CHAPTER – III
UNITED NATIONS AND WOMEN’S HUMAN RIGHTS - I

The end of the Second World War and the setting up of the United Nations Organization heralded a new era in the history of human rights. No longer were the rights to be confined to particular segments of society, nor were they to be limited on the basis of parochial considerations of race, class, religion, colour or sex. The post Second World War world, already in the throes of a cold war, and on the brink of another world war, was confronted with a massive task of social, political and economic reconstruction. This was impossible in the absence of a regime guaranteeing rights to all segments and sections of society. Thus emerged a new era: an era of human rights, which began with the enunciation of the United Nations Charter in 1945. This presented a vision of a world in which all human beings would be judged on the same standards viz. human rights standards and human rights were mooted as a vehicle for transformation of society wherein liberty, equality, and justice would prevail in the true sense. As Hilary Charlesworth observes, “…it is, after all, a great feat that this set of human rights standards adopted in the tense post-war world has achieved widespread acceptance, at least in the sense that no state has denounced it, and more positively in the sense that it has been widely implemented in national legal systems.”

The Charter of the UN made an even more momentous transition, by, for the first time in recorded human history, recognizing women as equal claimants of human rights, along with men. However, the issue emerges, were they in fact equal claimants? Did this recognition have any substantive impact? Was it enough to merely proclaim no discrimination on the basis of sex? Was the language of the new instruments for human rights gender sensitive? Were women’s concerns taken into consideration while drafting these instruments? If yes, which issues found acceptance with the international community and which ones were left out? What was the approach adopted by the United Nations in drafting the instruments for human rights? Where were women located in these instruments? Was there a change in this approach

over the years? It is these and related issues which would be taken up in this chapter.

In attempting to trace the changing approach of the United Nations, towards women’s human rights, the present chapter and the one following it would look at the texts of the various Conventions, Declarations and Resolutions adopted by the General Assembly of the United Nations to locate women’s rights within these. These Conventions, Declarations and Resolutions relate to human rights in general and women’s rights in particular. Here, it is necessary to clarify that a large amount of work has been done by various bodies of the United Nations in promoting human rights and women’s human rights over the years. However, it would not be possible to analyse all these in detail. References are made to a few Conventions adopted by some of the agencies, which have a particular bearing on the theme under consideration.

The work of the United Nations in this period, in relation to women’s human rights may be sub-divided into two categories for the sake of simplicity. First are the core Declarations and Conventions of human rights, viz. Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR). Second are the Declarations, Conventions and Resolutions which set out specific rights or relate to certain specific groups of people, including women. Here it must also be stated that the work of the UN in relation to human rights is extremely vast and difficult to compile and critique in one volume. Accordingly the entire body of human rights literature generated by the UN is beyond the scope of the present study. Thus, the present study seeks to restrict itself to the major Treaties, Conventions and Declarations relating to human rights adopted by the U.N. and its agencies. As for the human rights bodies and human rights mechanisms set up under the Conventions, it would not be possible to assess the work of these in detail as this would involve a study covering many volumes and would be beyond the scope of the present study. The present chapter is structured along the following lines. It is divided into two major sections: the first section covers the period from the foundation of the UN up till 1975 and the second from 1975 to 1985. Each section is further subdivided
into sub-sections on the basis of various rights enunciated in each period, which are grouped together for the sake of analysis.

The previous chapter reveals that prior to the setting up of the United Nations, the main international body, viz. the League of Nations did not conceive of the notion of women’s human rights. In fact, the idea of human rights, that is rights by virtue of birth as a human being had not yet taken birth. Nevertheless, it was the edifice of the League of Nations upon which the foundations of the United Nations were laid. Meanwhile, women’s issues had come to the centre-stage, particularly with the vigorous movements for right to vote in various countries of the world. Movements for democracy in the colonial states gave an added impetus to the notion of equality, liberty and justice. The United Nations Charter became the first international document to recognize this concept and proclaim the universality of human rights with its recognition of “the rights and freedom of every human being.” Accordingly any work on human rights would be incomplete without going into the antecedents and human rights provisions of the UN Charter.

**United Nations and Women’s Human Rights: 1945-1974 (First Phase)**

Events prior to and during the World War II led to concrete action being taken in the field of human rights with the setting up of the United Nations. Representatives of China, Soviet Union, United States and United Kingdom met at Dumbarton in 1944 to deliberate over the proposal for the establishment of an international organization devoted to ensuring world peace and security. The proposal stated that the purpose of the organization should be “to maintain international peace and security and to develop friendly relations among nations, to take appropriate measures to strengthen universal peace and to achieve cooperation in solution of the international economic and social problems.”

Thus, the original focus was not on human rights. As Benjamin V. Cohen states, “It is interesting to recall that at the Dumbarton Oaks Conference, where the preliminary working draft of the Charter was prepared, relatively little attention was given to the question of human rights and

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fundamental freedoms. The emphasis was on determining the relations between large and small states and the rules to govern their representation and voting in the various governing bodies. There was a tendency to avoid the problem of human rights."³

United Nations Charter and Women’s Human Rights

When the **Charter of the United Nations** was signed at San Francisco on June 26, 1945 by the representatives of fifty nations, human rights formed a crucial part of it. It had mainly three goals: “to prevent future wars by fostering peace and security; to promote social and economic progress; and, to define and protect the rights and freedom of every human being, regardless of race, sex, language or religion.”⁴ The objectives of the Charter were stated by President Truman in these words, “The Charter of the United Nations which you have just signed is a solid structure upon which we can build a better world. History will honor you for it. Between the victory in Europe and the final victory, in this most destructive of all wars, you have won a victory against war itself. . . . With this Charter the world can begin to look forward to the time when all worthy human beings may be permitted to live decently as free people.”⁵ Significantly, the adoption of the Charter, set the world on the path of women’s human rights too and also committed the United Nations to policies and programmes for advancement of women. Here it must be noted that of the 160 signatories, only four were women - Minerva Bernardino (Dominican Republic), Virginia Gildersleeve (United States), Bertha Lutz (Brazil) and Wu Yi-Fang (China). However, they played a significant role in inscribing women’s rights in the founding document of the United Nations.⁶

The Charter of the United Nations is the first international instrument to mention equal rights of men and women in specific terms.⁷ In fact, the thread of human rights actually weaves the diverse provisions of the United Nations Charter

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into one complete whole. Elimination of discrimination on grounds of sex was a paramount concern in the minds of the framers. This is clearly evident in the Preamble to the Charter which resoundingly proclaims, “We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,….and to employ international machinery for the promotion of the economic and social advancement of all peoples.”

Thus, protection and promotion of fundamental human rights, regardless of parochial considerations formed a predominant concern of the founders of the United Nations. It equally obliged the member states to make protection and promotion of human rights their primary duty and commitment, a commitment which could not be sidelined by concerns of national security and sovereignty.

The Preamble apart, the United Nations Charter makes specific declarations affirming its commitment to promotion and protection of human rights of all peoples regardless of religion, language, colour or sex. Article 1(3) emphatically declares that the purpose of the United Nations is “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for the human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Further, Article 8 ensures that “The United Nations shall place no restriction on the eligibility of men and women to participate in any capacity and under conditions of equality in its principle and subsidiary organs.” Responsibility has also been imposed upon the General Assembly, under Article 13(1) (b), to initiate studies and make recommendations for the purpose of, “promoting international cooperation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

The further responsibility of the General Assembly with respect to providing universal respect for human rights without any discrimination on the ground of sex is

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9 Article 1(3), ibid.
10 Article 8, ibid.
11 Article 13(1) (b), ibid.
provided under Article 55 of Chapter IX which lays down that “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a higher standard of living, full employment, and conditions of economic and social progress and development; ….universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”\textsuperscript{12}

The General Assembly is not the only organ vested with the responsibility of protecting and promoting human rights. Responsibility has also been conferred upon the Economic and Social Council for promoting respect for human rights for all, under Article 62(2), which provides that “It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”\textsuperscript{13} Further, Article 68 confers power upon the Economic and Social Council to, “set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.”\textsuperscript{14}

Protection and promotion of human rights has also been laid down as the basic objective of the Trusteeship system. Under the International Trusteeship System,\textsuperscript{15} Article 76 (c) provides that “The basic objectives of the trusteeship system, in accordance with the Purpose of the United Nations laid down in Article 1 of the present Charter, shall be: to encourage respect for Human Rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world.”\textsuperscript{16}

In sum, one could assert with Johannes Morsink that, “In the Charter, discrimination on the basis of sex is singled out from among the list of items and

\textsuperscript{12} Article 55 of Chapter IX, ibid.
\textsuperscript{13} Article 62(2), ibid.
\textsuperscript{14} Article 68, ibid.
\textsuperscript{15} The Trusteeship Council was originally established under Chapter XII of the Charter to provide international supervision for 11 Trust Territories under the administration of seven member states and to ensure that adequate steps were taken to prepare the territories for self-government and independence.
\textsuperscript{16} Article 1, UN Charter, \textit{op. cit.}
specifically prohibited.” As Elizabeth F. Defeis observes, “The commitment to gender equality as a fundamental human right is particularly significant since in 1945, the year that the charter came into force, women enjoyed the right to vote in only 31 countries.” The faith of the United Nations Charter in the dignity and worth of the human person and its commitment to realization of human rights was effectualised through its agencies and activities which followed the setting up of the United Nations. Following this, the UN work on human rights began in earnest.

*Women’s Human Rights and the International Bill of Rights*

The first major milestone in setting up the global human rights regime came with the adoption of the Universal Declaration of Human Rights. The General Assembly proclaimed that the Declaration was in fact a common standard of achievement for all peoples and all nations, every individual and every organ of society. Keeping this declaration always in mind through teaching and education and promoting respect for these rights and freedoms through national and international progressive measures, the General Assembly sought to secure their universal and effective recognition and observance both among the peoples of member states themselves and among the peoples of territories under their jurisdiction.

The Declaration, for the first time, elaborated the basic principles of human rights in a most comprehensive manner covering civil and political rights, i.e., Article 3 to 21 and economic, social, cultural rights under Articles 22 to 27.

The Declaration recognized the principles of equality and inalienability as the pre-requisites of human rights and set forth rights of equality, recognition of reason and conscience (Article 1 of UDHR), no distinction on basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status or on the basis of status of the country (Article 2), right to life, liberty and security of person (Article 3), prohibition of slavery and slave trade (Article 4), prohibition of torture, cruel, inhuman or degrading treatment or punishment (Article 5), right to be recognised as a person before the law (Article 6), equality before the

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law (Article 7), right to remedy (Article 8), right to be presumed innocent until proved guilty (Article 11), freedom of movement (Article 13), right to nationality (Article 15), right to marry and found a family (Article 16), right to property (Article 17), freedom of thought, conscience and religion (Article 18), freedom of speech (Article 19), freedom of peaceful assembly and association (Article 20), right to elect and be elected (Article 21), right to social security (Article 22), right to work (Article 23), right to rest and leisure (Article 24), right to an adequate standard of living (Article 25), right to education (Article 26) and right to participate in the cultural life of the community (Article 29). Thus, for the first time, in recorded history the international community committed itself to ensuring that no person would be bereft of rights or deprived of rights on the basis of race, religion, colour or sex.

It is significant to note that the UDHR applies to all human beings, men and women, equally. Article 1 of the Declaration proclaims that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” However, Articles 2, 16 and 25 focus on issues of special concern to women. Article 2 provides that everyone is entitled to all the rights and freedoms given in this Declaration without distinction of any kind such as race, sex, language, religion or political, national or social origin, birth on any other status. Article 16, related to marriage, not only grants the right to marriage and to found a family to all men and women, but specifies that “Marriage shall be entered into only with the free and full consent of the intending spouses,” thereby eliminating the issue of forced marriage. Article 25, recognizes that motherhood and childhood require and are entitled to special care and assistance and all children born in or out of wedlock are to enjoy the same social protection.

Nevertheless, as a document of universal human rights, the UDHR has certain clear limitations when it comes to women. In the first place, the Committee, which drafted the UDHR was overwhelmingly male with Eleanor Roosevelt, who chaired the Committee being the only exception. This uneven representation is clearly reflected in the language of the UDHR.\textsuperscript{20} Secondly, the entire language is misogynist. Article 1 which talks of freedom and equality of all human beings, at the same time

\textsuperscript{20} Hilary Charlesworth, \textit{op. cit.}
uses the term ‘brotherhood’, leading to the exclusion or at least marginalization of women from its ambit. Hilary Charlesworth observes that “The final version of article 1 refers to human "beings" as born free and equal in dignity and rights, but article 1 nevertheless retains a reference to "the spirit of brotherhood." Throughout the Universal Declaration, "man" is used as a general category (although the terms "human beings" and "person" are also used) and the male pronoun is used consistently.”\textsuperscript{21} Androcentric language reinforces gender based hierarchies. Hilary Charlesworth, quoting Helen Bequaert Holmes writes that with the use of "generic" masculine terms, “[a] man is sure that he is included; a woman is uncertain.”\textsuperscript{22} Another example which may be cited here is that of Article 12 of UDHR, which asserts “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honor and reputation”\textsuperscript{23}. The language is misogynist, recognizing only males as having a family or privacy or even correspondence to attend to. Thirdly, the human rights regime set up by the Universal Declaration of Human Rights did not recognize the violation of rights in the private sphere. Thus, the rights mentioned under this were mainly in the public sphere. It upholds the right to privacy and sanctity of the family and household. There is not even the conception of the fact that the so called haven of the family is the most dangerous place for a woman. The presumption underlying this approach was that it is the governments which are the major violators of human rights, not acknowledging the fact that the violations are much more likely to be perpetuated in the sacrosanct private sphere. Further, women’s human rights violations are also determined by the intersectionality of their gender with other factors such as race, ethnicity, sexual orientation, caste, religion, age, etc. Violence against women is a major issue both in the public and the private sphere, which demonstrates how human rights law has excluded women.

The few specific references to women in the UDHR serve to camouflage the limited acknowledgement of women’s issues and concerns in this august document. To quote Hilary Charlesworth once again, “The Universal Declaration's acknowledgment of women's lives clearly is quite limited. Women enter the picture

\textsuperscript{21}ibid.
\textsuperscript{22}Quoted in ibid.
only insofar as they are connected to men. The Universal Declaration depicts women as wives and mothers and, in the latter capacity, as particularly vulnerable individuals. The constant references to the family in the Universal Declaration reinforce the restricted image of women. In fact, the Universal Declaration presents the family as "the natural and fundamental group unit of society" and as a unit that is "entitled to protection by society and the State." The language of the Universal Declaration suggests that a family comprises only a heterosexual married couple and their offspring. Indeed, the Universal Declaration assumes that the primary purpose of marriage is to have children. In a marriage, a woman will be economically dependent on her husband such that, if she is widowed, she will have a special claim to social security." 24 She further opines that, “The sacrosanct image of the family in the Universal Declaration discourages proper scrutiny of whether the rights to life, liberty, freedom from slavery, and security of the person are realized within particular family contexts.” 25 This is particularly true in the context of the cultural relativist argument for denial of various rights to women. Moreover, this ‘sacrosanct image of the family’ obscures the numerous denials, deprivations and abuses suffered by women and girls within the family. Witness the denial of rights to education, health, nutrition and, in fact, the very right to be born in various nations; the latter, particularly in India.

Furthermore, the mere Declaration does not really oblige states to change their laws and ensure fulfillment of rights regardless of various other considerations. To quote Hilary Charlesworth once again, “Some states are reluctant to be bound fully to the treaty translations of the Universal Declaration's provisions. Some states claim that the Universal Declaration and the United Nations (U.N.) system of human rights protection is a reflection of Western values and therefore is a vehicle of cultural imperialism. Some activists and scholars claim that in our globalized world, the provisions of the Universal Declaration are completely inadequate to respond to the real threats facing humanity.” 26 In a similar vein, Adamantia Polis argues that the Declaration is informed by "the notion of man as an autonomous, rational, calculating

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24 Hilary Charlesworth, op. cit.
25 ibid.
26 ibid.
being..., a notion of man but not of woman and not even of all men but only of some."\textsuperscript{27}

Johannes Morsink also has a problem with the article on marriage, which she says would be redundant, if there was to be real equality between men and women. She opines, “The article on marriage started as part of an article on equality before the law. The article as later stated contained three ideas: the equality of men and women, the protection of the family, and the protection of motherhood and childhood. Put this way, the redundancy is immediately apparent; if the sexes are given equal rights even in marriage, as they are in Article 16, and if motherhood and children are protected, as they are in Article 25, why then does the Declaration have a separate statement just on the family? Since families are made up of men, women, and children, all of whose rights are separately protected in the Declaration, it would seem that no extra statement just about the family is needed. Yet the third paragraph of Article 16 asserts that ’’[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.’’\textsuperscript{28} This early approach also failed to recognize that women’s special situation necessitates special measures to ensure that the rights declared herein are applicable to them. Furthermore, there are certain rights in the absence of which all declarations of human rights for women become worthless. This recognition was to come only four decades after the UN Charter was adopted. Thus, in the very first instance of declaration of universal human rights, the United Nations approach is found wanting in both words and commitment.

The nascent concept of women’s human rights, nevertheless took birth with the Universal Declaration of Human Rights. The notions of universality, inalienability and indivisibility of human rights implied that women could not be left out of the human rights discourse and practice. It, therefore, challenges the invisible boundaries imposed upon women, which limit their rights in the name of various hidebound constraints, thus going a long way in setting out a roadmap for women’s human rights. What is significant is the fact that, for the first time, the notion of women’s equal entitlements to human rights was explicated in an international document. As Laura Reanda emphatically asserts, “Therefore, the entire range of human rights codified in the International Bill of Human Rights is applicable to women in the most

\textsuperscript{27} Johannes Morsink, \textit{op. cit.}  
\textsuperscript{28} ibid.
fundamental sense.”  She further points out why it is necessary to reiterate what seems to be a very obvious fact. “To emphasize this point may seem superfluous until one considers that most of the debate about the condition of women, both within and outside the United Nations, takes place within the framework of social development or humanitarian issues. Discriminatory practices and institutions which severely affect women and hold them in a subservient position - whether these are discrimination in nutrition and health care, violence in the family, rape, denial of the right to abortion, exclusion from public life, or traditional customs which often involve outright forms of violence against the female person - are not usually analyzed or handled as violations of the human rights and fundamental freedoms of women in terms of existing international instruments. This is even more striking if one considers that these and other forms of discrimination against women continue to prevail in many countries which have subscribed to the principles of the Universal Declaration of Human Rights by incorporating its provisions in their constitutions, or have undertaken a binding international obligation to respect human rights by becoming parties to the covenants.”

The Charter and UDHR had clearly set the United Nations onto the path of gender equality, a principle which was reiterated in the International Covenants adopted in 1966. Together with the Universal Declaration of Human Rights, the two International Covenants, viz. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, came to be known as the International Bill of Rights. This was the most celebrated and holistic documentation of human rights till date.

As stated earlier, the principles of gender equality and non-discrimination on the basis of sex were clearly set out under the Covenants. Article 2 of both Covenants specifically prohibits discrimination on the basis of sex.  

The International Covenant on Economic, Social and Cultural Rights, under Article 1, ensures the right to self determination of all peoples. Article 2 imposes an

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30 ibid.

obligation upon the various State governments to “take steps for realization of the rights recognized in the Convention without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Further, under Article 3 state governments are obliged to ensure equal rights of men and women and only such limitations as are compatible with the nature of these rights may be imposed (Article 4). Article 5 does not allow derogation from fundamental human rights on the pretext that this Convention does not recognize them. Coming to the specific rights guaranteed under this Covenant, it seeks to ensure: right to work (Article 6), enjoyment of just and favorable conditions of work and minimum remuneration, fair wages and equal remuneration for work of equal value “without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work”; decent living conditions, safe and healthy working conditions; equal opportunity for promotion, rest, leisure, reasonable limitation of working hours and periodic holidays (Article 7), as well as the right to form trade unions as well as the right to strike(Article 8). The right to social security is also guaranteed under (Article 9).

Article 10 reiterates the assertion of the UDHR of the family as the fundamental unit of society requiring the widest possible protection and assistance. It further emphasizes the necessity of free consent in marriage. Again, it provides for special protection to mothers before and after childbirth as well as paid maternity leave and social security benefits. It also asserts the necessity of protection and assistance of children and youth and their protection from economic and social exploitation. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law. Article 11 recognizes the right to an adequate standard of living. It also recognizes the right of everyone to be free of hunger and obliges state governments to take various actions for this purpose. Article 12 recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Within this, it obliges the state governments to take steps for reduction of still births, infant mortality and healthy development of the child. Apart from this, the focus rests on all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemics, endemic, occupational and other diseases; as well as assurance of medical service and medical attention to all in
the event of sickness. Article 13 recognizes the right of everyone to education, within which the focus is on free and compulsory primary education, general availability of secondary education as well as accessibility of higher education. Article 14 obliges the state parties to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all. Article 15 recognizes the right of a person to take part in cultural life; to enjoy the benefits of scientific progress and its applications; to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the said person is the author.

The International Covenant on Civil and Political Rights (ICCPR) sets out in elaborate detail the various civil and political rights of all persons without distinction on the basis of parochial considerations. As in the ICESCR, this Covenant too through Article 2 imposes an obligation upon the various State governments to “take steps for realization of the rights recognized in the Convention without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Article 3 obliges state governments to ensure equal rights of men and women for the enjoyment of all civil and political rights. Article 5 does not allow derogation from fundamental human rights on the pretext that this Convention does not recognize them.

Right to life is assured through Article 6 which provides that every human being has an inherent right to life which will be protected by law and no one shall be arbitrarily deprived of his life. Article 7 recognises that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, particularly, no one shall be subjected without his free consent to medical experimentation. Slavery, slave-trade or holding a person in servitude or forcing into compulsory labour is prohibited under Article 8. Article 9 recognizes the right of all persons to liberty and security of person and no one shall be subjected to arbitrary arrest or detention. Article 10 of the Covenant grants that those persons who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 11 provides that no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation. Article 12 states that everyone lawfully has the right to liberty of movement and freedom in choosing his residence and he or she
shall be free to leave any country subject to national security, public order, public health and freedoms of others. Article 13 recognizes that an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall be allowed to submit the reasons against his expulsion. Equality before the courts and tribunals is guaranteed under Article 14. Article 15 recognizes that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed. Article 16 declares that everyone has the right to recognition as a person before the law. Article 17 grants the right against arbitrary interference with privacy and family. Article 18 gives the right of freedom of thought and religion whereas Article 19 also grants the freedom of expression. Article 20 prohibits any propaganda for war and advocacy of hatred. Article 21 gives the right to peaceful assembly and Article 22 provides for freedom of association or to join trade unions.32

One of the most significant provisions of the Covenant relates to the family. Article 23 proclaims a family as a natural fundamental unit of society, entitled to protection by society and the state. It recognizes the rights of both men and women to marry and found a family, with the proviso that marriage shall not be entered into without the full and free consent of both partners. It also places an obligation upon the state parties to “to take appropriate steps to ensure equality of rights and responsibilities of the spouse to marry, during marriage and at its dissolution.”33

Article 24 grants the right of protection to every child without any discrimination based on sex, language, religion or national, social origin etc. Every child should be registered immediately after birth. Article 25 states that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, to vote and to be elected and have access to public service in country. Article 26 states that all persons are equal before the law and are equally entitled to protection of law without any discrimination based on race, color, sex, language and religion.

Undoubtedly, the two Covenants greatly expanded the notion of human rights to include previously unrecognized rights, particularly in the context of women’s rights. Thus, the right of women to be free of all forms of discrimination, the right of freedom of assembly and association, right to found a family, as well as the rights to, “liberty and security of the person” and “freedom of expression”, including “freedom to seek, receive and impart information and ideas of all kinds”; and affirm that “no marriage shall be entered into without the free and full consent of the intending spouses” have been recognized.

Nevertheless, the grandiose utopia created by these Covenants as well as the UDHR reveals itself to be weak in its very foundations, particularly where women are concerned. In the first place, it took almost 18 years for the Covenants to be formulated after the UDHR in 1948. Second, it was ten years after the Covenants were adopted by the General Assembly that they came into effect after the requisite number of state parties ratified them. More significantly, many member states have signed but not ratified the Covenants,34 and many have done so only with substantial reservations.

The laudable provisions of these Covenants, leave a lot unsaid and undone where women are concerned. As in the UDHR, the language here too is androcentric, creating a doubt and uncertainty regarding the inclusion of women as well as the extent of their inclusion. Are women merely corollaries to the males, entered as an afterthought, which is the impression one gets upon reading a large number of the provisions of the Covenant? Even where the Covenant recognizes the “the ideal of free human beings enjoying freedom from fear and want”, which can only be by a combined enjoyment of economic, social and cultural rights along with civil and political rights, the language continues to be androcentric with reference to “his” economic, social and cultural rights, as well as “his” civil and political rights. The same androcentric language is visible in Article 6 of ICESCR which proclaims, “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” (emphasis

34 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang =en accessed on 25th June, 2014. Cuba, Palau, South Africa and United States of America, signed the Covenants but did not ratified it whereas some of the states like Saudi Arabia, Singapore, United Arab Emirates, Malaysia, Fiji, Burma and Bhutan never signed or ratified these Covenants.
Similarly Article 11 of ICESCR emphasises the right to an adequate standard of living “for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Right to health is given a place of primacy within the Covenant. However, there is no mention of reproductive rights or reproductive health. While reduction of infant mortality rate is regarded as crucial, maternal mortality rate, which even today continues to be unacceptably high in developing countries, including India, finds no place in this Covenant. Again with reference to the right to education, there is no recognition of the cultural and social factors which lead to denial of education of girls, nor of the higher dropout rates of girls.

Article 6.1 of ICCPR provides that every human being has the inherent right to life. This right is required to be protected by law and it further ensures that no one shall be arbitrarily deprived of his life. This right is traditionally referred to in the immediate context of the obligation of states parties to ensure that courts observe due process of law before capital punishment is imposed. This understanding of the right to life is essentially male oriented, since men consider state execution more immediate to them than death from pregnancy or labour. A women’s right to life is obviously violated by avoidable death in pregnancy or childbirth. Likewise, the understanding of family is andocentric. Use of male centric language effectively excludes women from the ambit of family rights guaranteed under the Covenants.

Even more significantly while prohibiting discrimination neither the UDHR, nor the two Covenants define what they mean by discrimination. Further, Article 4 provides that in situations like public emergency which threatens the life of the nation, the state parties could take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation. Thus, the provisions of the Covenants are not sacrosanct, but give States, which are unwilling to apply them, adequate leeway to avoid the application of these provisions. The

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35 The Human Rights Committee has noted that the right to life has been too often narrowly interpreted. The expression of the ‘inherent right to life’ cannot be properly understood in a restrictive manner, and the protection of this right requires that states adopt positive measures.

36 Article 4 states that, “In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”.
Covenants also overlook the rights of women in special situations, in poverty, in armed conflict as well as the burden of socio-cultural traditions imposed upon them, which effectively nullifies the enjoyment of all rights for women. Recognition of the impact of violence against women on women’s rights was to come only after another two and a half decades had passed. All said and done, the Covenants set out an elaborate human rights arrangement, but women’s issues, perspectives and concerns were invisibilised by the very language, by the issues taken up or not taken up.

Moreover, as Roger Normand and Sarah Zaidi very pertinently observe, “The proclamation of universal human rights cannot erase, in one fell swoop, the hierarchies and divisions of power reflected in nation, class, race, and all other categories that separate humanity.”

Thus this giant step forward on the pathway of universal human rights, turned out to be a mere half step where women are concerned and in many cases not even that. Yet a beginning had been made, the foundation of an edifice laid and the international community moved on to a gradual recognition of ‘women’s rights are human rights’. The Declaration and Covenants were significant is that they mapped out a zone of human rights and provided a set of standards within which states could function and be judged.

*Women’s Human Rights in the International Conference on Human Rights*

1968 was designated as International Year of Human Rights by the UN. The year was marked by the convening of an International Conference on Human Rights in Tehran. One significant agenda of this Conference was the issue of women’s rights in the modern world. 29 resolutions were adopted at this Conference. There was a focus on the advancement of women and members were concerned about the existence of considerable discrimination against women in the political, legal, economic, social and educational fields. It was recognized that any advancement in the status of women can take place only by changing the traditional attitudes, customs

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and laws which are based on the idea of inferiority of women. Resolution IX adopted at this Conference stressed upon two significant issues, first, to ensure the equality of men and women in the field of social and economic rights. (like the right to work, the right to equal pay, the right to rest, the right to social security and the right to health protection); and second, to ensure equality of men and women in the field of civil and family rights. There was a recognition that there is a need to draft conventions in fields such as status of women in family law and others, where discriminatory practices continue to persist. It also recommended undertaking studies by the experts regarding attitude and values in different societies which affect the advancement of women, equality of rights between men and women as well as the implementation of these rights.

**United Nations: Women’s Human Rights Instruments**

Apart from these generally applicable human rights instruments, the United Nations from time to time has enunciated declarations and Conventions on specific issues pertinent to human rights. Some of these set out new rights or reiterate already stated ones while others focus on situations which lead to denial of human rights and attempt to rectify such situations or alleviate conditions emerging out of such situations, such as conflict, trafficking etc. Where do women stand in these? Do these include women as equal claimants of rights mentioned in each?

The United Nations attempted to rectify previous denials of women’s rights by enunciating certain instruments which focused specifically upon women. In this, a prime role was played by the Commission on the Status of Women (CSW).

Before going to analyze the women’s rights declared by the UN in this period, it would not be out of context to have a brief overview of how the CSW came into being as this is clearly indicative of the overall approach of the UN towards women’s rights.

Although the UN Charter unequivocally declared the principle of equality and non-discrimination, it was Eleanor Roosevelt’s open letter addressed to “the women...
of the world”, during the inaugural meetings of the UN General Assembly in London in February 1946 which drew the world’s attention to the issue of women’s rights, wherein she issued a call, “on the Governments of the world to encourage women everywhere to take a more active part in national and international affairs, and on women who are conscious of their opportunities to come forward and share in the work of peace and reconstruction as they did in war and resistance.”\(^{42}\) This enthused the UN into setting up a mechanism for women’s rights.

A Sub-Commission on the Status of Women was set up by the Economic and Social Council through its resolution E/RES/5 (I), 16 February 1946. The Sub-Commission, as Felice Gaer observes, was “subordinated both substantively and organizationally to the Commission on Human Rights (CHR)”,\(^{43}\) probably fearing that women’s rights might have a negative impact on “human” (read male) rights. Thus, initially comprising of seven female members, three additional male members were appointed, while, on the other hand, the CHR had only one female member. Thus, although a beginning was made on women’s human rights, yet work on this issue began from a stance of fear of sanctioning rights to women.

The first Chairperson of the Sub-Commission, Bodil Begtrup, requested the Economic and Social Council (ECOSOC) in May 1946 for a change to full Commission status, asserting that: “Women’s problems have now for the first time in history to be studied internationally as such and to be given the social importance they ought to have. And it would be, in the opinion of this Sub-Commission of experts in this field, a tragedy to spoil this unique opportunity by confusing the wish and the facts. Some situations can be changed by laws, education, and public opinion, and the time seems to have come for happy changes in conditions of women all over the world (…)”\(^{44}\)

This demand was soon accepted and on 21 June, 1946, the Sub-Commission formally became the Commission on the Status of Women (CSW), a full-fledged Commission dedicated to ensuring women’s equality and to promoting women’s rights. Its mandate was to “prepare recommendations and reports to the Economic and


Social Council on promoting women's rights in political, economic, civil, social and educational fields” and to make recommendations “on urgent problems requiring immediate attention in the field of women’s rights.” However, its powers were limited and it did not have “the power to investigate specific cases of discrimination, nor was it authorized to take measures to ensure compliance with United Nations standards”. Nevertheless, it played a very significant role in setting standards, generating awareness, countering obstacles to women’s rights and encouraging Governments to change national laws.

This led to the ECOSOC seeking reports from member states about the status of women in their respective states. This set the backdrop for various initiatives on specific rights for women. A holistic approach to women’s rights or even the recognition that women’s rights are human rights was yet a long way away.

The first specific issue taken up by the United Nations, where women’s rights are concerned related to women’s political rights. The issue of women’s political rights had first emerged with struggle over the right to vote in the middle of the 19th Century. New Zealand was the first country to grant women the right to vote in 1893. Gradually, the struggle had effect and other states followed suit. However, even by 1945 only 31 countries had granted women the right to vote. Although the UDHR specified various political rights of all persons, yet it was increasingly realized that women continued to be excluded from these political rights. It was in this context that the United Nations adopted the Convention on Political Rights of Women in 1952. The Convention, however, was not adopted in a vacuum. Prior to this, data was collected on the discrimination faced by women in the political field. The Commission on the Status of Women requested the Secretary-General to prepare a report, on the prevalent discrimination based on sex in political field, which was submitted on 15 March, 1950 under resolution no E/CN.6/131. Data of the Secretariat

47 ibid, p. 14.
49 Elizabeth F. Defeis, op. cit.
showed that in 22 countries women still did not have equal rights to vote or hold political office, even though there were no laws denying those rights.

The Political Rights Convention of 1952 was adopted by the General Assembly on December 20, 1952 by 46 votes in favor and none against with 11 abstentions. It came into force on July 7, 1954. It was the first instrument of international law aimed at recognizing and protecting the political rights of women everywhere. It specified the rights of women to vote, be elected and hold any public office.

After the Convention on Political Rights, the focus of the United Nations shifted to the position of women in society. By then, the realization had dawned that women suffered severe discrimination in the social sphere in the name of culture, custom and tradition. The General Assembly passed a resolution which urged member states to take all appropriate measures to abolish such customs, ancient laws and practices by ensuring complete freedom in the choice of spouse, abolishing bride-price, child marriage practice and guaranteeing the rights of the widow like custody of children and remarriage.

Another issue which attracted the attention of the United Nations was that of nationality of married women. The origins of this issue lie in a patriarchal and patrilocal set-up wherein the wife moves to the husband’s place of residence after marriage. In such a set-up, emerged the contentious issue of whether her nationality would remain the same or she would automatically get her husband’s nationality post-marriage. It is significant to note that reports of the Secretary General based upon data collected from various sources, revealed that discrimination against women was frequently a consequence of conflict between laws relating to nationality, domicile, marriage and divorce. In most of the countries, nationality laws were based on the traditional assumption that women who marry should automatically take their husbands’ nationality. The Commission, however, found that a woman who married a

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man of a different nationality could find herself deprived of her own nationality without her consent. The 1948 Universal Declaration of Human Rights had affirmed every individual’s right to a nationality and marked a path for the Commission’s efforts to set a legal standard to protect the right for all women.

Thereafter, a draft treaty on the nationality rights of married women was prepared by the Commission on the Status of Women in 1955. The proposed agreement was aimed at protecting the right of a woman to retain her nationality if she wished even if it differed from her husband, with the intention to eliminate conflict of laws involving the nationality of women who were married or divorced, or whose husbands had changed their nationality.

The Convention on the Nationality of Married Women was adopted by the General Assembly on 29 January 1957. It provided that neither marriage, nor its dissolution, nor the change of nationality by a husband during marriage would automatically affect the nationality of the wife (Article 1); wife could retain her nationality even when the husband acquires or renounces the nationality of another state (Article II); the wife could, on request acquire the nationality of her husband (Article III). The adoption of the Convention was a historic step at par with the Convention on the Political Rights of Women.

The androcentric tilt of the UDHR and the Covenants, as well as the reports gathered by the Commission on the Status of Women from various State parties, led to the recognition of the need for a separate instrument to eliminate discrimination against women. The Declaration on the Elimination of Discrimination against Women was adopted, which expressed concern that despite the Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments, considerable discrimination against women continues to exist.

The initiation of the Declaration had come much earlier when “in 1963, in an effort to solidify earlier gains, members of the General Assembly’s Third Committee argued that the cause of equal rights would gain immeasurably if the United Nations

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approved a declaration that consolidated, in one document, all of the standards on women’s rights that had been developed since 1945.\textsuperscript{55} This led to the request by the General Assembly to ECOSOC and CSW to prepare a draft Declaration on the Elimination of Discrimination against Women. After four years of debate the Declaration on the Elimination of Discrimination Against Women was passed unanimously by the General Assembly vide resolution A/RES/2263 (XXII) on 7 November 1967.\textsuperscript{56}

The Declaration brought together in a single document a concise listing of the areas in which equality of men and women had to be asserted in the field of law and practice. The Declaration proclaimed that discrimination against women was fundamentally unjust and constituted an offence against human dignity. It also called gender discrimination a practice incompatible with the welfare of the family and of society. New laws would have to be written and old laws, customs, regulations and practices amended in order to end discrimination against women under the law, and in political, economic and social life.\textsuperscript{57} The Declaration asserted the equality of rights of men and women and the elimination of discrimination based on sex.

It recognized that discrimination leads to denial or limiting of the equality of rights between men and women (Art 1).\textsuperscript{58} It specifically required that existing laws, customs and regulations that were discriminatory towards women be abolished and adequate legal protection of equality be established. (Art 2). This Article also called upon countries to ratify, or accede to, the international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women at the earliest possible, and ensure their full implementation.\textsuperscript{59} Article 3 requires states to take appropriate measures, “to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of

\textsuperscript{56} ibid, p. 165.
\textsuperscript{58} ibid.
customary and all other practices which are based on the idea of inferiority of women”.

The Declaration enumerates various rights of women including, political rights, right to nationality, rights under civil law, discriminatory provisions in penal law, prevention of traffic in women, education rights, economic and social rights and the principle of equality of rights of men and women. The Economic and Social Council with the recommendation of the Commission on the Status of Women, introduced a reporting system on the implementation of the Declaration on the Elimination of Discrimination against Women. Under this, the Member States, the specialized agencies and the non-governmental organizations concerned were asked to inform the Secretary-General of publicity given to the Declaration as well as the action taken by them in compliance with the principle of the Declaration. The Secretary-General then was to submit the report on the information so received for consideration by the Commission at its biannual sessions.

The Declaration was a giant step forward in the movement for women’s rights. Most significant was the recognition of discrimination as a violation of women’s rights. However, it suffered from certain inherent shortcomings which effectively nullified its impact. In the first place it was merely a Declaration and not a legally binding Convention. Secondly, the reporting procedures were voluntary, resulting in low response. The need for a legally binding convention defining women’s rights was the major need of the time. Most significantly, it did not define discrimination.

Meanwhile, the United Nations recognized the necessity of integration of women into the development process, which also received an impetus during the

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60 ibid, p.165.
62 ibid, Article 5.
63 ibid, Article 6.
64 ibid, Article 7.
65 ibid, Article 8.
66 ibid, Article 9.
67 ibid, Article 10.
68 ibid, Article 11.
Second UN Development Decade, when the General Assembly passed a Resolution 2626 (XXV) on November 19, 1970. This resolution stated that the full integration of women in the total development efforts should be encouraged.

The period also witnessed an emerging realization of the special concerns of women and children in times of emergency and armed conflict. This led to the proclamation of the Declaration on the Protection of Women and Children in Emergency and Armed Conflict71 by the General Assembly vide resolution 3318 (XXIX) of 14 December 1974. It expressed deep concern over the “sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm.” What is prohibited and condemned by this Declaration? Attacks and bombings on the civilian population and the use of chemical and bacteriological weapons in the course of military operations. It requires States to abide by their obligations under the Geneva Protocols and make all efforts to spare women and children from the ravages of war. It further obliges the State governments to take all necessary steps “to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children. It also declares as criminal “All forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories”. It further asserts the right of women and children under such circumstances to food, shelter, medical aid or other inalienable rights.

The Convention is indeed a very elaborate statement of the rights of women and children under emergency and armed conflict. However, it fails to recognize the special needs of women. Women’s experience of armed conflict differs in many ways from that of men. As Judith Gail Gardam and Hilary Charlesworth very pertinently observe, “We now have evidence that women experience armed conflict in a different way than men. These effects differ widely across cultures depending upon the role of

women in particular societies. One thing is clear: armed conflict often exacerbates inequalities (in this context, those based on gender) that exist in different forms and to varying degrees in all societies and that make women particularly vulnerable when armed conflict breaks out. Of the more than one billion people living in poverty today, the great majority are women. They are, moreover, generally disadvantaged in terms of education and are considerably less mobile because of their traditional role in caring for others. Further, these inequalities continue after the cessation of hostilities. Women are often excluded from the reconstruction processes that take place after armed conflict as well as from peace building initiatives.

They further continue that “Traditionally, reports and studies on the effects of armed conflict tend to incorporate women in the general category of civilians without regard to the different experiences of men and women civilians. The particular concerns of women have, to date, been regarded as peripheral in such analyses. For example, until recently, sexual violence against women was regarded as an inevitable aspect of armed conflict.”

The UN Women Report ‘Progress of the World’s Women’ of 2011-12 also reveals that, “The massive upheavals and social dislocation caused by conflict also have particular impacts on women, who bear the disproportionate burden of social and economic rights violations. When men go off to fight, in many cases, women are left behind to secure the basic requirements for survival, for themselves and their families. The destruction of social infrastructure and reduction of government spending on social services places additional burdens on women as caregivers and exacerbates existing poverty”. It further links mass displacement with violent conflict asserting that, “Mass displacement is a consequence of violent conflict and women represent the majority of internally displaced people (IDPs) and refugees globally. By 2009, there were more than 3 million displaced people in Colombia, the majority of them women and girls. Of the violations reported by women to the Sierra Leone Truth and Reconciliation Commission, nearly a quarter were related to forced displacement.”

The declaration fails to note that women suffer not merely from bombings and denial of rights such as shelter, food etc, but are the victims of rape and sexual assault

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73 ibid.


75 ibid.
in such circumstances. Witness the comfort women of South East Asia. Their trauma does not end with the war, but continues even after the cessation of hostilities. Moreover, women’s bodies are used as the battlefield on which male battles of dominance and control are continuously fought, be it in peace time or in war. These situations are ignored in this declaration, which continues to suffer from the obvious defect of its being non-binding, a mere declaration. It continues to look at women within their gender specific roles. The focus is on women as mothers who “play an important role in society, in the family and particularly in the upbringing of children.” It has a protective approach to women and children, failing to recognize them as capable of protecting themselves and others. They are held to be the most vulnerable members of the population.

Thus, the United Nations had bestirred itself in the arena of women’s human rights and begun the process with the setting up of CSW. It went on to make specific Conventions and declarations for women, focusing specifically on women’s political rights, on nationality rights, elimination of discrimination as well as protection of women and children in situations of armed conflict. This marked a significant breakthrough in assertion of women’s human rights. However, these Conventions and Declarations, as asserted above, failed to take note of women’s specific situations, of the socio-cultural baggage carried by women and of other discriminations which effectively denied them access to even the few rights declared in this period. Furthermore, the rights declared here had already been declared in the International Bill of Rights, so was there really any need to assert these specifically? Was this assertion not creating a separate ghettoized sphere of women’s human rights distinct from general rights? Moreover, even if one agrees that separate assertions and declarations were needed in view of the invisibilising of women’s rights over the centuries, yet a large number of rights for women were left out of the ambit of these Declarations and Conventions. The international community had a long way to go before recognizing women’s rights as human rights.

*Women’s Human Rights and UN Instruments for Protection of Children’s Rights*

The period also saw the United Nations embarking on the process of protection of rights of the child. The attempt to protect the rights of children in emergency and armed conflict has been mentioned above. Another major children’s
issue taken up in this period was the minimum age at which a person could be employed in various kinds of work. The International Labour Organisation took an initiative in this regard by attempting to prohibit child labour in various areas. **Minimum Age Convention, 1973**\(^{76}\) (No. 138) adopted on 26 June 1973 by the General Conference of the International Labour Organisation at its fifty-eighth session seeks to prohibit child labour by making it mandatory to raise the age barrier at which a person may seek employment. It prescribes 15 years as the minimum age, but allows developing countries to initially specify a minimum age of 14 years. However, the Convention once again fails to note the special situation of girls, the fact that girls are pushed into paid and unpaid domestic labour, whether in other households or their own, making the provisions of this Convention null and void so far as these girl children are concerned.

The own report of the ILO reveals that, “Millions of children around the world, mainly girls, are in paid or unpaid domestic work in households other than their own. Of these children around two thirds are estimated to be in unacceptable situations, either because they are below the legal minimum working age, or are working under hazardous conditions or in circumstances that are tantamount to slavery. These children carry out tasks such as cleaning, ironing, cooking, gardening, collecting water, looking after other children and caring for the elderly.”\(^{77}\) The Report further reveals that, “Understanding child domestic work purely in terms of child rights or as a labour issue is only a partial analysis. Evidence shows that the practice is highly feminized, in large part due to deep-rooted societal beliefs that domestic work is fundamentally the domain of women and girls.”\(^{78}\) Thus girls are invisible in the only attempt to protect children’s rights in this period.

*Women’s Human Rights in UN Instruments relating to Social Welfare and Development*

The UN and its agencies, in this period also attempted to enunciate various instruments aiming at eliminating discrimination in various fields as well as


\(^{78}\) ibid.
promoting development. One of the foremost issues taken up in this regard was that of
discrimination in education. Discrimination in education is a violation of rights
enunciated in UDHR as recognized by the **Convention against Discrimination in
Education** adopted by UNESCO in 1960. The Convention specifically focuses on
distinctions, exclusions, limitation or preferences which have the purpose or effect of
nullifying or impairing equality of treatment in education, specifically referring to
denial of access, limiting to inferior standards, or maintaining separate educational
institutions for persons or groups of persons. (Article 1). While the Convention makes
far reaching assertions for equality in education at all levels regardless of various
parochial considerations, it fails to recognize that girl’s educational attainments are
limited not merely by lack of educational institutes or other provisions, but by various
social and cultural factors. Moreover, while recognizing one aspect of discrimination
as “inflicting on any person or group of persons conditions which are incompatible
with the dignity of *man*” (emphasis mine), the Convention resorts to patriarchal
language.79 Reports reveal that, “reflecting the persistent disadvantages they face,
women account for two thirds of the world’s 774 million adult illiterates – a
proportion that is unchanged over the past two decades. Gender disparities in adult
literacy rates remain wide in most regions of the world.”80

Another problem area of special significance for women, rapidly drawing the
attention of the international community was the issue of forced and underage
marriages. It was in this context that the **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages** was adopted by the
General Assembly through resolution 1763 A (XVII) on 7 November 1962.81

The Preamble of the Convention significantly referred to the General
Assembly Resolution 843 (IX) of 17 December, 1954, that certain customs, ancient
laws and practices relating to the marriage and the family were inconsistent with the

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principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights. These necessitated complete freedom in the choice of the spouse, eliminating child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages would be recorded. The Convention in Article I provides for full and free consent of both parties to the marriage. This consent must be expressed publicly. Further, in Article II, it lays down the need for legislative action to specify a minimum age at marriage and finally it requires compulsory registration of all marriages.

This Convention requires the express consent of both parties to be given in front of a competent authority. Article 3 requires registration of the marriage. It further specifies the minimum age at marriage. This was particularly significant keeping in view the large number of underage marriages occurring particularly in developing countries and in countries such as India, where child marriage was an ancient custom. Although not specifically a women’s right, its impact was more women oriented as it is women and girls who suffer the severe consequences of the above mentioned acts. However, the provision seems to be a mere paper tiger, without any teeth for even today, women continue to suffer in forced marriages and a large proportion of girls are married under the legal age. Statistics reveal that “most of the world’s births to adolescents—95 per cent—occur in developing countries, and nine in 10 of these births occur within marriage or a union. About 19 per cent of young women in developing countries become pregnant before age 18. Girls under 15 account for 2 million of the 7.3 million births that occur to adolescent girls under 18 every year in developing countries.”

Such underage pregnancies have lasting and life threatening impact upon a girl’s life, thereby altering her entire life-course. The UNFPA State of the World Population Report further reveals that, “How it alters her life depends in part on how old—or young—she is. The risk of maternal death for mothers under 15 in low- and middle-income countries is double that of older females; and this younger group faces significantly higher rates of obstetric fistulae

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than their older peers as well. About 70,000 adolescents in developing countries die annually of causes related to pregnancy and childbirth. Pregnancy and childbirth are a leading cause of death for older adolescent females in developing countries.”

Way back in 1974, the issue of grave food crisis was recognized by the General Assembly and a **Universal Declaration on the Eradication of Hunger and Malnutrition** was adopted by the World Food Conference.\(^8^4\) It recognizes the role of social inequalities in creating situations of hunger and malnutrition along with other associated causes. It further recognizes that the food crises threatens fundamental human rights of life and human dignity. Certain crises within the world economy have aggravated the situation. The Declaration sees remedies to the situation of hunger in adequate production and distribution of food, establishment of a world food security system, peace and justice and eliminating the widening gaps between developed and developing nations. It proclaims that: “Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.” The responsibility to work towards this end is vested on Governments. The Declaration considers as significant, measures of socio-economic transformation, reorganization of rural structures, and mobilization of the full potential of human resources for achieving the target. It particularly emphasizes the need to “recognize the key role of women in agricultural production and rural economy in many countries, and to ensure that appropriate education, extension programmes and financial facilities are made available to women on equal terms with men.” Definitely significant from a woman’s perspective, the Declaration recognizes the role of social inequalities in causing the food crisis. However, it fails to look at socio-cultural factors which are an important component of malnutrition. Girls, for instance, are denied adequate nutrition on the presumption of various irrational ideas, and simply because they are unwanted. Increasing food production and even more equitable distribution is unlikely to make much of an impact under these circumstances.

Social welfare and development issues taken up during this period were of special significance for the welfare and development of women. Yet there were a

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\(^8^3\) ibid. 
number of loopholes in the provisions, which could negatively impact the availability of these rights for women. Thus, even these provisions had an androcentric tilt.

Women’s Human Rights and UN Instruments for Administration of Justice, War Crimes, Crimes against Humanity

The end of the second world war implied the cessation of active hostilities, but also charged the international community with the onerous task of peace-building, reconstruction and eradication of social evils and crimes. Achievement of universal human rights was impossible in the absence of these. In this context, the United Nations enunciated a number of instruments which have been grouped together under the overall theme of administration of justice.

Most of the Conventions and Declarations adopted in the immediate post war era related to issues emerging out of conflict. Thus, treatment of civilians, genocide and status of refugees were issues of immediate concern which drew the attention of the international community. One of the first issues taken up was that of genocide which has been recognized as a crime under international law. A Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly way back in 1948, vide resolution 260 A (III) of 9 December 1948. It admits that genocide had ‘inflicted great losses on humanity’ and emphasizes the need to liberate ‘mankind’ from ‘such an odious scourge’. Article II defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”

Undoubtedly, this was a very significant declaration particularly in view of the Nazi atrocities during the Second World War. However, nowhere does this Declaration recognize atrocities committed against women as genocide. Feminist

scholars have asserted that rape should also be considered as an instrumentality of genocide. Kelly Askin and Sherrie Russel-Brown have opined that “international tribunals should understand rape as an instrumentality of genocide…” 86 They further suggest that “we should view rape not simply as a "spoil of war"-that is, as a lamentable product of male exigencies- but also as a violation of the integrity of the victim and as a means to the destruction of the community through the debasement of the individual.” 87 Nikki van der Gaag reports that, “Genocide in Rwanda left an estimated 65,000 households headed by children-90 per cent for whom were girls. It is estimated that 250,000 women were exposed to sexual violence. More than 5,000 women were impregnated through rape. Many are now raising children fathered by men who killed their families.” 88 The UN Report, Progress of the World’s Women, too reveals that, “The true extent of these atrocities is generally not known because they are not fully documented, investigated or prosecuted. But the best estimates suggest their scale is vast. In Rwanda, it is estimated that between 250,000 and 500,000 women were raped in less than 100 days, as part of the 1994 genocide, in which 800,000 people were killed. In Bosnia and Herzegovina, between 20,000 and 60,000 mostly Muslim women were subjected to sexual violence in ‘rape camps’.” 89 Lack of recognition of these leads to major denial of women’s rights.

The many Geneva Conventions also attempted to protect the rights of civilians during the time of war. The Geneva Convention relative to the Protection of Civilian Persons in Time of War 90 (2nd part) adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949, prohibited the following activities in respect of persons who are not active


combatants: “(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular humiliating and degrading treatment; (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” It further provided that “The wounded and sick shall be collected and cared for.”

In the second part of the Declaration which provides for General Protection Of Populations Against Certain Consequences Of War, it declares that, “The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.” There is no recognition of distinction by sex. In Part III, Article 27, it provides that “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”

Specific provisions are made for children under 15 years of age, expectant mothers and mothers of children under seven years of age.

However, the recognition of women’s rights explicitly stated in the U.N. Charter and UDHR, notwithstanding, this very significant Convention of the rights of civilians in times of war fails to recognize issues of special significance to women. Language continues to be gender blind with he, his and him being used at various places. There is no specific recognition of women’s experiences whether as civilians or combatants. Moreover, the only recognition given to women is in respect of their relations to others, as wives, mothers, daughters and sisters and not as individuals in their own right. As Judith Gail Garden and Hilary Charlesworth observes, “Forty-three provisions of the Geneva Conventions and Protocols specifically deal with women and the effects of armed conflict. However, they all deal with women in their relationships with others, not as individuals in their own right. Nineteen are, in fact, designed to protect children”.

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What is even more significant is that sexual offences are not recognized as a violation of women’s human rights but as an affront on their honor. Judith Gail Garden and Hilary Charlesworth assert that, “Those that deal with sexual offenses are couched in terms of offenses against women’s honor. Women’s honor, as depicted in IHL, is constituted solely on the basis of certain sexual attributes, the characterizing features of which are what is seen as important to men, namely the chastity and modesty of women. In contrast, the honor of men is a much more complex concept in IHL, encompassing both mind and bodily attributes. The rules dealing with women are presented as less important than others. They are drafted in different language than the provisions protecting combatants and civilians generally, using the concept of “protection” rather than prohibition. Their breach, moreover, is not treated as serious within the rules themselves in that they are not considered “grave breaches” of the Conventions and, until recently, no attempt had been made to enforce these rules, despite widespread breaches.”

They further continue that “Although the Third Geneva Convention provides for such matters as separate dormitories and conveniences for women prisoners of war, it does not deal adequately with issues such as reproductive health.” As Nikki van der Gaag observes, “From 1990 to 2000, girls under 18 were involved in armed conflicts in at least 39 countries; in 65 per cent of those countries there are documented cases of kidnapping and physical force being used to recruit girls.” She further continues, “Estimates of the number of women raped during the war in Bosnia and Herzegovinia between 1992 and 1995 vary between 10,000 and 60,000.” The rights of these women are overlooked by the Convention.

Another major issue, specifically relevant to women, taken up by the United Nations in its early years, was the issue of trafficking and prostitution. Trafficking in persons is a multi-billion dollar industry, second only to the trade in arms and ammunition. Every year a large number of women are trafficked across borders and sold into prostitution. This issue, in itself if taken up and implemented by the various nations of the world could go a long way in protecting and promoting the human rights of numerous women across the world. Convention for the Suppression of
Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted by the General Assembly on 2 December 1949.\textsuperscript{97} The Preamble of the Convention proclaims that prostitution and the accompanying evil of traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person. It endangers the welfare of the individual, the family and the community. The Convention makes owning a brothel and renting out property for the purpose of prostitution, a criminal offence. State parties under the Convention must agree to undertake “measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution” and also make annual reports to the Secretary General of the UN regarding the measures taken.\textsuperscript{98} Trafficking and prostitution, herein, are considered within the concept of morality. Trafficking is defined only in the context of prostitution, a viewpoint which changed quite drastically in the year 2000 when the protocol on the same issue was adopted. \textsuperscript{99}

However, as Ndioro Ndiaye, the IOM’s Deputy Director observes, “As long as there is a demand and market for trafficking in persons, the human rights abuses it entails will continue. Unsuccessful economic transition, bad governance, corruption and gender based discrimination caused by deep-rooted patriarchal structures also aggravate the problem of trafficking in women.”\textsuperscript{100}

Thus, even in the case of rights of persons impacted by conflict or the crime of trafficking, it is found that the drafted instruments continued to use a masculinistic language and were based on male experiences. Women continued to be overlooked and invisibilised.

Women’s Human Rights in UN Instruments relating to Rights of Workers

The post-second world war world witnessed the emergence of democracy and crumbling of bastions of class, colour and religion. Yet a number of problems remained, particularly in the countries, freshly emerging from the colonial yoke. These included forced labour, slavery and slave like conditions, non payment of equal


\textsuperscript{99} ibid.

\textsuperscript{100} Nikki van der Gaag, op. cit., p. 52.
wages and other discriminations against workers. The problems were particularly acute for women workers, who had to deal with a gender bias along with all the other discriminatory considerations too. It may also be mentioned that the period of the second world war had seen women emerging from the private sacrosanct sphere into the public arena and taking up productive work in the public sphere. The end of the war, however, saw the women going back into the private sphere. Yet a beginning had been made and women were rapidly entering previously male bastions.

One the first issues taken up in this regard was the principle of equal wages for work of equal value. The International Labour Organisation adopted the Equal Remuneration Convention, 1951 (No. 100) on 29 June 1951 at its thirty-fourth session.\(^\text{101}\) The Convention very clearly specifies the meaning of remuneration to include the “ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.” It further specifies that the term “equal remuneration for men and women workers for work of equal value” refers to rates of remuneration established without discrimination based on sex. It obliges the member states to establish the principle of equal remuneration for work of equal value, regardless of sex. Reality, however, is revealed by Nikki van der Gaag, who asserts, “but while more women may be working, they are still paid less than men. In the US in 2000, on average, women earned 73 per cent of men’s wages. Black and minority women fared even worse: African American women earned 63 cents and Latinas 56 cents to every dollar earned by males.”\(^\text{102}\) The Convention provides for formal equality taking no consideration of various other aspects of women’s lives. It pays no heed to women’s ascribed gender roles, nor does it look at women’s work in the private sphere. Judy Fudge pertinently observes, “However, two limitations to the equal treatment norm combine to severely restrict its potential to redress women’s inequality at work. First, formal equality tends to benefit those women workers who most closely resemble men. Not only does this limit the number of women who are able to use equality rights to reduce their subordination at work, it fosters assimilation.

\(^{102}\) Nikki van der Gaag, op. cit., p. 45.
to the standard male employee. Second, since the instruments only apply to formal employment, women in informal employment or engaged in precarious employment arrangements that diverge widely from the male employment norm cannot invoke them.”

The ILO itself reports that “Despite decades of equal pay legislation, wage gaps remain wide and persistent across all regions and sectors”. The UN Women Report, Progress of the World’s Women, reveals that, “Women are generally paid between 10 and 30 percent less than men. According to the International Trade Union Congress, the average gender pay gap is 29 percent in Argentina, 22 percent in Poland and 24 percent in the Republic of Korea. These wage gaps reflect the fact that women doing the same or comparable jobs are paid less than men for the same work, but they are also indicative of the fact that women tend to be concentrated in low-paid work.”

While slavery was officially abolished long back, certain practices continued, which tended to bind workers in slavery like situations. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery adopted by a Conference of Plenipotentiaries convened by Economic and Social Council Resolution 608(XXI) of 30 April 1956 sought to end such practices. It obliges various states through Article 1 to “take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist... (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate...
service to such other person, whether for reward or not, and is not free to change his status; (c) Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person; (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.

The Convention recognizes the right of a woman to not be forced into marriage, transferred to another person or inherited. It also recognizes debt bondage and serfdom as institutions similar to slavery. However, it has its limitations. The use of the male pronoun would seem to limit debt bondage or serfdom only to males. It would also seem to limit women to reproductive roles, limiting their bondage to their sexual roles. It also fails to recognize women’s slavery within marriage, for it only talks of women being transferred to or inherited but not exploited or enslaved within their marriage.

The next significant step taken by the United Nations in the field of human rights was the adoption of the Abolition of Forced Labour Convention, 1957. The Convention took note of the Slavery Convention of 1926 as well as the Supplementary Slavery Convention of 1956, Protection of Wages Convention of 1949 as well as UDHR and Charter of UN. Prohibiting forced and compulsory labour, it specifically requires member states to not use forced or compulsory labour for political coercion, or education or as a punishment for expressing political views. Nor can it be used as a method of mobilising and using labour for economic development or for labour discipline or as a punishment for having participated in strikes or even as a means of discrimination. It specifically requires the member states to adopt measures to this effect immediately. However, there is no recognition of forced labour in the private sector, one major example of which can be found in the continued

existence of bonded labour in India. Examples of this can be found even today in various pockets of India, particularly on brick kilns. Thus, the significance of this Convention for human rights gets lost or misplaced as it fails to recognize the implications of forced labour in the private sector. This, again, recognizes only a male as a worker by using male pronouns. It would limit women to the private sphere, reserving the public sphere solely for men.

The Discrimination (Employment and Occupation) Convention was adopted by the ILO in 1958. It recognized that “discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights.” Discrimination is herein defined as: “(a) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” (Article 1). The Convention specifically provides for equality of opportunity and treatment in respect of employment and occupation. (Article 2) It also recognizes protective discrimination asserting that, “Special measures of protection or assistance provided in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.”

The notion of no discrimination on the basis of sex finds prominent place herein, yet this Convention too is limited in focus by only asserting rights in the public sphere. A large majority of women’s work takes place in the private sphere where women are involved in social reproduction. Again this work has no market value, but is essential to the maintenance of the very valued family which is reiterated again and again in the UN Conventions. What value would you ascribe to the woman collecting water for her family, or firewood or fodder for the cattle, or for her caregiving activities? Furthermore, taking up paid employment in the public sphere would entail either a double burden on the woman performing all her other activities or requiring public assistance in the performance of those activities. These find no mention in this Convention.

The General Conference of the International Labour Organisation adopted at its 48th session the **Employment Policy Convention (1964)**.\(^\text{109}\) It provided among other things, freedom of choice of employment as well as freedom of opportunity to use skills. However, it is significant to note that although it asserts the principle of no discrimination on the basis of sex yet it uses the male pronoun to refer to the worker. “There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.” Again it fails to note the boundaries within which women’s work is culturally sanctioned or even the boundaries which limit their attainment of skills.

Thus, this period saw the UN being highly proactive in the matter of rights of workers attempting to ensure equal wages for equal work, abolition of forced labour, as well as discrimination in employment and occupation. Nevertheless, women continued to be excluded through the use of male-centric pronouns as well as by neglect of women’s experiences and issues.

*Women’s Human Rights in the UN Instruments relating to Rights of Refugees, Stateless and Displaced Persons*

Following the Second World War, one of the most vulnerable groups of people were the numerous refugees fleeing their specific countries for fear of persecution. Recognition of their rights and status became a significant concern of the United Nations. Accordingly, the **Convention relating to the Status of Refugees**\(^\text{110}\) was adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. According to this Convention, the term refugee applies to any person who “As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the


country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” The Convention contains the principle of non-discrimination on the basis of “race, religion or country of origin.” The definition of refugee was upgraded in 1966 by the Protocol relating to the Status of Refugees which was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966, thereby removing the condition of a person’s refugee status being subject to “events occurring before January 1, 1951”.

The Convention grants various rights to refugees including the right to acquire movable and immovable property in the same manner as other aliens. Other rights granted are right to association in the same manner as nationals of the country, right to engage in wage-earning employment as granted to foreign nationals in the country, right to self-employment, right to liberal professions. Furthermore, if rationing exists in the country, refugees would be subject to it in the same manner as nationals of the country. Housing rights would be given in the same manner as other foreign nationals. They would also have similar rights to public education and public relief. They would have the same rights as nationals of the State in matters of remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women’s work and the work of young persons, and the enjoyment of the benefits of collective bargaining. They would be assured social security in cases of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme. Refugees would also have the right to choose their residence and enjoy freedom of movement. They have to be issued identity papers and travel documents, and they cannot be levied any taxes or charges higher than those imposed upon the nationals of the state. They may also transfer their assets from their state of origin. The Convention specifically mentions illegal refugees, prohibiting states from imposing penalties upon such persons, provided they immediately present themselves to the authorities.
Here the very definition of a refugee and the basis for persecution is lop-sided and male centric. There is no mention of discrimination on the basis of sex. Are women not persecuted? There is an increasing recognition that a large number of refugees world over are women, yet the Convention makes no reference to this fact. Witness the persecution of women in various countries, merely because they speak up for their rights. There is no recognition of this factor. The Convention makes use of male centric pronouns, leading to the assumption that only males are persecuted and only males need refugee status, while women remain safe within the four walls of their homes.

Thus, nowhere does this Convention recognize the issues and status of women refugees. As Andre Brynes pertinently asserts, “For example, in the area of refugee law, women refugees are frequently subjected to various forms of sexual abuse which may form part of the persecution from which they have fled or which they may have experienced while travelling or while living in refugee camps. The failure to be aware of the possibility of such violations and the fact that women will often be reluctant to talk about them, particularly to male interviewers, can mean that not only may a woman's claim to refugee status never be uncovered but the need for appropriately formulated medical or other programs to address the results of gender-specific violations may not be perceived.”

Even today, the UN reports that “More than 43 million people worldwide are now forcibly displaced as a result of conflict and persecution, the highest number since the mid-1990s. Several million people remain displaced because of natural disasters, although updated statistics are not available. More than 15 million of the uprooted are refugees who fled their home countries, while another 27 million are people who remain displaced by conflict within their own homelands — so-called ‘internally displaced people.’” Andrew Byrnes observes that, “Children constitute about 41 percent of the world’s refugees, and about half of all refugees are women.”

113 Andrew Byrnes, op. cit.
A similar problem may be traced in the language of the Convention relating to the Status of Stateless Persons adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council. Here it is important to recognize that it was often the nationality of married women which was in doubt, but the language of the Convention is totally androcentric. Women are at the highest risk of statelessness because of discriminatory nationality laws, and due to their gender are liable to face more and different problems. The Convention does not contain any provision prohibiting discrimination on the basis of gender. The Women’s Refugee Commission reports that, “An estimated 12 million people worldwide are stateless, with no country to call home. They are not recognized as nationals of the countries where they live, and as a result are denied basic human rights. For many people, this situation arises because of gender discrimination in nationality laws. This occurs when nationality legislation prevents women from acquiring, changing, retaining or passing on their nationality to their children and/or their spouses on an equal basis with men.” It further states that, “Being stateless has grave consequences, often leading to violations of fundamental human rights. Stateless people face many barriers and obstacles: without citizenship or identity documents they are unable to own or rent property, secure formal employment or access services such as public health care, education and social welfare benefits. Statelessness impacts individuals' ability to marry and couples' decisions to start a family.”

Women’s Human Rights and UN Instruments for Prevention of Racial Discrimination

Another major issue taken up during this period is that of racial discrimination. The United Nations in 1965 enacted the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention begins by recognizing the principles of equality and non-discrimination inherent in the UN Charter, and UDHR, as well as the Declaration on Elimination of all Forms of Racial Discrimination adopted by the UN in 1963. The Convention recognizes the deleterious effects of discrimination based on race, colour or ethnic origin on all aspects of human and state relations. It defines racial discrimination to mean “any

distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” It permits positive discrimination for the advancement of certain groups in order to ensure enjoyment of human rights by such groups. State parties, under the Convention are obliged to: not engage in any activity which may be termed as racial discrimination; not to sponsor or defend such activity; nor to enact such policies and laws which have the effect of perpetuating racial discrimination. The State parties may also take concrete steps for the development of certain racial groups in order to guarantee their enjoyment of rights and fundamental freedoms. The ideas of racial superiority are specifically condemned.

The Convention seeks to ensure that everyone, without distinction as to race, colour, national or ethnic origin shall enjoy the right to equality before the law, especially in the following areas: “(a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d) Other civil rights, in particular: (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; (iv) The right to marriage and choice of spouse; (v) The right to own property alone as well as in association with others; (vi) The right to inherit; (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression; (ix) The right to freedom of peaceful assembly and association; (e) Economic, social and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) The right to form and join trade unions; (iii) The right to housing; (iv) The right to public health, medical care, social security and social services; (v) The right to education and training; (vi) The right to
equal participation in cultural activities; (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.” No new rights are created under the Convention, merely the rights guaranteed by the UDHR are reiterated for everyone. A Committee for the Elimination of Racial Discrimination was set up under the Convention.

Notwithstanding the very comprehensive provisions of the Convention, there remain serious limitations, so far as women’s rights are concerned. It holds racial discrimination to be “scientifically false, morally condemnable, socially unjust and dangerous” and unjustifiable. However, it does not recognize the intersectionality of race, colour and gender in the subordination, discrimination and exclusion of women. This intersectionality of race and gender has been emphasized time and again by the feminist scholars and particularly black feminists as well as dalit feminists in India. However, the caste system in India is not even included within the definition of racial discrimination. Catharine MacKinnon has highlighted the “intersectional character of the genocidal rape of Muslim women in the former Yugoslavia: this rape is both ethnically based and a form of genocide directed specifically at women.” 118

Women’s Human Rights and UN Instruments for Mentally Challenged Persons

Another group of marginalized and deprived persons whose rights attracted the attention of the United Nations during this period were physically and mentally challenged persons. The Declaration on the Rights of Mentally Retarded Persons 119 was proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971. The Declaration was meant to be used as a common basis and frame of reference for the protection of the declared rights of mentally retarded persons. The declaration asserts the same rights for mentally retarded persons as for other human beings. These rights include the right to proper medical care, physical therapy and such education, training, rehabilitation and guidance as will enable them to develop their ability and maximum potential. Right to economic security, decent standard of living, to perform productive work or to engage in any other meaningful occupation are the other rights asserted in this Declaration. It further requires the mentally

118 Kathryn Abrams, op. cit.
retarded person to live with his own family and participate in different forms of community life. Further, the mentally retarded person has the right to protection from exploitation, abuse and degrading treatment as well as the right to due process of law.

There is no mention of violence against mentally retarded persons and their rights in such cases, no mention of unlawful confinement of such persons, no recognition of sexual violence to which such persons may be subjected. Further, the language again is masculinistic and women’s rights are totally ignored. A World Bank Report of 1993 reveals that, “More women than men suffer from mental health problems. Depression occurs two-to-three times more frequently in women than in men. The disparity in rates between men and women tends to be even more pronounced in the developing world.” Yet the Convention is silent on issues of concern to women. It overlooks the fact that women may also be included in the category of mentally retarded persons and continues with the use of the male pronoun. Furthermore, there is no recognition that mentally retarded women and girls may suffer in ways different from men and there is need for special provisions for them.

In sum, emerging from a time when rights were granted on the basis of specific considerations to the Universal Declaration of Human Rights and proceeding onwards to proclaiming certain rights as well as recognizing the rights of certain groups of people, the UN had come far along the road of human rights by the end of this phase. The first thirty years of the life of the United Nations saw remarkable achievements and international consensus on numerous issues pertaining to human rights in general. The Charter pointed the way, affirming the equal rights of men and women and declaring that the work of the organization must be conducted without distinction as to race, sex, language or religion. But the Charter’s words were not self enforcing. Decades of struggle were needed to elevate the human rights of the women to a prominent place on the international agenda. Beginning with the codifications of women’s legal and civil rights; the campaign for the advancement of the women stirred widespread recognition of their indispensable role in addressing the critical issues facing the world in the late twentieth century like poverty, unemployment, social disintegration, uncontrolled and unchecked population growth, human rights abuses, environmental degradation and militarism. Throughout this process, the

120 Nikki van der Gaag, op. cit., p.39.
United Nations played a unique role: as a catalyst for change, as a global standard setter for the eradication of gender discrimination, and as a forum for debate on the status of women worldwide. Some women’s issues too came to be taken up, but in general women were subsumed under the category of men. This led to the “the existence of a privileged dominant practice and a "specialised" marginal one”\textsuperscript{121} to use the words of Andrew Brynes. Women were either accidently or deliberately left out. The prevalent construction tended to exclude women both in terms of language used and rights declared. While all encompassing human rights violations were recognized and attempts made to alleviate suffering resulting from these, women, who just happened to be victims were left out of the analysis or the rights declared. Even those Treaties and Conventions which did make some attempt at recognition of women’s issues and rights continued to conceive of women within their gender specific roles as wives and mothers looking at rape as violation of honour, at family as a male’s family and so on. The core and universal human rights instruments and the committees entrusted with overseeing their implementation were the privileged lot, while those relating to women were supposedly the poor cousins, who had to be tolerated, but could not be allowed the privilege of actual equality. This, as Andrew Brynes suggests, “presents a strategic dilemma in this area, as in many areas where the goal is to bring about the advancement of women: how does one ensure that feminist perspectives are incorporated within the dominant discourse while maintaining the separate focus which is apparently necessary to ensure that these issues are not submerged or overwhelmed. In strategic terms any attempt to increase the attention given by the "mainstream" to gender issues in human rights must therefore also be accompanied by steps to strengthen the existing "women's rights" rights institutions and to lessen their marginalisation.”\textsuperscript{122}

The first phase from 1945 to 1974 saw the enactment of numerous international instruments aimed at securing human rights of people in general. Although recognizing women’s rights in certain vital spheres of their lives, the entire approach towards women’s rights in this period was andocentric, gender neutral and based on women’s traditional roles in society. The result was a gender blindness, which rendered the continuing abuse of women’s human rights invisible, unseen and

\textsuperscript{121} Andrew Byrnes, \textit{op. cit.}
\textsuperscript{122} ibid.
unacknowledged. Such an approach failed to see that woman’s experiences and needs are atypical, necessitating, both a different set of rights and a differential application of the existing rights.

Secondly, the focus of United Nations remained limited to activities in the public sphere while for women; the violations were much more extreme in the private sphere. Hilary Charlesworth argues that, “the focus on activities that occur in the public sphere introduces a significant bias against women into human rights law. For example, the accepted international definition of “torture” requires the involvement of a “public official.” Also, the guarantee of a right to work applies to the paid, public workforce only. Although many women do suffer from this public type of human rights violation, the violations of rights that take place in the “private” sphere are much more significant in women's lives globally.”

Thirdly the general human rights regime was designed with males in mind; based on male experiences of violations, women’s entry was incidental. Women’s lives were relegated to a separate and secondary status. One pertinent example which can be cited is that when the UDHR already specified political rights, was there really any need for a separate Convention on the Political Rights of Women?. The interpretation and implementation of these instruments by the various organs of the United Nations has fallen far short of ensuring their full applicability to women. Thus, even though theoretically not excluded from the concept of human rights, women remained excluded from the recognized definition and interpretations of human rights and their specific experience of human rights abuse, giving the entire human rights regime an excessive andocentric tilt.

To quote Hilary Charlesworth once again, “For example, prior to the Universal Declaration, there were conventions on trafficking in women and on women in the work place. This suggests that human rights relevant to women's lives were seen as a discrete and separate category to the “general” human rights guarantees that were designed with men in mind. Moreover, the Universal Declaration's image of women is reflected in all of the subsequent “general” international human rights treaties. These documents similarly rely on a generalized male experience and attend to a very limited notion of women's lives. Women's

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123 Hilary Charlesworth, *op. cit.*
submission to male authority appears as a “natural” consequence of their reproductive role.”\textsuperscript{124} As Spike Peterson writes, “a woman's capacity for \textit{biological} reproduction becomes essentialized as her nature; the ‘givenness’ of this capacity is then extended to the entire process of \textit{social} reproduction, thereby consigning women to a restricted 'family' domain.”\textsuperscript{125}

The UN approach in this phase failed to recognize the significance of gender in defining the substantive content of rights. While focusing on inviolability of the home and right to privacy, the approach did not take into consideration the issues of women’s control over their bodies, sexuality and reproduction. Again neither the International Bill of Rights nor the other universal human rights instruments, whether of individuals or of groups, take note of the differential challenges faced by women in the enjoyment of even the most basic rights such as right to life, health, shelter, bodily integrity and so on.

As Andrew Brynes observes, “In many parts of the world women are at a considerably higher risk of death from avoidable causes than are men. The reasons for this include horrifyingly high levels of maternal mortality, preferential treatment of men and boys in providing access to food and health care, and the perpetuation of traditional practices such as genital mutilation of young girls. The differences in the nature and level of threats to the enjoyment of their rights to life and to bodily integrity that women and men face justify the conclusion that women and men do not enjoy these rights on an equal basis, which is the promise held out to women by the major human rights instruments.”\textsuperscript{126} He further notes, “A number of writers also turned a critical eye on the response of the international system for the protection of human rights to the concerns of women and found it deficient in major respects. Two salient criticisms were made: issues of central concern to women found little place on the “mainstream” agenda and the institutions and procedures concerned with “women's issues” were the poor cousins of the “real” human rights organs and procedures. These critics charged that the “mainstream” “human rights” community largely ignored or neglected blatant violations of women's human dignity, refusing to perceive them as gross violations of fundamental human rights. Such issues were left

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124 ibid. \\
125 Spike Peterson quoted in, ibid. \\
126 Andrew Brynes, \textit{op. cit.}
\end{flushright}
to be taken up, if at all, as social and humanitarian issues in marginalised, procedurally weak for a dealing with women's issues.”¹²⁷

All in all, the period saw a marginalisation of women’s issues and concerns both rhetorically as well as substantively. Did the approach change and if so to what extent, in the next decade? The next section looks at the approval towards women’s human rights in the second phase.

United Nations and Women’s Human Rights: 1975 to 1985 (Second Phase)

The decade, 1975 to 1985, marked a perceptible shift in the United Nation’s approach towards women’s rights. Three world conferences on women and the enactment of Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) were the identifying features of this decade, which emerged as major milestones in the march of women towards equality and empowerment. At the same time, UN continued to elaborate specific rights of individuals as well as groups of people, as well as adopt instruments aimed at preventing violations of human rights in certain situations such as conflict, etc.

This section is further subdivided along the following lines: the first part attempts an analysis of the documents adopted at the three World Conferences on Women held during this period with the aim of assessing whether these merely address formal gender equality or do manage to address structural inequalities which hamper women’s access to rights. The second part analyses CEDAW from the same perspective. The third part evaluates the general instruments for human rights, expounded during this period, which are grouped together for the sake of analysis, as in the previous sections.

World Conferences on Women and Women’s Human Rights

On 18th December 1972, the United Nations General Assembly proclaimed 1975 as the International Year for Women.¹²⁸ This led to an intensification of efforts to promote gender equality, integrate women into the development process as well as to increasing women’s contribution to the strengthening of world peace. The year

¹²⁷ ibid.
(1975) saw the celebration of International Women’s Day on March 8 for the first time and a month later, the first ever World Conference on Women was convened in Mexico on the theme of equality, development and peace. The Conference sought to highlight the discrimination against women embedded in law and identified deeply rooted cultural beliefs as a major problem in the world. It attempted to draw attention to the need to increase efforts to promote equality between men and women and to acknowledge the vital role played by women in development.

The Mexico Declaration, also called the World Plan of Action, offered a comprehensive set of guidelines for the advancement of women until 1985 and declared that women must participate equally with men in the decision making processes which help to promote peace at all levels. The Conference, along with the United Nations Decade for Women (1976-1985) proclaimed by the General Assembly five months later, at the urging of the Conference, launched a new era in global efforts to promote the advancement of women by opening a worldwide dialogue on gender equality. A process was set in motion – a process of learning – that would involve deliberation, negotiation, setting objectives, identifying obstacles and reviewing the progress made.129

The major objectives of the Conference were to focus international attention on the need to develop future oriented goals, effective strategies and plans of action for the advancement of women. To this end, the General Assembly identified three objectives that would become the basis for the work of the United Nations on behalf of women; achievement of gender equality and elimination of gender discrimination; the integration and full participation of women in development; and an increased contribution by women towards the strengthening of world peace.130 The main targets were to provide equal access for women to every level of education and training, the ratification of legislations guaranteeing the political participation of women, increased employment opportunities, and improvement in health services like sanitation, housing, nutrition and family planning.131

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130 ibid, p. 35.
Thus, women’s issues and concerns moved from the margins to the centre-stage marking a significant shift in the approach and understanding of the international community. However, an indepth analysis of the documents adopted at this Conference reveals the change to be merely cosmetic, while the underlying features continue in the same patriarchal traditions. Women continue to be considered within their traditional gender roles; the approach is welfarist and the language, gender blind. Even while attempting to focus on inclusion of women in the development process, the stress is on access to training or on permitting access to political participation.

As Judith P. Zinsser observes, “The language of the various documents from Mexico City defined women according to traditional patriarchal images and within the patriarchal ideologies and structures of national and international relations. Women were either victims of forces beyond their understanding and control, or so marginal to the implicit model of the world that the Declaration and Plan of Action asked only that women be given “access” to training, be “integrated” into development programs, and allowed to “participate” in the political life of their country. Explicit distinctions between women, even simple acknowledgments of class, race, and ethnicity were lost in the collective, essentializing images of “mother, worker, citizen”.”132 Thus, recognition of women’s issues and concerns did not lead to a substantial change in the approach. Here, it is significant to note that the major participants and drafters of the Outcome document were women, who continued to voice the patriarchal language. The issue of women’s rights continued to be viewed within the same ideological framework, which regarded male experiences and concerns as the norm, marginalizing women’s issues and rights. Even while recognizing women’s problems, the Conference did not really consider eradication of women’s subordination and involvement in decision-making as the ultimate goals, rather it conferred upon them a passive role in which they were merely victims, with no agency of their own. The first priority was the ‘transformation of economic structures, while women’s rights were relegated to the second place. To quote Judith P. Zinsser once again, “While the Declaration of Mexico makes some attempt to link women to the three distinct ideological agendas, the Plan of Action explicitly favors

the transformation of economic structures first, women’s rights second. Women often come at the end of sentences and paragraphs, “Development” at the beginning”. She explains this by asserting, “An introductory paragraph explains the main “purpose” of the Plan: “to stimulate national and international action to solve the problems of under-development and of the socio-economic structure which places women in an inferior position.” She further observes that, “A specific reference to women’s disadvantaged circumstances receives justification only as part of the economic agenda and of women’s role in transforming the economy. “Improved access to health, nutrition and other social services is essential to the full participation of women in development activities.” Such a shortage of even the simplest health facilities “constitutes a high cost to the family, society and development by impairing the productivity of women”.

She further continues, “This paramount role assigned to the state by the Mexico City documents leaves women in a passive role. The tone and the language of the Declaration, the World Plan, and the Resolutions set the authors apart from their subjects, in this case the mass of the world’s women. They describe a patriarchal hierarchy of disadvantage. A diverse range of men are present by implication. In contrast, the explicit provisions for women, like the general objectives of the Plan’s introduction, give a simplistic image of “the woman.” In the major sections of the Plan “Equality, Development and Peace,” women lose their specificity and, in a predictable melding of traditional cultural and ideological images from East and West, North and South, become the mother, worker and citizen.”

Thus, women’s lives, rights, and equality were, even until this time, being measured by male standards.

The Second World Conference on Women held in Copenhagen in 1980, in addition to reaffirming the importance of the Convention on the Elimination of All Forms of Discrimination against Women, had two additional objectives: to review the progress in implementing the goals of the Mexico City Conference at the midpoint of the United Nations Decade for Women and to update the 1975 World Plan of Action adopted at the earlier Conference.

133 ibid.
134 ibid, p.
135 ibid, p.
Three major areas of concern were identified as the theme for the Conference, viz. Employment, Health, and Education. These emerged out of the realization that there was a need to polish the goals of equality, development and peace into highly focused objectives for women. Moreover, there was also the recognition that sustained social action, resource allocation and political will are needed to eliminate the differences between law and practice. Forty Eight resolutions were adopted at this Conference which emphasized on ensuring equal rights and opportunities for women especially in areas of employment, education and health as well as ensuring women’s ownership and control of property and women’s rights to inheritance, child custody and nationality.137

From Mexico to Copenhagen, there is a visible difference in the approach towards women’s issues. As Judith P. Zinsser observes, “The Copenhagen Programme did advance women’s interests. The final document places women in the mainstream of these ideologies and institutions. No longer are they just invited participants in the process of development. Generalized images of “the woman” defined by her reproductive function have been replaced by a multiplicity of images that describe and applaud women’s autonomous activities in the economy and in the family. Education of every kind will be the means to increased agency for women. Some paragraphs even suggest a veiled gender critique of the international order in clear statements about the adverse effects for women, as distinct from men, of contemporary economic structures and cultural attitudes.”138

By this time, women had emerged from the periphery and moved to the centre stage for realization of the objectives of development. It was realized that development would not be possible in the absence of elimination of inequalities between men and women. Women should not be mere beneficiaries but active participants in the process of development at every stage. This was also recognized as the requirement for attainment of peace. It was recognized that the index of development of the nation must be based on the assessment of the level of women’s education, employment and health. The negative impact of discrimination on women’s development was also noted.139

139 ibid.
This marked a major change in language and focus, taking women to the centre of the agenda of the United Nations and recognition of the advancement of women as the “pre-condition for the establishment of a humane and progressive society.” Nevertheless, the international community had a long way to go before even the recognition of women’s rights as human rights was to come about. The ghettoisation of women’s issues and concerns continued. They were a distinct agenda which was separate from the ‘human’ agenda.

The momentous decade culminated with the Third World Conference on women held at Nairobi in the year 1985. The Nairobi Forward Looking Strategies for the Advancement of Women to the year 2000, “a blue print for women’s future in all realms of life” were adopted during this Conference, whose objective was, “to review and appraise the achievement of the Decade for Women”. The Conference assessed in detail the progress achieved and obstacles encountered during the Decade and formulated strategies for the advancement of women, which were to be implemented until the year 2000 and beyond. These included identifying areas for action by Governments and the International Community to improve the status of the women over the next 15 years.

Various measures were enumerated to promote women’s participation. Violence against women was included for the first time as an issue related to peace. Furthermore, the issues of women in areas affected by drought, abused and destitute women, trafficked women, physically and mentally disabled women, migrant women and those forced into prostitution assumed significance in the strategizing. Judith P. Zinsser highlights the achievements of this Conference, observing that, “Ten years later in Nairobi, the phrases and paragraphs of the Forward-Looking Strategies demonstrate that women had taken control of the language. They used the international phrases and procedures confidently and aggressively. Women were now central to structural phenomena such as the international economic order. Rather than victims, in almost every section, women had become active agents in efforts to create new international institutions and practices. Gone are simplistic, essentializing

140 ibid.
categories of women. Instead, the “Strategies” present a multiplicity of explicit images: women in trade unions, rural cooperatives, health professions, young women, and old women. Thus, between 1975 and 1985, activists from around the world used the UN Decade to challenge the patriarchal model that frames national and international relations. The formal documents of the Decade reveal that women had, in fact, changed the discourse. The traditional “family of nations,” with its implicit subordination of women, had been superseded. Networks and coalitions of politically experienced women demanded the end to sexual stereotypes and gender discrimination. By 1985, they used the United Nations to speak with new assurance and to assert their rights, opportunities, and responsibilities as “equal partners with men” in the creation of a new international economic, social, and political order.”

Charlotte Bunch in a similar vein asserts, “By the Third UN World Conference on Women in Nairobi in 1985, many issues of gender-based persecution and violence against women were raised at both the governmental conference and the NGO Forum. Domestic violence, sex tourism, forced prostitution and female genital mutilation, among others, were discussed but not yet presented as matters of human rights.”

Nevertheless, gaps remained. One of the major gaps was women’s political participation where women have hardly made any dent. Unless, women enter the field of politics and become part of the political decision making, things will never change at a macro level.

A significant shift is noticeable in the approach towards women’s human rights in the ten years of this decade. Beginning with a distinctly patriarchal perspective in 1975 at the Mexico City Conference, the end of the decade reveals a substantial transformation in perspective. No longer was the advancement of women merely important for development outcomes or achieving the goals of population policies, but it became an agenda in itself. This led to the increasing adoption of a rights based approach. The enactment of CEDAW is the most pertinent example of this changed approach.

143 Judith P. Zinsser, op. cit.
The most significant recognition of women’s rights in this period, as a matter of fact, the first holistic document aimed at protection and promotion of women’s rights, also known as the International Bill of Rights for Women came in 1979. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) marked a historic step in the march for substantive equality for women. It was adopted by the UN General Assembly through its resolution 34/180 of 18 December 1979 and came into force on 3 September 1981.\textsuperscript{145} The thirty Articles of CEDAW are divided into 6 sections, which contain provisions for political, social, economic, civil and family rights. Provisions relating to its implementation are also included within the Convention itself. The Convention recognizes discrimination as violating the principle of equality of rights and respect for human dignity as well as being an obstacle to the participation of the women in the political, social, economic and cultural life of their countries on equal terms with men.

Discrimination against women is defined for the first time in international law. It has been defined as “any distinction, exclusion or restriction made on the basis of sex which had the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”\textsuperscript{146}

As a holistic instrument for women’s rights, CEDAW focuses not only on political and civil rights, but also attempts to bring about substantive equality by looking at other arenas of discrimination, such as culture, which actually form the basis of discrimination in all other spheres. It attempts to bring about a change in gender roles through a focus on equal responsibilities of men and women in family life. Rural women also receive due focus in this Convention and the State parties are obligated to take into account the particular problems faced by rural women and the significant roles which they play in the economic survival of their families and thus are to take all appropriate measures for the elimination of discrimination against


\textsuperscript{146}Article 1, Part 1 of CEDAW. Retrieved from http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx accessed on 27th June, 2014.
women in rural areas so as to ensure that rural women participate in and benefit from rural development on a basis of equality with men.\textsuperscript{147}

The state parties agreed to take all appropriate measures: (a) in all fields, particularly in the political, social, economic and cultural fields, in order to ensure the full development and advancement of women\textsuperscript{148}; (b) for the elimination of prejudice and practice that were based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women and also to ensure that family education covered a proper understanding of maternity as a social function as well as the recognition of the joint responsibility of men and women in the upbringing and development of their children\textsuperscript{149}; (c) for the suppression of all forms of traffic in women and exploitation of the prostitution of women\textsuperscript{150}; (d) for the elimination of discrimination against women in the political and public life of the country and particularly were to ensure to women on equal terms with men the rights: (i) to vote in all elections and the right to be eligible for election to all publically elected bodies; (ii) to hold public office and perform all public functions at all levels of government; (iii) to participate in the public and political life of the country\textsuperscript{151}; to get the opportunity to represent their governments at the international level and to participate in the work of international organizations.\textsuperscript{152} CEDAW requires that the state parties are to grant women equal rights with men regarding nationality, to acquire, change or retain their nationality and neither marriage to an alien nor change of nationality by the husband during marriage will automatically change the nationality of wife and render her stateless or force upon her the nationality of the husband.\textsuperscript{153} Women are also given equal rights with men with respect to the nationality of their children.

A giant step forward in advancing women’s rights, yet CEDAW by its very nature was encumbered by shackles which greatly limit its impact as a vehicle for substantive transformation of women’s human rights. In the first place, States have the right to enter reservations under Article 28, so long as they are not “incompatible with the object and purpose of the present Convention”. However, who is to judge the

\footnotesize{147 Article 14, ibid.
148 Article 3, ibid.
149 Article 5, ibid.
150 Article 6, ibid.
151 Article 7, Part II, ibid.
152 Article 8, CEDAW.
153 Article 9(1), 9(2), Part II of CEDAW}
compatibility and how is it to be judged? The Convention is silent on this. Again reservations are often stated in such broad terms that their effect cannot be said to be limited to a specific article. Admittedly, this is a feature of other international conventions too, but given the level of political will in implementing women’s rights, this turned out to be the biggest stumbling block in the successful application of CEDAW. Clark notes that “CEDAW has attracted the greatest number of reservations with the potential to modify or exclude most, if not all, of the terms of the treaty.”

Wade M. Cole observes that predominantly Muslim countries, have entered sweeping reservations to CEDAW, such as one by Oman that purports to exempt the government from “all provisions of the Convention not in accordance with the provisions of the Islamic Shari’a.” Thirty countries have entered reservations in relation to equal rights in marriage and family, another twenty two with respect to compatibility with religious laws or traditional codes, and twenty on equality of nationality. Hilary Charlesworth opines that, “Society justifies many violations of women's rights on the grounds that the violations are an aspect of particular religious or cultural practices. States, religious communities, and individuals invoke the rights to religious freedom or cultural integrity as "trumping" women's rights. The pattern of reservations to the Convention on the Elimination of All Forms of Discrimination Against Women provides a good example of this phenomenon.”

Secondly, CEDAW Committee in comparison with other Committees has very little authority. It is limited to monitoring and making non-binding recommendations. Moreover, the States either do not present their reports on time, or give inaccurate versions of events.

Hilary Charlesworth is also critical of the way in which the ideas of equality and non-discrimination are defined in the Convention. She emphatically observes that, “The ideas of equality and nondiscrimination that animate the Convention on the

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155 ibid.


157 Hilary Charlesworth, op. cit.

Elimination of All Forms of Discrimination Against Women, the flagship of women’s human rights, are very limited in the sense that they promise equality on male-defined terms only. The terms of the Convention require that women be treated in the same way as a similarly situated man. The Convention does not recognize the effects of structural discrimination against women.”  

Nor does the Convention recognize violence against women as a human rights abuse. It was only in 1993 that the CEDAW Committee took note of violence against women as leading to violation of women’s human rights.

Furthermore, the family is nowhere defined in CEDAW, but it does refer to the need to strengthen the family, as also to the contribution of women in the welfare of the family and to the development of society. It, moreover, does not fully recognize the social significance of maternity and the role of both parents in the family in the upbringing of children. Thirty years after the adoption of CEDAW, many girls and women still do not have equal opportunities to realize rights recognized by law. In many countries, women are not entitled to own property or inherit land. Social exclusion, honour killings, female genital mutilation, trafficking, restricted mobility and early marriage among others, lead to the denial of human rights to women.

Nevertheless, the significance of this Convention in the advancement of women’s rights cannot be over-emphasised. The mere fact of such a Convention, the recognition that culture and tradition lead to denial of women’s rights, the precise statement of such rights are in themselves significant. Furthermore, national judiciary of various countries has applied CEDAW on occasions where national laws are absent. For example, the Indian Supreme Court applied the provisions of CEDAW while deciding the case on sexual harassment at the workplace.  

Women’s Human Rights and UN Instruments relating to Administration of Justice

Apart from the International Conferences on Women and CEDAW, the decade also saw the United Nations being proactive in the declaration of other universal human rights. 1975, the International Year for Women saw the adoption of a Declaration on the Protection of All Persons from Being Subjected to Torture

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159 Hilary Charlesworth, op. cit.
and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1 defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.” The Declaration recognizes torture as “an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.” Similar male centric language is noticeable in Article 8 which states that “Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.” Here again, torture continues to be defined in the context of public sphere. Women’s experiences of torture in the private sphere of the family are totally invisibilised. The Declaration does not seem to recognize women as victims of torture, nor does it recognize domestic or mental torture or rape as torture. The definition of torture does not focus on the acts of private individuals thereby excluding and trivializing violence in the domestic or private sphere. Secondly the language continues to be androcentric with reference to he, him and his only. Moreover, the Declaration by its very nature was non-binding.

The Declaration on Torture had a very limited conception and was again androcentric in its language as well as understanding of human rights. A Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by General Assembly vide resolution 39/46 of 10 December 1984, with a much wider focus, but keeping its androcentric language intact. It takes cognisance of Article 55 of the UN Charter which seeks to promote universal respect for, and observance of, human rights and fundamental freedoms, as well as Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, all of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or

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punishment, as also the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 1 defines torture as, “For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” The Convention requires state parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and prohibits them from citing any exceptional circumstances including war or internal stability or other emergency as justifications for torture. It also forbids a State from extraditing a person who in ‘his’ native state would be in danger of being tortured and state parties must take account of the consistent pattern of human rights violations in such states. Torture should be recognised as an offence under national law with appropriate penalties. It thereafter provides for action to be taken by states under such circumstances, while maintaining the masculine pronoun throughout, thereby for all purposes excluding women from the purview of the Convention. Torture is regarded as an extraditable offence under this Convention.

The very first Article which defines torture very clearly reveals a continuation of the same kind of thinking which had characterised the previous conventions. The words, he, his and him are used with impunity, while defining torture. A breakup of the definition reveals, one that torture is intentionally inflicted, second, its purpose has been to: to obtain from him or a third person information or a confession, or for punishing him for an act he or a third person has committed or for intimidating him or coercing him. Thirdly, it could arise from discrimination of any kind which is inflicted “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Clearly, here torture is defined only in relation to the public sphere. Likewise, Article 3 proclaims, “No State Party...
shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” The torture undergone by women within the private sphere is not even recognised as such. A woman is tortured for not bringing dowry, for forgetting to put salt in the food; the reasons are numerous. She is tortured physically, mentally and sexually. Yet there is no recognition in this definition of all this. Rape is not regarded as torture. Nor is domestic violence or any other form of violence. It is widely recognized now that violence experienced by women in their own homes is nothing short of torture.

In the year 1984, when the UN was already veering towards a recognition of women’s human rights, at the fag end of the International Decade for women comes a Convention which could go a long way in protecting women from the torture inflicted upon them in the private sphere. Yet, it failed to do so. It is pertinent to note that women suffer from torture in ways noticeably different from men and the consequences of torture too would be different from them. There are numerous women being forced to suffer objects inserted into their private parts, even chilli powder during caste wars in India. The Convention does not take note of these aspects. The Convention makes no reference to non-discrimination on the basis of sex.

Another major problem in the field of human rights is the rights of people who are not nationals of the country in which they live. Recognising this as a major problem the UN General Assembly adopted a Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live in 1985 (Adopted by General Assembly Resolution 40/144 of 13, December 1985)\(^\text{164}\) Through it various rights of aliens, both men and women are recognized.

*Women’s Human Rights and UN Instruments relating to Minority Rights*

Right to freedom of religion is guaranteed by all democratic states. Yet intolerance in the name of religion and belief continues to be a major cause of conflict world over. *Declaration on the Elimination of All Forms of Intolerance and of*

Discrimination Based on Religion or Belief was proclaimed by General Assembly vide Resolution 36/55 of 25 November 1981. It clearly reveals the continuation of UN’s androcentric tendencies, for even till this date the UN continued to use male pronouns. For example, in this Declaration, “Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed.” (emphasis mine) The same he and his is used throughout.

The Declaration seeks to guarantee freedom of thought, conscience and religion and prohibit discrimination on such grounds by any State, institution or group of persons. The expression "intolerance and discrimination based on religion or belief" means “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.” It regards discrimination on the basis of religious belief to be an affront to human dignity and a violation of the rights guaranteed by the International Bill of Rights. At the same time, it asserts that practices of a “religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development.” This right, further, includes within its ambit a number of rights, specified in the Declaration.

Clearly, this is a significant Declaration in view of the large number of atrocities and persecutions being committed in the name of religion. Yet, this too suffers from the same flaws which previous Conventions and Declarations of general

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166 (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
(b) To establish and maintain appropriate charitable or humanitarian institutions;
(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
(d) To write, issue and disseminate relevant publications in these areas;
(e) To teach a religion or belief in places suitable for these purposes;
(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief;
(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.
applicability suffer. The language is androcentric. There is no recognition of the fact that women may be discriminated against within the same religion. That is, there may not be any general persecution in the name of religion, but women may suffer from discrimination and denial of human rights by the proponents as well as through dictums of their own religion. Female Genital Mutilation is one such example, *triple talaq* as practiced in India is another, women’s prohibition from entry into various places of worship in India, child marriage, devadasi system, and so on are all examples of such practices where women are discriminated against, not by others, but within their own religion. Undoubtedly, the Declaration aims at FGM when it seeks to prohibit practices endangering a child’s health, but then the Declaration hesitates to say so specifically, hiding behind the veil of obscenity in use of language, leading to a major problem in its applicability. It permits reservations and being a mere Declaration has a non-binding character.

*Women’s Human Rights and UN Instruments Protecting the Rights of Physically and Mentally Challenged Persons*

Another Declaration proclaimed in 1975 was the Declaration on the Rights of Disabled Persons.167 Unlike the Declaration on Torture, proclaimed in the same year which focused only on males and in the public sphere, this Declaration makes an attempt to recognize the issues of disabled women too. **Declaration on the Rights of Disabled Persons**168 proclaimed by General Assembly Resolution 3447 (XXX) of 9 December 1975, proclaimed the rights of disabled persons, calling for national and international action to ensure that this Declaration is used as common basis and frame of reference for the protection of these rights. Disabled person is defined in this Declaration as “any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.” The Declaration asserts that all disabled persons regardless of race, colour, language, sex, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation shall enjoy all the rights set forth in this Declaration. The specific rights guaranteed for disabled persons under this Declaration include: right to respect for

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their human dignity, right to enjoy a decent life, civil and political rights as given to other citizens, right to measures designed to enable them to become self-reliant, to medical, psychological and functional treatment, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counseling, placement services, right to economic and social security, to a decent level of living, the right to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions, right to have their special needs taken into consideration at all stages of economic and social planning, the right to live with their families or with foster parents and to participate in all social, creative or recreational activities, right to protection from exploitation, and right to avail themselves of qualified legal aid.

Do disabled women need special protection? Do these women suffer a double discrimination on the basis of their gender as well as disability? Do they suffer from a different kind of violence due to their gender? Is there any need to specify certain rights for these women? Notwithstanding the use of ‘his’ and her’ in this Declaration, it continues to be gender blind, in as much as it fails to address these questions. It does not recognize the multiple discriminations faced by women with disabilities, caused by the intersectionality of disability with gender. They are at a greater risk of physical and sexual violence precipitated by prevailing constructions about disability as well as their own physical or mental limitations. Neither are any new rights conferred, nor is there a recognition of the fact that disability impacts women and girls in ways significantly different from men and boys, particularly in societies with a distinct attitude of son preference such as India and China.

Women’s Human Rights and UN Instruments Protecting the Rights of Persons Impacted by Conflict

The hope that the setting up of the United Nations where all nations could resolve their disputes peacefully would lead to the eradication of conflict and establishment of lasting peace had not fructified. Efforts were made through the Geneva Protocols of 1949 to mitigate the adverse impact of conflict. However, continuing conflict, which increasingly impacted civilians, led to the realisation that additional measures were needed to protect them from this. The year 1977 saw the
enactment of two additional protocols to the Geneva Conventions of 1949.\footnote{http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolI.aspx, accessed on 26\textsuperscript{th} June, 2014.} The focus of these was on international and non international armed conflicts. Yet, for the first time, women also entered into consideration. Some of the provisions are of special significance to women. These international instruments required women to be treated with all consideration due to their sex (Geneva I, Article 12; Geneva II; Geneva III, Article 14, Protocol I, Article 76), sought to safeguard them from sexual violence and provide protection for pregnant women and mothers of infants and young children. However, there are no special provisions in relation to women in the rules determining the legitimate conduct of hostilities.\footnote{United Nations (2002), \textit{Women, Peace and Security}, UN: United Nations Publications, pp. 33-34. Retrieved from http://www.un.org/womenwatch/daw/public/eWPS.pdf accessed on 6\textsuperscript{th} August, 2014.} The \textbf{Additional Protocol} to the Geneva Conventions of 12 August 1949, which relates to the \textbf{Protection of Victims of International Armed Conflicts adopted} on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, although reaffirming the sovereignty of nation states, nevertheless seeks to “reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application”. It includes among wounded and sick, maternity cases and new-born babies as well as infirm and expectant mothers. It provides for the application of the Convention without any distinction on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or any other similar criteria.

It is significant to point out that the Convention provides that “The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission.” But it continues “Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.” Among these, the next paragraph specifies physical mutilation, medical or scientific experiments and removal of tissue or organs for transplantation.
There is no consideration of the fact that physical or mental health and integrity of women may be endangered not merely by medical procedures but in other ways, such as sexual assault or violence. The focus of protection is only on women as mothers.

It seems to consider only males as being within the power of the other party for again it states, “Any willful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.” Thus, language continues to be gender blind.

Similar gender blind language is visible in Part III which deals with Methods and Means of Warfare Combatant and Prisoner of War Status. Article 37 provides that “It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy.” Such language continues throughout Article 41 which deals with Safeguard of an enemy hors de combat. There is no recognition that women too could be combatants. Likewise, Article 44 regards only males as active combatants. Thus, throughout the Convention one finds use of he, him and his. Can only males be spies? What was Mata Hari?  

The Second Additional Protocol to the Geneva Conventions, adopted on June 8, 1977, by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, gave certain fundamental guarantees to persons during this period. It provides for respect for person, honour and convictions and religious practices as well as humane treatment. It further prohibits violence to the life, health, physical or mental well-being of persons which includes murder and cruel treatment such as torture, mutilation or any form of corporal punishment. It further prohibits collective punishments, taking of hostages, acts of terrorism, slavery, pillage and threats of any of these. It is significant to

171 Mata Hari was a professional dancer and mistress who became a spy for France during World War I. Suspected of being a double agent, she was executed in 1917. Retrieved from http://www.biography.com/people/mata-hari-9402348 accessed on 4th August, 2014.
mention that it specifically prohibits outrages upon personal dignity in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.

*Women’s Human Rights and UN Instruments protecting Rights of People to Peace*

Increasing inter-state and intra-state conflict brought to the fore the necessity of establishing peace, without which there could be no development. Peace was one of the themes of the three world Conferences on Women, but had not been really recognised as a human right. By the mid-nineteen eighties the international community realized that right to peace must be recognized as a fundamental human right, for peace is the basis on which all other human rights stand assured. The **Declaration on the Right of Peoples to Peace** was approved by General Assembly vide resolution 39/11 of 12 November 1984. It recognizes peace to be a pre-requisite for attainment of human rights and proclaims the rights of all peoples to peace. It declares preservation of this right to be a fundamental obligation of States. Anupama Roy observes that it “emphasizes that ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations.” However, it does not seem to regard women to be part of this community desirous of having peace or having the right to peace, excluding them simply by virtue of the use of gender blind language. The language is gender blind in as much as the word used throughout is ‘mankind’. For example it states that “Expressing the will and the aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a world-wide nuclear catastrophe”. Likewise, it states that , “Aware that in the nuclear age the establishment of a lasting peace on Earth represents the primary condition for the preservation of human civilization and the survival of mankind.” It does not bring out women’s contribution to establishment of sustainable peace.

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On the whole, the United Nations in this decade moved further along the road to making universal, inalienable human rights a reality by taking up previously unrecognized rights as well as the rights of various marginalized groups. These included women, minorities as well as physically and mentally challenged persons. However, where women’s rights are concerned, the approach turned dualistic with a continuation of the traditional patriarchal approach towards women rights in the universal human rights instruments and the creation of a special arena of women’s human rights.

This decade witnessed the increasing concretization of an understanding of women’s rights as distinct and separate from general human rights. The ghettoisation of women’s rights which had taken birth in the previous phase achieved its full growth in this phase, leading to an active lobbying by the women’s movement for inclusion for women’s rights in the general human rights agenda. This ultimately signaled a move away from a traditionalistic, paternalistic attitude towards women’s rights to an inclusive approach wherein the slogan ‘women’s rights are human rights’ gained ascendency. This changing approach would form the focus of the next chapter.