

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES**



**DISSERTATION**

*Submitted in partial fulfillment of the requirement for the award of the degree of  
LL.M (Master of Laws) in International Trade Law*

(2020- '21)

**GENDER PARITY IN INTERNATIONAL TRADE: STATUS OF THE KERALA STATE  
CASHEW DEVELOPMENT CORPORATION LIMITED**

**UNDER THE GUIDANCE AND SUPERVISION OF**

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## CERTIFICATE

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## DECLARATION

I, hereby, declare that this dissertation on '**Gender Parity in International Trade: Status of the Kerala Cashew Development Corporation Limited**', researched and submitted to the National University of Advanced Legal Studies in partial fulfillment of the requirement for the award of the degree of Master of Laws in International Trade Law under the guidance and supervision of Dr Sheeba S. Dhar is an original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of neither this University nor any other University.

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## ABBREVIATIONS

¶	Paragraph
AB	Appellate Body
Apr.	April
Art./art.	Article
BISD	Basic Instruments and Selected Documents
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CONST.	Constitution
Dec.	December
Doc.	Document
DS	Dispute Settlement
EEC	European Economic Community
EU	European Union
Feb.	February
G.A.	General Assembly
GATT	General Agreement on Tariff and Trade
GDP	Gross Domestic Product
I.C.J.	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
ICSID	International Centre for Settlement of Investment Disputes
Id.	Ibid

ILO	International Labour Organization
ITO	International Trade Organization
Jan.	January
KSCDC	Kerala State Cashew Development Corporation Limited
Ltd.	Limited
No.	Number
Nov.	November
R	Report
REG	Regional
Res.	Resolution
Sept.	September
Sess.	Session
Supp.	Supplement
U.N.T.S.	United Nations Treaty Series
U.S.	United States of America
UDHR	Universal Declaration of Human Rights
UN	United Nations
W M. & MARY J. WOMEN & L.	William & Mary Journal of Women and the Law
WTO	World Trade Organization
Yale. J. Int'l L.	Yale Journal of International Law

## LIST OF CASES

- Appellate Body Report, *Brazil - Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R (adopted Dec. 17, 2007).
- Appellate Body Report, *European Communities Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/ AB/R, WT/DS48/ABIR (adopted Feb. 13, 1998).
- Appellate Body Report, *Japan—Taxes on Alcoholic Beverages*, WTO Doc. WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (adopted Nov. 1, 1996).
- Appellate Body Report, *Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R (adopted Jan.10, 2001).
- Appellate Body Report, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R (Nov. 06, 1998).
- Appellate Body Report, *United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, Restrictions on Imports of Tuna*, WT/DS381/AB/R (adopted June 13, 2012).
- Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/AB/R (adopted May 20, 1996).
- Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/AB/R (adopted May 20, 1996).
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- *Case Concerning Barcelona Traction, Light and Power Company, Ltd., (Belgium v. Spain)*, 1970 I.C.J. (Feb. 05).

- Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)*), 1996 I.C.J. (July 11).
- Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), 1971 I.C.J. ¶ 126 (June 21).
- Panel Report, *Japan—Customs Duties, Taxes and Labeling Practices on Imported Wines and Alcoholic Beverages*, L/6253 (Nov. 10, 1987), GATT BISD (34th Supp.), (1988).
- Panel Report, *United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, Restrictions on Imports of Tuna*, Doc. WT/DS21/R (adopted Sept. 15, 2011).
- Panel Report, *United States—Restrictions on Imports of Tuna*, DS21/R (Sept. 3, 1991), GATT BISD 39S/155, (1992).
- Panel Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/R (Jan. 29, 1996).
- *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6.
- Report of the Panel, *Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes*, DS 10/R (Nov. 7, 1990), GATT BISD (37th Supp.), at 200, 223 (1991).
- *Urbaser S.A. v. Republic of Argentina*, ICSID Case No. ARB/07/26.

## CHAPTER-1

### INTRODUCTION

The Capital city of Argentina witnessed a historic feat in 2017. Buenos Aires Declaration on Women and Trade became the first time the WTO members sought to remove barriers to, and foster women's, economic empowerment.<sup>1</sup> Declaration acknowledged that gender equality and women's economic empowerment have a positive impact on economic growth.<sup>2</sup> Declaration, further, acknowledged that improving women's access to opportunities and removing barriers to their participation in national and international economies contributes to sustainable economic development.<sup>3</sup>

Conferences, researches and discussions have been going on for quite some time regarding the gender parity and international trade. This research tends to study the evolution and the current status of gender parity discourse in international trade.

Social, economic, political, cultural and legal barriers to 'weaker' genders are barriers to the development of a country. Indian women's contribution to GDP is, just, 18% with only 25% of India's labour force being female.<sup>4</sup> India could gain an additional \$2.9 trillion to annual GDP in 2025 with 50:50 labour work force participation from both the genders.<sup>5</sup> \$0.7 trillion could be added to India's GDP in 2025 by matching the best-in- region country in progress toward gender parity in work.<sup>6</sup> Should the India's GDP is to be increased; the abovementioned barriers are to be dealt with.

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<sup>1</sup> Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017, [https://www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/genderdeclarationmc11\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> JONATHAN WOETZEL et. al., (2015), THE POWER OF PARITY: ADVANCING WOMEN'S EQUALITY IN INDIA, (McKinsey & Company, Sept. 2015).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Kerala accounts for around 4% of the total GDP of the country.<sup>7</sup> Kerala is placed after Mizoram and Meghalaya among the Indian states in gender parity.<sup>8</sup> However, the labour force participation rate is around 30%.<sup>9</sup>

The export of cashew kernel from Kerala was 29,062 metric tons in 2018-19 with a value of 2580 crores.<sup>10</sup> This made it around 43.6 % of the total cashew kernel exports from India to the world in 2018-19.<sup>11</sup> This reveals the significance of the region in the cashew processing industry in India.<sup>12</sup> The Kerala State Cashew Development Corporation Limited (KSCDC) was incorporated in July 1969.<sup>13</sup> KSCDC has more than 15000 workers and 500 staff members are working in the 30 factories of the Kerala.<sup>14</sup> With an annual turnover of more than 250 crores, KSCDC plays a vital role in the cashew export industry.

Chapter 2-‘International Trade and Human Rights’ discusses the evolution, current position and the future of human rights discourse in international trade. It is not astounding that the concept of human rights did not really interest world of global trade where slave trade was a norm. It took some centuries for international trade to begin the discussion of human rights. Discussion on human rights in international trade sphere by the Havana Charter of 1947 did not become fruitful thanks to the demise of the idea of International Trade Organization.<sup>15</sup> General Agreement on Tariff and Trade,

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<sup>7</sup> MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION-GOVERNMENT OF INDIA(Feb.08, 2021, 07 : 43 PM), <https://www.mospi.gov.in/web/mospi/home>.

<sup>8</sup> *Supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Export Indicators*, DEPARTMENT OF INDUSTRIES AND COMMERCE-GOVERNMENT OF KERALA (Feb. 08, 2021,08:17 PM), <https://www.keralaindustry.org/index.php/at-a-glance/organisational-chart>.

<sup>11</sup> *Id.*

<sup>12</sup> See: Rajesh Many, *The Causes of Crisis in the Cashew Industry Cluster in Kollam*, KERALA INSTITUTE OF LABOUR AND EMPLOYMENT (KILE) THIRUVANANTHAPURAM, Mar. 2019.

<sup>13</sup> *About KSCDC*, THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LIMITED, (Feb.7, 2021, 05:12 PM), <https://cashewcorporation.com/about-kscdc/>.

<sup>14</sup> *Id.*

<sup>15</sup> Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, UN Doc E/PC/T/33 (1946).

1947 and its successor World Trade Organization (WTO) took note of human rights but in least possible manner. This chapter delves into the evolving notion of human rights in international trade by also looking into some of the WTO Panel and Appellate Body reports. The chapter concludes by discussing what the future holds for human rights discourse in international trade.

The first part of the third chapter-‘International Trade and Gender Rights’ makes a short dive into the number of trade agreements which has explicit gender-related provision. Then the chapter looks into the relationship between gender parity and economic growth and development. This part of the chapter buttressed upon the reports of World Bank, World Economic Forum, United Nations Conference on Trade and Development etc..<sup>16</sup> Sustainability of the gender parity discourse in international trade covers the next part of the chapter. Evolution of the gender parity discussions over the years, including through the reports of Panel and Appellate Body, and the present and future status of the same have been discussed. What is axiomatic from the discussion is that gender parity discourse has picked up the space, though slowly, but steadily, in the WTO governed global trade arena.

The fourth chapter -‘Gender Parity in Economic and Trade Regime: International and Indian Legal Instruments’- would reflect the national and international legal efforts for gender parity in the economic and trade realm.

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<sup>16</sup> World Bank. 2020. Women, Business and the Law 2020. Women, Business and the Law. Washington, DC: World Bank. doi:10.1596/978-1-4648-1532-4. License: Creative Commons Attribution CC BY 3.0 IGO ; World Economic Forum, The Gender Gap Report 2014; JONATHAN WOETZEI et. al., THE POWER OF PARITY: HOW ADVANCING WOMEN’S EQUALITY CAN ADD \$12 TRILLION TO GLOBAL GROWTH ( McKinsey & Company, Sept. 2015); INTERNATIONAL MONETARY FUND, GROUP OF SEVEN: PURSUING WOMEN’S ECONOMIC EMPOWERMENT, Meeting of G7 Ministers and Central Bank Governors, June 1-2, 2018 Whistler, Canada; UN INTER-AGENCY NETWORK ON WOMEN AND GENDER EQUALITY TASK FORCE ON GENDER AND TRADE, TRADE AND GENDER OPPORTUNITIES AND CHALLENGES FOR DEVELOPING COUNTRIES (Anh-Nga Tran-Nguyen & Americo Beviglia Zampetti, UNCTAD 2004).

Universal Declaration of Human Rights,<sup>17</sup> International Covenant on Civil and Political Rights,<sup>18</sup> International Covenant on Economic, Social and Cultural Rights,<sup>19</sup> Convention on the Elimination of All Forms of Discrimination against Women,<sup>20</sup> various legal instruments of the International Labour Organization,<sup>21</sup> Fourth World Conference on Women<sup>22</sup> and the Buenos Aires Declaration on Women and Trade<sup>23</sup> are the international endeavours discussed in this chapter. It is to be noted that only those matters which are related to trade and/or economics and gender have been addressed by the chapter. Further, the chapter divulge the provisions in the various Indian instruments-the Constitution of India, the Factories Act,<sup>24</sup> Equal Remuneration Act,<sup>25</sup> Maternity Benefit Act,<sup>26</sup> the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act<sup>27</sup>- concerning trade and gender.

<sup>17</sup> Universal Declaration of Human Rights, G.A.Res. 3/217 A, U.N.DOC. A/RES/ 3/217 A(Dec.10,1948).

<sup>18</sup> International Covenant on Civil and Political Rights, *entered into force* Mar. 23, 1976, 999 U.N.T.S. 171.

<sup>19</sup> International Covenant on Economic Social & Cultural Rights, *entered into force* Jan.3,1976,993 U.N.T.S. 3.

<sup>20</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *entered into force* Sept. 3, 1981, 1249 U.N.T.S. 13.

<sup>21</sup> Equal Remuneration Convention, *entered into force* May 23, 1953, ILO, C100; Convention Concerning Discrimination in respect of Employment and Occupation, 1958, *entered into force* June 15, 1960, ILO, C111; Convention Concerning the Revision of the Maternity Protection Convention (Revised), 1952, *entered into force* Feb. 07, 2002, ILO, C183; Convention Concerning Elimination of Violence and Harassment in the world of Work, *entered into force* June 25, 2021, ILO, C190; '*Resolution on Equal Opportunities and Equal Treatment for men and women in Employment, adopted by the International Conference at its seventy-first Session*' in 1985 Geneva: ILO; '*International Labour Conference Resolution Concerning ILO action for Women Workers adopted by the international conference at its seventy-eighth session.*' in 1991 Geneva: ILO; '*Code of Practice on Workplace Violence in Services Sectors and Measures to Combat this Phenomenon*', in 2003 Geneva: ILO.

<sup>22</sup> *World Conferences on Women*, UN WOMEN, <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>.

<sup>23</sup> Declaration on Women and Trade, *Supra* note 1

<sup>24</sup> The Factories Act,1948, No. 63, Acts of Parliament, 1948.

<sup>25</sup> Equal Remuneration Act, 1976, No. 25, Acts of Parliament, 1976.

<sup>26</sup> Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961.

<sup>27</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013.



'Gender Parity: The Kerala State Cashew Development Corporation Limited' is the fifth chapter. It investigates the gender parity status of the Kerala State Cashew Development Corporation Limited (KSCDC). It is an empirical study. The information sought through the Right to Information method is the backbone of this chapter. The chapter only focuses on labourers of all the 30 factories of the KSCDC.

The sixth and the final chapter titled 'Conclusion and Suggestions' concludes the research reflected in the preceding chapters. It addresses the international trade obligations of countries vis-à-vis gender and human rights obligations, new developments in the WTO, the KSCDC behind the curtain and the need for a broader view of gender parity.

### **OBJECTIVES**

- ❖ To find out the present status of gender parity in international trade.
- ❖ To find out the status of gender parity in the Kerala State Cashew Development Corporation Limited.

### **RESEARCH QUESTIONS**

- A. What is the status of gender parity in international trade?
- B. What is the status of gender parity in the Kerala State Cashew Development Corporation Limited?

## **HYPOTHESIS**

- ❖ Gender parity does get due regard in international trade
- ❖ The Kerala State Cashew Development Corporation Limited is a gender parity institution.

## **LITERATURE REVIEW**

Gender rights is a significant facet of human rights. But, the human rights discussion in international trade like HUMAN RIGHTS AND INTERNATIONAL TRADE (Thomas Coltier et. al, 2012), ROBERT HOWSE & MAKAU MUTUA, PROTECTING HUMAN RIGHTS IN A GLOBAL ECONOMY, Caroline Dommen, *Trade and Human Rights: Towards Coherence* (2005) are only concern about human rights issues but does not give emphasize to the gender rights. For instance, HUMAN RIGHTS AND INTERNATIONAL TRADE (Thomas Coltier et. al, 2012) examines the theoretical framework of the interaction between the disciplines of international trade law and human rights. The interaction is explored through seven case studies, ranging from freedom of expression and anti-trust rules, to the fight against trade in conflict diamonds and the United Nation's convention on tobacco control. Though it addresses wide range of human rights matters, it does not address specific gender-related issues and concerns in the global trade sphere.

International trade and gender parity are only decades old. It is evident from José-Antonio Monteiro, *Gender-related Provisions in Regional Trade Agreements*, ECONOMIC RESEARCH AND STATISTICS DIVISION, WORLD TRADE ORGANIZATION (2018). It looks into all the treaties registered to World Trade Organization and divulge the number of treaties which have explicit and implicit gender-related provisions. Further, it determines increasing among the regional trade agreements to incorporate

explicit gender-related provisions. However, it does not look into the effects and/or status of gender parity discourse in international trade.

UN INTER-AGENCY NETWORK ON WOMEN AND GENDER EQUALITY TASK FORCE ON GENDER AND TRADE, TRADE AND GENDER OPPORTUNITIES AND CHALLENGES FOR DEVELOPING COUNTRIES (Anh-Nga Tran-Nguyen & Americo Beviglia Zampetti, UNCTAD 2004) assessed the impact of trade on gender equality in order to assist countries in designing appropriate strategies and policies to support the objective of gender equality in the context of an open multilateral trading system. The world has come a long way since 2004. THE IMPACT OF INTERNATIONAL TRADE ON GENDER EQUALITY (2004) and TRADE AND GENDER-OECD(May 2021) explore how trade can contribute to women's economic empowerment but not vice-versa. World Bank. 2020. Women, Business and the Law 2020. Women, Business and the Law. Washington, DC: World Bank. doi:10.1596/978-1-4648-1532-4. License: Creative Commons Attribution CC BY 3.0 IGO, World Economic Forum, The Gender Gap Report 2014, JONATHAN WOETZEI et. al., THE POWER OF PARITY: HOW ADVANCING WOMEN'S EQUALITY CAN ADD \$12 TRILLION TO GLOBAL GROWTH (McKinsey & Company, Sept. 2015) do not address the legal complexities behind these relationships.

This research investigates evolution, present and future of gender parity discourse in international trade including its legal complexities. The research declutters the legal clutter but not without embracing the social and economic dimensions of international trade and gender parity. It also divulge international and Indian legal efforts to tackle gender disparity in trade and economics and the result of the same. Further, the research explores the gender parity status of the Kerala State Cashew Development Corporation Limited which does international trade. No works available regarding this specific matter of the Kerala Cashew Development Corporation Limited.

## **SCOPE**

Whilst there are many materials focusing social and economic dimensions of international trade and gender parity, limited resources addressing the past, present and future legal maze between international trade and gender parity. The research emphasize upon the legal discussions going on in the only organization which regulates international trade, especially the World Trade Organization's Panel and Appellate Body reports and the General Agreement on Tariff and Trade 1994. Further, this study reflect the national and international legal efforts for gender parity in the economic and trade arena. But, this research does not address the enforceability and rate of success of such an endeavour. Further, the study also look into the gender parity status of the Kerala State Cashew Development Corporation Limited. The study limits itself to the gender parity status of the labourers in all the factories of the Kerala State Cashew Development Corporation Limited. It did exclude directors of KSCDC, senior executives, junior executives, office staffs and all the other like categories of KSCDC and its factories. Census method is used; hence the research collected data from all the factories of KSCDC through a single RTI application to the KSCDC

## **RESEARCH METHODOLOGY**

Conferences, researches and discussions have been going on for quite some time regarding the gender parity and international trade. This research tends to study the dichotomous perspectives of the conundrum of gender parity in international trade through the various discussions organized by the different international forums and through the scholarly articles.

Kerala has exported 1892.6 crores of cashew kernels which amounts to 42.7% of the total value of cashew kernels exported from India.<sup>28</sup> Though the quantity, value and share of Kerala have been witnessing a downward trend

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<sup>28</sup> *Supra note* 10 (08:17 PM).

in the last couple of years, it still holds a prominent position in the cashew industry of India.<sup>29</sup> .The research looks into the status of gender parity in the Kerala Cashew Development Corporation Limited against the backdrop of the aforesaid. Thus, the study is both doctrinal and non-doctrinal.

## **CHAPTERIZATION**

- 1) Introduction
- 2) International Trade and Human Rights
- 3) International Trade and Gender Rights
- 4) Gender Parity in Economic and Trade Regime:International and Indian Legal Instruments
- 5) Gender Parity: The Kerala State Cashew Development Corporation Limited
- 6) Conclusion and Suggestions.

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<sup>29</sup>*Id.*

## CHAPTER-2

### INTERNATIONAL TRADE AND HUMAN RIGHTS

#### INTRODUCTION

'Parcel,' 'perishable goods' -no, I am not describing any fruit or livestock. This was how the enslaved people were termed and classified by the underwriters in international trade.<sup>30</sup> For centuries, efforts to identify common grounds between international trade and human rights were seen to be futile. The world had begun to see flashes of changes from the first decade of the 19th century. Different countries have adopted measures through treaties and statutes to restrict and/or abolish the international slave trade.<sup>31</sup> With the expansion of the definition of 'human being' beyond the white-male-property owner, international trade could not rebuff human rights, at least, the way it used to be.

Efforts to link between human rights and international trade can be witnessed in the Covenant of the League of Nations that has become defunct with the UN Charter. Article 23 (a) of the Covenant of the League of Nations states that the members of the League of Nations will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and

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<sup>30</sup> Guy Faulconbridge, *Some Facts About the London's Role in Insuring the Slave Trade*, INSURANCE JOURNAL (May 17, 2021, 06:42 AM), <https://www.insurancejournal.com/news/international/2020/06/19/572859.htm#:~:text=Slave%20were%20seen%20as%20cargo%20by%20the%20insurance,classified%20by%20underwriters%20as%20%20perishable%20goods%2C%20alongside%20cattle.>

<sup>31</sup> Declaration of the Eight Courts relative to the Universal Abolition of the Slave Trade, 8 February 1815 (Annex XV of the Treaty of Vienna), 63 Consol. T. S. 473, 474; Additional Convention between Great Britain and Portugal for the Prevention of the Slave Trade, 28 July 1817, arts. III, IV, 67 Consol. T.S. 373, 398 (barring importation of slaves into the Brazils other than by Portuguese-flagged ships with royal passports); General Act for the Repression of the African Slave Trade, 2 July 1890, arts. LXII, VIII, IX, 27 Stat. 886, 894-5, 912 (prohibiting the importation of slaves and barring the sale of firearms to sub-Saharan Africa due to the role of weapons in the slave trade and their destabilizing effect on local tribes).

industrial relations extend. Further, the said provision states that in order to achieve that purpose, the members of the League will establish and maintain the necessary international organizations. Nothing fruitful came out of the ambitious undertaking by the members.<sup>32</sup>

Fast forward to the second half of the twentieth century. Europe was devastated by the Second World War. The world witnessed the emergence and the demise of the 'Gold Standard.' United Nations came into place. The Report of the First Session of the Preparatory Committee of the U.N. Conference on Trade and Employment, charged with drafting a charter for an International Trade Organization (ITO), noted problems faced by the international trade through the exploitation of labour.<sup>33</sup> Though there was wide support from the participants to eliminate the substandard labour conditions, they also shared doubts about the appropriateness of including labour standard provisions in the ITO charter. These apprehensions were stemmed from the fact that the participants wished to avoid from impinging on the areas of competence of the International Labour Organization (ILO), and the view that the payment of lower wages in the developing countries was a legitimate practice.<sup>34</sup> The report came to a conclusion that there could not be 'any single comprehensive standard of fair labour conditions appropriate to all countries, but that the standard must in each case be related to the productivity of the country concerned'.<sup>35</sup>

These negotiations led to Article 7 (1) of the Havana Charter of 1948: "The Members recognize that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working

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<sup>32</sup> . Article 23 (a) of the Covenant of the League of Nations, League of Nations, Official Journal, Special Supplement No. 6, October 192.

<sup>33</sup> . Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, UN Doc E/PCIT/33 (1946).

<sup>34</sup> Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, UN Doc E/PC/T/33 (1946) part II, chap. I, section D, ¶ 2.

<sup>35</sup> *Id.* at ¶ 3.

conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.”<sup>36</sup>

The term ‘particularly in production for export’ indicates that the ITO’s primary concern was trade rather than social justice. Moreover, the obligations of the members were vague. When the Article 7(1) submitted to the members’ best judgments concerning the containment of labour exploitation by stating that ‘whatever action may be appropriate and feasible to eliminate such conditions within its territory’, Article 7 (3) propounded for consultation and cooperation between the ITO and the ILO in matters relating to labour standards.<sup>37</sup> The failed establishment of ITO also led to non-implementation of the said provision.

Free trade became the new norm with the advent of the General Agreement on Tariff and Trade in 1947. The year after, United Nations adopted the Universal Declaration of Human Rights (UDHR).<sup>38</sup> Ensuing to the UDHR, the world saw a spree of regional and international human rights treaties.<sup>39</sup>

### **International Trade and Human Rights Fora**

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<sup>36</sup> Article 7 (1) of the Havana Charter.

<sup>37</sup> Article 7 (1) & (3) of the Havana Charter.

<sup>38</sup> Universal Declaration of Human Rights, *supra* note 17.

<sup>39</sup> International Covenant on Civil and Political Rights, *supra* note 18; International Covenant on Economic Social & Cultural Rights, *supra* note 19 ; Convention on the Prevention and Punishment of the Crime of Genocide, *entered into force* Jan. 12, 1951, 78 U.N.T.S. 277 ; Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, *entered into force* June 26, 1987, 1465 U.N.T.S. 85 ; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *entered into force* Oct. 29, 1950, 75 U.N.T.S. 287; International Convention on the Elimination of All Forms of Racial Discrimination, *entered into force* Jan. 4, 1969, 660 U.N.T.S. 195 ; Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 20; Convention of the Rights of the Child, *entered into force* Sept. 2, 1990, 1577 U.N.T.S. 3; European Convention for the Protection of Human Rights and Fundamental Freedoms, *entered into force* Sept. 3 1953, 213 U.N.T.S. 221, E.T.S. 5 ; American Convention on Human Rights, *entered into force* July 18, 1978, 1144 U.N.T.S. 123 ; American Declaration of the Rights and Duties of Man, OAS Res. XXX, OAS Doc. OEA/Ser. L/V/I.4 Rev.XX (May 2, 1948); African Charter on Human and People’s Rights, *entered into force* Oct. 21, 1986, 1520 U.N.T.S. 217; Organization of the Islamic Conference, Cairo Declaration on Human Rights in Islam, Aug.5, 1990.



Besides an array of human rights treaties that followed the UDHR, there are universally accepted and binding rights on all states as *jus cogens* or *erga omnes* principles of customary international law. *Jus cogens* norms are those norms from which no derogation is possible and can only be replaced by a higher norm of similar character and include prohibitions against slavery, genocide, etc.<sup>40</sup> *Erga omnes* obligations are those customary human rights obligations that are not yet achieved the status of peremptory norms, but constitute ‘obligations of a state toward the international community as a whole’.<sup>41</sup> States are not permitted to breach these obligations of international law under the facade of international trade. Thus, states are prohibited from legalizing forced labour and/or servitude simply because it would increase their productions and exports and, in turn, favour international trade.

International Labour Organization(ILO) has recognized some rights as the ‘fundamental rights’ and makes it obligatory for the states to respect, promote, and realize, in good faith, those obligations according to the Constitution of the Organization. They are (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.<sup>42</sup> The fundamental principles recognized as

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<sup>40</sup> Vienna Convention on the Law of Treaties, art. 53, entered into force Jan. 27, 1980, 1155, U.N.T.S. 331

( “...a norm accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”); see also Vienna Convention *id.* at art. 64 (“If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates”).

<sup>41</sup> Case Concerning Barcelona Traction, Light and Power Company, Ltd., (Belgium v. Spain), 1970 I.C.J. ¶ 32 (Feb. 05); See also Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), 1996 I.C.J. ¶ 86 (July 11); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa),1971 I.C.J. ¶ 126 (June 21).

<sup>42</sup> Declaration on Fundamental Principles and Rights at Work and its Follow-up, International Labour Conference, art.2, ILO, 86th Session, Geneva, June 1998.

such by the ILO Declaration on Fundamental Principles and Rights at Work are obligations conferred upon all the members of the ILO despite the fact that the member states may not have ratified the respective conventions arising from the ‘fundamental principles.’<sup>43</sup> The core principles recognized by the ILO Declaration are also recognized by the general human rights instruments such as the UDHR,<sup>44</sup> ICCPR,<sup>45</sup> ICESCR,<sup>46</sup> CEDAW,<sup>47</sup> and the Convention on the Rights of the Child.<sup>48</sup> The dilemma, if any, in enforcing the labour rights when in confrontation with the international trade negates with the fact that the general international human rights treaties have recognized the same.

Economic/Trade sanctions were used against those nations which did not conform to the internationally accepted human right order.<sup>49</sup> The modern human rights system is buttressed upon the sub-global action due to the absence of effective international remedies against deplorable human rights violations.<sup>50</sup> GATT 1947 stood nonchalantly to these ‘extra’-trade matters thanks, heavily, to the lack of an effective dispute settlement mechanism.

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<sup>43</sup> ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, art.2, ILO, 86th Session, Geneva, June 1998.

<sup>44</sup> Universal Declaration of Human Rights, art.4 (prohibition against slavery and servitude), art.20 (freedom of association), art.23(2) and (4) (rights to equal pay and to form and join trade unions), *supra* note 17.

<sup>45</sup>International Covenant on Civil and Political Rights, art.8 (prohibition against slavery, servitude and forced labour), art.22 (freedom of association and to form and join trade unions), art.26(non-discrimination), *supra* note 18.

<sup>46</sup> International Covenant on Economic Social & Cultural Rights, art.7(a)(1) (equal pay), art.8(freedom of association, right to form and join trade unions and to strike), *supra* note 19.

<sup>47</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 11, ((gender discrimination in employment), *supra* note 20.

<sup>48</sup> Convention of the Rights of the Child, art.19 *entered into force* Sept. 2, 1990, 1577 U.N.T.S. 3 (obligating states “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”).

<sup>49</sup> For instance U.S. imposed trade sanctions on General Idi Amin’s regime in Uganda; In 1997, the EU suspended Generalised System of Preferences benefits for Burmese agricultural products thanks to the military coup; Rob Picheta, *US bans cotton and tomato products from China’s Xinjiang region over forced labor concerns*’ CNN(May 20, 07:13 PM), <https://edition.cnn.com/2021/01/13/china/us-blocks-cotton-tomato-imports-xinjiang-intl/index.html#:~:text=%28CNN%29%20The%20US%20has%20banned%20imports%20of%20cotton,Customs%20and%20Border%20Protection%20%28CBP%29%20said%20on%20Wednesday>.

<sup>50</sup> See Sarah Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 Yale J. Int’l L. 1, 3–5 (2001).

With the advent of the World Trade Organization (WTO) and the creation of an effective dispute settlement system, questions began to pop up about trade sanctions in the name of human rights protection.<sup>51</sup>

### **The Legality of Human Rights Sanctions under International Trade**

The GATT system under WTO advocates the least restrictions on international trade. However, GATT excuses specific measures, addressing certain non-trade values such as public morals, human life, etc., from the free trade requirements.<sup>52</sup> Human rights sanctions, to be valid, must not violate the trade provisions of GATT and, if violated, must adhere to the recognized GATT exceptions. Non-tariff barriers imposed as human rights sanctions violate Article XI, ¶ 1 of GATT<sup>53</sup> and do not come within the exceptions provided under ¶ 2<sup>54</sup>. Most-favoured-nation<sup>55</sup> and national treatment<sup>56</sup>

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<sup>51</sup> Marrakesh Agreement Establishing World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. [hereinafter Marrakesh Agreement]; Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU].

<sup>52</sup> General Agreement on Tariffs and Trade 1994, arts. XX & XXI, Apr. 15 1994, Marrakesh Agreement Establishing World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter GATT 1994].

<sup>53</sup> GATT 1994, art.1, ¶ 1. (No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.)

<sup>54</sup> GATT 1994, art. XI, ¶ 2 (The provisions of paragraph 1 of this Article shall not extend to the following:

(a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

(b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

(c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:

(i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

(ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to groups of domestic consumers free of charge or at prices below the current market level; or

respectively require members to provide equal market access to like products from all the GATT members and stand against any discrimination between a member's products and like products of another member state.

The interpretation of 'like' products does really make the difference. Can it be said that the products (say shoe) of forced labour from a country are distinct from the same products (shoe) of another country that values labour rights? Let us look into what the 'Understanding on Rules and Procedures Governing the Settlement of Disputes' has to say about interpreting WTO laws. The dispute settlement system must, while interpreting the provisions, conform to the 'customary rules of interpretation of public international law.'<sup>57</sup> General and supplementary rules of interpretation enunciated under Articles 31 and 32 of the Vienna Convention on the Law of Treaties<sup>58</sup>

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(iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.”).

<sup>55</sup> GATT 1994, *supra* note 52, art. I, ¶ 1 (“.....any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”).

<sup>56</sup> GATT 1994, *supra* note 52, art. III, ¶ 2 (“The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.”).

<sup>57</sup> DSU, *supra* note art.3.2.

<sup>58</sup> Vienna Convention on the Law of Treaties, arts. 31 & 32, entered into force Jan. 27, 1980, 1155, U.N.T.S. 331 ( art. 31: “1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

resonates customary rules of interpretation of public international law.<sup>59</sup> Accordingly, WTO interpreted the word ‘like’ to state that ‘physical characteristics’ determine ‘like’ products not the ‘process’ or ‘production’ methods, through which the products are made.<sup>60</sup> Thus, shoes made with or without the forced labour are ‘like’ products under WTO and any discrimination between the products invites disputes.

Now, the pertinent question is whether or not the human rights sanctions can be incorporated under the exceptions provided in Articles XX<sup>61</sup> and/or XXI<sup>62</sup> of the GATT?

What constitutes an ‘essential security interest’ is for the state to decide. Nevertheless, the WTO is entitled to determine whether those measures are part of Art. XXI(b)(i), (ii) and (iii).<sup>63</sup> Human rights trade sanctions such as a

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3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended.”;

art.32: “Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.”).

<sup>59</sup> Report of the International Law Commission, Subsequent agreements and Subsequent Practice in relation to the Interpretation of Treaties, Sess 65, G.A. 68/2010, U.N. DOC.A/RES/68/2010; Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/AB/R (adopted May 20, 1996) ; Appellate Body Report, *Japan—Taxes on Alcoholic Beverages*, WTO Doc. WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (adopted Nov. 1, 1996).

<sup>60</sup> See Panel Report, *Japan—Customs Duties, Taxes and Labeling Practices on Imported Wines and Alcoholic Beverages*, L/6253 (Nov. 10, 1987), GATT BISD (34th Supp.), at 83, 93 (1988); Panel Report, *United States—Restrictions on Imports of Tuna*, DS21/R (Sept. 3, 1991), GATT BISD 39S/155, at ¶ 5.15 (1992).

<sup>61</sup> GATT 1994, *supra* note 52, art. XX.

<sup>62</sup> GATT 1994, *supra* note 52, art. XXI.

<sup>63</sup> GATT 1994, *supra* note 52, art. I, ¶ (b) (“to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

ban on uranium trade to prevent a foreign country from using it against its neighbours, refusal to sell non-lethal compounds to a country believed to be producing weapons of mass destruction, etc., can be incorporated under Art. XXI (b) (i) and (ii). Whereas Art. XXI (b)(iii) measures pose various questions to ponder, like whether the country needs to be part of the war to take such actions or be only affected by the same. Article XXI(b)(iii) propounds that an international emergency does fall short of both war and threats to international peace and security within the meaning of the UN Charter since Art. XXI(c)<sup>64</sup> incorporates measures pursuant to Security Council authorization. On the whole, it is difficult to incorporate unilateral human rights sanctions under the purview of Article XXI, whilst it is impossible to justify sanctions against forced labour within the cusp of Art. XXI.

The provisions of Art. XX, which are relevant for discussion here are (a), (b), and (e).<sup>65</sup> WTO took an evolutionary approach of interpretation regarding the general exceptions provided in Article XX to render the GATT exceptions consistent with human rights treaties and customary international law principles.<sup>66</sup> Human life, public morals, and prison labour could include jus cogens, erga omnes, forced labour, and the like. However, the exceptions of human life and public morals are qualified by the word ‘necessary.’ i.e., if it is possible to promote and/or protect human life and public morals without

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(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations...”).

<sup>64</sup> GATT 1994, *supra* note 52, art. XXI, ¶ (c) (“to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.”).

<sup>65</sup> GATT 1994, *supra* note 52, art. XX (“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health;.....;(e) relating to the products of prison labour”).

<sup>66</sup> Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 129, 130, WTO Doc. WT/DS58/AB/R (adopted Nov. 6, 1998).



trade-restrictive measures, then the member should opt for the same. Trade restrictive measures must be used as the last resort to enhance human life and public morals. WTO held in Reformulated Gasoline case<sup>67</sup> that since less trade-restrictive measures were available and had not been pursued by the U.S, the U.S.’ measure to regulate smog-causing contaminants in domestic and imported gasoline was not necessary under Art. XX(b). WTO always bolstered least trade-restrictive measures in promoting and/or protecting human life and public morals.<sup>68</sup>

Unlike Article XX (a) and (b), the prison labour provision under Article XX (e) does not warrant ‘necessary,’ but the provision demands that the measures must ‘relate’ to the same. The ‘relating to’ words in the provision invites reasonableness to such measures, i.e., there must be a reasonable or substantial relationship between a trade restriction and the valid state interest it promotes.<sup>69</sup>

Besides the necessity or reasonableness requirements of the different exceptions provided under Article XX, measures adopted under Article XX must not constitute ‘arbitrary or unjustifiable discrimination..... or a disguised restriction on international trade’.<sup>70</sup> Proportionality, transparency, and a preference for multilateralism are the tests to determine whether a measure constitutes arbitrary or unjustifiable discrimination or a disguised

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<sup>67</sup> Panel Report, *United States—Standards for Reformulated and Conventional Gasoline*, ¶ 6.28, WTO Doc. WT/DS2/R (Jan. 29, 1996), as modified by Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/AB/R (May 20, 1996).

<sup>68</sup> See Panel Report, *United States—Restrictions on Imports of Tuna*, DS21/R (Sept. 3, 1991), GATT BISD 39S/155, at ¶ 5.28 (1992) (holding, under Article XX(b), that the USA had not “exhausted all options reasonably available to it to pursue its dolphin protection objectives through measures consistent with the General Agreement, in particular through the negotiation of international cooperative agreements”); Report of the Panel, *Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes*, DS 10/R (Nov.7, 1990), GATT BISD (37th Supp.), at 200, 223 (1991). (Thai ban on cigarette imports “could be considered to be ‘necessary’ in terms of Article XX(b) only if there were no [less trade-restrictive] alternative” available to achieve Thailand’s goal of protecting human life).

<sup>69</sup>See Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, at 19, WTO Doc. WT/DS2/AB/R (May 20, 1996).

<sup>70</sup> GATT 1994, *supra* note 52, art. XX.

restriction on international trade.<sup>71</sup> As a result, even when the appellate body identified in Shrimp/Turtle case that U.S. measure served a legitimate Article XX purpose, the report was against the U.S., since by dictating the specific turtle-protective methods that foreign states must adopt, by banning all shrimp imports from uncertified states, by failing to pursue multilateral measures, and by employing non-transparent methods, the measure violated the requirements of Article XX preamble.<sup>72</sup> So a restriction imposed upon the import of shoes produced thanks to forced labour will pass the muster as long as the restriction is confined to the import of shoes and not extended to other products from the exported country. For instance, Dystopia is a place in Utopia where 50 out of the 100 exported shoes are produced. The rest 50 are being produced from other parts of Utopia. Dystopia could produce half of the country's exported shoes thanks to the forced labour provisions of the region, which a linguistic and cultural minority group inhabits. Now, Lilliput, the neighbouring country, imposes restrictions on all the products imported from Dystopia. Would it be violating the GATT provisions? Definitely, yes. Firstly, Lilliput should have opted for some other modes, other than trade embargo, like diplomatic, multilateral, etc., to curb forced labour in Dystopia. Even the failure of all the modes does not grant a license to Lilliput to impose all-out trade restrictions. Lilliput's trade embargo must be confined to shoes that are produced in Dystopia. Restrictions on shoes from other regions of Utopia and on other products produced from Utopia are apparent violations of GATT provisions.

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<sup>71</sup> See Panel Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/R (Jan. 29, 1996), as modified by Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/AB/R (May 20, 1996); Panel Report, *United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, Restrictions on Imports of Tuna*, Doc. WT/DS21/R (adopted Sept. 15, 2011), as modified by Appellate Body Report, *United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, Restrictions on Imports of Tuna*, WT/DS381/AB/R (adopted June 13, 2012); Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc. WT/DS58/AB/R (adopted Nov. 6, 1998).

<sup>72</sup> Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, ¶¶ 161–84, WTO Doc. WT/DS58/AB/R (adopted Nov. 6, 1998).



## CONCLUSION

Recently, environment and human rights counterclaims are gaining pace in international investment arbitration discussions. Global awareness of the urgency of the climate crisis and emphasis on sustainable investment contributed to the recent success of the states in the environmental counterclaims in *Burlington Resources Inc. v. Republic of Ecuador* and *Perenco v. Ecuador*.<sup>73</sup> The right to sustainable environment is also a significant facet of human rights, and it has been internationally recognized, especially after the Stockholm Declaration of 1972. In *Urbaser v. Argentina*, the tribunal found the corporation to violate the human right of 'right to water'.<sup>74</sup> According to the tribunal, private parties have negative international human rights obligations.

When international trade law is interpreted by taking fundamental human rights into place, human rights and international trade law can co-exist with each other. Though human rights are not the primary concern of WTO, human rights have been given a window in the WTO laws. As the years go by, WTO's affinity towards human rights is becoming more evident, and the window is getting bigger and bigger. Having said that, since the jurisdiction of the WTO panel extends only to covered agreements of WTO, in the event of a breach of international human rights law, WTO cannot act to enforce that law. The regional differences in approaches to human rights will always be the bulwark against any amalgamation of human rights and international trade. The next chapter will discuss international trade vis-a-vis a critical facet of human rights, i.e., gender rights.

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<sup>73</sup> *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5; *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6.

<sup>74</sup> *Urbaser S.A. v. Republic of Argentina*, ICSID Case No. ARB/07/26.

## **CHAPTER-3**

### **INTERNATIONAL TRADE AND GENDER RIGHTS**

#### **INTRODUCTION**

The developed world has reached where it is now through the exploitation of human beings and the environment. Once, the world has believed that trade is distinct from individual and/or community right-based approach. One should be stupid enough to contemplate that a globe that only focused on accumulating gold and silver and regarded international trade as a zero-sum game should have recognized human rights, let alone gender rights. As a result, trade agreements did not, until the 1957 Treaty of Rome establishing the European Economic Community (EEC), consider explicit gender-related provisions.<sup>75</sup>

The equal pay for equal work provision enshrined in the Treaty of Rome did not make much difference to other trade agreements' approach towards gender-related provisions.<sup>76</sup> It is quite evident from the fact that only (around) 75 out of more than 550 trade agreements notified to the World Trade Organization have had explicit gender-related provisions.<sup>77</sup> The slow but steady increase, over the years, in the number of trade agreements incorporating explicit gender-related provisions underscores the fact that countries have been recognizing the positive relationship between the gender parity and economic growth and development.

#### **Gender Parity and Economic Growth and Development**

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<sup>75</sup> José-Antonio Monteiro, *Gender-related Provisions in Regional Trade Agreements*, ECONOMIC RESEARCH AND STATISTICS DIVISION, WORLD TRADE ORGANIZATION (2018); See also Treaty Establishing the European Economic Community, *entered into force*, Jan. 01, 1958, 298 U.N.T.S. 11 ; ZO RANDRIAMARO, GENDER AND TRADE: OVERVIEW REPORT 9 (2006);

<sup>76</sup> Treaty Establishing the European Economic Community, art. 119, *entered into force*, Jan. 01, 1958, 298 U.N.T.S. 11.

<sup>77</sup> Monteiro, *supra* note 75.

Gender equality and growth are directly proportional to each other. Equality of opportunity allows women to make the best choices for themselves, their families, and their communities.<sup>78</sup> It is also associated with improved economic outcomes.<sup>79</sup>

It is axiomatic that the removal of social and other barriers that restrict the ability of women to move freely, sign contracts, work outside the home, or manage assets has been associated with a more abundant female labour supply.<sup>80</sup>

Positive associations have been identified between gender equality and per-capita GDP, the level of competitiveness, and human development indicators.<sup>81</sup> Advancing gender equality could add \$ 12 trillion to global GDP by 2025.<sup>82</sup> This means the 'best-in-region' scenario could add \$ 12 trillion in global GDP by 2025.<sup>83</sup> Interestingly, the 'full potential scenario' would add up to \$ 28 trillion to annual GDP by 2025 compared with a business-as-usual scenario.<sup>84</sup> In the modern world, it is a settled principle of trade that gender equality augments the same. Greater gender equality gives new impetus to better development outcomes such as reduces income inequality, boosting economic diversification and, in turn, supports economic resilience.<sup>85</sup>

Despite the fact that the world has accepted gender equality as a coveted price for its progress, gender inequality persists in the trade arena. Social, cultural, and religious norms impede gender equality in the economic sphere. The traditional notion that women are meant to cater only for the needs of the

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<sup>78</sup> World Bank. 2020. Women, Business and the Law 2020, *supra* note 16.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> World Economic Forum, The Gender Gap Report 2014.

<sup>82</sup> WOETZEL, *supra* note 16.

<sup>83</sup> *Id.*, (The 'best-in-region' scenario means when all countries match the rate of improvement of the fastest-improving country in their region.).

<sup>84</sup> WOETZEL, *supra* note 16 ('full potential' scenario means when women participate in the economy identically to men.).

<sup>85</sup> INTERNATIONAL MONETARY FUND, GROUP OF SEVEN: PURSUING WOMEN'S ECONOMIC EMPOWERMENT, Meeting of G7 Ministers and Central Bank Governors, June 1-2, 2018 Whistler, Canada.

confined walls of the household, as a result of 'division of labour', render them inferior to access resources (such as land and credit) and other essential services (such as education and health care). That rampant inferiority made their bargaining power in the economic space weak. The different dimensions of gender inequality in the economy may be expressed in terms of:

- Employment opportunities – opportunities to participate in the labour market in all sectors (horizontal distribution of activities) and all occupations (vertical distribution of activities in a profession);
- Returns from labour (wage equality);
- Conditions of work and quality of employment;
- Access to essential services (such as health and education);
- Access to resources (such as land, credit and business services);
- Empowerment (participation in decision-making);
- Distribution of income inside and outside the household (or poverty levels).<sup>86</sup>

Because of its multi-dimensional character, gender equality cannot be fully achieved if progress is made in only one or a few areas.<sup>87</sup>

### **Sustainability of Gender Parity Discourse in International Trade**

Thanks, in part, to the call by the United Nations General Assembly,<sup>88</sup> IMF and the World Bank, by the beginning of this century, recognized gender inequality as an impediment against their mission and vision.<sup>89</sup>

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<sup>86</sup> Tran-Nguyen & Zampetti, *supra* note 16.

<sup>87</sup> *Id.*

<sup>88</sup> G.A. Res. 3, 49, U.N. GAOR, 23d Special Sess., Supp. No. 1, U.N. Doc. A/RES/S23/3 (June 10, 2000).

<sup>89</sup> See Caroline M. Robb, Poverty and Social Impact Analysis-Linking Macroeconomic Policies to Poverty Outcomes: Summary of Early Experiences 11-12 (International Monetary Fund, Working Paper, WP/03/43, 2003); WORLD BANK, ENGENDERING DEVELOPMENT THROUGH GENDER EQUALITY IN RIGHTS, RESOURCES, AND VOICE 73 (2001).

The WTO was quite reluctant to heed the call since its 1996 Ministerial Declaration made it clear that as an international organization concerning trade, human rights, for that matter, gender rights do not warrant their attention.<sup>90</sup>

The WTO's predecessor-the GATT, 1947<sup>91</sup>- was not a good role model in, amongst others, gender rights matters. Article XX of the GATT 1947, largely retained by the 1994 GATT, provided exceptions to the general rules.<sup>92</sup> Even such provision did not explicitly provide for human rights, for that matter, gender rights, exception. The time and again restrictive interpretation of article XX by the GATT panels resemble the weightage given by the international trade law to trade interests over other interests such as human rights or gender rights.<sup>93</sup> Though the establishment of WTO aimed to rectify the mistakes of the GATT and advance the international trade cooperation in various areas, human rights and gender rights never really made the cut for the WTO negotiations.

Gender implications stemmed from international trade disputes were downplayed by the GATT and its successor, the WTO. Such downplaying is evident from the Thailand-Cigarettes<sup>94</sup> and EC-Hormones<sup>95</sup> decisions.

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<sup>90</sup> WTO Ministerial Council, Singapore Ministerial Declaration, WT/MIN(96)/DEC, para. IV (13 December 1996).

<sup>91</sup> General Agreement on Tariffs and Trade, *entered into force* Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter GATT 1947].

<sup>92</sup> *Id.*, art. XX, (Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: I.(a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health; (c) relating to the importation or exportation of gold or silver; (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement.....)

<sup>93</sup> Report of the Panel, *Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes*, DS 10/R (Nov.7, 1990), GATT BISD (37th Supp.), (1991) ; Panel Report, *United States—Restrictions on Imports of Tuna*, DS21/R (Sept. 3, 1991), GATT BISD 39S/155, (1992).

<sup>94</sup> Report of the Panel, *Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes*, DS 10/R (Nov.7, 1990), GATT BISD (37th Supp.), (1991).

Thailand imposed restrictions on imports of and internal taxes on cigarettes.<sup>96</sup> Thailand justified its actions, inter alia, under article XX (b) of the GATT. It is pertinent to note that the same did not apply to domestically-produced cigarettes. Thailand contended that its women population is more prone to imported cigarettes from the U.S.A than the domestically-produced cigarettes since the former were made in such a way as to appeal to women through the addition of perfume or to make them long and slender to insinuate that smoking would result in thinness.<sup>97</sup> The World Health Organization (WHO) buttressed this argument.<sup>98</sup> WHO propounded that the use of additives and flavourings or the downward adjustments of tar and nicotine by the American and Western cigarettes facilitate the smoking of such cigarettes by people who might not otherwise smoke, particularly women.<sup>99</sup> Thus, the WHO shared the apprehension that the percentage of Thai women who smoke may increase from six per cent at the time of dispute thanks to the specific characteristics of the Western cigarettes.

The GATT panel identified that the measures by Thailand could not be considered necessary for the protection of human life so long as they have permitted the use of domestic cigarettes.<sup>100</sup> Also, the panel proposed some least trade-restrictive measures like introducing regulation requiring labelling or the disclosure of ingredients, banning cigarette advertising, or using government monopolies to regulate the overall supply of cigarettes or their pricing to meet Thailand's objective of protecting human health.<sup>101</sup> The fact that these proposals particularly, and the report generally failed to address the

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<sup>95</sup> Appellate Body Report, *European Communities Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/ AB/R, WT/DS48/ABIR (adopted Feb. 13, 1998).

<sup>96</sup> Report of the Panel, *Thailand—Restrictions on Importation of and Internal Taxes on Cigarettes*, DS 10/R (Nov.7, 1990), GATT BISD (37th Supp.), at ¶ 1 (1991).

<sup>97</sup> *Id.* at ¶¶ 27, 54.

<sup>98</sup> See, *Id.* at ¶¶ 51-57.

<sup>99</sup> *Id.* at ¶ 52.

<sup>100</sup> *Id.* at ¶ 81.

<sup>101</sup> *Id.* at ¶¶ 77-81.

specific concerns of imported cigarettes on women tell volumes on how less women's life is to the GATT panel in the overall picture of the 'protection of human life'.

The ban on the sale of meat from animals treated with certain kinds of hormones by the European Commission (EC) led to the EC-Hormone dispute.<sup>102</sup> The EC provided scientific evidence which links the levels of certain hormones and increased rates of cancer. The European Commission also submitted scientific evidence stating the potential of the hormone oestrogens to cause breast cancer when used as a growth promoter.<sup>103</sup> The Appellate Body rejected the findings for, inter alia, even if it were true, only 371 women in the European Union would develop cancer from hormone-ingested meat.<sup>104</sup> Thus, the EC-hormone report by the Appellate Body reverberates another instance of the downplaying of gender-implications in international trade by negating women's life and preferring international trade benefits to the life of women.

The WTO negotiations, and agreements along with its application in, inter alia, the aforesaid cases bolstered the statement in the preliminary report submitted by J. Oloka-Onyango and Deepika Udagama to the United Nations Economic and Social Council that "women as a group stand to gain little from.. [WTO]".<sup>105</sup>

The desperate search for a respite in other ways gender insensitive WTO covered agreements will cease before article 3.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.<sup>106</sup> According to

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<sup>102</sup> Appellate Body Report, *European Communities Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/ AB/R, WT/DS48/ABIR (adopted Feb. 13, 1998).

<sup>103</sup> *Id.* at ¶ 198.

<sup>104</sup> See *Id.* at ¶ 199 (adopted Feb. 13, 1998).

<sup>105</sup> Globalization and its impact on the full enjoyment of human rights Preliminary report submitted, to the Economic and Social Council, by J. Oloka-Onyango and Deepika Udagama, in accordance with Sub-Commission resolution 1999/8, E/CN.4/Sub.2/2000/13 (June 15, 2000).

<sup>106</sup> DSU, art. 3.2, *supra* note 51, ("...The Members recognize that [dispute settlement system] serves to preserve the rights and obligations of Members under the covered

article 3.2, customary rules of interpretation dictate the dispute settlement concerning the WTO covered agreements.<sup>107</sup> Articles 31 and 32 of the Vienna Convention on the Law of Treaties<sup>108</sup> resemble the customary rules of interpretation of public international law.<sup>109</sup> Thus, the 'contextual' interpretation of WTO covered agreements would aid in addressing gender rights in the dispute settlement by reading the WTO covered agreements in consonance with other international legal instruments dictating the gender rights.<sup>110</sup>

Sans such a reading even article XX (a), (b) and (d) of the GATT is of no use since they are qualified by the word 'necessary' and the chapeau of Article

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agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law....”].

<sup>107</sup> *Id.*

<sup>108</sup> Vienna Convention on the Law of Treaties, arts. 31 & 32, entered into force Jan. 27, 1980, 1155, U.N.T.S. 331 ( art. 31: “1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties. 4. A special meaning shall be given to a term if it is established that the parties so intended.”;

art.32: “Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.”).

<sup>109</sup> Report of the International Law Commission, Subsequent agreements and Subsequent Practice in relation to the Interpretation of Treaties, Sess 65, G.A. 68/2010, U.N. DOC.A/RES/68/2010; Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WTO Doc. WT/DS2/AB/R (adopted May 20, 1996) ; Appellate Body Report, *Japan—Taxes on Alcoholic Beverages*, WTO Doc. WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (adopted Nov. 1, 1996).

<sup>110</sup> See Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 129, 130, WTO Doc. WT/DS58/AB/R (adopted Nov. 6, 1998).



XX.<sup>111</sup> Within the existing legal framework of the WTO, Article XX (a), (b) and (d) of the GATT<sup>112</sup> can be invoked to defend any gender-friendly measures. Measures that restrict goods made by the forced women labourers or girl-child labourers could fall under article XX (a)<sup>113</sup> whereas measures taken to protect the women's health are bound to fall under article XX (b).<sup>114</sup> Measures like providing incentives by the government to companies actively promoting gender equalities to comply with domestic equality legislation can be called 'necessary to secure compliance with laws or regulations' that are otherwise consistent with the GATT.<sup>115</sup>

However, article XX (a), (b) and (d) must satisfy the chapeau of article XX<sup>116</sup> along with the test of 'necessary'. The new necessity test stemmed from the reports of Korea-Beef<sup>117</sup> and Brazil-Tyres<sup>118</sup> advocates that the state must demonstrate the importance of the interests or values that are being protected by the measure, a relationship between the measure and the objective sought,

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<sup>111</sup> GATT 1994, *supra* note 52, arts. XX, Apr. 15 1994 ("Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures.....").

<sup>112</sup> GATT 1994, *supra* note 52, arts. XX (a), (b) & (d) (".....(a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health;.....(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement.....").

<sup>113</sup> GATT 1994, *supra* note 52, arts. XX (a), Apr. 15 1994, (".....(a) necessary to protect public morals.....").

<sup>114</sup> GATT 1994, *supra* note 52, arts. XX (b) (".....(b) necessary to protect human, animal or plant life or health.....").

<sup>115</sup> GATT 1994, *supra* note 52, arts. XX (d), Apr. 15 1994 (".....(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement....."); See Barnali Choudhury, *The Facade of Neutrality: Uncovering Gender Silences in International Trade*, 15 WM. & MARY J. WOMEN & L. 113 (2008).

<sup>116</sup> GATT 1994, *supra* note 52, arts. XX, Apr. 15 1994, Marrakesh Agreement Establishing World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 ("Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures.....").

<sup>117</sup> Appellate Body Report, *Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R (adopted Jan.10, 2001).

<sup>118</sup> Appellate Body Report, *Brazil - Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R (adopted Dec. 17, 2007).

that the relationship must not be remote and that there is no less-trade restrictive measure available to achieve the intended object. The chapeau of Article XX ensures that the measures available under article XX will not be abused by prohibiting measures from using as means for arbitrary or unjustifiable discrimination between countries where the same conditions exist and from using the measures as disguised restrictions on international trade. Thus, the interpretation and application of chapeau must act as countenance to identify the middle-ground between the gender-parity measures under articles XX (a), (b) and (d) and the obligation of the WTO members under other provisions.<sup>119</sup>

Such methods of interpretation and sporadic positive interpretation and application cannot cement the gender parity discourse in international trade sans a shift in the only international organization dealing with the global rules of trade-WTO. The shift in WTO narrative concerning human rights (or gender rights) had become more evident when, in 2006, the then WTO Director-General Pascal Lamy announced that there is a new 'Geneva Consensus' to 'humanize globalization' and that the WTO would contribute its share towards that endeavour.<sup>120</sup>

11<sup>th</sup> Ministerial Conference has witnessed a first in WTO. World Trade Organization has taken a step forward towards gender equality. More than 120 WTO members and observers joined the Declaration on Trade and Women's Economic Empowerment.<sup>121</sup> The declaration acknowledged that advancing gender equality and women's economic empowerment will have a positive impact on economic growth and help to reduce poverty. Further, it acknowledged that improving women's access to opportunities and removing barriers to their participation in national and international economies

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<sup>119</sup> See Appellate Body Report, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 159, WT/DS58/AB/R (Nov. 06, 1998).

<sup>120</sup> Speech by DG Pascal Lamy in Santiago de Chile on 30 January 2006, (Apr. 22, 2021, 05:17 PM), [http://www.wto.org/english/news-e/sppl-e/sppl16\\_e.htm](http://www.wto.org/english/news-e/sppl-e/sppl16_e.htm).

<sup>121</sup> *Supra* note 1.

contributes to sustainable economic development. As a soft law, it may be a small step for WTO, but a giant leap, for gender equality, towards economic advancement.

At the various Aid for Trade Global Review sessions, held on 3-4 July 2019, speakers agreed that economic diversification and empowerment of women are keys to achieving a fairer and more efficient trading environment.<sup>122</sup> To deepen trade and gender discussions and deliberations in WTO, a group of WTO members established an Informal Working Group on Trade and Gender on 23 September 2020. It marked the next phase of an initiative kickstarted in 2017 to increase the participation of women in trade.<sup>123</sup> The online meeting to launch the new WTO working group was held at the invitation of Iceland and Botswana.<sup>124</sup> COVID-19 pandemic has been making disproportionate impact on women in trade.<sup>125</sup> The, then, Deputy Director-General Yonov Frederick Agah acknowledged the same and stated that “...This is because women are typically overrepresented in services such as travel and tourism, as well as manufacturing sectors such as footwear and apparel, and telecommunications products, that have seen the sharpest falls in demand”.<sup>126</sup> He continues “An open and predictable trading system has an important role to play in fostering a robust and inclusive economic recovery from the pandemic. But we cannot build back better without women.”<sup>127</sup> Informal Working Groups on Trade and Gender convened their first meeting on 10<sup>th</sup> December 2020.

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<sup>122</sup> Aid for Trade Global Review 2019, *Economic Diversification and Empowerment of Women Key to Bridge Development Gaps*, WORLD TRADE ORGANIZATION, (May 2, 2021, 04:31 PM), [https://www.wto.org/english/news\\_e/news19\\_e/gr19\\_04jul19\\_e.htm](https://www.wto.org/english/news_e/news19_e/gr19_04jul19_e.htm).

<sup>123</sup> Women and Trade, *New WTO Working Group Established to Deepen Trade and Gender Discussions*, WORLD TRADE ORGANIZATION, (May 2, 2021, 04:47 PM), [https://www.wto.org/english/news\\_e/news20\\_e/women\\_23sep20\\_e.htm](https://www.wto.org/english/news_e/news20_e/women_23sep20_e.htm)

<sup>124</sup> *Id.* at 04:48 PM.

<sup>125</sup> The Economic Impact of Covid-19 on Women in Vulnerable Sectors and Economies, WORLD TRADE ORGANIZATION, 3 Aug. 2020.

<sup>126</sup> Women and Trade, *New WTO Working Group Established to Deepen Trade and Gender Discussions*, WORLD TRADE ORGANIZATION, (May 2, 2021, 04:54 PM), [https://www.wto.org/english/news\\_e/news20\\_e/women\\_23sep20\\_e.htm](https://www.wto.org/english/news_e/news20_e/women_23sep20_e.htm).

<sup>127</sup> *Id.*

Dr Ngozi Okonjo-Iweala became the first woman and the first African to serve as the Director-General of the WTO.<sup>128</sup> She took office on 1 March 2021. Since the real powers are vested with the members, it is to be seen how far the appointment of a woman as Director-General will aid in the gender goals of WTO.

## **CONCLUSION**

Though the international trade and gender parity started off on the wrong foot, the changing/changed dimensions of the various international economic institutions like IMF, IBRD and especially WTO provide a bright present and future for the sustainability of gender parity discourse in international trade. United States-Mexico-Canada Agreement (USMCA),<sup>129</sup> which deals with labour and environment respectively at Chapters 23 and 24, is the recent example of a regional trade agreement which discusses gender parity discourse in international trade.<sup>130</sup> Among other labour-related obligations, under Article 23.3.1, the parties must take measures to eliminate discrimination in respect of employment and occupation.<sup>131</sup> Thus, the rights set out in the ILO Declaration on Rights at work<sup>132</sup> are being obligated by a multilateral trade agreement. Article 23.9 of USMCA deals explicitly with discrimination in the workplace.<sup>133</sup> As a result, parties to the agreement are

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<sup>128</sup> *WTO Director-General: Ngozi Okonjo-Iweala*, WORLD TRADE ORGANIZATION, (May 05, 2021, 08:41 PM), [https://www.wto.org/english/thewto\\_e/dg\\_e/dg\\_e.htm](https://www.wto.org/english/thewto_e/dg_e/dg_e.htm).

<sup>129</sup> United States-Mexico-Canada Agreement, *entered into force* July 01, 2021, WT/REG407 (Sept. 16, 2020) [hereinafter USMCA].

<sup>130</sup> USMCA, Chapter 23(Labor) & Chapter 24 (Environment).

<sup>131</sup> USMCA, art. 23.3 (“ Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Rights at Work: (a) freedom of association<sup>6</sup> and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor and, for the purposes of this Agreement, a prohibition on the worst forms of child labor; and (d) the elimination of discrimination in respect of employment and occupation.”).

<sup>132</sup> Declaration on Fundamental Principles and Rights at Work and its Follow-up, International Labour Conference, art.2, ILO, 86th Session, Geneva, June 1998.

Declaration on Fundamental Principles and Rights at Work and its Follow-Up(1998)

<sup>133</sup> USMCA, art. 23.9 (“The Parties recognize the goal of eliminating discrimination in employment and occupation, and support the goal of promoting equality of women in the workplace. Accordingly, each Party shall implement policies<sup>15</sup> that it considers appropriate to protect workers against employment discrimination on the basis of sex (including with

obligated to protect workers against employment discrimination based on sex (including with regard to sexual harassment), pregnancy, sexual orientation, gender identity. The parties must ensure that there is no employment discrimination based on caregiving responsibilities and must provide job-protected leave for birth or adoption of a child and care of family members. The Agreement also guarantees protection against wage discrimination.

Thus, it is high time for WTO to take steps, at least resembling the obligations set out in the USMCA, to inculcate gender-parity provisions within their legal framework.

Though there is no international trade treaty where gender rights are dealt with, in which India is a party to, Indian legal instruments quite comfortably discuss the gender parity in the trade and economic arena within its jurisdiction.<sup>134</sup> India must satisfy its conscience regarding the enforcement of its written laws craving for gender parity in the trade and economic arena. That being said, Indian laws warrant amendments to incorporate the changed notion of gender rights in its legal realm. Besides, as a country with international obligations, India must join the group that calls for gender parity laws within the international trade sphere. Against this background, the next chapter will discuss the various international and Indian legal instruments dealing with gender parity in economic and trade regimes.

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regard to sexual harassment), pregnancy, sexual orientation, gender identity, and caregiving responsibilities; for birth or adoption of a child and care of family members; and protect against wage discrimination.”).

<sup>134</sup> INDIA CONST. arts. 14, 15, 16, 39 (d) & 42; The Factories Act, 1948, No. 63, Acts of Parliament, 1948; Equal Remuneration Act, 1976, No. 25, Acts of Parliament, 1976; Maternity Benefit Act, 1961, No. 53, 1961; The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013.

## **CHAPTER-4**

### **GENDER PARITY IN ECONOMIC AND TRADE REGIME: INTERNATIONAL AND INDIAN LEGAL INSTRUMENTS**

#### **INTRODUCTION**

The tryst between gender rights and international trade is only decades-old, thanks to the once-dominant notion that they were not meant to be together. Even when such a notion was prevalent, the world witnessed constant changes in the general realm of international law concerning gender parity in, inter alia, the trade, and economic sphere. However, the want of effective enforcement made the legal instruments silent spectators more often than not. Unlike many other countries globally, since independence, India has endeavoured for gender parity in all its fields. The rate of success of such an endeavour is beyond the scope of the current study. This chapter would reflect the national and international legal efforts for gender parity in the economic and trade arena.

#### **International Legal Instruments**

##### **Universal Declaration of Human Rights (UDHR)<sup>135</sup>**

The first, widely acknowledged international human rights instrument, the Universal Declaration of Human Rights, put forth numerous rights in the trade arena. It states that everyone is entitled to indispensable economic rights, which are essential for their dignity and free development of their personality.<sup>136</sup> The Declaration made the steps to peel the patriarchal skin of humankind. Such an effort is quite evident even in the trade-related rights

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<sup>135</sup> UDHR *supra* note 17.

<sup>136</sup> *Id.* at art.22 (“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”).

envisaged under the UDHR. Equal pay for equal work engulfed by the Declaration<sup>137</sup> is still, even when the Declaration's platinum jubilee is neigning, remain an outcast in the vast majority of fields across the globe.<sup>138</sup> Other trade-related rights like just and favourable working conditions<sup>139</sup> and remuneration,<sup>140</sup> including protection from and prohibition, on slavery, servitude, and the slave trade,<sup>141</sup> are more or less general rights that incorporated the women's rights within themselves. Protection from, and the prohibition on, slavery, servitude, and slave trade also resemble in International Covenant on Civil and Political Rights<sup>142</sup> which, inter alia, prohibits forced or compulsory labour.<sup>143</sup>

### **International Covenant on Civil and Political Rights**<sup>144</sup>

The Covenant is the first step towards a hard law in furtherance to the rights incorporated in the Universal Declaration of Human Rights. Slavery and slave trade, in all their forms, are being prohibited by the Covenant.<sup>145</sup> The Covenant impedes servitude.<sup>146</sup> Besides, it stands against forced or compulsory labour.<sup>147</sup> The Covenant advocates for the rights of all genders.

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<sup>137</sup> UDHR *supra* note 17, art.23, ¶ 2 (“Everyone, without any discrimination, has the right to equal pay for equal work.”).

<sup>138</sup> ‘Women only make 77 cents for every dollar men earn’ *Equal Pay for Work of Equal Value*, UN WOMEN(June.26,2021, 05:47 PM), <https://www.unwomen.org/en/news/in-focus/csw61/equal-pay>.

<sup>139</sup> UDHR *supra* note 17, art.23, ¶ 1 (“Everyone has the right to work, to free choice of the employment, to just and favourable conditions of work and to protection against unemployment.”).

<sup>140</sup> UDHR *supra* note 17, art.23, ¶ 3 (“Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”).

<sup>141</sup> UDHR *supra* note 17, art.4 (“No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms”).

<sup>142</sup> UDHR *supra* note 17, art.8, ¶ 1,

<sup>143</sup> UDHR *supra* note 17, art.8, ¶ 3 (a),

<sup>144</sup> ICCPR, *supra* note 18.

<sup>145</sup> *Id.* at art.8, ¶ 1 (“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.”).

<sup>146</sup> ICCPR, *supra* note 18, art.8, ¶ 2 (“No one shall be held in servitude.”).

<sup>147</sup> ICCPR, *supra* note 18, art.8, ¶ 3 (a) (“No one shall be required to perform forced or compulsory labour.”).

Protection from, and the prohibition on, slavery, servitude, and slave trade in International Covenant on Civil and Political Rights<sup>148</sup> reflect the respective provisions of the UDHR but binding. The Covenant went a step further from the UDHR to inculcate the prohibition of forced or compulsory labour.<sup>149</sup> Thus, the Covenant ensures gender parity in the economic sphere within its limited sphere of civil and political.

### **International Covenant on Economic, Social, and Cultural Rights**<sup>150</sup>

The International Covenant on Economic, Social, and Cultural Rights warrants state parties to ensure equality between men and women in the enjoyment of economic rights.<sup>151</sup> The Convention reiterates its economic egalitarianism through, among others, its gender-specific provision, which calls for equality in conditions of work and payment between men and women of equal work.<sup>152</sup> Article 10 paragraph 2 of the Convention mandates maternity protections for working women for reasonable periods, including paid leave or leave with adequate social benefits.<sup>153</sup> Besides these gender-specific rights, all the rights enshrined in the Covenant are general rights such as the cries for safe and healthy working conditions, reasonable limitation of working hours and periodic holidays with pay, the right to form and join a trade union of the worker's choice, etc.

### **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**<sup>154</sup>

The definition of discrimination against women put forth by the Convention on the Elimination of All Forms of Discrimination against Women

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<sup>148</sup> ICCPR, *supra* note 18, art.8, ¶ 1 & 2.

<sup>149</sup> See ICCPR, *supra* note 18, art.8, ¶ 3 (a).

<sup>150</sup> ICESCR, *supra* note 19.

<sup>151</sup> ICESCR, *supra* note 19, art.3.

<sup>152</sup> ICESCR, *supra* note 19, art.7(a)(i).

<sup>153</sup> ICESCR, *supra* note 19, art.10, ¶ 2.

<sup>154</sup> CEDAW, *supra* note 20.



(CEDAW) includes distinction in the economic field.<sup>155</sup> CEDAW recognizes the right to work as an inalienable right.<sup>156</sup> CEDAW urges the states to ensure employment equality of men and women in various spheres of employment such as in the right to the same employment opportunities,<sup>157</sup> the right of free choice of profession and employment,<sup>158</sup> the right to equal remuneration,<sup>159</sup> the right to social security,<sup>160</sup> the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.<sup>161</sup> Marital status or maternity should not be a factor in discrimination against women. The Convention calls for the introduction of maternity leave with pay or comparable social benefits sans the loss of former employment, seniority, or social allowances.<sup>162</sup> It protects women from all kinds of discrimination in work on account of marital status or maternity. Capital is an essential facet of any trade, let alone international trade. In order to ensure, inter alia, no discrimination in this factor of production, the Convention guarantees equality of men and women in the right to bank loans, mortgages, and other forms of financial credit.<sup>163</sup> Rural women play an indispensable part in the national and international trade through their agricultural and other contributions towards the trade sector. Advancement of this section of the women in society would make a sizeable contribution to the progress in the trade as a whole. The Convention advocates for the equal status of men and women to have access to agricultural credit and loans, marketing facilities, appropriate technology, equal treatment in land and agrarian reform, and in land resettlement schemes.<sup>164</sup>

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<sup>155</sup> CEDAW, *supra* note 20, art.1.

<sup>156</sup> CEDAW, *supra* note 20, art.11¶ 1(a).

<sup>157</sup> *Id.*

<sup>158</sup> CEDAW, *supra* note 20, art.11¶ 1(b).

<sup>159</sup> CEDAW, *supra* note 20, art.11¶ 1(c).

<sup>160</sup> CEDAW, *supra* note 20, art.11¶ 1(d).

<sup>161</sup> CEDAW, *supra* note 20, art.11¶ 1(e).

<sup>162</sup> CEDAW, *supra* note 20, art.11¶ 2(b).

<sup>163</sup> CEDAW, *supra* note 20, art.13 ¶ (b).

<sup>164</sup> CEDAW, *supra* note 20, art.14¶ 2(g).

## INTERNATIONAL LABOUR ORGANIZATION (ILO)<sup>165</sup>

International Labour Organization's (ILO) effort to gender parity in the work and trade sphere is only younger than the UDHR. In 1951, ILO came up with the Equal Remuneration Convention, which demands equal remuneration for men and women workers for work of equal value.<sup>166</sup> Discrimination Convention, 1958 urges to denounce discrimination in employment and occupation.<sup>167</sup> Both are among ILO's Fundamental Conventions.<sup>168</sup> Maternity Protection Convention, 2000 prescribes at least 14 weeks of maternity leave, with cash benefits, including a six-week compulsory leave after childbirth.<sup>169</sup> It is interesting to note that the Convention does not warrant leave with pay; instead, it proposes only cash benefits that must not be less than two-thirds of women's earning, which is considered to provide the same.<sup>170</sup> However, the Convention demands remuneration for such reduced period of daily work or one or more daily breaks for breastfeeding the child by counting the same as working time.<sup>171</sup> A woman is protected from all discrimination, including protection from termination, on account of her pregnancy.<sup>172</sup> The burden of proof is upon the employer to prove that the termination is unrelated to pregnancy,<sup>173</sup> and the woman is guaranteed to return to the same position or

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<sup>165</sup> “[C]reated in 1919, as part of the Treaty of Versailles that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice.” See About the ILO, *History of the ILO*, INTERNATIONAL LABOUR ORGANIZATION (June 28, 2021, 07: 07 AM), <https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>.

<sup>166</sup> Equal Remuneration Convention, *Supra* note 21, art.1(b).

<sup>167</sup> Convention Concerning Discrimination in respect of Employment and Occupation, *Supra* note 21.

<sup>168</sup> Normlex User Guide, *What are Fundamental Conventions?*, INTERNATIONAL LABOUR ORGANIZATION, (June 28, 2021, 11:04 AM), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:71:0::: .](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:71:0:::)

<sup>169</sup> Convention Concerning the Revision of the Maternity Protection Convention (Revised), *supra* note 21, arts. 4 & 6.

<sup>170</sup> Convention Concerning the Revision of the Maternity Protection Convention (Revised), *supra* note 21, art. 6,

<sup>171</sup> Convention Concerning the Revision of the Maternity Protection Convention (Revised), *supra* note 21, art. 10.

<sup>172</sup> Convention Concerning the Revision of the Maternity Protection Convention (Revised), *supra* note 21, art. 8.

<sup>173</sup> Convention Concerning the Revision of the Maternity Protection Convention (Revised), *supra* note 21, art. 8, ¶ 1.

an equivalent position paid at the same rate at the end of her maternity leave.<sup>174</sup>

A safe and secure working environment is a sine qua non for any workplace. The productivity and service quality of a workplace is in proportion to the serene environment provided by the workplace. ILO recognizes the same.<sup>175</sup> In order to stall gender-based violence and harassment and thereby augment the production and quality of service, the International Labour Organization introduced the Violence and Harassment Convention, 2019.<sup>176</sup> Before it, ILO put forth non-binding instruments which contain provisions on sexual harassment at work.<sup>177</sup> The Convention grants protection to all harassments on account of sex or gender, including sexual harassment.<sup>178</sup>

#### **Fourth World Conference on Women**

The four World Conferences on Women, the last of which was held in Beijing in 1995, organized by the UN Commission on Women, became the standard-setter for the global agenda for gender equality.<sup>179</sup> Among the four Conferences, the 1995 World Conference held in Beijing marked a

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<sup>174</sup> Convention Concerning the Revision of the Maternity Protection Convention (Revised), *supra* note 21, art. 8, ¶ 2 entered into force Feb. 07, 2002, ILO, C183..

<sup>175</sup> Convention Concerning Elimination of Violence and Harassment in the world of Work, *supra* note 21, (.....Recognizing that violence and harassment also affects the quality of public and private services, and may prevent persons, particularly women, from accessing, and remaining and advancing in the labour market, and

Noting that violence and harassment is incompatible with the promotion of sustainable enterprise and impacts negatively on the organization of work, workplace relations, worker engagement, enterprise reputation, and productivity, and.....).

<sup>176</sup> *Id.*

<sup>177</sup> ‘Resolution on Equal Opportunities and Equal Treatment for men and women in Employment, adopted by the International Conference at its seventy-first Session’ in 1985 Geneva: ILO; ‘International Labour Conference Resolution Concerning ILO action for Women Workers adopted by the international conference at its seventy-eighth session.’ in 1991 Geneva: ILO; ‘Code of Practice on Workplace Violence in Services Sectors and Measures to Combat this Phenomenon’, in 2003 Geneva: ILO.

<sup>178</sup> Convention Concerning Elimination of Violence and Harassment in the world of Work, *supra* note 21, art. 1 ¶ (a) & (b) and art. 4.

<sup>179</sup> *World Conferences on Women*, UN WOMEN (June. 29, 2021, 07:47 PM), <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>.

significant turning point for the global agenda for gender equality.<sup>180</sup> The Beijing Declaration urged appropriate authorities to take appropriate actions to:

- promote women's economic rights and independence, including access to employment, appropriate working conditions and control over economic resources
- facilitate women's equal access to resources, employment, markets and trade
- provide business services, training and access to markets, information and technology, particularly to low- income women
- strengthen women's economic capacity and commercial networks
- eliminate occupational segregation and all forms of employment discrimination
- promote harmonization of work and family responsibilities for women and men<sup>181</sup>

Appropriate authorities include governments, private sectors, non-governmental organizations, trade unions, financial intermediaries, national training institutes, women's associations, professional organizations, local, national and international business organizations, central banks, private banking institutions etc.<sup>182</sup>

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<sup>180</sup> *Id.* at 08:23 PM.

<sup>181</sup> *Id.* at 08:25 PM.

<sup>182</sup> *World Conferences on Women*, UN WOMEN (July. 29, 2021, 08:26 PM), <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>.

### **Buenos Aires Declaration on Women and Trade**<sup>183</sup>

The Declaration came into place thanks to the efforts of the governments of Iceland and Sierra Leone, as well as the International Trade Centre.<sup>184</sup> Trade Impact Group of the International Gender Champions- a leadership network which brings female and male decision-makers together to break down gender barriers- contributed heavily to the Declaration.<sup>185</sup> As a result, over 100 members and observers issued the Declaration on 11<sup>th</sup> WTO Ministerial Conference.

The, then, Director-General of WTO-Roberto Azvedo opined that: “This joint declaration is a very welcome step in promoting women's economic empowerment and in building the more inclusive trading system we all want to see. I am proud to support this initiative, and to help launch it here in Buenos Aires at the WTO's 11th Ministerial Conference.”<sup>186</sup> Governments of Iceland and Sierra Leone that were the vigorous advocates of the Declaration respectively said that: “Trade can help advance women’s economic empowerment and is also good for the economy. Therefore focusing on women and trade is not only the right thing to do, it also makes economic sense”and “The structural imbalances which contribute to an unequal distribution of the benefits from trade must be acknowledged and acted upon.”<sup>187</sup>

The Declaration acknowledges the significance of inculcating gender perspective into the promotion of inclusive economic growth, and the key role that gender-responsive policies can play in achieving sustainable socio-economic development.<sup>188</sup> Further, the Declaration acknowledges that gender

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<sup>183</sup> Joint Declaration on Trade and Women’s Economic Empowerment, *supra* note 1.

<sup>184</sup> Eleventh WTO Ministerial Conference, *Buenos Aires Declaration on Women and Trade outlines actions to empower women*, World Trade Organization, (Sept. 17, 2021, 10:04 AM), WTO | 2017 News items - Buenos Aires Declaration on women and trade outlines actions to empower women.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Joint Declaration on Trade and Women’s Economic Empowerment, *supra* note 1.

equality and women's economic empowerment including improving women's access to opportunities and removing barriers to their participation in national and international economies have a positive impact on economic growth, contributes to sustainable economic development and helps to reduce poverty.

Members and observers supporting the Declaration agreed to co-operate with each other on making their trade and development policies more gender responsive. That includes sharing their respective experiences concerning to policies and programmes to encourage women's participation in national and international economies through the WTO information exchanges, as appropriate, and voluntary reporting during the trade policy review process; sharing best practices for conducting gender-based analysis of trade policies and for the monitoring of their effects; sharing methods and procedures for the collection of gender-disaggregated data, the use of indicators, monitoring and evaluation of methodologies, and the analysis of gender-focused statistics related to trade. Supporting members and observers of the declaration agreed to working together in the WTO remove barriers for women's economic empowerment and increase their participation in trade. They have also agreed to collaborate in ensuring that Aid for Trade supports tools and know-how for analysing, designing and implementing more gender-responsive trade policies.<sup>189</sup>

## **Indian Legal Instruments**

### **The Constitution of India**

Despite India's checkered past with gender rights, India has been witnessing steady progress towards gender parity. Art.14 of the Constitution of India guarantees equality before the laws and equal protection of the laws.<sup>190</sup> Indian Constitution prohibits discrimination on account of sex, inter alia, in

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<sup>189</sup> *Id.*

<sup>190</sup> INDIA CONST. art. 14 ("The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.").

matters of public employment.<sup>191</sup> Art. 23(1) prohibits all forms of forced labour.<sup>192</sup> Art. 39 (a) advocates for the right to an adequate means of livelihood, equally, for both men and women.<sup>193</sup> Further, Art.39 (d) advocates equal pay for equal work for both men and women.<sup>194</sup> The State is obligated to make provisions for just and humane conditions of work and maternity relief.<sup>195</sup> It is axiomatic from the Constitution of India that gender parity in the economic and trade sphere is an indispensable part of the country. In furtherance to the same, India has been witnessing legislation since independence towards fulfilling the gender parity in the economic and trade arena. The introduction of gender parity matters to the forefront of international trade is nothing short of what the Indian Constitution likes.<sup>196</sup> Besides, Indian Constitution warrants the State to foster respect for international law and treaty obligations.<sup>197</sup> As a result of its obligation towards the Indian people and the international community, India has incorporated many provisions which call for gender parity in the economic

<sup>191</sup> See INDIA CONST. arts. 15 & 16.

<sup>192</sup> INDIA CONST. art. 23(1) (“Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”).

<sup>193</sup> INDIA CONST. art. 39(a) (“The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; .....”).

<sup>194</sup> INDIA CONST. art. 39 (d). (“The State shall, in particular, direct its policy towards securing— (a)..... ; (d) that there is equal pay for equal work for both men and women ; .....”).

<sup>195</sup> INDIA CONST. art. 42. (“ The State shall make provision for securing just and humane conditions of work and for maternity relief.”).

<sup>196</sup> But, it is not what Indian diplomats are looking for. See Arun S, *119 Nations back move to Remove Barriers Limiting Women’s Participation in Trade*, THE HINDU, (July 02, 2021, 11:02 AM), <https://www.thehindu.com/business/Economy/119-nations-back-move-to-remove-barriers-limiting-womens-participation-in-trade/article21581261.ece> ; See also Scroll Staff, *India Votes against WTO Declaration seeking to improve Gender Equality in Trade*, SCROLL.IN, (July 02, 2021, 11:05 AM).

<sup>197</sup> INDIA CONST. art. 51(c). (“The State shall endeavour to—

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(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another....”)

and trade sphere. Even if the institution mainly focuses on international trade, the laws are not being excluded.<sup>198</sup>

### **The Factories Act**<sup>199</sup>

Indian Factories Act, 1948,<sup>200</sup> which applies to factories<sup>201</sup> across the country resonates with the gender parity goal of the Indian economic and trade arena. Manufacturing is at the core of export and hence, international trade. Any manufacturing unit in India, as long as it is a 'factory' under the Act,<sup>202</sup> in order to ensure equality of circumstances, must provide a crèche facility if the factory employed more than thirty women workers.<sup>203</sup> This provision provides the impetus for the working women without compromising their families if they so wish. Having said that, discrimination against women is quite visible in the numerous provisions of the Act.<sup>204</sup> Women are prohibited from employment in any part of a factory for pressing cotton in which a cotton opener is at work.<sup>205</sup> S.66 of the Act provides further restrictions on the employment of women. A woman is not permitted to work for more than nine hours any day under any circumstances.<sup>206</sup> No woman is required or permitted to work except between 6 a.m. and 7 p.m.<sup>207</sup> The Act, further, curbs

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<sup>198</sup> However, Special Economic Zones entails some exceptions which lead to exploitation of workers, particularly women workers. See SAZZAD PARWEZ, LABOUR AND LABOUR WELFARE IN SPECIAL ECONOMIC ZONES IN INDIA WITH SPECIAL REFERENCE TO GUJARAT, 23 SOTH ASIAN SURVEY 135 (2018).

<sup>199</sup> The Factories Act, 1948, *supra* note 24.

<sup>200</sup> *Id.*

<sup>201</sup> The Factories Act, *supra* note 24, §2(m),

<sup>202</sup> The Factories Act, *supra* note 24.

<sup>203</sup> The Factories Act, § 48(1) (“ In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.”).

<sup>204</sup> The Factories Act, *supra* note 24.

<sup>205</sup> The Factories Act, *supra* note 24, §27 (“No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work: Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.”).

<sup>206</sup> The Factories Act, *supra* note 24, § 66 ; See also The Factories Act, *supra* note 24, § 54.

<sup>207</sup> The Factories Act, *supra* note 24, § 66(1)(b) (“ The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further



the power of the government to extend the working period of women by forbidding any requirement of employment between 10 p.m. and 5 a.m.<sup>208</sup> unless the employment of women, working in fish-curing or fish-canning factories, is necessary to prevent damage to, or deterioration in, any raw material.<sup>209</sup> Further, the state government has the power to prohibit or restrict the employment of women in the manufacturing process or operation if there exists a serious risk of bodily injury, poisoning, or disease.<sup>210</sup>

The restrictions and prohibitions provided under the Act impede gender parity. The State has to ensure the safe passage of its people, irrespective of gender, during any period of the day and night. Restriction or prohibition placed on women's employment during specific hours may act as an impetus for the employers to employ more men workers. Also, it may reduce the overall productivity. Prohibition or restriction of women's employment in dangerous manufacturing processes or operations acknowledges that such works are not meant for the 'inferior' gender. The provision reflects the patriarchal notion that men are meant to do such works, and women have to be protected from the same since they are the 'weaker' genders-mentally and

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restrictions, namely:— (a)..... ; (b) no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M.:.....”).

<sup>208</sup> The Factories Act, *supra* note 24, § 66 (1)(b) (“ The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely:— (a)..... ; (b) no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M.: Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M..”).

<sup>209</sup> The Factories Act, *supra* note 24, § 66(2) (“The State Government may make rules providing for the exemption from the restrictions set out in sub-section (1), to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.”).

<sup>210</sup> The Factories Act, *supra* note 24, § 87 (b) Acts of Parliament, 1948 (“Where the State Government is of opinion that any manufacturing process or operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the manufacturing process or operation is carried on—.....; (b) prohibiting or restricting the employment of women, adolescents or children in the manufacturing process or operation; .....”).

physically. Also, the prohibition or restriction of women in such works may be detrimental to gender parity.

### **Equal Remuneration Act<sup>211</sup> and Maternity Benefit Act<sup>212</sup>**

Discrimination in remuneration is a centuries-old problem. Indian society is no exception. Equal Remuneration Act, 1976<sup>213</sup> came into force to give effect to Art. 39 of the Constitution of India<sup>214</sup> which calls endeavours from state to make equal pay for equal work. Equal Remuneration Act, 1976, warrants equal pay for equal work<sup>215</sup> and prohibits discrimination against women while recruiting the same work or work of a similar nature.<sup>216</sup> Equality in payment is an incentive that allures more women to employment. It increases the available human capital, skilled or unskilled. More people, skilled or unskilled, in the field, may significantly augment the production and thereby international trade. Further, equality in payment creates more people who can afford the commodities, which are other ways estranged to them. Thus, equal

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<sup>211</sup> Equal Remuneration Act, *supra* note 25.

<sup>212</sup> Maternity Benefit Act, *supra* note 26.

<sup>213</sup> Equal Remuneration Act, *supra* note 25.

<sup>214</sup> INDIA CONST. art. 39.

<sup>215</sup> Equal Remuneration Act, *supra* note 25., § 4 (“(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature. (2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker. (3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are only two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers: Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.”).

<sup>216</sup> Equal Remuneration Act, *supra* note 25, § 5 (“On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force: Provided that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees of any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.”).

pay for equal work also increases demand for certain products, which boosts international trade.

Maternity Benefit Act, 1961 entails a woman to claim benefits as provided by the Act to a maximum period of six weeks preceding and including the day of delivery and six weeks after the delivery.<sup>217</sup> The Act ensures employment security for women,<sup>218</sup> prohibits discrimination on account of sex, and bolsters the international trade realm by ensuring women's participation. Thus, the legislation paves the way for gender parity.

### **The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act<sup>219</sup>**

Sexual harassment in the workplace leads to increased absenteeism and turnover and lowers workplace productivity and job satisfaction.<sup>220</sup> As a result, sexual harassment is detrimental to international trade. India demands every workplace employer to constitute Internal Complaints Committee to take cognizance of sexual harassment cases.<sup>221</sup> The Sexual Harassment at

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<sup>217</sup> Maternity Benefit Act, *supra* note 26, §5(3) (“...(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day: Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death: Provided further that where a woman, having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up to and including the day of the death of the child.”); India is yet to ratify the Maternity Protection Convention, 2000 which calls for at least 14 weeks of maternity benefits. See Maternity Protection Convention, 2000, *Countries that have not Ratified this Convention*, INTERNATIONAL LABOUR ORGANIZATION, (June 30, 2021, 07:42 PM),

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310\\_INS TRUMENT\\_ID:312328:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INS TRUMENT_ID:312328:NO).

<sup>218</sup> Maternity Benefit Act, *supra* note 26, §12(1), No. 53, Acts of Parliament, 1961 (“Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.”).

<sup>219</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 27.

<sup>220</sup> JONI HERSCH, SEXUAL HARASSMENT IN THE WORKPLACE (IZA World of Labor, 2015).

<sup>221</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 27, § 4(1) (“Every employer of a workplace shall, by an order in writing,

Workplace Act, 2013,<sup>222</sup> which obligates every employer to constitute Internal Complaints Committee, mandates every District Officer<sup>223</sup> to constitute Local Complaints Committee in the district concerned.<sup>224</sup> Such Local Complaints Committee shall receive complaints against the employer himself or from establishments where no Internal Complaints Committee has been constituted due to having less than ten workers.<sup>225</sup> The Act has given wide ambit to the term ‘sexual harassment’ by providing an inclusive definition.<sup>226</sup> As a result, any unwelcome physical, verbal or non-verbal conduct of sexual nature is also, rightly, included within the cusp of ‘sexual harassment’.<sup>227</sup> The Sexual Harassment at Workplace Act, 2013,<sup>228</sup> envisioned to augment the workplace atmosphere of women. The Act stands as a bulwark against discrimination at the workplace on account of sex. Ergo, the Act ensures gender parity.

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constitute a Committee to be known as the “Internal Complaints Committee”: Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.”).

<sup>222</sup> The Sexual Harassment of Women at Workplace ( Prevention, Prohibition and Redressal) Act, *supra* note 27.

<sup>223</sup> The Sexual Harassment of Women at Workplace ( Prevention, Prohibition and Redressal) Act, *supra* note 27, § 5 (“The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.”).

<sup>224</sup> The Sexual Harassment of Women at Workplace ( Prevention, Prohibition and Redressal) Act, *supra* note 27, § 6(1) (“ Every District Officer shall constitute in the district concerned, a committee to be known as the Local Committee to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.”).

<sup>225</sup> The Sexual Harassment of Women at Workplace ( Prevention, Prohibition and Redressal) Act, *supra* note 27, § 6(1).

<sup>226</sup> The Sexual Harassment of Women at Workplace ( Prevention, Prohibition and Redressal) Act, *supra* note 27, § 2(n).

<sup>227</sup> *Id.* (2.....)

.....  
 (n) “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:— (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature”).

<sup>228</sup> The Sexual Harassment of Women at Workplace ( Prevention, Prohibition and Redressal) Act, *supra* note 27.

## CONCLUSION

Any country which ratified or acknowledged the international human rights/gender rights instruments could not shy away from their responsibilities to ensure the effective enforcement of the rights enshrined therein in their international trade sphere. For that, the enforcement of these provisions need not be a part of international trade. Member states must comply with their obligations under the said instruments. The apprehension of developing and least-developed countries, that they may miss the bus of development and growth, contribute to the want of ratification and improper implementation of the said laws. They fail to realize that gender imparity is a significant concern that stalls their overall progress and international trade in particular.<sup>229</sup> Much water has flown under the bridge since introducing the various human rights and gender rights accords. Still, gender parity in the international trade arena is miles away from reality. This plight of gender parity invites the introduction of gender rights to the forefront of international trade.

Despite some progressive laws indeed, India's economic and trade fields are far from achieving gender parity. International trade by the institutions within India's territory must comply with, among other things, the domestic laws calling for gender parity. Gender imparity is not conducive for India's export, for that matter, international trade. Around half of the population does not feel the country is secure enough to contribute. It is to be noted that gender parity is not confined to men and women's mere labour force participation rate. Of course, women's labour force participation rate in an industry plays a significant role, but it is not everything. In Kerala, cashew industries do have

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<sup>229</sup> See JONATHAN WOETZEI et. al., THE POWER OF PARITY: HOW ADVANCING WOMEN'S EQUALITY CAN ADD \$12 TRILLION TO GLOBAL GROWTH (McKinsey & Company, Sept. 2015) ; See also INTERNATIONAL MONETARY FUND, GROUP OF SEVEN: PURSUING WOMEN'S ECONOMIC EMPOWERMENT, Meeting of G7 Ministers and Central Bank Governors, June 1-2, 2018 Whistler, Canada ; UN INTER-AGENCY NETWORK ON WOMEN AND GENDER EQUALITY TASK FORCE ON GENDER AND TRADE, TRADE AND GENDER OPPORTUNITIES AND CHALLENGES FOR DEVELOPING COUNTRIES (Anh-Nga Tran-Nguyen & Americo Beviglia Zampetti, UNCTAD 2004).

a significant say in determining the export indicators of the State. More than 40% of the total cashew kernel export from India is from Kerala.<sup>230</sup> The Kerala State Cashew Development Corporation Limited is the most significant player in the market by having a turnover of 250 crores.<sup>231</sup> The next chapter will divulge the gender parity in the Kerala State Cashew Development Corporation Limited.

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<sup>230</sup> *Export Indicators*, DEPARTMENT OF INDUSTRIES AND COMMERCE- GOVERNMENT OF KERALA (July 03, 2021, 12:02 PM), <https://www.keralaindustry.org/index.php/at-a-glance/organisational-chart>.

<sup>231</sup> *About KSCDC*, THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LTD., (July 03, 2021, 08:47 PM), <https://cashewcorporation.com/about-kscdc/>.

## **CHAPTER-5**

### **GENDER PARITY : THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LIMITED**

#### **INTRODUCTION**

Finding out the gender parity status of the Kerala State Cashew Development Corporation Limited (KSCDC) was one of the research questions. For that both quantitative and qualitative data were required. Researcher relied completely on primary data collection (right to information method).

Research was confined to the gender parity status exclusively among the labourers in the factories of the KSCDC. It did exclude directors of KSCDC, senior executives, junior executives, office staffs and all the other like categories of KSCDC and its factories. Census method is used; hence the research collected data from all the factories of KSCDC through a single RTI application to the KSCDC. It saved time and money sans compromising the authenticity of data. The aim of the RTI application was to collect data relating to the gender parity status of the labourers in all the factories under the KSCDC. Total 12 questions have been asked. In which, 5 and 4 sub-questions formed question numbers 2 and 9 respectively. The application dated 05.04.2021, which was sent through registered post, reached the KSCDC on 07.04.2021. The researcher received the reply dated 30.04.2021 on 05.05.2021. The reply was satisfactory. Therefore, no appeal proceeding was initiated.

Mean of women's labour force participation in KSCDC has been identified as:

$$\frac{W_k}{N_k}$$

$W_k =$  Total number of women labourers in KSCDC

$N_k =$  Total number of labourers in KSCDC

K indicates KSCDC

The percentage of women labourers employed in various categories of labour out of the total women workforce has been identified as:

$$\frac{W_x}{W_k} \times 100$$

$W_x =$  Total number of women labourers in each categories of labour

$W_k =$  Total number of women labourers in KSCDC

x indicates category of labour while k indicates KSCDC

Mean of women's labour force participation in each category of labour in KSCDC where at least one woman is being employed has been identified as:

$$M_x = \frac{W_x}{F_k}$$

$M_x =$  Mean of women's labour force participation in each category of labour

$W_x =$  Total number of women labourers in each categories of labour

$F_k =$  Total number of factories under KSCDC



The data collection and analysis do not reveal the total number of women labour force per factory. Also, the total number of complaints received by each Internal Complaints Committee cannot be identified through the same. That being said, the aforesaid data collection and analysis provide candid information with respect to the gender parity status of the whole KSCDC labour force. Since the right to information method was used the authority concerned was bound by law to provide accurate and honest information. It is to be noted that gathering data from each factories of the KSCDC would not have been practical thanks to the pandemic and the paucity of time.

### **THE STATE OF KERALA, CASHEW INDUSTRY AND THE KSCDC**

The state of Kerala accounts for around 4% of the total GDP of the country.<sup>232</sup> Kerala is placed after Mizoram and Meghalaya among the Indian states in gender parity..<sup>233</sup> However, the labour force participation rate is around 30%.<sup>234</sup>

During April 2018-January 2019, India has exported 55272 metric tons of cashew kernels, 1323 metric tons of roasted and salted cashew kernels, and 4547 metric tons of cashew nut shell liquid/cardanol.<sup>235</sup> The export of cashew kernel from Kerala was 29,062 metric tons in 2018-19 with a value of 2580 crores.<sup>236</sup> This made it around 43.6 % of the total cashew kernel exports from India.<sup>237</sup> This reveals the significance of the region in the cashew processing

<sup>232</sup> MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION-GOVERNMENT OF INDIA (Feb.08, 2021, 06 : 43 PM), <https://www.mospi.gov.in/web/mospi/home>.

<sup>233</sup> Woetzel et. al. *Supra* note 4.

<sup>234</sup> *Id.*

<sup>235</sup> *Statistics*, THE CASHEW EXPORT PROMOTION COUNCIL OF INDIA, (Feb.08, 2021, 07:32 PM), [Cashewindia.org/statistics](http://Cashewindia.org/statistics).

<sup>236</sup> *Export Indicators*, DEPARTMENT OF INDUSTRIES AND COMMERCIAL-GOVERNMENT OF KERALA (Feb. 08, 2021,08:17 PM), <https://www.keralaindustry.org/index.php/at-a-glance/organisational-chart>.

<sup>237</sup> *Id.*

industry in India.<sup>238</sup> The Kerala State Cashew Development Corporation Limited (KSCDC) was incorporated in July 1969.<sup>239</sup> The KSCDC has more than 15000 workers, and 500 staff members are working in the 30 factories across Kerala.<sup>240</sup> With an annual turnover of more than 250 crores, KSCDC plays a vital role in the cashew export industry.

### **STATUS OF GENDER PARITY**

The Cashew industry requires arduous manual labour and has a long history of recruiting many women workers; KSCDC is not an exception to the same. KSCDC employs 98.12% women out of its total of 11828 factory workers across the 30 factories of KSCDC.<sup>241</sup> Thus, the women's labour force participation rate averages 386.86 workers per factory, whereas the total labour force averages 394.26 workers per factory. Women labourers are employed in various labour categories. They are Shelling, Peeling, Grading, General Maicadu, Cooling Maicadu, Podi Maicadu, Rejection Maicadu, Cleaning Staff, Tholippattu Maicadu, Filling & Packing, Pirival Maicadu, and Cutting.

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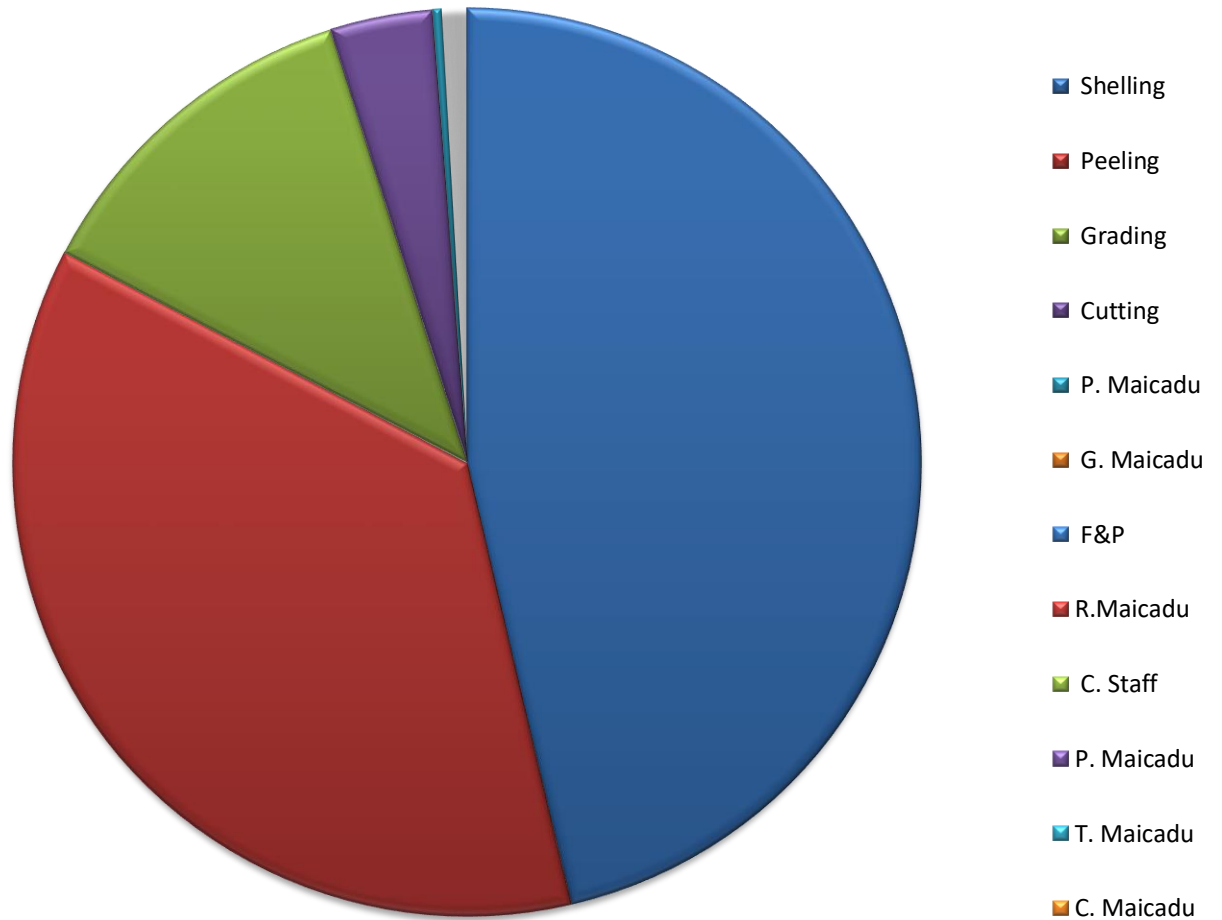
<sup>238</sup> See: Rajesh Many, *The Causes of Crisis in the Cashew Industry Cluster in Kollam*, KERALA INSTITUTE OF LABOUR AND EMPLOYMENT (KILE) THIRUVANANTHAPURAM, Mar. 2019.

<sup>239</sup> *About KSCDC*, THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LIMITED, (Feb.09, 2021, 05:12 PM), <https://cashewcorporation.com/about-kscdc/>.

<sup>240</sup> *About KSCDC*, THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LIMITED, (Feb.09, 2021, 05:12 PM), <https://cashewcorporation.com/about-kscdc/>.

<sup>241</sup> Annexure A

## LABOUR FORCE PARTICIPATION RATE(%) OF WOMEN IN VARIOUS LABOUR CATEGORIES



(in %)

#Shelling-46.303 # Peeling-36.386 # Grading-12.450 # Cutting-3.636

#P. Maicadu (Podi Maicadu)-0.318

# G. Maicadu (General Maicadu)-0.198

#F&P(Filling & Packing)-0.198

#R. Maicadu (Rejection Maicadu)-0.163

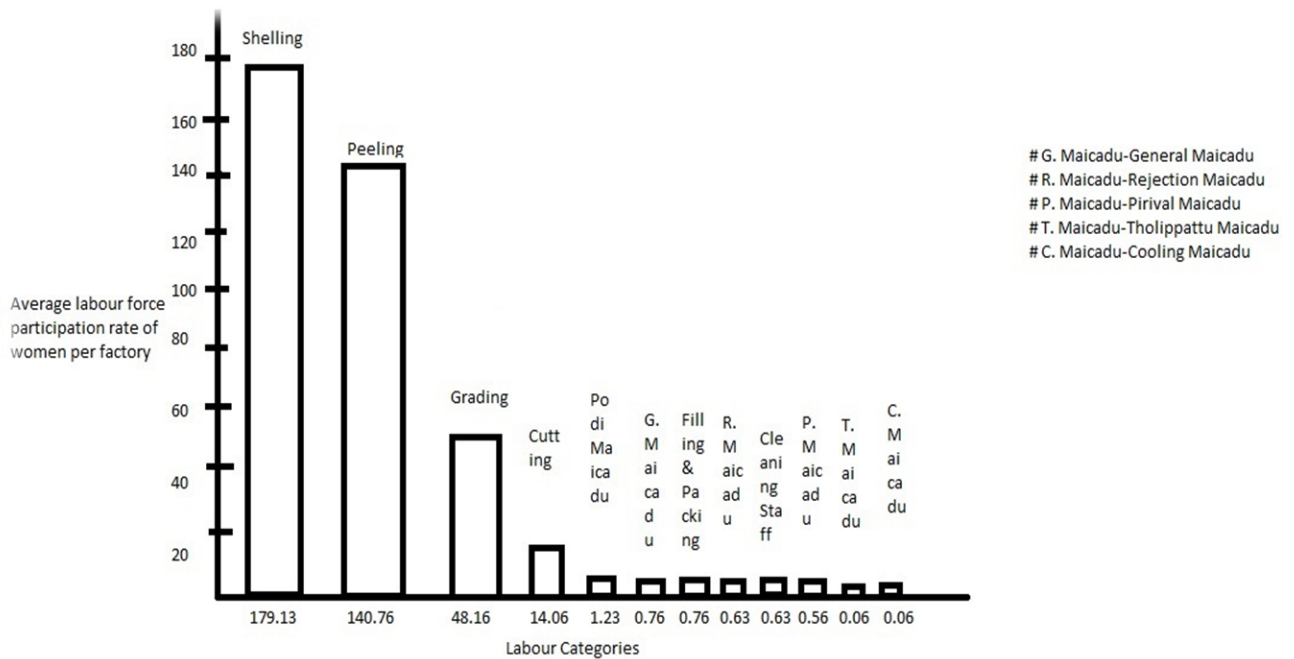
#C.Staff (Cleaning Staff)-0.163

#P. Maicadu (Pirival Maicadu)-0.146

#T. Maicadu (Tholippattu Maicadu)-0.017

#C. Maicadu (Cooling Maicadu)-0.017

Out of the total 11606 women labourers, 46.303% have been employed in Shelling while 36.386% have been engaged in Peeling. Shelling, Peeling, Grading, and Cutting comprise about 99% of the total women workforce in the Kerala Cashew Development Corporation Limited's 30 factories. It is axiomatic from the above data that women prefer Shelling, Peeling, and Grading to any other labour category. Unlike many different sectors, data shows us that there is no question of gender inequality, at least in the labour force of women in Shelling, Peeling, Grading, and Cutting labour categories in all the factories of KSCDC.



The above figure resonates with the average labour force participation of women per factory in labour categories where at least one woman is being employed. It is pertinent to note that women's labour force participation rate averages less than one per factory in labour categories other than Shelling,

Peeling, Grading, Podi Maicadu, and Cutting. Shelling averages 179.33 women labourers per factory while Peeling, Grading, and Cutting respectively average 140.76, 48.16, 14.06 women labourers per factory. The data reveals that though women are employed in distinct labour categories, their participation is not equally divided. Thus, workforce gender inequality is visible in General Maicadu, Cooling Maicadu, Podi Maicadu, Rejection Maicadu, Cleaning Staff, Tholippattu Maicadu, Filling & Packing, and Pirival Maicadu.

Gender inequality in the workforce is not confined to the said categories of labour. Roasting is a category of labour in which no woman is being employed. The specified action of the KSCDC is being buttressed by § 66 (1) (b) of the Indian Factories Act, 1948.<sup>242</sup> As far as the KSCDC is concerned, Roasting is a labour category which warrants exclusive timing between 7 p.m. and 6 a.m. Roasting is not explicitly prohibited for women under the Indian Factories Act, 1948.<sup>243</sup> The RTI reply provided by the KSCDC reveals that the Corporation arbitrarily adjudged that the Roasting would be dangerous to women.<sup>244</sup> The patriarchal concept of ‘manliness’ resonates in their attitude. As a result, KSCDC has regulated (in practice-prohibited) the employment of women in Roasting.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter ‘the Act of 2013’) warrants the constitution of the Internal Complaints Committee (ICC) at every factory to deal with workplace sexual harassment.<sup>245</sup> KSCDC has complied with the

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<sup>242</sup> The Factories Act, 1948, *Supra* note 24, § 66(1)(b) ( “...(b) no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M....”).

<sup>243</sup> The Factories Act, 1948, *Supra* note 24.

<sup>244</sup> Annexure

<sup>245</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 27, § 4(1) (“ Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”.

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Complaints Committee shall be constituted at all administrative units or offices.).

same by constituting ICCs at all 30 factories.<sup>246</sup> It is to be noted that it has taken them more than one year to comply with the same.<sup>247</sup> Also, they have failed to reconstitute the Committees after their initial constitution. Such an act is a blatant violation of § 4(3) of the Act of 2013.<sup>248</sup> The fact that all the ICCs have received a total of only five complaints since their constitution reflects that either the KSCDC's factories have a near-perfect atmosphere for women or want of proper enforcement of §19(a)-(c) of the Act of 2013.<sup>249</sup> Thus, the lack of awareness among women employees may have highly contributed to the meager number of complaints received by the ICCs.

The KSCDC follows the principle of 'equal pay for equal work.' Though they may not employ women in all labour categories, they do not differentiate in payment between men and women within a labour category. They do provide crèche facility at all factories. All the benefits accessible to male workers are also accessible to female workers. Besides the general laws concerning all genders,<sup>250</sup> women labourers are protected by specific laws such as the

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<sup>246</sup> Annexure

<sup>247</sup> KSCDC has constituted ICC on 8<sup>th</sup> August 2014. (See Annexure)

<sup>248</sup>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 27, § 4(3) ("The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer").

<sup>249</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note, § 19(a)-(c), 2013 ("Every employer shall-

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Complaints Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Complaints Committee in the manner as may be prescribed;.....").

<sup>250</sup> The Factories Act, 1948, No. 63, Acts of Parliament, 1948; The Minimum Wages Act, 1948, No.11, Acts of Parliament, 1948; Equal Remuneration Act, 1976, No. 25, Acts of Parliament, 1976; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, No.19, Acts of Parliament, 1952; The Kerala Cashew Workers' Relief and Welfare Funds Act

Maternity Benefit Act, 1961<sup>251</sup> and the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013.<sup>252</sup>

## **CONCLUSION**

Though around 98% of the labourers are women, their numbers are less than rudimentary in most labour categories. The prohibition of women's employment in Roasting is a travesty of Articles 14,<sup>253</sup> 15<sup>254</sup> and 16<sup>255</sup> of the Constitution of India. The KSCDC's justifications for the same fall foul to the constitutional ethos. Want of sensitization among the administration and among the labourers resonate in the disastrous working of the Internal Complaints Committees. Employer at every factory invites penalty under § 26(1)(c) of the Act of 2013.<sup>256</sup> As they say, ignorance of the law is no excuse. The world of international trade, slowly but steadily, is witnessing a change in its attitude towards gender rights. The KSCDC aspires to expand its global market. The proper recognition of gender rights akin to the international standards, inter alia, would propel their business and set a benchmark among the international players in their field. Thus, the KSCDC warrants rigorous changes in its approaches towards women and gender-specific laws.

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<sup>251</sup> Maternity Benefit Act, 1961, No.53, Acts of Parliament,1961.

<sup>252</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013.

<sup>253</sup> INDIA CONST. art.14.

<sup>254</sup> INDIA CONST. art.15.

<sup>255</sup> INDIA CONST. art. 16.

<sup>256</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, § 26(1), 2013 (Where the employer fails to-

.....

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder, he shall be punishable with fine which may extend to fifty thousand rupees.”).



## CHAPTER-6

### CONCLUSION AND SUGGESTIONS

As history of slave trade tells us, human rights, let alone gender rights, were never the cup of tea of international trade. International trade is centuries old, even older than 'silk route' and 'spice route' as evident from the archaeological remnants across the world. As in every sphere of the society, patriarchy dominated trade too. Human rights were confined to white, male and property owners to a larger part of human history. 20<sup>th</sup> century world has witnessed radical change in those skewed thoughts.

International trade must conform to peremptory norms whether or not it recognizes human rights. As a result forced labour/servitude of women or for that matter anybody is prohibited even though the bilateral or multilateral trade treaty concerned disregards the same. Besides, International Labour Organization's (ILO) 'fundamental rights' are binding upon all the members of ILO despite their status of legal recognition of respective conventions arising from the 'fundamental principles'.<sup>257</sup> The 'elimination of discrimination in respect of employment and occupation' is one among the 'fundamental principles'. All ILO members are bound to work towards that goal.<sup>258</sup> It is a sorry state of affair that despite the existence of numerous human rights and gender rights instruments, gender parity in trade is far away from reality.

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<sup>257</sup> Declaration on Fundamental Principles and Rights at Work and its Follow-up, International Labour Conference, art.2, ILO, 86th Session, Geneva, June 1998.

<sup>258</sup> Declaration on Fundamental Principles and Rights at Work and its Follow-up, International Labour Conference, art.2, ILO, 86th Session, Geneva, June 1998 (Four 'fundamental principles' are : (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

.World Trade Organization came into place, displacing the General Agreement on Tariff and Trade, on 1995. It is the only international body that regulates the international trade among nations. Since WTO is an international organization, it cannot shy away from the responsibility to uphold human rights and, for that matter, gender rights. Within the current legal framework of the World Trade Organization (WTO), Article XX (a), (b) and (e) of the GATT can be invoked to incorporate gender parity matters in international trade.<sup>259</sup> Public morals, human life and prison labour engulfed in Article XX (a), (b) and (e) respectively could include gender parity matters. The word ‘necessary’, which qualifies ‘public morals’ and ‘human life’, ensures that the trade-restrictive measure must be used as a last resort. Consequently, the measures invoked by a country in furtherance of gender parity goals in the international trade sphere must satisfy the condition of ‘necessary’ even if they can protect ‘public morals’ and ‘human life’. It is to be noted that the term ‘necessary’ does not qualify Article XX (e) which talks about ‘prison labour’. On the contrary, the term ‘relate to’ which in fact qualifies prison labour indicates that there must be a reasonable or substantial relationship between a trade restriction and the valid state interest it promotes.<sup>260</sup> Also, not all gender related matters can be included under ‘prison labour’ no matter how much the scope of the word has been widened through interpretation.

Political Declaration on the occasion of the twenty-fifth anniversary of the Fourth World Conference on Women by the UN Commission on Women has expressed concern that even after all these years since the Conference no

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<sup>259</sup> GATT 1994, *supra* note 52, art. XX (“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: (a) necessary to protect public morals; (b) necessary to protect human, animal or plant life or health;.....(e) relating to the products of prison labour”).

<sup>260</sup> See Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, at 19, WTO Doc. WT/DS2/AB/R (May 20, 1996).

country has achieved gender equality and empowerment for all women and girls. Since most WTO members are UN members they are committed, specifically in the context of economic and social cooperation, to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>261</sup> Article 103 of the UN Charter reaffirms the supremacy of the Charter over any other international agreements and thus places the obligations of the countries under UN Charter on a higher pedestal than WTO obligations.<sup>262</sup>

Countries like India did not embrace the Declaration on Trade and Women’s Economic Empowerment.<sup>263</sup> India was of the opinion that WTO is not the appropriate body to discuss such issues. If the gender rights were to be made under WTO obligations, then the developing and least- developed countries (LDCs) would be at peril. The developed countries in the last couple of centuries have exploited and looted the said countries and made them penniless while the colonial masters achieved flamboyant economic growth. In their race towards economic prosperity the colonial masters denounced every fundamental human rights, let alone the gender rights. Only in the second-half of twentieth century these colonies have shredded their chains. Ensuing the freedom, most of these countries plunged into the abyss of corruption and other internal and international struggles. That resulted in their continued economic derailment. Making the gender rights obligated to WTO members would invite wrath upon the social, cultural and economic fabrics of the developing and least developed members and cause turbulence in the dispute settlement mechanism of the WTO.

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<sup>261</sup> U.N. Charter art. 52; See also UN INTER-AGENCY NETWORK ON WOMEN AND GENDER EQUALITY TASK FORCE ON GENDER AND TRADE, TRADE AND GENDER OPPORTUNITIES AND CHALLENGES FOR DEVELOPING COUNTRIES (Anh-Nga Tran-Nguyen & Americo Beviglia Zampetti, UNCTAD 2004).

<sup>262</sup> U.N. Charter art. 103 (“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”).

<sup>263</sup> Buenos Aires Declaration on Women and Trade outlines actions to empower women, *Members and Observers supporting the Buenos Aires Declaration on Women and Trade*, WORLD TRADE ORGANIZATION, (Sept. 25, 2021, 08:43 PM), [https://www.wto.org/english/news\\_e/news17\\_e/mc11\\_12dec17\\_e.htm](https://www.wto.org/english/news_e/news17_e/mc11_12dec17_e.htm).; See *supra* note 1.

Having said that, the way forward for gender rights in WTO is bright. The Marrakesh Agreement establishing the WTO recognizes “raising standards of living” and “sustainable development” as its objectives. The members have begun to realize that the raising the standard of living and sustainable development of their territory cannot be achieved by snubbing almost half of its population. The document prepared by WTO secretariat, which revealed the plate of economic impact of covid-19 on women, reflects how far the organization has come in gender issues. WTO has a significant role in attaining the 2030 Sustainable Development Goals (SDG). WTO recognizes, inter alia, its role in SDG 5: Gender Equality.<sup>264</sup> The Aid for Trade monitoring exercise in 2017 revealed that most WTO members – least-developed, developing and developed – believe that trade can play an important role in empowering women and contributing to achieving SDG 5 on gender equality.<sup>265</sup>

Gender rights in the modern world are not confined to women’s rights alone. World contains more than two genders. The studies which proclaimed that advancing gender equality would increase GDP failed to consider transgenders. WTO’s and other international organizations including UN’s discussions of gender rights are confined to women’s rights. Even the 2030 SDGs snubbed the rights of transgenders. Economy boosts when the people irrespective of their distinctions do have equal opportunities in all spheres of life. Though the recent development in WTO buttressed on the said, WTO must enlarge the effectiveness of the inclusive growth idea and also must widen the ambit of the term ‘gender’ by expanding its horizon beyond the traditional understanding of a two-gender world by keeping in mind the needs of LDCs.

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<sup>264</sup> WORLD TRADE ORGANIZATION, MAINSTREAMING TRADE TO ATTAIN THE SUSTAINABLE DEVELOPMENT GOALS (2018).

<sup>265</sup> *Id.*

The age-old concept of women being the 'weaker gender' resonates in Indian employment field laws. That is why, sections 27<sup>266</sup> and 66<sup>267</sup> of the Factories Act, 1948 respectively prohibit women from employment in any part of a factory for pressing cotton in which a cotton opener is at work, and working at night. These provisions neither safeguard women nor aid the productivity. As a result, it negatively impacts international trade.

Prima facie it looks like the Kerala State Cashew Development Corporation Limited (KSCDC) has been practicing gender parity in labour force employed. But, a deeper look at the figures reveals a different story. Though there are 98.12% women labourers out of its 11828 labourers across 30 factories, the women labourers are concentrated on Shelling, Peeling, Grading and Cutting. The 'renowned' gender parity of KSCDC in labour force participation is really a façade. The number of women labourers employed as Podi Maicadu, General Maicadu, Filling & Packing, Rejection Maicadu, Cleaning Staff, Pirival Maicadu, Tholippattu Maicadu and Cooling Maicadu do not resemble the gender parity in workforce. Also, women are prohibited from being employed in Roasting since it is 'too dangerous' for them. Transgenders are not employed in any field of labour in KSCDC. Thus, the careful analysis of the data determines that the KSCDC is not a gender parity institution in the labour workforce albeit they employ 98.12% women labourers. It is high time for the KSCDC to embrace gender parity in practical sense in order to attract new modern-liberal worlds in its efforts to maximize exports.

Since, WTO is the only international body dealing with multilateral trade, a change in the international trade narrative sans WTO's firm presence is impossible.

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<sup>266</sup> The Factories Act, *supra* note 24, §27.

<sup>267</sup> The Factories Act, *supra* note 24, § 66.

It is high time for the WTO to make gender-related matters within the purview of WTO-related laws. Initiatives from WTO members can start from ensuring adequate representation of women at the WTO bodies including the Appellate Body. Addition of more women members, alone, cannot alleviate gender silences. Training on gender issues, including in the conduct of gender impact assessments, should also be provided to members of the WTO Secretariat, to representatives from state trade ministries, and to adjudicators of trade disputes are also an important facet in incorporating gender-related matters to WTO laws. Thus, from making an indirect mention of gender-related matters under exceptions WTO must go towards making them as obligations subject to dispute settlement if broken.

### **SUGGESTIONS**

- ▶ Human rights and gender rights must be inculcated as obligations of the states under the WTO legal instruments which can be submitted to dispute settlement mechanism.
- ▶ Ensure adequate representation of women at the WTO bodies including the Appellate Body.
- ▶ Studies on trade and gender must be wide enough to incorporate more than two genders.
- ▶ Repeal of s.27 and s.66 of the Factories Act, 1948(India) thanks to its discriminatory nature.
- ▶ The KSCDC must obliterate discrimination against women in 'Roasting' and other labour category. Also must properly implement all the gender-related laws especially the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

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**APPENDIX**

✓ RTI



**THE KERALA STATE CASHEW DEVELOPMENT CORPORATION LTD.**

**(A Government of Kerala Undertaking)**

(AN ISO 22000 - 2005 CERTIFIED COMPANY)



CDC/CS/RTI Act 2005/2021  
30.04.2021

ശ്രീ ഉക്തേഷ്.എ

Address: [Redacted] email: [Redacted]  
Phone: [Redacted] 9869  
Tel: [Redacted] [Redacted] [Redacted] [Redacted]

ങ്ങൾ

വിഷയം:- വിവരാവകാശ നിയമം 2005-മറുപടി ലഭ്യമാക്കുന്നത്- സംബന്ധിച്ച്.  
സൂചന:- 07.04.2021 തീയതിയിൽ കെ.എസ്.സി.ഡി.സി യിൽ കൈപ്പറ്റിയ ശ്രീ. ഉക്തേഷ്.എ സമർപ്പിച്ച വിവരാവകാശ അപേക്ഷ.

വിവരാവകാശ നിയമപ്രകാരം താങ്കൾ സമർപ്പിച്ച അപേക്ഷയിൽ ആവശ്യപ്പെട്ട വിവരങ്ങൾക്കുള്ള മറുപടി ചുവടെ ചേർക്കുന്നു.

- നിലവിൽ പ്രവർത്തനക്ഷമമായിട്ടുള്ള ആകെ ഫാക്ടറികളുടെ എണ്ണം എത്ര ?  
30
- (1) നിലവിൽ പ്രവർത്തനക്ഷമമായിട്ടുള്ള ഫാക്ടറികളിൽ ജോലി ചെയ്യുന്ന ആകെ തൊഴിലാളികളുടെ എണ്ണം എത്ര ?  
11828
- (2) ആകെ തൊഴിലാളികളിൽ സ്ത്രീകൾ എത്ര ?  
11606
- (3) ആകെ തൊഴിലാളികളിൽ ട്രാൻസ്ജെൻഡേഴ്സ് എത്ര ?  
ഇല്ല
- (4) ഓരോ തൊഴിൽ കാറ്റഗറിയിലുമുള്ള ആകെ സ്ത്രീകളുടെ എണ്ണം വേർതിരിച്ച് നൽകുക.
 

ചെല്ലിംഗ്	-	5374
പീലിംഗ്	-	4223
ഗ്രേഡിംഗ്	-	1445
ജനറൽ മെയ്കാട്	-	23
കൂളിംഗ് മെയ്കാട്	-	2
പൊടി മെയ്കാട്	-	37
റിജക്ഷൻ മെയ്കാട്	-	19
ക്ലീനിംഗ് സ്റ്റാഫ്	-	19
തൊലിപാറ്റ് മെയ്കാട്	-	2



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Web : www.cashewcorporation.com, CIN : U15493KL1969SGC002234



ഫില്ലിംഗ് & പാക്കിംഗ്	-	23
പിരിവാൽ മെയ്കാട്	-	17
കട്ടിംഗ്	-	422

(5) ഓരോ തൊഴിൽ കാറ്റഗറിയിലുമുള്ള ആകെ ട്രാൻസ്ജൻഡർ തൊഴിലാളികളുടെ എണ്ണം വേർതിരിച്ച് നൽകുക.

കോർപ്പറേഷനിലെ തൊഴിലാളികളിൽ നിലവിൽ ട്രാൻസ്ജൻഡേഴ്സ് ഇല്ല.

3. സ്ത്രീ തൊഴിലാളികൾക്ക് ഏതെങ്കിലും തൊഴിൽ കാറ്റഗറിയിൽ ജോലി ചെയ്യുന്നതിന് നിയന്ത്രണം / നിരോധനം / വിലക്ക് ഉണ്ടോ? ഉണ്ടെങ്കിൽ അവ ഏതൊക്കെ തൊഴിൽ കാറ്റഗറിയാണെന്ന് വ്യക്തമാക്കുക.

അപകട സാധ്യത കണക്കിലെടുത്തും ഫാക്ടറീസ് ആക്ടിലെ നിർദ്ദിഷ്ട സമയക്രമം പാലിച്ചുള്ള ജോലിയുമല്ല റോസ്റ്റിംഗ് എന്നതിനാൽ ടി ജോലികളിൽ സ്ത്രീകൾക്ക് നിയന്ത്രണം ഏർപ്പെടുത്തിയിട്ടുള്ളതാണ്.

4. ട്രാൻസ്ജൻഡർ തൊഴിലാളികൾക്ക് ഏതെങ്കിലും തൊഴിൽ കാറ്റഗറിയിൽ ജോലി ചെയ്യുന്നതിന് നിയന്ത്രണം / നിരോധനം / വിലക്ക് ഉണ്ടോ? ഉണ്ടെങ്കിൽ അവ ഏതൊക്കെ തൊഴിൽ കാറ്റഗറിയാണെന്ന് വ്യക്തമാക്കുക.

ട്രാൻസ്ജൻഡർ വിഭാഗത്തിൽ വരുന്ന ജീവനക്കാരെ പ്രത്യേകമായി ജോലി ചെയ്യുന്നതിൽ വിലക്ക് ഏർപ്പെടുത്തിയിട്ടില്ലാത്തതാണ്.

5. തൊഴിലാളികളുടെ ക്ഷേമത്തിനും സുരക്ഷയ്ക്കുമായി ഫാക്ടറികളിൽ ബാധകമാകുന്ന നിയമങ്ങൾ ഏതെല്ലാം?

തൊഴിലാളികളുടെ ക്ഷേമത്തിനും സുരക്ഷയ്ക്കുമായി ഫാക്ടറികളിൽ ബാധകമാകുന്ന നിയമങ്ങൾ - (1) ഫാക്ടറീസ് Act 1948, (2) മിനിമം വേജസ് ആക്ട് 1948, (3) മെറ്റേണിറ്റി ബെനിഫിറ്റ് ആക്ട് 1961, (4) ഇ.എസ്.ഐ ആക്ട് 1948.

The Sexual Harasment of Women at work place ( prevention prohibiteion And Redressal) Act 2013

6. സ്ത്രീ തൊഴിലാളികളുടെ പ്രത്യേക ക്ഷേമത്തിനും സുരക്ഷയ്ക്കുമായി ഫാക്ടറികളിൽ ബാധകമാകുന്ന നിയമങ്ങൾ ഏതെല്ലാം?

1. ഫാക്ടറീസ് ആക്ട് 1948 (Factories Act.1948)
2. The Sexual Harasment of Women at work place ( prevention prohibiteion And Redressal) Act 2013
3. മെറ്റേണിറ്റി ബെനിഫിറ്റ് ആക്ട് 1961.(Maternity Benefit Act.1961)
4. തുല്യ വേതന നിയമം 1976.(Equal Remuneration Act.1976)
5. മിനിമം വേജ് ആക്ട് 1948.(Minimum Wages Act.1948)
6. The Employee's Provident Fund and Miscellaneous Provisions Act 1952.



7. Kerala Cashew Workers's Relief & Welfare Fund Act 1979.

7. ട്രാൻസ്ജെൻഡർ തൊഴിലാളികളുടെ പ്രത്യേക ക്ഷേമത്തിനും സുരക്ഷയ്ക്കുമായി ഫാക്ടറികളിൽ ബാധകമാകുന്ന നിയമങ്ങൾ ഏതെല്ലാം?

ട്രാൻസ്ജെൻഡർ തൊഴിലാളികളുടെ ക്ഷേമം, സുരക്ഷിതത്വം, സംരക്ഷണം എന്നിവ സംബന്ധിച്ച നിയമങ്ങൾ ചുവടെ ചേർക്കുന്നു.

1. ട്രാൻസ്ജെൻഡർ പേഴ്സൺസ് (Protection of Rights Act, 2019)
2. തുല്യവേതന നിയമം, 1976 .(Equal Remuneration Act.1976)

8. ഒരേ തൊഴിൽ ചെയ്യുന്ന പുരുഷന്മാർ, സ്ത്രീകൾ, ട്രാൻസ്ജെൻഡേഴ്സ് എന്നിവർക്ക് അവരുടെ 'Gender' അനുസരിച്ച് വേതനങ്ങളിൽ / ശമ്പളത്തിൽ വ്യത്യാസം ഉണ്ടോ ?

ഒരേ തൊഴിൽ ചെയ്യുന്ന പുരുഷന്മാർ/ സ്ത്രീകൾ / ട്രാൻസ്ജെൻഡേഴ്സ് എന്നിവർക്ക് അവരുടെ ജൻഡർ അനുസരിച്ച് വേതനത്തിലോ/ ശമ്പളത്തിലോ ഒരു വ്യത്യാസവും ഇല്ല.

9. (1) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 പ്രകാരം, നിലവിൽ പ്രവർത്തനക്ഷമമായിട്ടുള്ള എത്ര ഫാക്ടറികളിൽ Internal Complaints Committee (ICC) രൂപവത്കരിച്ചിട്ടുണ്ട് ?

The Sexual Harassment Women at Work place (Prevention, Prohibition and Redressal) Act 2013 Act പ്രകാരം, കാഷ്യൂ ഡവലപ്മെന്റ് കോർപ്പറേഷന്റെ 30 ഫാക്ടറികളിലേയും പരാതി പരിഹരിക്കുന്നതിനായി Internal Complaints Committee രൂപീകരിച്ചിട്ടുണ്ട്.

9. (2) ഓരോ ഫാക്ടറിയിലും ടി നിയമ പ്രകാരം ആദ്യമായി ICC രൂപവത്കരിച്ചതെന്നാണ് (dd/mm/yyyy) ?

13.08.2014 തീയതിയിൽ രൂപീകരിച്ചു.

9. (3) ഓരോ ഫാക്ടറിയിലും ടി നിയമ പ്രകാരം നിലവിലെ ICC രൂപവത്കരിച്ചത് എന്നാണ് (dd/mm/yyyy) ?

ഉത്തരം 9(2) കണ്ടാലും

9. (4) ഓരോ ഫാക്ടറിയിലും ടി നിയമ പ്രകാരം ആദ്യമായി ICC രൂപവത്കരിച്ച ദിവസം മുതൽ

ഈ അപേക്ഷയ്ക്ക് മറുപടി നൽകുന്ന ദിവസം വരെ എത്ര പരാതികൾ ലഭിച്ചിട്ടുണ്ട് ?.

അഞ്ച് പരാതികൾ ലഭിച്ചിട്ടുണ്ട്





10. നിലവിൽ പ്രവർത്തനക്ഷമമായിട്ടുള്ള എത്ര ഫാക്ടറികളിൽ creche സൗകര്യമുണ്ട് ?

നിലവിൽ കോർപ്പറേഷന്റെ എല്ലാ ഫാക്ടറികളിലും creche സൗകര്യമുണ്ട്.

11. നിലവിൽ പ്രവർത്തനക്ഷമമായിട്ടുള്ള എത്ര ഫാക്ടറികളിൽ ജോലി ചെയ്യുന്ന സ്ത്രീ തൊഴിലാളികൾക്ക് മെറ്റേണിറ്റി ബെനിഫിറ്റ് ആക്ട് 1961 പ്രകാരമുള്ള ആനുകൂല്യങ്ങൾ (അവധി ഉൾപ്പെടെ) ലഭ്യമാകുന്നതിന് പ്രസ്തുത സ്ത്രീ ഫാക്ടറി തൊഴിലാളി വിവാഹിതയായിരിക്കണമെന്നുണ്ടോ?

ഫാക്ടറികളിൽ ജോലി ചെയ്യുന്ന സ്ത്രീ തൊഴിലാളികൾക്ക് Maternity Benifit Act 1961 പ്രകാരമുള്ള ആനുകൂല്യങ്ങൾ ലഭ്യമാകുന്നതിന് സ്ത്രീ ഫാക്ടറി തൊഴിലാളികൾക്ക് ടി നിയമത്തിലെ വ്യവസ്ഥകൾക്ക് വിധേയമായി ലഭിക്കുന്നതാണ്. എന്നാൽ തൊഴിലാളി വിവാഹിതയായിരിക്കണമെന്ന് പ്രത്യേകം പരാമർശിത്തില്ലാത്തതാണ്.

12. അവിവാഹിതയായ ഒരു സ്ത്രീ ഫാക്ടറി തൊഴിലാളിയ്ക്ക് മെറ്റേണിറ്റി ലീവ് ഉൾപ്പെടെയുള്ള ആനുകൂല്യങ്ങൾ ലഭ്യമാകുമോ?

ഉത്തരം 11 കണ്ടാലും

വിവരാവകാശ നിയമ പ്രകാരം നൽകുന്ന മേൽ പ്രകാരമുള്ള മറുപടി തൃപ്തികരമല്ലെങ്കിൽ ആയതിന് ഈ കത്ത് ലഭിച്ച് 30 ദിവസങ്ങൾക്കുള്ളിൽ അപ്പീൽ അധികാരിക്ക് അപേക്ഷ സമർപ്പിക്കാവുന്നതാണ്. അപ്പീൽ അധികാരിയുടെ മേൽവിലാസം ചുവടെ ചേർക്കുന്നു.

അപ്പീൽ അധികാരിയുടെ മേൽ വിലാസം (അപ്പീൽ അധികാരി)  
മാനേജിംഗ് ഡയറക്ടർ  
കേരള സ്റ്റേറ്റ് കാഷ്യൂ ഡവലപ്മെന്റ് കോർപ്പറേഷൻ ലിമിറ്റഡ്,  
കാഷ്യൂ ഹൗസ്, പി. ബി നം. 13,മുണ്ടയ്ക്കൽ,  
കൊല്ലം,പിൻ 691 001

വിശ്വസ്തതയോടെ  
കേരള സംസ്ഥാന കശുവണ്ടി  
വികസന കോർപ്പറേഷനു വേണ്ടി



എസ്. അജിത്  
പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ  
(പേഴ്സണൽ മാനേജർ)

