

WHAT IS WORK, EMPLOYMENT AND WAGE?

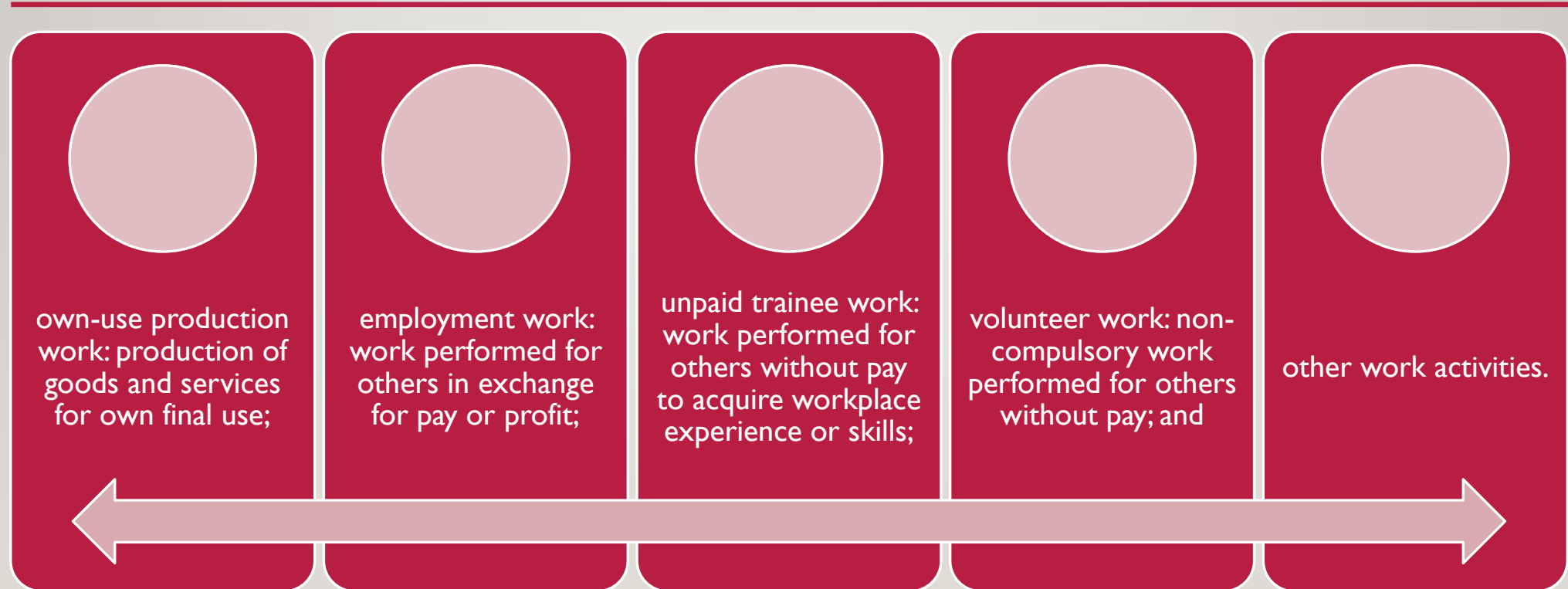


INTRODUCTION

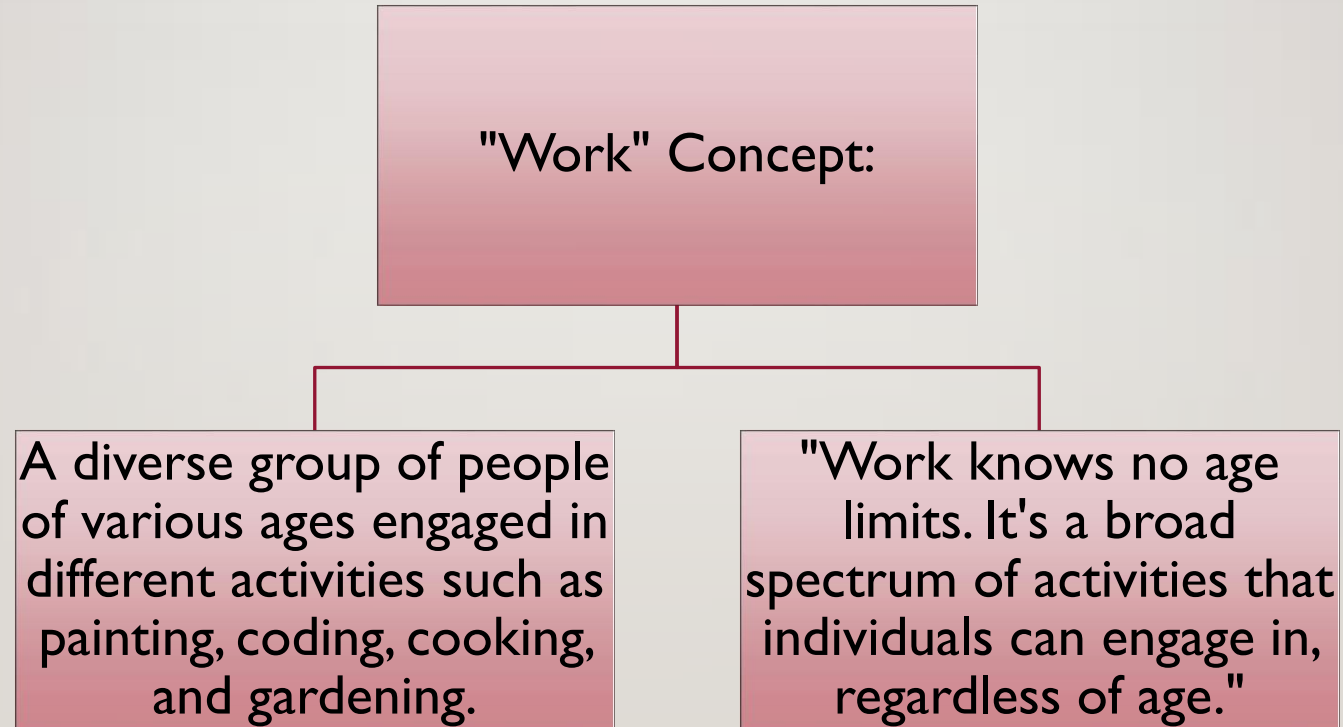
- Employment = any activity to produce goods or provide services for pay or profit.
- Work = any activity performed by persons of any sex and age to produce goods or to provide services for use by others or for own use.

Employment is a very specific form of work. Other forms of work include own-use production work, volunteer work and unpaid trainee work.

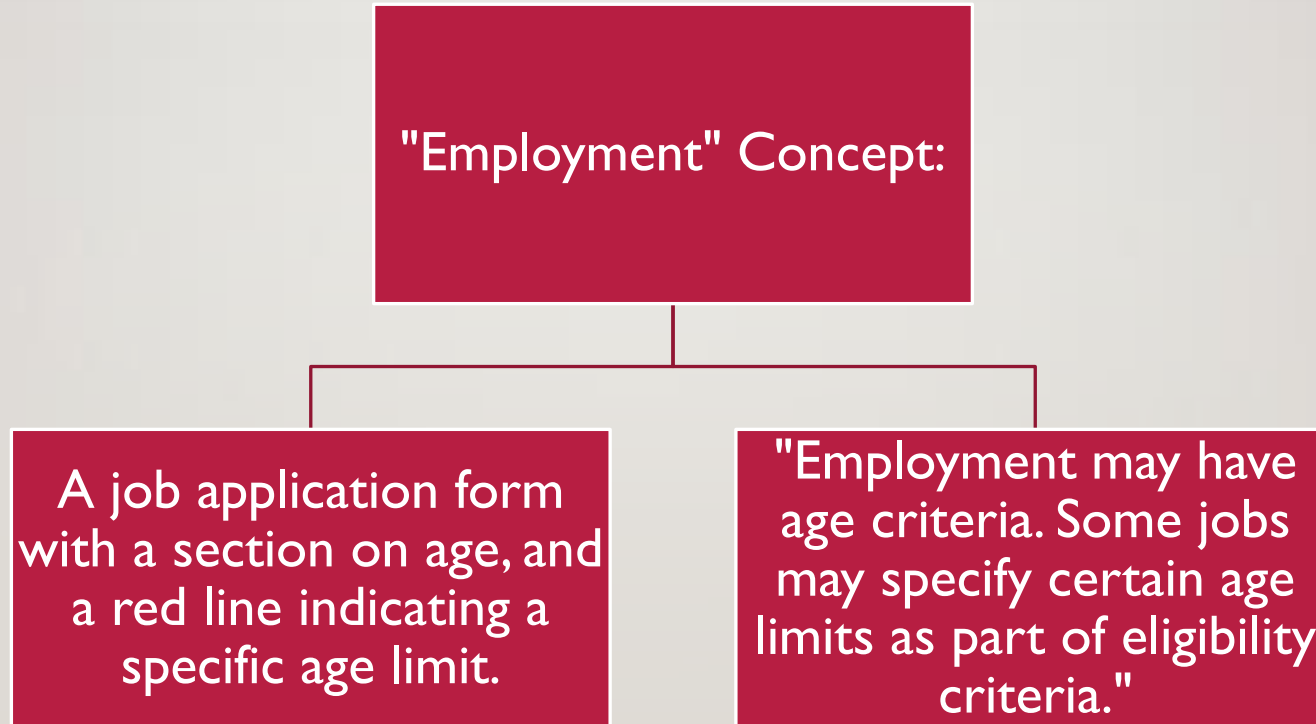
FORMS OF WORK



ILLUSTRATION



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TIMES OF INDIA: 22 JAN, 2021

Value of homemaker's work same as hubby's at office: SC

Dhananjay Mahapatra / TNN / Updated:
Jan 22, 2021, 08:12 IST

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NEW DELHI: The [Supreme Court](#) on Tuesday said the value of a woman's work at home was no less than that of her office-going husband and enhanced the compensation to relatives of a couple who died when a car hit their scooter in April 2014 in Delhi.

A bench of [Justices N V Ramana](#) and Surya Kant enhanced the compensation by Rs 11.20 lakh to Rs 33.20 lakh to be paid to the father of the deceased man by the insurance company with 9% annual interest from May 2014.

OSHWC CODE:2020

The Occupational Safety Health and Working Conditions Code (OSHWC Code), 2020 contains separate definitions for the terms 'employee' and 'worker' respectively.

Section-2(t) of the OSHWC Code, 2020 defines employee in respect of establishments as:

A person (other than an apprentice engaged under **the Apprentices Act, 1961**) employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied; and

A person declared to be an employee by the appropriate Government.

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Section-2(zzi) defines a worker as any person employed in any establishment 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 working journalists as well as sales promotion employees. However, it does not include the following persons:

Those who are subject to the Air Force Act, 1950 or the Army Act, 1950 or the Navy Act, 1957; or

Those are employed in the police service or as officer or other employee of a prison; or

Those who are employed in managerial or administrative capacity

Those who are employed in supervisory roles drawing wages exceeding eighteen thousand rupees (Rs. 18,000/-) per month or an amount as may be notified by the Central Government from time to time.

WHY LEGISLATION REQUIRED?

Indian labour laws recognize the value of work as the cornerstone of social and economic progress.

These regulations address the variety of work, from official employment in factories to informal employment in the unorganized sector, and emphasize the value of providing safe and decent working conditions.

The law guarantees that those who engage in various jobs have a right to respect, acceptable pay, and access to essential benefits.

LEGISLATIVE FRAMEWORK

The rules outline different employment contracts, including contractual, temporary, and permanent ones, each with certain rights and obligations.

The framework strives to offer job stability while accommodating the changing nature of employment in a dynamic economy.

Additionally, employment-related regulations guard against exploitation, guarantee just wages, and advance gender equality.

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- The commitment of the legislative framework to social justice, gender equality, and equitable remuneration highlights its part in forming a more inclusive and progressive society where work is honorable, employment opportunities are plentiful, and salaries represent the value of labour.
- Equal Remuneration Act, Payment of Wages, Minimum Wage and Maternity Act.

Creating the ideal conditions for long-term economic growth and social justice in the workplace

WAGE CODE: A LEGISLATIVE FRAMEWORK

A key component is found in Section 2(y), which carefully defines 'wages' to include all monetary compensations granted to employees, including base salary, allowances, and bonuses, but omitting particular elements like gratuities and some employer-contributed funds.

Section 2(z) defines the term 'worker,' defining the people to whom the Code extends its wage-related rules.

Section 3 of the Code, which upholds the notion of prompt and complete compensation by requiring employers to return salaries on time and in whole, ideally no later than the seventh day after the pay period.

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Section 9 digs into allowable salary deductions, specifying parameters for legal deductions, including fines, absences, and damages, and establishing restrictions to prevent unfair exploitation.

Sections 14 and 17 require the maintenance of records, registers and providing wage rate notices.

Section 22 describes the procedure for filing complaints and identifies the body in charge of adjudication. It also outlines the procedures for resolving grievances regarding underpaid pay.

CONCEPT OF MINIMUM WAGES IN INDIA

The Code's provisions, founded on the idea of **just remuneration**, highlight the significance of Section 9, which requires companies to pay workers more than the **legal minimum wage** to uphold the dignity of labour.

This minimum wage framework considers several parameters, including geographic location, skill level, and type of employment, making it easier to establish different wage ceilings for various locations and vocations.

The Code seeks to **reduce pay inequality** and avoid worker exploitation by considering these various aspects, helping to create a more equitable and balanced economic environment.

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A Central Advisory Board and State Advisory Boards, made up of members from companies and employees, must be established to guide minimum wage fixation.

The Wage Code's minimum wage requirements open the door for a more inclusive, responsive, and fair wage structure that caters to workers' varied demands while advancing social justice and sustainable economic growth.

In Sanjit Roy Vs. State of Rajasthan (1983), the Supreme Court held that the Exemption Act in so far as it excluded the applicability of the Minimum Wages Act 1948 to the workmen employed in famine relief work is “clearly violative” of Article 23.

EQUAL REMUNERATION AND GENDER EQUALITY

The Wage Code, 2019 recognizes the necessity of eliminating wage discrimination based on gender and shows a persistent commitment to equitable pay and gender equality.

Section 4 of the Code sets the fundamental idea of equal remuneration for equal effort or work of a similar type, regardless of gender, as the cornerstone of this endeavor.

Section 15 of the Code, which prohibits gender-based discrimination in hiring, compensation, and working conditions, strengthens one of the fundamental tenets of gender equality.

India makes substantial steps to address wage discrimination, promote the ideals of gender equality, and create a workforce that is inclusive, diverse, and reflective by including these gender-focused measures into the fabric of the Wage Code.

PRACTICAL APPROACH

- Problem-Solving Question:
- In a dynamic workplace where diversity and inclusion are key priorities, the HR department at XYZ Corporation is conducting a review of its remuneration policies. The company acknowledges the importance of adhering to Section 4 of the Code, ensuring equal pay for equal work. However, during the analysis, the HR team identifies a gender pay gap in certain job roles.

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- Interesting Facts:
 - The company has a well-documented commitment to gender equality, and a diverse workforce is one of its strengths.
 - Recent industry research indicates that a gender-diverse workforce often leads to increased innovation and better financial performance.
 - The average pay for female employees in the identified roles is 15% less than that of their male counterparts, even though their performance metrics are on par.

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- Question:
 - As the HR manager, how would you address and rectify the gender pay gap in the identified job roles while aligning with the principles set out in Section 4 of the Code? Propose a comprehensive plan that not only ensures compliance with equal remuneration but also fosters an inclusive and equitable work environment.
 - Consider the interesting facts provided to enhance the effectiveness of your strategy.

LANDMARK JUDGMENT

- In the case of *Budhan Choudhary v. the State of Bihar*, the Supreme Court held that the concept of equality does not require that the law treat all individuals the same, but rather **classification made between individuals must be reasonable**. Hence, the classification must be grounded on two rationals, firstly, on **an intelligible differentia** which distinguishes people of one group from other groups, secondly, such differentia must have a **rational relation to the object** sought to be achieved. Although, the facts of the case itself did not deal with the idea of 'equal pay for equal work', however, the principles laid down have been significantly relied on by the courts in the cases involving such issues.

STANDARD VACUUM REFINING COMPANY OF INDIA LTD. VS. THEIR WORKMEN

The central issue revolved around the management's decision to alter the existing wage structure. The company sought to introduce a new wage system, which the workmen found unfavorable and contested. The workmen argued that the **modifications were unjust, leading to a dispute** over the terms of employment and remuneration. The case, therefore, involved a careful examination of the legality, fairness, and implications of the proposed changes to the wage system, shedding light on the intricacies of industrial relations and the balance between the interests of management and labour.

India's wage-related legal framework emphasizes the importance of reasonable and fair wage distribution.



CHALLENGES AND ISSUES

- **Informal and Unorganized Sector**

- Self-employed people, contract workers, and small-business owners are all included in India's informal and unorganized sector, which comprises a sizeable portion of the labour force. To provide these workers with social security benefits, including maternity, old age, and health care requirements, the *Unorganized Workers' Social Security Act, 2008* was established.
- In the case of *Safai Karamchari Andolan v. Union of India & Ors.* highlighted the need for manual scavengers to be rehabilitated and urged their transfer to alternate livelihoods while the practice was outlawed. Furthermore, the 1985 case *Rural Litigation & Entitlement Kendra (RLEK) v. State of U.P.* stressed that the right to life is inextricably linked to the right to a livelihood, defending the freedom of rural labourers to make a living off of their ancestral lands.

WAGE DISPARITIES AND EXPLOITATION

- In the case of *Mangalore Ganesh Beedi Works v. State of Karnataka* is a seminal case emphasizing the importance of resolving gender wage discrepancies. The Indian Supreme Court stressed the idea of ‘equal pay for equal work’ in this case and decided that women working in the beedi business must be paid the same as their male colleagues for carrying out comparable duties. This judgment established a precedent for addressing gender-based wage discrimination and reaffirmed the significance of pay parity and equality in the workplace.
- 2003 (5) KarLJ 26

TECHNOLOGICAL ADVANCEMENTS AND CHANGING NATURE OF WORK

The nature of work has undergone a fundamental change due to technological improvements, with the rise of gig work playing a big part in India's contemporary labour market. The issues brought on by this evolving nature of employment are being addressed by developing new labour rules.

Gig workers are officially recognized and protected under the new labour laws. There are provisions in the Code on Social Security, 2020, that aim to give gig workers in India access to social security benefits.

FOOD CORPORATION OF INDIA & ORS. V. JAGDISH BALARAM BAHIRA & ORS

- The court held that even though it wasn't specifically about gig work, this case made a point about the value of defending the rights of contract or temporary workers who performed work comparable to that of regular employees. The principle of equal pay for equal labour, regardless of the type of employment, was upheld by the Supreme Court, which declared that temporary workers performing the same or equivalent job as permanent employees should be entitled to the same salary. This idea has larger applications for the gig economy and the requirement that gig workers be fairly compensated for their services.
- CIVIL APPEAL NO. 1559 OF 2022.

RECENT REFORMS AND FUTURE DIRECTIONS

- Work from Home.
- Work from Anywhere.
- Remote Work.
- Cross border Work from anywhere.
- Gig-working.
- Work from Specific Locations.

CONCLUSION

- The legal landscape around work, employment, and wages is intricate and calls for a careful balance between regulatory requirements and the rights that workers are naturally entitled to.
- To create a **fair environment that protects the rights of both employers and employees**, it is crucial to articulate a thoughtful range of labour legislation.
- These rules are essential for creating **a transparent, honorable, and just operational environment, where employees** can diligently give their skills without worrying about undue subordination.

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- A crucial requirement is reconciling the conflict between economic vitality and labour laws. Inadequate oversight may unintentionally promote labour exploitation and spark public unrest, while an oversupply of regulatory requirements could stifle innovation and hinder the creation of jobs.
 - Therefore, a strategy is required, based on flexible legal frameworks that accommodate the changing nature of employment, including phenomena like the rising gig economy and quickening technology development.