

TO BE INTRODUCED IN LOK SABHA

Bill No. 255 of 2018

THE WOMEN'S SEXUAL, REPRODUCTIVE AND MENSTRUAL
RIGHTS BILL, 2018

By

DR. SHASHI THAROOR, M.P.

A

BILL

*further to amend certain enactments to emphasise on the agency of a woman in her
sexual and reproductive rights and to guarantee menstrual equity for
all women by the State.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Women's Sexual, Reproductive and Menstrual Rights Act, 2018. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENTS OF THE INDIAN PENAL CODE, 1860

Amendment of section 375.	2. In section 375 of the Indian Penal Code, 1860,—	45 of 1860.
	<p>(a) for the words "Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married", the words "Fourthly.—With her consent, when the man knows that he is not the person she believes she has given consent to engage in sexual intercourse or sexual acts and that her consent is given because she believes that he is another man with whom she wants to engage in sexual intercourse or sexual acts."; shall be substituted;</p> <p>(b) Exception 2 shall be omitted; and</p> <p>(c) after the proviso to <i>Explanation 2</i>, the following proviso shall be inserted, namely:—</p> <p>"Provided that the women's ethnicity, religion, caste, education, profession, clothing preference, entertainment preference, social circle, personal opinion, past sexual conduct or any other related grounds shall not be a reason to presume her consent to the sexual activity."</p>	5 10 15

CHAPTER III

AMENDMENTS TO THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Amendment of short title.	3. For the short title of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the principal Act in this Chapter), the following short title shall be substituted, namely:—	20 34 of 1971.
	"This Act may be called the Legal Termination of Pregnancy Act, 1977."	
Amendment of long title.	4. For the long title of the principal Act, the following long title shall be substituted, namely:—	25
	"An Act to provide for the legal termination of pregnancies by both medical and surgical methods by registered health care providers and medical practitioners and for matters connected therewith or incidental thereto."	
Amendment of section 2.	5. In section 2 of the principal Act, after clause (d), the following clause shall be inserted, namely:—	30
	<p>"(e) "registered health care provider" means—</p> <p>(i) a registered medical practitioner; or</p> <p>(ii) a practitioner who possesses any recognized medical qualification of Ayurveda, Unani or Siddha as defined in clause (h) of section 2 of the Indian Medicine Central Council Act, 1970 and whose name has been entered in the Central Register or State Register of Indian medicine; or</p> <p>(iii) a practitioner who possess any recognized medical qualification of Homoeopathy as defined in clause (g) of section 2 of the Homoeopathy Central Council Act, 1973 and whose name has been entered in the Central Register or State Register of Homeopathy; or</p> <p>(iv) a nurse or auxiliary nurse midwife who possesses any recognized qualification in general nursing or auxiliary nurse midwifery as defined in section 10 of the Indian Nursing Council Act, 1947 and who has been enrolled as a nurse or auxiliary nurse midwife in the Indian Nurses Register or the State Register;</p> <p>and who has such training and experience to terminate the pregnancy as may be prescribed by rules made under this Act.</p>	35 48 of 1970. 59 of 1973. 40 48 of 1947. 45

(f) "prescribed" means prescribed by rules made under this Act; and

(g) "termination of pregnancy" means a procedure to terminate a pregnancy by using medical or surgical methods."

6. In section 3 of the principal Act,—

Amendment
of section 3.

5 (a) in sub-section (1), for the words "registered medical practitioner", the words "registered health care provider";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Subject to the provision of sub-section (4), a pregnancy may be terminated.

10 (a) medically by a registered health care provider, who is affiliated to a place as described under section 4, where the length of her pregnancy does not exceed twelve weeks; or

(b) surgically by a medical practitioner where the length of her pregnancy does not exceed twelve weeks; or

15 (c) by a registered medical practitioner, where the length of the pregnancy does not exceed twenty weeks, if not less than one registered medical practitioner is of the opinion, formed in good faith, that,—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

20 (ii) there is a substantial risk that if the child were born, it would suffer from such physical, mental or genetic abnormalities, as may be prescribed.

Explanation 1.—Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

25 *Explanation 2.*—Where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman by a registered medical practitioner; or

30 (d) where the length of pregnancy does not exceed twenty-four weeks and the woman falls in the categories of a survivor of rape, person with disability or any other related grounds as may be prescribed by a registered medical practitioner; or

(e) if not less than two registered medical practitioners are of the opinion, formed in good faith, that the termination of pregnancy is necessitated,—

(i) to save the life of the pregnant woman; or

35 (ii) by the diagnosis of a fatal foetal abnormality incompatible with healthy living and life as may be prescribed; and

(f) where a child survivor of rape is pregnant, if not less than two registered medical practitioners are of the opinion that the termination of pregnancy will not involve a risk to her life.

40 7. In section 4 of the principal Act, for the word "No", the words "Save as otherwise provided in section 3(2)(a), no" shall be substituted.

Amendment
of section 4.

8. For section 5 of the principal Act, the following section shall be substituted by, namely:—

Amendment
of section 5.

"5. (1) No person shall reveal the name and other particulars of a woman who may intend to terminate her pregnancy or terminates her pregnancy as per this Act.

Ban of
revelation of
identity of
women who
intend to
terminate
pregnancy or
terminate
pregnancy.

(2) Whoever contravenes the provisions of sub-section (a), such person shall be punished with imprisonment for a term which may extend to one year, or with fine of minimum five thousand rupees subject to a maximum of ten lakh rupees, or with both.

Amendment
of section 6.

9. In section 6 of the principal Act, in sub-section (2),—

(a) in clause (a) for the words "registered medical practitioner", the words "registered health care provider" shall be substituted; and 5

(b) after clause (a), the following clauses shall be inserted, namely:—

"(aa) the training and experience to terminate pregnancy of registered health care providers under sub-section (e) of section 2; and

(ab) the categories of physical, mental and genetic abnormalities under sub-clause (i) of clause (b) of sub-section (2) of section 3; and 10

(ac) the additional categories of woman under clause (c) of sub-section (2) of section 3; and

(ad) the categories of fatal foetal abnormality incompatible with healthy living and life under sub-clause (ii) of clause (d) of sub-section (2) of section 3;". 15

Amendment
of section 7.

10. In section 7 of the principal Act, in sub-section (1),—

(a) in clause (a), for the words "registered medical practitioner", the words "registered health care provider" shall be substituted.

(b) in clause (b) for the words "registered medical practitioner", the words "registered health care provider" shall be substituted. 20

Amendment
of section 8.

11. In section 8 of the principal Act for the words "registered medical practitioner", the words "registered health care provider" shall be substituted.

CHAPTER IV

AMENDMENT TO THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 25

Amendment
of Schedule.

12. In the Schedule to the Right of Children to Free and Compulsory Education Act, 2009, in entry 2, in column (3) under the heading "Norms and Standards", after the words and figures "(iii) separate toilet for boys and girls;", the words and figures "(iiia) sanitary pads, preferably in the toilet for girls, which shall be provided at no cost to individuals who may use such facility," shall be inserted. 35 of 2009. 30

CHAPTER V

MENSTRUAL EQUITY FOR ALL WOMEN

Duty to provide
sanitary pads.

13. Every public authority, as defined by sub-section (h) of section 2 of the Right to Information Act, 2005, shall make available sanitary pads, preferably in the toilet for women, which shall be provided at no cost to individuals in the premises of the public authority. 22 of 2005. 35

STATEMENT OF OBJECTS AND REASONS

Women, the biological equal half in the procreation of human beings, had been confined to just that for millenniums and even in that they had no autonomy. When they broke socio-cultural shackles and went on to govern countries, fight wars and excel in professions, these few exceptions were considered as enough representation. Society is content with the minimal representation of women in different spheres, even though they constitute half the population of the country. Women have been made vulnerable by the social construct of patriarchy, leading to their exclusion in every other social space. Unless we account for these inequalities and deconstruct patriarchal notions, we will fail in our constitutional mandate to ensure everyone's right to access justice.

In furthering this equality, the autonomy of the woman must be rightfully restored to her by granting her the agency over her sexual and reproductive rights. For this, marital rape must be criminalized to eliminate the loss of a woman's sexual independence post marriage. Further, unrelated facts about a woman's life such as caste, profession, clothing preference, personal opinion and past sexual conduct, among others should not be factors in presuming her sexual consent. By shifting from a 'No means No' to a 'Yes means Yes' regime, it transforms us from an era of women having to actively fight for them to be treated with respect and dignity to an era where they will be treated with respect and dignity.

Similarly, even with respect to reproductive rights, a woman must have the right to terminate pregnancy as a norm rather than an exception. A woman's right to terminate pregnancy should be only restricted to avoid female foeticide and when a foetus gains the right to life after it becomes viable. In all other circumstances, including when the foetus or the pregnant woman has any injury or threat to life, or when a woman is a rape survivor or has a disability, she should have the right to terminate her pregnancy. There must be no unnecessary distinction in the right to terminate pregnancy between married and unmarried women. To ensure women, especially rural women, can successfully exercise this right, the procedure must be relaxed accordingly. A major hurdle in the termination of pregnancy is the social stigma attached to it, which should be removed by absolutely protecting the privacy of a woman who intends to or terminates her pregnancy under the Medical Termination of Pregnancy Act, 1971.

Another major source of inequality is the absence of access to menstrual hygiene products that puts girls out of schools and women out of the work force, pushing them into the vicious cycle of dependency. The absence of an equivalent reproductive process in men has resulted in our failure to consider the lack of facility for women's menstrual hygiene. We have failed to admit that this biological process is a role women play for the subsistence of the human species as a whole. This disparity can be eradicated by obligating schools and public authorities to supply sanitary pads free of cost to any girl or women in their facilities.

Hence this Bill.

NEW DELHI;
November 19, 2018.

SHASHI THAROOR

FINANCIAL MEMORANDUM

Clause 12 of the Bill stipulates the provisions of sanitary pads free of cost by schools under the Right of Children to Free and Compulsory Education Act, 2009. Clause 13 provides for provision of sanitary pads free of cost preferably in the toilet for women in the premises of every public authority. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India.

It is estimated that a recurring expenditure of about Rupees one hundred crore per annum, will be involved out of the Consolidated Fund of India.

No non-recurring expenditure is likely to be involved.

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860

(45 OF 1860)

* * * *

375. A man is said to commit "rape" if he— Rape.

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married

* * * *

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual Act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

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EXTRACT FROM THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

(34 OF 1971)

An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto

Short title,
extent and
commencement.

1. (1) This Act may be called the Medical Termination of Pregnancy Act, 1971.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) * * * *

(d) "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in cl.(h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under this Act.

When
Pregnancies
may be
terminated by
registered
medical
practitioners.

3. (1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provision of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that,— (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.—Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) * * * *

Place where
pregnancy
may be
terminated.

4. No termination of pregnancy shall be made in accordance with this Act at any place other than,—

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government.

5. (1) The provisions of Section 4 and so much of the provisions of sub-section (2) of Section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

Sections 3 and 4 when not to apply.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

6. (1) * * * *

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act; and

(b) such other matters as are required to be or may be, provided by rules made under this Act.

(3) * * * *

7. (1) The State Government may, by regulations,—

Power to make regulations.

(a) require any such opinion as is referred to in sub-section (2) of Section 3 to be certified by a registered medical practitioner or practitioners concerned in such form and at such time as be specified in such regulations, and the preservation or disposal of such certificates;

(b) require any registered medical practitioner, who terminates a pregnancy to give intimation of such termination and such other information relating to the termination as may be specified in such regulations;

(c) * * * *

(2) * * * *

(3) * * * *

8. No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this act.

Protection of action taken in good faith.

EXTRACTS FROM THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

(ACT NO. 35 OF 2009)

THE SCHEDULE

(See sections 19 and 25)

NORMS AND STANDARDS FOR A SCHOOL

Sl. No.	Item	Norms and Standards
1.*	* * *	* *
2.	Building	All-weather building consisting of— (i) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room; (ii) barrier-free access; (iii) separate toilets for boys and girls; (iv) * *

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(Dr. Shashi Tharoor, M.P.)