

**STANDING COMMITTEE ON LABOUR AND WELFARE
(2003)**

(THIRTEENTH LOK SABHA)

**MINISTRY OF LABOUR
THIRTY-EIGHTH REPORT**

THE FACTORIES (AMENDMENT) BILL, 2003

**LOK SABHA SECRETARIAT
NEW DELHI**

December 2003/Agrahayana 1925 (Saka)

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**COMPOSITION OF THE STANDING COMMITTEE ON LABOUR AND WELFARE
(2003)**

Dr. Sushil Kumar Indora-CHAIRMAN

**LOK SABHA
MEMBERS**

2. Shri Ashok Argal
3. Shri Denzil B. Atkinson
4. Smt. Sandhya Bauri
5. Shri Joachim Baxla
6. Shri Padmanava Behera
7. Shri Ashok Kumar Singh Chandel
8. Shri Manibhai Ramjibhai Chaudhuri
9. Shri Bhim Prasad Dahal
10. Shri Krishan Lal Diler
11. Shri M. Durai
12. Shri Virendra Kumar
13. Shri Haribhau Shankar Mahale
14. Shri Parsuram Majhi
15. Shri Ramjee Manjhi
16. Shri Bherulal Meena
17. Shri Punnu Lal Mohale
18. Shri Dalpat Singh Parste
19. Shri Raj Narain Passi
20. Shri R.S. Patil
21. Shri Varkala Radhakrishnan
22. Shri Madhab Rajbangshi
23. Dr. Vukkala Rajeswaramma
24. Shri Ramshakal
25. Dr. D.V.G. Shankar Rao
26. Shri Y.S. Vivekanand Reddy
27. Shri Brij Bhushan Sharan Singh
28. Shri Khelsai Singh
29. Shri Mansukhbhai D. Vasava

RAJYA SABHA

30. Shri B.P. Apte
31. Shri Jhumuk Lal Bhendia
32. Shri Debabrata Biswas
33. Ms. Pramila Bohidar
34. Shri Indramoni Bora
35. Shri Urkhao Gwra Brahma
36. Shri Sukhdev Singh Libra
37. Dr. (Mrs.) Kum Kum Rai
38. Shri Kanshi Ram
39. Shri Dilip Ray
40. Shri Jibon Roy
41. Smt. Savita Sharda
42. Shri Uday Pratap Singh

SECRETARIAT

- | | | |
|---------------------|---|--------------------|
| 1. Shri N.K. Sapra | - | Joint Secretary |
| 2. Shri J.P. Sharma | - | Director |
| 3. Shri S.K. Saxena | - | Assistant Director |

INTRODUCTION

I, the Chairman of the Standing Committee on Labour and Welfare having been authorised by the Committee to submit the report on their behalf present this Thirty-eighth Report on the Factories (Amendment) Bill, 2003 of the Ministry of Labour.

2. The Bill was introduced in Lok Sabha on 29 July 2003 and was referred to the Committee on 26 August 2003 by the Hon'ble Speaker, Lok Sabha under Rule 331E(b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report. The Bill seeks to amend section 66 of the Factories Act, 1948 to allow employment of women workers between 7 p.m. and 6 a.m., provided the occupiers of the factories make adequate safeguards as regards occupational safety and health, equal opportunity for women workers, adequate protection of their dignity, honour and safety and their transportation from the factory premises to the nearest point of residence.

3. The Committee at their sitting held on 7 October 2003 took evidence of the representatives of the Ministry of Labour and decided to invite views /suggestions from the Trade Unions, women organizations, employers and other interested groups on the proposed amendments in the Bill.

4. The Committee wish to express their sincere thanks to the organizations for sending valuable views in the memoranda submitted by them to the Committee.

5. The Committee also wish to express their thanks to the officers of the Ministry of Labour for placing before them detailed written notes on the subject and for furnishing the desired information in connection with the examination of the Bill.

6. The Committee took up the Bill for consideration at their sitting held on 19 December 2003. The Report was considered and adopted by the Committee at the same sitting.

7. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report.

DR. SUSHIL KUMAR INDORA,
Chairman,
Standing Committee on Labour and
Welfare.
NEW DELHI;
December 2003
Agrahayana 1925(Saka)

REPORT

BACKGROUND

The Factories Act, 1948 vide section 66 provides that no women worker would be employed in the factories between 7 p.m. and 6 a.m. This section was incorporated after India's ratification of the International Labour Organisation (ILO) Convention No.89 in the Factories Act, 1948. However, the provision in the Act authorises the State Government to frame rules for employment of women during night hours in fish curing or fish canning factories to prevent damage to, or deterioration in any raw material, but no such authorisation can permit employment of women between 10p.m. and 5 a.m.

2. Many Women Organisations have filed Writ Petitions in the various High Courts seeking directions for amending the Act to provide for night work by women on the ground that the existing provisions of the Act are discriminatory. The High Court of Bombay in its Judgement dated 10 June 1999 has passed interim order allowing deployment of women in Santacruz Electronic Export Processing Zones (SEEPZ) in the night shift. The High Court of Tamil Nadu and the High Court of Andhra Pradesh in their judgements have struck down section 66(1)(b) of the Factories Act, 1948 as unconstitutional. The matter, however, has been taken up by the respective State Governments in the High Courts of Tamil Nadu and Andhra Pradesh.

3. Proposals have been received from the Ministries of Commerce and Information Technology for employment of female workers in the third shift in designated industries such as the electronic hardware and software units, garments and assembly service sector particularly, in all the Export Promotion Zones (EPZs), the Export Oriented Units (EOUs) and Special Economic Zones (SEZ) so as to utilise the full installed capacity and also for making these industries more competitive in the global market. A similar proposal has also been received from the Department of Women and Child Development informing that in the 'National Policy for the Empowerment of Women' approved by the Cabinet on 28 March 2001 (Case No. 88/13/2001) it had been clearly stipulated as follows:

"5.7 Women at present cannot work in night shift in factories even if they wish to. Suitable measures will be taken to enable women to work on the night shift in factories. This will be accompanied with support service for security, transportation, etc."

4. The General Conference of the ILO in June 1990 had adopted a Protocol relating to Convention No.89, known as Protocol of 1990. Under the provisions of this Protocol, the competent authority in a country under its National Laws and Regulations was authorized to modify the duration of the night shifts or to introduce exemption from the prohibition within certain limits. This is required to be done always after consulting the organisation of employers and workers as follows:-

- * With the agreement of the said organizations in a specific branch of activity or occupations;
- * On the basis of an agreement between the employers' and the workers' representatives in one or more specific establishments;
- * For a specific period after having established that adequate safeguards exist, when no agreement has been reached.

5. India has ratified Convention No.144, concerning tripartite consultation and is under an obligation to consult Workers' and Employers' Organisations while considering ratification of the ILO Conventions/Protocols. Therefore, on this issue, the Government has carried out the necessary consultation with the social partners.

6. With a view to exploring the possibility of India ratifying the Protocol of 1990, three meetings of the representatives of the employers and the trade union organisations were organised on 14 July 1998, 21 January 2000 and 17 April 2000. The trade unions were not in favour of allowing any flexibility as provided in the Protocol for night shift work by women workers. The main reasons for their stand were that the work environment in the country was not favourable for night work of women. They also felt that as the women would be working in confined areas during night hours, there was every likelihood of their being harassed and exploited. Similarly, the overall law and order situation was also not conducive for the movement of the women freely during the late night hours. The trade unions were also apprehensive of the sexual exploitation of the women workers during night, non-enforcement of labour laws and trade union activities in export promotion zones. The Employers' Organisations by and large favoured the idea of providing flexibility for the employment of women during night. In order to allay the apprehensions of the Central Trade Union Organisations, a meeting was also arranged with the Development Commissioners of the various Free Trade Zones under the Chairmanship of Commerce Secretary. In spite of the clarifications given by the Development Commissioners, the representatives of the trade unions reiterated their earlier stand. The Trade

Union Organisations felt that a blanket license for engaging women during night shifts by denouncing the Convention No.89 was inappropriate at this stage of the country's social and economic development.

7. The views of the Trade Union Organisations have been carefully examined. It is felt that though there is some merit in their argument that conditions are not favourable for the night work of women. However, this sense of insecurity is not confined to women workers alone. This insecurity is clearly applicable to women in general including housewives and college students, etc. This concern clearly highlighted the need to build in certain safeguards regarding the safety and security of women before relaxation in this regard is permitted.

8. Keeping in view the fact that several women's organizations are themselves in favour of night work and also the fact that even after ratification of the Protocol of 1990, it would be possible to provide flexibility in the duration of working hours and exemptions from the prohibitions from night work only under certain conditions, including consultation with the representatives of workers of the branch of activity or occupation concerned, it is proposed to ratify the Protocol of 1990 in the overall interest of utilization of the installed capacity, promotion of exports and generation of employment opportunities for women. This would be done with the understanding that suitable provisions would be made in the Factories Act, 1948 that employment of women workers in the night would be allowed only after the State Government or any person in this behalf is satisfied that provisions in the factory have been made for adequate safeguards regarding occupational safety and health and adequate protection of the dignity, honour and safety of women workers within their factory premises during the night and arrangements have also been made for their safe transportation from the factory premises to the nearest point of their residence.

9. The Committee also invited suggestions/views of women organisations, employers, trade unions and other interested groups on the provision of the Bill. Only 9 memoranda were received from them which were duly examined along with the comments of the Ministry of Labour thereon. The Committee considered these suggestions in depth before taking any final decision.

10. On being asked why the representatives of the Trade Union Organisations are not in favour for women to work in the night hours, the Secretary, Labour in his evidence has stated as under:

“.....they felt that the scenario in the country is not very safe for women to work at night. The law and order position is also not conducive for this”

11. Adding further, Secretary stated as under:

“We have taken their apprehension into consideration and we have put safeguards. One is that every factory or establishment before they engage them – here it is relevant to factories only because we are amending the Factories Act – they need to consult the Trade Union organisations in that factory.

There are two things. In the factory or establishment, there is a Trade Union leader, who is concerned about the local conditions of the workers. But, we consult the Central Trade Union Organisation, which takes a broader policy view. So, if the Trade Union leader or the Workers’ Organisation in the factory or establishment is willing; is agreeable, then only we introduce women to work in night shifts.”

12. The Committee note that section 66 of the Factories Act, 1948 prohibits employment of women in factories between 7 p.m. and 6 a.m. but several women organisations have filed writ petitions in the various High Courts for amending the Act on the ground that the existing provisions are discriminatory. The Committee further note that the Ministry of Labour have received proposals from the Ministries of Commerce and Information Technology for employment of female workers in third shift in the designated industries so as to utilise the installed capacity in full and also for making the industries more competitive in the global market.

The Committee also take note of the apprehension expressed by trade unions with regard to sexual exploitation of the women workers during night shifts and their stiff opposition in giving blanket license to employers for engaging women for work during night. The Committee feel that although the Government has provided adequate safeguards for engaging women to work in the night shift, the overall law and order situation in the country is still not conducive for free movement of the women during late night hours. The Committee,

therefore, approve the amendment in the Factories Act provided the Government takes the following extra safeguards in addition to the safeguards available under proviso to section 66, namely .-

- (i) “Flexibility” with regard to women’s employment during night, should specifically include women’s own right to decide.**
- (ii) “Night shift” should not commence and end in the midnight.**
- (iii) “Transport facility” should be made available from and upto her residence in the night hours instead of the nearest point of her residence as proposed in the Bill.**
- (iv) Stringent penal provisions should be made against an erring employer in case of non-implementation of the conditions for night work.**

13. The Committee desire that the Ministry should make the above changes in the Factories Act, 1948 in the light of above modifications suggested by the Committee in the present amending Bill.

**New Delhi:
December 2003
Agrahayana 1925 (Saka)**

**Dr. SUSHIL KUMAR INDORA,
Chairman
Standing Committee on Labour and
Welfare**

ANNEXURE-II
MINUTES OF THE ELEVENTH SITTING OF THE STANDING COMMITTEE ON LABOUR AND WELFARE HELD ON TUESDAY, 7 OCTOBER 2003.

The Committee met from 11.00 hrs. to 12.30 hrs. in Committee Room 'E' Parliament House Annexe, New Delhi.

PRESENT

Dr. Sushil Kumar Indora -- Chairman

MEMBERS

2. Shri Ashok Argal
3. Shri Denzil B. Atkinson
4. Smt. Sandhya Bauri
6. Shri Joachim Baxla
6. Shri Manibhai Ramjibhai Chaudhuri
7. Shri Krishan Lal Diler
8. Shri Virendra Kumar
9. Shri Haribhau Shankar Mahale
10. Shri Ramjee Manjhi
11. Shri Bherulal Meena
12. Shri Punnu Lal Mohale
13. Shri Dalpat Singh Parste
14. Shri Varkala Radhakrishnan
15. Shri Madhab Rajbangshi
16. Shri Brij Bhushan Sharan Singh
17. Shri Khelsai Singh
18. Shri Mansukhbhai Vasava

RAJYA SABHA

19. Shri B.P. Apte
20. Shri Debabrata Biswas
21. Shri Indramoni Bora
22. Shri Urkhao Gwra Brahma
23. Shri Sukhdev Singh Libra
24. Dr. (Mrs.) Kum Kum Rai
25. Shri Jibon Roy
26. Shri Uday Pratap Singh

SECRETARIAT

- | | | | |
|-------|--------------------|---|-----------------|
| (i) | Shri N.K.Sapra | - | Joint Secretary |
| (ii) | Shri J.P. Sharma | - | Director |
| (iii) | Shri Bhupesh Kumar | - | Under Secretary |

I. REPRESENTATIVES OF THE MINISTRY OF LABOUR

- | | | | |
|----|----------------------|---|-------------------------|
| 1. | Dr. P.D. Shenoy | - | Secretary |
| 2 | Shri K. Chandramouli | - | Joint Secretary |
| 3. | Shri D.S. Poonia - | | Joint Secretary & P.G.E |

**II. REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE
(LEGISLATIVE DEPARTMENT)**

- | | | | |
|----|-------------------|---|---|
| 1. | Shri Z.S Negi | - | Joint Secretary and Legislative Counsel |
| 2. | Shri L.R Khuranna | - | Deputy Legislative Counsel |

3.	Shri S.R.Dhaleta	-	Additional Legislative Counsel
4.	Shri Chander Veer	-	Assistant Legislative Counsel

2. At the outset, Hon'ble Chairman welcomed Members of the Committee, and officers of the Ministry of Labour and Ministry of Law & Justice. He invited their attention to "The Factories (Amendment) Bill, 2003", which was introduced in Lok Sabha on 29 July 2003 and was referred to the Committee by Hon'ble Speaker, Lok Sabha under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and Report. The Bill seeks to amend Section 66 of the Factories Act, 1948 to allow employment of women workers in factories between the hours of 7 p.m. and 6 a.m. with certain safeguards.

3. Labour Secretary, while explaining the salient features of the proposed amendment in the Bill, informed the Committee that the Ministry of Commerce and Ministry of Information Technology had recommended to Labour Ministry to permit women workers to work in Export Promotion Zones/Export Oriented Units and Special Economic Zones during night shift (between 7 p.m. and 6 a.m.) to meet the export targets. He further, informed that though Trade Unions had opposed the proposed amendment on the ground that the work environment in the country was not conducive for the women working in night shifts whereas employers had straightway supported the idea of providing flexibility for the employment of women during night. Certain women organizations had filed writ petitions in several High Courts to permit women to work during the night shift and the Hon'ble High Courts declared Section 66(1)(b) of the Factories Act, 1948 ultra vires. The Committee felt that although the employers can facilitate women to work in the night shift with suitable support service for security and transportation but the overall law and order situation was still not conducive for the movement of the women during late night hours. The Committee were not prima facie in favour of giving blanket permission to the employers for engaging women in the night shift. However, before taking a final view, they decided to invite suggestions/views of women organizations, employers, Trade Unions and other interested groups.

4.	XXX	XXX	XXX
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5.	XXX	XXX	XXX
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6. The Chairman thanked the representatives of the Ministry of Labour and the Ministry of Law & Justice for the cooperation extended by them and for expressing their views freely on the points raised by the Members on the aforesaid Bills.

A verbatim record of the evidence was kept.

{ **The witnesses then withdrew**}

The sitting then adjourned.

APPENDIX

List of Organisations who have furnished their comments/suggestions on the provisions of the Bill.

1. All India Democratic Women's Association,
121, V.B.P. House,
Rafi Marg, New Delhi-110001.
2. Advanced Products (Pvt.) Ltd.,
B-2, Magnum House-1,
Karampura Commercial Complex,
Shivaji Marg, New Delhi-110015.
3. Working Women's Forum (India),
No. 55, Bhimasena Garden Road,
Mylapore, Chennai-600004.
4. Hind Mazdoor Sabha.
120, Babar Road,
New Delhi-110001.
5. United Trades Union Congress,
249, Bipin Behari Ganguly Street,
(Ist Floor), Kolkata-700012.
6. Institute of Social Studies Trust,
India Habitat Centre, Upper Ground Floor,
Core 6A, Lodhi Road,
New Delhi-110003.
7. Centre of Indian Trade Unions.
B.T. Ranadive Bhawan,
13A, Rouse Avenue,
New Delhi-110002.
8. All India Trade Union Congress,
24, Pt. R.S. Shukla Lane,(Canning Lane),
New Delhi-110001.
9. Centre for Women's Development Studies, New Delhi.
25 Bhai Vir Singh Marg,
New Delhi-110001.