

## **Compromising Health to Gain Wealth: A Legal Response to Adverse Health Effects of Night Work**

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### **Abstract**

Although night work has responded to a variety of social, technical, and economic reasons, it has adversely affected the health, safety, and work-life balance of such night workers. Thus, this article aims to explore the hiatus in Sri Lankan law in devising effective legal measures responding to such health issues encountered by night workers due to their engagement in irregular work time. This research is conducted as a literature review based on secondary sources approaching both qualitative and quantitative methods. The International Labour Organisation (ILO) and its recommendations provide for an effective mechanism for an organised night working culture in response to the health effects of such working community. However, Sri Lanka, not being a signatory to those Conventions, failed to address the issue through legislative measures. Further, the delinquency of statistics and medical researches on the health status of night workers in Sri Lanka also worsened the situation. Thus, the author attempts to draw a Constitutional justification to delineate the fundamental duty of the State to address the said issue and recommends suitable strategies and mechanisms to truncate the adverse health effects to those workers by drawing examples from initiatives taken by the European Union, especially from Spain.

**Keywords:** Night Work, Health and Wellbeing, International Labour Standards, Working Culture, Labour Rights

### **Introduction**

The U.N. General Assembly proclaimed the year of 2015 as the International Year of Light and Light-based Technologies (IYL 2015) in its 68th session.<sup>1</sup> The

resolution emphasised that the light has revolutionised "medicine, opened up international communications via the Internet, and continues to be central to linking cultural, economic, and political aspects of the global economy."<sup>2</sup> Thus, the

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<sup>1</sup> Resolution adopted by the General Assembly on 20 December 2013, 'International Year of Light and Light-Based Technologies, 2015'

<<https://www.light2015.org/Home/About.html>> accessed 16 June 2018.

<sup>2</sup> Resolution adopted by the General Assembly on 20 December 2013 (n 1).

rapidity in the usage of artificial light has created a 24/7 working society which also impacted the choices of lifestyle, location of residence, etc.<sup>3</sup> The night work and night shift are some of such fundamental evolutions adopted as a working culture of the twenty-first century as a result of 'globalisation'.<sup>4</sup> Although night work also existed in ancient civilisations,<sup>5</sup> it became widespread once 'improved artificial lighting' was instigated.<sup>6</sup> These structural evolutions in the working pattern since the industrial revolution to the technological era although have lifted the living standards of the people considerably, they also adversely affected the health of night and shift workers by accelerating the threat of suffering from several health-related issues compared to the past.

According to the statistics of the National Health Interview Survey in 2010, 29% of the labour force in the United States stated that their work time arrangement is diverse

from regular day shifts.<sup>7</sup> The General Survey in Canada in 2005 revealed as 28%,<sup>8</sup> and for European Union, it is 21%.<sup>9</sup> Despite the percentage of the night or shift workforce, the statistics of health effects<sup>10</sup> are regarded as 'carcinogenic in humans' by the International Agency for Research on Cancer.<sup>11</sup> Evidence shows that there is an acceleration in the percentage of various types and conditions of job stresses which in the long run leads to mental health problems.<sup>12</sup> One of such conditions is related to the working hours.<sup>13</sup> Some empirical research suggests that there is a systematic connection between working hours and worker's psychological health.<sup>14</sup> Despite the health issues encountered by the workers, the industries continue to employ more workers in the night and shift works.<sup>15</sup>

Although there are no statistics found so far regarding the night and shift workers of Sri Lanka, in practice, there is an increased

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<sup>3</sup> Ruth M Lunn and others, 'Health Consequences of Electric Lighting Practices in the Modern World: A Report on the National Toxicology Program's Workshop on Shift Work at Night, Artificial Light at Night, and Circadian Disruption' (2017) 607–608 *Science of The Total Environment* 1073.

<sup>4</sup> R Ganguly-Scrase and D Vandenbroek, 'Globalisation, Liberalisation and the Transformation of Women's Work in India.' in R White, R Rottier and Julian R (eds), *Community, Place, Change* (The Sociological Association of Australia (TASA) 2005).

<sup>5</sup> JM Harrington, 'Health Effects of Shift Work and Extended Hours of Work' (2001) 58 *Occupational and Environmental Medicine* 68.

<sup>6</sup> NANCY GONLIN and APRIL NOWELL, 'A HISTORY OF WHAT WE DO IN THE DARK' (*Pacific Standard*, 23 April 2018) <<https://psmag.com/news/historical-night-life>> accessed 13 April 2019.

<sup>7</sup> Toni Alterman and others, 'Prevalence Rates of Work Organization Characteristics among Workers in the U.S.: Data from the 2010 National Health Interview Survey' (2013) 56 *American Journal of Industrial Medicine* 647.

<sup>8</sup> Williams C. Work-life balance of shift workers, *Statistics Canada Perspectives* 2008;75-001-X <<http://www.statcan.gc.ca/pub/75-001-x/2008108/pdf/10677-eng.pdf>> accessed 16 June 2018.

<sup>9</sup> Eurofound. Sixth European Working Conditions Survey 2015. Available at: <https://www.eurofound.europa.eu/surveys/european-working-conditions-surveys/sixth-european-working-conditions-survey-2015>. Accessed May 29, 2018.

<sup>10</sup> Göran Kecklund and John Axelsson, 'Health Consequences of Shift Work and Insufficient Sleep' [2016] *BMJ* i5210; DB Boivin and P Boudreau, 'Impacts of Shift Work on Sleep and Circadian Rhythms' (2014) 62 *Pathologie Biologie* 292.

<sup>11</sup> Straif K, Baan R, Grosse Y, et al. Carcinogenicity of shift-work, painting, and fire-fighting. *Lancet Oncol* 2007 8(12)1065–6.

<sup>12</sup> Kate Memish and others, 'Workplace Mental Health: An International Review of Guidelines' (2017) 101 *Preventive Medicine* 213.

<sup>13</sup> Kaori Sato, Sachiko Kuroda and Hideo Owan, 'Mental Health Effects of Long Work Hours, Night and Weekend Work, and Short Rest Periods' (2020) 246 *Social Science & Medicine* 112774.

<sup>14</sup> R Kato and others, 'Heavy Overtime Work and Depressive Disorder among Male Workers' (2014) 64 *Occupational Medicine* 622; Sato, Kuroda and Owan (n 13).

<sup>15</sup> Jeffrey V Johnson and Jane Lipscomb, 'Long Working Hours, Occupational Health and the Changing Nature of Work Organization' (2006) 49 *American Journal of Industrial Medicine* 921.

demand for non-standard jobs, shift work, and night work outside the traditional daytime jobs.<sup>16</sup> A few Acts enacted by the Parliament of Sri Lanka incorporated definitions for the term 'night worker' based on the objectives and scope of such labour legislation; however, they failed to devise effective preventive measures for health issues encountered by them due to irregular work time. The literature also remains silent on addressing the necessity for the up-gradation of labour legislations in light of the health issues of the night workers in Sri Lanka. Thus, this research aims to explore the gap in Sri Lankan law relating to the health-related rights of night workers. In order to devise effective preventive strategies, it is important to study workplace stressors that cause and increase the risk of adverse health effects that affect both night workers themselves as well as the people surrounded by them. With that perspective, it also aims to recommend systematic legal measures to uplift the health and wellbeing of such night workers by drawing examples from selected other jurisdictions.

Having said that, to address the research problem, the first section discusses the concept of labour exploitation as a theoretical background; demonstrates the origin of night work; defines the term night and shift work; and identifies the advantages and disadvantages of night and shift work. The second section demonstrates the adverse health issues

encountered by the night and shift workers; the Sri Lankan law's response to such health effects; and international standards addressing the same in detail. The third and final section evaluates the measures adopted by the few other jurisdictions in dealing with the issue and attempts to propose recommendations.

## **1. Theoretical Background**

### ***1.1 Labour Exploitation and Constitutional Protection***

Labour exploitation can be defined as a form of modern slavery<sup>17</sup> where the labours are treated under the standards of human rights. Among the list of categories to identify the indicators for labour exploitation, indicators like lousy living conditions, excessive working days and hours, hazardous work, low salary, no access to education, no respect of labour laws or contracts signed, no special protection like contract and social insurance, appalling working conditions, and wage manipulation,<sup>18</sup> are crucial to realise of being exploited. For some scholars, exploitation is a treatment merely in an instrumental way. For some others, it is a treatment exclusively beneficial to the employer, and for others, it is defined as coercion where the employee is vulnerable to an extent where he consents to their exploitation. Many others observed that the harm through entering into an exploitative agreement is greater than the harm caused

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<sup>16</sup> 'Women in Night and Shift Work in Sri Lanka: Policies to Facilitate More Participation' (*Talking Economics*, 5 March 2020)

<<https://www.ips.lk/talkingeconomics/2020/03/05/women-in-night-and-shift-work-in-sri-lanka-policies-to-facilitate-more-participation/>> accessed 12 July 2021.

<sup>17</sup> Morgan Rennie, 'What Is Labour Exploitation?' (*Delta Net International*, 4 September 2018) <[https://www.delta-](https://www.delta-net.com/compliance/modern-slavery/faqs/what-is-labour-exploitation)

[net.com/compliance/modern-slavery/faqs/what-is-labour-exploitation](https://www.delta-net.com/compliance/modern-slavery/faqs/what-is-labour-exploitation)> accessed 18 July 2019.

<sup>18</sup> 'Details of Indicators for Labour Exploitation' <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_105035.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105035.pdf)> accessed 13 July 2019.

by the exploitation itself.<sup>19</sup> Despite the contradictory arguments of the scholars, promoting and realising standards and fundamental principles and rights at work are some of the core aims of the International Labour Organisation,<sup>20</sup> which also include mitigation of labour exploitation.

Especially in the Sri Lankan context, Article 27(7) of the Constitution states that the State shall eliminate economic and social privilege and disparity and the exploitation of man by man or by the State which is pledged to establish a democratic socialist society. The State is also pledged to ensure social security and welfare under the Constitution.<sup>21</sup> Moreover, Sri Lanka has ratified forty-three International Labour Conventions and one Protocol up to date.<sup>22</sup> Among them, it ratified all the eight fundamental Conventions.<sup>23</sup> Therefore, the State has the duty under Article 27(15) to promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order and shall endeavour to foster respect for international law and treaty obligations in dealing among nations. Thus, with the view of promoting the rights of the labours, there are no justifications on the part of the State to exclude night

workers from such protections and privileges provided to labours by the State.

## **1.2 Origin of Night Work**

Night work is not a newly emerging concept upon the invention and development of improved artificial lighting. In ancient times, even before inventing artificial lighting, the nature of work was practised more closely with the hours of natural light.<sup>24</sup> However, depending on the season, the productions which required special care at dark are consummated at night hours.<sup>25</sup> Later, with the commencement of the industrial revolution, night work was exerted as a regular working hour for certain industries and factories with the aim of accelerating the quantity of production to obviate the cost of high-priced equipment.<sup>26</sup> International Labour Organisation (ILO) reports that the national economy developed considerably through the expansion of implementing shift work which includes night work or night shift work between the mid-1945 to the end of the 1970s.<sup>27</sup> Statistical data on the number of night and night shift workers is not easy to obtain outside Europe<sup>28</sup> and few developed countries, and Sri Lanka is not an exception to this rule. However, the literature identifies an acceleration in the

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<sup>19</sup> Patti Tamara Lenard and Christine Strachle, 'Temporary Labour Migration: Exploitation, Tool of Development, or Both?' (2010) 29 Policy and Society 283.

<sup>20</sup> Elina Vilup and Jakub Przetacznik, 'Briefing: The International Labour Organisation and International Trade' <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/570460/EXPO\\_BRI\(2016\)570460\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/570460/EXPO_BRI(2016)570460_EN.pdf)> accessed 16 July 2019.

<sup>21</sup> Article 27(9)

<sup>22</sup> 'Ratifications of Sri Lanka' (*International Labour Organisation*) <<http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:112>

00:0::NO::P11200\_COUNTRY\_ID:103172> accessed 12 May 2021.

<sup>23</sup> 'Ratifications of Sri Lanka' (n 22).

<sup>24</sup> International Labour Conference, 107th Session, 2018, 'Ensuring Decent Working Time for the Future' <[https://www.ilo.org/ilc/ILCSessions/previous-sessions/107/reports/reports-to-the-conference/WCMS\\_618485/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/107/reports/reports-to-the-conference/WCMS_618485/lang--en/index.htm)> accessed 15 February 2018.

<sup>25</sup> ILO: *Night work*, Report V(1), 1989 6.

<sup>26</sup> ILO: *Night work*, Report V(1), 1989 6.

<sup>27</sup> ILO: *Night work*, Report V(1), 1989 6.

<sup>28</sup> International Labour Conference, 107th Session, 2018 (n 24).

number of night workers in recent decades.<sup>29</sup>

### **1.3 Defining Night Work**

Night work is a performance of work at a time when people would normally sleep. This can either be a 'non-shift night work', which is by nature, has to be performed at night or 'night shift', where the working time of the workers succeed one another at different times of the day in which workers will also be required to work for certain hours per week at night too.<sup>30</sup> The shift work can be 'fixed', where the working hours at night will be the same or 'rotating' where the shift work is regulated by a roster.<sup>31</sup> Depending on the nature of the work, the workers may perform night work regularly or periodically or on a temporary short-term basis.<sup>32</sup> Recently, the expanding needs like ensuring the functioning of social utilities, reaching the productive economic demands, developing the leisure sector etc., cultivated a dramatic expansion in outsourcing the business processes through providing 'technology-enabled services', which resulted in enabling the multitude of remote work arrangements.<sup>33</sup> This enabled the services to be provided based on the time zone<sup>34</sup> of the clients or of the parent company; thus, adjusted the

working hours accordingly, which also include non-shift night work and night shift work.

### **1.4 Advantages and Disadvantages of Night Work**

Among few advantages, mainly three of them are crucial. One is that nightwork helps to fulfil the social and technical needs of the workers.<sup>35</sup> The advantage is fairly certain for a few service sectors; however, not clear cut in the information and leisure sector.<sup>36</sup> The second is the increment in profitability.<sup>37</sup> In most countries, night work is associated with additional benefits for the employees and associated benefits like productivity and efficiency for employers. Night work also aims for intense use of equipment and infrastructure. It is cost-effective for some enterprises.<sup>38</sup> The third one is employment creation and growth.<sup>39</sup> Night work and shift work have a considerable effect on employment. As already stated above, the additional benefits ensured and provided for employees also lead to a rise in the economic level of the community.

With regard to disadvantages, work-life balance is seen as a major challenge as researchers suggest that the ones who

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<sup>29</sup> Swiss Labour Force Survey (SPFS), carried out by the Federal Statistical Office, French Agency for Food, Environmental and Occupational Health and Safety (ANSES): *Evaluation des risques sanitaires liés au travail de nuit*, Avis de l'Anses No. 2011-SA-0088, Rapport d'expertise collective, 2016, 17.

<sup>30</sup> S Strohmaier and others, 'A Review of Data of Findings on Night Shift Work and the Development of DM and CVD Events: A Synthesis of the Proposed Molecular Mechanisms' (2018) 18 Current Diabetes Reports 132. also see ILO: *Working time in the twenty-first century*, Tripartite Meeting of Experts on Working-Time Arrangements (17–21 October 2011) at p. 45

<sup>31</sup> Strohmaier and others (n 30).

<sup>32</sup> Strohmaier and others (n 30).

<sup>33</sup> Strohmaier and others (n 1) at p.6.

<sup>34</sup> Leonardi and Bailey, 'Transformational Technologies and the Creation of New Work Practices: Making Implicit Knowledge Explicit in Task-Based Offshoring' (2008) 32 MIS Quarterly 411. at pp. 411-412

<sup>35</sup> International Labour Conference, 107th Session, 2018 (n 24).

<sup>36</sup> J. Carpentier and P. Cazamian: *Night work: Its effects on the health and welfare of the worker* (Geneva, ILO, 1997) 4.

<sup>37</sup> International Labour Conference, 107th Session, 2018 (n 24) 145.

<sup>38</sup> International Labour Conference, 107th Session, 2018 (n 24) 146.

<sup>39</sup> International Labour Conference, 107th Session, 2018 (n 24).



regularly work in the typical schedule are continuing to work not by deliberate choice but as a job requirement.<sup>40</sup> Abnormal working schedules are often asynchronous with the members of the family;<sup>41</sup> thus leads to a work-family conflict, stress and relationship breakdowns.<sup>42</sup> Second is the decreased productivity and performance due to fatigue. One of the major advantages expected from night and shift work is the maintenance of productivity at an acceptable level. However, a number of associated factors like health issues, disturbed social life, shortened and disturbed sleep, and effects on circadian rhythms also affect the productivity of the employees.<sup>43</sup> Among other disadvantages, effects on health and safety are a major cause of the rest of the disadvantages and the next section addresses the issue in detail.

## **2. Legal Response to Adverse Health Effects of Night and Night Shift Work**

### **2.1 Adverse Health Effects of Night Work**

Night and night shift work is practised in opposite to their biological clocks by remaining awake, alert and productive at a time when the human biological drive for sleep is at its strongest.<sup>44</sup> In recent times, several scholars researched the adverse health impacts due to night work. More specifically, the researches prove a correlation between night and shift work and major health issues like cardiovascular disease,<sup>45</sup> breast cancer,<sup>46</sup> chronic

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<sup>40</sup> C Fagan and others, 'The Influence of Working Time Arrangements on Work-Life Integration or "Balance": A Review of the International Evidence', *Conditions of Work and Employment Series* (International Labour Organisation 2012)

<<http://www.ilo.org/travail/info/working/lang-en/index.htm>> accessed 12 October 2019 39.

<sup>41</sup> S Hamermesh Daniel and Elena Stancanelli, 'Long Workweeks and Strange Hours' (2015) 5 ILR Review 1008.

<sup>42</sup> Fagan and others (n 40) 39.

<sup>43</sup> S Folkard, 'Shift Work, Safety and Productivity' (2003) 53 Occupational Medicine 99.

<sup>44</sup> Tripartite Meeting of Experts on Working Time Arrangements, International Labour Office, and Conditions of Work and Employment Programme (eds), *Working Time in the Twenty-First Century: Report for Discussion at the Tripartite Meeting of Experts on Working Time Arrangements 2011 (17-21 October 2011)* (ILO 2011) 65.

<sup>45</sup> Giovanni Costa, 'The Impact of Shift and Night Work on Health' (1996) 27 Applied Ergonomics 9; A Silva-Costa, RH Griep and L Rotenberg, 'Disentangling the Effects of Insomnia and Night Work on Cardiovascular

Diseases: A Study in Nursing Professionals' (2015) 48 Brazilian Journal of Medical and Biological Research 120; Adriano Marçal Pimenta and others, 'Trabalho noturno e risco cardiovascular em funcionários de universidade pública' (2012) 58 Revista da Associação Médica Brasileira 168; Sungjin Park and others, 'Association between Night Work and Cardiovascular Diseases: Analysis of the 3rd Korean Working Conditions Survey' (2015) 27 Annals of Occupational and Environmental Medicine 15.

<sup>46</sup> Hye-Eun Lee and others, 'The Relationship between Night Work and Breast Cancer' (2018) 30 Annals of Occupational and Environmental Medicine 11; Chang-Ho Chae, 'Validity of Breast Cancer Symptom Questionnaire and Its Relationship With Breast Ultrasonography in Young Female Night Workers' (2020) 11 Safety and Health at Work 361; Emilie Cordina-Duverger and others, 'Night Shift Work and Breast Cancer: A Pooled Analysis of Population-Based Case-Control Studies with Complete Work History' (2018) 33 European Journal of Epidemiology 369; John W Cherrie, 'Shedding Light on the Association between Night Work and Breast Cancer' (2019) 63 Annals of Work Exposures and Health 608.

insomnia,<sup>47</sup> obesity<sup>48</sup> and diabetes.<sup>49</sup> A research published by the World Health Organization (WHO) International Agency for Research on Cancer in 2010 opinions that women who regularly work on night are more likely to get breast cancer.<sup>50</sup> Some other scholars argue that reduction in quality and quantity of sleep,<sup>51</sup> widespread complaints of "fatigue",<sup>52</sup> anxiety,<sup>53</sup> depression,<sup>54</sup> and increased neuroticism,<sup>55</sup> possible increase in gastrointestinal disorders,<sup>56</sup> increased risk of spontaneous abortion,<sup>57</sup> low birth weight,<sup>58</sup> and prematurity<sup>59</sup> are some other health impacts

as a result of practising abnormal working patterns. Thus, it is certain that night and shift work heavily impacts health adversely; thus, there is an imminent need for regulations of night and shift work responding to the economic and social needs of the society.

## ***2.2 Sri Lanka: Legal Response to the Adverse Health Effects Encountered by the Night and Shift Workers.***

The current status of the law's response to the night workers, in general, is debilitating and in specific health and safety of the same

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<sup>47</sup> Jakob Weitzer and others, 'Sleep Complaints in Former and Current Night Shift Workers: Findings from Two Cross-Sectional Studies in Austria' (2021) 38 *Chronobiology International* 893; MJ Abenza-Abildúa and others, 'Perampanel in Chronic Insomnia' (2020) 192 *Clinical Neurology and Neurosurgery* 105724; Rabia Emekli and others, 'Comparing Expression Levels of PERIOD Genes PER1, PER2 and PER3 in Chronic Insomnia Patients and Medical Staff Working in the Night Shift' (2020) 73 *Sleep Medicine* 101; Sandra Carvalho Bos and António Ferreira Macedo, 'Literature Review on Insomnia (2010–2016)' (2019) 50 *Biological Rhythm Research* 94.

<sup>48</sup> Maria Carlota Borba Brum and others, 'Night Shift Work, Short Sleep and Obesity' (2020) 12 *Diabetology & Metabolic Syndrome* 13; M Sun and others, 'Meta-Analysis on Shift Work and Risks of Specific Obesity Types: Shift Work and Specific Obesity Types' (2018) 19 *Obesity Reviews* 28; Miaomiao Sun and others, 'Night Shift Work Exposure Profile and Obesity: Baseline Results from a Chinese Night Shift Worker Cohort' (2018) 13 *PLOS ONE* e0196989; Qi Zhang and others, 'Association between Shift Work and Obesity among Nurses: A Systematic Review and Meta-Analysis' (2020) 112 *International Journal of Nursing Studies* 103757.

<sup>49</sup> Yinyan Gao and others, 'Association between Shift Work and Risk of Type 2 Diabetes Mellitus: A Systematic Review and Dose-Response Meta-Analysis of Observational Studies' (2020) 37 *Chronobiology International* 29; Areesa Manodpitipong and others, 'Night-Shift Work Is Associated with Poorer Glycaemic Control in Patients with Type 2 Diabetes' (2017) 26 *Journal of Sleep Research* 764; Zhilei Shan and others, 'Rotating Night Shift Work and Adherence to Unhealthy Lifestyle in Predicting Risk of Type 2 Diabetes: Results from Two Large US Cohorts of Female Nurses' [2018] *BMJ* k4641; Strohmaier and others (n 30); Céline Vetter and others, 'Night Shift Work, Genetic Risk, and Type 2 Diabetes in the UK Biobank' (2018) 41 *Diabetes Care* 762.

<sup>50</sup> International Agency for Research on Cancer (IARC), *Painting, Firefighting, and Shiftwork*. (publisher not

identified 2010) 764  
<[http://VH7QX3XE2P.search.serialssolutions.com/?V=1.0&L=VH7QX3XE2P&S=AC\\_T\\_B&C=Painting%2C%20Firefighting%2C%20and%20Shiftwork&T=marc&tab=BOOKS](http://VH7QX3XE2P.search.serialssolutions.com/?V=1.0&L=VH7QX3XE2P&S=AC_T_B&C=Painting%2C%20Firefighting%2C%20and%20Shiftwork&T=marc&tab=BOOKS)> accessed 17 August 2021.

<sup>51</sup> Daniel and Stancanelli (n 41).

<sup>52</sup> Mikko Härmä and others, 'Shift Work with and without Night Work as a Risk Factor for Fatigue and Changes in Sleep Length: A Cohort Study with Linkage to Records on Daily Working Hours' (2019) 28 *Journal of Sleep Research* e12658.

<sup>53</sup> Lauren A Booker and others, 'Exploring the Associations between Shift Work Disorder, Depression, Anxiety and Sick Leave Taken amongst Nurses' (2020) 29 *Journal of Sleep Research* <<https://onlinelibrary.wiley.com/doi/10.1111/jsr.12872>> accessed 17 August 2021.

<sup>54</sup> Booker and others (n 53); Paula Hammer and others, 'Night Work and Postpartum Depression: A National Register-Based Cohort Study' (2019) 45 *Scandinavian Journal of Work, Environment & Health* 577.

<sup>55</sup> Tomoteru Seki and others, 'Influence of Parenting Quality and Neuroticism on Perceived Job Stressors and Psychological and Physical Stress Response in Adult Workers from the Community' (2020) Volume 16 *Neuropsychiatric Disease and Treatment* 2007.

<sup>56</sup> Soo-Kyung Lim and others, 'Stress and Sleep Quality in Doctors Working On-Call Shifts Are Associated with Functional Gastrointestinal Disorders' (2017) 23 *World Journal of Gastroenterology* 3330.

<sup>57</sup> Luise Moelenberg Begtrup and others, 'Night Work and Miscarriage: A Danish Nationwide Register-Based Cohort Study' (2019) 76 *Occupational and Environmental Medicine* 302.

<sup>58</sup> Kara A Michels and others, 'The Influences of Sleep Duration, Chronotype, and Nightwork on the Ovarian Cycle' (2020) 37 *Chronobiology International* 260.

<sup>59</sup> Ina Olmer Specht and others, 'Night Work during Pregnancy and Preterm Birth—A Large Register-Based Cohort Study' (2019) 14 *PLOS ONE* e0215748.

remains tacit in Sri Lanka. The Regulation 3, 6 & 7 of the Shop and Office Employees Act<sup>60</sup> and sec.67 of the Factories Ordinance<sup>61</sup>, Employment of Women, Young Persons, and Children Act<sup>62</sup> of Sri Lanka classify the time range of working at night for persons in general, women, and young person, regulate the hours of intervals to be provided and provide provisions for the overtime pay for the workers who contributed beyond the stipulated working hours. However, the law remains silent on premium payment for night workers. Moreover, these laws deal with the recognition of gender equality, definition of the terms related to night works and classification of working hours for night workers according to their age group and scope of the legislation; in turn, failed to address the category and diversity of night works and workers in many instances. Even though no attempts are recorded in collecting specific statistics estimating the number of employees engaged in night work and the health issues encountered by them, the sample data collection and overall medical researches conducted in western countries in identifying such health effects<sup>63</sup> prove that there are not only the existence of adverse health effects but also a collapse in the basic structure of the society – the family<sup>64</sup>- as well. Thus, it is certain that there is an inadequacy of addressing the rights and interests of the night workers in general and in specific, neither provisions identify nor provide any mitigative or preventive

measures for the adverse health effects encountered by them.

### ***2.3 International Conventions Addressing the Adverse Health Effects of Night Workers.***

Besides Sri Lanka being a signatory to all key Conventions, it is a signatory to three governance and thirty-two technical conventions of ILO.<sup>65</sup> Among them, the Night Work of Young Persons (Industry) Convention (Revised)<sup>66</sup> particularly provides for the regulation of work, age, and working hours of employees engaged in night work. Further, it also classifies and defines the term 'night work' in the context of young persons considering the factors that are harmful, prejudicial, or dangerous to them. However, it did not incorporate provisions concerning the health effects of night workers.

Noticing an increment in the number of night workers globally and the statistics of health effects encountered by them, the ILO adopted international standards on night work aiming to protect the vulnerable categories of night workers. In particular, the Night Work (Women) Convention (Revised) 1948 (C089), Convention concerning the Night Work of Young Persons Employed in Industry 1921 (C006), Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (C079), Night Work of Young Persons (Industry) Convention (Revised), 1948 (C090), and Night Work (Bakeries) Convention 1925 (C020) deal with the

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<sup>60</sup> No 19 of 1954.

<sup>61</sup> No 45 of 1942, part I.

<sup>62</sup> No 29 of 1973 as amended up to Act no 24 of 2006

<sup>63</sup> see section 2 of this article.

<sup>64</sup> The Constitution of Democratic Socialist Republic of Sri Lanka 1978, Article 27(12).

<sup>65</sup> 'Ratifications of Sri Lanka' (n 22).

<sup>66</sup> C090 - Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)



revision of the definition of the term 'night work' and do not, in particular, deal with the health effects of the same. Moreover, Sri Lanka is not a signatory to the above-said Conventions other than the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90). However, the above-listed Conventions make provisions for some aspects of nightwork other than the health issues encountered by them.

The Night Work Convention, 1990 (C171) is the convention ab initio recognised the need for a separate law to deal with the health and wellbeing of the night workers. However, Sri Lanka is not a signatory to the Convention. Article 3 of the Convention requires that the specific measures specified under the Convention shall be taken in order to protect the health of the night workers, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately. Measures are also required to be taken in the fields of safety and maternity protection for all workers performing night work. All the night workers, before accepting an assignment as a night worker, at regular intervals during such assignment, and in case of experiencing any health issues during the assignment (subject to limitations) at their request have the right to undergo a health assessment without any charges.<sup>67</sup> They also have the right to receive advice to mitigate and prohibit health problems associated with their work.<sup>68</sup> If the assessment suggests that the worker is unfit

for night work, such findings are required to be kept confidential.<sup>69</sup> The employer is imposed with a duty to arrange suitable first-aid facilities, including a place in case of emergency arises for an imminent treatment.<sup>70</sup> Article 6 of the Convention provides protection from discrimination. If a night worker is certified unfit for night work, he shall be transferred to a similar job in which he fits at, whenever practicable. In case if the transfer is not practicable, he shall be granted the benefits as other workers who are unable to work or secure their job.<sup>71</sup> If he is certified as temporarily unfit, he is given the protection against dismissal or notice of dismissal as other workers who are prevented from working for health issues.<sup>72</sup> Special measures are provided to eliminate gender bias under Article 7 of the Convention. The provision provides alternatives to night work for women workers before pregnancy, during pregnancy and for a period following childbirth. It is also ensured for an additional period on request attaching a medical certificate stating the necessity of the health of the mother and child.<sup>73</sup> Moreover, a woman worker is ensured with job security by providing that an action for dismissal cannot be taken for reasons connected with pregnancy or childbirth.<sup>74</sup> The Convention also mandates the employer before introducing and regularly after introducing the work schedules of night work to such workers and forms of organisation to consult the worker's representatives regarding the details of such schedules.<sup>75</sup>

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<sup>67</sup> The Night Work Convention, 1990 (C171), Article 4(1).

<sup>68</sup> The Night Work Convention, 1990 (C171), Article 4(1).

<sup>69</sup> The Night Work Convention, 1990 (C171), Article 4(2).

<sup>70</sup> The Night Work Convention, 1990 (C171), Article 5.

<sup>71</sup> The Night Work Convention, 1990 (C171), Article 6(2).

<sup>72</sup> The Night Work Convention, 1990 (C171), Article 6(3).

<sup>73</sup> The Night Work Convention, 1990 (C171), Article 9(1)b.

<sup>74</sup> The Night Work Convention, 1990 (C171), Article 9.

<sup>75</sup> The Night Work Convention, 1990 (C171), Article 10.

Having said that, however, the detailed protection mechanisms are not comprehended to the Convention itself. Instead, further efficient mechanisms are listed out and demonstrated under the recommendations - like providing opportunities to detect health issues, before engaging them or during their employment, certain medical indications of inability to adjust the night work; informing and advising how best to adapt to night work, especially regarding sleep, diet, and activities unrelated to work; practising medical expenses at the cost of the employer etc.- which lacks with an enforcement mechanism.

### **3. Recommendations**

As the article already mentioned above, there is a State obligation under the Constitution of Sri Lanka to eliminate labour exploitation and foster respect for international law and treaty obligations. Although Sri Lanka is not a signatory to the Night Work Convention (C171), the obligation of the State to labour exploitation, not in any way exclude the night workers. If it does so, that may be regarded as a violation of the right to equality under Article 12 of the Constitution. Moreover, State is also obliged to take necessary measures to mitigate the breakage of family relationships as a result of the health effects faced due to night work. Because State has been imposed the responsibility of

protecting the family as the basic unit of a society under the Constitution.<sup>76</sup>

Other than the measures introduced by the Night Work Convention (C171), and recommendations thereto, other jurisdictions initiated few innovative measures to mitigate the health issues encountered due to night work. The government of South Africa incorporated the concept of informed consent in obtaining consent to be employed in night work. The employee shall be in writing informed of the health and safety hazards associated with the night work.<sup>77</sup> Spain is following a mechanism to address most of the issues related to night work by way of collective agreements as to cultivate responses based on the nature of each employment. Several legislations and implementing structures are also established to achieve the objective of preserving the health of such night workers in Spain.<sup>78</sup>

A number of countries, including some not ratified the Convention 171, prohibited the performance of night work by pregnant women and the mother given childbirth and instead transferred them to daytime work. Belgium, Chile<sup>79</sup>, and Lao People's Democratic Republic<sup>80</sup> are some of them. Moreover, Belgium also provides arrangements for health insurance schemes and sickness insurance schemes for women workers who signed the contract of suspension.<sup>81</sup> Whereas Sri Lanka, under the Maternity Benefits Ordinance,<sup>82</sup> is silent regarding the prohibition of employing

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<sup>76</sup> The Constitution of Democratic Socialist Republic of Sri Lanka 1978, Article 27(12).

<sup>77</sup> Basic Conditions of Employment Act No 75 of 1997, s.17(3)(b).

<sup>78</sup> Women's Charter, s. 36(4).

<sup>79</sup> Labour Code, s.195 and 202.

<sup>80</sup> Labour Law 2013 (Law No.43/NA), s. 97.

<sup>81</sup> The Royal Decree of 3 July 1996, s. 219 (2).

<sup>82</sup> No 32 of 1939 and the amendment thereto.

pregnant or nursing women in night work or income maintenance.

Belgium also recognises the rights of the aged people by giving them the right to request for a transfer to day work if they are aged 55 or over with at least 20 years of service. European Union initiated an obligation on the part of employers of such institutions under Principle 9 of the European Pillar of Social Rights to maintain the work-life balance of the workers by providing the right to parents and people with caring responsibilities to claim suitable leave, flexible working arrangements and access to care services.<sup>83</sup> European Union directives also make provisions on the definition for night-shift, length of shifts, flexibility and control of scheduling the working time, and pay attention on preserving the health issues of such workers as well.<sup>84</sup>

Moreover, as night and shift work leads to a disproportionate amount of problems, they should be reduced as much as possible or increase the number of crews involved. Scheduling rapid rotations instead of slow rotations will interfere less with circadian rhythm.<sup>85</sup> Preferably, avoiding morning and night shifts in the same 24 hours will also allow longer rest periods between shifts. The duration of the shifts can also be limited to 10 to 12 hours as the researches show that the condition of fatigue is greater on long shifts.<sup>86</sup> It can also avoid the poorer performance of the workers. Further, special concerns in workplace improvements in catering – based on the

diet plans and advice suitable to maintain a healthy lifestyle -, supervision of health condition of night workers, health care services, transportation services, recreational facilities, and leisure time activities, should be facilitated by the employers. Physical fitness is one factor that helps to cope with the night and shift work. Thus, night workers should be advised on exercise, diet, and sleep management to mitigate adverse health effects.

## Conclusions

Zero statistical data on the night and shift workers in Sri Lanka shall not in any way neglect the need of addressing the adverse health effects faced by them. As already discussed above, negligent treatment of night workers and the associated disadvantages can be related to the indicators of labour exploitation. Thus, the failure to enhance the health and wellbeing of the night workers should also be seen as a form of labour exploitation. Sri Lanka did fail not only to address the adverse health effects of night and shift workers but also to ensure the general provision on night workers provided under the ratified International Labour Conventions. Moreover, Sri Lanka's failure to ratify the C.171 is an additional disappointment in the law's response. Thus, there is an imminent need to address the said issue in the country, and it is time to regulate the issues related to night and shift work for a healthy future of Sri Lanka.

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<sup>83</sup> Sabato, Sebastiano, and Bart Vanhercke. "Towards a European Pillar of Social Rights: from a preliminary outline to a Commission Recommendation." *Social policy in the European Union: state of play* (2017) 73-96.

<sup>84</sup> The Working Time Directive, 2003/88/EC.

<sup>85</sup> Harrington (n 5) 71.

<sup>86</sup> Härmä and others (n 52).

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