



A Note on Restriction on working hours of Women in IT/ITES

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Introduction

Vertolex, a legal outsourcing company, offers superior quality legal process outsourcing services having faster turnarounds and compelling savings employing best of breed expertise, processes and technology. It's our constant endeavour to help businesses with quality policy notes which will help the business executives to understand the complex issues related to law and make effective decisions.

IT/ITES industry in India is constantly growing and providing excellent employment opportunities. One of the major reasons for IT/ITES outsourcing to India was the extended working day i.e. timezone difference. Being white collar working environment significant part of the workforce is seen to be the woman power. The timezone working requirements and constitutional rights allowed night shift for women. But the unfortunate incidences of atrocities against woman employees during night shifts have got the topic of safety, responsibility etc. on anvil. This note will help understand the laws and legislations in place to make effective decisions related to working hours of women staff.

Background

Section 66 of the Factories Act, 1948 prohibits employment of women in factories between 7.00 P.M. and 6.00 A.M. This section was incorporated in the Act, after India's ratification of the International Labour Organisation (ILO) Convention No. 89. The State Governments, however, have the power to vary the limits laid down under clause (b) of subsection (1) of the said section so as to permit employment of women in any factory or class of factories, but no such authorisation can permit employment of women between 10.00 P.M. and 6.00 A.M.

History of Amendments

In the recent past, many women's organisations have filed Writ Petitions in certain High Courts seeking, inter alia, directions for amending the Factories Act, 1948 with a view to permitting night work by women on the ground that the provisions of the Act are discriminatory and gender biased. Some of the Courts have allowed employment of women during the night shift and two High Courts have struck down clause (b) of sub-section (1) of section 66 of the aforesaid Act as unconstitutional.

Govt of Maharashtra to attract IT/ITES companies declared IT/ITES policy 2003, which says "To enable IT and ITES units to work efficiently on 24x7x365 basis, provisions under the Shops and Establishments Act have been relaxed for working hours, work shifts and employment of women" and goes further. "Vehicles of IT and ITES units transporting women workers during night hours will be issued special passes/permission".

In June, 1990, the General Conference of ILO also had adopted a Protocol relating to Convention No. 89, known as the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948. Under the provisions of the Protocol, the competent authority in a country under its national laws and regulations is authorised to modify the duration of the night shifts or to introduce exemption from the prohibition within certain limits. The Protocol has since been ratified by India and has come into effect on 21st November, 2004. On 16th August 2005, The factories(Amendement) Act 2005 was introduced in the Loksabha. The Bill proposed to amend section 66 of Factories act 1948, so as to provide flexibility in the

matter of employment of women during night shift with adequate safeguards, dignity, honour and transportation.

Analysis of related Laws, Acts & Court Decisions

1. **Constitution of India Article 14,15,16 under Right of Equality** Art 14 deal with equality before law. Art 15 deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Art 16 deals with Equality of opportunity in matters of public employment.
2. **Factories Act 1948 Section 66 (b) no woman shall be required or allowed to work in any factory except between the hours of 6 am and 7 pm.** Provided that the state Govt may, by notification in the official Gazette, vary the limits laid down in the clause(b), *but so that no such variation shall authorise the employment of any woman between the hours of 10 pm and 5 am.*
3. **Bombay Shop & Establishment Act 1948. Section 33 Opening and closing hours for young person and women** (3) No such woman shall be required or allowed to work in any establishment after 9:30 pm. The Schedule II of this act exemptions [476] for software and information technology Establishments including Customer Service Care Center operating through Computer in Maharashtra State says Section 33(3)
 - (i) Special arrangement should be made for protection of female employees working before 6 am and after 8:30 pm including transport.
 - (ii) Female employees should be provided job jointly or in group
 - (iii) Arrangement of rest room and lockers should be made for woman employees.

Court Judgements

K.S. Triveni vs Union of India 2002 III CLR 690

The bone of contention in this writ petition was the restriction placed on the employment of women in Factories Act under section 66(1) (b) of the Act. The challenge was on the ground of discrimination and the provision was ultravires.

It was held by the Madras High Court that S.66(1)(b) of the Factories Act is unconstitutional.

Following this judgment S.66(1)(b) was struck down as unconstitutional and the Government ordered certain safeguards to be provided by the Employer to women working during night shifts.

Som Mittal Vs Govt of Karnataka Criminal Appeal No. 206 of 2008-09-01

Som Mittal had filed petition to relieve himself from the prosecution proceedings in the case of Pratibha Murthy, BPO employee at Hewlett Packard Global Soft Ltd, Bangalore, who was raped and murdered by a cab driver while going for her duty. Under Section 25 of Karnataka Shop and commercial Establishments Act, 1961, no women is allowed to work in any establishment after 10 PM and before 6AM. Here the Company taking advantage of relaxation given by the State Government in its Official Gazette to employ women to work during night shifts for certain establishments including IT and ITES industry, employed women to work during second and third shift. The company failed to comply with the adequate safety and security measures drafted by Government in the same Gazette for women working during night shift. In this case it was held that even though sec 3(1) of Karnataka shop and Establishment Act states that Nothing in this Act applies to (h) person occupying management position of any Establishment, the Courts relied on the Definition of "Employer" defined in Sec 2(h) which states

that - Employer means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes members of the family of an employer, a manager, agent or other person acting in the general management or control of an establishment. Hence the appellant Mr. Som Mittals plea to relieve himself from the case of Pratibha Murthy was dismissed by the Hon'ble Court.

Inference

The K.S.Triveni in case brought changes to sec 66 of The Factories Act, wherein the restriction on working hours of women was relaxed for certain industries, empowering the State governments to draft time limitations or completely relax the restriction for industries like Software Technology and other computer related jobs. Taking into considerations Art.14, 15 and 16 of Constitution of India the Hon'ble Courts imposed right to equality to everyone.

But even though State Govt in its official Gazette, allowed women to work during second and third shifts ,the onus of responsibility lied on the employer to provide adequate security to women employees . The courts held "Employer" which includes company management responsible for any atrocities towards woman employees after leaving home for duty in company provided transport and till the time they return to their residence .

Even though IT and ITES policy,2003 of Govt of Maharashtra allows women to work during 10PM to 6AM, the establishments need to follow certain rules and guidelines laid by the Government:--

- i) No women is allowed or required to work in any establishment after 9.30 Pm
- ii) Special arrangements should be made for protection of female employees working before 6 AM and after 8.30 PM including transport
- iii) Female employees should be provided job jointly or in group
- iv) Arrangement of rest rooms and lockers should be made for all women employees.
- v) No women employee shall be asked to come for night shift for more than 15 days
- vi) Under clause 9.1 of IT and ITES policy 2003 of Govt of Maharashtra it is proposed that every vehicle transporting women employees be issued special pass
- vii) Every company should provide a security guard with the vehicle for women employee.

References

The Factories Act, 1948

IT and ITES policy 2003-Govt of Maharashtra

ASSOCHAM Research Study, Night Shift for Women: Growth & Opportunities

The factories(Amendment) Act 2005

Constitution Of India

The Bombay shop and Establishment Act,1948

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Karnataka Shop and Commercial Establishments Act, 1961