

**M**CP, or male chauvinist pig, is no longer so widely in vogue as when the evocative expression first hit the feminist circuit in the US in the 1980's, or was it earlier? But one never knows; it can bounce back into circulation in the face of extreme provocation. If so, I may be in for the appellation. Nevertheless, I must record my sense of bewilderment, if not chagrin, at the way the courts sometimes interpret constitutional provisions, especially when egged on by formidable champions of the feminist cause.

The allusion is to a recent 'landmark' judgment by Justice E. Padmanabhan of the Madras (Chennai) High Court. According to a *Deccan Herald* report, the learned judge also issued a set of guidelines to be followed till the Central and State governments issue rules amending the Factories Act which bars employers from engaging women workers in night shifts. He first ruled that the Section 86(1)(b) of the Factories Act, which forbids employment of women on night duty, violates Article 15 of the Constitution and therefore unconstitutional. Article 15 of the Constitution, incidentally, enjoins on the State not to discriminate against any citizen 'on grounds 'only' of religion, race, caste, sex, place of birth or any of them'.

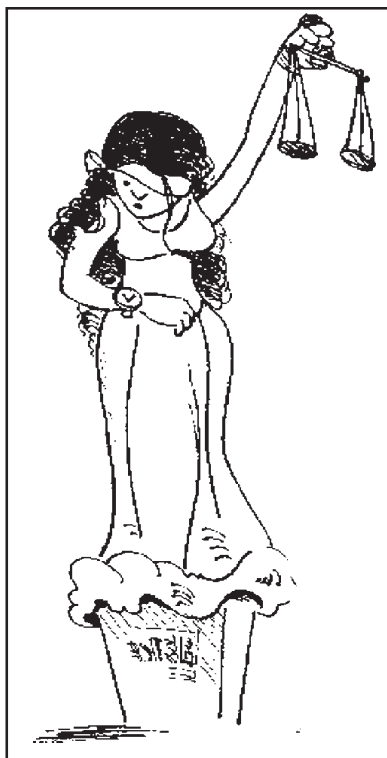
The judgment was in response to a batch of 150 writ petitions filed by women employees, groups and trade unions challenging the Factories Act provision. According to it, the bar on night shifts for women results in denial of livelihood and, therefore, is a restrictive and not an affirmative action. The set of guidelines is highly original. According to the report, the court said women should be

## More Equal than Men?

### High Court Judgement on Night Shift Employment for Women

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employed only in batches of not less than ten or not less than two-thirds of the total night shift strength, and separate work sheds, canteen facilities, transport, and additional paid holidays for menstruation period,



besides medical facilities. Besides, there should also be two or more women wardens. The court's observation that 'the bar on night shifts for women results in denial of livelihood' is not understandable unless it means that some employers

are loathe to employ women because they cannot be made to work at night. As far as blue-collar workers are concerned there is usually no gender discrimination except in cases requiring hard physical labour like mining or steel making. In the case of white collar employees, there is more, except in administrative offices where women are employed as receptionists, secretarial staff and the like. Women employed in such positions are reluctant to be called to work at night because of the interaction with strangers, their work involves. At the Bhabha Atomic Research Centre (BARC), on the other hand, I have seen that gender does not come into consideration in the work place. Women scientists and technicians conduct themselves as professionals totally unmindful of their gender. They handle hazardous assignments like those involving toxic substances like plutonium, as do their male counterparts. So how deprivation of livelihood occurs in the Chennai case is not clear.

Maybe, some establishments pay night shift allowance, which is not available to those not included in the night shift. There is no such provision in factories and mills. In the old days when Mumbai was Bombay and the textile mills were operational, men and women would work round-the-clock,

manning all the three eight-hour shifts without discrimination. Their strength would lie not in the number of women on the muster-roll, but depend on the men at work. They represented what we would call working class culture which seems to be disappearing in this western metropolis thanks to the influence of Bollywood culture.

This was the case in the Calcutta jute mills too. In fact the rate of, crimes against women was very low in the mega cities until recently. Middle class women, would freely move about at night without an escort or fear of violence against their persons. So was the case in Kanpur too, although it was hardly urban in orientation and composition. Lahore and Delhi were different.

According to a complaint made to Gandhiji by (the future) Sucheta Kripalani – she was unmarried then – about eve teasing which was rampant in Lahore, women dared not go to late night film shows, even in company. Gandhiji, while condemning such male behaviour as unworthy of Indians, also advised women to avoid ‘provocative’ dress and conduct in public, which enraged Sucheta who wrote an irate letter in the *Harijan*. She said the mere presence of women provoked certain men and so justifications like provocative appearance were passing the buck on to victims of uncivilised behaviour.

Reverting to the Chennai case, the petitioners before the High Court acknowledged that some employers were prepared ‘to provide food, stay dormitory, and transport facilities for women, but the Factories Act barred them from engaging women in night shifts. In this context, the court could have confined itself to holding the Factories Act *ultra vires* of the

Constitution, instead of laying down costly conditionalities, which would be beyond the means of small-sized businesses. For the larger ones, the burden of additional overheads would be a damper to private investment, both domestic and foreign, in enterprises where the Factories Act provision and the High Court ruling would be applicable. Given that the Indian industry is already in recession and reeling under the impact of foreign competition, such unrealistic provisions will strengthen the bias against employing women at all. The public sector companies that adopt it would pave the way for faster sickness and ultimate closure.

V.P.Singh, in his time, was the embodiment of such parasitic politics. As the finance minister in Rajiv Gandhi's government, he embarked on a veritable witch-hunt of business leaders, such as Kirloskar of Poona, who was arrested on charges of tax evasion. The anarchist streak in his complex personality came out more openly when, as short-lived prime minister, he landed the country in a veritable civil war in the name of affirmative action.

The issue is not that women employees do not deserve the facilities and safeguards envisaged by the Chennai judgment. The question is what impact will it have on the survival and prosperity of the enterprises, and on their employment potential. Mulcting employers to the utmost might have been the fashion in another age when industrialists and traders made hay under the sun of a socialist pattern of society, keeping the economy and the country backward and under-developed. Today, with technology and the

information revolution breaking national barriers for investment and trade, it would be a prescription for pauperism.

The issue of employment of women in the night shift brings back memories of the 1950s when Sadanand's *Free Press Journal* in Bombay made it a policy to have an all-male editorial department, until Shakuntala Masani, nee Srivastava, joined and volunteered to work at night. Sadanand did not believe in providing transport or rest rooms for night shift employees. We would lie down on the news desk and other tables after putting the edition to bed until the first tram from the Museum started at 4 a.m. So did the other press workers. The *Times of India*, on the other hand, had transport laid on for night shift desk staff. Still, enterprising journalists opted to work under Sadanand because he was an institution by himself. Incidentally, Shakuntala had another reason to opt for the night shift. Her fiancé, Minoos Masani, would pick her up in his car and they would have some time together before she was dropped home.

Finally, I have a hunch that some of the laws meant to safeguard women have been misused for blackmail. There are instances when women freely fraternising with men have taken to blackmailing them by claiming molestation and worse.

Such cases not only lift the crime graph but also add to the feeling of insecurity among women. How one wishes one could go back to the good old days of working class culture! □

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