Human Rights Due Diligence Law for Gender Equality in Multinational Enterprises

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Abstract. Women's equal employment rights are one of the key research topics. The researchers found that only relying on human rights norms could not effectively regulate women's unequal employment rights problems. In addition, Multinational Enterprises (MNEs) and their host and home countries are responsible for women's unequal employment. Mandatory human rights due diligence (HRDD) laws can effectively regulate this gender inequality. However, the law on mandatory HRDD is still in its infancy and needs to be improved. The present study employs a literature review and empirical research methods to examine the factors hindering the guarantee of women's equal employment. Additionally, this paper scrutinizes the justifications for introducing mandatory HRDD laws. Meanwhile, the study analyses the advantages of mandatory HRDD laws and evaluates the current effectiveness, scope of application, and implementation. It is argued that the present situation needs to be revised to safeguard women's equal employment rights better. Finally, the paper offers corresponding suggestions to enhance the mandatory HRDD laws, and the research purpose of this paper is to promote women's employment equality and human rights protection.

Keywords: Mandatory human rights due diligence laws; Multinational Enterprises; Women's equal employment rights.

1. Introduction

For a long time, the problem of women's unequal employment has prevailed worldwide. According to *FTSE Women Leaders Review 2022*, women still face a persistent issue with low appointment rates, as only 38% of positions are filled by women, leaving almost two-thirds of male roles [1]. Additionally, most companies in the FTSE 100 are MNEs, indicating that gender inequality in employment is prevalent in such companies. This situation highlights the significant issue of gender inequality in MNEs. Similarly, due to the low labor cost of the Indian hand textile industry, some MNEs have established production bases in India. According to a sample survey in 2019, in the Indian handloom industry, 70% of workers are female, but 90% work from home or in handloom households [2]. Owing to compliance and quality skill limitations, female producers must rely on intermediaries to sell products to foreign buyers. Furthermore, most female producers face low incomes below Rs 3,000 and limited bargaining power, which affects their sustainability and well-being. Likewise, in the 2013 building collapse in Bangladesh's Sawa district, most of the dead were female garment factory workers [3]. Locally, women's right to work and working conditions have been severely violated. Meanwhile, the event triggered global responses and discussions on MNEs' human rights obligations within their supply chains. Consequently, Western retailers pledged to perform widespread inspections of garment factories in Bangladesh.

Women's unequal employment exists across a range of countries, including developed, developing, and least-developed ones. Women face various challenges and unequal treatment in the job market, such as unequal opportunities for advancement, failure to achieve equal pay, and unsafe workplaces. Mandatory HRDD law is a good level of regulation, where the corporation is still allowed to do whatever, they want, just with limitations on some serious issues. Besides, mandatory HRDD laws benefit the state, MNEs, and victims. In addition, mandatory HRDD laws themselves have several advantages, like specificity and predictability. Therefore, mandatory HRDD laws should be introduced to effectively regulate the impact of MNEs on women's equal employment. By achieving women's equality in the workplace, women's potential and resources can be better harnessed for

economic and social development [4]. Moreover, in the context of globalization, the introduction of mandatory HRDD laws can also send a positive signal to other countries and promote the development of global gender equality. At present, relevant research has explored the ways of integrating gender issues into due diligence laws and various norms for MNEs to protect women's equal employment rights, such as the *UN Guiding Principles on Business and Human Rights*, the *Convention on the Elimination of All Forms of Discussion Against Women*, the *OECD Due Diligence Guidance for Responsible Business Conduct.* Furthermore, some countries have published relevant HRDD laws, including France, Netherlands, and Germany. However, these laws' effectiveness, the scope of application, and implementation still need more in-depth research and discussion. It is worth acknowledging that the current HRDD framework is still in its early stage and necessitates enhancements in various aspects. Despite these limitations, there have been notable advancements in implementing mandatory HRDD laws, demonstrating some positive outcomes.

2. Barriers to Women's Employment Equality

2.1. Relevant International Human Norms and Their Limitations

Since gender equality in employment is recognized as a human right, protection rules under human rights regulations also apply to women's right to equal employment opportunities.

2.1.1. Current status of relevant international human rights norms

According to the comments on Article 12 of the *United Nations Guiding Principles on Business and Human Rights*, enterprises need to consider supplementary standards to be followed in specific circumstances. Existing international Women's human rights norms should be one of the additional standards companies refer to [5].

The *United Nations Guiding Principles on Business and Human Rights* has already involved women's equal right to work, emphasizing the general principle of non-discrimination. Article 11 of The *Convention on the Elimination of All Forms of Discrimination against Women* enumerates several specific rights of women to equal employment. The *OECD Due Diligence Guidance for Responsible Business Conduct* recommends applying a gender perspective to due diligence, where appropriate [6].

Overall, these international human rights norms emphasize the significance of promoting gender equality and non-discrimination in the workplace. Therefore, MNEs should consider them when performing HRDD. However, there are still some areas for improvement in the current international human rights regulations with respect to ensuring equal employment opportunities for women.

2.1.2. Limitations and shortcomings of international human rights norms in ensuring equal treatment for women in work

First, MNEs are neither states nor state organizations and, in fact, cannot become subjects of international law, which makes MNEs often escape the web of human rights regulations [7]. Second, some countries may be reluctant to accede to certain international conventions related to women’s rights for various reasons, failing women's equal employment rights to be well protected. Third, countries may impose reservations when ratifying or acceding to international human rights norms, exempting themselves from specific treaty provisions and avoiding the corresponding obligations. For example, Article 28 of the *Convention on the Elimination of All Forms of Discrimination against Women* requires the United Nations Secretary-General to accept reservations made by countries upon ratification or accession. Many countries, such as Australia, Argentina, and Bangladesh, have made reservations upon joining the Convention. Finally, the international human rights norms lack of binding effect. These norms rely on the voluntary cooperation of states, but this approach cannot guarantee that the norm will be effectively implemented.

2.2. Host State's Emphasis on Supporting Enterprises Over Labor Rights

Many countries, especially developing countries, are increasingly interested in attracting MNEs due to their ability to bring in capital and create employment opportunities [7]. However, this competition for foreign direct investment (FDI) from MNEs can lead to a race to the bottom where states lower their national regulations to attract investment. As a result, governments may prioritize supporting enterprises over labor rights, potentially neglecting human rights issues caused by MNEs to attract more foreign investment. Unfortunately, victims of human rights abuses may have limited legal recourse. In some cases, host governments may even engage in human rights abuses to protect corporate facilities from peaceful protesters, such as when national militaries use excessive violence [7].

2.3. Home State's Absence of Jurisdiction over Its MNEs

Regarding legal personality, a subsidiary operating abroad acts as a separate entity from its parent company. In general, holding a parent company responsible for the infringements committed by its subsidiary is often challenging, as piercing the corporate veil is a difficult legal concept to establish. What is more, MNEs must comply with the laws of the countries where their separate entities are located, as governed by the principle of territoriality.

As human rights are considered fundamental under customary international law, it is incumbent upon all states to uphold this principle. Therefore, the home country's implementation of basic customary international human rights norms does not violate the host country's sovereignty. However, home states are not obligated by international laws to assert jurisdiction beyond their borders over MNEs that infringe upon human rights outside their territories. In the absence of such an obligation, home countries are often reluctant to prosecute their MNEs extraterritorially. This absence would imply a competitive disadvantage for home MNEs as long as not all countries exercise similarly close control over their MNEs.

An additional obstacle to the effective exercise of domestic jurisdiction over foreign MNEs is the legal principle of forum non-conveniences commonly applied in the Anglo-American legal system. This doctrine allows courts to decline to hear a case if a more appropriate foreign court is available [7].

2.4. MNEs Outpowering the Government

The process of globalization has resulted in noteworthy changes in several MNEs, including Amazon and Alphabet, elevating their efficiency and productivity to levels that surpass those of numerous small nations [8]. As a result, these corporations have gained immense power and control, significantly impacting the global business landscape. Also, there are minimal reasons for piercing the corporate veil. Therefore, MNEs are fearless of the consequences of their subsidiaries' human rights violations.

MNES have sometimes used their transnational viability to circumvent or ineffective national policies. MNEs can exercise considerable power over the government, threatening to move their operations to countries with more reasonable costs, preferable, cheaper countries, and countries with more liberal legal systems. More than that, MNEs have instigated and actively cooperated in overthrowing governments that pursued policies that harmed their interests.

3. Solution: Mandatory HRDD Laws

Introducing mandatory HRDD laws can address the limitations of international human rights regulations, which do not cover MNEs and lack binding force. For host countries, these laws can improve the host country's reputation and increase foreign investors' trust, leading to economic development. For home states, such laws can enhance domestic companies' competitiveness and international image by promoting compliance with human rights standards. Hence, it can be seen that

introducing mandatory HRDD laws is an excellent solution to protecting women's equal employment rights.

3.1. The Concept of Mandatory HRDD Laws

Compulsory human rights due diligence laws are legal procedures that require governments, enterprises, or other organizations to take coercive measures. The purpose of these measures is to ensure compliance with international human rights laws and standards, preventing any violations related to activities, policies, or projects [5].

3.2. Advantages of Mandatory HRDD Laws

3.2.1. The intrinsic legal features of mandatory HRDD law

Coercive Force. The mandatory nature of HRDD laws imposes a binding force on citizens, enterprises, and governments. Such laws can lead to heightened protection for female workers and reinforce their rights and interests, thereby promoting women's equal employment rights. These laws can also push the government to take measures to guarantee such rights. Moreover, these laws can foster citizens' trust in enterprises and the government, thereby encouraging active support and participation in realizing women's equal employment rights.

Specificity and Predictability. As statutory law, mandatory HRDD laws have transparent and predictable provisions. Explicit legal protections and judicial remedies are available to women who have suffered unequal employment rights violations. In addition, these provisions will help MNEs better foresee and avoid behaviors that may lead to women's unequal employment rights violations, thereby minimizing the negative impact.

High Compatibility and Convergence. As a national regulation, mandatory HRDD laws are more compatible with other domestic laws and can be better implemented and enforced. At the same time, it helps to ensure the consistency and coordination of the national legal system, thereby better safeguarding and promoting women's equal employment rights**.**

Higher formulation efficiency. Compared with international treaties, the formulation of mandatory HRDD will be more efficient. International regulations take a long time to formulate, and it may take years for every country worldwide to agree. Additionally, it would be up to every government to decide whether they want to be part of that international treaty. Nevertheless, if countries develop their own compulsory human rights laws and regulations, they can create laws and regulations tailored to their legal system and situation. These own laws and regulations eliminate the need to wait for international consensus or compromise, allowing for the prompt resolution of issues related to equal employment rights for women.

3.2.2. Benefits to legal subjects

For countries, promoting or requiring mandatory HRDD laws is beneficial to their protection obligations [9]. Besides, the introduction of such laws can elevate a country's reputation, promote international cooperation, and foster economic and social development. Specifically, the implementation of mandatory HRDD laws can benefit both host and home countries. For host countries, in addition to enhancing their reputation and increasing foreign investors' trust, which can lead to economic development, HRDD laws can also strengthen human rights protection, with a focus on promoting women's equal employment rights at the local level. For home states, HRDD laws can improve the competitiveness and international reputation of domestic companies in their states by encouraging adherence to human rights standards.

For MNEs, This regulation allows corporations to retain a degree of freedom while only imposing limitations on serious human rights concerns. Implementing HRDD can effectively manage stakeholder-related risks, potentially exempting companies from penalties and facilitating a balance between costs and benefits for MNEs. Moreover, the proposal mandates that parent companies oversee their subsidiaries, promoting corporate accountability as well as improving reputation and brand image.

For affected women, mandatory HRDD laws are anticipated to decrease the overall incidence of unequal employment and offer a potential avenue for redress in cases of harm for affected women. Apart from that, if mandatory HRDD regulations differ between the host and home countries, there may be instances of overlapping legal applications that could enhance the protection of women's employment rights.

4. Suggestions for Improving Mandatory HRDD Laws

Recently, there has been a rise in the mandatory HRDD regulations that require companies to ensure gender equality in employment practices. Nonetheless, it is essential to acknowledge that these laws have their limitations. Further research and discussions are necessary to explore the effectiveness, scope of application, and implementation of mandatory HRDD laws in greater depth. This research can help identify ways these laws can be improved to better protect women's equal employment rights while also considering the needs and realities of MNEs. Ultimately, this can lead to the development of more sustainable and effective solutions for promoting gender equality in the workplace.

4.1. Improving the Effectiveness

First and foremost, taking into account the factual background of women is essential. Mandatory HRDD laws should fully consider the cultural and social background of women. For example, if cultural and social traditions limit women to family roles, then they may face difficulties balancing family and work responsibilities. In such cases, flexible working hours and benefits can help women manage their dual roles and enhance their competitiveness in the job market [10].

Secondly, efforts to mitigate rights inequality should be prioritized. Measures can be taken to support women's equal participation in consultation and negotiation. These measures include encouraging women to speak up and make suggestions when men are not present. Creating dedicated spaces for women to engage in business decision-making can enable their active participation [6]. Also, national institutions can help address the issues of power, information, resources, and bargaining position that favor some enterprises over others [11].

Moreover, the outcome should be given emphasis. As a governance approach focused on processes, HRDD may inadvertently prioritize processes over outcomes [12]. Giving excessive focus to processes could be problematic, as it may not hold companies accountable for the outcomes of their actions, including those that lead to negative consequences for human rights. This emphasis on process over outcomes could lead to companies disregarding regulatory objectives and failing to protect women's equal employment rights adequately. Consequently, mandatory HRDD laws should include outcome criteria, such as gender equality indicators for businesses, encompassing hiring, promotions, pay, and other relevant areas. These indicators can be used by MNEs to evaluate and enhance their gender equality policies and practices and to ensure equitable treatment of women in the workplace. Similarly, regulatory bodies can utilize these indicators to monitor compliance with standards and impose penalties on non-compliant companies.

Lastly, obtaining a judgment against the individuals responsible for a company can be challenging and costly. In cases where women's equal employment rights are violated, removing this idea of separate legal personality and limited liability is advisable. For instance, the collapse of a commercial building in Bangladesh in 2013 resulted in the death of over 1,100 individuals, mostly female garment factory workers. In such severe situations, it may be appropriate to pierce the veil of the subsidiary company and hold the parent company jointly liable for compensation. This approach would ensure that victims receive adequate compensation for their losses.

4.2. Expanding the Scope of Application

MNEs often raise human rights issues due to their business operations. However, in cases where global rules are incomplete, unenforced, or non-existent, MNEs should internalize externalities, obeying the law and going beyond what is required by law. For example, relevant provisions have

been made in the *Convention on the Elimination of All Forms of Discrimination against Women*, which guarantees women the right to equal job opportunities, equal pay, and a safe working environment. Nevertheless, HRDD laws enacted by several European countries lack clarity regarding their implementation. Currently, only Germany requires companies to carry out HRDD with regard to all international human rights enumerated, but this regulation only applies to "covered enterprises" and not all MNEs [13]. Additionally, other countries, such as the Netherlands, only regulate the use of child labor, while Switzerland only regulates conflict minerals and child labor [13].

4.3. Enhancing the Implementation

One aspect is the strengthened regulatory mechanism. The implementation of mandatory HRDD laws requires robust national and international monitoring mechanisms. However, the current supervisory mechanism needs to be improved, especially in developing countries [14]. The following measures can be taken to strengthen the regulatory mechanism. For example, establishing an independent supervisory agency ensures that the supervisory agency is not affected by political and economic interests. The supervisory body should be composed of impartial and experienced experts and have the power to investigate, audit and supervise the HRDD of multinational enterprises. In addition, a grievance mechanism should be established so that affected women and other interested parties can lodge complaints. Supervisory bodies should be able to investigate these complaints and take appropriate action [11].

Another aspect is the jurisdiction over litigation. Currently, none of the existing mandatory HRDD laws provide jurisdiction over litigation. For example, in France, when a human rights dispute reaches the litigation stage, the parties do not know which French court to go to and which court has jurisdiction over these issues. Although most countries have general rules that regulate the courts where the defendant is located have jurisdiction, there are exceptions to this rule. In some cases, the courts where the plaintiff is located or where the harmful act occurred may have jurisdiction instead. Thus, when countries introduce or regulate mandatory HRDD laws, they should specify which court has jurisdiction over their case. Understanding jurisdictional rules is essential for parties involved in legal disputes.

5. Conclusion

Research has shown that obstacles still need to be addressed despite international human rights norms regulating equal employment rights for women. Many countries, especially developing countries, seek to attract MNEs for capital and job creation potential but fail to hold them accountable for their actions. Home states fail to exercise jurisdiction over their MNEs because of the independent legal personality of the subsidiary and the doctrine of non-conveniences. Meanwhile, home states may also be unwilling to exercise jurisdiction over their MNEs for a competitive disadvantage. Furthermore, MNEs have significant power and influence, which can outstrip government authority. To address this issue, the introduction of mandatory HRDD laws is necessary. Mandatory HRDD laws offer specificity and predictability, coercive force, compatibility and convergence, and greater efficiency in the formulation. What is more, mandatory HRDD laws are not only good for the states but also MNEs and women.

However, there is still a need for further research and discussion to improve their effectiveness, scope, and implementation. For example, the factual background of women in different countries and mitigation of rights inequality should be considered, and outcome criteria and piercing the veil should be considered. The application’s range should be broadened to encompass equitable employment prospects, remuneration, and a secure work setting. A strengthened regulatory mechanism and jurisdiction over litigation are also necessary for effective implementation.

To ensure equal employment rights for women, the cooperation and joint efforts of government, business, and civil society organizations are necessary. In the future, there needs to be continued research and discussion on how to improve the effectiveness, scope, and implementation of

mandatory HRDD laws. With greater accountability in corporate practices, women's rights can be safeguarded. Ultimately, the implementation of mandatory HRDD laws can lead to a more just and equal society.

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