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PROTECTION OR RESTRICTION? REGULATING WOMEN'S NIGHT WORK IN INDIA AND THE UK

ABSTRACT

The ongoing conflict between workplace safety and the constitutional commitment to equality and freedom of employment is reflected in India's regulations regarding women's night shift employment. In contrast to the previous limited approach, the Occupational Safety, Health and Working Conditions Code, 2020 permits women to work at night under certain safety conditions and with their consent. The approach, however, raises questions about the voluntariness of consent, differences in state-level protections, enforcement, and the potential for protective measures to unintentionally perpetuate gender-based stereotypes. In contrast to the UK's mostly gender-neutral and risk-based approach under the Working Time Regulations 1998, the Equality Act 2010, and occupational health and safety laws, this article critically evaluates India's regulatory structure. The comparison study emphasises that rather than limiting employment prospects based on gender, the comparative analysis emphasises the significance of controlling real workplace risks. It makes the case that meaningful consent, consistent minimum safety standards, customised risk assessments, stricter enforcement, and increased integration with workplace sexual harassment regulations are all ways to improve India's system. In order to ensure that women can engage in night shift work safely, willingly, and on an equal basis with other workers, the article ultimately promotes a change from protection by limitation to protection through regulation.

INTRODUCTION

Background

The increasing participation of women in the workforce has significantly changed the nature of employment and workplace regulation. Women are now employed across a wide range of sectors, including healthcare, information technology, banking and financial services, hospitality, aviation, manufacturing and business-process outsourcing, many of which require operations beyond conventional daytime working hours. The International Labour Organization has noted that women's participation in the Indian labour market has historically been affected by occupational segregation and social norms concerning women's employment, making the creation of accessible and safe employment opportunities an important aspect of gender equality.

Night-shift employment presents a distinct legal and social challenge. While permitting women to work at night can expand their employment opportunities and facilitate their participation in sectors operating on a 24-hour basis, night work may also raise concerns relating to occupational safety, transportation, workplace security, fatigue, health and sexual harassment. The regulation of night work therefore requires a balance between two important objectives: protecting women workers from genuine occupational risks and ensuring that

protective measures do not become a basis for restricting their equal participation in employment.

In India, the legal position concerning women's night work has undergone a gradual transformation. Earlier labour legislation imposed significant restrictions on the employment of women during night hours, largely on the basis of protective considerations. The Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code) represents a shift towards permitting women's participation in night work while requiring safeguards. Section 43 of the Code permits women to work before 6 a.m. and beyond 7 p.m. subject to their consent and prescribed conditions relating to safety.

The issue is therefore no longer merely whether women should be permitted to work at night, but rather how the law can ensure that such employment remains safe, equitable and free from discrimination.

Need for Regulation of Women's Night Work

Night work creates occupational and social risks that require specific regulatory attention. Working during night hours can involve fatigue and disruption of normal working patterns, while employees travelling to or from work during late hours may face additional transportation and security concerns. These issues become particularly important in sectors where women are increasingly required to work rotational or night shifts.

At the same time, regulation must not become a mechanism for excluding women from employment opportunities. Excessive restrictions based solely on gender may reinforce the assumption that women are inherently incapable of undertaking certain forms of work or require greater protection than men. The Supreme Court of India has addressed this tension in its jurisprudence concerning protective discrimination and women's employment, particularly in *Anuj Garg v Hotel Association of India*¹.

The regulation of women's night work must therefore adopt an approach that **protects women from actual workplace risks while preserving their autonomy, dignity and equality of opportunity.**

OBJECTIVES OF THE STUDY

The study has the following objectives:

1. To examine the legal provisions governing the employment of women during night shifts under the OSH Code, 2020.
2. To analyse the constitutional principles of equality, non-discrimination, dignity and freedom of occupation applicable to women's night employment.
4. To study the UK legal framework governing night work, particularly the Working Time Regulations 1998, Equality Act 2010 and occupational health-and-safety legislation.

¹ *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1

5. To comparatively analyse the Indian and UK approaches to women's night-shift employment.
6. To identify legal and practical gaps in the Indian framework and suggest possible reforms.

EVOLUTION AND CONSTITUTIONAL FRAMEWORK OF WOMEN'S NIGHT WORK IN INDIA

Historical Position

The regulation of women's employment in India has historically been influenced by the belief that women require greater protection from certain forms of work, particularly work performed during night hours. Although such restrictions were often introduced with the objective of protecting women from exploitation and unsafe working conditions, they also had the effect of limiting the occupations and hours in which women could participate.

A significant example can be found in the Factories Act, 1948. Section 66² imposed further restrictions on the employment of women in factories and, as a general rule, provided that women could not be required or permitted to work between 7 p.m. and 6 a.m., subject to certain exceptions and State-level variations. The provision reflected the protective approach that characterised much of the earlier labour legislation concerning women.

Over time, however, the position began to change. As women's participation in employment expanded and industries increasingly required operations throughout the day and night, a complete or near-complete restriction on night work became difficult to reconcile with the principle of equal employment opportunity. Legislative developments at the State level also began permitting women to work during night hours subject to safeguards concerning security and working conditions. For instance, amendments to the Factories Act in Maharashtra allowed women workers to work between 7 p.m. and 6 a.m. where adequate safety and security measures were provided³.

This gradual change represents a broader shift in Indian labour law—from an approach based primarily on restricting women's exposure to perceived risks towards one that seeks to enable women's participation while requiring employers and the State to address those risks.

Constitutional Framework

The Constitution provides the fundamental basis for evaluating restrictions and safeguards relating to women's employment. Article 14 guarantees equality before the law and equal protection of the laws⁴, while Article 15(1) prohibits discrimination by the State on grounds including sex. At the same time, Article 15(3) expressly permits the State to make special provisions for women and children.

² Factories Act, 1948, s 66(1)(b)

³ Factories (Maharashtra Amendment) Act, 2015

⁴ The Constitution of India, 1950, arts 14, 15(1), 15(3), 16, 19(1)(g), 21, 39(d) & 42.

The relationship between these provisions is particularly significant in the context of night work. Article 15(3) recognises that women may require specific legal protection in appropriate circumstances; however, such protection cannot automatically justify restrictions that deny women equal opportunities in employment. Article 16 further guarantees equality of opportunity in matters of public employment, while Article 19(1)(g) protects the right to practise any profession or to carry on any occupation, trade or business, subject to reasonable restrictions imposed by law.

Article 21 is also relevant because the right to life and personal liberty has been interpreted by the Supreme Court to include dimensions of dignity, autonomy and personal choice. In the context of employment, these values support the proposition that women should be able to make meaningful choices about their occupations and working conditions while being protected against genuine threats to their safety and dignity.

The Directive Principles reinforce this constitutional commitment. Article 39(d) directs the State towards equal pay for equal work, while Article 42 calls upon the State to make provision for securing just and humane conditions of work and maternity relief. Together, these constitutional provisions demonstrate that Indian law does not view women's employment solely through the lens of protection; it also recognises equality, dignity, autonomy and fair working conditions as important objectives.

Protection vs Equality

The constitutional debate surrounding women's night work therefore involves a fundamental question: **when does protection become a restriction on equality?**

The Supreme Court's decision in *Anuj Garg v Hotel Association of India* is particularly important in understanding this tension. The case concerned a statutory provision that prohibited women from being employed in premises where liquor was served. The Court rejected the assumption that women's safety could be secured simply by excluding them from certain forms of employment. It emphasised that the State has a responsibility to create conditions in which women can participate in employment safely, rather than responding to social insecurity by restricting women's choices.

The significance of *Anuj Garg* extends beyond the specific legislation challenged in that case. It suggests that protective labour legislation must be examined carefully where it is based on assumptions about women's vulnerability or their supposedly unsuitable roles. A rule may appear protective on its face but may, in practice, reinforce traditional stereotypes by treating women as a class that must be shielded rather than as equal participants in the workforce.

This does not mean that all special protections for women are constitutionally undesirable. Article 15(3)⁵ expressly permits special provisions for women, and genuine differences in risk may justify additional safeguards. The more appropriate question is therefore whether the measure is **designed to address an actual risk in a proportionate manner or whether it simply restricts women's freedom because of assumptions about their sex**. In the context of night

⁵ The Constitution of India, 1950, art 15(3)

work, this distinction is particularly important. Instead of excluding women from night employment, the law can seek to address risks through measures such as secure transportation, workplace security, appropriate working hours and effective mechanisms for dealing with harassment.

The OSH Code, 2020 reflects this changing approach by allowing women to work before 6 a.m. and beyond 7 p.m. with their consent, subject to prescribed safety conditions.⁶ The legal trajectory therefore appears to be moving from **protection through exclusion to protection through regulation and safeguards**. Whether this approach succeeds in achieving genuine equality in practice is a central question that will be examined through the subsequent comparison with the United Kingdom.

OVERVIEW OF THE OSH CODE, 2020

The Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code)⁷ represents an attempt to consolidate and rationalise the legal framework governing occupational safety, health and working conditions in India. It replaced a number of earlier labour enactments, including the Factories Act, 1948, and seeks to establish a more uniform framework governing working conditions across different categories of establishments. The Code was enacted on 28 September 2020 and, according to the current India Code record, came into force on **21 November 2025**.

One of the important changes introduced by the Code concerns the employment of women. Earlier legislation, particularly Section 66(1)(b) of the Factories Act, had adopted a restrictive approach by prohibiting women from working in factories during certain night hours. The OSH Code moves away from this blanket prohibition and adopts an approach based on **formal equality combined with safety safeguards**. Section 43 provides that women are entitled to employment in all establishments and in all types of work covered by the Code. It further permits women to work before 6 a.m. and after 7 p.m., provided their consent is obtained and prescribed conditions relating to safety, holidays, working hours and other matters are complied with.

Thus, the Code attempts to reconcile two objectives: first, ensuring that women are not excluded from employment opportunities merely because the work occurs at night; and second, recognising that night work may require additional safety measures. The change is significant because it treats women increasingly as participants with agency in the workforce rather than as persons who must simply be protected through restrictions. However, as discussed below, the effectiveness of this model depends substantially upon the rules framed by the appropriate Government and the manner in which employers implement them.

3.2 Section 28 – Working Hours and Night Shifts

Section 28 of the OSH Code specifically deals with **night shifts extending beyond midnight**.⁸ It provides that where a worker works on a shift extending beyond midnight, the weekly holiday is to be understood as twenty-four consecutive hours beginning when that shift ends. It also treats the following twenty-four-hour period as beginning at the end of the shift and provides that the hours worked after midnight are to be counted as part of the previous working day.

⁶ Occupational Safety, Health and Working Conditions Code, 2020, s 43

⁷ Occupational Safety, Health and Working Conditions Code, 2020, Act No. 37 of 2020, enacted on 28 September 2020.

⁸ Occupational Safety, Health and Working Conditions Code, 2020, s 28

Section 28 must therefore be read together with the provisions on working hours. Section 25 establishes the broader framework concerning daily and weekly working hours⁹, while Section 27 provides for overtime wages where a worker works beyond the prescribed hours¹⁰. The purpose of Section 28 is largely to prevent uncertainty concerning the calculation of working days and weekly holidays where a shift crosses midnight. This is particularly relevant to sectors such as information technology, business-process outsourcing, healthcare, hospitality and manufacturing, where night and rotating shifts are common.

For women working night shifts, therefore, the legal question is not simply whether a shift passes midnight. The more specific protection arises from **Section 43**, which regulates employment before 6 a.m. and after 7 p.m. Consequently, compliance requires employers to consider both the general rules concerning working hours and the additional safeguards applicable to women working during these periods.

3.3 Section 43 – Employment of Women

Section 43 marks one of the most important departures from the earlier legal position. It expressly states that women are entitled to employment in all establishments and for all types of work under the Code. This establishes a principle of formal equality and removes the earlier assumption that night work should generally be unavailable to women. However, this right is accompanied by specific conditions when the employment takes place before 6 a.m. or beyond 7 p.m.¹¹

Employment before 6 a.m. and after 7 p.m.

The Code does not impose a blanket prohibition on women working during these hours. Instead, such employment is permitted where the woman has consented and the employer complies with the conditions prescribed by the appropriate Government. The framework therefore shifts from **prohibition to regulated permission**. This is particularly relevant in modern sectors that operate around the clock, since excluding women from night shifts could otherwise affect their access to certain occupations, positions and promotion opportunities.

Consent of women workers

Consent is a central requirement under Section 43. A woman cannot simply be assigned to work before 6 a.m. or after 7 p.m. without satisfying the consent requirement. At first sight, this can be viewed as an important recognition of individual autonomy. Unlike the older paternalistic model, the law allows the woman herself to decide whether she is willing to undertake night work.

However, the requirement of consent also raises an important practical concern. The Code does not itself provide a detailed framework explaining when consent must be obtained, how it should be recorded, whether it can subsequently be withdrawn, or what protection exists where a woman refuses night work. This criticism is particularly important in the employment context because the relationship between employer and worker is inherently unequal. A worker may technically sign a consent form while believing that refusal could result in reduced working opportunities, loss of promotion or non-renewal of employment. The distinction, therefore, is between **formal consent and substantive consent**. A meaningful protective framework should ideally ensure that consent is voluntary, informed and capable of being withdrawn without retaliation.¹²

⁹ Occupational Safety, Health and Working Conditions Code, 2020, s 25

¹⁰ Occupational Safety, Health and Working Conditions Code, 2020, s 27

¹¹ Occupational Safety, Health and Working Conditions Code, 2020, s 43

¹² Occupational Safety, Health and Working Conditions Rules, r. 67.

Conditions prescribed by the Government

Section 43 delegates the detailed conditions governing women's night work to the appropriate Government. These may concern safety, holidays, working hours and other conditions to be followed by the employer.

This delegation has resulted in variation among state-level rules and draft rules. Different states have adopted or proposed different requirements relating to consent, transportation and workplace facilities. For example, the Kerala Draft Rules contemplated written consent, transport to the employee's residence, separate restrooms and mess facilities, adequate lighting and the presence of female supervisory or security personnel during night shifts¹³. Maharashtra, Karnataka and Tamil Nadu have also adopted or proposed frameworks with varying levels of detail.

The resulting variation creates an important compliance challenge. A woman working for the same organisation may have different practical safeguards depending upon the State in which she is employed. Employers operating across multiple States must therefore undertake state-specific legal compliance rather than applying a single uniform night-shift policy.

Section 44 – Safety of Women in Dangerous Operations

Section 44 supplements Section 43 by addressing situations in which the employment of women may pose particular risks to health and safety. Where the appropriate Government considers the employment of women to be dangerous in an establishment, class of establishments or in a particular hazardous or dangerous process, it may require the employer to provide **adequate safeguards before women are employed in such operations**.¹⁴

The provision is important because it recognises that equal access to employment does not eliminate occupational risks. However, Section 44 has been criticised for its lack of precision. The expression **“dangerous process”** is not clearly defined in Section 44, and the phrase **“adequate safeguards”** is also left open to interpretation. Further, the power given to the Government is discretionary because the provision states that it *may* require safeguards where it considers employment dangerous.

This uncertainty may create two opposite consequences. On the one hand, inadequate clarity could permit inconsistent standards of protection. On the other hand, employers may avoid employing women in certain operations altogether because they are uncertain about what measures would satisfy the requirement of “adequate safeguards”.

Employer's Safety Obligations

The protection of women working night shifts cannot be understood solely through Sections 43 and 44. It must also be read with the general duties imposed upon employers under the OSH Code. **Section 23** places responsibility upon employers to maintain prescribed health, safety and working conditions. These include matters such as cleanliness, ventilation, drinking water, adequate space, lighting and separate sanitary facilities¹⁵.

Similarly, **Section 24** requires employers to provide prescribed welfare facilities, including separate washing facilities, restrooms and other welfare arrangements, as well as first-aid facilities. Depending upon the establishment and applicable rules, these provisions become particularly relevant where women remain at the workplace during late-night hours¹⁶.

¹³ Occupational Safety, Health and Working Conditions (Kerala) Rules/Draft Rules, 2021, r. 44.

¹⁴ Occupational Safety, Health and Working Conditions Code, 2020, s 44

¹⁵ Occupational Safety, Health and Working Conditions Code, 2020, s 23

¹⁶ Occupational Safety, Health and Working Conditions Code, 2020, s 24

In practical terms, employers' night-shift obligations may therefore include:

Transportation: State-level rules may require employers to make arrangements for safe transport between the workplace and the employee's residence. The Kerala Draft Rules for example, contemplated transport up to the employee's doorstep.

Security: Night-shift arrangements must address the heightened safety risks associated with employees travelling to and from work and remaining at the workplace at night. Measures discussed in state-level frameworks include adequate lighting and female security or supervisory personnel.

Workplace facilities: Separate and hygienic washrooms, rest areas, canteen or food facilities, first aid and adequate lighting are important components of a safe working environment. The OSH Code itself places wider health, safety and welfare responsibilities on employers.

Emergency measures: Employers should maintain accessible emergency contacts, effective grievance mechanisms and procedures for dealing with incidents occurring during night shifts. The importance of maintaining documentation and functional complaint mechanisms is also emphasised in practical compliance guidance.

Thus, obtaining consent cannot by itself satisfy the statutory objective. Consent must operate alongside a workplace environment in which the employee can actually work safely.

Interaction with the POSH Act, 2013

The OSH Code and the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** operate together in protecting women at work. The POSH Act recognises a woman's right to a safe working environment and imposes specific duties upon employers. Section 19 requires employers, among other things, to provide a safe workplace, display relevant information, conduct awareness programmes and provide facilities necessary for the functioning of the Internal Committee¹⁷.

This becomes particularly important in the context of night shifts because risks relating to transportation, isolated work areas, security personnel and interaction with co-workers or supervisors may extend beyond conventional working hours. Consequently, OSH compliance and POSH compliance should not be treated as separate and unrelated exercises. A workplace may technically comply with night-shift working-hour requirements but still fail to provide an effective mechanism for preventing and addressing sexual harassment.

The practical compliance approach should therefore integrate night-shift safety measures with the Internal Committee mechanism under the POSH Act.

Critical Issues under the OSH Code

Although the OSH Code represents a significant movement away from blanket restrictions on women's night work, its framework is not free from structural difficulties. The first concern is the **ambiguity surrounding consent**. Section 43 requires consent but does not comprehensively address its form, withdrawal or protection against retaliation. This creates a risk that consent could become a procedural formality rather than a genuine expression of choice.

The second concern is **state-wise variation**. Since Section 43 leaves important conditions to the appropriate Government, the actual level of protection may vary between jurisdictions.

¹⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 19

Third, Section 44 suffers from uncertainty surrounding the expressions “**dangerous process**” and “**adequate safeguards**.” The lack of objective criteria can create uncertainty for employers and may encourage risk-averse exclusion of women from certain forms of work rather than encouraging employers to make workplaces safer.

Finally, there is the issue of **enforcement**. A protective provision is effective only when employers understand their obligations and workers have practical avenues to enforce them.

Therefore, the OSH Code should be viewed as a **shift from exclusion to conditional inclusion**, rather than as a complete solution to the problem of women's night work. Its progressive potential lies in allowing women access to employment traditionally denied to them, while its principal weakness lies in the uncertainty surrounding consent, safety standards and implementation. The ultimate effectiveness of the framework will depend on clear rules, consistent enforcement and safeguards that protect women's autonomy without encouraging employers to exclude them from night-time employment.

LEGAL FRAMEWORK IN THE UNITED KINGDOM

The United Kingdom regulates women's night work through a layered legal framework combining limits on working time, general health and safety obligations, specific protections for pregnant workers and new mothers, and anti-discrimination law. The Working Time Regulations 1998 establish who qualifies as a “night worker”, define the default night period, regulate average working hours, and provide for rest breaks and health assessments for night workers. The Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999 impose duties on employers to identify, assess, and control workplace risks, including those associated with night shifts, fatigue, and lone working. The Equality Act 2010 prohibits sex discrimination and requires equal treatment, meaning that workplace policies relating to night work must not directly or indirectly disadvantage women unless such treatment can be objectively justified. Specific protections are also available to pregnant workers and new mothers through requirements concerning risk assessments, adjustments to working hours or duties, and, where necessary, paid suspension from work. The Health and Safety Executive (HSE) plays an important enforcement role through guidance, workplace inspections, and formal enforcement measures where required.

Working Time Regulations 1998

The Working Time Regulations 1998 (WTR) provide the principal framework governing night work in the UK. A “night worker” is generally a worker who, as a regular part of their work, works at least three hours during “night time” on the majority of their shifts. By default, “night time” is the period between 11 p.m. and 6 a.m., although a different period may be established through a collective or workforce agreement¹⁸. The Regulations limit a night worker's average daily working time to eight hours over a reference period. They also impose the general 48-hour average weekly working-time limit, subject to the possibility of an individual opt-out, together with minimum daily and weekly rest periods and rest breaks¹⁹.

Employers must also provide night workers with a free health assessment before they begin night work and at regular intervals thereafter. Where a medical certificate establishes that night work is adversely affecting a worker's health, the employer must transfer the worker to suitable day work where such work is available²⁰, these obligations apply irrespective of

¹⁸ Working Time Regulations 1998, SI 1998/1833, reg. 2

¹⁹ Working Time Regulations 1998, SI 1998/1833, regs. 4, 6–7, 10–12

²⁰ Working Time Regulations 1998, SI 1998/1833, reg. 7

gender. However, they are particularly relevant for women where health or caring responsibilities interact with night-work schedules.

Equality Act 2010

The Equality Act 2010 prohibits discrimination in employment on the basis of sex and covers direct discrimination, indirect discrimination, harassment, and victimisation. Direct sex discrimination occurs where a woman is treated less favourably because of her sex, such as where she is denied promotion or training opportunities because she works night shifts.

Indirect discrimination may arise where an apparently neutral provision, criterion, or practice—such as a requirement that all employees be available for regular night work—places women at a particular disadvantage compared with men and cannot be shown to be a proportionate means of achieving a legitimate aim.²¹ The Equality and Human Rights Commission (EHRC) Employment Code recognises that inflexible scheduling, refusal of flexible working, or failure to take caring responsibilities into account may, in appropriate circumstances, give rise to claims of indirect sex discrimination²². In the context of night shifts, employers must therefore comply not only with working-time and safety requirements but also ensure that rostering policies, promotion criteria, and access to training do not systematically disadvantage women.

Health and Safety at Work etc. Act 1974

The Health and Safety at Work etc. Act 1974 (HSWA) imposes a general duty on employers to ensure, so far as is reasonably practicable, the health, safety, and welfare of their employees. This includes providing safe systems of work, adequate lighting, safe access and egress, and appropriate supervision, all of which are particularly relevant to night work.²³ Employers must also ensure that non-employees, such as visitors or clients, are not exposed to risks to their health and safety arising from the conduct of the employer's undertaking.²⁴

Breach of these duties may result in enforcement action by the HSE or local authorities, including improvement notices, prohibition notices, and prosecution.²⁵ In the context of women working at night, the HSWA framework extends to managing risks such as violence or harassment, unsafe transport arrangements, poorly lit premises or car parks, and fatigue-related accidents.²⁶

Management of Health and Safety at Work Regulations 1999

The Management of Health and Safety at Work Regulations 1999 require employers to carry out suitable and sufficient risk assessments of work activities and to implement appropriate control measures.²⁷ These obligations are continuous and must be reviewed where significant changes occur, including the introduction of new shift patterns or the employment of new or expectant mothers.²⁸ Employers must also provide employees with comprehensible

²¹ Equality Act 2010, ss. 13, 19, 26 & 27

²² Equality and Human Rights Commission, *Employment: Statutory Code of Practice* (2011)

²³ Health and Safety at Work etc. Act 1974, § 2(1)–(2); Workplace (Health, Safety and Welfare) Regulations 1992, reg. 8

²⁴ Health and Safety at Work etc. Act 1974, § 3(1)

²⁵ Health and Safety at Work etc. Act 1974, §§ 20–22, 33

²⁶ Health and Safety Executive, *Managing Shift Work: Health and Safety Guidance* (HSG256) (2006); Health and Safety Executive, *Good Practice Guidelines*.

²⁷ Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg. 3.

²⁸ Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg. 3(3); reg. 16

information, instruction, and training concerning workplace risks and the precautions required to control them.²⁹

In relation to night work, risk assessments should address matters such as fatigue, mental health, lone working, security, and the adequacy of rest facilities and transport arrangements.³⁰ Where risks cannot be eliminated through organisational or engineering controls, employers must consider adjustments such as altered shifts, additional staffing, or modifications to work tasks.³¹

Protection of Pregnant Workers and New Mothers

Pregnant workers and new mothers receive enhanced protection under UK law. Under the Management Regulations, employers must specifically assess risks to new or expectant mothers and, where a risk is identified, take steps to avoid it by adjusting working conditions or hours of work³². Where this is not possible, the employer must offer suitable alternative work on terms and conditions that are not substantially less favourable.³³

Where neither an adjustment nor suitable alternative work is feasible, the employer must suspend the employee on full pay for as long as necessary to avoid the identified risk.³⁴ HSE guidance identifies night work as a potential risk factor for pregnant workers, particularly where it involves long hours, prolonged standing, stress, or exposure to harmful agents³⁵. Employers are therefore expected to consider whether night shifts can be modified or replaced with day work during pregnancy and the early post-natal period.³⁶ They must also ensure that returning mothers are not placed in unsafe roles or shifts without an appropriate and updated risk assessment.³⁷

Role of HSE

The Health and Safety Executive (HSE) is the UK's national regulator for work-related health, safety, and welfare. It issues guidance on shift work, fatigue, stress, and the protection of new and expectant mothers, and works with local authorities to enforce compliance with the HSWA and related regulations.³⁸

HSE inspectors may visit workplaces, investigate complaints and accidents, and issue enforcement notices requiring remedial action or preventing unsafe practices from continuing.³⁹ In serious cases, the HSE may prosecute employers for breaches of statutory duties.⁴⁰ In relation to women working night shifts, the HSE's role is particularly important in ensuring that employers do not treat safety obligations as mere formalities, but instead

²⁹ Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg. 10.

³⁰ Health and Safety Executive, *Managing Shift Work: Health and Safety Guidance* (HSG256).

³¹ Management of Health and Safety at Work Regulations 1999, reg. 16; Health and Safety Executive, *Protecting pregnant workers and new mothers*

³² Management of Health and Safety at Work Regulations 1999, SI 1999/3242, reg. 16(1)–(2).

³³ *Ibid.*, reg. 16(2)(b).

³⁴ *Ibid.*, reg. 16(3)

³⁵ Health and Safety Executive, *Protecting Pregnant Workers and New Mothers: Employers' Responsibilities*.

³⁶ Management of Health and Safety at Work Regulations 1999, reg. 16; Health and Safety Executive, *New and Expectant Mothers at Work: A Guide for Employers*.

³⁷ Management of Health and Safety at Work Regulations 1999, reg. 16(1)–(2); HSE, *Protecting Pregnant Workers and New Mothers*.

³⁸ Health and Safety Executive, *What we do*.

³⁹ Health and Safety at Work etc. Act 1974, §§ 20–22; Health and Safety Executive, *What to expect when a health and safety inspector calls*.

⁴⁰ Health and Safety at Work etc. Act 1974, § 33; Health and Safety Executive, *Enforcement Guide* (HSE48).

implement practical measures such as safe transport policies, adequate lighting and security, effective grievance and harassment procedures, and genuine adjustments for pregnant and nursing workers.⁴¹

COMPARATIVE ANALYSIS: INDIA AND THE UK

India and Great Britain adopt significantly different approaches to regulating women's night work. India follows a **gender-specific framework** under the Occupational Safety, Health and Working Conditions (OSH) Code, 2020, which permits women to work at night subject to their consent and conditions prescribed by the appropriate Government. Great Britain, by contrast, follows a largely **gender-neutral approach**. The Working Time Regulations 1998 establish common limits on night work, working hours and rest periods, while the Equality Act 2010 prohibits sex discrimination. General health and safety duties further require employers to assess and manage workplace risks. These differences are particularly evident in relation to consent, safety, pregnancy protection and enforcement.

Gender-Specific Regulation and Consent

Under Section 43 of the OSH Code, women may be employed in all establishments and types of work, including before 6 a.m. and after 7 p.m., subject to their **consent** and prescribed safety conditions. State-level rules may additionally require written consent, transportation, adequate lighting and security measures. While this represents a shift away from the earlier restrictive approach to women's night work, questions remain regarding whether consent is always genuinely voluntary. In precarious employment, workers may feel pressured to accept night work due to concerns about job security, promotion or future opportunities.

Great Britain has **no separate consent requirement for women's night work**. Instead, night workers are subject to statutory limits on working hours and rest, while the Equality Act protects against discriminatory practices. A neutral requirement to undertake regular night work may amount to **indirect sex discrimination** if it places women at a particular disadvantage and cannot be objectively justified.

Working Hours, Safety and Security

The Indian framework regulates working hours, overtime and welfare facilities, while State rules may prescribe additional safeguards for women working at night, including transportation, lighting and security. In Great Britain, the Working Time Regulations establish a **48-hour average weekly limit** and an eight-hour average daily limit for night workers, together with minimum rest requirements. Health and safety duties under the Health and Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999 require employers to assess and control risks associated with workplace activities, including fatigue, lone working and security.

Unlike India, Great Britain does not generally impose women-specific transport or security requirements. Instead, such risks are addressed through general risk-assessment obligations.

⁴¹ Health and Safety Executive, *Managing Shift Work: Health and Safety Guidance* (HSG256)

This provides employers with greater flexibility but places greater responsibility on them to identify and effectively manage risks.

Health Assessment and Pregnancy Protection

Both jurisdictions recognise the particular risks that night work may create for pregnant workers and new mothers, but their approaches differ. In India, the OSH Code permits restrictions on the employment of pregnant women in **dangerous operations**, while the Code on Social Security, 2020 provides maternity benefits, including up to 26 weeks of maternity benefit in specified circumstances, together with nursing and crèche-related provisions.

Great Britain adopts a more **individualised risk-assessment model**. The Management of Health and Safety at Work Regulations 1999 require employers to assess risks to new and expectant mothers and, where necessary, modify working conditions or hours or provide suitable alternative work. Where neither is reasonably practicable, suspension on full pay may be required. Thus, the British approach focuses more on adapting work to the individual worker rather than relying primarily on categorical restrictions.

Sexual Harassment and Enforcement

India has a dedicated statutory framework for workplace sexual harassment through the **POSH Act, 2013**, which requires employers to establish Internal Committees and provide mechanisms for complaints and redressal. This is particularly relevant to night work where employees may face additional concerns relating to security, isolated workplaces and reporting mechanisms.

Great Britain addresses sexual harassment primarily through the **Equality Act 2010**. In addition, since **26 October 2024**, employers have been subject to a statutory duty to take reasonable steps to prevent sexual harassment of employees. Enforcement also differs: Indian compliance involves labour authorities and institutional mechanisms such as Internal Committees, whereas Great Britain combines regulatory enforcement by the HSE with employment tribunal remedies for discrimination and harassment claims.

Protection vs Equality: Which Approach is More Effective?

India's **protective, gender-specific model** provides visible safeguards for women but may reinforce stereotypes and create a risk that employers avoid employing women in night-based roles because of perceived compliance burdens. The effectiveness of consent may also be weakened where workers lack meaningful bargaining power or where State-level requirements vary.

Great Britain's **equality-based, risk-assessment model** avoids treating women as inherently more vulnerable and places responsibility on employers to identify and manage risks affecting workers generally, while providing additional protections where circumstances such as pregnancy require them. However, its effectiveness depends on proper risk assessment, enforcement, worker awareness and access to employment tribunals.

Neither approach is inherently superior. India provides stronger **formal recognition of women's specific vulnerabilities**, while Great Britain offers greater emphasis on **equality, flexibility and individualised risk management**. The central lesson for both systems is that substantive safety and equality require more than statutory rights: they depend upon consistent implementation, effective enforcement, worker awareness and remedies that are accessible in practice.

SUGGESTIONS AND RECOMMENDATIONS

According to the analysis, the OSH Code, 2020 can be improved by striking a balance between adequate safety protections and fair job opportunities for women.

First, safety regulations ought to be more risk-based and gender-neutral. Instead of viewing women as intrinsically vulnerable, protection should concentrate on real occupational threats. When certain conditions, including pregnancy, dangerous job, or working alone, call for them, further protections may be offered.

Second, Section 43's permission requirement ought to guarantee sincere and free will. Consent must be informed, recorded, and able to be revoked without consequence. Refusing to work at night shouldn't have a negative impact on hiring, advancement, or other job prospects.

Third, clear and uniform minimum safety standards should be prescribed for night shifts. These should include safe transportation, adequate lighting, workplace security, emergency assistance, rest facilities and sanitary facilities. A common minimum standard across States would reduce inconsistencies in implementation.

Fourth, businesses should do routine, recorded risk assessments that address issues including exhaustion, working alone, transportation, workplace security, and harassment. The risk-assessment method used in the UK offers a helpful paradigm for transferring accountability for identifying and managing workplace hazards to companies.

Fifth, there should be more enforcement. For businesses that hire people at night, labour authorities should utilise explicit compliance checklists and perform routine inspections. Consent, risk assessments, safety plans, and complaints should all be kept on file by employers, and major non-compliance should be punished appropriately.

Sixth, the POSH Act of 2013 should be merged with OSH compliance. Accessible complaint channels, operational internal committees, and unambiguous information about emergency and harassment-related protocols should all be available to women who work at night.

Finally, India should aim to move from protection through restriction to protection through regulation. The objective should not be to prevent women from working at night in the name of safety, but to ensure that employers and the State create conditions in which women can undertake night work safely, voluntarily and with dignity and equal opportunity.

COCNCLUSION

The difficulty of striking a balance between workplace safety and equality, autonomy, and freedom of employment is shown in the regulation of women's night shift employment. The Occupational Safety, Health and Working Conditions Code, 2020 in India marks a substantial shift from the previous strategy of limiting women's involvement in night work. The Code acknowledges that women should not be denied employment possibilities based solely on the time of work by allowing them to work at night, subject to permission and specified precautions.

The potential of a more risk-based, gender-neutral approach is illustrated by the comparison with Great Britain. The UK approach places more emphasis on detecting and controlling workplace risks rather than seeing women as a universally vulnerable category. It also offers specific protection where individual circumstances, like pregnancy, demand it. India may benefit from this strategy without giving up protections that address the real hazards posed by female employees.

Therefore, the goal should be to make protection a method of promoting equality rather than to choose between the two. While giving employers and regulators the primary duty for controlling workplace dangers, a progressive framework should guarantee that women can work at night in a safe, voluntary, and dignified manner. Therefore, protection through effective, risk-based regulation and equitable opportunity should be the future of women's night shift employment in India rather than protection through restrictions.

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