

Legislative Brief

The Factories (Amendment) Bill, 2005

The Bill was introduced in the Lok Sabha on August 16, 2005. The Bill was not referred to the Standing Committee.

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Highlights of the Bill

- ◆ The Factories (Amendment) Bill, 2005 seeks to amend the Factories Act, 1948.
- ◆ The Principal Act restricts the employment of women in factories in night shifts. The Bill authorises state governments to remove the restrictions, subject to certain safeguards.

Key Issues and Analysis

- ◆ While the Bill allows women to work night shifts in factories, there may not be adequate safeguards to prevent exploitation of women workers.
- ◆ Other than the Factories Act, 1948, various state Shops and Commercial Establishment Acts also prohibit women from working at night.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Factories Act, 1948 regulates the working condition of labour in factories in India. In 1950, India ratified the International Labour Organisation's (ILO) Night Work (Women) Convention (Revised), 1948, No. 89, and amended the Act to prohibit the employment of women between 7PM and 6AM. The ILO Protocol of 1990 to the Night Work (Women) Convention (Revised) 1948 permitted a country to enact national laws that would allow the competent authority to rectify the duration of nightshifts or to introduce exemptions from ban on night work for women for certain branches of activity or occupations.

Some women's organisations filed Writ Petitions in High Courts seeking directions for amending the Act to allow night work by women on the ground that the existing provisions were discriminatory. A number of High Courts ruled against the restriction on women working in night shifts.²

The Factories (Amendment) Bill, 2003 was introduced on July 29, 2003 and referred to the Standing Committee on Labour and Welfare which submitted its report in December 2003. However, the Bill lapsed due to the dissolution of the 13th Lok Sabha.³ The Factories (Amendment) Bill, 2005 seeks to allow employment of women in factories during night shift with certain safeguards.

Key Features

Night shift for women workers

- The Principal Act specifies certain restrictions on the employment of women in factories. It states that (a) no adult worker (including women) would be required to work in a factory for more than nine hours a day and 48 hours in a week; (b) shifts can be changed only after a weekly holiday or any other holiday; and (c) no woman shall be required to work in a factory between 7PM and 6AM. The state governments are authorised to vary the time limit and allow women to be employed in any class of factory. However, they cannot authorise employment of women in any factory between 10PM and 5AM. The state governments may exempt women working in fish curing or fish canning factories from the above mentioned restrictions.
- The Bill authorises the state government to issue a notification in the Official Gazette allowing women to be employed between 7PM and 6AM in such type of factories as may be specified. Such a notification may be issued after consulting with the concerned employer and workers. The occupier of the factory has to make

adequate provisions in the factory for the occupational safety and health, dignity, and honour of women workers. The occupier also has to provide transport from the factory to the nearest point of their residence.

PART B: KEY ISSUES AND ANALYSIS

Safety vs Equal Opportunity

The Bill aims to strike a balance between the risk of exploitation of women workers and their right to earn a living. The argument in favour of restricting women from working in factories cites India's law and order situation and the work environment as not being favourable to women doing night work.² The counter argument to this view is that prohibiting women from working in factories at night discriminates against women on grounds of sex, and thus violates Article 15 (1) of the Constitution. In 1999, the High Court of Bombay passed an interim order allowing deployment of women in Santacruz Electronic Export Processing Zones in the night shift.² The High Courts of Tamil Nadu⁴ and Andhra Pradesh, in their judgments, struck down the clause prohibiting women from working in factories in the Factories Act, 1948 as unconstitutional.²

The Standing Committee report on the Factories (Amendment) Bill, 2003 had recommended that the government should provide extra safeguards for women. For example, night shifts should not commence and end at mid night; transport facility should be made available from and upto the residence instead of the point near residence as proposed in the Bill; and stringent penal provisions should be made against an erring employer.² The High Court of Tamil Nadu also qualified its judgment with several provisions for ensuring the safety and security of women.⁵ Also, many civil society organisations stress the need for safe public spaces with lighting, public transport, police booths, telephone booths etc.⁶

Lack of Uniformity

Since "labour" comes under the Concurrent List, both the union and the states have the right to make laws. While the Factories Act, 1948 is a central law, there are various state Shops and Establishments Acts regulating working condition of labour. These state laws prohibit the employment of women at night in shops and commercial establishments.⁷ Recently, the Karnataka Shops and Commercial Establishment Act, 1961 was amended to make employment of women in shops and commercial establishments at night a punishable offence.⁸ However, press reports indicate that the Karnataka government plans to reverse this provision through an Ordinance.⁹ Also, establishments in information technology and biotechnology sectors and essential services such as hospitals and railways are exempted from such a provision.¹⁰

Notes

1. This Brief has been developed on the basis of The Factories (Amendment) Bill, 2005 was introduced in the Lok Sabha on August 16, 2005. The Bill was not referred to a Standing Committee.
2. Standing Committee report on the Factories (Amendment) Bill, 2003.
3. "Annual Report: 2004-05," Ministry of Labour, Government of India.
4. Vasantha R. vs. Union of India, High Court of Madras, 8.12.2000 (W.P. Nos. 4604 to 4606/1999).
5. "Night Shift for Women: Growth & Opportunities," March 2006, Associated Chambers of Commerce and Industry of India, Sponsored by National Commission for Women.
6. "What about safety in public spaces?" Kalpana Vishwanath, Hindu, Feb 5, 2006.
7. "11.47 lakh inspections of shops & commercial establishments conducted; Rs.1.60 crore realized as fine for violations," Press Information Bureau, March 16, 2007.
8. "Women barred from night shift in Karnataka," Deccan Herald, May 10, 2007.
9. "State Government to scrap law banning night shifts for women," Hindu, May 15, 2007.
10. The Karnataka Shops and Commercial Establishments (Amendment) Act, 2001 and the Karnataka Shops and Commercial Establishment Act, 1961.

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