

Change in Shop Timings: Impact and Success

The Delhi Government supervises and monitors shops and commercial establishments under the Delhi Shops and Establishment Act, 1954. The Act is enforced through Chief Inspectors of Shops, who are posted in nine districts of Delhi. These inspectors function directly under the control of district Deputy/ Assistant Labour Commissioner. Section 15 of the Act deals with shop opening and closing times. From time to time, amendments were made in the Act. At times, special orders were passed by the Government to close shops by a certain time on grounds of security. Some of the general provisions of the Act are regarding the opening and closing of shops are as follows:

- **§ Opening and closing hours of shops and commercial establishment**

Section 15 of the Act states that no shop or commercial establishment can be opened earlier than such hour or closed later than the hour fixed by the government. The Delhi Government can hold an inquiry to ensure implementation of timings. It is also empowered to fix separate opening and closing hours for different classes of shops and establishments for different areas and for different times of the year. Table 1 shows the shop timings as practised before the amendments.

Table 1: Opening and Closing Hours of Shops and Establishments

<i>Nature of establishment</i>	<i>Opening hours</i>	<i>Closing hours</i>
Shops (during summers)	9:30 AM	7:30 PM
Shops (during winters)	9:00 AM	7:00PM
Commercial establishments	8:00AM	6:00PM

- **Closed day of the shops and commercial establishments**

Section 16 of the Act provides for closing of shops and establishments. It states that all the shops and establishment shall remain closed one specified day in a week, and three national holidays. The

Delhi Government by notification can specify different closed days for different classes of shops and commercial establishments, or for different areas. A shop or commercial establishment may open on a closed day, provided a notice to this effect is given to the Chief Inspector of Shops at least 24 hours before such a closed day.

Amendment to the Delhi Shops and Establishments Act, 1954

Long overdue amendments to Sections 15 and 16 of the Act were brought about in September 2004 by the Lieutenant Governor of Delhi. The amended provisions are:

- Unless otherwise previously exempted, shops shall not remain open beyond 11 pm.
- Overtime wages shall be paid to eligible employees at double the normal rate as provided in Section 8 (48 hrs a week and 9 hrs a day) of the Act.
- Work in shifts, if any, shall be in such a way that neither is any employee is forced to work on a night shift, nor is there overlapping of shifts.
- If a shop remains open on all seven days of the week, weekly off to employees shall be given in rotation.
- Employees working on a national holiday shall be given a compensatory holiday in addition to overtime wages, in lieu thereof.
- Employers and market associations will be responsible for compliance with conditions on which the exemption is granted. In case of violations detected during inspections, the Government would take action against the employer as prescribed in the Act.

It is interesting to see the emphasis only on the closing time of shops; opening time remains the discretion of shopkeepers. The South District Inspector felt that shops can be chalaaned for opening later than the stipulated time in the morning, i.e., between 9 and 9:30 am. However, the Central District Inspector and the Chief Inspector of Shops said that no penalty could be imposed on shop owners for opening their shops later than the stipulated time in the mornings. But if a shop opens before 9 am, it can be chalaaned!

The extension of 11 pm is completely optional. Shop-owners cannot be forced to keep their shops open till then, and no employee can be made to work till 11 pm against his will. The timings depend solely on the needs and wishes of the owners as long as they are within the stipulated time mentioned in the Act, i.e., 9-9:30 am-11pm.

Licenses from MCD

The Municipal Corporation of Delhi (MCD) gives trade licences as per Section 417 of the Delhi Municipal Corporation Act, 1957 for opening shops where these licences also mention the permissible working hours. In case of an ad hoc licence issued in a non-conforming zone, the shop is supposed to close by 6 pm. Shops with commercial license are supposed to close by 7 pm. On enquiring with the MCD Licence Department whether timings on the licences have been changed, officials of the Department were clueless about the changed timings, and said that as long as officers could be bribed, timings would remain flexible.

Reasons for Amending the Act and Impact

- One of the primary reasons for the amendment of the Act was to end Inspector Raj. Laws forbid the shops to operate beyond a stipulated time of 7:30 pm. However, a large majority of shops used to find it profitable to stay open longer. Thus, the only way feasible was to either get legal exemption, which was the privilege of only big shops, or bribing inspectors.

Officials of the Labour Department and other government officials emphasised the fact that Inspector Raj has been wiped out, as inspectors could no longer ask for bribes or be tempted to take them on the persistence of shopkeepers. As shopkeepers have the discretion of keeping their shops open longer, inspections are not carried out now. Various shop-owners and market associations echo the same sentiment. The same shop-owners who used to pay Rs 1,000 as *hafta* are not harassed by any inspectors today.

- The need was felt to increase the hours when shops would be open because work hours of the general public have also increased. Ex-

tension of shop timings was meant to allow people to do shopping. However, in reality, most shops in Delhi close by 8:30-9 pm. Hence, the workforce has not really benefited.

- This change was also expected to increase business for shop-owners, since extension in time could mean more customers and more sales. However, due to lack of substantial change in timings, there is no significant change in monetary gains. Since there was an expected increase in sales, increase in sales tax was also expected. Due to an insignificant increase in revenue, there is no impact on collection of sales tax.
- Competition was another major concern that needed to be addressed.¹ The changes necessitated by growing competition and the pressure of losing business to Noida and Gurgaon malls. New Delhi Trader's Association (NDTA) President Manoj Agarwal had said, "The already functional malls are making merry at our cost, especially on public holidays and Sundays. A change is needed so that at least there will be a level playing field." Managers of malls in Gurgaon do not share the same experience and suggest that there has been no change in the number of consumers.
- The amendment was passed keeping in mind the need to reduce congestion, caused by heavy customer inflow restricted to only a few hours in the evening, in turn leading to parking problems
- Another predicted benefit was that cases of sexual harassment might reduce since with markets remaining open till late, there would be better safety arrangements on the streets and they will be less deserted at night. However, there has been no positive impact on safety of women.

In the earlier system, Inspectors would inspect the licensed shops and commercial establishments to ensure adherence to the closing time. However, in the new system, inspections are redundant, and so should have been the services of inspectors as well. But the number of inspectors has been reduced only from 75 to 25, as the Department claims that there are other functions of registering, filling and redressing complaints received by the Department.

The Delhi Shops and Establishments Act, 1954 regulates hours of work, payment of wages, leave, holidays, terms of service and other conditions of persons employed in shops, commercial establishments, establishments for public entertainment or amusement, and other matters connected therewith.² These inspectors are responsible for ensuring the smooth implementation of as many as 28 Acts such as the Minimum Wages Act, Industrial Disputes Act, Equal Remuneration Act, et al. However, according to the chief Inspector of Shops, inspections to ensure the implementation of even these Acts have been completely stopped. The functioning of these 25 inspectors in the light of this information becomes questionable.

The next step in evaluating the role of inspectors was to analyse the redressal mechanism of the Department. Delhi has been divided into 9 districts, and complaints can be filed with the respective district inspectors. Most of the complaints deal with unfair termination or dismissal and non-payment of wages. The number of complaints varies with each district.

There is no set format or form for filing complaints. A letter of complaint can be submitted to the District Inspector either by the employee himself or any official of a registered trade union authorised in writing to act on his behalf, or any legal practitioner, provided that such applications should be presented within one year of the date of termination or claim for wages, unless the applicant satisfies the authority that he had sufficient cause for delay. Inspectors register the complaint and the hearing is conducted giving the concerned parties opportunity to reconcile. If the dispute sustains, then it is forwarded to Conciliation Officers appointed as per Section 4 of Industrial Disputes Act, 1947. The employee with a complaint can also directly approach labour courts. It takes approximately one month for the complaint to reach labour courts in case of failure in conciliation. On reaching labour courts, it can take years on end. Thus, the insignificance of inspectors in complaint redressal is quite self-evident.

Problems Envisaged

- One of the major reasons against the amendment of the Act was

the probable increase in the violation of labour laws. Since the inspections would either be reduced or stopped, there would be no way to keep check on corruption and employee harassment. The shops might choose to stay open till 11 pm - however, employers may exploit their staff by not increasing employees and overworking the current staff without paying overtime or implementing the shift system.

- Most employees are unaware of their rights and the complaint procedure against any kind of exploitation. There are various instances where employees, mostly in small commercial establishments, work as many as 11 hours. However, officials of the Department are not ready to accept this fact, and feel that it is the responsibility of the trade unions to sensitise the working class. Most interestingly, there has been no increase in the type or number of complaints received since changes in shop timings. Working hours of women and young persons have not been changed.
- Another reservation about this amendment was that law and order could further deteriorate. Crime against women could increase. However shops do not remain open later than 8:30 pm mostly therefore the security situation is as before. However, steps have been taken to monitor shopping areas. For example 28 closed circuit television cameras have been installed in the Karol Bagh Market area.
- New Delhi Trade Association President, Mr Manoj Agarwal felt that small traders would have to choose between bribery and competition. According to some other Market Associations, there was no marked change in shop timings due to already overworked shop-owners, family obligations and lack of customers.
- Opening markets till late at night could put a strain on the already limited infrastructure available in the city such as power, water supply and parking. There could be a tug-of-war between adjoining residential colonies and commercial establishments, and the probability is that residents would suffer. Parking is likely to become less tiresome since customers will spread over a greater time period.

This, theoretically, should give an incentive to shopkeepers to take advantage of the change in timings. Various shop-owners, government officials and market associations felt that there has been no negative impact on power and water supply. Most markets feel that parking is already an existing problem and parking problems are in fact a deterrent for shopkeepers to keep their shops open longer. Some people felt that customers stay away due to unavailability of public transport and inadequate lighting, which seems unlikely.

Exemptions to the Amendment

Shops and establishments can be exempted from various sections of the Act provided they have a valid reason for such exemption. There is supposed to be a special form that has to be filled in order to get exemption. However, the Central District Inspector said there was no special form available.

Shops mainly apply for exemption from Sections 15 and 16 of the Act. They can apply for exemption from the second provision of Section 8 dealing with requirement of 3-day advance intimation with respect to overtime. Shops can also apply for exemption from section 14 dealing with restriction of timings for women and young persons. It is interesting to note that according to the Chief Inspector of Shops, the exemption procedure takes about 3-6 months, however as per the Central Inspector, it does not take more than one month.

In actual fact, there is no fixed method of granting exemptions. The Chief Inspector can ask the respective District Inspectors to check on the shops and whether they will be able to follow various conditions such as security of employees if working overtime, shift system, weekly day off allowed in rotation and other specifications. If the chief inspector feels that there is a genuine need and capability exists to carry out the conditions, he grants the exemptions after giving an undertaking. Quarterly checks are carried out to ensure that labour laws are not being violated.

A Case Study on Automated Teller Machines (ATMs)

During this analysis, a unique case came up with regard to ATM machines of various banks in the context of both labour laws and closure rules of commercial establishments. According to senior government officials, there are no exceptions, i.e., generalised exemptions to the amendment. Contradictory answers were given when asked about ATMs specifically.

According to Central District Inspector S C Yadav, individual exemptions need to be taken by all banks with an ATM facility to make sure that specific conditions are followed. However, according to Chief Inspector of Shops, N R Ahluwalia, a generalised exemption is provided. The list of exemptions states that all banking establishments under the control of banks in Delhi, covered by the Second Schedule of the Reserve Bank of India Act, 1934 are exempted from Sections 15 and 16 of this Act. According to the RBI, most banks are covered in this schedule and a list of non-schedule banks is not available.

Conclusion

The actual scenario is that shops have not really accepted this extension of timings and continue to operate almost as before, except extending their working for a few hours. There are two main reasons for this: social and family obligation of shop-owners, and habit patterns. Inspections have been completely stopped, leading to the end of Inspector Raj. Employees need to be educated about the complaint system and employee rights. The procedure for filing a complaint against overtime issues of employees should be formalised. Affected persons should be made aware of the process so that more and more cases of exploitation come to light.

Also, Provision 2 of Section 8 of the Act dealing with 3-day prior intimation for overtime work should be done away with, as no one implements or follows this unwieldy rule anyway. Late evening shopping culture will catch on in Delhi sooner or later. On the whole, the amendment has been a success due to the end of Inspector Raj and

reduction of one more redundant rule to follow.

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Notes

- ¹ *The Times of India*. 2005. *The Countdown Begins: Delhi to Shed its Cinderella Bag*. Available at <http://timesofindia.indiatimes.com/articleshow/840343.cms>. Accessed on 12 September 2005
- ² *The Times of India*. 2003. *High Time for all Night-shops*. Available at <http://timesofindia.indiatimes.com/articleshow/208828.cms>. Accessed on 12 September 2005

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