

Bill No. 305 of 2019

THE PATERNITY BENEFIT BILL, 2019

By

Ms. S. JOTHIMANI, M.P.

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CLAUSES

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A

BILL

to regulate the employment of men in certain establishments for certain periods before and after becoming a father and to provide for paternity benefit and certain other benefits.

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

1. (1) This Act may be called the Paternity Benefit Act, 2019.

(2) It extends to the whole of India.

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

2. It applies, 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;

Short title,
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commencement.

Application of
Act.

(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, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:

Provided that the State Government may, with the approval of the Central Government, after giving not less than one 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;

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

Definitions.

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

(a) "appropriate Government" means, in relation to an establishment being a mine, or an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, the Central Government and in relation to any other establishment, the State Government;

(b) "child" includes a still-born child;

(c) "commissioning mother" means a biological mother who uses her egg to create an embryo implanted in any other woman;

(d) "delivery" means the birth of a child;

(e) "employer" means—

(i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

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

(f) "establishment" means—

(i) a factory;

(ii) a mine;

(iii) a plantation;

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

(v) a shop or establishment; or

(vi) 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) "Inspector" means an Inspector appointed under section 12;

(i) "man" means a man,—

(1) employed, whether directly or through any agency, for wages in any establishment;

(2) self-employed or working in the unorganised sector or in establishments where less than ten persons are employed; and

(j) "mine" means a mine as defined in clause (i) of section 2 of the Mines Act, 1952;

(k) "miscarriage" means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-six weeks of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code, 1860;

(l) "paternity benefit" means the payment referred to in section 4;

(m) "plantation" means a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951;

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

(o) "State Government", in relation to a Union territory, means the Administrator thereof;

(p) "wages" means all remuneration paid or payable in cash to a man, if the terms of the contract of employment, express or implied, were fulfilled and includes—

(1) such cash allowances (including dearness allowance and house rent allowance) as a man is for the time being entitled to;

(2) incentive bonus; and

(3) the money value of the concessional supply of foodgrains and other articles, but does not include—

(i) any bonus other than incentive bonus;

(ii) over-time earnings and any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the man under any law for the time being in force; and

(iv) any gratuity payable on the termination of service; and

(q) "women" means a women who is expecting or has become a mother.

4. (1) Subject to the provisions of this Act, every man shall be entitled to, and his employer shall be liable for, the payment of paternity benefit at the rate of the average daily wage for the period of his actual absence, that is to say, the period immediately preceding the day of delivery of child to his legally wedded wife, or commissioning mother the actual day of delivery of child to his legally wedded wife, or commissioning mother and any period immediately following that day.

Right to payment of paternity benefit.

Explanation:— For the purpose of this sub-section, the average daily wage means the average of the man's wages payable to him for the days on which he has worked during the period of three calendar months immediately preceding the date from which he absents himself on account of paternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

(2) No man shall be entitled to paternity benefit unless he has actually worked in an establishment of the employer from whom he claims paternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the expected date of delivery of child to his legally wedded wife or commissioning mother:

Provided that the qualifying period of eighty days aforesaid shall not apply to a man who has immigrated into the State of Assam and whose wife was pregnant at the time of the immigration.

Explanation.—For the purpose of calculating under this sub-section the days on which a man has actually worked in the establishment, the days for which he has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages during the period of twelve months immediately preceding the expected date of delivery of the child shall be taken into account. 5

(3) The maximum period for which any man shall be entitled to paternity benefit shall be fifteen weeks of which not more than seven weeks shall precede the date of expected delivery: 10

Provided that paternity benefit shall be availed up to three months from the date of delivery of child:

Provided further that where a man dies during this period, the paternity benefit shall be payable only for the days up to and including the day of his death: 15

Provided also that where a man dies during the period immediately following the date of delivery of his child for which he is entitled for the paternity benefit, leaving behind the child, the employer shall be liable for the paternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child. 20

(4) Subject to provisions of this Act, every man who legally adopts a child below the age of three months or the legal husband of the commissioning mother, shall be entitled to paternity benefit for a period of fifteen weeks from the date the child is handed over to the adopting father or legal husband of the commissioning mother, as the case may be.

(5) Notwithstanding anything contained in this Act, where the nature of work assigned to a man is of such nature that he may work from home, the employer may allow him to do so after availing of the paternity benefit for such period and on such conditions as the employer and the man may mutually agree. 25

Parental
Benefit
Scheme.

5. (1) The Central Government shall formulate a scheme to be known as the Parental Benefit Scheme for providing paternity benefit to every man. 30

(2) The Central Government shall, by notification in the Official Gazette, constitute a Fund to be known as the Parental Benefit Scheme Fund for carrying out the purposes of this Act.

(3) All employees (Irrespective of gender), employers and the Central Government shall contribute to the Fund in such ratio as may be prescribed. 35

(4) The Fund shall be utilised to meet the costs related to paternity benefit under this Act.

(5) The Central Government shall, in consultation with the State Governments, the employee and the employer unions/associations, by notification in the Official Gazette, issue guidelines for implementation of Parental Benefit Scheme. 40

Notice of
claim for
paternity
benefit and
payment
thereof.

6. (1) Any man entitled to paternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to his employer, stating that his paternity benefit and any other amount to which he may be entitled under this Act may be paid to him or to such person as he may nominate in the notice and that he will not work in any establishment during the period for which he receives paternity benefit. 45

(2) In the case of a man whose legally wedded wife is pregnant, such notice shall state the date from which he shall be absent from work, not being a date earlier than seven days from the date of expected delivery or any such other prescribed date.

(3) Any man who has not given the notice before leave may give such notice as soon as possible after the delivery of child to his legally wedded wife.

(4) On receipt of the notice, the employer or local authority shall permit such man to absent himself from the establishment during the period for which he receives the paternity benefit.

(5) The amount of paternity benefit for the period preceding the date of expected delivery of child to the wife of a man shall be paid in advance by the employer to the man on production of such proof as may be prescribed that his wife is expecting a child, and the amount due for the subsequent period shall be paid by the employer to the man within forty-eight hours of production of such proof as may be prescribed that the man has become a father.

(6) The failure to give notice under this section shall not disentitle a man to paternity benefit or any other amount under this Act if he is otherwise entitled to such benefit or amount and in any such case an Inspector may either of his own motion or on an application made to him by the man, order the payment of such benefit or amount within such period as may be specified in the order.

7. If a man entitled to paternity benefit or any other amount under this Act, dies before receiving such paternity benefit or amount, or where the employer is liable for paternity benefit under the second proviso to sub-section (3) of section 4, the employer shall pay such benefit or amount to the person nominated by the man in the notice given under section 6 and in case there is no such nominee, to his legal representative.

Payment of paternity benefit in case of death of a man.

8. In case of miscarriage of his wife, a man shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of paternity benefit, for a period of seven days immediately following the day of the miscarriage.

Leave for miscarriage.

9. (1) Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities:

Creche facility.

Provided that the employer shall allow four visits a day to the creche by the man:

Provided further that the creche shall have trained staff for taking care of the children.

(2) The appropriate Government shall issue guidelines for the establishment, operation and maintenance of creche established under sub-section (1).

10. Every establishment shall inform in writing and electronically to every man at the time of his initial appointment regarding facilities and benefits available under this Act.

Duty of establishment.

11. (1) When a man absents himself from work in accordance with the provisions of this Act, it shall be unlawful for his employer to discharge or dismiss him during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to his disadvantage any of the conditions of his service.

Dismissal during absence.

(2) The discharge or dismissal of a man at any time during his paternity leave, if the man but for such discharge or dismissal would have been entitled to paternity benefit, shall not have the effect of depriving him of the paternity benefit:

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the man, deprive him of the paternity benefit.

(3) Any man deprived of paternity benefit, or discharged or dismissed during or on account of his absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to him, appeal to such authority as may be prescribed, and the decision of

that authority on such appeal, whether the man should or should not be deprived of paternity benefit or discharged or dismissed shall be final.

(4) Nothing contained in sub-sections (2) and (3) shall affect the provisions contained in sub-section (1).

Appointment
of Inspectors.

12. The appropriate Government may, by notification in the Official Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of the jurisdiction within which they shall exercise their functions under this Act. 5

Powers and
duties of
Inspectors.

13. An Inspector may, subject to such restrictions or conditions as may be prescribed, exercise all or any of the following powers, namely:—

(a) enter at all reasonable times with such assistants, if any, being persons in the service of the Government or any local or other public authority, as he or she thinks fit, any premises or place where men are employed or work is given to them in an establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspection; 10

(b) examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment: 15

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;

(c) require the employer to give information regarding the names and addresses of men employed, payments made to them, and applications or notices received from them under this Act; and 20

(d) take copies of any registers and records or notices or any portions thereof.

Inspectors to
be public
servants.

14. Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860. 45 of 1860.

Power of
Inspector to
direct
payments to
be made.

15. (1) Any man claiming that — 25

(a) paternity benefit or any other amount to which he is entitled under this Act and any person claiming that payment due under section 7 has been improperly withheld;

(b) his employer has discharged or dismissed him during or on account of his absence from work in accordance with the provisions of this Act, may make a complaint to the Inspector. 30

(2) The Inspector may, on his own motion or on receipt of a complaint referred to in sub-section (1), make an inquiry or cause an inquiry to be made and if satisfied that —

(a) payment has been wrongfully withheld, may direct the payment to be made in accordance with his orders; and 35

(b) he has been discharged or dismissed during or on account of his absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority. 40

(4) The decision of the prescribed authority where an appeal has been referred to it under sub-section (3) or of the Inspector where no such appeal has been referred, shall be final.

(5) Any amount payable under this section shall be recoverable by the Collector on a certificate issued for that amount by the Inspector as an arrear of land revenue. 45

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| <p>16. If a man works in any establishment after he has been permitted by his employer or local authority to absent himself under the provisions of section 6 for any period during such authorised absence, he shall forfeit his claim to the paternity benefit for such period.</p> | <p>Forfeiture of paternity benefit.</p> |
| <p>17. An abstract of the provisions of this Act and the rules made thereunder in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which men are employed.</p> | <p>Abstract of Act and rules thereunder to be exhibited.</p> |
| <p>18. Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.</p> | <p>Registers, etc.</p> |
| <p>19. (1) If any employer fails to pay any amount of paternity benefit to a man entitled under this Act or discharges or dismisses such man during or on account of his absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees:</p> | <p>Penalty for contravention of Act by employer or local authority.</p> |
| <p>Provided that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only <i>in lieu</i> of imprisonment.</p> | |
| <p>(2) If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both:</p> | |
| <p>Provided that where the contravention is of any provision regarding paternity benefit or regarding payment of any other amount and such paternity benefit or amount has not already been recovered, the court shall, in addition, recover such paternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.</p> | |
| <p>20. Whoever fails to produce on demand by the Inspector any register or document in his custody kept in pursuance of this Act or the rules made thereunder or conceals or prevents any person from appearing before or being examined by an Inspector shall be punishable with imprisonment which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.</p> | <p>Penalty for obstructing Inspector.</p> |
| <p>21. (1) Any aggrieved man, an office-bearer of a trade union registered under the Trade Unions Act, 1926 of which such man is a member or a voluntary organisation registered under the Societies Registration Act, 1860 or an Inspector, may file a complaint regarding the commission of an offence under this Act in any court of competent jurisdiction but no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed.</p> | <p>Cognizance of offences.</p> |
| <p>(2) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.</p> | |
| <p>22. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or order made thereunder.</p> | <p>Protection of action taken in good faith.</p> |
| <p>23. The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act and the State Government shall comply with such directions.</p> | <p>Power of Central Government to give directions.</p> |
| <p>24. If the appropriate Government is satisfied that having regard to an establishment or a class of establishments providing for the grant of benefits which are not less favourable than those provided in this Act, it is necessary so to do, it may, by notification in the Official Gazette, exempt, subject to such conditions and restrictions, if any, as may be specified in the notification, the establishment or class of establishments from the operation of all or any of the provisions of this Act or of any rule made thereunder.</p> | <p>Power to exempt establishments.</p> |

Effect of laws and agreements inconsistent with this Act.

25. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a man is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the man shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a man from entering into an agreement with his employer or local authority for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.

Power to make rules.

26. (1) The appropriate Government may, subject to the condition of previous publication and by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of registers, records and muster rolls;

(b) the exercise of powers (including the inspection of establishments) and the performance of duties by Inspectors for the purposes of this Act;

(c) the method of payment of paternity benefit and other benefits under this Act in so far as provision has not been made therefor in this Act;

(d) the form of notices under section 6;

(e) the nature of proof required under the provisions of this Act;

(f) acts which may constitute gross misconduct for purposes of section 11;

(g) the authority to which an appeal under sub-section (3) of section 11 shall lie; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(h) the authority to which an appeal shall lie against the decision of the Inspector under section 15; the form and manner in which such appeal may be made and the procedure to be followed in disposal thereof;

(i) the form and manner in which complaints may be made to Inspectors under sub-section (1) of section 15 and the procedure to be followed by them when making inquiries or causing inquiries to be made under sub-section (2) of that section; and

(j) any other matter which is to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament 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 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.

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

STATEMENT OF OBJECTS AND REASONS

The parents of a new born are jointly responsible for the proper care, physical growth, mental and emotional development of a child paid leave and absence from work, in order to devote time to ensure the well being of the child, is required equally for the spouses. The Maternity Benefit Act, 1961 provides for twenty six weeks of maternity leave and other associated benefits. There is a need for similar no pan India legislation that provides for paternity leave.

Paternity leave is necessary to change the societal notion implies that child care is the responsibility of only the mother. A paternity leave policy can help in shaping incremental attitudinal changes and to remove gender role distinctions. The International Labour Organisation in its 2014 Report on Maternity and Paternity at work says, "Fathers who take leave, especially those taking two weeks or more immediately after childbirth, are more likely to be involved with their young children. This can have positive effects for gender equality in the home and at work and may indicate shifts in relationships and perceptions of parenting roles and prevailing stereotypes". Introduction of paternity leave for the spouse will ensure that the mother gets some time to adjust, support during and after childbirth and is not forced to return to the workforce in order to generate income.

Maternity Benefit Act, 1961 places the financial burden solely on employers and the absence of any paternity leave might be counterproductive as it may discourage the private sector, which is driving women employment, from hiring, retaining or promoting women. World over there has been a shift away from an employer liability system towards collective social security schemes in which the employee, employer and Government contribute towards maternity and paternity benefits.

At present, the Central employees under the All India and Central Civil Services Rules can avail a paid fifteen day paternity leave. India is already in the list of countries providing the highest maternity leave alongwith a progressive paternity leave, India will be in the top countries to provide the highest paternity leave and other associated benefits.

Hence this Bill.

NEW DELHI;
October 28, 2019

S. JOTHIMANI

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for constitution of Parental Benefit Scheme Fund to which the Central Government and all State Governments shall contribute. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that an annual recurring expenditure to the tune of rupees two thousand crore would be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees fifty crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill empowers the Central Government to issue guidelines for implementation of Paternity Benefit Scheme. Clause 9 empowers the appropriate Government to issue guidelines for establishment, operation and maintenance of creche in every establishment. Clause 26 empowers the Central Government to make rules for carrying out the purposes of this Bill. As the guidelines and rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

LOK SABHA

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BILL

to regulate the employment of men in certain establishments for certain period before and after becoming a father and to provide for paternity benefit and certain other benefits.

(Ms S. Jothimani, M.P.)