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Perspectives

Trade Agreements and Gender Justice in Developing Countries: An Analytical Perspective

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ABSTRACT

This article examines how gender related references in trade agreements and other related documents affect gender justice in developing countries. Both the language and the nature of the agreements, i.e., binding or non-binding, have obvious implications for the treatment of the vulnerable sections of society at the places of work in the developing countries where focus is to bring in more foreign direct investments and foreign institutional investment irrespective of the concomitant social costs. Some of the gender-related references in the trade agreements might be binding while others might have influence over the policy making.

KEYWORDS: Trade Agreements, Gender Justice, Gender Equality, Developing Countries

INTRODUCTION

Trade agreements have far-reaching socio-economic impacts on developing countries which are rich in resources but lack the wherewithal to become prosperous through rapid industrialization. Lack of investments, technology and stable governance structures create solid stumbling block to jeopardize their developmental aspirations. Trade agreements not only bring in investments and technology but also fresh ideas that can trigger holistic transformational changes aimed at removing social barriers induced by discriminatory practices which have

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survived over the centuries as part of cultural landscape of a particular country. It has been observed that trade agreements invariably include references to gender-related non-discriminatory norms during bilateral negotiations (Korinek et al., 2021). According to Macdonald (2024), over one hundred trade agreements notified to the World Trade Organization, have explicit reference to gender equality. Yet, portrayal of women in the trade agreements and other related documents is generally as a mother or as an employee. Unfortunately, women are not viewed as entrepreneurs or decision makers in bilateral negotiations where the trade agreements are eventually signed between countries (Kuhlmann and Bahri, 2023). Despite inherent weaknesses in terms of portrayal of women, the trade agreements do include provisions related to labor rights and gender equality at workplace (UNCTAD, 2019) which require structural changes in the developing countries.

Insistence of developed countries regarding implementation of fair labor practices is profound. Developing countries that violate the trade agreements norms regarding labor rights and fair practices at workplace face the risk of sanctions due to unfair competition. Hence, the developing countries try their best to avoid such punitive measures by taking proactive steps to ensure non-discriminatory work settings through appropriate legislation and policy framework. For example, government of India has rolled out Code on Wages, Industrial Relations Code, Code on Social Security, and Occupational Safety, Health, and working Conditions Code. These labor codes have tried to resolve the age-old issues related to gender discrimination at the workplaces in the country besides setting labor standards in sync with the global best practices and international norms. However, there are several developing countries which have archaic labor laws that perpetuate gender discrimination and violation of labor rights despite the trade agreements being in place due to lacunae revolving around non-binding clauses. Labor provisions in the trade agreements have generally been outside the ambit of enforcement, especially in the underdeveloped countries. Indeed, international labor standards based on gender justice, fairness, and non-discrimination have often signified greater degrees of social, economic and political freedom (Bastiaens et al., 2023).

TRADE AGREEMENTS AND GENDER-BASED WAGE GAPS

It has been observed that the gender-based wage gaps decline with increased trade and economic prosperity (Oostendorp, 2009). Further, the companies in the developing countries, which are involved export functions, are likely to follow the international labor standards and terms of reference of any existing trade agreements and other related documents. Costs of

avoiding compliance with international labor standards are high as there are companies in other countries which can take advantage of possible sanctions and punitive measures. Hence, women's labor force participation rates have increased in export-oriented developing countries. At the same time, gender-based wage gaps have also been reduced significantly in such countries. Developed countries invariably put pressure for gender justice at the workplaces on those developing countries in which gender-based discrimination is pronounced, during bilateral trade negotiations (Wang, 2018). On the other hand, several countries tend to award service contracts only to those countries which guarantee wages sans gender discrimination (World Bank and World Trade Organization, 2020). While on paper, it looks appealing, it is uncertain whether women benefit from such norms. Despite best efforts of the companies as well as the state agencies, women's labor force participation rates in developing countries are lower than those of the developed ones.

Trade liberalization induced by bilateral and multilateral trade agreements in developing countries pushes them toward more formalized economies wherein labor rights are well defined, non-discriminatory, and legally enforceable as per the domestic laws (Ben Yahmed and Bombarda, 2020). Trade negotiations involve demand for structural reforms in labor laws as a precondition for the deal. Thus, the investment seeking countries have to make necessary changes in their labor laws and policies prior to the signing of the trade agreement. Further, the investor retains the right to inspect and monitor execution of the terms and conditions of the deal with the sole objective of aligning partner companies with the international labor standards and penalize them in case of breaches. However, investors tend to include standalone chapters on gender discrimination and labor which are non-binding and non-enforceable in the international trade dispute mechanisms. It is important to include reference to labor and gender discrimination in sync with core conventions of International Labor Organization (ILO) to enhance their enforceability in the developing countries.

CRITIQUE OF THE TRADE AGREEMENT

Several researchers have found negligible impacts of bilateral and multilateral trade agreements on improvement of gender justice in developing countries. For example, increase in international trade has been linked with reduced bargaining power of female workers in developing countries (Berik et al., 2004). Contrary to popular notion, labor markets in Taiwan and Korea have witnessed higher incidence of gender-based wage discrimination, especially in the export-intensive industries (Berik et al., 2004). Discrimination percolates down to non-

employment of female workers who lack flexibility due to their familial commitments at home. Employers tend to reward employee flexibility disproportionately, allowing male workers to earn more as compared to their female counterparts (Boler, et al., 2018). A comprehensive study covering 220 regional trade agreements across 136 countries during 1995 – 2011 indicates no improvement in the labor conditions despite explicit references about labor standards, and non-discrimination (Kamata, 2016). Canadian trade agreements with other countries have dismal outcome on improvement of labor conditions (Williams and Lilly, 2021). Even the free trade agreements signed by USA with 19 countries have negligible impacts on labor conditions and gender-based discrimination despite appropriate non-discriminatory clauses (Giumelli and van Roozendaal, 2017). North American Free Trade Agreement (NAFTA) has been equally weak in terms of implementation of labor standards and non-discriminatory norms.

CONCLUSION

Genders have traditionally been viewed unequally in the labor markets, especially in the developing countries where power distance is significantly high. Unfortunately, instances of gender discrimination have affected civilizational progress and economic prosperity. World over, institutionalized gender discrimination has adversely impacted gross domestic product (GDP) of the countries. Trade agreements serve as formidable instruments to end gender discrimination and wage differences among male and female workers. Trade agreements provide a stimulus to dismantle the deep-rooted social architecture of gender discrimination at the workplaces and the society. Trade agreements can also be instrumental in improving the working conditions, health and wellbeing of vulnerable employees in developing countries.

However, the existing standalone chapters on gender and labor in the trade agreements are usually promotional and non-binding. Hence, clauses on gender and labor read good on paper and appear to be an impressive public relations exercise sans any real value. There are several studies which indicate that gender and labor clauses in the trade agreements have failed to improve the material conditions of women in the developing countries. Gender justice through trade agreements can however be attained by adopting three-pronged action plan:

- **Universalizing binding commitments:** There is an urgent need to move gender and related clauses from purely cooperative and soft law parlance into core labor and dispute settlement chapters in the trade agreements. Legacy trade agreements can be modified accordingly.

- **Expanding pre-ratification directives:** Investors can maximize trade leverage by linking market access directly to explicit dismantling of statutory gender discrimination such as restrictions on property ownership, access to credit, and sectoral restrictions on employment.
- **Empowering local oversight institutions:** The investors can empower the local civil society organizations, think tanks, human rights bodies, and trade unions with liberal funding support to function as domestic watchdog to ensure level playing field through formation, strengthening and execution of non-discriminatory ecosystem.

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