



WOMEN'S NIGHT SHIFT SAFETY: A SENSE OF RESPONSIBILITY

WEDNESDAY WISDOM
09-10-2024





Introduction [1]

The Constitution of India guarantees equal opportunities to all its citizens, irrespective of caste, creed, colour, or sex. However, until 2005, women faced restrictions in night shift employment due to restrictions provided in labour laws. A landmark judgment[2] by the Madras High Court in 2001 challenged these discriminatory provisions, paving the way for better gender equality in the workplace.

The Hon'ble Madras High Court ruled that Section 66(1) (b) of the Factories Act 1948 was (a) violation of the constitutionally guaranteed fundamental right to equality enjoyed by women (ii) was discriminatory to women on sole ground of sex and (iii) interfered with the fundamental right of petitioners to carry out their fundamental right to practice any profession or to carry on any occupation, trade or business.

State-Level Regulations and Safety Measures

The ruling of The Madras High Court introduced a paradigm shift with respect to diversity, equality and inclusion in the workplaces. It opened doors of opportunities with multiple states permitting engagement of women employees in night shifts. Various states introduced regulations and amended their respective Shops and Establishment Act ("SAE Act") permitting the employment of women in night shifts in commercial establishments following the guidelines laid down in Madras High Court Judgment[3].

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] Smt. R. Vasantha v. Union of India, [(2001) 1 ILLJ 843 Mad

[3] Each State has its own respective Shops and Establishments Act, considering that labour is a concurrent subject under the Constitution.

These regulations provide for specific safety and security measures to be adopted by each state which requires the employers to protect women employees employed in the night shift such as:

1. **Consent:** To obtain consent from women employees for night shift work.
2. **Minimum number of women employees:** Ensuring a minimum number of women are employed in night shifts to maintain a safe working environment.
3. **Transportation:** Providing transportation for women employees, including pickup and drop-off facilities to the women employees at their doorstep.
4. **Sexual Harassment Committee:** Ensure to form sexual harassment committee and abide by the provisions of Sexual Harassment of Women at Workplace (Prevention, prohibition and Redressal) Act, 2013.
5. **Driver and security guard details:** Maintaining accurate records of drivers and security guards involved in transportation services.
6. **Police verification:** Conducting police verification for all drivers engaged in transportation services.



While most states require employers to obtain consent from women employees for night shift work, the specific regulations regarding working hours and security measures can vary. Here's a comparison of regulations in a few states:

Notified Regulations to amend SAE Act	State	Night Shift Timing	Additional safety measures
Haryana Notification ⁴ provides the condition for exemption under Section 30 of Punjab SAE Act, 1958 ("PSCEA") permitting the women to work in night shift.	Haryana	7 pm to 6 am	<ul style="list-style-type: none"> a. Total number of women employed in night shift shall not be less than 2/3rd of the total strength. b. Sufficient women security shall be provided in entry and exit point during night shift. c. Transportation provided to women shall have female security guard and each vehicle shall have CCTV. d. 1/3 of shift-in charge or supervisors shall be women.
Karnataka Notification ⁵ to amend section 25 of Karnataka SAE Act, 1961 to allow women to work at night shift.	Karnataka	8 pm to 6 am	<ul style="list-style-type: none"> a. Total number of women employed in night shift shall not be less than 5. b. Transportation provided to women shall have security guard and each vehicle shall have GPS tracking and monitoring system.
Maharashtra added a provision to the Maharashtra SAE (Regulation of Employment and Conditions of Service) Rules, 2018 ("SEA Rule") allowing commercial establishments to employ female employees in night shift.	Maharashtra	9:30pm to 7 am	<ul style="list-style-type: none"> a. Total number of women employed in night shift shall not be less than 3. b. Safe, secure and separate transportation shall be provided to women working in night shift.

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Applicability of SAE Act to IT/ ITES Sector.

In Maharashtra, certain provisions of the SEA Act's regarding working hours, shifts, and the employment of women have been relaxed under the state's IT Policy[6] for the IT/ITES sector. While establishments registered under the Maharashtra SAE Act, including those in the IT/ITES sector, are not prohibited from employing women in night shifts, compliance with workplace sexual harassment laws is mandatory. Additionally, it is essential for establishments to implement robust security measures as per the applicable laws, for the safe transportation of female employees. Neglecting these responsibilities not only jeopardizes staff safety but can also significantly damage company's reputation.

Case Study

The tragic 2007 incident involving the rape and murder of a Wipro BPO employee by a cab driver provided by the company in Pune brought the issue of women's safety during night shifts into sharp focus. The Pune Sessions Court convicted two individuals in this case and sentenced them to death. Upon appeal[7], the Bombay High Court upheld the capital punishment and stressed the urgent need to enhance the safety and security of women commuting to work at night. The Court urged both government and private organizations to establish clear guidelines to improve safety measures.

Implementing the compliance obligations

To implement the aforesaid obligations, employers must implement clear policies and enter into robust contracts with transport service provider. Certain salient features which may be incorporated in the contractual obligations of transport service providers are listed below:

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[7] Station vs. Purushottam Dashrath Borate Appeal no. 632/ 2012 https://indiankanoon.org/doc/85931845/

- **Safety Measures**

- Background checks: Conduct thorough background checks for all drivers and security personnel.
- Vehicle maintenance: Ensure regular maintenance and inspections of vehicles to maintain safety standards.
- GPS tracking: Install GPS tracking devices in all vehicles to monitor location and movement.
- Emergency equipment: Equip vehicles with necessary emergency equipment, such as first aid kits and fire extinguishers.

- **Emergency Procedures**

- Comprehensive coverage: Ensure comprehensive insurance coverage for all vehicles, including liability insurance for passengers.
- Additional coverage: Consider additional insurance coverage, such as accident insurance for employees.

- **Liability and Indemnification**

- Define the liability of service provider clearly in the contract and include provisions for indemnification to protect from certain losses or damages.

- **Confidentiality and data protection**

- Data protection: Implement measures to protect the privacy and confidentiality of women employees' personal information.
- Non-disclosure agreements: Require service providers to sign non-disclosure agreements to maintain confidentiality.

- **Quality of Services**

- **Service level agreements:** Establish clear service level agreements (SLAs) outlining the expected quality and standards of service.

- **Accountability and Monitoring**

- **Regular monitoring:** Implement regular monitoring and evaluation mechanisms to assess the effectiveness of the services provided.
- **Performance reviews:** Conduct periodic performance reviews with employees to address any issues or concerns.
- **Dispute resolution procedures:** Establish procedures for resolving disputes or disagreements between the parties.

Contractual Obligation of Employer and Security Guard Service Provider

The contract with Security Guard Service Provider should include the following additional obligations other than the obligations provided herein above:

1. **Emergency handling training:** Ensure security guards are trained in handling emergency situations, such as medical emergencies, fire incidents, and security breaches.
2. **Reporting procedures:** Require security guards to follow specific procedures for reporting and documenting incidents.
3. **Essential skills training:** Provide training in conflict resolution, first aid, and emergency response.
4. **Transportation of female security bodyguard:** Ensure female security guards working in night shifts are picked up and dropped off to their doorstep. The responsibility of safe pick-up and drop of female security guard shall always be of the service provider.

Conclusion:

Working women are a significant part of India's labour market and play a vital role in both the household and national economy. They deserve the respect and recognition that reflects their contributions to society. As the socio-cultural landscape evolves, women are entering a transformative era. Discrimination against women in any form is unacceptable; their rights must be prioritized, whether it's equal employment opportunities and compensation or the freedom to choose their professions, or access to promotion and benefits.

Celebrating equal opportunities will need a change in mindset which will ensure effective implementation of anti-discrimination laws, that will make women feel secure and valued at the workplace. Women's dignity can be truly respected only when their working conditions do not compromise their moral and ethical values in any manner.

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