

**Bill No. 292 of 2019**

**THE RIGHT TO MENSTRUAL HYGIENE AND PAID LEAVE  
BILL, 2019**

By

Ms. S. JOTHIMANI, M.P.

A

**BILL**

*to provide the right to menstrual hygiene facilities, health benefits and paid leave to women during menstruation and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Right to Menstrual Hygiene and Paid Leave Act, 2019.

Short title,  
extent and  
commencement.

(2) It extends to the whole of India:

5            Provided that the provisions of this Act in so far as they relate to the mines shall extend to whole of India, including the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India as defined under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976.

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

Application.

**2.** The provisions of this Act shall apply, in the first instance,—

(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances; 5

(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State:

Provided that the State Government may, with the approval of the Central Government, after giving not less than month's notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise; and 10

(c) to every person who is self-employed or working in the unorganized sector or in establishments where less than ten persons are employed. 15

Definitions.

**3.** In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means,—

(i) in relation to an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government; and 20

(ii) in relation to any other establishment, the State Government;

(b) "company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013; 30

(c) "educational institution" means a place where persons of different ages study to gain an education, including pre-school, childcare, primary or elementary school, secondary or high schools and universities;

(d) "employee" means,—

(a) in respect of an establishment, a person, including an apprentice engaged under the Apprentices Act, 1961, employed on wages by such establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied; and 35

(b) a person declared to be an employee by the appropriate Government; 40

(c) a worker including a gig-worker, home-based worker and wage worker;

but does not include any member of the Armed Forces of the Union:

Provided that notwithstanding anything contained in this clause, in case of a mine a person is said to be—employed in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not— 45

(i) in any mining operation (including the concomitant operations of handling and transport of minerals up to the point of dispatch and of gathering sand and transport thereof to the mine);

5 (ii) in operations or services relating to the development of the mine including construction of plant therein but excluding construction of buildings, roads, wells and any building work not directly connected with any existing or future mining operations;

(iii) in operating, servicing, maintaining or repairing any part of any machinery used in or about the mine;

10 (iv) in operations, within the premises of the mine, of loading for dispatch of minerals;

(v) in any office of the mine;

(vi) in any welfare, health, sanitary or conservance services required to be provided under this Code relating to mine, or watch and ward, within  
15 the premises of the mine excluding residential area; or

(vii) in any kind of work whatsoever which is preparatory or incidental to, or connected with, mining operations;

(e) "employer" means a person who employs, whether directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his  
20 establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

25 (i) in relation to an establishment which is a factory, the occupier of the factory;

(ii) in relation to mine, the owner of the mine or agent or manager having requisite qualification under the law for the time being in force and appointed by the owner or agent of the mine as such;

30 (iii) in relation to any other establishment, the person who, or the authority which has ultimate control over the affairs of the establishment and where said affairs are entrusted to a manager or managing director, such manager or managing director;

(iv) Contractor; and

35 (v) legal representative of a deceased employer;

(f) "establishment" means—

(i) a factory;

(ii) a mine;

(iii) a plantation;

40 (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(v) a shop or establishment;

(vi) means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment; or

(vii) an establishment to which the provisions of this Act have been declared under section 2 to be applicable;

(g) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948;

(h) "gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship; 5

(i) "Government establishment" means any office or department of the Government or local authority;

(j) "home-based worker" means a person engaged in the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs; 10

(k) "menstrual hygiene management" means women and adolescent girls using a clean menstrual management material to absorb or collect blood or discharge that may be changed in privacy as often as necessary for the duration of the menstruation period, using soap and water for washing the body as required, and having access to facilities to dispose of used menstrual management materials; 15

(l) "menstruation benefit" means the benefits referred to in section 4;

(m) "notification" means a notification published in the Gazette of India or in the Official Gazette of a State, as the case may be, and the expression "notify" with its grammatical variations and cognate expressions shall be construed accordingly; 20

(n) "organised sector" means an enterprise which is not in an unorganised sector;

(o) "prescribed" means prescribed by rules under this Act made by the appropriate Government; 25

(p) "sanitary napkin" means pad of absorbent material used by women during menstruation period; and "synthetic napkin" means sanitary napkins made by chemical synthesis, especially to imitate a natural product;

(q) "self-employed worker" means any person who is not employed by an employer, but engages himself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government; 30

(r) "State" includes a Union Territory; 35

(s) "unorganised sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten;

(t) "unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapter III to VII; 40

(u) "wage worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in-kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, 45

with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be;

(v) "wages" means all remuneration, whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes;—

(a) basic pay;

(b) dearness allowance; and

(c) retaining allowance, if any;

but does not include—

(a) any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;

(b) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(d) any conveyance allowance or the value of any travelling concession;

(e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(f) house rent allowance;

(g) remuneration payable under any award or settlement between the parties or order of a court or Tribunal;

(h) any overtime allowance;

(i) any commission payable to the employee;

(j) any gratuity payable on the termination of employment;

(k) any retrenchment compensation or other retirement benefits payable to the employee or any *ex-gratia* payment made to him on the termination of employment:

Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent. as may be notified by the Central Government, of all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause;

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.

*Explanation.*—Where an employee is given *in lieu* of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee.

(w) "woman" means any person who is of the female sex including adolescent girls who are women below the age of eighteen, transgender, gender non-conforming or queer persons, to whom this Act is applicable;

(x) "worker" means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes—

(i) working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; and

(ii) sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute;

(iii) any person who is employed in the police service or as an officer or other employee of a prison; or

(iv) any person who is employed mainly in a managerial or administrative capacity; or

(v) any person who is employed in a supervisory capacity drawing wage of exceeding fifteen thousand rupees per month or an amount as may be notified by the Central Government from time to time;

but does not include any such person—

who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, during the period of war;

4. Every woman shall be entitled to the following rights—

(a) Right to self-perception of her menstruation including but not limited to menarche (first menstruation), menopause, menstrual cycle, primary or secondary dysmenorrhea (PD or menstrual pain) in accordance with the provisions of this Act;

(b) Right to paid leave and absence from work for three days during her menstruation, for a female employee in any establishment registered with the appropriate Government;

Provided that if a woman employee undergoing menstruation opts to work instead of taking leave, she shall be paid overtime wages allowance at such rate and in such manner as may be prescribed.

*Explanation.*—For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, whichever is higher.

There shall be paid wages at the rate of twice the rate of wages in respect of overtime work, where a worker works in an establishment or class of establishments for more than such hours of work in any day or in any week as prescribed by the appropriate Government and the period of overtime work shall be calculated on a daily basis or weekly basis, whichever is more favourable to such worker:

Provided further that no worker shall be required to work overtime by the employer without the prior consent of the worker in writing for such work.

(c) Right to leave of absence from school, college, university or an educational institution for three days during her menstruation, for an adolescent girl who is a student in or above Class VIII;

5 (d) Right to thirty minutes of rest period twice a day for not more than four days during menstruation in a month, for every woman employee working in the establishment during her menstruation.

(e) Right to menstrual hygiene management facilities and equity for all women.

(f) Right to receive intimation and information in writing or electronically regarding every health benefit available under this Act, at the time of the appointment;

10 (g) Right to separate toilets for women, transgender persons and specially-abled persons in public spaces, metros, railway stations, highways, airports, malls, theatres, public toilets, Government offices and educational institutions.

15 **5. (1)** Every employer shall be liable for providing three days paid leave and the payment of adequate wages, overtime allowance and relevant salary to the female employees and other rights in accordance with the provisions of this Act;

Duties of employers including educational institutions and Government offices.

(2) No employee shall discriminate against female employees on the basis of benefits provided to women under this Act, at the time of hiring or promotion;

20 (3) Every employee shall set up a grievance redressal mechanism such as the Internal Complaints Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 or similar Grievance Redressal Committees and Human Resource departments constituted within the establishment which shall address the grievance pertaining to menstrual leave within the establishment:

25 Provided that if not constituted, the employer shall be held responsible for the non-implementation of the provisions of this Act, and for addressing or resolving the grievance pertaining to menstrual leave within the establishment.

**6. The appropriate Governments shall:**

Facilities to women.

(a) provide biodegradable sanitary pads, tampons or other such sanitary napkins in the separate restrooms, at no cost to the women;

30 (b) ensure provision of adequate waste-baskets, dustbins, trash-cans and tissue papers, toilet rolls, bags, envelopes or newspapers for the safe, secure and easy disposal or menstrual discharge;

(c) annually celebrate 28th May as Menstrual Hygiene Day;

35 (d) ensure the implementation of Guidelines on Menstrual Hygiene Management (MHM) issued by the Government under the Swachh Bharat Mission Guidelines (SBM-G).

40 (e) take such steps, as may be necessary, for creating awareness among the females and adolescent girls about menstrual hygiene management and removing stigma or taboo associated with menstruation through the means of mass media and by organising such events as it deems fit in classes, seminars and counselling sessions in every Government and private educational institutions in the villages, urban, rural and remote areas regarding hygienic menstrual practices to be followed.

**7. Whoever,—**

Punishment.

(a) denies leave to a woman during her menstruation; or

(b) obstructs a female employee from the entitlement of menstrual leave; or

45 (c) denies or discontinues prescribed rest and recreation facilities to the women during her menstruation; or

(d) contravenes any provision of this Act, shall be punishable with imprisonment for a term which shall not be less than one month but which may extend up to three months and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees.

Funds to the State Government. **8.** The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide such sums of money to the State Governments as it thinks necessary for carrying out the provisions of this Act. 5

Provision to be in addition. **9.** The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

Power to make rules. **10.** (1) The appropriate Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. 10

(2) Every rule made under this Act by the Central or State Government shall be laid, as soon as may be after it is made, before each House of Parliament or the Legislative Assembly and the Legislative Council, as the case may be, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 15 20



## STATEMENT OF OBJECTS AND REASONS

Only in seven of India's States and Union territories did ninety per cent. or more women in the fifteen to twenty-five age group use hygienic protection during menstruation, according to the latest national health data. Not even fifty per cent. women used clean methods of dealing with menstrual hygiene in eight States and Union Territories according to the National Family Health Survey-4 (NFHS), released in 2015-16. This is the dark reality behind all the talks of women empowerment. Even now, women are considered "impure" during their period, subjected to social, religious and cultural restrictions. This shame around menstruation also forces girls to opt-out of school once they reach puberty, impeding the growth of female literacy in India. In rural India, twenty-three per cent. of girls have listed menstruation as the chief reason for dropping out of school. Reproductive Tract Infections (RTIs) are extremely common among women that they are reported to affect one-third of women of reproductive age around the world, according to a report by the World Health Organization (WHO). Sexually transmitted infections (of which RTI is a significant contributor) are also classified among the "top five disease categories", by WHO. The risk of women contracting RTIs is high in rural India, where, in the absence of toilets in villages, access to sanitation is still limited. Sanitary pads are either too expensive or unavailable for women in many parts of India. And unless we provide awareness to women, remove the stigma, increase accessibility to affordable products; we are not solving the problem in its entirety. Non-biodegradable sanitary napkins pose a huge challenge in India, where the disposal system is largely missing in rural areas. According to census 2011 population data, 336 million girls and women in India experience menstruation and it can be safely estimated that about 121 million girls and women are currently using locally or commercially produced disposable sanitary napkins. The end result is that a staggering one billion non-compostable pads are landing up in urban sewers, landfills, as well as in rural fields and water bodies in India every month which takes years to decompose. The lack of disposal treatment options may lead to unsafe management of a mammoth volume of menstrual waste, which affects the health of those living in the areas that the waste is disposed of, as well as negatively affecting the water cycle in the area. Menstruation is still a taboo subject in India and the lack of first-hand understanding of the experience of menstruation by most policy makers means that it has not received the requisite importance it deserves when it comes to framing policy. There is need to provide information to women and adolescent girls regarding how frequently one should change sanitary napkins and what is the proper methods to dispose of them. They need somewhere private to change sanitary cloths or pads; clean water and soap for washing their hands, bodies and reusable cloths; and facilities for safely disposing of used materials or a clean place to dry them if reusable. To avoid a staggering amount of non-degradable waste generated by using synthetic sanitary pads, there is a need to promote manufacturing and usage of biodegradable pads. There is also a need for both men and women to have a greater awareness of good menstrual hygiene practices. It is necessary to create awareness among women and adolescent girls regarding menstrual hygiene, safe usage and disposal of sanitary napkins, easy access of affordable sanitary napkins to women in villages and remote areas and promotion and use of biodegradable napkins.

Hence, this Bill.

NEW DELHI;  
October 28, 2019.

S. JOTHIMANI

## FINANCIAL MEMORANDUM

Clause 6 of the Bill provides for the construction of separate toilets, distribution of sanitary napkins, disposal mechanisms and creating awareness regarding menstrual hygiene management among women through programmes. Clause & provides that the Central Government shall provide funds to the State Governments for the effective implementation of the Act. The Bill, therefore, if enacted, will involve expenditure from the consolidated Fund of India. It is estimated that an annual recurring expenditure of about rupees one thousand crore would be involved from the Consolidated Fund of India. A non-recurring expenditure of about rupees five hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the appropriate Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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to provide the right to menstrual hygiene facilities, health benefits and paid leave to women during menstruation and for matters connected therewith or incidental thereto.

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*(Ms. S. Jothimani, M.P.)*