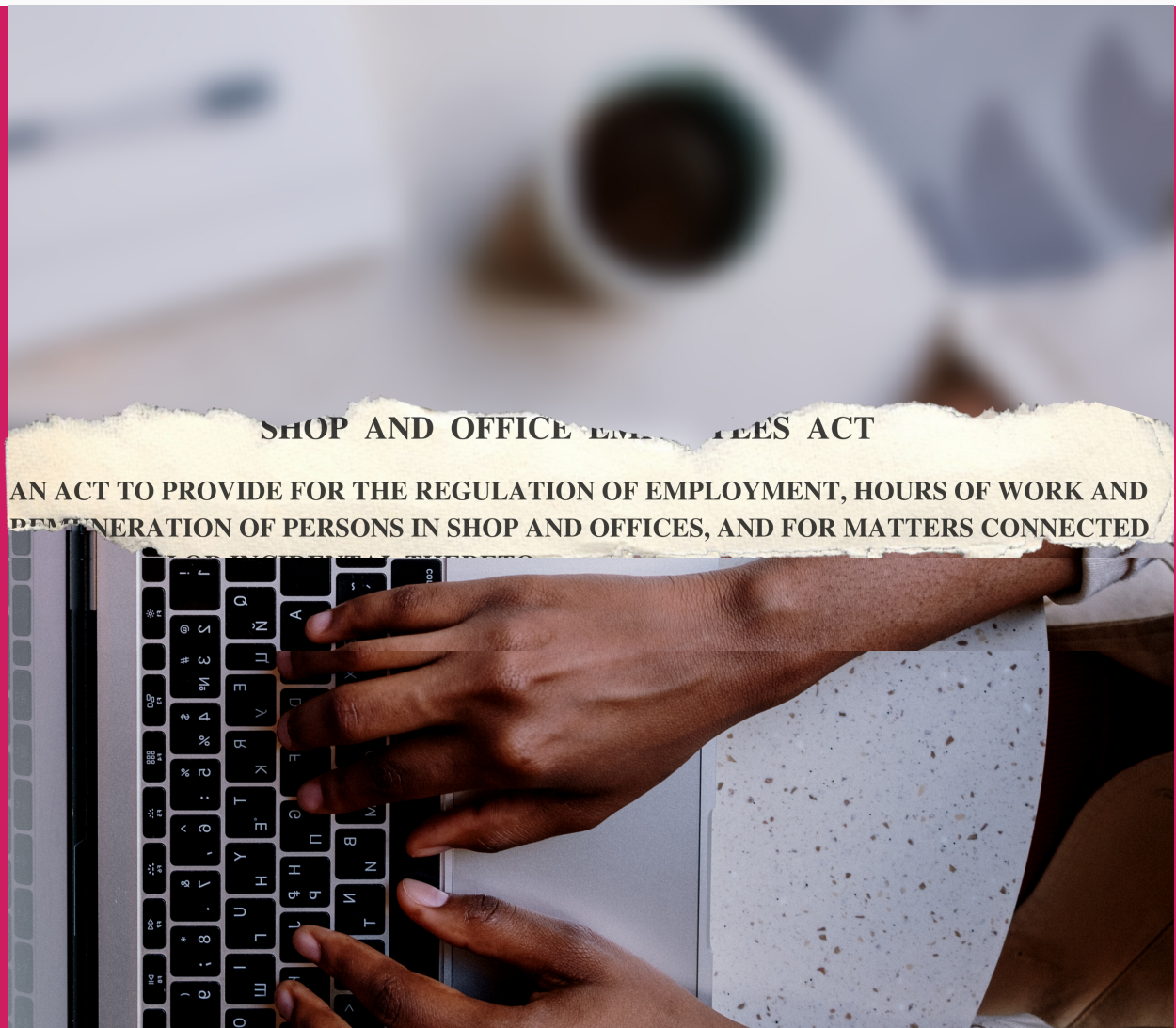


GENDER DISCRIMINATORY LABOUR LAWS IN SRI LANKA AND FEMALE LABOUR FORCE PARTICIPATION

MARCH 2022

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CONTENTS

01

Introduction 7

02

Methodology 8

03

Legal Gender Equality and Women's
Labour Force Participation 9

3.1 The Women, Business and the Law Index 10

3.2 Scorecard for Sri Lanka Based on the
Women, Business and the Law 2022 Index 12

04

Statutes Governing Labour Laws 14
in Sri Lanka

05

Part-Time Work for Women in 15
Sri Lanka

5.1 Adverse Impacts of the Non- 16
Recognition of Part-Time Work

5.2 Positive Outcomes of Legislating 17
Part-Time Work

5.3 International Obligations 19

5.4 Reform Recommendations 20



06

Overtime Work for Women in Sri Lanka	21
6.1 Discrimination in Overtime Work	21
6.2 Administrative Relaxation: An Exception to the Law	22
6.3 Reforms Proposed through the Draft ‘Employment Act 2019’	22
6.4 Lessons From The Region	23
6.4.1 Nepal	
6.5 International Obligations	23
6.6 Reform Recommendations	24

07

Work at Night for Women in Sri Lanka	25
7.1 Restrictions on Women Working in the IT/ BPM Sector	25
7.2 Restrictions on Women Employed in Hotels and Restaurants	27
7.3 Restrictions on Women Working in the Manufacturing Sector	27
7.4 Concerns Associated with Working at Night	28
7.5 International Obligations	27
7.6 Lessons from the Region	28
7.6.1 Maharashtra	
7.6.2 Kerala	
7.7 Reform Recommendations	30

08

Sexual Harassment in the Workplace in Sri Lanka	32
8.1 Criminalising Sexual Harassment under the Penal Code	32
8.2 Sexual Harassment in the Private Sector under Civil Law	33
8.3 Sexual Harassment in the Public Sector	34
8.4 Lessons from the Region	34
8.4.1 India	
8.5 International Obligations	35
8.6 Reform Recommendations	36

09

Conclusion	37
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Abbreviations

BPM	Business Process Management
CEDAW	Committee on the Elimination of Discrimination Against Women
CPPR	Centre for Public Policy Research
FICCI	Federation of Indian Chamber of Commerce and Industry
ICC	Internal Complaints Committee
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	Industrial Disputes Act
ILO	International Labour Organisation
IPS	Institute of Policy Studies
IT	Information Technology
KII	Key Informant Interview
LC	Local Committee
NLAC	National Labour Advisory Council
PLFS	Periodic Labour Force Survey
SLASSCOM	Sri Lanka Association for Software Services Companies
WBL	Women, Business and the Law
WDI	World Development Indicators
WEF	World Economic Forum
WHO	World Health Organisation



Introduction

Despite high levels of educational attainment,¹ low female labour force participation has been the case for Sri Lanka for over two decades with a rate oscillating between 30-37%. The total female unemployment rate was reported to be 8.5% in 2020 as opposed to a 4.0% of male unemployment rate.² Moreover, the second quarter of 2021 reported a female unemployment rate of 7.7% with a male unemployment rate of only 3.8%.³ Further, in both instances female unemployment rates recorded a higher number than male unemployment across all age groups.⁴

While there can be many factors that determine women's participation in the labour force such as economic development, social norms, access to child care and other support activities,⁵ marital status, race, relation to the head of the household, literacy in English,⁶ etc, this report attempts to unpack the contribution of Sri Lanka's labour laws that discourage the entry and retention of women in the labour force.

The analysis finds a lack of reference to part-time and flexible employment in the existing labour law, time restrictions on employing women at night, dearth of legal provisions for sexual harassment in employment and restrictions on overtime work for women as legal obstacles that discourage women from entering and remaining in the labour force.

To improve female labour force participation in Sri Lanka this brief recommends amending the Shop and Office Employees (Regulation of Employment & Remuneration) Act No.19 of 1954, Wages Boards Ordinance No. 27 of 1941, Gratuity Act No.12 of 1983, Industrial Disputes Act No.43 of 1950 (IDA), Factories Ordinance No. 45 of 1942, Employment of Women, Young Persons and Children Act No.47 of 1956 to mitigate the impact of the identified discriminatory laws.

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- 1 Government of Sri Lanka, Department of Census and Statistics, Table 03. Population (5 years and above) by educational attainment and age group and sex 2012, Census of Population and Housing, 2012, <http://www.statistics.gov.lk/GenderStatistics/StaticInformation/Education/Population-5YearsAndAbove-ByEducationalAttainmentAndAgeGroupAndSex2012> (accessed October 18, 2021).
 - 2 Government of Sri Lanka, Department of Census and Statistics, Sri Lanka Labour Force Survey – 2020 (With Provincial and District level data), 2020, <http://www.statistics.gov.lk/LabourForce/StaticInformation/AnnualReports/2020> (accessed March 3, 2022).
 - 3 Government of Sri Lanka, Department of Census and Statistics, Sri Lanka Labour Force Statistics Quarterly Bulletin - 2nd Quarter 2021, Issue No. 91, 3, <http://www.statistics.gov.lk/LabourForce/StaticInformation/QuarterlyReports/2ndQuarter2021> (accessed March 3, 2022).
 - 4 Government of Sri Lanka, Department of Census and Statistics, Sri Lanka Labour Force Statistics Quarterly Bulletin - 2nd Quarter 2021, Issue No. 91, 3, <http://www.statistics.gov.lk/LabourForce/StaticInformation/QuarterlyReports/2ndQuarter2021> (accessed October 18, 2021).
 - 5 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016) https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed October 18, 2021).
 - 6 L.U. Mallawarachchi and T.S.G. Peiris, "A study of the factors affecting female labour force participation in Sri Lanka", Sri Lankan Journal of Business Economics, 9 (1), (2020): 60 <https://mgt.sjp.ac.lk/bec/wp-content/uploads/2020/08/Sri-Lankan-Journal-of-Business-Economics-SLJBE-Vol.-09-1-2020-May-Article-04.pdf> (accessed October 18, 2021).



Methodology

A mixed-method approach was deployed in this qualitative research report.

The main sources this report relied on for analysis are:

- a. Existing local and international literature on labour laws, gender-discriminatory labour laws and their impact on women's labour force participation.
- b. Laws and policy frameworks and other official government documents.
- c. A desk research-based survey of evidence on laws and policies adopted by other countries to encourage women's labour force participation.
- d. Key Informant Interviews (KIIs) with relevant government personnel and private sector personnel.

The 2022 World Bank, Women, Business and the Law index was used as a reference to identify the lack of legal best practices and discrimination that impacts female labour force participation.

The study will:

- a. Identify gender-discriminatory labour laws, legal provisions, or the lack thereof, in terms of part-time, overtime and work at night for women and sexual harassment in the workplace.
- b. Provide reform recommendations to improve the legal and policy framework to encourage women to enter and remain in the labour force.



Legal Gender Equality and Women's Labour Force Participation

Sri Lanka's labour force survey states that the female labour force participation rate (LFPR) was 32.0% in 2020.⁷ The second quarter of 2021 recorded 30.9% for the same.⁸ This is a significant decrease from the 33.4% reported in the first quarter of the same year.⁹ This could be attributed to COVID 19 deepening gender inequality in the labour market similar to global trends. For example, a 2020 study by McKinsey Global estimates that women's jobs are 1.8 times more vulnerable to the crisis than men's jobs and women account for 54% of overall job losses despite making up only 39% of global employment.¹⁰

More positively, the biennial World Bank publication, *Women, Business and the Law*, which monitors how discriminatory laws prevent women from fully and equally contributing to their economies in 190 countries across the world, highlighted that despite adversities created by the pandemic many economies made gender equality a priority. For example, since October 2020, 23 economies

around the world have recognized benefits and introduced legal reforms improving 39 laws increasing women's economic empowerment.¹¹ The 2021 *Women, Business and the Law* report emphasised that even though it is impossible to be fully prepared for external shocks such as a pandemic, governments take an important step towards safeguarding their economies when the legal environment encourages women's work. The 2022 report confirms this by stating that when societies become more equal, economies become more resilient.¹² The publication's data reveal that legal reforms may precede improvements in women's opportunities and outcomes. For instance, the report shows that in economies where women face less discrimination under the law, greater progress has been made in closing gender gaps. Most importantly, the report highlights that greater equality under the law is associated with more women participating in the labour force and fewer female workers in vulnerable employment.^{13 14}

7 Government of Sri Lanka, Department of Census and Statistics, Sri Lanka Labour Force Survey Annual Report - 2020, <http://www.statistics.gov.lk/LabourForce/StaticInformation/AnnualReports/2020> (accessed March 4, 2022).

8 Government of Sri Lanka, Department of Census and Statistics, Sri Lanka Labour Force Statistics Quarterly Bulletin - 2nd Quarter 2021, Issue No. 91, 3, <http://www.statistics.gov.lk/LabourForce/StaticInformation/QuarterlyReports/2ndQuarter2021> (accessed October 18, 2021).

9 Government of Sri Lanka, Department of Census and Statistics, Annual Bulletin of Labour Force - 2002 (With Provincial Level Data), 2002, 1, <http://www.statistics.gov.lk/LabourForce/StaticInformation/AnnualReports/2002> (accessed October 6, 2021)

10 Anu Madgavkar and others, COVID-19 and gender equality: Countering the regressive effects, (McKinsey Global Institute, 2020), 2, <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/Future%20of%20Organizations/COVID%2019%20and%20gender%20equality%20Countering%20the%20regressive%20effects/COVID-19-and-gender-equality-Countering-the-regressive-effects-vF.pdf> (accessed October 10, 2021).

11 *Women, Business and the Law 2022*, (Washington: The World Bank, 2022), <https://openknowledge.worldbank.org/handle/10986/36945> (accessed March 1, 2022).

12 *Women, Business and the Law 2022*, (Washington: The World Bank, 2022), <https://openknowledge.worldbank.org/handle/10986/36945> (accessed March 1, 2022).

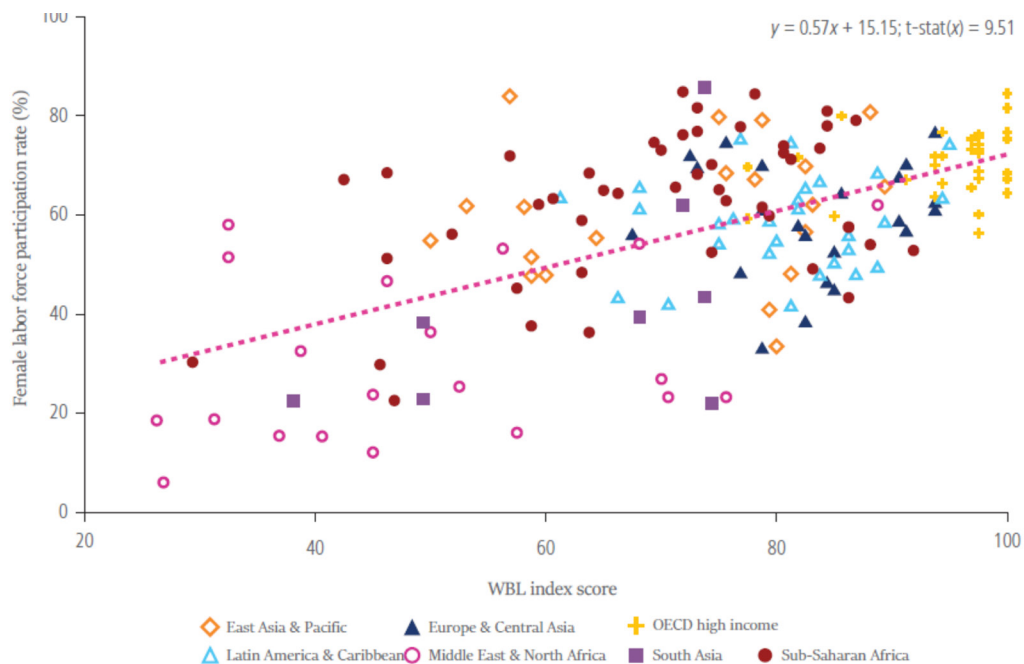
13 Vulnerable employment refers to those workers who either are self-employed without any employees or are unpaid family workers. This is a noteworthy association: vulnerable employees are those who are least likely to have access to social protection and safety nets or to be able to save, leaving them exposed to economic shocks and at the greatest risk of poverty.

14 *Women, Business and the Law 2022*, (Washington: The World Bank, 2022), <https://openknowledge.worldbank.org/handle/10986/36945> (accessed March 1, 2022).



The graph below illustrates the positive relationship between equality of the law and increased female labour force participation.

FIGURE 1 | LEGAL GENDER EQUALITY AND FEMALE LABOUR FORCE PARTICIPATION



(Source: *Women, Business and the Law 2021 (WBL) database*; *World Development Indicators (WDI) database*, *Global Gender Gap Index (WEF 2019)*.)

Drawing from this, while there are extensive studies of contributory factors to Sri Lanka's low female labour force participation, this brief explores four legal constraints that are easier to tackle in terms of legal reforms in Sri Lanka. These reforms, which are entirely in the hands of the government, will contribute to making the labour market more conducive to women, encouraging their entry and retention in the labour force. This is important because, as identified by the World Bank, women's economic empowerment reduces income inequality, increasing diversity and economic resilience, benefiting the wider economy of a country.¹⁵

3.1 The Women, Business and the Law Index

Sri Lanka scored 65.6 on the World Bank's Women, Business and the Law index. The index captures reforms that occurred between October 2, 2020, and October 1, 2021. Since its inception in 2009, the index collected data on laws and regulations that restrict women's economic opportunities. In 2020, the project began examining this data through an index structured around a woman's working life. This perspective aligns different areas of the law with the decisions women make as they begin, progress through, and end their careers.¹⁶

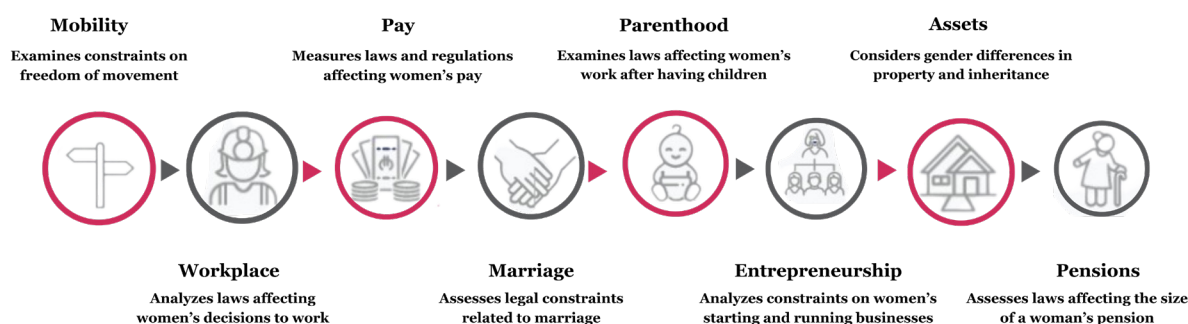
15 *Women, Business and the Law 2021*, (Washington: The World Bank, 2021), 5, https://www.worldbank.org/content/dam/sites/wbl/documents/2021/02/WBL2021_ENG_v2.pdf (accessed October 10, 2021).

16 *Women, Business and the Law 2022*, (Washington: The World Bank, 2022), <https://openknowledge.worldbank.org/handle/10986/36945> (accessed March 1, 2022).



The study assigns 35 questions across eight indicators. Figure 2 below demonstrates the eight indicators.

FIGURE 2 | LAWS AFFECT WOMEN THROUGHOUT THEIR WORKING LIVES











(Source: *Women, Business and the Law 2022 (WBL)*, World Bank)

Overall scores are then calculated by taking the average of each indicator, with 100 representing the highest possible score. The final Women, Business and the Law index score is identified to present the share of good laws in each economy weighted by the indicators. Therefore, as stated by the World Bank, the index serves as an easily replicable way to gauge the regulatory environment for women as entrepreneurs and employees.¹⁷

¹⁷ Women, Business and the Law 2022, (Washington: The World Bank, 2022), <https://openknowledge.worldbank.org/handle/10986/36945> (accessed March 1, 2022).



3.2 Scorecard for Sri Lanka Based on the Women, Business and the Law 2022 Index

Indicator	Question	Answer	Indicator score
Mobility 	1. Can a woman choose where to live in the same way as a man?	Yes = 1	100
	2. Can a woman travel outside her home in the same way as a man?	Yes = 1	
	3. Can a woman apply for a passport in the same way as a man?	Yes = 1	
	4. Can a woman travel outside the country in the same way as a man?	Yes = 1	
Workplace 	1. Can a woman get a job in the same way as a man?	Yes = 1	75
	2. Does the law prohibit discrimination in employment based on gender?	No = 0	
	3. Is there legislation on sexual harassment in employment?	Yes = 1	
	4. Are there criminal penalties or civil remedies for sexual harassment in employment?	Yes = 1	
Pay 	1. Does the law mandate equal remuneration for work of equal value?	No = 0	25
	2. Can a woman work at night in the same way as a man?	No = 0	
	3. Can a woman work in a job deemed dangerous in the same way as a man?	Yes = 1	
	4. Can a woman work in an industrial job in the same way as a man?	No = 0	
Marriage 	1. Is there no legal provision that requires a married woman to obey her husband?	Yes = 1	100
	2. Can a woman be head of household in the same way as a man?	Yes = 1	
	3. Is there legislation specifically addressing domestic violence?	Yes = 1	
	4. Can a woman obtain a judgement of divorce in the same way as a man?	Yes = 1	
	5. Does a woman have the same rights to remarry as a man?	Yes = 1	
Parenthood 	1. Is paid leave of at least 14 weeks available to mothers?	No = 0	20
	2. Does the government administer 100% of maternity leave benefits?	No = 0	
	3. Is paid leave available to fathers?	No = 0	
	4. Is there paid parental leave?	No = 0	
	5. Is dismissal of pregnant workers prohibited?	Yes = 1	
Entrepreneurship 	1. Does the law prohibit discrimination in access to credit based on gender?	No = 0	75
	2. Can a woman sign a contract in the same way as a man?	Yes = 1	
	3. Can a woman register a business in the same way as a man?	Yes = 1	
	4. Can a woman open a bank account in the same way as a man?	Yes = 1	
Assets 	1. Do men and women have equal ownership rights to immovable property?	Yes = 1	80
	2. Do sons and daughters have equal rights to inherit assets from their parents?	Yes = 1	
	3. Do male and female surviving spouses have equal rights to inherit assets?	Yes = 1	
	4. Does the law grant spouses equal administrative authority over assets during marriage?	Yes = 1	
	5. Does the law provide for the valuation of non-monetary contributions?	No = 0	
Pension 	1. Is the age at which men and women can retire with full pension benefits the same?	No = 0	50
	2. Is the age at which men and women can retire with partial pension benefits the same?	Yes = 1	
	3. Is the mandatory retirement age for men and women the same?	Yes = 1	
	4. Are periods of absence due to childcare accounted for in pension benefits?	No = 0	

WBL
economy
score
65.6



Under the **workplace indicator**, Sri Lanka has scored a total indicator score of 75. Of the four questions that have been taken into consideration under the workplace indicator **sexual harassment** is addressed by questions 3 and 4:

- Is there legislation on sexual harassment in employment?
- Are there criminal penalties or civil remedies for sexual harassment in employment?

In terms of legislation on sexual harassment in employment, no statute has been dedicated to addressing sexual harassment in the workplace in Sri Lanka. Moreover, statutes that cover the offence indirectly have been identified to be insufficient.

In terms of criminal penalties and civil remedies for sexual harassment in employment, sexual harassment is criminalised under Penal Code (Amendment) Act No.22 of 1995. However, there are no civil remedies for sexual harassment.

Under the **pay indicator**, Sri Lanka ranks low with an overall score of 25. Of the four questions considered under the indicator, two are as follows:

- Does the law mandate equal remuneration for work of equal value?
- Can a woman work at night in the same way as a man?

In terms of equal remuneration for work of equal value, there is no specific provision in the law that provides for equal pay for an equal role for men and women in Sri Lanka. However, Section 12 of the Sri Lankan Constitution states that all persons should be equal before the law, making both men and women eligible for equal pay for equal work. In light of this, it is worthy to note that Shop and Office Employees (Regulation of Employment & Remuneration) Act No. 19 of 1954 only permits a maximum of nine hours of work per day, including meal intervals, within a five-day working week for women, with an exception for those employed in residential hotels, clubs and other places of

entertainment or in any shop situated at an airport. Hours in excess of this is not permitted under the Act. However, men above the age of 18 years are permitted to work a maximum of nine hours per day and twelve hours of overtime per week. This inhibits women's opportunity for equal work and thereby restricts their access to equal pay for **overtime work they may be willing and able to do**.

Similarly, Sri Lanka's labour laws have no reference to the concept of **part-time work**, thereby failing to legally secure both men and women's equal access to and remuneration for part-time work.

In terms of a woman's ability to **work at night** the same way as a man, the Shop and Office Employees (Regulation of Employment & Remuneration) Act No. 19 of 1954, The Factories Ordinance No. 45 of 1942 and the Employment of Women, Young Persons, and Children Act No. 47 of 1956 restricts women's ability to work at night, in most sectors¹⁸ in Sri Lanka. No such restrictions are applicable to men.

(The World Bank Women, Business and the Law indicator recognizes Section 10 under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 as a legal obstacle that prevents women from working the same night hours as men. However, through our research it was seen that The Factories Ordinance No. 45 of 1942 and the Employment of Women, Young Persons, and Children Act No. 47 of 1956 also include provisions that restrict women's ability to work at night).

As the Women, Business and the Law indicators coincide with milestones a woman might experience or achieve in their lifetime, they are based on statistically significant associations with outcomes related to women's economic empowerment such as women's labour force participation rates.¹⁹ Therefore, the indicator measures explicit gender-based differences in the law. This report uses it as a reference to identify the lack of legal best practices and discrimination that negatively impacts female labour force participation to provide reform recommendations.

¹⁸ This term in this brief refers to work at night for women working in the IT/BPM sector, the hotels sector and the manufacturing sector.

¹⁹ Women, Business and the Law 2022, (Washington: The World Bank, 2022), <https://openknowledge.worldbank.org/handle/10986/36945> (accessed March 1, 2022).



Statutes Governing Labour Laws in Sri Lanka

Presently, numerous statutes have been introduced to cover different aspects of employment in Sri Lanka.

The Shop and Office Employees (Regulation of Employment & Remuneration) Act No. 19 of 1954 regulates the terms and conditions of employment for employees engaged in a shop or office.²⁰ The Wages Boards Ordinance No. 27 of 1941 regulates fundamental working conditions including working time, annual leave and wages,²¹ for particular trades.²² The Factories Ordinance No. 45 of 1942 provides for the safety and welfare of employees working in a factory.²³ The Industrial Disputes Act No. 43 of 1950

(IDA) aims to regulate the relationship between the employer and employee by prescribing modes of settling disputes amongst them.²⁴ The Employment of Women, Young Persons, and Children Act No. 47 of 1956 regulates work at night for women and children.²⁵ The Payment of Gratuity Act No.12 of 1983 details the social security schemes accessible to workers.²⁶

In response to some of the limitations identified in the aforementioned statutes, a draft “Employment Act 2019”²⁷ was presented to the National Labour Advisory Council (NLAC). The Act proposed to unify existing labour laws in Sri Lanka.

20 Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954.

21 Sabrina Esufally, Vidya Nathaniel, Sanjit Dias and Gehan Gunatilleke, Sri Lanka: Domestic Workers. An Analysis of the Legal and Policy Framework, (Verite Research, 2015) <https://www.veriteresearch.org/wp-content/uploads/2018/06/Sri-Lanka-Domestic-Workers-Legal-Policy-Framework-No.-1.pdf>, (accessed 8 November 2021).

22 Wages Board Ordinance No. 27 of 1941.

23 Factories Ordinance No. 45 of 1942.

24 Industrial Disputes Act No. 43 of 1950.

25 Employment of Women, Young Persons, and Children Act No. 47 of 1956.

26 Payment of Gratuity Act No.12 of 1983.

27 Draft ‘Employment Act 2019’.



Part-Time Work for Women in Sri Lanka

Sri Lanka's labour laws have no reference to the concept of part-time work.²⁸ According to 2019 World Bank data, the percentage of women who worked part-time in Sri Lanka (33.82%) was significantly higher than that of men (19.87%).^{29 30} This indicates that a woman in Sri Lanka is almost twice more likely to engage in part-time work.

Research shows that women bear a bigger burden of unpaid care work. Therefore, part-time and flexible work can encourage them to enter and remain in the labour force. A 2017 survey by the Department of Census and Statistics estimated that the female participation rate for unpaid domestic services

for household and family members was 86.4% with unpaid caregiving services for household and family members amounting to 38.4% in 2016.³¹ Further, a 2017 World Bank report found that from 2006 to 2015 the share of women with contributing-family-worker status, which is unpaid, rose from 72-78%. In other words, of all employed females in 2015, 18.8% were contributing-family-workers in comparison to 2.8% males that were engaged in unpaid work in the same year.³²

This overrepresentation of women in unpaid work calls for part-time and flexible work to be included in the legal framework.

28 Nadunie Wanigasinghe, *Working Women and Tight Rope Walking: An Agenda to Reform Workplace Flexibility Laws*, (University of Colombo, 2019), <http://docplayer.net/195865603-Working-women-and-tight-rope-walking-an-agenda-to-reform-workplace-flexibility-laws.html>, (accessed 8 December 2021).

29 "Part-time Employment, Female (% of Total Female Employment) - Sri Lanka", The World Bank Group, February 8, 2022, <https://data.worldbank.org/indicator/SL.TLF.PART.FE.ZS?locations=LK> (accessed 8 December, 2021).

30 "Part-time Employment, Female (% of Total Female Employment) - Sri Lanka", The World Bank Group, February 8, 2022, <https://data.worldbank.org/indicator/SL.TLF.PART.FE.ZS?locations=LK> (accessed 8 December, 2021).

31 Government of Sri Lanka, Department of Census and Statistics, *Sri Lanka Time Use Survey - Final Report 2017*, http://www.statistics.gov.lk/Resource/PressReleases/TUS_FinalReport_2017.pdf (accessed 8 December 2021).

32 Jennifer L. Solotaroff and others, *Getting to Work Unlocking Women's Potential in Sri Lanka's Labour Force*, (Washington: The World Bank Group, 2017), <https://documents1.worldbank.org/curated/en/281511510294264126/pdf/121117-PUB-PUBLIC-Getting-to-Work-Unlocking-Womens-Potential-in-Sri-Lankas-Labor-Force-Overview-Ebook.pdf> (accessed 8 December 2021).



5.I Adverse Impacts of the Non-Recognition of Part-Time Work

As the current labour laws fail to specifically recognize part-time work, employers are restrained from employing part-time workers for several reasons.

The Wages Board Ordinance No. 27 of 1941³³, Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954,³⁴ Employment of Women, Young Persons and Children Act No. 47 of 1956³⁵ and Factories Ordinance No. 45 of 1942³⁶ govern the working hours, rest intervals and holidays of workers.³⁷ However, none of the statutes prescribe the minimum hours of work to be qualified as a full-time employee.³⁸ Therefore, even a part-time employee will be able to fall within the scope of a full-time employee.³⁹ This would entitle part-time workers to the same number of holidays and rest hours.

Additionally, the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 entitles employees to compensation upon unfair termination of employment,⁴⁰ provided

that they have worked for 180 days within a year.⁴¹ As the Act fails to provide a minimum number of hours worked during those 180 days, a part-time worker would also fall under the scope of the Act.⁴² Thus, employers would be less inclined to hire part-time workers on the basis that they will be working for fewer hours for the same entitlements.⁴³ For example, a 2016 International Labour Organisation (ILO) report revealed that 20% of senior managers of selected companies in Sri Lanka were not in favour of flexible working arrangements under the existing legal framework on the basis that such schemes would be more disadvantageous to the company.⁴⁴

Another disadvantage of the lack of legal recognition of part-time work is identified under the Payment of Gratuity Act No. 12 of 1983.⁴⁵ This Act calculates an employee's social security⁴⁶ based on their last drawn salary.⁴⁷ Under this Act, part-time workers are entitled to the same social security as full-time workers, provided that they served an employer for an uninterrupted period of five years or more.⁴⁸ This will be an additional factor that deters employers from hiring part-time workers.

33 Wages Board Ordinance No. 27 of 1941, Section 24.

34 Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954, Section 3.

35 Employment of Women, Young Persons and Children Act No. 47 of 1956, Part IV, Section 21.

36 Factories Ordinance No. 45 of 1942, Section 67 (1).

37 Sanuja Kalhari and Arosha Adhikaram, Silent and Discriminated: Part Time Employees in Sri Lanka and their Legal Rights, (University of Colombo, 2016), https://www.academia.edu/40008358/SILENT_AND_DISCRIMINATED_PART_TIME_EMPLOYEES_IN_SRI_LANKA_and_THEIR_LEGAL_RIGHTS (accessed November 30, 2021).

38 Nadunie Wanigasinghe, Working Women and Tight Rope Walking: An Agenda to Reform Workplace Flexibility Laws, (University of Colombo, 2019), <http://docplayer.net/195865603-Working-women-and-tight-rope-walking-an-agenda-to-reform-workplace-flexibility-laws.html>, (accessed 8 December 2021).

39 Nadunie Wanigasinghe, Working Women and Tight Rope Walking: An Agenda to Reform Workplace Flexibility Laws, (University of Colombo, 2019), <http://docplayer.net/195865603-Working-women-and-tight-rope-walking-an-agenda-to-reform-workplace-flexibility-laws.html>, (accessed 8 December 2021).

40 Termination without sufficient notice or without reasonable cause.

41 Termination of Employment of Workmen Act (TEWA) (Special Provisions) Act No. 45 of 1971, Section 3 (1) (b).

42 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed November 18, 2021).

43 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016) https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed November 18, 2021).

44 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016), 17, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed October 18, 2021).

45 Payment of Gratuity Act No. 12 of 1983.

46 Employees are entitled to a sum of money upon reaching retirement.

47 Payment of Gratuity Act No. 12 of 1983, Section 06.

48 Yashoravi Bakmiwewa, How to amend the Sri Lankan labour law to include flexible working arrangements?, (International Labour Organization, 2021), 5,

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_776392.pdf, (accessed 30 November, 2021).



The calculation of social security under the Payment of Gratuity Act No. 12 of 1983 has an impact on employees who wish to shift to part-time work arrangements. For instance, an employee working under the same employer for over five years wishing to shift to part-time work would be entitled to a smaller portion of social security as it is based on their salary as a part-time worker (last drawn salary), without any consideration of their salary as a full-time employee.

Based on the above, there are numerous barriers to secure part-time work in the formal sector in Sri Lanka. This causes women who prefer more flexible working arrangements to enter the informal sector as they are not formally governed under the labour laws aforementioned.⁴⁹ For example, a survey conducted by the Department of Census and Statistics in 2020 revealed that 49.9% of the informal sector is made up of women.⁵⁰ While casual⁵¹ and temporary forms of work in the informal sector ensure flexibility for women, it also exposes women to job and income insecurity, as it is characterised by low pay, little or no wage benefits and no labour law rights.⁵²

This further disadvantages women as they are prevented from accessing formal financial services such as requesting loans from banks.⁵³

5.2 Positive Outcomes of Legislating Part-Time Work

Legislating part-time work proves to be an effective measure to increase female labour force participation by enabling women to balance unpaid care work responsibilities with paid employment.⁵⁴

For instance, legislation of part-time work in Austria, Belgium and Germany contributed to an average 26% increase in women's employment rates from 1992 to 2011.⁵⁵ Further, government reforms introduced in the Netherlands, such as the right to work part-time by virtue of the Adjustment of Working Hours Act⁵⁶ and provisions for flexible employment contracts through the Labour Market Act,⁵⁷ led to an increase in the participation of young mothers in the labour force. In 2019, the maternal employment rate was 80.1% with 50% of maternal employment being part-time work compared to 30.1% full-time.⁵⁸

45 Payment of Gratuity Act No. 12 of 1983.

46 Employees are entitled to a sum of money upon reaching retirement.

47 Payment of Gratuity Act No. 12 of 1983, Section 06.

48 Yashoravi Bakmiwewa, How to amend the Sri Lankan labour law to include flexible working arrangements?, (International Labour Organization, 2021), 5,

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_776392.pdf, (accessed 30 November, 2021).

49 Nadunie Wanigasinghe, Working Women and Tight Rope Walking: An Agenda to Reform Workplace Flexibility Laws, (University of Colombo, 2019), <http://docplayer.net/195865603-Working-women-and-tight-rope-walking-an-agenda-to-reform-workplace-flexibility-laws.html> (accessed 30 November, 2021).

50 Government of Sri Lanka, Department of Census and Statistics, Sri Lanka Labour Force Survey - 2020 (With Provincial and District level data), 2020, <http://www.statistics.gov.lk/LabourForce/StaticInformation/AnnualReports/2020> (accessed October 6, 2021).

51 Workers who are called into the workplace as and when they are needed.

52 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016), 17, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed October 18, 2021).

53 Helani Galpaya, Suthaharan Perampalam, and Laleema Senanayake, Investigating the Potential for Micro-Work and Online-Freelancing in Sri Lanka, (Springer International Publishing, 2018), https://doi.org/10.1007/978-3-319-78420-5_14 (accessed 30 November, 2021).

54 Olivier Thévenon, Drivers of Female Labour Force Participation in the OECD, (OECD, 2013) <https://doi.org/10.1787/5k46c7vrgnms6-en>, (accessed 30 November, 2021).

55 Paolo Barbieri, Giorgio Cutuli, Raffaele Guetto, and Stefani Scherer, "Part-Time Employment as a Way to Increase Women's Employment: (Where) Does It Work?" *International Journal of Comparative Sociology*, 60, No. 4, 2019: 249-68, <https://doi.org/10.1177/0020715219849463> (accessed 30 November, 2021).

56 Flexible Working Act 2000, <https://wetten.overheid.nl/BWBR0011173/2016-01-01> (accessed February 24, 2022).

57 Balanced Labor Market Act 2019, <https://wetten.overheid.nl/BWBR0042307/2021-01-01> (accessed February 24, 2022).

58 OECD Family Database, (OECD, 2019), <https://www.oecd.org/els/family/database.htm> (accessed February 24, 2022).

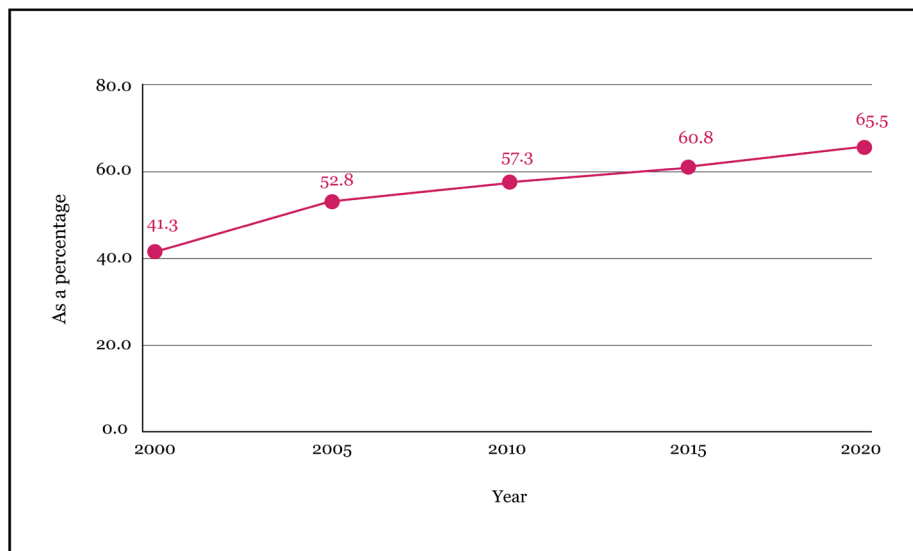


Austria, in particular, reports high part-time female employment rates recording 65.5% of total female employment in 2020.⁵⁹ Laws such as the Working Time Act and the Temporary Employment Act, which equalised treatment of part-time and full-time employees, aided in the increase of part-time female employment in Austria. Moreover, reforms were made to the Working Time Act in 2007 to allow further protection to part-time workers by regulating the worker registration and payment process. Social protection was also extended to cover groups engaging in atypical forms⁶⁰ of employment.⁶¹ These reforms have also contributed to the increase in part-time female employment rates. The law on working

time also allows for the possibility of normal working time, which is 40 hours per week, to be distributed across the week as preferred. This, together with collective agreements,⁶² allow for flexible working time arrangements. The 2007 reforms have also ensured that part-timers are protected under all labour law requirements, insured, qualify for pension benefits and are entitled to severance pay.⁶³

The graphs below depict the positive relationship between part-time female employment rate and female labour force participation in Austria from the years 2000 to 2020.

FIGURE 3 | PART-TIME FEMALE EMPLOYMENT RATE IN AUSTRIA



Source: World Bank Data, 2022

59 "Part Time Employment, Female (% of Total Female Employment) - Austria," The World Bank, February 8, 2022, <https://data.worldbank.org/indicator/SL.TLF.PART.FE.ZS?locations=AT> (accessed March 3, 2022)

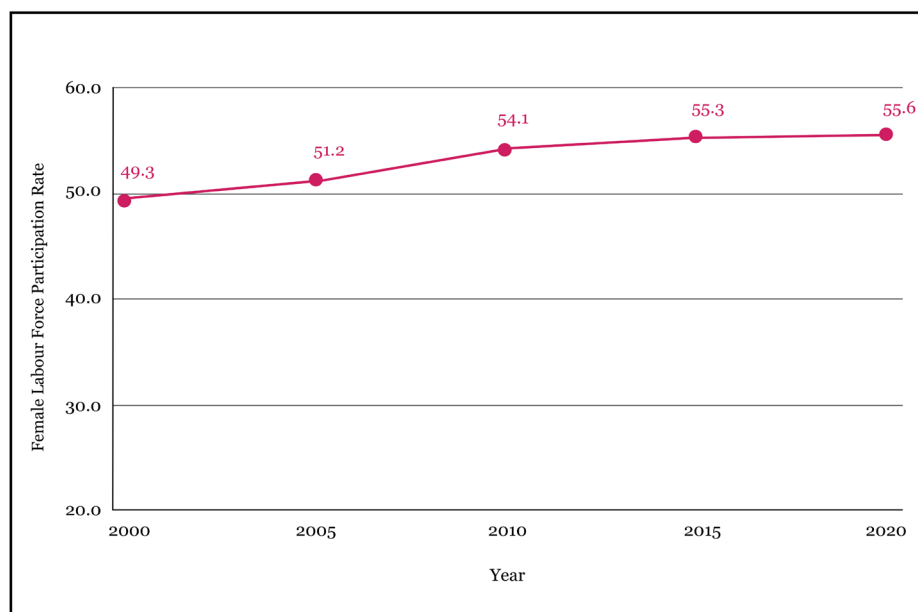
60 As per the European Institute for Gender Equality, atypical employment is work arrangements that fall outside the realm of the standard employment relationship, understood as work that is full-time and of indefinite duration.

61 Decent Work Country Profile Austria, (Geneva: International Labour Organization, 2009).

62 As per Article 1 of the Collective Labour Agreement Act, collective labour agreement refers to the agreement entered into by one or more employers or one or more associations with full legal capacity of employers and one or more associations with full legal capacity of employees, whereby mainly or exclusively working conditions are regulated, to be taken into account in employment contracts.

63 Tobias Hinterseer, "Part-time work: atypical? Precarious? Normal?," *European Journal of Futures Research*, 1, No. 1 (2013): 1-8, <https://link.springer.com/article/10.1007/s40309-013-0018-1> (accessed March 1, 2022).



FIGURE 4 | FEMALE LABOUR FORCE PARTICIPATION RATE IN AUSTRIA

Source: World Bank Data, 2022

The COVID 19 pandemic is also forcing the increase of flexible work globally due to safe-distancing measures and restrictions, highlighting the urgency to include part-time work in Sri Lanka's legal framework.

5.3 International Obligations

Sri Lanka has ratified the Employment Policy Convention, 1964 (No. 122) despite the ambiguity of part-time employment in the law.⁶⁴ Article 1 of the Employment Policy Convention advocates for freedom in employment by stating

that an employee should have freedom of choice and fullest opportunity to engage in work which they are suited for.⁶⁵ As the ratified convention focuses on equal opportunity and freedom of choice in work, part-time workers are entitled to protection by the law.⁶⁶

64 "C122 - Employment Policy Convention, 1964 (No. 122)", International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267 (accessed January 3, 2022).

65 "C122 - Employment Policy Convention, 1964 (No. 122)", International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267 (accessed January 3, 2022).

66 "C122 - Employment Policy Convention, 1964 (No. 122)", International Labour Organization, Recommendation 7, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267 (accessed January 3, 2022).



5.4 Reform Recommendations

1. Introduce a clause under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954⁶⁷ to specifically entitle employees who work less than the maximum working hours, to annual and casual leave which is to be calculated in proportion to the number of hours worked.⁶⁸ This will incentivise employers to hire workers on a part-time basis as their entitlements would differ according to the hours worked.
2. Similarly, mandate that the Wages Boards governed by the Wages Boards Ordinance No. 27 of 1941 provide annual leave to part-time workers in proportion to the number of hours worked.⁶⁹
3. Amend the calculation of social security under the Payment of Gratuity Act No. 12 of 1983 so as to consider an employee's last drawn salary as a full-time worker and a part-time worker separately, provided that they meet the 5 year period of employment. This will enable women who wish to shift to part-time work arrangements⁷⁰ for the purposes of balancing unpaid care work, to do so without compromising their social security entitlements based on full-time work in the past.
4. As a long term recommendation, legislate a separate Act to formally recognize flexible work arrangements. In addition to defining flexible working arrangements, the Act would calculate the appropriate entitlements and benefits for employees based on the number of hours worked. This would include, annual leave, rest days, overtime, and social security benefits.

⁶⁷ Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Section 3 (1)(3)(a).

⁶⁸ Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Section 04, Subsection 6(1)(a).

⁶⁹ Wages Board Ordinance No. 27 of 1941, Section 28(1).

⁷⁰ Work compensated on an hourly basis.



Overtime Work for Women in Sri Lanka

The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954⁷¹ only permits a maximum of 9 hours of work per day including meal intervals within a five-day working week for women.⁷² It does not permit any hours in excess of this. Men above the age of 18 years are permitted to work 9 hours per day and a maximum of 12 hours of overtime per week.⁷³ However, an exception is provided for females employed in residential hotels, clubs and other places of entertainment or in any shop situated at an airport where they may be employed up to 10 p.m. under specific conditions.^{74 75}

The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954⁷⁶ was enacted during the British rule in 1948 and intended to protect women. However, under modern working conditions the law dissuades employers from recruiting women, denying them opportunities for economic advancement.⁷⁷

6.1 Discrimination in Overtime Work

The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954⁷⁸ and the Wages Boards Ordinance No. 27 of 1941⁷⁹ does not permit any overtime for women. However, in practice, employees in a large number of firms work overtime. For example, the 2021 quarterly labour force survey shows that 49.8% of firms worked overtime.⁸⁰ A 2020 study by the Institute of Policy Studies also revealed that 70.91% of employees in private hospitals worked overtime.⁸¹ Although this percentage is not segregated by gender, it highlights that the legislation does not accommodate modern business requirements.

71 Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954.

72 Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Regulation 2(1). The following Regulation applies to all female employees working in Shops and Offices and male employees under the age of 18.

73 On a five day work week.

74 Subject to conditions under the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) (No. 32 of 1984), Section 2A.

75 Employment In Terms Of The Shop And Offices Employees' Act Monograph No. 17 (Rajagiriya: The Employers' Federation of Ceylon, 2016), 13.

76 Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954.

77 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016), 16, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed December 18, 2021).

78 Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954.

79 Wages Board Ordinance No. 27 of 1941, Section 24 (3).

80 Sri Lanka Labour Force Statistics Quarterly Bulletin - 2nd Quarter 2021, Department of Census and Statistics, ISBN 978-624-5919-37-6, Issue No. 91, <http://www.statistics.gov.lk/LabourForce/StaticInformation/QuarterlyReports/2ndQuarter2021> (accessed February 10, 2022).

81 Nisha A. and others, Women, Work and Night Shifts in Nursing Homes and Supermarkets, (Institute of Policy Studies of Sri Lanka, 2020).



6.2 Administrative Relaxation: An Exception to the Law

There is an informal sentiment in some sectors such as IT and BPM, that the Department of Labour will not enforce the prohibition of overtime work. Therefore, a concept outside of the formal law, named administrative relaxation, is followed in these sectors with employers and employees coming into verbal or written agreements to engage in overtime work.⁸²

Advocata's efforts to confirm this from the Labour Department revealed that the concept of administrative relaxation is not officially recognised by them.

A key informant interview conducted by the Advocata Institute⁸³ further found that there is no formal and uniform process by which administrative relaxation is practised. There have also been instances where companies have worked excessive hours of overtime, exceeding the permitted time limit.⁸⁴ In other instances, there have been complaints where employees have worked overtime but did not receive overtime compensation.⁸⁵ It is also unclear as

to which sectors are entitled to administrative relaxation and therefore employees have little awareness of whether the sector they are engaged in is covered under this concept.

6.3 Reforms Proposed through the Draft 'Employment Act 2019'

The draft 'Employment Act 2019'⁸⁶ was presented to the National Labour Advisory Council (NLAC),⁸⁷ proposing amendments⁸⁸ to repeal the restriction on overtime work for female employees under the Shops and Offices Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954.⁸⁹ The amendment permitted both male and female employees⁹⁰ to work overtime during the five-day work week and be remunerated accordingly.⁹¹

This indicates that there has been acceptance towards change in the law and overtime work hours. However, the Act was only taken up to the draft stage and was not passed by Parliament.⁹²

82 A key informant interview conducted by the Advocata Institute.

83 A key informant interview conducted by the Advocata Institute.

84 Employment In Terms Of The Shop And Offices Employees' Act Monograph No. 17 (Rajagiriya: The Employers' Federation of Ceylon, 2016), 13.

85 Employment In Terms Of The Shop And Offices Employees' Act Monograph No. 17 (Rajagiriya: The Employers' Federation of Ceylon, 2016), 13.

86 Draft 'Employment Act 2019'.

87 Draft 'Employment Act 2019'.

88 Draft 'Employment Act 2019', Section 35.

89 Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, Regulation 2(1). The following Regulation applies to all female employees working in Shops and Offices and male employees under the age of 18.

90 Draft 'Employment Act 2019', Section 12.

91 Draft 'Employment Act 2019', Section 12.

92 Sarah Hannan, "TUs push for withdrawal of proposed labour laws", The Morning, September 8, 2019, <https://www.themorning.lk/tus-push-for-withdrawal-more-favourable-to-employer-and-manpower-agencies/> (accessed October 30, 2021).



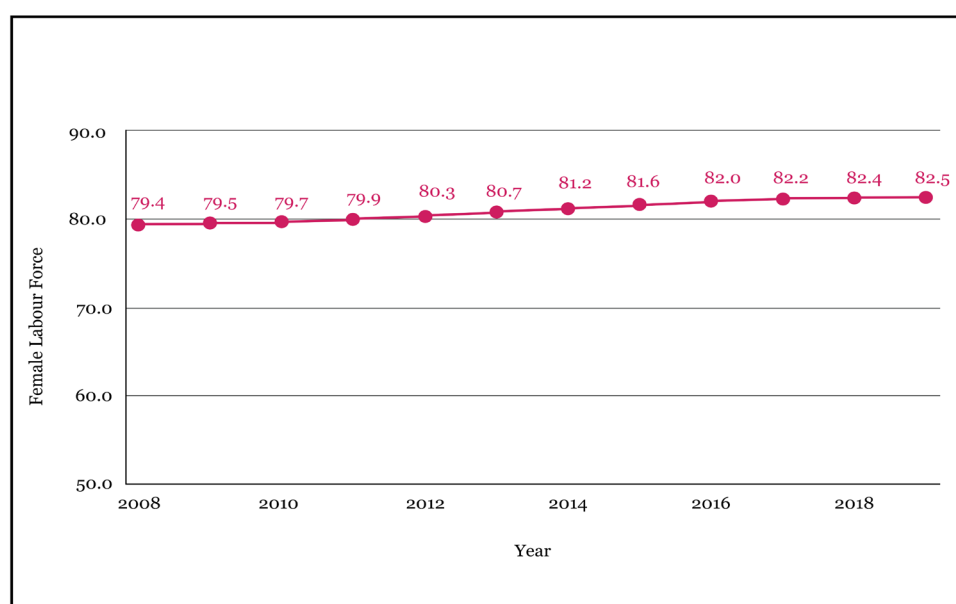
6.4 Lessons from the Region

6.4.1 Nepal

In 2017, Nepal reversed their legal restrictions on overtime work for both male and female employees by enacting “Labour Act, 2074 (2017)”.⁹³ This allowed female employees to work overtime up to a maximum of 24 hours

per week,⁹⁴ as opposed to 20 hours in the previous Act.⁹⁵ It is worthy to note that female labour force participation has continued to increase since. Female labour force participation was at 79.4% in 2008, it increased up to 81.6% in 2015 and then to 82.5% in 2019.⁹⁶ The amendments made on overtime laws could be a contributory factor to this increase.

FIGURE 5 | FEMALE LABOUR FORCE PARTICIPATION RATE IN NEPAL



Source: ILOSTAT database, 2022.

6.5 International Obligations

Sri Lanka is a signatory to the Discrimination (Employment and Occupation) Convention 1958 No. 111,⁹⁷ which upholds the principle of

non-discrimination in respect of employment and occupation based on sex.⁹⁸ Despite being a signatory to this convention, overtime restrictions on female employees in Sri Lanka continue to exist.

⁹³ The Labour Act 2017 (2074).

⁹⁴ The Labour Act 2017 (2074), Section 30.

⁹⁵ Labour Act of Nepal (2048), Section 16.

⁹⁶ “Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate) - Nepal”, The World Bank Group, International Labour Organization, ILOSTAT database, June 15, 2021, <https://data.worldbank.org/indicator/SL.TLFC.ACT.FE.ZS?locations=NP> (accessed December 7, 2021).

⁹⁷ Anatomy Of A Prohibition: ILO Standards In Relation To Night Work Of Women In Industry, Article 1(a) of the Convention, (Switzerland: International Labour Office Geneva, 2001), 40, <https://www.ilo.org/public/english/standards/reln/ilc/ilc89/pdf/rep-iii-1b-c2.pdf> (accessed September, 15, 2021).

⁹⁸ Anatomy Of A Prohibition: ILO Standards In Relation To Night Work Of Women In Industry, Article 1(a) of the Convention, (Switzerland: International Labour Office Geneva, 2001), 40, <https://www.ilo.org/public/english/standards/reln/ilc/ilc89/pdf/rep-iii-1b-c2.pdf> (accessed September, 15, 2021).



6.6 Reform Recommendations

1. Under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954,⁹⁹ the law should be amended to include overtime work for female employees on weekdays. In order to do this, the overtime work restrictions on weekdays should be repealed and a Regulation permitting female employees to work overtime should be introduced. This Regulation can be introduced under Section 3 (1)(3)(a) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954,¹⁰⁰ allowing female employees to work overtime on desired days within the permitted limit of twelve hours of overtime per week.¹⁰¹
2. Similarly, the above Regulation should include guidelines, such as those stated in Section 2A of the Employment of Women, Young Persons and Children Act No. 47 of 1956,¹⁰² and Section 67A of the Factories Ordinance No. 45 of 1942 to prevent exploitation of excessive overtime. These guidelines shall include (a) no women having to work overtime against their will, (b) every female employee working overtime (at night) shall be provided restrooms and refreshment by the employer and (c) there shall be appointed female wardens to see to the welfare of female employees who work overtime (at night).¹⁰³ These guidelines would ensure the safety and protection of female employees who work overtime.

⁹⁹ Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Regulation 7.

¹⁰⁰ Employment of Women, Young Persons and Children No. 47 of 1956, Factories Ordinance No. 47 of 1956, and Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) 1984, Section 2A and Section 67A

¹⁰¹ Employment of Women, Young Persons and Children No. 47 of 1956, Factories Ordinance No. 47 of 1956, and Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) 1984, Section 3 (2).

¹⁰² Employment of Women, Young Persons and Children No. 47 of 1956, Factories Ordinance No. No. 45 of 1942, and Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) 1984, Section 2A and Section 67A.

¹⁰³ Employment of Women, Young Persons and Children No. 47 of 1956, Factories Ordinance No. No. 45 of 1942, and Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) 1984, Section 3 (2)



Work at Night for Women in Sri Lanka

The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, the Factories Ordinance No. 45 of 1942 and the Employment of Women, Young Persons and Children Act No. 47 of 1956 restrict work at night for women in most sectors¹⁰⁴ in Sri Lanka. No such restriction exists for men.¹⁰⁵ Although these restrictions intend protection,¹⁰⁶ they have inadvertently discriminated against women by restricting opportunities for employment. A 2016 ILO report revealed that a majority of employers in selected manufacturing, service and plantation sectors¹⁰⁷ agreed that the existing laws on working at night are discriminatory.¹⁰⁸

In light of this, this section discusses the restrictions placed on work at night for women employed in the IT/BPM sector, tourism industry (hotels and restaurants) and the manufacturing sector.

7.1 Restrictions on Women Working in the IT/BPM Sector

The Shop and Office Employees (Regulation of Employment and Remuneration) Act

No.19 of 1954 permits women, who are 18 and above, to only work till 8 p.m.¹⁰⁹ Exceptions are granted to women employed in selected industries.¹¹⁰ This exception does not include women employed in the IT and BPM sector.¹¹ However, the nature of work in the sector requires employees to work outside the accepted 9-5 hours, as it functions in alignment with international time zones.

Currently, firms in the sector operate later hours by way of the concept of administrative relaxation, which is outside the formal law.¹¹² However, as mentioned previously, the Department of Labour does not officially recognise this concept.

It is worthy to note that the 2020 Annual Performance Report of the Labour Department records only 57 cases filed and 4 cases completed under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954, which restricts women from working after 8 p.m., as opposed to 2219 cases filed and 1077 cases completed under the Employees' Provident Fund Act No. 15 of 1958.¹¹³

104 This term in this brief refers to work at night for women working in the IT/BPM sector, the hotels sector and the manufacturing sector.

105 No restrictions exist for men above 18 years of age.

106 Sri Lanka: Small and Medium-Sized Enterprises Line of Credit Project (Financed by the Japan Fund for Poverty Reduction), (Asian Development Bank, April 2017),

107 6, https://www.adb.org/sites/default/files/project-documents/49273/49273-001-tacr-en_7.pdf (accessed May, 10, 2021); A. Wimalaweera, Covid 19 & Beyond- The impact on the Labour Market of Sri Lanka (Department of Labour, 2020), 6, http://www.labourdept.gov.lk/images/PDF_upload/notices/survey%20report%202020.pdf (accessed January 5, 2022).

108 Sub sectors in the manufacturing sector included enterprises in the apparel sector, food and beverage, boat building, hardware, furniture. The service sector included hospitality, retail services (clothing and supermarket), banks, insurance, Telecom/IT services, health services and construction. As per the report, those interviewed included both women and men (Pg 21). Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016), 30, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed June 06, 2021).

109 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016), 30, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed June 06, 2021).

110 Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Section Section 10(2)(iii).

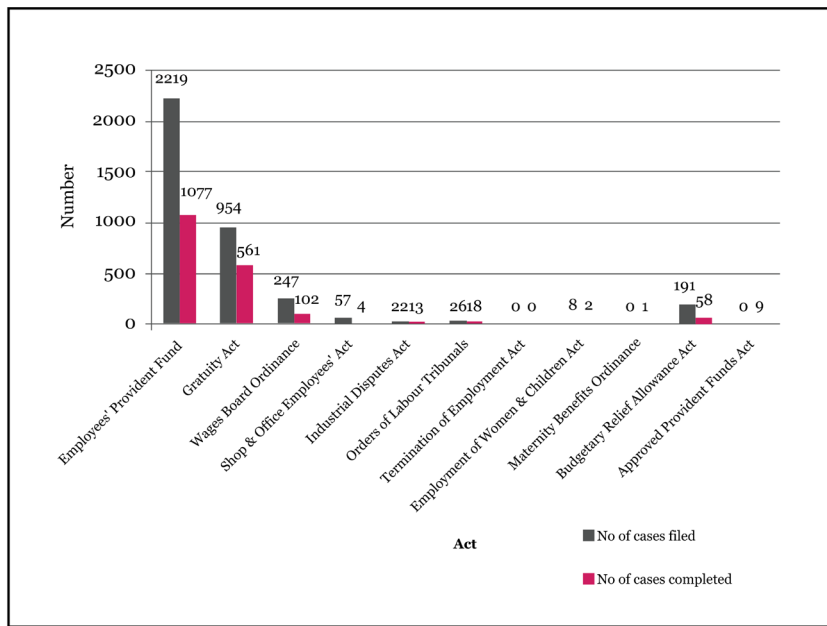
111 Exceptions are only given where an employee who has reached 18 years of age be employed in a hotel or restaurant between 6 p.m. to 10 p.m. (Section 10(2)(b)(i)) and Any female who has attained the age of 18 years may be employed before 6. a.m. or after 6.p.m. in any office maintained by an airline at an airport on the work of a ground hostess, or in any residential hotel on the work of a receptionist, ladies cloak-room attendant, ladies linen room attendant or ladies lavatory attendant. (Regulation 3).

112 Sri Lanka: Small and Medium-Sized Enterprises Line of Credit Project (Financed by the Japan Fund for Poverty Reduction), (Asian Development Bank, April 2017), 5 - 6, https://www.adb.org/sites/default/files/project-documents/49273/49273-001-tacr-en_7.pdf (accessed May, 10, 2021).

113 Government of Sri Lanka, Department of Labour, Annual Performance Report - 2020, (2020), 28, http://www.labourdept.gov.lk/images/PDF_upload/statistics/ar2020_e.pdf (accessed March 3, 2022).



FIGURE 6 | COURT CASES FILED BY ALL DISTRICT OFFICES AND CASES RESOLVED IN 2020



Source: Annual Performance Report - 2020, Department of Labour.

This legal ambiguity deters investment and expansion of the sector as labour laws are recognised as a crucial factor for investors.¹¹⁴ Flexibility to the labour law, provided by way of unwritten administrative relaxations, discourage investors as informal arrangements lack certainty and transparency. For example, a survey conducted by the World Bank to identify several priorities for governments seeking to attract and retain international investment in the power sector, identified a clear and enforceable framework as a top priority for investors.¹¹⁵ 66% of respondents indicated a legal framework, which clearly defines the rights and obligations of private

investors, as one of the most important factors in decisions to invest in developing countries.¹¹⁶

Interviews conducted with the national chamber for the Sri Lankan IT/BPM industry, Sri Lanka Association for Software Services Companies (SLASSCOM), confirmed that the current practice in the sector is to work beyond 8 p.m. They expressed that the authorities have been supportive, emphasising the satisfactory working relationship between the parties. However, they recognized the need to remove restrictions to attract more investments to the industry.¹¹⁷

114 "C122 - Employment Policy Convention, 1964 (No. 122)", International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267 (accessed January 3, 2022).

114 "C122 - Employment Policy Convention, 1964 (No. 122)", International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267 (accessed January 3, 2022).

114 "C122 - Employment Policy Convention, 1964 (No. 122)", International Labour Organization, Recommendation 7, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267 (accessed January 3, 2022).

114 Shop & Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Section 3 (1)(3)(a).



7.2 Restrictions on Women Employed in the Tourism Sector (Hotels and Restaurants)

While the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 permits hotels and restaurants to employ women who are 18 and above to work after 8 p.m., it restricts them from working beyond 10 p.m.¹¹⁸ Exceptions are provided to selected job roles.¹¹⁹ However, as most hotels and restaurants work till midnight or beyond, the actual requirement is to function beyond 10 p.m.

Women represented less than 10% of the tourism industry in 2018,¹²⁰ despite the industry being identified to be a promising sector for increasing women's labour force participation in Sri Lanka.¹²¹ Estimates show that 25,000-30,000 additional employees will be needed each year to deliver the projected increase of tourist arrivals by 2023.¹²² While limited flexible working options have been identified as a factor that contributes to low female engagement in the sector, removal of the restriction that limits women from working after 10 p.m. will enable better opportunities for women in the sector.

7.3 Restrictions on Women Working in the Manufacturing Sector

Working at night is allowed for women under the Factories Ordinance No. 45 of 1942 and the Employment of Women, Young Persons and Children Act No. 47 of 1956. However, it limits women working in the manufacturing sector¹²⁴ from engaging in night work for more than 10 days a month.¹²⁵ Exceptions are provided for certain job roles.¹²⁶

The restriction is contrary to the “right to have and determine choices”, an integral part of women's empowerment, as declared by the United Nations.¹²⁷ It not only inhibits the ability of women to choose their preferred time to work, but also limits their capacity to earn more. For example, women engaged in night work are paid one and half times the normal payment in Sri Lanka.¹²⁸ A 2020 IPS study conducted amongst women working in supermarkets and nursing homes confirmed night work to be a mode of additional income.¹²⁹ Therefore, the ability to earn an extra income by choosing to engage in night work emphasises the need to remove restrictions that curtail choice.

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- 118 Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Section 10(2)(b)(i).
- 119 Shop and Office Employees (Regulation of Employment and Remuneration) (SOE) Act No. 19 of 1954, Regulation 3; Any female who has attained age of 18 years may be employed before 6. a.m. or after 6.p.m. in any residential hotel on the work of a receptionist, ladies cloak-room attendant, ladies linen room attendant or ladies lavatory attendant.
- 120 Sri Lanka Tourism and Hospitality Workforce Competitiveness Roadmap 2018-2023 A Private Sector Approach, (The Private Sector Tourism Skills Committee, 2018), 7, https://sltta.gov.lk/storage/common_media/29274e4cbb57d617b633f87fe9f998b7.pdf (accessed September, 6, 2021).
- 121 Integrating Women's Economic Empowerment And Equality Into Labor, Small And Medium Enterprise Development, And The Enabling Environment In Sri Lanka, (USAID, 2020), 10, <https://banyanglobal.com/wp-content/uploads/2020/03/Integrating-WE3-Into-Labor-SME-Development-and-the-Enabling-Environment-in-Sri-Lanka.pdf> (accessed September, 8, 2021).
- 122 Sri Lanka Tourism and Hospitality Workforce Competitiveness Roadmap 2018-2023 A Private Sector Approach, (The Private Sector Tourism Skills Committee, 2018), 5, https://sltta.gov.lk/storage/common_media/29274e4cbb57d617b633f87fe9f998b7.pdf (accessed September, 6, 2021).
- 123 Government of Sri Lanka, Ministry of Tourism Development and Christian Religious Affairs, Sri Lanka Tourism Strategic Plan 2017-2020, (The World Bank Group, 2020), 96, <https://storage.googleapis.com/sltta-cdn/tourism-strategic-plan-2017-to-2020.pdf> (accessed September, 15, 2021).
- 124 Most manufacturing entities would be included within the definition of an “industrial undertaking” in the Employment of Women, Young Persons and Children Act and the definition of a factory in the Factories Ordinance
- 125 This is, provided that women consent to work at night, and that written approval of the Commissioner General of Labour has been obtained; Employment of Women, Young Persons and Children Act No. 47 of 1956. (EWYPCA), Section 2A(2)(g) and Factories Ordinance No. 45 of 1942, Section 67A(2)(g).
- 126 As per Section 2B of the EWYPCA, this restriction does not apply to women holding responsible positions of a managerial or technical character, to women employed in health and welfare services who are not ordinarily engaged in manual work and to an industrial undertaking in which only members of the same family are employed; As per Section 74 of the Factories Ordinance No. 45 of 1942, this restriction does not apply to women holding responsible positions of management who are not ordinarily engaged in manual work.
- 127 Louise Fox and Carolina Romero, In the Mind, the Household, or the Market? Concepts and Measurement of Women's Economic Empowerment, (The World Bank, 2017), 3, <https://documents1.worldbank.org/curated/en/436011496234827185/pdf/WPS8079.pdf> (accessed September, 15, 2021).
- 128 Factories Ordinance No. 45 of 1942, Section 67A(2)(d) and Employment of Women, Young Persons and Children No. 47 of 1956 (EWYPCA) Section 2A(2)(d).
- 129 ‘Women, work and Night shifts in Nursing Homes and Supermarkets’, (Colombo, Institute of Policy Studies Sri Lanka, 2020), 20



7.4 Concerns Associated with Working at Night

While it is necessary for women to be permitted to work at night, access to safe transport should also be ensured. A 2020 IPS survey conducted amongst women working in the nursing sector and the supermarket sector revealed travel as a major concern associated with working at night.¹³⁰ Lack of buses available at night, harassment on the road and harassment from other travellers were stated as main challenges encountered by respondents from the nursing sector.¹³¹ The respondents from the supermarket sector were positive about travelling at night, as free transportation was provided by respective organisations, accompanied by a supervisor.¹³²

7.5 International Obligations

Despite restrictions on night work for women, Sri Lanka has ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which upholds the basic ILO principle of non-discrimination in employment based on sex.¹³³ Similarly, these restrictions further violate fundamental principles of non-discrimination and equality of opportunity and treatment under the Convention on the Elimination of All Forms of Discrimination Against Women, ratified by Sri Lanka in 1981.¹³⁴

7.6 Lessons from the Region

7.6.I Maharashtra

The Bombay Shops and Establishment Act of 1948, which applied to the State of Maharashtra,¹³⁵ did not allow women to work after 9.30 p.m. until 2017.¹³⁶ In 2017, the State introduced the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act of 2017, allowing women to work from 9.30 p.m. to 7 a.m. in shops and establishments, provided that consent is obtained.¹³⁷ It also mandates the employer to provide protection from sexual harassment, safety and transportation from the establishment to the doorstep of the employee's residence.¹³⁸

The Impact of Removal of Restrictions on Night Work for Women in Maharashtra

The Employment and Unemployment Survey of India (2015-2016) reported a female labour force participation of 33% in Maharashtra.¹³⁹ However, after the Act was enacted, the Periodic Labour Force Survey (PLFS) reported the female labour force participation, in the ages of 15 and above, to be 31.6% in 2018-2019¹⁴⁰ and 38.7% in 2019-2020.¹⁴¹

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- 130 Nisha A. and others, Women, Work and Night Shifts in Nursing Homes and Supermarkets, (Institute of Policy Studies of Sri Lanka, 2020), 24.
- 131 Nisha A. and others, Women, Work and Night Shifts in Nursing Homes and Supermarkets, (Institute of Policy Studies of Sri Lanka, 2020), 25.
- 132 Nisha A. and others, Women, Work and Night Shifts in Nursing Homes and Supermarkets, (Institute of Policy Studies of Sri Lanka, 2020), 26.
- 133 Anatomy Of A Prohibition: ILO Standards In Relation To Night Work Of Women In Industry, Article 1(a) of the Convention, (Switzerland: International Labour Office Geneva, 2001), 40, <https://www.ilo.org/public/english/standards/relm/ilc/ilc89/pdf/rep-iii-1b-c2.pdf> (accessed September, 15, 2021).
- 134 George P. Politakis, "Night work of women in industry: Standards and sensibility", *International Labour Review*, Vol. 140, No 4, (2001), <https://library.fes.de/libalt/journals/swetsfulltext/17160734.pdf> (accessed October, 2, 2021).
- 135 Bombay Shops and Establishment Act of 1948, Section 2.
- 136 Bombay Shops and Establishment Act of 1948, Section 32.
- 137 Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act of 2017, Section 13(2).
- 138 Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act of 2017, Section 13(2).
- 139 Government of India, Ministry Of Labour & Employment Labour Bureau Chandigarh, Report On Fifth Annual Employment - Unemployment Survey (2015-16), Volume I, 28, http://labourbureaunew.gov.in/usercontent/eus_5th_1.pdf (accessed March 2, 2022).
- 140 Government of India, Ministry of Statistics and Programme Implementation, Annual Report Periodic Labour Force Survey (PLFS) (July 2018 - June 2019), India: National Statistical Office, 172, https://cse.azimpremjuniuniversity.edu.in/wp-content/uploads/2019/06/Annual_Report_PLFS_2018_19_HL.pdf (accessed March 3, 2022).
- 141 Government of India, Ministry of Statistics and Programme Implementation, Annual Report Periodic Labour Force Survey (PLFS) (July 2019 - June 2020), India: National Statistical Office, 181, https://www.mospi.gov.in/documents/213904/301563/Annual_Report_PLFS_2019_20m1627036454797.pdf/18afb74a-3980-ab83-0431-e84321f75af (accessed March 3, 2022).



Based on 2014 data, 8.25% of women entrepreneur establishments were reported in Maharashtra.¹⁴² According to news reports, the reform is expected to boost these women-driven businesses with the removal of work at night restrictions.¹⁴³ Even though increased female labour force participation cannot be entirely credited to the night work reform, these reforms do help in creating an enabling environment for women to enter and retain in the labour force.¹⁴⁴

7.6.2 Kerala

Kerala Shops and Commercial Establishments Act 1960 prohibited women from working before 6 a.m. or after 7 p.m.¹⁴⁵ In 2018, the Act was amended to allow women to be employed at night, between 9 p.m. and 6 a.m., provided that consent is obtained.¹⁴⁶ It also mandates the employer to provide adequate protection and transportation to females working at night.¹⁴⁷

However, the Centre for Public Policy Research (CPPR) that pioneered the reform of removing night work restrictions in Kerala, confirmed that the increase in the labour force participation cannot be solely attributed to removal of work at night restrictions. Moreover, it is difficult to deduce if more women were employed in shops and commercial establishments due to the reform, as they are not considered a separate sample in the PLFS. Further, CPPR stated that the impact of COVID 19 may have resulted in the loss of the momentum of the reform.¹⁵⁰

Post-reform observations saw that many shops in Kerala started operating at night, while shops such as eateries were newly opened. Nevertheless, the CPPR expressed that it is difficult to say if women were necessarily employed in these shops.¹⁵¹

Impact of Restrictions being Removed in Kerala in 2018

The Periodic Labour Force Survey (PLFS) reported a female labour force participation of 26.5% in 2017-2018 in Kerala.¹⁴⁸ After the amendment, the PLFS for 2019-2020 revealed a female labour force participation of 31.9% in the same category.¹⁴⁹

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- 142 Government of India, Ministry of Statistics and Programme Implementation, All India Report of Sixth Economic Census, New Delhi: Central Statistics Office, 2016, iv, <https://msme.gov.in/sites/default/files/All%20India%20Report%20of%20Sixth%20Economic%20Census.pdf> (accessed March 3, 2022); Ms Katherine S Miles, An Analysis of Women Entrepreneurship in India Current Profile, Future Landscape and Recommendations for Policymakers and Implementing Partners, (German Cooperation), 38, https://private-sector-development.com/pdf/publication/20190729_An%20Analysis%20of%20Women%20entrepreneurship%20in%20India_full%20report.pdf (accessed March 3, 2022); “7th Economic Census”, Directorate of Economics and Statistics, <https://des.ap.gov.in/EcoCensus.do> (accessed March 3, 2022).
- 143 Anushree Sharma, “Maharashtra Government open to women working night shifts”, People Matters, December 21, 2017, <https://www.peoplesmatters.in/news/diversity/maharashtra-government-open-to-women-working-night-shifts-17118> (accessed March 3, 2022)
- 144 Women, Business and the Law 2021, (Washington: The World Bank, 2021), 1, https://www.worldbank.org/content/dam/sites/wbl/documents/2021/02/WBL2021_ENG_v2.pdf (accessed October 10, 2021).
- 145 The Kerala Shops and Commercial Establishments Act 34 of 1960, Section 20.
- 146 The Kerala Shops and Commercial Establishments Act 34 of 1960, Section 20.
- 147 The Kerala Shops and Commercial Establishments (Amendment) Bill 2018; Sara John P and others, Draft of the Proposed Amendments to the Kerala Shops & Commercial Establishments Act, 1960, (Centre for Public Policy Research), 26, <https://www.cppr.in/wp-content/uploads/2018/03/Model-Act-Draft.pdf> (accessed October 5, 2021).
- 148 This number is for the category of 15 years and above. Government of India, Ministry of Statistics and Programme Implementation, Annual Report Periodic Labour Force Survey (PLFS) (July 2017 - June 2018), India: National Statistical Office, 202, <http://www.indiaenvironmentportal.org.in/files/file/Annual%20Report,%20PLFS%202017.pdf> (accessed March 3, 2022).
- 149 Government of India, Ministry of Statistics and Programme Implementation, Annual Report Periodic Labour Force Survey (PLFS) (July 2019 - June 2020), India: National Statistical Office, 243, https://www.mospi.gov.in/documents/213904/301563/Annual_Report_PLFS_2019_20m1627036454797.pdf/18afb74a-3980-ab83-0431-1e84321f75af (accessed March 3, 2022).
- 150 A key informant interview conducted by the Advocata Institute.
- 151 A key informant interview conducted by the Advocata Institute.



7.7 Reform Recommendations

Legislative Reforms	Institutional Reforms
<ol style="list-style-type: none"> 1. Remove overall work at night restrictions under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, Factories Ordinance No. 45 of 1942 and the Employment of Women, Young Persons and Children Act No. 47 of 1956. 2. In removing restrictions, to avoid exploitation of women, legislators should comply with adequate safeguards. For example, the Factories Ordinance No. 45 of 1942 and the Employment of Women, Young Persons and Children Act No. 47 of 1956 require employers to obtain consent from female employees prior to employing them at night.¹⁵² Accordingly, when work at night restrictions are removed from the above two laws, the requirement to get individual consent of women to work at night should be retained as a safeguard. 	<ol style="list-style-type: none"> 1. Companies should have a specific safety policy applicable to women employed at night. 2. The government should come up with options and choices to ensure safe and secure transport to women working at night by coordinating and incentivising stakeholders. For example, a draft of the proposed amendments to the Kerala Shops and Commercial Establishments Act, 1960 lays out several suggestions for providing transportation facilities. They are as follows: <ol style="list-style-type: none"> i. Suggestions to collectively provide transport by the employers for women employed at night in a particular area.¹⁵³ ii. Suggestions to jointly provide transport by the Shops and Welfare Fund Board, private players and employers, based on a mutual agreement between them.¹⁵⁴

152 Employment of Women, Young Persons and Children (EWYPCA) Act No. 47 of 1956, Section 2A(2)(a) and Factories Ordinance No. 45 of 1942, Section 67A(2)(a).

153 Sara John P and others, Draft of the Proposed Amendments to the Kerala Shops & Commercial Establishments Act, 1960, (Kerala: Centre for Public Policy Research), 26, <https://www.cppr.in/wp-content/uploads/2018/03/Model-Act-Draft.pdf> (accessed October, 5, 2021).

154 Sara John P and others, Draft of the Proposed Amendments to the Kerala Shops & Commercial Establishments Act, 1960, (Kerala: Centre for Public Policy Research), 26, <https://www.cppr.in/wp-content/uploads/2018/03/Model-Act-Draft.pdf> (accessed October, 5, 2021).



BOX ARTICLE 1.1 : ENSURING SAFETY OF WOMEN EMPLOYED AT NIGHT: A MARKET RESPONSE

According to a policy analysis by the Cato Institute, a market where firms compete for women's labour allows women to increase their bargaining power.¹⁵⁵ Women's labour is important for firms in the IT/BPM sectors in Sri Lanka. A human resource GAP analysis report on the IT/BPM sectors in Sri Lanka states that female participation in the industry can increase both quantity and quality of inputs. Based on their primary research, it was acknowledged by corporate executives that women are relatively more sincere and dedicated in their work and possess better soft skills (language and communication), which lead to the enhancement of the industry's competitiveness. This also means that women's labour will provide competitive advantage to individual firms in the industry.¹⁵⁶

For women to be encouraged to work at night, their safety should be ensured. The Sri Lanka Association for Software Services Companies (SLASSCOM), the national chamber for the IT/BPM industry in Sri Lanka, speaking to *Advocata*, stated that a majority of firms in the industry already provide transportation for females working at night as a safety measure. Hence, for individual firms to retain and attract more women into the labour force and to ultimately remain competitive in the market, policies that ensure access to safe transportation for female employees working at night should be adopted as a market response.

155 Chelsea Follett, "How Markets Empower Women: Innovation and Market Participation Transform Women's Lives for the Better", Cato Institute, Policy Analysis No. 859, December 17, 2018, <https://www.cato.org/policy-analysis/how-markets-empower-women-innovation-market-participation-transform-womens-lives#introduction> (accessed October, 5, 2021); Women's labour is important for firms in the ICT/BPM sectors in Sri Lanka. According to a human resource GAP analysis report on the ICT/BPM sectors in Sri Lanka by the PWC (Commissioned by the ADB), female participation in the industry can increase both quantity and quality of inputs. Based on their primary research, most corporate executives have acknowledged that women are relatively more sincere & dedicated in their work, possess better soft skills (language & communication) and hence would enhance competitiveness of the industry.

156 Sri Lanka: Small and Medium-Sized Enterprises Line of Credit Project (Financed by the Japan Fund for Poverty Reduction), (Asian Development Bank, April 2017), https://www.adb.org/sites/default/files/project-documents/49273/49273-001-tacr-en_7.pdf (accessed May, 10, 2021).



Sexual Harassment in the Workplace in Sri Lanka

Sexual harassment in the workplace is not addressed under the existing labour laws in Sri Lanka. While several statutes cover the offence indirectly, it has proven to be inadequate¹⁵⁷. A 2011 sample survey conducted by the Sri Lanka Medical Association revealed that out of 1,344 female Free Trade Zone workers, 57% faced sexual harassment.¹⁵⁸ Another sample survey, conducted by the same, revealed that out of 321 female industrial workers, 62.3% had experienced some form of unwanted sexual advance.¹⁵⁹ Furthermore, a questionnaire administered by the ILO in 2016 among 500 women, the majority of whom were unemployed, discovered that three-fifth of women would be willing to work if they were assured that they would not be vulnerable to sexual harassment in the workplace.¹⁶⁰ The ILO recognizes sexual harassment in the workplace to be a form of discrimination that causes women to move out of the workplace.¹⁶¹

8.1 Criminalising Sexual Harassment under the Penal Code

Sexual harassment is criminalised under Section 345 of the Penal Code (Amendment) Act No.22 1995.¹⁶² It explains sexual harassment in the workplace to be **words or actions used by a person in authority**.¹⁶³ The term 'person in authority' here is not limited to persons in power such as those in managerial positions, thereby enabling a co-worker to fall within the scope of the provision.¹⁶⁴

However, addressing sexual harassment in criminal law alone is ineffective. This is because the Penal Code requires victims to report cases of sexual harassment to the police in means of a complaint.¹⁶⁵ Additionally, complaints made under criminal law are potentially followed by lengthy court proceedings, requiring a higher burden of proof¹⁶⁶ in comparison to cases of civil law.¹⁶⁷

157 Report of the Committee of Experts on the Application of Conventions and Recommendations, (International Labour Conference, 2009) [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2009-98-1A\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2009-98-1A).pdf) (accessed February 3, 2022).

158 Perera, J., Gunawardane N. and Jayasuriya V., Review of Research Evidence on Gender Based Violence (GBV) in Sri Lanka, Second Edition, (Sri Lanka Medical Association Colombo, 2011), https://www.researchgate.net/publication/256198565_Review_of_Research_Evidence_on_Gender_Based_Violence_GB_V_in_Sri_Lanka (accessed February 3, 2022).

159 Perera, J., Gunawardane N. and Jayasuriya V., Review of Research Evidence on Gender Based Violence (GBV) in Sri Lanka, Second Edition, (Sri Lanka Medical Association Colombo, 2011), https://www.researchgate.net/publication/256198565_Review_of_Research_Evidence_on_Gender_Based_Violence_GB_V_in_Sri_Lanka (accessed February 3, 2022).

160 Factors Affecting Women's Labour Force Participation Rate in Sri Lanka, (Colombo: International Labour Organization, 2016) https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_551675.pdf (accessed September 12, 2021).

161 Handbook addressing violence and harassment against women in the world of work, (UN Women, 2019), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/Addressing-violence-and-harassment-against-women-in-the-world-of-work-en.pdf> (accessed November 30, 2021)

162 Penal Code (Amendment) Act No.22 1995, Section 345.

"Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person."

163 Penal Code (Amendment) Act No. 22 1995, Explanation 1.

164 Women's rights are human rights: A training guide, (United Nations Population Fund) <https://srilanka.unfpa.org/sites/default/files/pub-pdf/Women%27s%20rights%20are%20human%20rights.compressed.pdf> (accessed September 21, 2021).

165 Naoko Otake, Globalization, employment and gender in the open economy of Sri Lanka, (Geneva: International Labour Organization, 2013), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_212721.pdf (accessed September 12, 2021).

166 The obligation on the party to prove the allegations of the accusation in court proceedings.

167 Report of the Committee of Experts on the Application of Conventions and Recommendations, (International Labour Conference, 2009) [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2009-98-1A\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2009-98-1A).pdf) (accessed 12 September 2021).



The Parliamentary Sectoral Oversight Committee on Legal Affairs (anti-corruption) & Media in 2017 estimated the average time taken to conclude a High Court Proceeding to be 10.2 years from the date of the crime.¹⁶⁸ This limits victims' access to legal protection, causing sexual harassment cases to go under-reported.¹⁶⁹ This highlights the inadequacy of confining sexual harassment in the workplace to criminal procedures.¹⁷⁰

8.2 Sexual Harassment in the Private Sector under Civil Law

To circumvent the barriers to justice in criminal law, victims can resort to the Industrial Disputes Act No.43 1950 (IDA) under civil law. However, the scope of the Act is limited to the private sector.¹⁷¹ The Act provides swifter mechanisms to resolve work-related disputes which do not involve the police and court proceedings.¹⁷² Under this Act, work-related disputes can be expansively interpreted to include sexual harassment in the workplace, thereby allowing victims to seek justice.¹⁷³ However, it is worthy to note that a 2015 publication reports that no complaint of sexual harassment has ever been made through this Act.¹⁷⁴ Further, a

key informant interview conducted by the Advocata Institute revealed that only 2-3 sexual harassment complaints have been made through the Act to the Labour Department between 2018-2019. Those complaints were directed to the police as the Labour Department was not equipped under the IDA to inquire into the matter.

With the aim of improving victims' access to justice, the draft 'Employment Act 2019'¹⁷⁵ put forth by the Ministry of Labour, addressed sexual harassment in the workplace.¹⁷⁶ The draft Act defined the offence as the use of physical, verbal and non-verbal conduct of sexual nature, which creates an intimidating, hostile and humiliating work environment on the basis of gender.¹⁷⁷ However, no further steps have been taken to approve the draft as valid law.

168 The Parliament of Sri Lanka, Sectoral Oversight committee on Legal Affairs (Anti Corruption) & Media, Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice, September, 2017, <https://www.parliament.lk/uploads/comreports/1510738363068517.pdf> (accessed February 9, 2022).

169 Youth Labour Market Assessment, (Verite Research, 2018), <https://www.veriteresearch.org/wp-content/uploads/2019/02/Youth-Labour-Market-Assessment-26.12.2018.pdf> (accessed December 14, 2021).

170 Report of the Committee of Experts on the Application of Conventions and Recommendations, (International Labour Conference, 2009)

171 Industrial Disputes Act No. 43 of 1950, Section 49.

172 Including conciliation, a process by which a dispute is settled with the assistance of a third party and arbitration, a legally binding decision in response to the dispute outside court.

173 Code of Conduct and Guidelines to Prevent and Address Sexual Harassment in the Workplace, (International Labour Organization and Employers Federation of Ceylon, 2013), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_525537.pdf (accessed September 7, 2021).

174 Rodriguez and Wejnert, Enabling gender equality: future generations of the global world, (Emerald Group Publication, 2015), https://books.google.lk/books?id=1y7HsgEACAAJ&source=gbs_book_other_versions_r&redir_esc=y (accessed 12 September 2021).

175 The Draft Employment Act 2019 unified all employment laws in Sri Lanka, with a special attempt to improve employment discrimination and access to remedy.

176 Targeted Surveys on Application of Core Labour Standards Sri Lanka, (European Commission, August 2019).

177 Draft 'Employment Act 2019', Section 07.



8.3. Sexual Harassment in the Public Sector

Workers in the public sector have several avenues of redress when experiencing sexual harassment in the workplace. The courts have attempted to combat sexual harassment in the public sector in limited circumstances. *Pelaketiya v Gunasekera*¹⁷⁸ ruled that sexual harassment within the public sector is a violation of the fundamental right to equality.¹⁷⁹ *Republic of Sri Lanka v Abdul Rashak Kuthubdeen*¹⁸⁰ criminalized the demand of sexual activity as a bribe in exchange for public service.¹⁸¹ Furthermore, the Ministry of Women and Child Affairs issued and executed an internal circular, enabling workers to file complaints when faced with sexual harassment.¹⁸² Thereafter, the Ministry of Women and Child Affairs submitted the circular to all other Ministries, with the direction to implement the complaint mechanism.¹⁸³

handling complaints, to being proactive and taking the initiative to conduct prevention measures as well.¹⁸⁷ The second amendment was made in 2019 and organisations with more than 10 employees were instructed to register their internal committees through a web portal within 30 days from when the Act was issued.¹⁸⁸

After the implementation of the Act in 2013, within a year, the National Commission for Women reported a 35% increase in complaints from 249 to 336.¹⁸⁹ Numbers suggest that with the implementation of the law more women were encouraged to report cases of sexual harassment within the workplace.

8.4 Lessons from the Region

8.4.I India

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 is the law that protects women in workplaces from sexual harassment¹⁸⁴ in India.¹⁸⁵ The Act legally requires every employer to have an internal complaint committee, or committees, if they have multiple branches. A local committee is appointed by the Act at a district level, by way of conciliation.¹⁸⁶

The Act was amended in May of 2016. This expanded the scope of the sexual harassment committees from merely being confined to

¹⁷⁸ SC/FR/No.76/2012.

¹⁷⁹ Government of Sri Lanka, The Constitution of the Democratic Socialist Republic of Sri Lanka, Article 12(1).

¹⁸⁰ B 839/93.

¹⁸¹ Bribery Act No. 09 of 1980, Section 14.

¹⁸² Government of Sri Lanka, Ministry of Women, Child's Affairs and Social Security, The Performance Report of the Ministry of Women, Child Affairs and Social Security for the year 2019 has been prepared as per instructions in the Public Finance Circular No. 402 dated 12 September 2002, 47, <https://www.parliament.lk/uploads/documents/paperspresented/performance-report-ministry-of-women-child-affairs-2019.pdf> (accessed February 23, 2022).

¹⁸³ As discussed by a former employee under the Ministry of Women and Child Affairs.

¹⁸⁴ This Act defines sexual harassment as any uninvited and sexual act - physical, verbal, or nonverbal activity, such as physical contact, demand or desire for sexual favours, making sexually tinged comments, showing pornography, including "quid pro quo" harassment.

¹⁸⁵ Government of India, Ministry of Law and Justice, Act No. 14 of 2013.

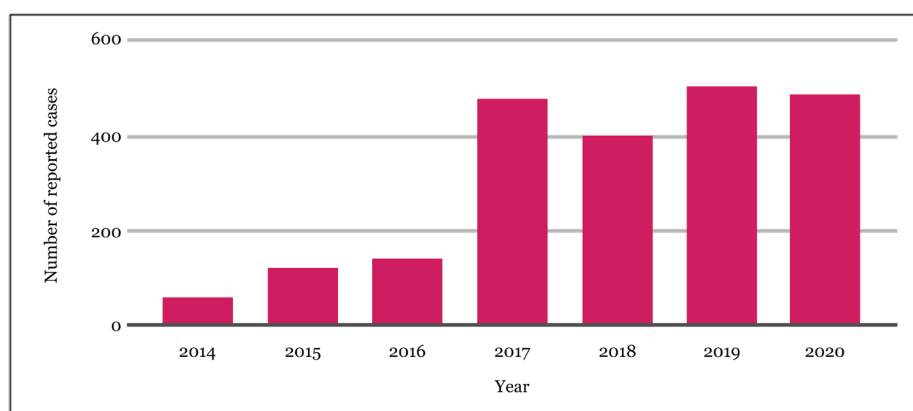
¹⁸⁶ Mediation between the two parties.

¹⁸⁷ Government of India, Ministry of Law and Justice, NEW DELHI, MONDAY, MAY 9, 2016/ V AISAKHA 19, 1938 (SAKA), May 2016, <https://www.kelphr.com/pdf/amendment-on-posh-act.pdf> (accessed March 3, 2022).

¹⁸⁸ Anshul Prakash and Abhisek Choudhury, "Maharashtra And Telangana: State Governments Mandate Registration Of Internal Committee Constituted Under PoSH Act", Mondaq, July 9, 2019, <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/823608/maharashtra-and-telangana-state-governments-mandate-registration-of-internal-committee-constituted-under-posh-act> (accessed March 3, 2022).

¹⁸⁹ Manisha Chachra, "70% working women do not report workplace sexual harassment in India", Business Standard, Indian Business Standard, March 4, 2017, https://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227_1.html (accessed March 3, 2022).



FIGURE 7 | REPORTED CASES OF SEXUAL HARASSMENT IN THE WORKPLACE

Source: National Crime Records Bureau, *Crime in India Reports*

However, raising concern, a 2015 study by the Federation of Indian Chamber of Commerce and Industry (FICCI) found that 36% of Indian national companies and 25% of multinational companies situated in India had not constituted their internal complaints committees (ICCs).¹⁹⁰

The Indian Bar Association conducted a survey in 2017 where 6047 working women and men participated. This revealed that 65.2% of the companies did not follow the legal procedure that the Act requires and that only 33.3% of the women feel that their complaint was dealt with fairly. When asked if the women believed they had enough legal protection from sexual harassment, only 11.1% of the respondents were confident of the law. Most felt that the complaints process in their place of employment was not conducted in an organised manner.¹⁹¹

A 2018 study by the Martha Farrell Foundation found, through right to information queries, that out of 655 districts in the country, only 29% have formed the Local Committees (LCs) to address sexual harassment. 15% of districts have not formed the LC.¹⁹²

Through India's experience it can be concluded that even though amendments to the law on sexual harassment in the workplace encourages

women to report cases of sexual harassment, non-compliance with the law still disincentivises victims from reaping the full benefit of the legal reform. Therefore, a compliance mechanism seems necessary. Wider awareness on the victims' legal rights is also proven to be essential. Additionally, there is a need to destigmatise sexual harassment in the workplace so that victims are freely able to access the legal protection available to them.

8.5 International Obligations

Despite an ineffective legal framework providing for sexual harassment in the workplace, Sri Lanka is a signatory to two relevant international conventions; the Convention on the Elimination of Discrimination against Women (CEDAW), which upholds the right to safe working conditions¹⁹³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right to safe and healthy working conditions.¹⁹⁴ More recently, in 2021, the Cabinet granted approval to ratify the landmark ILO Convention on 'Eliminating Violence and Harassment in the World of Work'.¹⁹⁵ In addition to courts and tribunals, the convention obligates its signatories to set up complaint mechanisms within the workplace to specifically address sexual harassment.¹⁹⁶

190 Fostering safe workplaces Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, (Inida: Ernst & Young LLP, 2015) <https://fikki.in/spdocument/20672/Fostering-safe.pdf> (accessed March 3, 2022).

191 Report GARIMA Sexual Harassment in the Workplace, (Prabhat Books, 2008), <https://www.indianbarassociation.org/wp-content/uploads/2017/07/Garima-1INBAs-Book.pdf> (accessed March 3, 2022).

192 'Who safeguards a woman's right to a safe workplace? A STUDY OF LOCAL COMMITTEES ACROSS INDIA USING RTI DATA', (2018), https://www.marthafarrellfoundation.org/uploads/pdf_files/1555302838_RTI%20Study%20PDF.pdf (accessed March 3, 2022).

193 Convention on the Elimination of Discrimination against Women (CEDAW), Article 11 (f).

194 International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 7 (b).

195 "SL to ratify landmark ILO convention on workplace harassment", Daily Mirror, March 21, 2021, <https://www.dailymirror.lk/print/business-news/SL-to-ratify-landmark-ILO-convention-on-workplace-harassment/273-208363> (accessed December 3, 2022).

196 Convention on the Elimination of Discrimination against Women (CEDAW), Article 10.



8.6 Reform Recommendations

Legislative Reforms

1. The Industrial Disputes Act No.43 of 1950 could be used to address sexual harassment in the workplace in civil law.¹⁹⁷
 - a. Expanding the definition of “Industrial Disputes” to include sexual harassment in the workplace.¹⁹⁸
 - b. Define ‘sexual harassment’ under the IDA separately.¹⁹⁹ For instance, the definition provided in the draft Employment Act 2019 may be considered.
2. Supplement the reforms under the IDA by introducing a clause within the following statutes to ensure sexual harassment within the workplace is addressed.²⁰⁰
 - a. Introduce a clause under the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954²⁰¹ and the Factories Ordinance No.45 of 1942²⁰² requiring employers to set up a policy and mechanism within the workplace to enable employees to report complaints of sexual harassment. The policy should incorporate the definition of sexual harassment under the draft ‘Employment Act 2019’ into both statutes.^{203 204}
 - b. Introduce a Regulation under the Employment of Women, Young Persons and Children Act No.47 of 1956,²⁰⁵ prohibiting sexual harassment in the workplace.²⁰⁶ The Regulation should define the offence based on the definition under draft ‘Employment Act 2019’.²⁰⁷
 - c. Mandate all operative Wages Boards governed under the Wages Boards Ordinance No.19 of 1945 to declare that employees have a right to a workplace free of sexual harassment.²⁰⁸ This will bind employers to set up a mechanism through which complaints of sexual harassment can be reported in the workplace.²⁰⁹ Further, obligate employers to exhibit notices prohibiting sexual harassment in the workplace in all three languages.²¹⁰

Institutional Reforms

1. Introduce a Regulation under the IDA²¹¹ through which an office within the Labour Department shall be appointed to specifically address sexual harassment complaints in an unbiased and sensitive manner.²¹²
2. The office appointed should be given the mandate to overlook mechanisms set up by private companies to address sexual harassment complaints internally. (Stakeholder consultation is necessary to determine the proper degree of government oversight).

197 Legislative Reforms of labour laws in Sri Lanka is a time consuming affair, as it is accompanied with a spectrum of procedures and formalities.

198 Kamalimi Wijayatilake and Faizun Zackariya, Sexual Harassment at Work. Plantation Sector, (Colombo: International Labour Organization, 2001).

199 Industrial Disputes Act No. 43 1950, Section 48.

200 Similar to the simultaneous revisions made to the four labour laws in Sri Lanka in respect of minimum age.

201 Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954, Part I.

202 Factories Ordinance No. 45 of 1942, Section 31(1).

203 Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954, Section 68 (1).

204 Factories Ordinance No. 45 of 1942, Part XV.

205 Regulations can be enacted by way of Gazette Notification under Section 31(1) of the Employment of Women, Young Persons and Children’s Act No.47 of 1956.

206 Gazette of the Democratic Socialist Republic of Sri Lanka, 2010-08-20, No. 1667/41, 2010-08-17.

207 Draft Employment Act 2019, Section 07.

208 Wages Board Ordinance No.19 of 1945, Section 28(1).

209 Employers belonging to that respective trade under the mandate of the Wages Board.

210 Wages Board Ordinance No.19 of 1945.

211 Wages Board Ordinance No.19 of 1945, Section 39.

212 Code of Conduct and Guidelines to Prevent and Address Sexual Harassment in the Workplace, (International Labour Organization and Employers Federation of Ceylon, 2013), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_525537.pdf (accessed 7 September 2021).



Conclusion

This report examines the role of gender discriminatory labour laws in Sri Lanka's low female labour force participation. This study uses the World Bank's Women, Business and the Law index as a reference to identify gender discriminatory laws in Sri Lanka that prevent women from fully and equally contributing to the economy. The report presents a case for concrete reforms to facilitate the entry and retention of women in the labour force. The study recognizes the significant relationship between women's rights and economic wellbeing. A growing body of literature shows that women's economic empowerment reduces income inequality, increasing economic resilience, benefiting the wider economy of a country. As concluded by the Women, Business and the Law report, when societies become more equal, economies become more resilient, highlighting that gender equality makes economic sense.

In this respect, the study identifies four legal constraints that are easier to tackle in terms of legal reforms in Sri Lanka:

1. Given the lack of reference to part-time and flexible work in the legal framework:
 - Amend Section 3 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 and Section 24 (3) of the Wages Boards Ordinance No. 27 of 1941 to include part-time and flexible work.
 - Amend the Payment of Gratuity Act No. 12 of 1983 to separately calculate social security based on an employee's work as both a full-time and part-time employee.
2. To address overtime work restrictions on female employees:
 - Remove the restriction on overtime work under Regulation 7 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954.
 - Introduce a new Regulation under Section 3 (1)(3)(a) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 to allow female employees to work overtime.
 - Introduce guidelines to avoid exploitation of excessive overtime under the new Regulation, such as those stated in Section 2A of the Employment of Women, Young Persons and Children Act No. 47 of 1956 and Section 67A of the Factories Ordinance No. 45 of 1942.
3. Removing work at night restrictions for women under:
 - Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, the Factories Ordinance No. 45 of 1942 and the Employment of Women, Young Persons, and Children Act No. 47 of 1956, while ensuring the protection of women employed at night.
4. To address sexual harassment in the workplace:
 - Expand the definition of work related disputes under Section 48 of the Industrial Disputes Act No. 43 of 1950 to include sexual harassment in the workplace.
 - Include a clause within the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, Factories Ordinance No.45 of 1942 and the Wages Boards Ordinance No. 27 of 1941 to address sexual harassment in the workplace.
 - Introduce a Regulation in accordance to Section 31 of the Employment of Women, Young Persons and Children Act No.47 of 1956, prohibiting sexual harassment in the workplace.

These reforms will ensure that Sri Lanka's legal and policy framework complies with legal best practices, improving female labour force participation and overall economic resilience in the country.





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