

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP (C) PIL No.36/2020

Court on its own motion ...Petitioner(s)

Through: Nemo

v/s

Government of India and others Respondent(s)

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

(on Video Conference from High Court at Jammu)

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

(on Video Conference from High Court at Jammu)

ORDER
08.12.2020

01. We are concerned about a serious difficulty faced by adolescent females between the ages of 11 to 18 years coming from poor backgrounds facing the insurmountable difficulties in receiving education on account of lack of access to education, a constitutional right under Article 21A of the Constitution of India and it is free and compulsory under the Right to Education Act, 2009. These are adolescent females who are not equipped with and are also not educated by the parents about menstruation and menstrual hygiene. The deprived economic status and illiteracy leads to prevalence of unhygienic and unhealthy practices which has serious health consequences; increases obstinacy and leads to eventual dropping out from schools.

02. In order to achieve gender equality, it is crucial that girls are able to actualize their educational potential. In 2018, the Delhi High Court issued an order in *Setu Niket v. UOI (WP (C) 5909/2017)* mandating the Delhi Government to provide free or subsidized access to menstrual hygiene products

in schools and to make arrangements for education on menstruation and menstrual hygiene.

03. As a response to a PIL stating underutilizing of allocated funds, the court also called for the issues of menstrual health to be read in conjunction with the fundamental ***right to education under Article 21A of the Constitution of India***. Furthermore, the Right to Education Act 2009 (the 'Act' hereafter), provides for compulsory attendance and completion of elementary education for all children in this age group. The Act also specifies that schools must have gender-segregated sanitation facilities. Both these objectives cannot be achieved with an imbalanced gender dynamic that prevents equal access to educational facilities.

04. With regard to the right of every citizen to the right to education under Constitution of India, in the judgment reported at ***AIR 1992 SC 1858 : Mohini Jain v. State of Karnataka***, the Supreme Court observed as follows:

".....The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under [Article 19](#) cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity....."

"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under [Article 21](#) and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."

05. The Government of India has deliberated for several years with regard to the inclusion of right to education as a fundamental right. The Saikia Committee of 1997 had been appointed to examine the economic viability proposal as to whether the right to free elementary education up to 14 years age could be made a fundamental right. Accepting the recommendations of the Committee, the Government of India tabled the Constitution (83rd Amendment Bill, 1997) in the monsoon session of the parliament which came to be referred to the Department of related Parliamentary Standing Committee on Human Resources Development. Article 21A was incorporated as a Part-III right in the Constitution of India by way of 86th Constitutional Amendment Act, 2002 guaranteeing the right to education to every child of the country between ages from 6 to 14 years.

06. The Right to Education Act, 2009 was enacted and took effect from 26th August, 2009 with the objective of providing free and compulsory education in the age group of 6 to 14 years. Notably Section 8C of this enactment mandates that a child belonging to the weaker sections or disadvantaged groups is not discriminated or prevented from pursuing and completing elementary education on any grounds. Section 2(c) of the Act refers that "*child*" means a male or female child of the age of six to fourteen years. Section 3(1) of the Act says that "*every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education*" and Section 3(2) says that "*For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education*". Section 8(c) mandates that "*ensure that the child*

belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds”.

07. In India, **right to health** derives from the Directive Principles of State Policy and is an established right under Article 21 of the Constitution of India which guarantees the right to life and dignity. In a number of cases, the Supreme Court has reiterated this and the positive obligation on the State to provide healthcare facilities. In [(1980) 4 SCC 162], *Municipal Council Ratlam v. Shri Vardhichan*, the Supreme Court highlighted that **“Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies.”**

08. Menstrual health must be included within the larger framework of **Sexual and Reproductive Health Rights (SRHR)**. In the landmark decision reported at [(2009) 9 SCC], *Suchita Srivasta v. Chandigarh Administration*, the Supreme Court understood reproductive rights to be an essential component of the guarantee of right to life and liberty under Article 21. Similarly, in [(2017) 10 SCC 1], *KS Puttaswamy v. Union of India*, the Court recognized the right of a woman to make reproductive choices, deduced *“from a woman’s right to privacy, dignity, and bodily integrity.”*

09. The Supreme Court’s verdict in the Sabarimala temple petition reported at (2019) 11 SCC 1, *Indian Young Lawyers Association and Others (Sabarimala Temple, In Re) v. State of Kerala and others*, addressed menstrual taboos and the associated stigma. The SC ruled that the discriminatory emphasis placed on biological differences constituted a violation of Article 14 – the Right to Equality, and emphasized that *“the social*

exclusion of women based on menstrual status is a form of untouchability.”

The court also highlighted that ***“Women have a right to control their own bodies. The menstrual status of a woman is an attribute of her privacy and person. Women have a constitutional entitlement that their biological processes must be free from social and religious practices, which enforce segregation and exclusion. These practices result in humiliation and a violation of dignity.”***

10. Inadequate Menstrual Hygiene Management (MHM) options would be a major barrier to education, even in Union Territories of Jammu & Kashmir and Ladakh, with many adolescent girls dropping out due to lack of access to sanitation facilities, menstrual products and the stigma associated with menstruation. The difficulties faced by these young girls are compounded by the fact that there are several educational facilities and institutions without basic toilet facilities. It cannot be denied that separate and basic toilets are essential for ensuring the constitutional guarantees to these children.

11. Poor awareness of the physiology, unscientific attitudes, myths, and misconceptions including the notion that menstruating women are *‘contaminated,’ ‘dirty,’ and ‘impure’* adversely affect their health and social lives. This has included exclusion from places of work, worship and the home, with a rigid hygiene centric routine aimed to prevent *‘pollution’* of spaces which menstruating women may access.

12. Historically, in the Indian context, menstruation has been a subject of shame and socio-economic exclusion, emanating from early agricultural societies, where it was seen as inauspicious for the harvest. To this very date, many women in the rural agricultural sector have their wombs forcefully removed in a bid to enhance productivity. Very often, the hiring contractors

issue an advance for this surgery and then deduct it from the wages of these workers, trapping them in a never-ending cycle of loans and exploitation.

13. Prevalent myths about menstruation force millions of girls to drop out of school early or be ostracised for the duration of their menstrual cycle every month. They also affect the hiring of female workers, as it is felt that menstruation hampers their productivity capabilities. Unfortunately, it continues to be treated as a taboo in many societies, shrouded in a culture of silence and shame.

14. The difficulties faced by adolescent females is also highlighted by either the complete deficiency of facilities in the nature of toilets in educational institutions or lack of hygienic facilities in addition to the ignorance about menstruation and menstrual hygiene as well as access to sanitary products. These children from economically deprived families are unable to afford hygienic sanitary products all leading to these adolescent girls abandoning education.

15. As per the data collected in the year 2011, the menarchal age of an Indian girl was 12.41 years. A report in the 'Times of India' published on 23rd January, 2011 has concluded that about 28% of girls drop out of schools on reaching puberty. A report by the Citizen Bureau published on 31st May, 2016 has concluded that around 20% of the girls drop out of school on reaching the age of puberty.

16. UNICEF has published a report dated 19th March, 2011 adverting to inability to afford sanitary napkins by young girls being a reason for dropping out of schools. Financial incapacity has been the largest barrier for sanitary napkins and has attributed in a large way to adolescent girls dropping out of schools.

17. The ability to manage menstruation in a hygienic manner is fundamental to the dignity and well-being of women, especially in a democratic society. It constitutes an integral component of basic hygiene, sanitation, and reproductive health services. Inadequate menstrual hygiene management compromises girls' education, health, and wellbeing. Therefore, efforts to address these inadequacies must involve provision of sanitation and hygiene facilities along with creating an enabling social and physical environment that addresses all menstruation-related needs.

18. The issue of menstrual hygiene thus involves a three-stage intervention—firstly, the spreading of awareness about menstrual health and unboxing the taboos that surround it; secondly, providing adequate sanitation facilities and subsidised or free sanitary products to women and young students, especially in disadvantaged areas; thirdly, to ensure an efficient and sanitary manner of menstrual waste disposal.

19. It is learnt from newspaper reports that in the year 2017, the State of Kerala took the initiative and announced the “*She Paid Scheme*” aiming to provide sanitary products to all girl students. It was reported that the Government of Kerala allocated around Rs. 30 crores for this project to ensure provision of sanitary napkins to all girls in all Government schools.

20. Access to free sanitary products has been incorporated as part of the education enactment in Kenya to ensure that adolescent females are not deprived of education due to issues arising out of lack of access to sanitary products as per a BBC report dated 22nd June, 2017.

21. It is imperative that access to holistic education entails sensitivities towards biological changes in the body which include menstruation and menstrual hygiene in their own body and special accessories needed including

sanitary products. States are equally responsible for empowering children not only about knowledge and information but also removing all financial constraints in the way of children and the adolescents accessing the sanitary products.

22. In 2010 the Government of NCT of Delhi launched a scheme “*Rashtriya Kishor Swasthya Karyakaram*” which was sponsored by Government of India through the Ministry of Health and Family Welfare subsidizing procurement of menstrual products.

23. It appears that the High Court of Madras has also taken a view on this issue in a decision dated 25th November, 2016 rendered in *WP(C) No.18605/2016 Women Advocates Association Madras High Court, Madurai Bench v. State of Tamil Nadu and others*.

24. The *Government of India* has developed other programmes including the following:

- i) *Menstrual Hygiene Scheme (MHS)* by the Ministry of Health and Family Welfare, targeted at “improving knowledge, access and disposal of menstrual waste, and improving sanitation in schools.”
- ii) *Kishori Shakti Yojana* by the The Ministry of Women and Child Development, which aims to “improve the nutritional, health and development status of adolescent girls, promote awareness of health, hygiene, nutrition and family care, link them to opportunities for learning life skills, going back to school, help them gain a better understanding of their social environment and take initiatives to become productive members of the society.”

iii) The *Scheme for Adolescent Girls (SABLA)* had also been launched under the Integrated Child Development Scheme with the broad objectives of promoting awareness and services regarding health, hygiene, nutrition and access to public services. The Scheme also envisaged other services including iron and folic acid supplementation, health check-up and referral services, counseling on family welfare and vocational training for girls aged 16 and above under the National Skill Development Programme.

iv) Apart from these two schemes, the *Sarva Siksha Abhiyan* and *Rashtriya Madhyamik Shiksha Abhiyan* of the Ministry of Education respectively prioritizes sanitation infrastructure in schools as a way to improve school retention.

v) The *Swachh Bharat: Swachh Vidyalaya* is a national campaign which entails conducting activities in schools that promote sanitary products.

vi) The *National Rural Livelihood Mission* of the Ministry of Rural Development supports self-help groups and small manufacturers to produce sanitary pads.

vii) The *Pradhan Mantri Bhartiya Janaushadhi Pariyojana* of the Department of Pharmaceuticals facilitates availability of subsidized Oxo-Biodegradable Sanitary Napkins at Janaushadi Kendras.

viii) The *Swachh Bharat Mission*, India's national cleanliness programme run in rural areas by the Ministry of Drinking Water and Sanitation and in urban areas by the Ministry of Housing and Urban Affairs, also emphasizes sanitation and hygiene as key issues for women in the context of their fundamental rights to privacy, dignity, safety and

self respect. As part of the Mission, the Ministry of Drinking Water and Sanitation released *Guidelines on Menstrual Hygiene Management* in 2015, which outlines roles of different stakeholders and seeks to “address every component of menstrual hygiene ranging from, raising awareness, addressing behavior change, creating a demand for better hygiene products, capacity building of frontline community cadre, sensitization of key stakeholders, convergence needed for effective outreach and intervention, creation of WASH facilities including safe disposal options, etc.”

25. In 2018, the *University Grants Commission* (‘UGC’) issued a notification for the installation of sanitary napkin vending machines and incinerators in women’s hostels to ensure proper disposal of menstrual waste.

26. Budgetary allocation for these schemes may be necessary.

27. It is necessary for the Union Territories of Jammu & Kashmir and Ladakh to forthwith undertake an audit as to the applicability of these schemes and their effective implementation thereof. It is equally imperative to develop a programme for the education and sensitization of children and adolescent girls regarding the menstruation and menstrual cycle as also menstrual hygiene and to ensure the fundamental right of life (guaranteed under Article 21) and right to education (guaranteed under Article 21A) of the Constitution of India.

28. In order to undertake a holistic and effective examination of the issues above, the following are necessary and proper parties for the present consideration:

- i) *Government of India through Secretary, Ministry of Health and Family Welfare.*
- ii) *Government of India through Secretary, Ministry of Education.*

- iii) *Government of India through Secretary, Ministry of Women and Child Development.*
- iv) *Government of India through Secretary, Ministry of Drinking Water and Sanitation.*
- v) *Government of India through Secretary, Ministry of Housing and Urban Affairs.*
- vi) *Government of India through Secretary, Ministry of Rural Development.*
- vii) *Government of India through Secretary, Ministry of Chemicals & Fertilizers, Department of Pharmaceuticals*
- viii) *Union Territory of Jammu and Kashmir, through Commissioner Secretary, Health and Family Welfare Department.*
- ix) *Union Territory of Jammu and Kashmir, through Commissioner Secretary, Jammu and Kashmir to Education Department.*
- x) *Union Territory of Jammu and Kashmir, through Commissioner Secretary, Jammu and Kashmir to Social Welfare Department.*
- xi) *Union Territory of Ladakh through Commissioner Secretary, Health and Family Welfare Department.*
- xii) *Union Territory of Ladakh through Commissioner Secretary, Ladakh to Education Department.*
- xiii) *Union Territory of Ladakh through Commissioner Secretary, Ladakh to Social Welfare Department.*
- xiv) *J&K Housing and Urban Development Department.*

Directions

29. In view of the above, it is directed as follows:
- i) The respondents shall conduct an audit and consider the issues detailed hereinafter and, place a report before this court regarding the feasibility of the matters noted by us. In case measures are in place, status report thereof be filed before this court within six weeks from today.

- ii) The status report shall set out the steps taken for implementation of the various Government schemes noted above.
- iii) The respondents shall submit a report on the following:
- a) Availability of affordable menstrual hygiene products to all adolescent girls. If necessary, such products being made available at subsidized rates or even free of cost either within the school or in collaboration with local health centres/ clinics.
 - b) Implementation of the current national schemes; development of contextual programs for the purposes of awareness generation; provision of sanitary products and establishment of required facilities; implementation of the policies formulated across all schools whether Government aided or unaided and minority schools; ensuring access of every adolescent girl to a trained female school teacher/ health councilor in the school premises on a periodical basis for imparting education about menstrual health, addressing concerns of the adolescent girls and for creation of awareness of personal hygiene; proper use and distribution of sanitary napkins in the school and at home and a day be also fixed say the last working day of the month for distribution of the sanitary products. Installation of vending machines in the school complexes should also be ensured.
 - c) Action plan for sensitization and education on the subject of menstruation and menstrual hygiene.
 - d) Each head of the school to nominate a female teacher as Nodal In-charge in his/her school for the above programme and

for distribution of sanitary napkins among girl students free of cost.

- iv) The Respondents shall place a report before this Court with regard to the implementation of the Menstrual Hygiene Scheme under the “*Rashtriya Kishore Swasthiya Karyakaram*” of the Government of India; the grant received and utilization thereof as also the out lay of the Government of the Union territories of Jammu & Kashmir and Ladakh on the scheme. Similar information to be provided regarding implementation of other relevant schemes under the different ministries as and beyond mentioned in this order.
- v) The Respondents shall file an affidavit giving the details of programmes in place with regard to the issues noted above as also the budgetary outlay on the same and the manner in which the schemes are being worked.
- vi) The respondents Nos. (ix) & (xii) shall submit details of educational programmes/ schemes as also schedule of the programmes for imparting education on the schemes in the schools of UTs of Jammu and Kashmir and Ladakh.
- vii) The respondent no. (xiv) shall conduct an audit of every school in Jammu & Kashmir and Ladakh with regard to availability of separate working toilets for girl students in the schools. The respondents shall place on affidavit an action plan regarding construction of hygienic and separate toilets inclusive of Menstrual Hygiene Management (MHM) features for girls in every school giving timelines within which the same shall be completed. This entails facilities with adequate lighting, ventilation and other amenities such as clean water,

soap and disposal facilities such as incinerators inside the cubical. Furthermore, these sanitation facilities need to be inclusive and account for those with varied needs such as the differently abled.

viii) The respondents shall place a report regarding adequate means of sanitary waste disposal mechanisms taking into account environmental concerns.

30. The affidavits on the above aspects shall be filed within six weeks.

31. The Registry shall draw up a memo of parties in terms of para no. 28 and place it on record.

32. List on 10th February 2021.

(SINDHU SHARMA)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
08.12.2020
Raj kumar

