescent Girls' (2011) 3(2) *Online Journal of Health and Allied Sciences*

⁵ Lopamudra Ganguly, Laxminarayan Satpati and Sreeparna Nath, 'Taboos and Myth — Indispensable Part of Menstruation: An Overview' (2021) 8(1) *Asian Pacific Journal of Health Sciences* 14

⁶ National Family Health Survey (NFHS-5) 2019-21 (International Institute for Population Sciences 2021)

ability to conceive. It describes a woman's monthly cycle as part of the divine order and does not attach impurity to it.⁷ "Upon this bride, a husband shall beget offspring. She shall spread bliss through her house. A male child shall be begotten, and she shall offer worship." Atharvaveda 1.5.2 acknowledges menstruation as a biological function and does not attach impurity to it.⁸ "Just as the earth is cleansed by the rain, a woman is cleansed by her menstrual cycle." Yajurveda (Taittiriya Samhita 2.5.1) refers to menstruating women as Rajasvala, meaning "one who possesses Rajas (creative energy)." The term "Rajas" is also used to describe divine cosmic energy in Hindu philosophy.⁹

The menstrual taboo as practised today is not Vedic in origin. It is a later social construction, developed in the Dharmaśāstra period and codified in texts like the Manusmriti, serving the purpose of restricting women's mobility and authority under the cover of religious obligation.

MENSTRUAL SHAMING IN INDIA: THE EVIDENCE ON GROUND

In the last few years, several instances of menstrual shaming have come to light. Such news genuinely unsettles readers to the core and sets off a series of debates, decisions and reactions from several sections of society. It is noteworthy that since Menstruation is widely considered a taboo topic that must be kept under cover, it can be reasonably inferred that a lot of incidents never reach the media and the public at large.

In November, 2025, three women sanitation workers of Maharshi Dayanand University in Haryana were compelled to send photographs of their sanitary pads to prove that they were not menstruating.¹⁰ In July 2025, girls at a school in Thane, Maharashtra, spoke up about being strip-searched by some members of the staff to ascertain if they were menstruating when blood stains were found in a toilet.¹¹ In 2020, 68 students living in a college hostel in Gujarat were strip-searched after they stopped reporting their periods to authorities to avoid restrictions which barred them from entering the temple and the kitchen or touching other students. In

⁷ **Rigveda 10.85.30** *Rigveda*, 10.85.30, in Ralph T.H. Griffith (tr.), *The Hymns of the Rigveda* (E.J. Lazarus & Co., Benares, 1896)

⁸ **Atharvaveda 1.5.2** *Atharvaveda*, 1.5.2, in William Dwight Whitney (tr.), *Atharva-Veda Samhita* (Harvard University Press, Cambridge, 1905)

⁹ **Yajurveda — Taittiriya Samhita 2.5.1** *Taittiriya Samhita*, 2.5.1 (Yajurveda), in Arthur Berriedale Keith (tr.), *The Veda of the Black Yajus School* (Harvard University Press, Cambridge, 1914)

¹⁰ 'SC Will Frame Rules: Menstrual Shaming Must End' (*Times of India*, November 2025)

¹¹ 'Strip Search in Thane School: Period Check, Strip Search' (*Indian Express*, July 2025)

2017, 70 students were stripped naked at a residential school in Uttar Pradesh by the female warden after she found blood on a bathroom door.¹²

THE EVOLUTION OF MENSTRUAL RIGHTS IN INDIA

The Traditional Welfare Framework: For decades, menstrual health in India was addressed exclusively through health and welfare schemes rather than rights-based frameworks. The National Rural Health Mission (NRHM), launched in 2005, included the Menstrual Hygiene Scheme (MHS) in 2011, under which subsidised sanitary napkins called "Freedays" were distributed to adolescent girls in rural areas at Rs. 6 per pack.¹³ The scheme reached approximately 1.5 crore adolescent girls in 152 select districts. While the scheme was introduced with a noble intent, it suffered from severe implementation deficits: irregular supply chains, inadequate infrastructure for disposal, absence of awareness campaigns, and failure to reach the most marginalised communities.

The Swachh Bharat Mission (SBM), launched in 2014, included provisions for menstrual waste management and toilet construction in schools, but menstrual health was again framed as a subsidiary sanitation concern rather than an independent right. Government schools were to maintain separate functional toilets for girls.¹⁴ This mandate, which, on paper, aligned with the Right to Education Act, 2009, but in practice remained widely unimplemented in rural and semi-urban areas.

This welfare framework consistently failed in achieving its aims because it was discretionary in character. Welfare schemes can be modified, underfunded, or discontinued without judicial accountability. They do not create enforceable entitlements in the hands of individuals. A girl who was denied access to sanitary products under the MHS had no legal remedy; she could not approach a court demanding specific performance of a constitutional obligation.

The Constitutional Foundations: The Constitution does not explicitly reference menstrual health, menstruation, or reproductive health. The transformation of menstrual health into a constitutional right is therefore entirely the product of judicial interpretation. It is specifically the Supreme Court's long and robust jurisprudence expanding the right to life under Article 21.

¹² 'India Menstrual Hygiene: Women Forced to Prove They Were on Their Periods' (*BBC News*, 2025)

¹³ Ministry of Health and Family Welfare, 'Menstrual Hygiene Scheme (MHS)' (*National Health Mission*, Government of India)

¹⁴ Ministry of Jal Shakti, Department of Drinking Water and Sanitation, 'Menstrual Hygiene Management' (*Swachh Bharat Mission*, Government of India)

Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Since *Maneka Gandhi v. Union of India* (1978), the Court has read Article 21 expansively to encompass not merely the right to physical survival, but the right to live with dignity, the right to health, the right to education, and numerous other substantive entitlements.¹⁵ In *Francis Coralie Mullin v. Union Territory of Delhi* (1981), the Court held that the right to life includes the right to live with basic human dignity and all that goes along with it, like adequate nutrition, clothing, shelter, and the right to read, write, and express oneself in diverse forms.¹⁶

The right to health as a component of Article 21 was affirmed in *Consumer Education and Research Centre v. Union of India* (1995), where the Court held that the right to health and medical care is a fundamental right of workers under Article 21 read with Directive Principles in Articles 39(e), 41, and 43.¹⁷

The right to education, initially a directive principle under Article 45, was elevated to a fundamental right through the 86th Constitutional Amendment in 2002, inserting Article 21A. This was operationalised through the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), which mandates, inter alia, separate toilets for girls in schools. The link between the right to education and menstrual hygiene infrastructure was therefore already present in the constitutional and statutory framework before the 2026 ruling made it explicit.

Thus, the doctrinal building blocks for constitutionalising menstrual health were already in place. What *Dr Jaya Thakur v. Union of India* did was to synthesise them into a coherent, enforceable constitutional mandate.

DR. JAYA THAKUR V. UNION OF INDIA (2026): ANALYSIS OF THE JUDGMENT

Background and Parties: The petition in *Dr Jaya Thakur v. Union of India* was filed as a public interest litigation under Article 32 of the Constitution. The petitioner, Dr Jaya Thakur, highlighted the persistent and widespread failure of the State to ensure menstrual hygiene infrastructure in schools, the resulting dropout of adolescent girls, and the constitutional implications of this failure. The respondents included the Union of India through the Ministry

¹⁵ *Maneka Gandhi v Union of India* [1978] 1 SCC 248 (Supreme Court of India)

¹⁶ *Francis Coralie Mullin v Union Territory of Delhi* [1981] 1 SCC 608 (Supreme Court of India)

¹⁷ *Consumer Education and Research Centre v Union of India* [1995] 3 SCC 42 (Supreme Court of India)

of Education, Ministry of Health and Family Welfare, Ministry of Women and Child Development, and all State Governments and Union Territories.

The Court's Reasoning: The Supreme Court of India declared that menstrual health is an integral component of individual fundamental rights. This pioneering move makes India the only country in the world to constitutionally guarantee menstrual health.¹⁸ Drawing on Articles 14, 15, 21, and 47 of the Constitution, the Court located menstrual health within guarantees of dignity, equality, and substantive access to rights that had been present in Indian constitutional jurisprudence. Acknowledging the substantial evidence linking menstruation to higher rates of absenteeism and school dropout among adolescent girls, alongside stigma, health risks, and the reinforcement of gender inequality, the Court reframed menstrual hygiene management (MHM) as a constitutional obligation of the State through two critical constitutional entry points: the right to education and the right to health. This approach reflects a shift towards substantive equality, which requires the State to account for structural and biological disadvantages.¹⁹

The Court issued a set of directives to all States and Union Territories mandating amongst other things (a) the provision of functional, accessible, and gender-segregated toilets in every school both private and public, (b) the free and regular supply of biodegradable sanitary pads in every school both private and public, (c) the integration of gender-responsive education on menstruation and related health concerns into school curricula.

The Court's reasoning proceeded along three principal axes. First, the Court held that menstrual health and hygiene are integral to the right to life and dignity under Article 21. The Court reasoned that a girl who lacks access to menstrual hygiene products and sanitation facilities is unable to manage her menstruation with dignity. The physical discomfort, the risk of infections from unhygienic practices, and the social stigma of menstruating without adequate support collectively constitute a deprivation of the ability to live with dignity. The Right to Dignity, since Justice K.S. Puttaswamy v. Union of India (2017), has been recognised as the core of Article 21. The Court drew on the Puttaswamy judgment's formulation of dignity as encompassing bodily autonomy and the right to make choices free from social coercion.²⁰

¹⁸ *Dr. Jaya Thakur v. Government of India & Ors.*, (2026), INSC97. https://api.sci.gov.in/supremecourt/2022/35023/35023_2022_7_1502_68117_Judgement_30-Jan-2026.pdf

¹⁹ *Substantive Equality: A Perspective*, *Minnesota Law Review*, Vol. 96 (2011).

²⁰ *Justice K S Puttaswamy (Retd) v Union of India* [2017] 10 SCC 1 (Supreme Court of India)

Second, the Court held that the failure to provide menstrual hygiene infrastructure in schools constitutes a violation of the right to education under Article 21A, read with the RTE Act. The causal link here is that girls who lack access to sanitary products and functional private toilets in schools frequently miss school during menstruation, and a significant proportion eventually drop out altogether. The Court reasoned that the Right to Education cannot be meaningful if the school environment is hostile to the biological reality of half its students.

Third, the Court invoked Article 15(3), which permits the State to make special provisions for women and children, as an enabling constitutional mandate. The specific direction to provide facilities for girls in classes 6 through 12 is calibrated to the age of menarche.

Directions Issued: The Court issued the following principal directions under the rubric of a continuing mandamus, which is a judicial mechanism through which the Court retains jurisdiction over a matter to ensure ongoing compliance:

The Court directed all States and Union Territories to ensure that free eco-friendly sanitary napkins are made available to girls in classes 6 through 12 in all government-aided and government schools across the country. The mandate of eco-friendliness reflects emerging environmental jurisprudence and aims to avoid the solid waste management crisis generated by disposable plastic-based sanitary pads.

All schools were directed to install and maintain functional, gender-segregated toilets with water supply and privacy, with specific provisions for menstrual hygiene management, including covered disposal bins. The mandate extends to the installation of vending machines for sanitary products in schools, ensuring that access is not contingent on a teacher's discretion or a girl's willingness to ask.

Compliance was mandated within three months of the judgment, with States and Union Territories required to file affidavits of compliance before the Court. The continuing mandamus mechanism ensures that non-compliance can be addressed through contempt proceedings, giving the directions real legal teeth.

The Court also directed the framing of a comprehensive national policy on menstrual health and hygiene within six months, to be placed before it for review.

Significance: The Court has created an enforceable individual entitlement by locating the Right to Menstrual Health under the Right to Life. Unlike welfare schemes that depend on

executive largesse, an Article 21 right can be enforced through writ jurisdiction. Any girl denied access to the mandated facilities can, in principle, approach the High Court under Article 226 or the Supreme Court under Article 32 to compel State compliance.²¹

Furthermore, the judgment disrupts the cultural framing of menstruation as a shameful or religiously coded matter. When the Apex Court of the Country declares that access to menstrual products is a fundamental right, it sends a powerful normative message that menstruation is a biological and constitutional reality. A taboo topic is unshackled and brought out in public to destigmatise and give young girls the biological rights they deserve. The judgment also aligns with feminist jurisprudence, which critiques the exclusion of bodily and reproductive experiences from legal recognition by relegating them to the private sphere.

SABRIMALA CASE- MENSTRUAL DISCRIMINATION AS A CONSTITUTIONAL CONCERN

The Sabarimala Temple in Kerala customarily prohibited women between the ages of 10 and 50, i.e. women of menstruating age, from entering its premises. The justification offered was the celibate nature of the deity, Lord Ayyappa, and the need to protect that celibacy from the presence of menstruating women. This practice was protected by Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which permitted the exclusion of women from places of public worship where such exclusion was based on custom.²² The exclusion had been upheld as constitutional by the Kerala High Court as far back as 1991 in *S. Mahendran v. The Secretary, Travancore*, on the ground that it was a long-standing custom.²³ Indian Young Lawyers Association challenged this before the Supreme Court in a public interest litigation filed in 2006, arguing that the prohibition violated the Right to Equality under Article 14, the Right against discrimination under Article 15, and the Freedom of Religion under Article 25, which guarantees all persons equally the right to freely profess, practise, and propagate religion.

On September 28, 2018, a five-judge Constitution Bench delivered a 4:1 majority ruling declaring the prohibition unconstitutional. The majority held that the devotees of Lord Ayyappa did not constitute a separate religious denomination entitled to manage their own religious

²¹ 'Menstrual Health as a Facet of Right to Life: *Dr Jaya Thakur v Government of India*' (*Supreme Court Observer Law Reports*, 2026)

²² 1991 in *S. Mahendran v. The Secretary, Travancore*

²³ *S Mahendran v The Secretary, Travancore Devaswom Board* AIR 1993 Ker 42 (Kerala High Court, 1991)

affairs under Article 26, and that the exclusion of women was not an essential religious practice protected under Article 25.

In 2018, the historic Sabarimala Verdict clarified that the Temple's exclusion of women violated the fundamental rights of women between the ages of 10 and 50 years. Justice Chandrachud stated that the right against untouchability is vast, and includes any kind of social exclusion based on notions of 'purity'. Further, Rule 3(b) of the Public Worship Rules, which allowed the custom of prohibiting women struck down as unconstitutional. While it does not highlight the issue of menstrual health per se, it sheds light on the discrimination against menstruating women and clarifies that it is unconstitutional in nature.²⁴ In his concurring opinion, Justice D.Y. Chandrachud held that the right against untouchability under Article 17 extends beyond caste to include any form of social exclusion based on notions of purity, including menstrual-based exclusion. The deliberate use of the phrase 'any form' in Article 17 entails that the exclusion of women from temple premises based on menstruation may constitute untouchability within the meaning of the Constitution.²⁵

Together, the two cases form a doctrinal arc: one addressed menstrual discrimination in religious spaces, the other in educational spaces. They collectively signal the emergence of a constitutional jurisprudence that treats menstruation-based exclusion as an equality and dignity violation rather than a cultural or religious prerogative.

THE MENSTRUAL LEAVE DEBATE: RIGHTS, RISKS, AND LEGISLATIVE DESIGN

There is an outcry for paid menstrual leave for women as an attempt to make the workplace comfortable and to destigmatise periods. However, this issue seems to have both pros and cons with equal weight. Today, companies and employers ruthlessly question unmarried women if they are planning to get married anytime soon and ask married women when they are planning to have children. It seems like a clear violation of personal boundaries, but several companies in India feel that paid maternity leave is a drain on resources and refrain from hiring young women who might need it in the course of their employment. If something like maternity leave is threatened at the ground level, one can hardly expect menstrual leaves to be successful, which

²⁴ *Indian Young Lawyers Association v State of Kerala* [2018] 8 SCC 1 (Supreme Court of India)

²⁵ Aditya Kumar Singh, 'Gender Justice in the Face of Religious Traditions: An Analysis of the Sabarimala Temple Case' (*Indian Journal of Integrated Research in Law*, 2023)

is precisely why the Supreme Court's caution in March 2026 deserves serious legal examination rather than dismissal.

The Supreme Court's Refusal in March 2026: In March 2026, the Supreme Court refused to entertain a PIL seeking a nationwide policy providing menstrual leave for women students and workers, observing that no one would give them jobs in such a scenario. The top court said that such a provision would unintentionally reinforce gender stereotypes. A bench comprising Chief Justice Surya Kant and Justice Joymalya Bagchi, however, said the competent authority may consider the representation and examine the possibility of framing a policy on menstrual leave after consulting all relevant stakeholders.²⁶

This reasoning reflects a legitimate concern about unintended consequences, and it echoes debates in other jurisdictions. Japan introduced menstrual leave (*seiri kyuuka*) in 1947, making it one of the first countries to do so. However, uptake has historically been very low, partly because of social stigma and partly because workers fear employer retaliation.²⁷ South Korea, Taiwan, and Indonesia have similar provisions, with variable implementation.

In India, the State of Bihar introduced paid menstrual leave for government employees in 1992. Kerala introduced a two-day menstrual leave policy for employees and students in 2023. Zomato, a food delivery platform, became a notable corporate pioneer in 2020 when it announced ten days of paid leave per year. These initiatives demonstrate that menstrual leave is legally and practically feasible, but they also confirm that its effectiveness depends heavily on cultural context and implementation design.

As a menstruating individual entitled to her own opinion, I am not in favour of menstrual leaves for the simple reason that it attaches a sort of speciality and exclusiveness to a very natural and routine process and might aggravate the discrimination instead of eradicating it. The ground-level situation of maternity leave has already been highlighted, and it could make it more difficult for women to seek employment opportunities. This is not to say that the suffering of women who experience debilitating dysmenorrhea is not real or deserving of accommodation—it is. But the solution lies in destigmatising menstruation itself, not in legislating its visibility in a workplace culture that has not yet been made ready to receive it.

²⁶ 'Supreme Court Rejects PIL Seeking Nationwide Policy Providing Menstrual Leave for Women Students and Workers' (*News on AIR*, March 2026)

²⁷ 'Menstrual Leave: Stigma and Uncertainty Mean These Progressive Measures Are Being Underused Around the World' (*The Conversation*, March 2026)

The Constitutional and Statutory Framework for Menstrual Leave: From a constitutional law perspective, the argument for menstrual leave is grounded in Articles 14, 15, and 21. Article 14 guarantees equality before the law. However, equality does not require identical treatment of persons in unequal circumstances; it requires equal treatment in equal circumstances and appropriately differentiated treatment in different circumstances. Menstruation is a biological condition that creates specific functional limitations on certain days for a portion of the workforce. Treating menstruating workers identically to non-menstruating workers on those days may itself constitute a form of substantive inequality.

Article 15(3) permits special provisions for women, providing the enabling clause for legislative differentiation. Article 21, as interpreted in the 2026 judgment, encompasses the right to health and dignity, which can be read to include the right to be able to manage menstruation without loss of livelihood.

However, the design of a menstrual leave statute is legally and politically complex. Several design questions require resolution. First, should leave be mandatory or optional? A mandatory leave scheme risks the perverse hiring incentives identified by the Supreme Court, while an optional scheme may be underutilised due to stigma. A middle path requiring employers to offer the leave but giving employees the discretion to claim it, without requiring medical certification, may address both concerns. Second, should the leave be paid or unpaid? Paid leave creates employer costs that may feed into discriminatory hiring; unpaid leave may be economically inaccessible to women in low-wage employment. Third, how should the law address privacy? Requiring women to declare that they are menstruating as a condition of claiming leave exposes them to exactly the kind of stigma that menstrual rights frameworks seek to dismantle.

A well-designed menstrual leave statute would need to balance these competing considerations. One model worth studying is the approach adopted by Spain in 2023, which introduced a statutory right to paid menstrual leave of three to five days per month for women with painful periods (dysmenorrhea), funded by the State rather than employers, thereby removing the financial disincentive for employers without creating a surveillance requirement.²⁸ While this model seems to solve problems, it might not be suited for the Indian setting, with a tremendous

²⁸ Spain: New Law on Menstrual Sick Leave' Industrial Relations News — IOE (March 2023)

fiscal burden on the State stretched across several welfare obligations. At the same time, the potential for misuse cannot be ignored.

Menstrual Health in the Informal Economy: A particularly acute gap in the existing framework is the near-total absence of menstrual health protections for women in the informal economy, who constitute approximately 90% of India's female workforce. Domestic workers, agricultural labourers, construction workers, home-based piece-rate workers, and women in the gig economy have no access to paid menstrual leave, no access to sanitation facilities at the workplace, and no employer obligation to accommodate menstrual health needs.

Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020, collectively aim to provide universal labour protections. Yet, none of them contains any provision for menstrual leave, menstrual hygiene, or gender-sensitive occupational health policies.²⁹

COMPARATIVE JURISPRUDENCE: WHAT INDIA CAN LEARN

Across the world, countries have grappled with the question of how the law should accommodate a biological reality that affects half the population. A survey of select jurisdictions reveals both the possibilities and the limits of legal intervention in this space.

Scotland stands as one of the most comprehensive legislative responses to menstrual inequality in the world. The Period Products (Free Provision) (Scotland) Act, 2021 made Scotland the first country to legislate a universal right to free period products for anyone who needs them, regardless of age, employment status, or location. Local authorities are under a statutory duty to ensure that period products are freely available in schools, universities, and community centres. The funding comes entirely from the Scottish Government, removing any burden from employers or individuals. The limitation in direct applicability is one of scale: Scotland has a population of approximately 5.5 million, roughly the size of a single Indian district.³⁰

Spain in 2023 became the first country in Europe to introduce statutory paid menstrual leave through its Sexual and Reproductive Health Law. Three to five days of paid leave per month are available to women suffering from painful menstruation, with the cost borne by the State's social security system rather than employers. This design directly addresses the hiring incentive

²⁹ 'Invisible Bleeding: The Case for Menstrual Leave in India's Informal Labour Sector' Record of Law (August 26, 2025)

³⁰ Period Products (Free Provision) (Scotland) Act 2021 (asp 1)

problem that the Indian Supreme Court identified in March 2026. However, as already discussed, even Spain's uptake has been negligible; fewer than 4,000 leaves have been granted since the law came into force. The lesson is not that the law failed but that law alone, without accompanying cultural change, rarely produces the result it aspires to give.³¹

Japan introduced menstrual leave as far back as 1947, making it one of the earliest examples of labour law accommodating menstrual health. Seiri kyuuka, as it is called, allows women to take leave on days when menstruation makes work difficult. Yet fewer than 1% of eligible workers use it because using it invites stigma, judgment, and in some cases, retaliation. Japan's seventy-year experiment with menstrual leave is perhaps the most important data point in this entire debate. It demonstrates conclusively that a legal right without a supportive social environment is a right in name only.³²

In 2017, Nepal amended its criminal code to make the imposition of Chhaupadi practices a punishable offence. Chhaupadi is the practice of banishing menstruating women to outdoor sheds, often without protection, warmth, or sanitation. This is a practice that has caused documented deaths. Despite criminalisation, the practice continues in many areas. Police enforcement is minimal, and community compliance is driven by social pressure that the law has not dismantled.

All the examples point to one critical pivot that supports the debate: the social and cultural stigma that surrounds menstruation. Spain and Japan are proof that legislation without social change can be counterproductive. Therefore, the *Jaya Thakur V. Union of India* case of 2026 is a landmark that can influence and eradicate menstrual taboo from the grassroots level through education. Legal change can happen faster than social change because it is practically impossible to reach every Indian woman and household and convince them of something contrary to what they have been told and taught generationally.

CASTE, CLASS, AND THE INTERSECTIONAL DIMENSIONS OF MENSTRUAL RIGHTS

Any legally rigorous analysis of menstrual health in India must confront the intersectional character of menstrual inequality. The constitutional right articulated in the 2026 judgment is

³¹ Spain Pioneered Menstrual Leave, But Women Are Hardly Using It' (*The European Correspondent*, November 2025)

³² 'Menstrual Leave: Stigma and Uncertainty Mean These Progressive Measures Are Being Underused Around the World' (*The Conversation*, 2026)

formal and universal, but the substantive barriers to menstrual health are profoundly differentiated by caste, class, religion, and geography.

Dalit and Adivasi women face compounded discrimination: they are subject to the general menstrual taboos that affect Indian women broadly, but these taboos are intensified by caste-based hierarchies of pollution that attach menstrual impurity to caste impurity.³³ Studies from rural Tamil Nadu, Rajasthan, and Odisha document how Dalit women are subjected to additional restrictions like exclusion from water sources, separate living arrangements during menstruation, and denial of health services.³⁴ The constitutional right to menstrual health must therefore be understood through the lens of Article 15(2), which prohibits discrimination based on caste in access to public resources, and Article 17, which abolishes untouchability.

The economic dimension is equally critical. Period poverty, defined as the inability to access adequate menstrual health products due to financial constraints, affects an estimated 50 crore women globally and a disproportionate share of Indian women.³⁵ In India, the average monthly expenditure on menstrual products is approximately Rs. 500, a sum that represents a significant proportion of the monthly income of families below or near the poverty line. Rural women, domestic workers, agricultural labourers, and women in the informal economy are most vulnerable to period poverty. The mandate to provide free sanitary napkins in schools addresses one dimension of this problem, but adult women outside the school system, precisely those in the most precarious economic circumstances, remain outside the ambit of the 2026 judgment.

CONCLUSION

“A period should end a sentence – not a girl’s education.” These are the words of Melissa Berton, an American educator, social activist, and producer, that were used in the January 30, 2026 judgment in *Dr Jaya Thakur v. Union of India*, which is a landmark. For the first time in India's constitutional history, a girl who is denied access to a sanitary pad in her school can walk into a court of law and demand her rights.

And yet, this article has attempted to demonstrate throughout that the law's work here is the beginning of the story, not its resolution. While the 2026 judgment reaches school-going girls, it does not reach the domestic worker in Chennai, the agricultural labourer in Rajasthan, or the

³³ Deepthi Sukumar, 'Caste Is My Period' in *Springer Nature* (2020)

³⁴ Swarup Dutta, Ishita Sinha and Adya Parashar, 'Dalit Women and Water: Availability, Access and Discrimination in Rural India' (2018) *Journal of Rural Management*

³⁵ Period Poverty and Public Policy: Challenges and Solutions' (*Social Policy Research Foundation*, 2024)

Dalit woman in rural Odisha who faces menstrual restrictions compounded by caste-based exclusions that the Constitution has prohibited since 1950, but the ground reality is a stark contrast. The menstrual leave debate remains unresolved, and the comparative evidence from Japan and Spain tells us clearly that even when the law creates a right, a hostile social environment will ensure that right remains on paper.

The honest conclusion of this study is therefore not a list of legislative recommendations but an observation. Legal change in the largest democracy of the world and the most populous nation has always been faster than social change. The Constitution abolished untouchability in 1950, and caste discrimination persists in 2026. The law can move in a day what society takes generations to absorb. The 2026 judgment is valuable precisely because it can reach the grassroots through schools and education in a way that awareness campaigns and cultural interventions cannot. A child who grows up in a school where menstruation is taught, discussed, and accommodated will carry that normalisation home.

This article has sought to assess the legal scenario of menstrual rights in India through a sociological lens since the two are not mutually exclusive but deeply intertwined. There is a serious dearth of literature on this subject, and this article is also a silent rebellion to spark up more discussion. Change is on its way, and the March 2026 judgement proved that, but we have a long way to go, and perhaps engaging with the topic in the form of research is one way to act as a catalyst.