



WAY FORWARD FOR AMENDING RESTRICTIONS ON WORKING HOURS OF WOMEN IN SRI LANKA

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Abstract

According to statistical data provided by the Ministry of Higher Education in 2021, 68% of graduates from academic programs in state universities are female and 32% are male. However, when considering the overall labour force in Sri Lanka during the same period, it was found that only approximately 30-36% consisted of female workers. It is noteworthy that this disparity, where male labour force participation has consistently exceeded that of females, has persisted for several decades in Sri Lanka. The existence of such a significant gap in women's labour force participation can be attributed to various factors. The prevailing economic crisis in Sri Lanka has caused an uphill struggle across all realms of human endeavour, irrespective of gender. Consequently, it is evident that educated women, possessing both knowledge and agency, have the potential to exert a substantial and transformative influence on the current crisis. Therefore, the primary objective of this study is to identify the legal factors contributing to the persistent lag in women's labour force in Sri Lanka with special reference to the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 and the Factories Ordinance No. 45 of 1942. The secondary objectives of the study are to examine whether the Sri Lankan legal framework is in accordance with the ILO standards, to examine the applicability of constitutional guarantees towards the restrictions on working hours of women in Sri Lanka, and to investigate best practices in Nepal and Austria in order to provide policy recommendations. The research methodology utilized for this study will incorporate both online and library-based research approaches. Secondary data will be collected from ILO Conventions and other international instruments, scholarly articles, journals, reports and books. Based on the above, this study concludes that the existing legislation concerning nighttime and overtime employment has had an impact on discouraging women from entering and remaining in the labour force of Sri Lanka. Therefore, the study recommends that the relevant provisions relating to the working hours of women in Sri Lanka should be amended.

Key Words: Women, Labour force, Labour laws, Night time and Overtime, Equality



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INTRODUCTION

Sri Lanka, like many other nations, faces the ongoing challenge of creating an inclusive and equitable labour force that supports the empowerment and economic independence of women. Currently, Section 10 and Regulation 2(1) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 provides restrictions on night time work and overtime employment for women. These restrictions often hinder women's ability to fully participate in the labour market. Permitting nighttime work, which refers to working hours beyond the traditional 8-to-5 schedule, can provide increased flexibility for working women. It allows them to balance personal and professional responsibilities, especially for those who may have caregiving responsibilities during the day. Furthermore, allowing women to engage in overtime work can provide them with additional income opportunities and greater financial independence. Overtime work may be essential for women who seek to enhance their career prospects or meet their financial goals. It can also contribute to the overall economic growth of the country by maximizing workforce productivity in the current economic crisis in Sri Lanka. In addition, facilitating work for women can be a crucial step towards addressing the work-life balance challenges faced by many. Accordingly, this study is a comprehensive examination of the existing Sri Lankan legal framework, along with an analysis of the legal factors impacting women in Sri Lanka to undertake nighttime and overtime work under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 and Factories Ordinance No. 45 of 1942. This analysis will also draw upon the experiences of countries that have already implemented such reforms.

METHODOLOGY

This study adopts a mixed method approach, including qualitative, comparative, and case study methods. It relies on an extensive collection of secondary data from ILO Conventions and other international instruments, scholarly articles, journals, reports and books. The qualitative approach is used throughout the investigation, especially to identify legal factors contributing to the persistent lag in women's labour force in Sri Lanka. Further, the case study approach was employed to identify the relevant statistics relating to the restrictions on nighttime work and overtime employment of women in Sri Lanka. In addition, the comparative method was used to explore best practices in other jurisdictions.

RESULTS AND DISCUSSION

SRI LANKAN LEGAL FRAMEWORK

Section 10 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 imposes restrictions on female workers, prohibiting them from working before 6 a.m or after 6 p.m on any day. However, exceptions have been made for women working in hotels, restaurants, and places of entertainment under Section 10(2) Proviso (ii). According to the Department of Government Information (2022), the Cabinet approved night work for women in the IT sector on the 9th of August 2022, marking a landmark improvement in labour laws in Sri Lanka. Therefore, the above provisions should be amended, subject to the consent of the women workers, thus enabling them to do night-time work without any discrimination.



Night Work (Women) Convention No. 89 of 1948 is the latest ILO instrument dealing with the issue of night work. According to Article 8 of the Convention not only women holding responsible managerial positions but also women engaged in work of a technical character and in health and welfare services are excluded from the prohibition of night work. Accordingly, ILO instruments have been designed to set the standards on night work by women in a more flexible manner. However, Sri Lanka has still not ratified the Night Work Convention (ILO Convention 171).

Additionally, Regulation 2.1 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 limits overtime working hours for women to a maximum of twelve hours per week. These restrictions create a significant disparity between the employment opportunities and rights of male and female workers, consequently posing potential adverse implications on the country's economic cohesion and growth. Therefore, overtime restrictions for women in shops and offices should be repealed. Further, the minister has the power to change these types of discriminatory Regulations in Sri Lanka. Even though the ILO Convention on Discrimination (Employment and Occupation) Convention 1958 guaranteed that women should not be discriminated against in their employment based on sex, Sri Lanka has been implementing overtime restrictions on women since 1954. Even though there were protection issues in the 1950s in Sri Lanka, the situation has changed in the present. Therefore, policy makers should amend these provisions to exclude these restrictions.

However, Section 67(A) of the Factories Ordinance No. 45 of 1942 has taken a particularly progressive approach to women's nighttime work. It encourages women workers to engage in nighttime work only with their own consent and the written approval of the Commissioner of Labour. The above principle has been analogously adopted by the Employment of Women, Young Persons and Children, the Factories and the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No. 32 of 1984, and the above-mentioned restriction will not apply to women holding posts of a managerial or technical character and women employed in health and welfare services who are not ordinarily engaged in manual work. Subject to the exceptions noted above, the resulting position is that women can be employed in industrial undertakings until 10.00 p.m. Therefore, legal provisions should allow women in other industrial undertakings to engage in night work without any such limitation regarding time or number of days, but with the consent of the woman worker or the approval of the Commissioner.

Regarding overtime work in factories, this Ordinance only focuses on maintaining a register for women and young persons to record their working hours, under Section 70. Therefore, the authors have not focused on the Factories Ordinance in this study.

CONSTITUTIONAL GUARANTEES

The restrictions on working hours of women in Sri Lanka can be addressed from a human rights perspective, drawing upon the constitutional guarantees of equality and non-discrimination. Article 12(2) of the Constitution recognizes that every individual, regardless of their gender, has the right to work under fair and just conditions without facing discriminatory practices. In Sri Lanka, Article 12(1) of the Constitution provides the fundamental right to equality, stating that all persons are equal before the law and are entitled to equal protection of the law. These constitutional guarantees form the basis for challenging any discriminatory restrictions on working hours for women. According to Sarveswaran A (2021), women should have the same opportunities and rights as men in terms of employment, including the freedom to choose their working hours without arbitrary or gender-based limitations. When applying a human rights approach, it is important to emphasize the principles of non-discrimination, dignity, and autonomy. Restrictions on working hours that disproportionately affect women can be viewed as discriminatory, as they hinder their economic opportunities and perpetuate gender stereotypes. By limiting their working hours, women may face unequal access to



employment, reduced income, and limited career advancement, thus impeding their economic empowerment.

To address these issues, the human rights approach entails challenging discriminatory laws, regulations, and practices through legal means. Since the Constitution, as the supreme law of the country, guarantees equality and non-discrimination, this study suggests that the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 and Factories Ordinance No. 45 of 1942 should remove or amend laws that impose arbitrary restrictions on working hours for women, ensuring that they are afforded equal opportunities in the workforce.

COMPARATIVE ANALYSIS

In response to the evolving needs of the work force and the pursuit of gender equality, several countries, including Austria and Nepal, have undertaken progressive amendments to their labour laws. These amendments are centred around the empowerment of women by granting them the opportunity for employment during night hours and the extension of overtime working hours. Additionally, these changes incorporate measures aimed at ensuring the safety and well-being of women in the workplace. Since 2002, Austria has implemented only gender-neutral night work regulations that apply equally to men and women under Section 14 of the Working Time Act (Arbeitszeitgesetz). This inclusive approach promotes gender equality in the workforce and recognizes the capabilities and rights of individuals regardless of their gender. However, certain protective measures remain in place to safeguard vulnerable groups, such as pregnant women, nursing mothers, and individuals below the age of 18, who are not permitted to work night shifts due to considerations for their well-being and protection. These amendments reflect Austria's commitment to ensuring a fair and safe working environment for all its citizens.

In Asia, Nepal recently introduced the Labour Act of 2017. Section 33 of the Act increased the limit of overtime working hours and mandatory transportation for female employees during late hours. Further, Section 30 of the Labour Act of 2017 emphasized that “where an employer needs to cause any labour to work for more than the working hours specified in Section 28, such labour may be caused to work not exceeding four hours a day and twenty-four hours a week”. The highlight of this provision is the gender-neutral usage of the newly enacted Nepal Labour Act. In light of these positive changes, Sri Lanka must consider similar legal amendments, coupled with effective mechanisms, to prioritize the welfare of its workforce.

CONCLUSIONS/RECOMMENDATIONS

In conclusion, the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 and the Factories Ordinance No. 45 of 1942 prove that there are legal factors contributing to the persistent lag in the women's labour force in Sri Lanka. Therefore, the need for Sri Lanka to permit night and overtime work for all working women without any restrictions is a pressing issue. By allowing greater flexibility in choosing working hours, Sri Lanka can foster gender equality and non-discrimination, enhance women's economic empowerment, and promote a more inclusive and dynamic workforce. Through a comparative analysis, the authors suggested recommendations for policy development in Sri Lanka. Accordingly, amendments to the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 and the Factories Ordinance No. 45 of 1942 are necessary to remove restrictions on night work and overtime work for women employed in the shop and office sectors in Sri Lanka. By eliminating these limitations, women will have equal opportunities for employment and career advancement. Furthermore, Sri Lanka should follow the ILO standards and internationally recognized trends in employment to introduce new provisions to enhance women's social security, with particular emphasis on the active involvement of employers. This could include measures such as providing a well-established security system,



facilities for transportation, healthcare coverage, and insurance schemes to ensure the overall wellbeing of female employees. This would enable greater flexibility and work-life balance for women, leading to increased productivity and job satisfaction.

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