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Meaning of Worker

In India the Census started defining 'Worker' as early as 1872. **Over time the term 'work' and 'worker' as defined by Census of India have undergone several amendments to suit the changing dimensions of work.**

Work is defined as participation in any economically productive activity with or without compensation, wages or profit. Such participation may be physical and/or mental in nature. Work involves not only actual work but also includes

1. Effective supervision and direction of work
2. Part time help or unpaid work on farm, family enterprise or in any other economic activity
3. Cultivation or milk production even solely for domestic consumption

Accordingly, as per Census of India, all persons engaged in 'work' defined as participation in any economically productive activity with or without compensation, wages or profit are workers.

- ✚ The Reference period for determining a person as worker and non-worker is one year preceding the date of enumeration.
- ✚ The Census classifies Workers into two groups namely, **Main workers and Marginal workers.**
 - **Main Workers** are those workers who had worked for a major part of the reference period – that is 6 months or more.
 - **Marginal Workers** are those workers who had not worked for a major part of the reference period i.e. less than 6 months.

The **Main workers** are classified based on Industrial category of workers into the following four categories:

1. **Cultivators**
2. **Agricultural Labourers**
3. **Household Industry Workers**
4. **Other Workers**

According to the existing Apprentice Act of 1961, "Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly but shall not include an apprentice referred to in clause (aa) of Section 2(r) of the Act.



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Meaning of Employer under Apprentice Act of 1961, any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment.

Meaning of Establishment includes any place where any industry is carried on and where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of the establishment. (Section 2(g) of Apprentice Act of 1961. **The Industrial Disputes Act 1947** which is a major disputes resolutions and processing mechanism, defines, for the purposes of the act, "workman" in Sec. 2(s) of the act as under:

Accordingly, "**Workman**" is any person (including an apprentice) 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 for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

1. who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act 1950 (46 of 1950) or the Navy Act 1957 (62 of 1957) or,
2. who is employed in the police service or as an officer or other employee of a prison, or,
3. who is employed mainly in managerial or administrative capacity, or
4. who, being employed in a supervisory capacity draws wages exceeding Rs. 6500/- per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Constitutional rights of Workers

In the Constitution of India from 1950, articles 14-16, 19(1)(c), 23-24, 38, and 41-43A directly concern labour rights.

- ✚ Article 14 states everyone should be equal before the law,
- ✚ Article 15 specifically says the state should not discriminate against citizens
- ✚ Article 16 extends a right of "equality of opportunity" for employment or appointment under the state
- ✚ Article 19(1)(c) gives everyone a specific right "to form associations or unions"
- ✚ Article 23 prohibits all trafficking and forced labour
- ✚ Article 24 prohibits child labour under 14 years old in a factory, mine or "any other hazardous employment"



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- ✚ Article 38(1) says that in general the state should "strive to promote the welfare of the people" with a "social order in which justice, social, economic and political, shall inform all the institutions of national life. In article 38(2) it goes on to say the state should "minimise the inequalities in income" and based on all other statuses.
- ✚ Article 41 creates a "right to work", which the National Rural Employment Guarantee Act 2005 attempts to put into practice.
- ✚ Article 42 requires the state to "make provision for securing just and human conditions of work and for maternity relief".
- ✚ Article 43 says workers should have the right to a living wage and "conditions of work ensuring a decent standard of life".
- ✚ Article 43A, inserted by the Forty-second Amendment of the Constitution of India in 1976, creates a constitutional right to codetermination by requiring the state to legislate to "secure the participation of workers in the management of undertakings".

Scope of Protection to Worker

Indian labour law makes a distinction between people who work in "**organised sectors**" and people working in "**unorganised sectors**".

People who do not fall within these sectors, the ordinary law of contract applies.

India's labour laws underwent a major update in the Industrial Disputes Act of 1947. Since then, an additional 45 national laws expand or intersect with the 1948 act, and another 200 state laws control the relationships between the worker and the company.

These laws mandate all aspects of employer-employee interaction, such as companies must keep 6 attendance logs, 10 different accounts for overtime wages, and file 5 types of annual returns. The scope of labour laws extends from regulating the height of urinals in workers' washrooms to how often a work space must be lime-washed. Inspectors can examine working space anytime and declare fines for violation of any labour laws and regulations.

India's Ministry of Labour, in its 2008 report, classified the unorganised labour in India into four groups. This classification categorized India's unorganised labour force by occupation, nature of employment, specially distressed categories and service categories.

The unorganised occupational groups include small and marginal farmers, landless agricultural labourers, sharecroppers, fishermen, those engaged in animal husbandry, beedi rolling, labelling and packing, building and construction workers, leather workers, weavers, artisans, salt workers, workers in brick kilns and stone quarries, workers in saw mills, and workers in oil mills.



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A separate category based on nature of employment includes attached agricultural labourers, bonded labourers, migrant workers, contract and casual labourers. Another separate category dedicated to distressed unorganised sector includes toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders. The last unorganised labour category includes service workers such as midwives, domestic workers, barbers, vegetable and fruit vendors, newspaper vendors, pavement vendors, hand cart operators, and the unorganised retail.

Given its natural rate of population growth and aging characteristics, India is adding about 13 million new workers every year to its labour pool. India's economy has been adding about 8 million new jobs every year predominantly in low paying, unorganised sector.

The remaining 5 million youth joining the ranks of poorly paid partial employment, casual labour pool for temporary infrastructure and real estate construction jobs, or in many cases, being unemployed.

Employment contracts

Among the employment contracts that are regulated in India, the regulation involves significant government involvement which is rare in developed countries.

The Industrial Employment (Standing Orders) Act 1946 requires that employers have terms including working hours, leave, productivity goals, dismissal procedures or worker classifications, approved by a government body.

The Contract Labour (Regulation and Abolition) Act 1970 aims at regulating employment of contract labour so as to place it at par with labour employed directly.[8] Women are now permitted to work night shifts too (10 pm to 6 am).

This contract together with the need to put in efforts in producing goods and services imposes duties (including ancillary duties) and obligations on the part of the employees to render services with the tools provided and in a place and time fixed by the employer. And in return, as a quid pro quo, the employer is enjoined to pay wages for work done and or for fulfilling the contract of employment.

Duties generally, including ancillary duties, additional duties, normal duties, emergency duties, which must be done by the employees and payment of wages therefor. Where the contract of employment is not fulfilled or work is not done as prescribed, the principle of 'no work no pay' is brought into play.



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Wage regulation

India has numerous labour laws such as those prohibiting discrimination and child labour, those that **aim to guarantee fair and humane conditions of work, those that provide social security, minimum wage, right to organise**, form trade unions and enforce collective bargaining. India also has numerous rigid regulations such as maximum number of employees per company in certain sectors of economy, and limitations on employers on retrenchment and layoffs, requirement of paperwork, bureaucratic process and government approval for change in labour in companies even if these are because of economic conditions.

Indian labour laws are very highly regulated and rigid as compared to those of other countries in the world. The intensity of these laws has been criticised as the cause of low employment growth, large unorganised sectors, underground economy and low per capita income. These have led many to demand reforms for Labour market flexibility in India. **India has over 50 major Acts and numerous laws that regulate employers** in matters relating to industrial relations, employee unions as well as who, how and when enterprises can employ or terminate employment. Many of these laws survive from British colonial times, while some have been enacted after India's independence from Britain.

India is a federal form of government. Labour is a subject in the concurrent list of the Indian Constitution and therefore labour matters are in the jurisdiction of both central and state governments.

Both central and state governments have enacted laws on labour relations and employment issues.

The **Payment of Wages Act 1936** requires that employees receive wages, on time, and without any unauthorised deductions. Section 6 requires that people are paid in money rather than in kind. The law also provides the tax withholdings the employer must deduct and pay to the central or state government before distributing the wages.

The Minimum Wages Act 1948 sets wages for the different economic sectors that it states it will cover. Central and state governments have discretion to set wages according to kind of work and location,. State governments have their own minimum wage schedules.

The **Payment of Gratuity Act 1972** applies to establishments with 10 or more workers. Gratuity is payable to the employee if he or she resigns or retires. The Indian



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government mandates that this payment be at the rate of 15 days salary of the employee for each completed year of service subject to a maximum of ₹ 2000000.

The **Payment of Bonus Act 1965**, which applies only to enterprises with over 20 people, requires bonuses are paid out of profits based on productivity. The minimum bonus is currently 8.33 per cent of salary. This Act applies to an enterprise employing 20 or more persons.

The **Industrial Employment (Standing orders) Act of 1946**, requires employers in industrial establishments to define and post the conditions of employment by issuing so-called standing orders. These standing orders must be approved by the government and duly certified. These orders aim to remove flexibility from the employer in terms of job, hours, timing, leave grant, productivity measures and other matters. The standing orders mandate that the employer classify its employees, state the shifts, payment of wages, rules for vacation, rules for sick leave, holidays, rules for termination amongst others.

The **Industrial Disputes act 1947** regulates how employers may address industrial disputes such as lockouts, layoffs, retrenchment etc. It controls the lawful processes for reconciliation, adjudication of labour disputes.

This **Industries (Regulation and Development) Act of 195**, law declared numerous key manufacturing industries under its so-called[dubious – discuss] First Schedule. It placed many industries under common central government regulations in addition to whatever laws state government enact. It also reserved over 600 products that can only be manufactured in small scale enterprises, thereby regulating who can enter in these businesses, and above all placing a limit on the number of employees per company for the listed products. The list included all key technology and industrial products in the early 1950s, including products ranging from certain iron and steel products, fuel derivatives, motors, certain machinery, machine tools, to ceramics and scientific equipment.

This **Employees Provident Fund and Miscellaneous Provisions Act of 1952**, seeks to ensure the financial security of the employees in an establishment by providing for a system of compulsory savings. The Act provides for establishments of a contributory Provident Fund in which employees' contribution shall be at least equal to the contribution payable by the employer. Minimum contribution by the employees shall be 10-12% of the wages. This amount is payable to the employee after retirement and could also be withdrawn partly for certain specified purposes.



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The **Maternity Benefit Act of 1961** regulates the employment of the women and maternity benefits mandated by law. Any woman employee who worked in any establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefits under the Act. The employer is required to pay maternity benefits, medical allowance, maternity leave and nursing breaks.

Health and safety

The **Workmen's Compensation Act 1923**, compensates a workman for any injury suffered during his employment or to his dependents in the case of his death. The Act provides for the rate at which compensation shall be paid to an employee.

The Employees' State Insurance provides health and social security insurance. This was created by the Employees' State Insurance Act 1948.

The Unorganised Workers' Social Security Act 2008 was passed to extend the coverage of life and disability benefits, health and maternity benefits, and old age protection for unorganised workers.

"Unorganised" is defined as home-based workers, self-employed workers or daily-wage workers. The state government was meant to formulate the welfare system through rules produced by the National Social Security Board.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is enacted to regulate the condition of service of inter-state labourers in Indian labour law. The Act's purpose is to protect workers whose services are requisitioned outside their native states in India. Whenever an employer faces shortage of skills among the locally available workers, the act creates provision to employ better skilled workers available outside the state.

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