CHAPTER III

INTERNATIONAL INSTRUMENTS DEALING WITH THE HUMAN RIGHTS OF WOMEN

Human Rights emanate from the dignity and worth inherent in a human person and are recognised by the legal systems of all the civilized countries. It was the bitter experience of the Second World War that prompted the nations to adopt an international norm of human rights. They did not encounter any difficulty in achieving unanimity for formulating the general norms of universal application.

The concept of equality and non-discrimination on the ground of sex finds its place in all international instruments dealing with human rights. Women who constitute half of humanity are often subjected to exploitation and human rights violations. The International Instruments cast an obligation on the Member States to incorporate provisions for the abolition of sex discriminatory laws and practices and for granting equal rights to women with those of men.

All distinctions, restrictions and exclusions impairing or nullifying the enjoyment and exercise by women of human rights and fundamental freedoms are required to be prohibited by the Convention on the Elimination of All Forms of Discrimination Against Women, 1979. It also required the Member States to abolish all customs, traditions and religious practices that discriminate against women.
The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights states:

"Human rights of women and girl child are inalienable, integral and indivisible part of the universal human rights."

It also calls for the equal and full participation of women in all aspects of public life.

It would be fruitful to examine the international documents for detailed discussion of the rights of women included therein.

One of the main purposes of the United Nation was the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. From its very inception it was concerned with the enjoyment of equal rights by men and woman.¹ Human Rights and fundamental freedoms are available to all persons without distinction as to sex.² The United Nations Charter requires the United Nations not to place any restrictions on the eligibility of men and women to participate in any capacity in any of its organs.³ The General Assembly was empowered to initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms of all without distinction as to race, sex, language or

¹ The United Nations Charter, 1945, Preamble.
² id. at Article 1.
³ id. at Article 8.
religion. The Charter authorises the Economic and Social Council to make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms of all. It also authorise the Council to set up Sub Commissions and a Commission on the Status of women was constituted to prepare recommendations on promoting human rights in political, civil, economic, social, cultural and educational fields, and to make recommendations to the council on urgent problem requiring immediate attention in the field of women's right, with the object of implementing the principle of equal rights of men and women set forth in the various articles of the charter.

The recognition and realisation of human rights and the rights of women were regarded, as one of the methods of achieving co-operation and unity with the nations. The charter of the United Nations is dedicated to the promotion and achievement of human rights and unless these rights and freedoms are guaranteed to all men and women without any distinction as to race, caste, language or religion, there cannot have peace or security. The Charter contains no provision for the enforcement of human rights.

id. at Article 13(1)(b).
id. at Article 55 and 56.
id. at Article 62.
id. at Article 68.
It is pertinent to look at the various international documents accepting and declaring the value of human beings especially of women for detailed examination.


Universal Declaration of Human Rights, 1948

Universal Declaration of Human Rights, 1948 is neither a treaty nor a binding international instrument. It is only a statement of principles of the inalienable human rights, setting up a common standard for achievement of human rights and every Member State can take steps to promote respect for these rights and freedoms by incorporating the norms in their domestic law.

In addition to the preamble the Declaration consists of 30 articles dealing with the human rights and fundamental freedoms which all men and women everywhere in the world are entitled to, without any discrimination on the basis of sex.

The preamble of the Universal Declaration of Human Rights, 1948 recognises the inherent dignity of the individual and the equal and inalienable rights of the members of the human family. The basic principle enunciated in
Ihe Declaration, which proclaims that "all human beings are born free and
equal in dignity and rights" and that every one is entitled to all the rights and
freedoms set forth in the declaration without distinction of any kind including
distinction based on sex. All are equal before law and are entitled to equal
protection of the law without any discrimination. A person shall not be
subjected to arbitrary interference with his privacy, family, home,
correspondence or attack upon his honour or reputation. Everyone has the right
to protection of law against such interference or attacks. A guarantee against
factors affecting the human dignity, all forms of violence such as domestic
violence, sexual violence, rape, and violence inside and outside the family that
affect the honour and reputation are incorporated in the Declaration. The
provision is intended for the protection of women because women are often
subjected to sex based discrimination and often subjected to violence inside
and outside the family.

The right to marry and found a family without any limitation due to
race, nationality or religion is another accepted norm protecting the right of
women. Women are often denied the right to choose the spouse. This denial
extends to their rights during the subsistence of marriage and also at its
dissolution. Consent of the women to the marriage is often ignored and she is
bound or forced to marry according to the decisions of the parents or guardians.

According to the Universal Declaration of Human Rights, attainment of

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9 The Universal Declaration of Human Rights, 1948, Article 1.
10 id. at Article 2.
11 id. at Article 7.
12 id. at Article 12.
13 id. at Article 16.
majority and free consent is regarded as a condition for the marriage. There is no provision in the declaration, which requires a woman to change her nationality according to that of her husband.

The right to work and equal pay for equal work without discrimination as to sex is recognised as an inalienable right of all human beings. The right to equal pay for equal work without discrimination as to sex implies the right of man and woman, the same right of employment, equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation and quality of work. There shall not be any restriction on the basis of sex, especially in marriage or maternity. The declaration also contains provisions guaranteeing the right to a standard of living sufficient for health and well being of a person and his family including the facilities to live with human dignity. It includes food, clothing, housing, medical care, necessary social services, right to security in the case of unemployment, sickness, disability, widowhood, old age etc. Motherhood and childhood are entitled to special care and protection under the Declaration.

Articles 2 to 21 deal with Civil and Political Rights. They are right to life, liberty and security of person, freedom from slavery or servitude, prohibition against torture, inhuman or degrading treatment or punishment.

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9. id. at Article 16 (2).
10. id. at Article 23 (2).
11. id. at Article 23 (3).
12. id. at Article 25 (2).
13. id. at Article 3.
14. id. at Article 4.
15. id. at Article 5.
recognition as a person before law, equality before law and equal protection of law without any discrimination, effective remedy before national tribunal, freedom from arbitrary arrest, detention or exile, right to a fair and public hearing by independent and impartial tribunal, the right to presume to be innocent till the guilt is proved, protection against ex post facto laws, right to privacy, family, home or correspondence, freedom of movement and residence, right to leave the country including his own and to return to his country, right to seek and to enjoy in other countries asylum from persecution, right to nationality, right to marry and found a family, right to own property, right to freedom of thought, conscience and religion, right to freedom of opinion and expression, right to freedom of peaceful assembly and association and right to participate in the government of his country, etc.

Articles 22 to 27 of the Declaration deal with economic, social and cultural rights. They are the right to social security, right to work and free

\[\text{id. at Article 6.}\]
\[\text{id. at Article 7.}\]
\[\text{id. at Article 8.}\]
\[\text{id. at Article 9.}\]
\[\text{id. at Article 10.}\]
\[\text{id. at Article 11.}\]
\[\text{id. at Article 11(2).}\]
\[\text{id. at Article 12.}\]
\[\text{id. at Article 13(1).}\]
\[\text{id. at Article 13(2).}\]
\[\text{id. at Article 14(1).}\]
\[\text{id. at Article 15.}\]
\[\text{id. at Article 16.}\]
\[\text{id. at Article 17.}\]
\[\text{id. at Article 18.}\]
\[\text{id. at Article 19.}\]
\[\text{id. at Article 20.}\]
\[\text{id. at Article 21.}\]
\[\text{id. at Article 22.}\]
choice of employment, right to rest and leisure, right to a standard of living adequate for the health of himself and of his family, right to education, right to participate in cultural life and right to good social and international order.

Universal Declaration of Human Rights, 1948 does not provide any machinery for enforcement. Hence the General Assembly decided to adopt two Covenants with machinery for its enforcement. Accordingly International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 were adopted. The Optional Protocol to Civil and Political Rights enables the individual to bring action against human rights' violations.

The rights conferred on the individuals by the Declaration shall be subject to the requirements of morality, public order and general welfare in a democratic society. The rights recognised in the declaration, are inalienable, universal, indivisible, inter-dependent and inter-related. Universal Declaration of Human Rights, 1948 has been a source for the various types of action taken by the United Nations. The provisions have inspired a number of international conventions, national constitutions, domestic legislation and decisions of courts.

39 id. at Article 23.
40 id. at Article 24.
41 id. at Article 25.
42 id. at Article 26.
43 id. at Article 27.
44 id. at Article 28.
International Covenant on Civil and Political Rights, 1966

International Covenant on Civil and Political Rights consists of 53 articles and is divided into six parts. Part I, II & III dealing with various freedoms and the other parts dealing with procedure for the effective realisation of these rights.

Part I deals specifically with the right of the people to self-determination. Part II casts obligations on the State Parties to take necessary steps to incorporate the provisions of the Covenant in the domestic laws and to adopt such legislative or other measures to give effect to the rights recognised in the Covenant. The State Parties are to ensure equal rights of men and women to the enjoyment of all civil and political rights.

Part III deals with specific rights of the individuals and the obligations of the State Parties. The preamble as well as other articles of the Covenant recognises the natural and inalienable rights of women. It also envisages the protection and promotion of equal rights of man and woman. Universal peace can be maintained only when the rights of others are recognised by the individual as well as by the State.

The Covenant requires the State Parties to take steps to ensure that the rights guaranteed under the Covenant are available to all persons without distinction as to sex. It prohibited discrimination against any person on the ground of sex among other grounds such as race, caste, religion or place of
These rights are available to men and women equally. They are equal before the law and are entitled to equal protection of law without discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.

Part III of the Covenant deals with the specific rights of the individuals and the obligation of the State Parties. They are right to life, freedom from inhuman and degrading treatment, freedom from slavery, servitude and forced labour, right to liberty and security, right to be treated with humanity, freedom from imprisonment for inability to fulfill contractual obligation, freedom of movement and to choose his residence, freedom of aliens from arbitrary expulsion, right to fair trial non-retroactive application of criminal law, right to recognition as a person before the law, right to privacy, family,

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45 International Covenant on Civil and Political Rights, 1966, Article 2 para. 1: Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
46 id. at Article 3 The State Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present covenant.
47 id. at Article 26 All persons are equal before law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
home or correspondence, 59 freedom of thought, conscience and religion, 60 freedom of opinion and expression, 61 prohibition of propaganda of war, 62 right to peaceful assembly, 63 freedom of association, 64 rights of the child, 65 right to take part in the conduct of public affairs, to vote and to be elected, 66 equality before the law 67 and rights of minorities, 68 etc.

Right to lead a dignified life requires privacy and protection of family. If there is any attack or interference with these rights, it is to be protected by law. 69 The right to privacy is concerned more with women. She has the right to safeguard her privacy, her family, marriage, motherhood, child bearing etc. In order to lead a life with human dignity without fear of sexual violence and domestic violence, the Covenant requires the State Parties to incorporate these norms into their domestic law.

Family is considered as the natural and fundamental unit of the society and entitled to protection. The right to form a family by marriage and its protection is also recognised by the Covenant. It also recognised the free

59 id. at Article 17.
60 id. at Article 18.
61 id. at Article 19.
62 id. at Article 20.
63 id. at Article 21.
64 id. at Article 22.
65 id. at Article 23.
66 id. at Article 24.
67 id. at Article 25.
68 id. at Article 26.
69 id. at Article 27.
70 id. at Article 17(2).
consent and attainment of majority as a condition for marriage. So the Covenant implicitly prohibited child marriages. Equal right of nationality to women was also recognised.

Part IV (Articles 28 to 45) deals with measures of implementation of Civil and Political Rights. Human Rights Committee was constituted under Article 28. Articles 29 to 40 deal with constitution and functioning of the committee. Following are the procedures envisaged under the Covenant for implementation.

1. Reporting Procedure

Part I of Article 40 of the International Convention on Civil and Political Rights, 1966 casts an obligation on the part of the States to report to the Secretary General who transmitted the report to the Human Rights Committee, the measures taken by them to realise the rights guaranteed under the Convention. The first part of the report shall contain details about the violations of human rights and the second part shall contain the legislative, administrative or other measures in force in regard to such rights, restriction, limitation etc; imposed by the State on the enjoyment of these rights. By this system if the fair and accurate report is furnished by the state, the committee can really assess and supervise the human rights situations of that particular country.

70 id. at Article 23.
2. Inter State Communication System

Article 41 provides for Inter State Complaint machinery that enables one State Party to charge another State Party with violation of the treaty. If a State Party is of opinion that another state is not giving effect to the provisions of the Covenant, the matter can be brought to the notice of that State in writing. Within three months, the receiving State can give clarification as to the domestic procedure or remedies taken in that matter. If the matter cannot be clarified to the satisfaction of both the States within six months, either State shall have the right to refer the matter to the human rights committee, after giving notice to the committee as well as to the State.

The committee shall deal with the matter only if it is satisfied that all alternate remedies under the domestic law have been exhausted except in cases where resort to domestic law caused unreasonable delay in deciding the matter. The committee shall after giving opportunities to the parties, tried for a friendly settlement of the matter on the basis of respect for human rights and fundamental freedoms recognised in the Covenant. If a friendly settlement is possible, the committee shall submit a report containing a brief statement of the facts and solutions reached and the report shall be communicated to the State Parties concerned.

If a friendly settlement is not possible, the committee may call the State Parties to submit relevant information relating to the matter. The report of the
committee shall contain a brief statement of the facts, the written submissions
and a record of the oral submissions made by the State Parties. The complaint
machinery under this article is optional. It becomes effective only if the State
Party declares that it recognises the competence of the human right committee
to receive and consider communications by the State Parties.

3. Conciliation Procedure

When the inter-state system fails, the Human Right Committee adopts
the conciliation procedure. Article 42 of the International Covenant on Civil
and Political Rights, 1966 provides for the establishment ad-hoc conciliation
commission with the prior consent of the State Parties concerned with a view to
an amicable solution of the matter on the basis of the respect for the Covenant.
The commission shall submit its report to the Chairman of the committee. The
report shall contain a brief statement of facts and the solution reached. If an
amicable settlement is not possible its views on the possibilities of the amicable
settlement is stated in the report. After the Commission examines the matter, it
gives its views to the parties. The parties are at liberty to accept or reject the
views. But the Covenant is silent as to the remedies available to the aggrieved
state. It is one of the weaknesses of the conciliation system.

4. Individual communication system

Under the optional protocol to the Covenant on Civil and Political
Rights after giving notice to the state parties and calling explanations from the

71) id. at Article 43.
State parties, the committee examines the complaint and forwards its views to
the State parties concerned. The committee is not empowered to give its
decision or judgement. The implementation procedure under this Covenant is
not sufficient to make the protection and promotion of the rights effective. It is
felt that an independent judicial enforcement system ought to have been created
under the Covenant then it could have been possible for the individuals to
enjoy these rights.

International Covenant on Economic, Social and Cultural Rights, 1966

Besides the preamble, the International Covenant on Economic, Social
and Cultural Rights consists of 31 Articles divided into five parts. Part I deals
with the right of the people for self-determination. Part II deals with the
obligation of the State Parties to take measures to incorporate the rights
recognised in the Covenant in their domestic law. The outstanding feature of
the Covenant on Economic, Social and Cultural Right is that it does not require
the State Parties to give immediate effect to this Covenant but only according
to the available resources of the country. It requires the State Parties to take
appropriate measures including legislation to give effect to this Covenant.73
The rights guaranteed in the Covenant are available to all persons without any
discrimination of any kind as to sex, among other grounds such as race, colour,
language, religion, political or other opinion, national or social origin, property,

birth or other status.\textsuperscript{74} The Covenant casts an obligation on the State Parties to undertake steps to ensure that the rights available in the Covenant shall be equally enjoyable by men and women.\textsuperscript{75}

The International Covenant on Economic, Social and Cultural Rights, 1966 envisages protection of human rights of women and prohibits discrimination against women in work places.

The Covenant requires the State Parties to give every person, man and women the right to choose any work and favourable conditions of work. There shall not be any discrimination on the remuneration in ground of sex and the working conditions of women shall not be inferior to man.\textsuperscript{76}

The State Parties shall also ensure a decent living, safe and healthy living conditions, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays and equal opportunity for promotion.\textsuperscript{77}

The right of woman to work, equal wages, humane conditions of work etc; are guaranteed under the Covenant.\textsuperscript{78} It is specifically provided in the Covenant that in the case of promotion to a higher level only the seniority and

\textsuperscript{74} \textit{id.} at Article 2(2).
\textsuperscript{75} \textit{id.} at Article 3.
\textsuperscript{76} \textit{id.} at Article 7(a) (1).
\textsuperscript{77} \textit{id.} at Article 7 a(ii) (b) (c) (d).
\textsuperscript{78} \textit{ibid.}
competence shall be taken into consideration. Discrimination shall not be made on the basis of sex in the matter of promotion.\textsuperscript{79}

Considering family as the natural and fundamental unit of the society and responsible for the care and protection of the dependent children, the covenant required the State Parties to give maximum protection to family especially to mothers during reasonable period before and after child birth. Working mothers should be accorded paid leave or leave with adequate remuneration during this period. Like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, free consent of marriage is also recognised.\textsuperscript{80}

It also provided that children and young persons should be protected from economic and social exploitation.\textsuperscript{81} The basic principle underlying all the human rights instruments is respect for human rights and the principle of nondiscrimination, which prohibits any distinction in the enjoyment and exercise of human rights based on sex.

The full development of the personality of a person and the right to lead a dignified life requires education. The Covenant requires the State Parties to give free compulsory primary education.\textsuperscript{82}

\textsuperscript{79} id. at Article 7 (a)(ii)(c).
\textsuperscript{80} id. at Article 10(1) & (2).
\textsuperscript{81} id. at Article 10 (3).
\textsuperscript{82} id. at Article 13(2)(a).
Procedure for Implementation

The Covenant provides for reporting system for the implementation of the provisions. The State Parties undertake to submit reports to the Secretary General of the United Nations who shall transmit copies to the Economic and Social Council for consideration and to the specialised agencies concerned.\(^83\) The Economic and Social Council may transmit the reports submitted by the States to the Commission on Human Rights for study and general recommendation or as appropriate for information.\(^84\)

The reports shall be furnished in stages in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the Covenant.\(^85\) The council may submit from time to time to the General Assembly the reports with recommendations of a general nature and a summary of information received from the State Parties to the Covenant and specialised agencies.

The Economic and Social Council established a Committee on Economic, Social and Cultural Rights in 1985. The Committee also makes general comments on a number of topics for the effective realisation of the rights recognised in the Covenant.

Despite the rhetorical commitment to the indivisibility and interdependence of human rights, the international community including the

\(^{83}\) id. at Article 16.  
\(^{84}\) id. at Article 19.  
\(^{85}\) id. at Article 17.
international human right movements has consistently treated civil and political rights as more significant, while consistently neglecting economic, social and cultural rights.\textsuperscript{86}

The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

The European Convention on Human Rights was signed by the State Parties in 1950 and entered into force in 1953. The significance of the European Convention is that it provides the machinery for enforcement. It establishes a Commission to receive and examine complaints about infringement of rights by the State Parties and a Court to adjudicate the complaints and to interpret the provisions of the Convention. It also establishes a committee of ministers of the Council of Europe, having power of adjudication.

Five protocols were later adapted to the Convention. First protocol was signed on 20\textsuperscript{th} March 1952 which adds 4 new articles providing for certain rights and freedoms. The second protocol was signed on 6\textsuperscript{th} May 1963. It recognises the advisory jurisdiction of the court of human rights on legal questions concerning the interpretation of the Convention and protocols. It came into force on 21\textsuperscript{st} September 1970. The third protocol amended Articles 29, 30, 34, abolished the system of sub-commission and it was signed on 6\textsuperscript{th}

May 1963 and came into force on 22\textsuperscript{nd} September 1970. The fourth protocol was signed on 16\textsuperscript{th} September 1963 and came into force on 2\textsuperscript{nd} May 1968 secured four freedoms. (1) Freedom from imprisonment for debts, (2) Freedom from expulsion of aliens, (3) Freedom of choice of residence and (4) liberty of movement. The fifth protocol was signed on 20\textsuperscript{th} January 1966. It makes certain procedural changes regarding the election of the commission and courts.

The European Convention protects predominantly civil and political rights. The rights guaranteed under the Convention are enjoyable by all persons without any discrimination on the basis of sex. These rights are equally available to men and women irrespective of their race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The rights recognised under the Convention are right to life,\textsuperscript{87} freedom from torture and from inhuman or degrading treatment or punishment,\textsuperscript{88} freedom from slavery and servitude,\textsuperscript{89} the right to liberty and security of the person,\textsuperscript{90} the right to fair trial,\textsuperscript{91} protection against retroactivity of the criminal law,\textsuperscript{92} freedom of thought, conscience and religion,\textsuperscript{93} freedom of expression,\textsuperscript{94} freedom of assembly and association,\textsuperscript{95}

\textsuperscript{88} \textit{id.} at Article 3.
\textsuperscript{89} \textit{id.} at Article 4.
\textsuperscript{90} \textit{id.} at Article 5.
\textsuperscript{91} \textit{id.} at Article 6.
\textsuperscript{92} \textit{id.} at Article 7.
\textsuperscript{93} \textit{id.} at Article 9.
\textsuperscript{94} \textit{id.} at Article 10.
\textsuperscript{95} \textit{id.} at Article 11.
right to an effective remedy if one's rights are violated\textsuperscript{96} etc. The Convention recognises the right of men and women of marriageable age to marry and found a family according to the national laws governing the exercise of that right.\textsuperscript{97} Every one has the right to respect for his private and family life, his house and his correspondence.

The European Social Charter, 1961 also has provisions protecting the rights of women. The right of the employed women to protection casts an obligation on the State to provide either by paid leave or by adequate social security benefits or benefits from public funds for women to take leave before and after child birth up to a period of at least twelve weeks. During such period, the employer shall not give her notice of dismissal. The mothers who are nursing their infants shall be entitled to sufficient time-off for that purpose.\textsuperscript{98} There is also provision in the Social Charter to ensure fair and humane conditions of work to women employees at work place. The Charter considers family as the fundamental unit of the society and as such required the contracting parties to this Convention to promote protection of the family life by providing social and family benefits, fiscal arrangements, provisions for family housing, benefits for the newly married couple etc.\textsuperscript{99} Article 5 of the seventh protocol protects the equality of the spouses in private law. The right to respect private and family life, the right to marry and found a family and the right to equality of the spouses and the prohibition of inhuman or degrading

\textsuperscript{96} id. at Article 13.
\textsuperscript{97} id. at Article 12.
\textsuperscript{98} European Social Charter, 1961. Article 8.
\textsuperscript{99} id. at Article 16.
treatment casts not only a negative obligation of non-interference but also a positive obligation to give effective respect for private and family life. This obligation very much implies protection of women.

The Convention establishes a Commission to receive and examine complaints about infringement of rights by the State Parties and a Court to adjudicate finally on complaints, and a Committee of the Ministers of the Council of Europe, for the protection and promotion of human rights. In international law, the individual cannot complain about violation of one’s right. But the European Convention recognises the right of the individual to complain even against one’s own government.100 When a petition is brought before the Commission, the first task of the Commission is to decide whether it is admissible. The Commission may deal with a case only after all domestic remedies have been exhausted and within a period of six months from the date of the decision at the national level.101 When a petition is admissible, the Commission investigates the case and after investigation tries for a friendly settlement.102 If the commission finds that the petition is not acceptable, the fact is communicated to parties.103 The Commission draws up a detailed report and the report is transmitted to the concerned State, to Committee of Ministers and to the Secretary General of the Council of Europe for publication.104

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102 id. at Article 28 (h).
103 id. at Article 29 (as amended by Third Protocol).
104 id. at Article 30.
If the case is not referred to the Court of Human Rights, the Committee of Ministers shall decide whether there is violation of human rights.\textsuperscript{105} The Convention creates an obligation on States to take remedial measures on the basis of the decision of the Committee of Ministers and if the Government has not taken satisfactory measures within the period prescribed, the Committee of Ministers decides what further action is necessary and to publish the report of the commission.\textsuperscript{106}

A case may be referred to the European Court of Human Rights only by the Commission or a State Party and not by the individual applicant.\textsuperscript{107} Only if the defendant State accepted the jurisdiction of the court, the court can exercise jurisdiction.\textsuperscript{108}

The Court may only deal with a case only after the Commission has acknowledged the failure of efforts for friendly settlement and within the period of 3 months provided for in Article 32.\textsuperscript{109}

Then the court has to decide whether there is violation of human rights. The Convention is silent as to the question whether the court has to order remedial measures. But the Convention empowers the court to award just satisfaction or damages to an injured party if the domestic law does not provide such a remedy.\textsuperscript{110} The judgement of the court is transmitted to the Committee

\textsuperscript{105}id. at Article 32(1).
\textsuperscript{106}id. at Article 32 (2) & (3).
\textsuperscript{107}id. at Article 44.
\textsuperscript{108}id. at Article 46 (1).
\textsuperscript{109}id. at Article 47.
\textsuperscript{110}id. at Article 50.
of Ministers who has the duty to give effect to the judgement.\textsuperscript{111} The Government concerned has to explain to the committee the remedial measures that have been taken by the Government to give effect to the provision and the committee decides whether such action satisfies the requirements of the situation.

As discussed earlier the European Convention on Human Rights recognises the right of every person of marriageable age to marry and establish a family. The efficacy of this provision came to be tested. In England a prisoner was denied the right to marry by the order of the authorities of the United Kingdom. The matter was referred to the Commission and the question for consideration before the Commission was whether there is violation of Article 12 of the Convention. The Commission was of the opinion that in so far as the prisoners' right to marriage does not affect the public interest, the exercise of his right to marry was substantially delayed by the combined effects of national law and administrative action, and according to the opinion of the Commission, it amounts to an injury to the prisoner's right to marry. The Commission finds that the applicant's right to marry guaranteed by Article 12 of the Convention was violated. The committee of ministers was also of the same view. From the above discussion it can be seen that respect for the human rights was recognised by the Commission and the committee by holding that even the prisoner has the right to marry.\textsuperscript{112}

\textsuperscript{111} id. at Article 54.
\textsuperscript{112} Hamer v. United Kingdom, 1982 (4) E.H.R.R. p.139.
Article 8 of the Convention recognises respect for a person's family and his private life and any interference with the right violates the rights recognised in the Convention. Respect for the family life includes right to access to the child. A child was born to a mentally retarded woman. The local county council after due regard to the family and welfare of the child, applied to the Juvenile Court for safety order of the child on 12 February 1976 and following an application by the council to the High Court, the child became a ward of the court. During the early stages, she was given access to the child, but later the access was reduced and consequently she filed application before the High Court, which was refused and in the course of the Judgement, the Judge made a recommendation that the child may be placed for adoption. In 1977, she married another person and her health was improved and so she approached the council for access to the child. On 13 November 1978 she and her husband initiated proceedings before the High Court pursuant to wardship jurisdiction to re-establish access.

On 22nd October 1980, the Judge made an adoption order in respect of the child and refused applicant, access to the child. Access to the child was denied by the High Court and appeal was also dismissed. Proceeding was instituted before the Commission on September 3, 1981. The mother alleged delay in the disposal of the application to access and hence there is violation of Article 6(1) and Article 13 read with Article 8 of the Convention. The Commission admitted the case. The Commission found that refusal of access to the child is a violation of Article 8. There is failure on the part of the authorities
to show respect for her family life protected by Article 8(1) of the Convention. The European Court of Human Rights also observed that the length of the proceedings related to the applicants claim to access to her child violates Article 6(1) and 8 of the Convention. The court further held that the decision of the court determines the question of applicants future relations with her child and the proceedings related to a fundamental element of family life etc.

Irrespective of their final outcome, the respect for the applicants family life required that the question to be determined solely in the light of all relevant considerations. The delay in the proceedings amounted to an interference with the applicant rights to respect for her family life protected by Article 8(1). The same view was followed in B v. United Kingdom and it was held that denial of access to children taken to public care violates Article 8 of the European Convention on Human Rights.

These decisions show the support given by the European Court of Human Rights and the European Commission on Human Rights to protect the interest of women. Enforcement mechanism under the European Convention for Protection of Human Rights and Fundamental Freedoms 1950 is more effective than the other international conventions.

American Convention on Human Rights, 1969

The 9th Inter American Conference held at Bagota, Columbia in May 1948, established the Organisation of American States (OAS). The 1948 Charter entered into force in December 1951. The Bagota Conference of 1948 also adopted the American Declaration of the Rights and Duties of man. In 1956 the meeting of consultation of foreign affairs of the Inter-American Conference held at Santiago adopted a resolution for the establishment of Inter-American Convention on Human Rights. The preparation of the drafts of human rights convention was entrusted to the Inter-American Council of Jurists. It was also resolved to constitute an Inter-American Commission on Human Rights. The Inter American Council of Jurists met at Santiago and prepared a draft according to the model of European Convention. The draft was considered at the extra ordinary conference held in Rio de Janeiro in November 1965, two other drafts were also presented by the Government of Uruguay and Chile, the latter was designed to incorporate all relevant provisions not only of the European Convention but also of its protocols and of the European Social Charter. After general discussion the drafts were referred to the Council of the Organisation of American States in Washington with instructions to prepare a single revised draft, which would be sent to governments for their comments, and thereafter to convene a specialised conference for providing a final text for adoption and signature. The Conference also adopted a resolution to the effect that pending the conclusion of a new Convention on Human Rights, the
existing Commission on Human Rights should be authorised to consider individual complaints of violation of certain basic rights such as right to life liberty etc.

The third special Inter-American Conference took place from 15th to 25th February 1967. It adopted detailed amendment of the Charter. The Inter-American Judicial Committee of experts replaced the Council of Jurists by the amended Charter. The Inter American Commission is made a statutory organ with the main function of protection and promotion of human rights. The conference was then held at Costa Rica from 7th to 22nd November, to produce the final text, to adopt and submit it for signature. The Convention was signed on 22nd November 1969 and entered into force on 18th July 1978.

The Convention has been divided into three parts.

1. Part I deals with the right to be protected and promoted. Article 1 to 32.
2. Part II deals with means of protection of Human Rights - Article 33 to 73.
3. Part III deal with general provisions regarding signature, ratification, reservations, amendment, protocols and denunciation.

The preamble of the Convention recognised that the essential rights of man are not derived from one being a national of a State but are based upon the attributes of human personality and therefore entitled to protection through Convention and through incorporation of the norms of the Convention to the domestic laws of the American States.
The State Parties to the Convention undertake to respect rights and freedoms to all persons subject to their jurisdiction without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social conditions.\textsuperscript{115} The Member States are under an obligation to incorporate the provisions in their domestic law through legislative or other process.\textsuperscript{116}

Part II of the Convention deals with civil and political rights. Every person has the right to recognition as a person before law.\textsuperscript{117} The rights and freedom to be protected under the Convention are the right to life,\textsuperscript{118} right to respect for physical, mental and moral integrity, right not to be subjected to cruel, inhuman or degrading punishment or treatment,\textsuperscript{119} the right to personal liberty,\textsuperscript{120} the right to fair trial,\textsuperscript{121} freedom from ex post facto law,\textsuperscript{122} right to compensation for miscarriage of justice,\textsuperscript{123} right to respect his family, honour, right to privacy of life, family, correspondence,\textsuperscript{124} freedom of conscience and religion,\textsuperscript{125} freedom of thought and expression,\textsuperscript{126} the right to reply,\textsuperscript{127} the right to assembly,\textsuperscript{128} right to association,\textsuperscript{129} right to constitute family,\textsuperscript{130} right to

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\item[116] \textit{id.} at Article 2.
\item[117] \textit{id.} at Article 3.
\item[118] \textit{id.} at Article 4.
\item[119] \textit{id.} at Article 5.
\item[120] \textit{id.} at Article 7.
\item[121] \textit{id.} at Article 8.
\item[122] \textit{id.} at Article 9.
\item[123] \textit{id.} at Article 10.
\item[124] \textit{id.} at Article 11.
\item[125] \textit{id.} at Article 12.
\item[126] \textit{id.} at Article 13.
\item[127] \textit{id.} at Article 14.
\item[128] \textit{id.} at Article 15.
\item[129] \textit{id.} at Article 16.
\item[130] \textit{id.} at Article 17.
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name, right of the child, right to nationality, right to property, freedom of movement and residence, right to participate in the Government, right to equal protection of laws, and right to judicial protection etc.

Article 10, 11, 17, 25 are provisions meant for the protection of women. The rights recognised in the Covenant are available to all persons without discrimination as to race, colour, sex, language, religion or other opinion, national or social origin, economic status, birth or any other social conditions. Every one has the right to respect his dignity, the right to non-interference of his private life, family, honour or reputation. The right to form family is recognised. The right to form family implies equal participation of the husband and wife in all areas of household responsibilities such as family planning, child rearing and household work. But men are often reluctant to share the responsibility because of the social and traditional attitude of the society and women are often subjected to difficulties. Men and women have the same mental constitution, same intelligence, and both are human beings, and by virtue of being a human person women are entitled to the same right with that of man. The Convention requires the State Parties to take adequate steps for the protection and promotion of the family, which implies the active involvement of women in family and for the promotion of equal value of children of both

\[131\) id. at Article 18.
\[132\) id. at Article 19.
\[133\) id. at Article 20.
\[134\) id. at Article 21.
\[135\) id. at Article 23.
\[136\) id. at Article 24.
\[137\) id. at Article 25.
\[138\) id. at Article 17.
the sexes. The Convention also strives to achieve equal rights of men and women in matrimonial relations and at the dissolution of marriages by virtue of the principle of free consent to marriage.\textsuperscript{139}

The Inter American Commission on Human Rights and the Inter American Court of Human Rights constitute the mechanism for the implementation of human rights envisaged under this Convention.

The Commission of Human Rights was originally established under Santiago Conference, Resolution VII in 1959 as a promotional organ. By Rio Conference it was given certain limited powers to consider individual petitions. Later in 1967 Buenos Aires Conference on the revision of the Charter made it a statutory organ. The structure, competence, and procedure of the Commission were left to be decided by the draft Convention.

Under the draft Convention, the Commission would be composed of seven members who are persons of high moral character and recognised competence in the field of human rights. The Commission shall represent all the member countries of the organisation of American States.\textsuperscript{140} They are elected by secret ballot in a personal capacity by the General Assembly from amongst the list of candidates proposed by the States. A State may propose three candidates out of which one must be national of other State.\textsuperscript{141} They are elected for four years. They could be reelected only once. Two nationals of the

\textsuperscript{139} ibid.
\textsuperscript{140} id at Article 35.
\textsuperscript{141} id at Article 36.
same State may not be members of the Commission. The term of three members chosen in the first election is two years. Immediately following the election, the General Assembly shall determine the names of those three members by lot.  

Chapter VII deals with Inter American Commission on Human Rights.

The functions of the Commission are:

1. To develop awareness of human rights
2. To make recommendation for the adoption of progressive measures within the framework of national legislation.
3. To prepare studies and reports
4. To obtain information from States on measures adopted for the promotion and protection of human rights.
5. To respond to consultations made by the members on matters relating to human rights with advisory services through Secretary General.
6. To take action on petitions and other communication.
7. To submit report to the General Assembly of the organisation of American States.  

Any person or group of person or any non-governmental organisation or one or more States of the organisation may lodge petition before the Commission for violation of the Convention against his own State or any other

\[id.\] at Article 37.

\[id.\] at Article 41.
State. The Commission can entertain the petition only if the competence of the commission is recognised by the State Parties by a declaration at the time of ratification or at a later time.

This declaration can be made at any time for a limited period or unlimited period and is optional. The petition is admissible only if:

1. All the domestic remedies have been exhausted.
2. The petition is lodged within 6 months from the final decision of the domestic court.
3. The subject of the petition is not pending before another International Tribunal for settlement.
4. The petition contains the name, nationality, profession, domicile and signature of persons or legal representatives.

The rules regarding admissibility of the petition is not applicable if the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have been allegedly violated or the party alleging violation of his right has been denied access to the remedies under domestic law or has been prevented from exhausting them, or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

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144 id. at Article 44.
145 id. at Article 46.
Procedures before the Commission

When an admissible petition is received by the Commission, copy of the same will be sent to the State responsible for the alleged violation and requires the State to furnish information within a reasonable period determined by the Commission in accordance with the circumstances of each case. When the information is received or at the expiration of the time specified for furnishing the information, the Commission shall ascertain whether grounds for the petition still exist. If they do not, the Commission shall order the record to be closed. The Commission has the power to declare the petition or communication inadmissible or out of order on the basis of the information or evidence subsequently received.

If the record has not closed, the Commission with the knowledge of the parties, and with the information from the States and if necessary by an investigation verify the facts and try for a friendly settlement of the matter on the basis of respect for human rights recognised in the Convention.\textsuperscript{146} If a friendly settlement is reached the report of the Commission about the settlement shall be transmitted to the petitioner and to the State Parties to the Convention and shall then be communicated to the Secretary General of the Organisation of American States for publication. The report shall contain a brief statement of the facts and solution reached on the request of the party etc.\textsuperscript{147}

\textsuperscript{146} \textit{id.} at Article 48(d).
\textsuperscript{147} \textit{id.} at Article 49.
If the settlement is not reached, the report of the Commission shall be transmitted to the State concerned, and within a period of three months from the date of transmission of the report to the State concerned if the matter has not been settled, it is submitted to the court.\textsuperscript{148}

Inter-American Court of Human Rights

The Court consists of seven Judges, elected in individual capacity from amongst the jurists of high moral authority and recognised competence in the field of human rights and who are competent to be appointed to the highest judicial office of the State.\textsuperscript{149} No two judges may be the nationals of the same State. They are elected by secret ballot by an absolute majority of votes in the General Assembly from out of a panel of three candidates by these States, of which at least one should be the national of other State.\textsuperscript{150} The term of the judges is fixed to be six years and may be re-elected again.\textsuperscript{151}

If a judge called upon to hear a case belongs to one of the parties, then the other party may appoint an ad-hoc judge. If none of the judge belongs to the parties, then each party is entitled to appoint ad-hoc judges.\textsuperscript{152} Five Judges constitute quorum for the court.\textsuperscript{153} The Commission appears in all cases before the court.\textsuperscript{154}

\textsuperscript{148} \textit{id.} at Article 51.
\textsuperscript{149} \textit{id.} at Article 52.
\textsuperscript{150} \textit{id.} at Article 53.
\textsuperscript{151} \textit{id.} at Article 54.
\textsuperscript{152} \textit{id.} at Article 55.
\textsuperscript{153} \textit{id.} at Article 56.
\textsuperscript{154} \textit{id.} at Article 57.
Only the State Parties and the Commission shall have the right to submit a case to the court. Before the court could hear the case, it is necessary that the procedures of Article 48 to 51 should have been exhausted.

The State Parties, upon depositing its instrument of ratification or adherence to the Convention or at any subsequent time declare that it recognises the jurisdiction of the court on all matters relating to interpretation and application of the provisions of this Convention that are submitted to it, provided that the State Parties to the case recognise or have recognised such jurisdiction whether by special declaration or by a special agreement. In cases of extreme seriousness and urgency and whenever it becomes necessary to avoid irreparable damage to persons, the court may adopt provisional measures.\textsuperscript{155} It may issue such orders on the request of the Commission in cases, which have not been submitted, to it. If the court finds a violation of the right or freedom protected by the Convention, it shall rule that the injured party is ensured the enjoyment of his right or freedom that was violated and also rule that fair compensation be paid to the injured party.\textsuperscript{156} The decision of the court is final and not subject to appeal.

Any State may seek advisory opinion regarding the interpretation of the Convention or other treaties concerning the protection of human rights in the American States and the compatibility of the domestic laws with American Convention or any other treaty on human rights.

\textsuperscript{155} id. at Article 63(2).
\textsuperscript{156} id. at Article 63 (1).
The court is required to submit its report to the General Assembly, giving particulars about the working of the court and also specify cases in which a State has not complied with its judgement and make the pertinent recommendation.\textsuperscript{157}

The judgement of the court shall be supported by reasons and a judge is empowered to pronounce the dissenting opinion, in case of disagreement with other judges.\textsuperscript{158} The court has the power to interpret the meaning and scope of its judgement on being requested by any within 90 days from the date of notification of the judgement.\textsuperscript{159}

The States shall be bound by the judgement of the court and an order of the court for damages will be directly enforceable in the State concerned in accordance with the domestic procedure governing the execution of the judgement against the State.

The court has also been conferred with advisory jurisdiction. The court is empowered not only to give advisory opinion regarding the interpretation of the Convention but also other treaties concerning protection of the human rights between American States. The jurisdiction of the court is optional.

American Declaration of the Rights and Duties of Man, 1948 also recognises the dignity of the individual and equality of status of all persons. Provisions are made in the Declaration to person ensuring the right to

\textsuperscript{157} id. at Article 65.
\textsuperscript{158} id. at Article 66.
\textsuperscript{159} id. at Article 67.
protection of law against abusive attacks upon the individual’s honour, reputation and his private and family life.\textsuperscript{160} Every person has the right to establish a family and the right to protection of the family\textsuperscript{161}. Special protection is given to all women during pregnancy and the nursing period.


The Organisation of African unity is a body of all African States. In 1981, the Assembly of the Head of the States and Government of the organisations of African Unity adopted African Charter on Human and Peoples Rights, 1981. This Charter entered into force in 1986. The main object set out in the preamble is the establishment of bodies to promote and protect human and peoples rights especially freedom, equality, justice, and dignity. The Charter was primarily dedicated to eradicate all forms of colonization from South Africa, to co-ordinate and intensify their co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

The various rights covered under the Charter include right to equality before law and equal protection of law.\textsuperscript{162} Every human being shall be entitled to respect for his life and dignity and to recognition of his legal status.\textsuperscript{163} All persons can enjoy all the rights recognised under this Charter without any distinction as to race, ethnic group, colour, sex, language, religion, politics or

\footnotesize{\textsuperscript{160} American Declaration of the Rights and Duties of Man, 1948, Article 5. \textsuperscript{161} id at Article 6. \textsuperscript{162} African Charter on Human and Peoples Rights, 1981, Article 3. \textsuperscript{163} id at Articles 4 & 5.}
any other opinion.\textsuperscript{164} Like all the other conventions the African Charter also
considers family as the fundamental unit of the society and a duty is cast on the
government of the Member States to take steps to protect the physical and
mental health of its members and to eliminate all forms of discrimination. The
other rights include the right to life,\textsuperscript{165} the right to security of the person,\textsuperscript{166} the
right to be heard,\textsuperscript{167} freedom of conscience and freedom to practice religion,\textsuperscript{168}
freedom of expression and the right to receive information,\textsuperscript{169} the right to form
association,\textsuperscript{170} freedom of assembly,\textsuperscript{171} freedom of movement and residence,\textsuperscript{172}
right to participate in the government of the country,\textsuperscript{173} the right to property,\textsuperscript{174}
the right to enjoy the best attainable standards of physical and mental health,\textsuperscript{175}
the right to education,\textsuperscript{176} the right to existence,\textsuperscript{177} and the right to freely dispose
of their wealth and natural resources.\textsuperscript{178} All people have the right to their
economic, social and cultural development with due regard to their freedom
and identity and the equal enjoyment of the common heritage of mankind,\textsuperscript{179}
right to national and international peace and security,\textsuperscript{180} and the right to a
general satisfactory environment favourable to their development\textsuperscript{181} etc.

\textsuperscript{164} \textit{id}. at Article 2.
\textsuperscript{165} \textit{id}. at Article 6.
\textsuperscript{166} \textit{ibid}.
\textsuperscript{167} \textit{id}. at Article 7.
\textsuperscript{168} \textit{id}. at Article 8.
\textsuperscript{169} \textit{id}. at Article 9.
\textsuperscript{170} \textit{id}. at Article 10.
\textsuperscript{171} \textit{id}. at Article 11.
\textsuperscript{172} \textit{id}. at Article 12.
\textsuperscript{173} \textit{id}. at Article 13.
\textsuperscript{174} \textit{id}. at Article 14.
\textsuperscript{175} \textit{id}. at Article 16.
\textsuperscript{176} \textit{id}. at Article 17.
\textsuperscript{177} \textit{id}. at Article 20.
\textsuperscript{178} \textit{id}. at Article 21.
\textsuperscript{179} \textit{id}. at Article 22.
\textsuperscript{180} \textit{id}. at Article 23.
\textsuperscript{181} \textit{id}. at Article 24.
The enforcement machinery under the African Charter is the Commission on Human Rights and the People's Rights. It has very few powers; hence it cannot effectively implement or interpret the provisions of the Charter. Articles 31 to 45 to the Charter deal with the constitution, duration, powers and functions of the commission and articles 46 to 58 deal with the procedure before the commission.

Equal Remuneration Convention 1951

This Convention deals with equal remuneration for men and women workers for work of equal value, adopted by the General Conference of the International Labour Organisation on June 29, 1951 and entered into force on May 23, 1953. The object of the Convention is to ensure the principle of equal remuneration to men and women to work of equal value. Remuneration is defined in the Convention as including 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 workers' employment. The term equal remuneration for men and women workers of equal value refers to rates of remuneration established without discrimination based on sex. The Convention requires the parties to take appropriate steps through legislation or regulation or through machinery for wage determination or through agreements between employers and workers or through the combination of all these methods to ensure the application of the principle of equal remuneration to men and women of same work.

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182 Equal Remuneration Convention, 1951, Article 1.
Measures shall be taken for the appraisal of the work and if different rates are paid to workers based on the differences in the work performed by them without regard to sex, it shall not be considered as being contrary to the principle of equal remuneration for men and women of equal value.\textsuperscript{183} The Convention also requires the members to co-operate with the employers and workers concerned for the purpose of giving effect to the provisions of the Conventions.\textsuperscript{184}

The formal ratification of this Convention shall be communicated to the Director General of the International Labour Office for registration. The Convention shall be binding only upon those members of International Labour Organisation whose ratification has been registered with the Director General.

Convention on the Political Rights of Women, 1953

It was adopted by the General Assembly on 20\textsuperscript{th} December 1952 and entered into force on 7\textsuperscript{th} July 1954. The preamble of the Convention expresses the desire of the Member States to implement the principle of equal rights of men and women incorporated in the U.N. Charter and the Universal Declaration of Human Rights and recognised the right of everyone to take part in the government of his/her country directly or through freely chosen representatives, and has access to public service in the country. The object of the Convention is to equalise the status of men and woman in the enjoyment and exercise of political rights in accordance with the provisions of the Charter.

\textsuperscript{183} id. at Article 3.
\textsuperscript{184} id. at Article 4.
and of the Universal Declaration of Human Rights. The Convention recognises the right of woman to vote in all elections in equal terms with men without any discrimination,\(^{185}\) the right to be elected to publicly elected positions established by national law on equal terms with men without any discrimination,\(^{186}\) the right to hold public offices and the right to exercise all public functions established by national law on equal terms with men without any discrimination.\(^{187}\) The same provision is reiterated in Article 25 of the International Covenant on Civil and Political Rights 1966, after 14 years of the adoption of the Convention on the Political Rights of Women.

Convention on the Nationality of Married Women, 1957

The problem of nationality of married women has been the concern of the United Nations since 1948 as the rule followed in conflict of laws made the domicile of wife dependent on husband's domicile. The General Assembly adopted the

Convention on the Nationality of Women, in consonance with Article 15 of the Universal Declaration of Human Rights to ensure equality between man and woman and to prevent a woman from becoming stateless or to prevent other hardships arising out of conflict of laws. In 1955, the Commission on the Status of Women completed its preparation of the draft of the Convention and was adopted by the General Assembly on 29th January 1957 and entered into force on 11th August 1958.
Under this Convention, each Contracting States agrees that neither the celebration nor the dissolution of marriage and the change of nationality of the husband during marriage shall affect the nationality of the wife.\textsuperscript{188} Even if the husband voluntarily acquires the nationality of another State or renounces the nationality, wife can retain the nationality of her own\textsuperscript{189}. An independent status is thus provided to women as per this Convention and the nationality of wife does not depend upon the nationality of the husband. Each contracting State, however, agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband, through specially privileged nationalisation procedures.

Discrimination (Employment and Occupation) Convention, 1958

This Convention was adopted on 29\textsuperscript{th} June 1958 by the General Conference of the International Labour Organisation at its 42\textsuperscript{nd} session and entered into force on 15\textsuperscript{th} June 1960. The main object of the Convention is to make the Member States to remove discrimination in the field of employment and occupation. The Convention casts an obligation on the part of the parties to the Convention to adopt a national policy designed to promote equality of opportunity and treatment of men and women in employment and occupation.\textsuperscript{190}

\textsuperscript{188} Convention on the Nationality of Married Women, 1957, Article 1.
\textsuperscript{189} Id. at Article 2.
\textsuperscript{190} Discrimination (Employment and Occupation), 1958, Article 2.
Discrimination is defined as 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. Any distinction, which is an essential requirement of the particular job, shall not be treated as discrimination. Employment and occupation include access to vocational training, access to employment and to particular occupation and terms and conditions of employment.\textsuperscript{191}

According to the Convention the State Parties shall (1) seek the cooperation of the workers organization and the employer (2) enact legislation to give effect to the policy (3) repeal all laws which are inconsistent with this policy and (4) ensure the observance of the policy in activities such as vocational training, placement services etc. to give effect to the policy adopted by the States. The action taken by the States to promote the objects and the results of such activities shall be included in the annual report submitted to the General Assembly.\textsuperscript{192}

Measures taken against persons engaged in activities affecting the security of the State or special protection given to person on the ground of sex, age, family responsibilities, in consultation with appropriate authorities shall not be deemed to be discriminatory, provided that the individual concerned shall have the right to appeal to a competent body established in accordance

\textsuperscript{191} id. at Article 1.
\textsuperscript{192} id. at Article 3.
with the national practice. The object of the Convention is elimination of
discrimination on the ground of sex among other grounds in the field of
employment and occupation. Section 5 of the Convention affords special
protection to women. Any special treatment based on difference as to sex, or
family responsibility shall not be treated as discrimination. The Convention
shall be binding only upon those members of the International Labour
Organization whose ratifications have been registered with the Director
General.

Convention Against Discrimination in Education, 1960

This Convention was adopted by the General Conference of the United
Nations Educational Scientific and Cultural Organization on December 14,
1960 and entered into force on 22\textsuperscript{nd} May 1962.

The Conference considered that discrimination in education on the
ground of sex among other things is a violation of the rights enumerated in the
Universal Declaration of Human Rights and that the United Nations
Educational, Scientific and Cultural Organisation (UNESCO) while respecting
the diversity of national educational systems, has the duty to prohibit
discrimination in education and to promote equality of opportunity and equal
treatment of all in education.

Discrimination is defined as any distinction, exclusion, limitation or
preference which being based on race, colour, sex, language, religion, political

\textsuperscript{193} id. at Article 4.
or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education. and in particular depriving a person or group of persons access to education on any level or limiting any person or group of an inferior standard education or establish separate educational institutions other than those permitted under the Convention and inflictions of conditions which are incompatible with the dignity of man. 194

The maintenance and establishment of separate schools with the same curriculum and teachers with same qualifications for boys and girls, establishment of educational institutions by religious or linguistic minorities to preserve their culture, religion or language and establishment of schools for providing facilities in addition to facilities provided by public authorities shall not be deemed to be discriminatory provided such schools shall conform to the standards laid down by the appropriate authorities. 195 The Convention requires the parties to the Convention, to take steps to repeal or to abrogate all laws and administrative instructions for the purpose of eliminating discrimination and for the purpose of promoting equality in all spheres of education. 196 The steps to be taken by the State shall include:

1. Primary education shall be made free and compulsory
2. Secondary education shall be made available and accessible to all

195 id. at Article 2.
196 id. at Article 3.
3. Higher education shall be made equally accessible to all on the basis of individual capacity.

4. The standards and quality of education are same in all public educational institutions.

5. Providing training for the teaching profession without discrimination.\(^{197}\)

The State Parties to the Convention agree to pay attention to the measures adopted by the General Conference of the UNESCO for the prevention of any kind of discrimination in the field of education and for ensuring equality of opportunity and for treatment.\(^{198}\) The Parties to the Convention are also required to furnish to the General Conference of the UNESCO, the measures adopted by them to give effect to this Convention.\(^{199}\)

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962

The Convention was adopted by the General Assembly on 7\(^{th}\) November 1962 and entered into force on 9\(^{th}\) December 1964. The object of the Convention is to prevent child marriage and marriages without the consent of the parties to the marriage. The Convention provides the following measures to achieve its object. The consent must be expressed by the two intending spouses in person after due publicity and in the presence of two witnesses.\(^{200}\) The States

\(^{197}\) id. at Article 4.

\(^{198}\) id. at Article 6.

\(^{199}\) id. at Article 7.

\(^{200}\) The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1962, Article 1.
shall take legislative measures to specify minimum age for marriage and all marriages shall be registered in an appropriate register by competent authority. The Convention requires the presence of the spouses in order to express the consent but in exceptional cases presence of one of the spouses can be dispensed with if the competent authority has satisfied that the circumstances is exceptional and the party has expressed the consent before a competent authority and has not withdrawn it. The Convention also permits exception in the case of age, if the competent authority has in the interest of the intending spouses and for serious reasons, granted a dispensation as to age. Even though the Convention itself has not specified the minimum age for marriage it imposes an obligation on the State Parties to take legislative action to this effect.

Declaration on the Elimination of Discrimination Against Women 1967

This declaration was made by the General Assembly on 7th November 1967. The parties to the Convention considered that discrimination against women affects the welfare of the society, the family and the development of the potentialities of women in social, political, economic and cultural life of the society. It also affects the full and effective participation of women in equal terms with men in the social, economic and cultural life and it is against the concept of human dignity of the individual. The full and complete development of the country, the welfare of the nation and maintenance of peace requires the

201 id. at Article 2.
202 id. at Article 3.
203 id. at Article 1(2).
204 id. at Article 2.
maximum participation of women along with men in all spheres of activities. Taking into consideration all these aspects the parties to the Convention feel that the principle of equality between man and woman requires the universal recognition in law and fact.

The Convention recognises that discrimination against women denying or limiting their equality of rights with men is fundamentally unjust and constitutes an offence against human dignity\(^{205}\) and it requires the State Parties to the Covenant to take steps to abolish all customs or laws or existing practices which are discriminatory against women and to adopt measures to ensure equal protection to men and women.\(^{206}\)

The Convention also requires the State Parties to take all measures to eliminate all prejudices against women based on the idea of inferiority of women\(^ {207}\) and to take appropriate measures to ensure women on equal terms with men the right to vote, be elected and to hold public offices.\(^{208}\) Women shall have the same right with men to acquire, change or retain the nationality. Marriage to an alien shall not automatically affect the nationality of the wife.\(^{209}\)

Family is the natural and fundamental unit of the society and is entitled to protection and all the members of the family i.e. both man and woman have the same right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage. Marriage shall be entered into

\(^{205}\) Declaration on the Elimination of All Forms of Discrimination Against Women, 1967, Article 1.
\(^{206}\) id. at Article 2.
\(^{207}\) id. at Article 3.
\(^{208}\) id. at Article 4.
\(^{209}\) id. at Article 5.
with the full and free consent of the parties. Both the parties to the marriage have equal right in respect of dissolution of marriage. Parents have equal rights and duties in matters relating to their children. The Convention also envisages the prohibition of child marriages and betrothal of young girls before puberty. The Convention requires the State Parties to fix the minimum age for marriage and registration of marriages shall be made compulsory.\textsuperscript{210} The Convention also requires the State Parties, to repeal all provisions in the penal code, which constitute discrimination against women.\textsuperscript{211}

According to the Convention appropriate measures shall be taken to prohibit all forms of traffic in women and exploitation,\textsuperscript{212} to ensure equality in education, equal conditions of access, same curricula, equal distribution of scholarships among boys and girls,\textsuperscript{213} the right to receive vocational training, free choice of profession and employment, the right to equal remuneration with men, equality of treatment in respect of work of equal value, the right to leave with pay, retirement privileges, provisions for security in case of unemployment, sickness, old age or incapacity to work, right to receive family allowances on equal terms with men.\textsuperscript{214} In order to ensure equality between man and woman and to prevent discrimination against woman on account of marriage, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave with the guarantee of returning to former employment, and to provide the necessary social service
including child care facilities.\textsuperscript{215} Measures taken to protect women in certain type of works for reasons inherent in their physical nature shall not be regarded as discriminatory.\textsuperscript{216} The Convention requires the State Parties, to implement the principle of equality of rights of men and women enunciated in the United Nations Charter and the Universal Declaration of Human Rights. Governments, non-governmental organizations and individuals are required to do all in their power to promote the implementation of the principles contained in the Declaration.\textsuperscript{217}

Convention on the Elimination of All Forms of Discrimination Against Woman, 1979

The United Nations Charter, the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 various other Conventions, resolutions and recommendations concluded under the auspicious of the United Nations, and specialized agencies, contain provisions promoting equality between men and women. Despite these instruments extensive discrimination against women continues to exist.

The General Assembly adopted this Convention in 1979, and this is the basic and comprehensive instrument dealing with human rights of woman. The main issue concerning woman is the deprivation and discrimination to which they are subjected and the object of the Convention is to prohibit discrimination against women and to ensure equality.

\textsuperscript{215} \textit{id.} at Article 10(2).
\textsuperscript{216} \textit{id.} at Article 10(3).
\textsuperscript{217} \textit{id.} at Article 11.
The State Parties to the Convention were convinced that establishment of a new economic order based on equity and justice was needed to promote equality between man and woman. The full development of the country and the maintenance of peace and welfare of the world require maximum participation of woman in equal terms with man. The Convention requires the State Parties to bear in mind that the role played by women as mothers and in the upbringing of children shall not be the basis for discrimination and a change in the traditional role of men and women in the family and society is needed to achieve full equality between men and woman.

The Convention opens with the terms “Discrimination against Women”. Discrimination against women means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on the basis of equality of men and women, of human rights and fundamental freedoms in the political, social, economic, cultural, civil or any other field.  

Taking into consideration all these aspects, the parties to the Convention agreed to undertake steps to eliminate discrimination against women in all forms. The State Parties shall incorporate the principle of equality of men and women in national constitution, legislation and to adopt sanctions in appropriate cases through competent national tribunals and other public institutions.

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institutions to eliminate discrimination whether by the State or by any person, organization or enterprise. All the Member States of the Convention are under an obligation to take steps including legislation to ensure the full development and advancement of women and equality between men and women in all fields.\(^{219}\) The State shall modify all the existing legislation, or abolish existing laws, regulations, custom or practices or repeal all final provisions, which constitute discrimination against women.\(^{220}\) The Convention mainly concerns with elimination of all forms of discrimination in the area of development, political and public life, nationality, marriage, family benefits, education, employment, health etc.

Every human being is born free and entitled to certain right by virtue of the fact that he is a human being, but the rights of women has always been neglected in the name of custom, honor, family, welfare and social prestige. The attitude of the society towards women is that they are weaker sex and they cannot do anything like that of men. The Convention casts an obligation on the parties to take appropriate measures to eliminate this and for this purpose the State shall take steps to modify the social and cultural patterns of the society for the purpose of eliminating all prejudices against women resulting from the customary and all other practices which are based on the idea of inferiority or superiority of either of the sexes or on the stereotype roles of men and women. Proper family education shall be given for the purpose of creating an

\(^{219}\) id. at Article 3.
\(^{220}\) id. at Article 2.
awareness of common responsibility of men and women in the upbringing and development of children.\textsuperscript{221}

The Convention also requires the State Parties to take steps to eliminate discrimination in the political and public life of the country and to ensure women the right to vote, the right to be elected, the right to participate in the governmental policy, the right to hold public office, right to participate in non-governmental organizations and associations concerned with the public and political life of the country\textsuperscript{222} and the right to represent their governments at international level and to participate in the work of international organizations.\textsuperscript{223} Women shall be guaranteed equal rights with men in the case of acquisition, change or retention of nationality. The marriage of a woman with an alien or change of nationality by the husband during marriage shall not affect the nationality of the wife. Women shall be given equal rights with men in respect of nationality of their children.\textsuperscript{224}

In the field of education, same kind of treatment to boys and girls, especially same kind of training, same curricula, teaching staff with same qualification etc; shall be provided. Benefits from scholarships and study grants shall be equally distributed among men and women. The female drop out rates shall be reduced and the State shall organise programs for women and girls who left the school prematurely. Same opportunities shall be granted to men

\textsuperscript{221} \textit{id. at Article 5.}  
\textsuperscript{222} \textit{id. at Article 7.}  
\textsuperscript{223} \textit{id. at Article 8.}  
\textsuperscript{224} \textit{id. at Article 9.}
and women to participate actively in sports and physical education. Women shall be given access to specific educational information to help to ensure the health and well being of families including information and advice in family planning.\textsuperscript{225}

The Convention recognized that the right to work is an inalienable right of all human beings. Women and men have the same right to employment and the same criteria for selection in matters of public employment. Discrimination shall not be allowed in the right of free choice of profession, promotion, and job security and all benefits and conditions of service. The right to equal pay for equal work, equal treatment in respect of work of equal value and equality of treatment in the evaluation of the quality of work are also recognized. The State Parties are under an obligation to provide the same privileges in the case of right to social security in the case of retirement, unemployment, sickness, invalidity and old age and other incapacity to work. State Parties are also under an obligation to provide paid leave during the period of maternity to protect the health, to provide safe working conditions, including the safeguarding of the function of reproduction.\textsuperscript{226}

In order to prevent discrimination against women on the grounds of marriage or maternity, the Convention requires the member states to prohibit dismissal on the grounds of maternity or pregnancy with appropriate sanction, to introduce provision for maternity leave, establish child care facilities and to provide special protection to women during pregnancy from doing works

\textsuperscript{225} \textit{id.} at Article 10.
\textsuperscript{226} \textit{id.} at Article 11.
which are harmful to them. There shall not be any discrimination on the
ground of marriage, pregnancy, maternity leave etc. Protective legislation
providing special benefits to women is required to be reviewed for the purpose
of eliminating discrimination and giving protection. The health of women
especially in times of pregnancy and lactation is protected by this
Convention. With regard to family benefits, loans, and mortgages and in
other financial matters, adequate steps shall be taken by the States to eliminate
discrimination. The provisions of the Convention shall be applicable to rural
women also. The Convention also recognized the right of women or the
capacity of women to conclude a contract or administer property and to be
treated equally before the court or tribunal. The freedom of movement and
freedom to choose the residence is also recognised.

The parties to the Convention are required to take all steps to eliminate
discrimination against women in matters relating to marriage and family and to
the equal right of men and women to enter into marriage, the right to decide the
number of children, spacing of children, the right and responsibilities as
parents, guardians, the right to hold and dispose of property etc. The
Convention also requires the State Parties to specify the minimum age for
marriage and to make registration of marriages in an official registry
compulsory.

\begin{itemize}
\item id. at Article 11(2).
\item id. at Article 12.
\item id. at Article 13.
\item id. at Article 15.
\item id. at Article 16.
\item id. at Article 16(2).
\end{itemize}
For the purpose of considering the progress made in the implementation of the present Convention, there shall be a committee on the Elimination of Discrimination Against Women. The State Parties shall make a report on the legislative, judicial, administrative, or other measures taken by them to the Secretary General of the United Nations for consideration by the Committee. The Committee shall through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from State Parties. The Secretary General of the United Nations shall transmit the reports of the committee to the commission on the status of women for its information. The Convention shall not affect any provisions that are more conducive to the achievement of equality between men and women contained in the legislation of a State Party or any other international convention, treaty or agreement in force in that State. The State Parties under Article 24 have to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in this Convention. Part V of the Convention (Articles 17-22) deals with the constitution and function of the Committee on the Elimination of all forms of discrimination Against Women. The committee consists of 23 members who serve in their individual capacities. The committee, which has to be convened once a year for a three-week period, reviews the report of the State Parties
relating to the implementation of the Convention on the Elimination of All
Forms of Discrimination Against Women, 1979. It can suggest specific as well
as general recommendations for the implementation of the Convention.

Declaration on the Elimination of Violence Against Women, 1993

The Declaration on the Elimination of Violence Against Women adopted by the United Nations General Assembly in 1993 is the first international human rights instrument exclusively and explicitly address the issue of violence against women. “Violence against women” for the purpose of the Declaration means any act of gender-based violence that results, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.233

The Declaration is concerned with physical and psychological violence inside the family, violence committed by the community and violence perpetrated by the States and all such other forms of violence.234 According to the Declaration women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields.235 The Declaration required the State Parties to condemn violence against women and to pursue by appropriate means and

234 id. at Article 2.
235 id. at Article 3.
without delay a policy for eliminating violence against women.\textsuperscript{236} For this purpose the State Parties should:

(1) ratify the Convention on the Elimination of All Forms of Discrimination Against Women if they have not yet ratified;

(2) refrain from engaging violence against women;

(3) take steps to punish those who are responsible for acts of violence against women irrespective of the fact that it is perpetrated by the State or by private persons, to prescribe sanctions in domestic laws to provide effective remedies and to give access to the victims of violence to justice and to inform them about their rights;

(4) consider the possibilities of developing national plans of action to promote the protection of women against violence. For this purpose the State can see co-operation of non-governmental organizations;

(5) develop preventive measures against violence;

(6) ensure rehabilitation of women subjected to violence and to their children, assistance and care according to the available resources of the country;

(7) raise adequate resources for their activities relating to violence against women;

(8) give training to public officials to sensitize them about the needs of women;

\textsuperscript{236} id at Article 4.
(9) adopt appropriate means especially in the field of education to modify the social and cultural and customary practices that discriminates against women;

(10) promote research and collect data about different forms of violence and suggest measures to prevent violence against women;

(11) adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(12) information pertaining to violence against women be included in the reports submitted to the United Nations by the relevant human rights instruments;

(13) encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(14) recognise the important role of the women’s movement and non-governmental organisations world wide in raising awareness and alleviating the problem of violence against women;

(15) facilitate and enhance the work of the women’s movement and non-governmental organizations and cooperate with them at local, national and regional levels;

The Declaration required the organs and specialised agencies of the United Nations system within their respective fields of competence to contribute to the recognition and realisation of the rights and principles set forth in the Declaration. 237

237 id at Article 5.
Conclusion:

The bird’s eye view of the international documents may indicate that the international community focused its attention in all spheres of human activity with a view to avoid the age old sufferings of the women folk who constituted half of the humanity. These are in fact the culmination of the fulminating activities of women’s organizations the world over. It is interesting that the international union for protection of women rights has percolated down to the municipal jurisdictions.

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