

NOTIFICATION

Whereas in the judgment of the Hon'ble Madras High Court in Case No:W.P 4604-06 of 1999 it has been declared that section 66(1)(b) of Factories Act 1948 (Central Act 63 of 1948) is unconstitutional as violative of Articles 14, 15 and 16 of the constitution and have been struck down. By virtue of which, now women can be employed in factories in the night shifts i.e between 7.00 P.M to 6.00 AM. The Hon'ble Madras High Court in the said judgment has also laid down certain conditions for employing women in night shift in respects of their security and safety so as to safeguard the interest of the women workers.

In view of the above decision, the Government of Karnataka hereby allows employment of women workers, who come forward to work during night shifts, i.e. between 7.00 P.M to 6.00 A.M. in the factories registered under the Factories Act, 1948 (Central Act 63 of 1948) subject to the following conditions namely,-

1. It shall be the duty of the employer or other responsible persons at the work places to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecutions of acts of sexual harassment by taking all steps required.
2. The employer or persons in charge of factory shall take the following steps to prevent sexual harassment namely,-
 - i. Express prohibition of Sexual harassment in any form such as unwelcome Sexually determined behavior either directly or by implication or advances or contact to gain contact or demand sexual favours or make sexually coloured remarks or showing pornography or any other unwelcome physic, verbal or non-verbal contact of sexual nature;
 - ii. The rules or regulations shall be framed by the factory managements relating to conduct and disciplined prohibiting sexual harassment and provide for appropriate penalties in such rules against the offenders and also introduce amendment wherever necessary which are existing in the Standing Orders;
 - iii. Provide appropriate working conditions in respects of works, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

3. In case of any criminal case the employer shall initiate appropriate action in accordance with the penal law without delay and also ensure that victims or witness are not victimized or discriminated while dealing with the complaints of sexual harassment and wherever necessary, at the request of the affected workers, shift or transfer the perpetrator, if circumstances so warrant. The employer shall take appropriate disciplinary action if such conduct amounts to misconduct in employment.
4. The employer shall maintain a complaint redressal mechanism in the factory itself and the said mechanism shall ensure time-bound treatment of complaint. Such mechanism shall provide, when necessary a Complaint Committee, a special counselor or other support services including the maintenance of confidentiality.
5. Such Complaint Committee shall preferably be headed by a women and not less than half of its members should women besides a non-government organization's representation in the committee. Such person should be familiar with the Issues of sexual harassment.
6. The Female employees shall be allowed to raise issues of sexual harassment to workers in the Workers' meeting and other appropriate forums.
7. The Female employee shall be made aware of their rights in particular by prominently notifying the guidelines on the subject.
8. Wherever there is a harassment at the instance of the third party, either by an act or omission the employer and the person in charge of the factory shall take all steps necessary and reasonable to assist the affected person in term of support and preventive action
9. The employer shall provide proper lighting and CCTV coverage not only inside the factory, but also surrounding of the factory and to all places where the female workers may move out of necessity in the course of such shift. CCTV footage shall be storage for not less than forty five days.
10. The employers shall see that the women workers are employed in a batch not less than ten and the total of the women workers employed in a night shift shall not be less than 2/3rd of the total strength.
11. Sufficient women security shall be provided during the night shift at the entry as well as exit point.
12. Sufficient number of rest rooms shall be provided for the female workers to arrive in advance and also leave after the working hours.

13. Separate canteen facility shall be provided for the female employees.
14. The employer shall provide transportation facility to the women workers from their residence and back (for night shift) and security guards (including female security guard) and each transportation vehicle shall also be equipped with CCTV Camera
15. The factory shall provide appropriate medical facilities and also make available at any time of urgency by providing necessary telephone connections and where more than hundred women workers are employed in a shift, a separate vehicle be kept ready to meet the emergent situation such as hospitalization, whenever there is a case of injury or incidental acts of harassment etc.
16. Wherever the factory provides boarding and lodging arrangements for the women workers, the same shall be kept exclusively for the women under the control of women wardens or supervisors.
17. During night shift not less than $1/3^{\text{rd}}$ of strength of the supervisor shift-in-charge or foreman or other supervisory staff shall be women.
18. There shall be not less than twelve consecutive hours of rest or gap between the last shifts and the night shift wherever a women worker is changed from day shift to night shift and so also from night shift to day shift.
19. In other respects, the provisions of the Factories Act and the rules of other statutory provision with respect to the hour of work shall be followed by the employer.
20. The employer shall appoint not less than two female wardens per night shift who shall go around and work as Special welfare Assistants.
21. The female workers who work in night shifts and regular shifts shall have a monthly meeting through their representative with principal employer once in eight weeks as grievance day and the employer shall try to comply all just and reasonable grievances.
22. The employer shall be at liberty to employ women workers as a whole or in part during night shift, provided, the above the directions be complied with.
23. The employer shall send a fortnightly report to Inspector of Factories about the details of employees engaged during night shifts and shall also send express report whenever there is some untoward incident to the Inspector of Factories and local Police Station as well.

24. It shall not be made compulsory or obligatory for any women worker to work in night shifts. Written consent shall be obtained from the women workers who are interested to work in night shifts.

Note: The Chief Inspector may by an order withdraw the permission issued by this notification to any factory, if any or all the conditions laid down in the notification are not followed, in the interest of safety and security of the women workers who come forward to work in night Shifts.

By Order and in the name of
the Governor of Karnataka


(M.K. Bharmarajappa)

Additional Secretary to Govt
Labour Department.

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4. Director, Department of Factories, Boilers, Industrial Safety and Health, Karmika Bhavana, Bannerugatta Road, Bengaluru.
5. Commissioner, Labour Department, Karmika Bhavan, Bannerugatta Road, Bengaluru
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