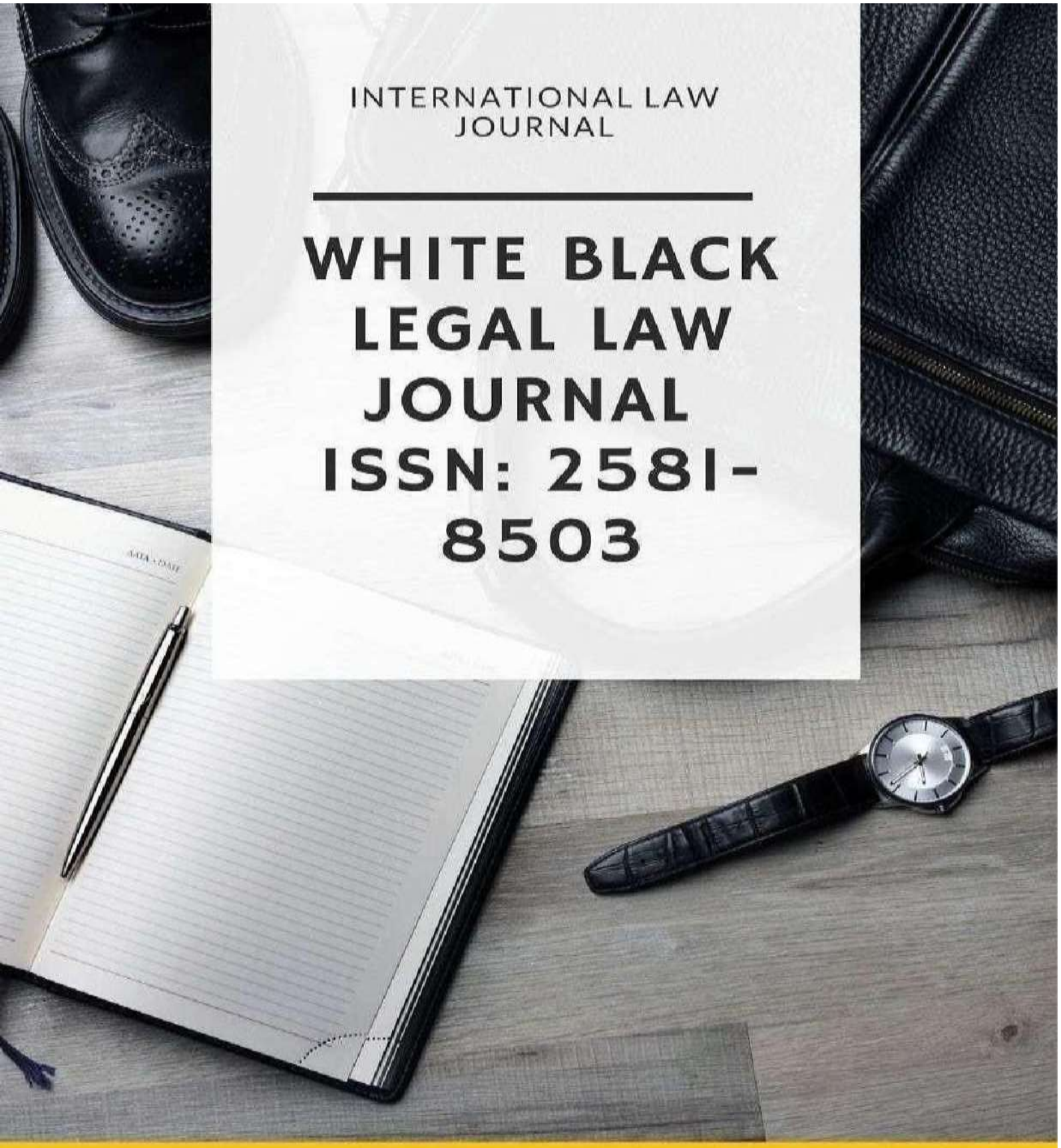

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With this thought, we hereby present to you

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# IMPACT OF INTERNATIONAL TRADE ON HUMAN RIGHTS WITH REFERENCE TO LABOUR LAW AND WTO– A CRITICAL STUDY

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## Abstract

The progress of a nation is as good as the progress of the workers. Trade law aims at enhancing growth, welfare of states and raising the standard of living of the people by bringing in the best around the world. Somehow differences in the rights of labor among varying countries attract attention to the various factors like low labor costs, child labour et al.

Disparities in labor rights and labor standards clearly affect international trade and investment choices. The question is whether the application of high standards, strong enforcement of worker rights acts as a disincentive for investments? What are the positive and negative effects of International Trade on human rights including labour laws? If the labor standards become too "burdensome", the companies may shift to countries wherein the labour costs are less. However, having less labour costs means a compromise with the standards in which the labour force works in. One of the important elements of human rights is the right to dignity. How do we determine right to dignity? Anything that does not compromise on the self esteem of a person can be said to be a person's right to dignity.

**Main Body:**

The main purpose of establishing WTO was to make sure that the trade is flowing as freely as possible, thus contributing towards one world when it comes to trade. The tussle between the developed and developing nations occurs mainly due to differing labour standards, thus, limiting the scope and applicability of WTO.

This issue has been discussed multiple times at conferences of Seattle and Cancun. The issue of labour standards need to be addressed both at the level of ILO and WTO so that a majority of the countries can arrive at the global consensus. More efforts should be directed at addressing the ethical, environmental, social issues in order to create an equal world.

WTO can help a lot with its concept of central non-discrimination obligations. It tries to reduce the boundaries by deleting certain potential incompatibilities of nations. One of the many labour friendly provisions of WTO include non-discrimination between the trading partners. It supports domestic goods and services provided surely the exceptions. A lot depends on the interpretation of laws too which when interpreted in a deregulatory and liberal fashion might lead to a lot of conflicts leading to disrespect of social and human rights values. Multilateral trade regime has great bearing and references for the labour law rights and it should be clarified that WTO is not structured to get in the way of their trading partners and renders full support if they want to make any rules and regulations for the same.[1]

## World Trade Organization and the rules relating to it

The WTO does not make any discrimination between the goods and services of their trading partners and their own domestically produced goods. Certain exceptions are provided which WTO resorts to, as and when permitted. However, these exceptions mean states will be able to treat goods and services differently in favour of goods and services produced domestically which in short means that catching up with International Labour Standards might be difficult. Also, labour rights are not explicitly provided in the exceptions list of WTO, which makes it difficult for states to restrict trade on labour grounds. This potential conflict is deepened if the law of the WTO were to be interpreted in a deregulatory, neoliberal fashion that does not respect the ability of states to regulate to protect important social values and human rights.

## Laws of World Trade Organization

Under WTO law, states cannot discriminate between the goods and services of their trading partners, or in favour of domestic goods and services, except as permitted by certain enumerated exceptions. These non-discrimination obligations could potentially mean that states are not permitted to treat goods and services produced in a manner that violates (international) labour rights differently; and since protecting labour rights is not explicitly listed as one of the WTO's enumerated exceptions, states may not be able to justify trade-restrictive measures on labour grounds. This potential conflict is deepened if the law of the WTO were to be interpreted in a deregulatory, neoliberal fashion that does not respect the ability of states to regulate to protect important social values and human rights.

[1] (Howse & Langille with Burda, 2006)

The basic gist of WTO's legal order is the principle of non-discrimination, this principle of non-discrimination is meant to protect trade policies and protectionism, to avoid the disastrous tit-for tat discrimination of the period between the war. This principle works at two dimensions. The first dimension is 'Most Favoured Nation' (MFN) obligation, which states are required to treat the goods and services produced by their trading partners alike - states cannot discriminate among their trading partners by treating 'like' products or services from one state differently from those of another state (GATT, art. I; GATS, art. II). Second, the 'national treatment' obligation targets protectionism by prohibiting states from treating imported products less favourably than domestically produced 'like' products or services (GATT, art. III:4; GATS, art. XVII).

At the heart of the WTO's legal order is the principle of non-discrimination, designed to guard against beggar-thy-neighbour trade policy and protectionism, to prevent the disastrous retaliatory discrimination of the interwar period. This principle operates along two dimensions. First, the 'most favoured nation' (MFN) obligation requires states to treat the goods and services produced by their trading partners alike – states cannot discriminate among their trading partners by treating 'like' products or services from one state differently from those of another state (GATT, Article I; GATS, Article II). Second, the 'national treatment' obligation targets protectionism by prohibiting states from treating imported/ products less favourably than domestically produced 'like' products or services (GATT, Article III:4; GATS, Article XVII). Concerns about protectionist discrimination also underpin other WTO obligations. For example, the GATT prohibits 'quantitative restrictions,' which means that Member states must refrain from banning or restricting imports of foreign-produced products (GATT, art. XI).

Normally, the disputes occur when there is a prima facie violation of provisions of the GATT or the General Agreement on Trade in Services (GATS) by a member state which has adopted some trade restrictive measures under the relevant 'General Exceptions' clause. Generally, the measures that are taken are justified on the grounds that are relevant for the public policy, protection of public morals, public health or the environment. However, members have to be cautious while stipulating the protectionist discrimination that they do not violate the Chapeau of General Exceptions clause. It is also required on the part of member states to put forward a convincing argument in case they are availing this exception. It does not have to be arbitrary or unjustifiable discrimination or results in disguised protectionism. Technical Barriers to Trade include numerous obligations that go beyond the traditional principle of limiting

discrimination at the border to promote regulatory efficiency and coherence among trading partners' domestic legal regimes and coherence among trading partners.

What situations can lead to a ban on imports pertaining to labour issues? If the goods produced in a particular state are produced through child labor, they are in violation of ILO Conventions. And that particular nation cannot export goods to the nation which follows ILO's standards. This measure is likely to violate MFN and national treatment provisions if followed by nations. Many arguments can be advanced such as products made through child labour are not a 'like' product since they were not produced in compliance with International Labour Standards. Therefore, locgically, different treatment given to them will not be counted as discrimination and it does not amount to 'less favourable treatment' for a particular trading partner. Differential treatment in such cases is not protectionist and is directed towards important regulatory purpose.

If one nation bans the importation of goods produced through child labour, then that nation is possibly violating many of the conventions and GATT provisions. GATT provisions are say that a nation cannot ban imports based on quantity.[2] Also, GATT advocates non-discrimination obligations to be discouraged.[3]

products on the basis of their origin, it would constitute a de jure violation of both the MFN and national treatment provisions. The restrictions would constitute non-origin-neutral, less-favourable treatment for a particular trading partner – both in contrast to the Member's other trading partners (MFN) and in contrast to the Member's treatment of its own domestic products (national treatment).

One might argue, however, that a product made with child labour is not 'like' a product that was produced in compliance with international labour standards, and thus treating them differently should not count as discrimination. Similarly, one might argue that treating products made with child labour differently does not necessarily amount to 'less favourable' treatment, since the differential treatment is not protectionist and is motivated by an important regulatory purpose.

[2] (Rodrik, 1997; Howse, 1999)
[3] (Hepple, 2005)

As having discussed above, products produced through the application of child labour can be treated differently and they should not violate legal provisions that are meant to eliminate protectionist discrimination. Prima Facie, there should be no violation of WTO legal provisions.

In practice, many developed states have sought to condition access to GSP trade preferences on a developing country's compliance with labour obligations[4].

As has been emphasized earlier, at the WTO, there has been voices against interlinking standards of labour with trade. The use of labour standards in order to propagate protectionist aims, has been unanimously rejected at the Singapore Ministerial Declaration in 1996. In particular, the Singapore Ministerial Declaration has mentioned that the "economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question." Therefore, there been constant encouragement given to the collaboration between the WTO and ILO Secretariats.

At the WTO, as discussed in the introduction to this paper, there has been strong opposition to the linkage of labour standards to trade. The Singapore Ministerial Declaration in 1996, as discussed earlier, unequivocally rejected the use of labour standards for protectionist purposes. Specifically, the Singapore Ministerial Declaration stated that: "economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question." The WTO and ILO secretariats resultingly have been suggested to continue their collaboration under the existing framework. The WTO, in its findings have suggested that there are huge differences in the perspective of countries towards questions relating to trade and labour. Some of the questions, relating to trade and labour are as follows: In situations, where countries have lower labour standards, will their position in exports be at an advantage? Thereby, will it act as attracting factor for other countries to lower their labour standards which will put them at an advantageous position?

[4] (Bartels, 2003)

Thus, to avoid such situations wherein countries start degrading their standards, the trade should happen only between countries having equal standards for trade. Another pertinent question that arises is if the WTO, a good platform to be given the authority to discuss cases relating to disputes in trade. Also, does it have the authority to set rules on labour and trade and enforce them? In WTO agreements generally, one fails to find any references relating to labour. However, if GATT obligations are to be looked into, Article XX(e) allows the countries to deviate from such obligations if labour provisions are concerned.

It is also significant to note that the possibility of applying Article XX(d) on "measures necessary to secure compliance with laws or regulations not inconsistent with the GATT" to labour standards was discussed during the negotiations of the Havana Charter, but rejected.

## Trade and labour law in different countries compared

The situation in various countries when put simply means that the USA wants to put labour standards on trade. However, the developing countries like Brazil, Egypt, Malaysia and India aggressively oppose the coercion as put by the developed countries to include labour standards within the ambit of the WTO. Though this resistance has contributed a lot for not including any labour standards in the WTO as yet, increasingly nations are including labour standards in their Preferential Trade Agreement and Regional Trading Agreement. These incorporations are mainly done by the countries such as USA, the European Unions, the New Zealand et al.

The US has been aggressively pushing for labour standards to be included in the WTO, yet it has itself not ratified core labour principles of the ILO Conventions which deals with freedom of association, the right to bargain, non-discrimination in the workplace and in general child labour. The USA has not ratified conventions relating core labour standards.

The main provisions of Prefrential Trading Agreement of the USA and those that stipulate labour standards are as follows:

(i) obligations relating to labour standards; (ii) provisions relating to labour cooperation and procedural guarantees; (iii) institutional mechanism in relation to the labour provisions; (iv) dispute settlement in relation to labour; and (v) enforcement action

## Conclusion

Trade is one such area wherein nations can exercise their soft power. However, considering humanity is the basic aspect of every activity that a nation engages in, setting of minimum standards for labour seems like the need of the hour. The minimum standards have to be set in such a manner that both the developed and the developing nations can meet the criteria and engage in mutual trade. Development of International Standards on Social Labeling is one such good step towards it.