

# **LABOUR LAW IN INDIA**

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# LABOUR LAW IN INDIA

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## INDIAN LABOUR LAW

Indian labour law refers to law regulating labour in India. Traditionally, the Indian government at the federal and state levels has sought to ensure a high degree of protection for workers, but in practice, this differs due to the form of government and because labour is a subject in the concurrent list of the Indian Constitution.

The Minimum Wages Act of 1948 requires companies to pay the minimum wage set by the government alongside limiting working weeks to 40 hours (9 hours a day including an hour of break). Overtime is strongly discouraged with the premium on overtime being 100% of the total wage.

The Payment of Wages Act 1936 mandates the payment of wages on time on the last working day of every month via bank transfer or postal service.

The Factories Act 1948 and the Shops and Establishment Act 1960 mandate 15 working days of fully paid vacation leave each year to each employee with an additional 7 fully paid sick days.

The Maternity Benefit (Amendment) Act, of 2017 gives female employees of every company the right to take 6 months' worth of fully paid maternity leave. It also provides for 6 weeks' worth of paid leaves in case of miscarriage or medical termination of pregnancy.

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## **INDIAN LABOUR LAW**

**The Employees' Provident Fund Organization and the Employees' State Insurance, governed by statutory acts provide workers with necessary social security for retirement benefits and medical and unemployment benefits, respectively.**

**Workers entitled to be covered under the Employees' State Insurance (those making less than Rs 21000/month) are also entitled to 90 days worth of paid medical leaves.**

**A contract of employment can always provide for more rights than the statutory minimum set rights.**

**The Indian parliament passed four labour codes in the 2019 and 2020 sessions. These four codes will consolidate 44 existing labour laws.[2] They are: The Industrial Relations Code 2020, The Code on Social Security 2020, The Occupational Safety, Health, and Working Conditions Code, 2020, and The Code on Wages 2019.**

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## HISTORY

Indian labor law is closely connected to the Indian independence movement, and the campaigns of passive resistance leading up to independence. While India was under colonial rule by the British Raj, labour rights, trade unions, and freedom of association were all regulated by the:

- Indian Slavery Act, 1843
- Societies Registration Act, 1860
- Co-operative Societies Act, 1912
- Indian Trade Unions Act, 1926[3]
- The Trades Disputes Act, 1929[4]

Workers who sought better conditions, and trade unions who campaigned through strike action were frequently, and violently suppressed. After independence was won in 1947, the Constitution of India of 1950 embedded a series of fundamental labour rights in the constitution, particularly the right to join and take action in a trade union, the principle of equality at work, and the aspiration of creating a living wage with decent working conditions.

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## CONSTITUTIONAL RIGHTS

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, and 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 labor, while Article 24 prohibits child labour under 14 years old in a factory, mine or "any other hazardous employment".

Articles 38-39, and 41-43A, however, like all rights listed in Part IV of the Constitution are not enforceable by courts, rather than creating an aspirational "duty of the State to apply these principles in making laws".[5] The original justification for leaving such principles unenforceable by the courts was that democratically accountable institutions ought to be left with discretion, given the demands they could create on the state for funding from general taxation, although such views have since become controversial. 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 "minimize 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,[6] creates a constitutional right to codetermination by requiring the state to legislate to "secure the participation of workers in the management of undertakings"

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## WAGE REGULATION

The Payment of Wages Act 1936 requires that employees receive wages, on time, and without any unauthorized 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.[16]

The Minimum Wages Act of 1948 sets wages for the different economic sectors that it states it will cover. It leaves a large number of workers unregulated. Central and state governments have the discretion to set wages according to the kind of work and location, and they range between as much as ₹ 143 to 1120 per day for work in the so-called central sphere. State governments have their own minimum wage schedules.[17]

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 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.[18]

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 percent of the salary.[19]

Weekly Holidays Act 1942 [20]

Beedi and Cigar Workers Act 1966 [21]

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## HEALTH AND SAFETY

The Workmen's Compensation Act 1923 requires that compensation is paid if workers are injured in the course of employment for injuries, or benefits to dependents. The rates are low.

- Factories Act 1948, consolidated existing factory safety laws (replaced in 2020)
- Occupational Safety, Health, and Working Conditions Code, 2020
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 seeks to protect and provide a mechanism for women to report incidents of sexual harassment at their place of work.

## PENSIONS AND INSURANCE

The Employees' Provident Fund and Miscellaneous Provisions Act 1952 (repealed in 2020) created the Employees' Provident Fund Organization of India. This functions as a pension fund for old age security for the organized workforce sector. For those workers, it creates Provident Fund to which employees and employers contribute equally, and the minimum contributions are 10-12 percent of wages. On retirement, employees may draw their pension.[24]

- Indira Gandhi National Old Age Pension Scheme
- National Pension Scheme
- Public Provident Fund (India)

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

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The Unorganized Workers' Social Security Act 2008 (repealed in 2020) was passed to extend the coverage of life and disability benefits, health and maternity benefits, and old age protection for unorganized workers. "Unorganized" 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.

### EQUALITY

Article 14 states everyone should be equal before the law, article 15 specifically says the state should not discriminate against citizens, and Article 16 extends a right of "equality of opportunity" for employment or appointment under the state. Article 23 prohibits all trafficking and forced labour, while Article 24 prohibits child labour under 14 years old in a factory, mine, or "any other hazardous employment".

### GENDER DISCRIMINATION

Article 39(d) of the Constitution provides that men and women should receive equal pay for equal work. The Equal Remuneration Act of 1976 implemented this principle in legislation.

- **Randhir Singh v Union of India** Supreme Court of India held that the principle of equal pay for equal work is a constitutional goal and therefore capable of enforcement through constitutional remedies under Article 32 of the Constitution
- **State of AP v G Sreenivasa Rao**, equal pay for equal work does not mean that all the members of the same cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications, and various other incidents of service.
- **State of MP v Pramod Baratiya**, comparisons should focus on the similarity of skill, effort, and responsibility when performed under similar conditions

- **Mackinnon Mackenzie & Co v Adurey D'Costa**, a broad approach is to be taken to decide whether duties to be performed are similar

### **SEXUAL ORIENTATION AND GENDER IDENTITY**

The Transgender Persons (Protection of Rights) Act, 2019 bans discrimination on the basis of gender identity in employment. Furthermore, the following judicial orders ban discrimination on the basis of sexual orientation in employment.

- **Navtej Singh Johar v. Union of India**, Sexual orientation is protected under the right to privacy, and LGBT rights are protected by the Indian constitution under Article 15.
- **Pramod Kumar Sharma v. State of Uttar Pradesh**, prohibits discrimination and firing from employment on the grounds of sexual orientation.[33]

### **CASTE DISCRIMINATION**

The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 bans discrimination on the basis of caste including in employment and pursuance of profession or trade. The legislation has often been called the "world's most powerful anti-discrimination law".[34]

### **MIGRANT WORKERS**

Interstate Migrant Workmen Act 1979, It is now replaced by the Occupational Safety, Health and Working Conditions Code, 2020

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## VULNERABLE GROUPS

**Bonded Labour System (Abolition) Act 1976, abolishes bonded labour, but estimates suggest that between 2 million and 5 million workers still remain in debt bondage in India.[35]**

### Domestic workers in India

**Child labour in India is prohibited by the Constitution, article 24, in factories, mines and hazardous employment, and under Article 21 the state should provide free and compulsory education up to a child is aged 14.[36] However, in practice, the laws are not enforced properly.**

## STATE LAWS

**Each state in India may have special labour regulations in certain circumstances. Every state in India makes its own regulations for the Central Act. The regulations may vastly differ from state to state. The forms and procedures used will be different in each state. The Central Government is in the process on simplifying these multiple state laws into 4 Labour Codes. They are Code on 1. Wages, 2. Social Security and Welfare, 3. Industrial Relations, 4. Occupational Safety and Health and Working Conditions**

## International comparison

The table below contrasts the labour laws in India to those in China and the United States, as of 2022.

| Relative regulations and rigidity in labour laws <sup>[46]</sup>    |  |                                     |                                     |
|---|--|-------------------------------------|-------------------------------------|
| Practice required by law  | <a href="#">India</a>                              | <a href="#">China</a>               | <a href="#">United States</a>       |
| <b>Minimum wage</b> (US\$/month)                                    | ₹12,500 (US\$160) /month <sup>[47]</sup>           | 182.5                               | 1242.6                              |
| <b>Standard workday</b>   | 8 hours  | 8 hours                             | 8 hours                             |
| <b>Minimum rest while at work</b>                                   | one hour per 6-hour                                | None                                | None                                |
| <b>Maximum <u>overtime</u> limit</b>                                | 125 hours per year <sup>[attribution needed]</sup> | 432 hours per year <sup>[48]</sup>  | None                                |
| <b>Premium pay for overtime</b>                                     | 100%   | 50%                                 | None                                |
| <b>Dismissal due to <u>redundancy</u> or closure of the factory</b> | Yes, if approved by local labor department         | Yes, without approval of government | Yes, without approval of government |
| <b>Government approval required for 1 person <u>dismissal</u></b>   | Yes  | No                                  | No                                  |



## **Labour Laws in India and New Amendments 2022**

### **Labour laws in India**

**Labour laws in India are the area of law which articulates the relationship between employees and employers. It plays an important role in protecting the rights of employees or labours, their union, and their wages and provides guidance for peaceful employment.**

**The Centre has passed a new code for labour laws in India which is applicable from the financial year 2022 – 2023. Since labour laws in India are subject to the concurrent list, the Centre seeks to implement them in all states.**

**This code is applicable across all sectors whether it is service trade, manufacturing etc. is relevant to all skilled, semi-skilled, unskilled, supervisory, managerial etc.**

**The new code is applicable across India from July 1st. This law or code or new code has changed employees' in-hand salary, working hours, social security and occupational relationship.**

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## **Impact of the New Wages Code in 2022**

- 1. Employers now need to make a full and final settlement of employees' salary within 2 days of either termination, resignation or dismissal. Earlier employers would make settlements of employees within 60 to 90 days from the last working day of the employee.**
- 2. Maternity leave for female employees is increased up to 26 weeks and they would be given the option not to work the night shift.**
- 3. After implementation of this code, Government employees will get 30 days in a year, while for defense officials this number will go up to 60 days in a year.**
- 4. Employees working 8 hours a day will get one leave in a week while employees working 9 hours a day will get two days leave in a week. Employees working 12 hours a day will get a 3-week off. But employees working hours will be restricted to up to 48 hours a week.**
- 5. Employees will not get more than 50% allowance of their salary.**
- 6. Employees' take-home salaries will reduce after implementing the code due to a rise in PF contribution.**

**Many labour laws have been enacted by the central government and the State government not only for the protection of workers' health and wages but also to protect workers against discrimination in the workplace because it ensures a proper relationship between employer and employee for a smooth working environment for industrial peace, to impart discipline among workers and also to take disciplinary action against indiscipline and disputed workmen in the work environment.**

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THANK YOU