CHAPTER – II

INTERNATIONAL DOCUMENTS IN THE FIELD OF

WOMEN’S HUMAN RIGHTS AND THEIR MECHANISM :-

Although the idea of human rights grew and developed through the evolutionary process rooted in the human civilization, but the expansion of the contemporary human right system is a product of the First World War and Second World War. The context of women’s human rights also gains its momentum since 1948, but not as like human right which is universally accepted for the protection of right of human being. Women’s rights are a relatively recent addition to the domain of human rights. Their importance began with the first meetings on women and development in the 1970s. Though women make up about fifty percent of the total human resources, still the position of women is subordinate than men which may be due to biological difference. Gender based discrimination is not a new phenomenon, but it is a practice from time immemorial. Women, perhaps due to their illiteracy, were not conscious enough to voice against such discrimination in ancient period. It may be mentioned here that human rights are non-delegable and non-transferable rights. These human rights may be

violated not only by the unjust acts of individuals, but also by the unjust formation of national or international structure. The United Nations Organization from the very beginning concerned with the plight of women. This is significant in itself as it not only accepts the prevalence of discrimination against women but also becomes a major instrument to eliminate discrimination in all its forms. Thus, human right though is an all pervading concept, but the concern with the diminution of sex based discrimination is a relatively new concept in the international agenda. Women often raised the questions from a long time why their rights are seen as ancillary to the concept of human rights. However, it was only in 1935 that the question of the status of women in all its aspects was first placed on the agenda of an international organization – the League of Nation. The Assembly of the League initially referred the question to the Governments and Women’s International Organizations regarding possible action. Before that, in 1919 the International League for peace and freedom was organized which reflects many women’s concern for peace, which had the impact to including the character of league many of women’s issue. In 1937, it appointed a Committee of experts to carry out a comprehensive

inquiring into the legal status enjoyed by women in the various countries of the world\textsuperscript{63}.

But the Committee's mandate was only restricted to collect and analyze information without making recommendation as to any further action, as there was no consensus over the measures to be taken at the international level, or even on whether the international community had jurisdiction in the matter relating to woman.

But to change this type of attitude, a coordinated effort had been taken by the world organization only in the early part of 1990. Though the rights of women along with those of men have been recognized as the major human rights instruments since the establishment of the United Nation\textsuperscript{64}, but the basic concept of women's human rights were recognized only after the Vienna declaration, 1993 and Beijing Platform for Programme of Action, 1995. In this Chapter, it may be observed that there are various international conventions and declarations adopted by the United Nations for the protection of the women's rights. But at the same time, it reveals the futile exercise of those international instruments for women due to various technical difficulties on adoption and ratification and frequent practice of reservation of the articles within

\textsuperscript{64} Supra. (61) P.10.
the conventions. It is an undeniable fact that once a right is recognized, then only the violation of those rights can be accounted and remedied.

As the concern for the elimination of sex-based discrimination is a relatively new issue on the international agenda, hence a discussion of the various human rights of women guaranteed by the United Nations by different declarations and conventions, their limitations and reservations etc. are discussed in this Chapter. The United Nation Organization from the very beginning is concerned with the rights of women and tried to eliminate discrimination in all its forms. The non-governmental organizations (NGOs), Governmental Organizations (GOs) and Inter-Governmental Organizations (IGOs) often play pivotal role for the protection as well as against the violation of women’s human rights.

Thus, considering all these elements, a discussion on the international human rights organization, their mechanism and their role for the protection or violation of human rights have been analyzed in this Chapter.

Charter of the United Nations (1945) :-

The devastating effect of the Second World War lead the world community to establish the United Nations in 1945. It is through the United Nations that the international norms regarding the human rights of individuals and groups were established. The charter of the United
Nations and the peace treaties concluded after the establishment of United Nations and therefore it is the first international instruments containing sex-equality provisions of a wide-ranging nature. At San Francisco in 1945, a number of feminists working under the umbrella of the Inter-American Commission on the status of women were successful in having non-discrimination on the ground of sex written into the United Nation charter. The U.N. Charter reaffirms its faith in fundamental human rights and equal rights of men and women. The preamble to the Charter states: "to affirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." It aims to achieve international co-operation in solving international problems of economic, social, cultural or humanitarian character without distinction as to race, sex, language or religion.

Article-13(1) (b) empowers the General Assembly to study and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without any distinction on sex.

65. Ibid. (62).
The Charter also made a list of the functions of the United Nation for the promotion and observance of human rights for women⁶⁷.

Though the United Nations Charter is the first international instrument to protect the women’s human right, but it was in an infant form and reluctant to interfere the violation of women’s human right in the private life. Thus … “Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State…….”⁶⁸ These articles are important as they involve the member States and the political and judicial organs of the United Nations and have interpreted these provisions as a whole to constitute legal obligation. The Charter also empowered the Economic and Social council (ECOSOC) to make recommendation for the purpose of promoting respect for and observances of human rights and fundamental freedom for all⁶⁹. All United Nations Member States must fulfill the obligations to respect human rights.

Analyzing all those we can understand that every right that helps women to become human being is her human right and denial of such rights amounts to violation of women’s human rights. The charter of the

⁶⁷. Art. 55 (c).
⁶⁸. Art. 2 (7).
United Nations, though recognized the rights of women in social life, but it did not consider the human rights violation of women in their private or personal life.

The Universal Declaration of Human Rights, 1948:

The United Nations had expressed again the faith in equal rights of men and women by adopting the Universal Declaration of Human Rights on 10th December, 1948. The Declaration consists of 30 articles providing basic rights and fundamental freedoms to which all men and women are entitled without any discrimination. These include the right to life, liberty, and equality before the law and equal protection under the law, right to social security and right to education. The human rights of women also include their right to have control over and decide freely on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

The Declaration has exercised a profound influence upon the minds of human beings. Its message is one of hope, equality, liberation and empowerment. But the Declaration was not intended to be legally

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binding and therefore it did not impose any legal obligations on the states to give effects to its provisions. In other words, the declaration is only a recommendation, it was not strictly binding on the states and had no machinery for its implementation other than State goodwill.

secondly, some of its provisions are as general as that of article-55 of the UN, charter. For instance article-3 stated that everyone has the right to life, liberty and security of person. This generalized expression is unable to lead any legal obligation among the people. Till, the declaration has been invoked many times both within and outside the United Nations. Due to the general acceptance and common legal opinion, the Declaration gets the status of customary international law or 'Jus Cogen'\textsuperscript{72}. India also is a member of the Universal Declaration of Human Rights. Inspired by the ideals of Universal Declaration of Human Rights, the framers of the Indian constitution incorporated the concept of human rights of Universal Declaration in two parts – Part-III and Part-IV of the Constitution. Similarly many nations became the member of Universal Declaration. But insufficient State practice and lack of awareness reduce

the obligation of the member states towards the Declaration.

**Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949:**

Since the period of Roman Civilization, there was the practice of traffic in persons in the form of slave trade among the nations. With the rise of new imperialism, slavery had become an integral part of the colonial system of European Countries. Various attempts had been taken by United Nations to suppress and abolish the slavery completely. Nowadays trafficking in persons is condemned under the international human rights law with provisions that place an explicit obligation upon states to take steps to stop this practice. Finally, the United Nations adopted the Convention for the Suppression of the Traffic in persons and of the Prostitution of Others, 1949 by the General Assembly Resolution No. 317 (iv)\(^73\). This Convention totally denounces the traffic in persons for the purpose of prostitution.

The Convention consists of 28 Articles and have Final Protocol, under which the Convention shall apply\(^74\). This Convention gives some security towards women against exploitation of prostitution at

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74. Articles 23 to 26.
international level and to punish any such exploitation or practice. The Convention considers the case of recidivism and voluntary prostitution and suggests abolition of any domestic law prevailing in member states under which prostitution is recognized\textsuperscript{75}. One of the main themes of this Convention is the rehabilitation of the prostitutes and prevention of international flesh trade. The Convention also provides for the arrangement of repatriation of destitute victims of international traffic. But the Convention does not include the international sex tourism of girl child.

Normally, ‘trafficking’ has been used in international legal instruments to refer to the movement of, and trade in, human beings, usually in connection with slavery, prostitution and sexual exploitation. In recent years, increased attention to the global problem of trafficking and sex tourism in persons has led to a widespread push to develop a working definition of trafficking that encompasses the full nature and scope of the abuse. Further, the United Nations took the decision to draft a Convention Against Transnational Organized Crime, supplemented by an Optional Protocol on trafficking in persons. To this end, the Ad-hoc Committee on the elaboration of the Convention was established by the

\textsuperscript{75} Articles 1 to 4.
General assembly in 1998\textsuperscript{76}, with a mandate to draft the Convention and the trafficking protocol by the end of 2000. In February, 2000, the Office of the United Nations High Commissioner for Human Rights (UNHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s’ Fund (UNICEF), and the International Organization for Migration (IOM) submitted a joint statement to the Ad-hoc Committee recommending the following definition of trafficking: “the recruitment, transportation, transfer or harboring or receipt of any person for any purpose or in any form, including the recruitment, transportation, transfer or harboring or receipt of any person by the threat or use of force or by abduction, fraud, deception, coercion or abuse of power for the purposes of slavery, forced labour and servitude which should be understood to include forced prostitution\textsuperscript{77}”.

Prostitution in the form of ‘Devdashi’ was recognized since the ancient period of Indian Civilization. The Constitution of India provides for prohibition of traffic in human being and forced labour\textsuperscript{78}. The Indian judiciary also opined that traffic in human beings, obviously includes

\textsuperscript{76} Owed Justice – International Legal Standards on Trafficking In Women. \url{http://www.hrw.org/reports/2000/japan/5-int-stand.htm.}
\textsuperscript{78} Article – 23 of the Constitution of India.
traffic in women for immoral or other purposes\textsuperscript{79}. For restraining prostitution, the Government also passed legislation on it. Nevertheless, it may be concluded that the Convention for the Suppression of the traffic in persons and of the exploitation of the prostitution of others, 1949 is the first attempt at the international level to give the recognition to the prostitute as a human being\textsuperscript{80}, though the prostitution is not yet able to control.

**Equal Remuneration Convention, 1951 :-**

The inclusion of women's rights in key United Nations documents, however, has not brought about equality. Consequently, a number of other human rights instruments have been passed both by the United Nations General Assembly and by U.N. specialized agencies with regard to various aspects of women's rights. In 1951, the International Labour Organization (ILO) adopted a Convention concerning Equal Remuneration for Men and Women workers for work of equal values, besides adopting two other Conventions to improve the working conditions for women. They are Conventions on prohibition of Night Work for women employed in industry, adopted in 1948 and the Convention providing Maternity protection adopted in 1952. Economic

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\textsuperscript{79} Raj Bahadur - Vs - Legal Remembrancer of the Government of West Bengal.  

\textsuperscript{80} Articles – 6 and 13 – 20.
justice plays an important role in providing social justice to all. The dramatic increase in the number of women workers during the two world wars give impetus to the equal pay movement. The I.L.O. Convention have emphasized the necessity for providing economic protection on equal basis to the industrial women workers. The Convention consists of 14 Articles and Article-1 said that the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without any discrimination based on sex. The Convention also ensures the application of the principle of equal remuneration by the member states in their National Law or regulations or recognized machinery and the collective agreement between the workers and employers for amicable settlement.

But in many countries, many of these stated rights of workers exist only on papers. In less economically developed countries, many of these rights might also be unknown in their culture. In a society where leaders are chosen on the basis of family lineage, cultural norms would obviously clash with the requirement to promote workers only on the

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82. Article – 2.
basis of seniority and competence.\footnote{83. Supra.}

In India, the post-independence era witnessed remarkable development in providing protection to the working class by enacting labour legislations. The foremost and the most revolutionary document in this regard is the Constitution of India and the Equal Remuneration Act, 1976 to provide for payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women in the matter of employment and for matters connected therewith, though conflict still observed in equality of payment.

**Convention on the Political Rights of Women, 1952** :-

The Commission on the Status of Women (CSW) adopted the Convention on the Political Rights of Women after a direct result of long suffrage movement. It has been finally adopted by the General Assembly of the United Nation in 1952. It consists of 11 articles, which recognize the desire to equalize the status of men and women in the enjoyment and exercise of political rights in accordance with the provisions of United Nations Charter and the Universal Declaration of Human Rights, 1948.

Till 1952, many countries did not recognize the political rights of
women, even the right to vote. The Convention stated that women shall be entitled to vote in all elections on equal terms with men, without any discrimination. They shall be eligible for election to all publicly elected bodies established by national law on equal terms with men and shall be entitled to hold public office and to exercise all public functions.\textsuperscript{84}

In India, since the 19\textsuperscript{th} centuries, the Congress had demanded adult suffrage for the people of India.\textsuperscript{85} In 1919, the Women’s Indian Association demanded women’s franchise on the same basis as men’s in the new constitution. Accordingly, in 1926, Assam State Legislature enfranchised women.\textsuperscript{86}

\textbf{Convention on the Nationality of Married women, 1957:}

Regarding the position of nationality of married women, the main confusion was the issue relating to status of women. The issue was centuries concern and women had to suffer a lot for the identity of their nationality. Finally, the Commission on the status of women had drafted the Convention on the Nationality of Married Women which was re-drafted by the General Assembly in 1957, by the supplementing in

\begin{footnotes}
\item[84] Articles- I, II & III.
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Article-15 of the Universal Declaration of Human rights. The Convention contains 12 Articles and the conflict regarding the nationality of a woman marrying a person of another nationality was resolved by adopting this Convention. Thus, the Convention seeks to fulfill aspirations of Article-15 of Universal Declaration of Human Rights, 1948 that everyone have the right to nationality. In this way, the Convention recognizes that the nationality of a woman will not change automatically simply by marrying a person of another nationality.

The Convention specifically stated that the change or renunciation of nationality by the husband during marriage shall not automatically affect the nationality of the wife. However, excluding articles 1 & 2, article-8, the convention made the provision for reservations to any of the articles of the present Convention. Another limitation of safeguard under this Convention is that this protection regarding marriage can be availed only by those women whose nation is a member state to the present Convention. Hence, the conflicts of law for the nationality of women of non-members country after marrying an alien remain the same.

India is the member state of the Convention on the Nationality of

87. Articles – 1 & 2.
married women, 1957. But India reserved Article-10 of the Convention while signing the it. Article-10 of the Convention provides for the reference of any dispute regarding nationality of an individual to the International Court of Justice.

Apart from these, the other two Conventions – Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and Recommendation on consent to Marriage, Minimum Age for Marriage and Registration of Marriages were adopted in 1962 and 1965 respectively. Both of these Conventions states about the minimum age for marriage, process for registration of marriage, consent of marriages etc. which are required to remove conflict and to bring uniformity in marriage procedure for marriage in between aliens of different nationality.

The International Covenant on Civil and Political Rights, 1966 :-

The Universal Declaration of Human Rights stated the common standard of achievements for the enjoyment and protection of human rights. It was not legally binding on the status. Hence the Commission on Human Rights, in 1947 decided to draw up a separate Covenant

which would be a Covenant on such specific rights as would lend themselves to binding legal obligation. Accordingly, the Commission completed the preparation of the draft of the Covenant and in December, 1966 the General Assembly adopted the Covenant on Civil and Political Rights after the recommendation of the Third Committee.

The Covenant consists of 53 Articles and is divided into six parts. While in Parts-I, II and III various rights and freedoms are enumerated, the other three parts are devoted to implementation procedures for effective realization of these rights. This Covenant is also known as first generation right, which by way of states non-intervention negatively accords liberties and freedoms to the human being.

Some of the rights recognized by the Covenant, specifically for women are – individual rights as a human being, equality rights, rights during emergency, right to life, marriage right, protection of girl child, equal suffrage, prohibition of discrimination etc.

Moreover, Articles – 28 to 45 under Part-IV of the Covenant provides for the establishment of a Human Rights Committee.

The Covenant on Civil and Political Right is the first international instrument which imposes the binding obligation upon the member states. Within the provision of the Covenant there is the reporting procedure under which the member states have to submit annual report before the Human Rights Committee^{93}. The Committee may ask the member states to report about any violation done within the member’s country and also the remedy the member country had taken to remove that human rights violation. But there is no specific provision for the reporting of any traditional human rights violation like genital mutilation of women.

The Covenant has two Optional Protocols. The Optional Protocol-I had been adopted in 1966 and it contains 14 Articles. The Protocol provides for the remedy for the individual to submit communication before the Human Rights committee, if that individual claims to be a victim of violations by the State Party for any of the rights set forth in the Covenant and that the domestic remedy of the individual had been exhausted^{94}. But the Protocol under Article-1 expressly laid down that no communication shall be received by the Committee if it concerns a

\(^{93}\) Article-40 of the International Covenant on Civil and Political Rights, 1966.
\(^{94}\) International Law and Human Rights. Dr. H.O. Agarwal, Central Law Publication. 11\textsuperscript{th} Edi. 2004. P.726.
State Party to the Covenant which is not a party to the Protocol. Some of the communications submitted before the Human Rights Committee for the violation of human rights of women under the Covenants are mentioned below:-

  She submitted the communication on her own behalf through her legal representative.

  Here, she submitted the communication on behalf of her aunt, Beatriz Weismann de Lanza, who had been arbitrarily arrested and detained in Uruguay.

  She initiated the communication for her own behalf.

- Conovelo Salgar de Montejo – Vs – Colombia.(Communication No.R.15/64. dt. 18th December, 1979, decided on 24th March, 1982).
She submitted the communication on her own behalf through her legal representatives.

- Elsa Cubas – Vs – Uruguay. (Communication No. R.17/70, dt. 3rd May 1980, decided on 1st April, 1982).
  
  She submitted the communication on behalf of her sister Mirta Cubas Simones.

  
  She submitted the communication on her own behalf.

  
  She submitted the communication on her own behalf as well as on behalf of her husband.

  
  The communication is made by a 32-year old woman for losing her rights and status as an Indian after marrying a non-Indian man.

This communication was made by 20 Mauritian women alleging the violation of right to found a family and home.


She submitted her communication on her own behalf.

In all those above communications, the judgment given by the Human Rights Committee is followed by the impugned member states. India is a member of the Covenant, but not signed the Optional Protocol-I. Moreover, India reserved Article-1 of the Covenant and in Second Periodic Report admitted the rise of destruction of female fetus in India.

The Optional Protocol-II had been adopted in 1990 aiming at the abolition of death penalty within the member states completely. The Protocol consists of 11 articles and directed the member country to take all necessary measures to abolish the death penalty within their own


96. (CCPR/c/37) (Add.13) at its 1039th to 1042nd meetings, 26th & 27th March, 1
jurisdiction. Not only this, no reservation is admissible to the present Protocol, except in wartime, which is to be withdrawn after the end of War. India signed the Optional Protocol-II and is taking all the necessary steps to abolish the death penalty. Thus, though the Protocol is not mentioning about death penalty on woman, still it is applicable to both man and woman.

**Covenant on Economic, social and Cultural rights, 1966:**

The Covenant on economic, social and cultural Rights was adopted by the General assembly in 1966 by Resolution No. 2200 A (XXI) and came into entry into force in 1976. The rights under this Covenant are also known as Second generation rights or positive rights. The Covenant contains 31 articles out of which articles – 2, 3, 7 and 10 forbids discrimination on the ground of sex. Thus the Covenant forbids discrimination, thereby indirectly recognizes the prevailing discrimination against woman and directs for removal of such discrimination.

Thus Article-2 under Part-II guaranteed the progressive realization of the rights enunciated in the present Covenant without discrimination as to sex.

97. Article – 1.
98. Article- 3
The Covenant also ensures the equal rights to men and women and provides for equal work for equal value without any discrimination\textsuperscript{99}.

Family is one of the most important social institutions. The Covenant recognizes the protection of family and children with provision for maternity leave to working women\textsuperscript{100}.

Though the Covenant has not included the word woman, but the presumption is that the Covenant is equally accessible to all without any discrimination. However, these rights sometimes called positive rights, require active intervention, not abstentions on the part of States. Hence, the enjoyment of these rights requires a major commitment of resources and therefore their realization cannot be immediate as in the case of Civil or Political rights. Moreover, the economic, social and cultural rights are based fundamentally on the concept of social equality. It is because, they are clear only as general principles and not as specific rules.

\textsuperscript{99} Article – 7
\textsuperscript{100} Article – 10.
Declaration on the Elimination of Discrimination against Women, 1967:

Despite the U.N. Charter, the Universal Declaration of Human rights, the International Covenants on Human Rights and other instruments and despite the progress made, there continues to exist considerable discrimination against women. Hence, after four years of debate and detailed drafting in the Commission on the status of women and in the Assembly, the Declaration on the Elimination of Discrimination against women was adopted in 1967 by the general assembly in resolution 2263 (XXII). The Declaration consists of 11 articles. In 1965, thirty governments, fifteen women's NGOs and four U.N. specialized agencies had submitted comments on the proposed declaration. Education was the high priority among these submissions. Thus, the Declaration recognized the particular nature of discrimination against women as worthy of a separate legal response.

The Declaration represents a general pronouncement of United Nations Policy in regard to equality of rights of men and women and the elimination of discrimination based on sex. It restates and consolidates a series of principles, many of which were embodied in earlier

international instruments emanating from the United Nations and the specialized agencies. Article-1 of the Declaration specifically states that discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity. However, the term ‘discrimination’ is defined as discrimination against women as 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 a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field\textsuperscript{102}.

The Declaration also called for member states to submit reports on the status of women in their own countries. India, being a signatory to the Declaration released its report ‘Toward Equality’ in 1971\textsuperscript{103}. The report illuminated the poor conditions of women in India with regard to economic freedom, education, family and legal rights and helped the more educated and politicized Indians to see that something needed to


be done to achieve full equality in Indian society. Overall, the Declaration may be considered as the first step for giving remedy for the violation of women’s human right.

**Declaration on the Protection of Women and Children in Emergency and Armed conflict, 1974**:

In the recent years, the growing problem among the nation’s State is the emerging armed conflict. Normally in such situation women and girl child become the worst victim. To combat this situation, in 1974 the General Assembly by its Resolution No. 3318 (XXIX) adopted the Declaration on the Protection of Women and Children in Emergency and armed Conflict. The Declaration expresses the deep concern over the sufferings of women of civilian population during the period of emergency and Armed Conflict for self determination, national liberation and independent movement.

The Declaration calls for the strict observance for the protection of women by the member states specifically prohibits on the attacks and bombing, inflicting incalculable suffering to women ; the use of chemical and bacteriological weapons inflicting heavy loss to women in course of military operation ; and to spare women from the ravages of war in foreign territories or military operation in territories which is still
under the colonial domination; all forms of military repression; cruel, inhuman treatment of women including imprisonment, torture, shooting, mass arrest, destruction of dwellings etc. are to be considered as criminal and women belonging to civilian population shall not be deprived of shelter, food, medical aid or other inalienable rights during such operation.

But, in recent years, increase of external and internal armed conflict developed the new trend of ethnic cleansing which worsen the situation, not only to the unmarried women, but also to the married women. Rape of woman during armed conflict is a common phenomenon and it is recognized as a violation of human right law by the World Conference on Human rights in Vienna in 1993 and the Fourth United Nations World conference on women in Beijing in 1995.

Article-8(2)(b) (XXII) of the Statute of International Criminal Court gives a list of War crimes committed during international armed conflict and it includes: Committing rape, sexual slavery, enforced prostitution, forced pregnancy as defined in Article-7 paragraph 2(f), enforced sterilization, or any other form of sexual violence constitute a grave breach of the Geneva Conventions. Despite these important steps

taken for the protection of women, the fact remains that women have not yet got its proper place in the international humanitarian law. Women was raped, subjected to forced pregnancy in the name of ethnic cleansing during the time of Yugoslavia and Serbian War. There was no War Tribunal established to prosecute for such rape or forced pregnancy. Thus, despite the long history of rape and sexual assault against women during armed conflicts, these offences had not figured significantly in war crimes prosecution. Moreover, much importance has not been given to protection of women in the Four Geneva Conventions and the 1977 Protocols.

Hence, it is crystal clear that the Declaration on the protection of women and children in emergency or armed conflict situation is not sufficient to meet the problem of violation of women human right during armed conflict. However, United Nation by its Resolution 1325 in October 2000 for the role of Women in peace building activities for protecting women in Armed Conflict situation.


Convention on the Elimination of All forms of Discrimination
Against Women, 1979 :-

The right of women along with men have been recognized in major human rights instruments since the establishment of the United Nations. But, by the early 1960s, a sense of dissatisfaction let to renewed proposals for the elaboration of a global instrument covering all aspects of discrimination against women. Subsequently, the adoption of the Declaration on the Elimination of Discrimination against Women was also found to be only a moral force with lukewarm response by the governments. However, it is the Convention on the Elimination of All Forms of Discrimination against Women adopted by the General Assembly in 1979 which is found to be the major instrument relating to the status of women. It was only with the International Women’s Year in 1975 and the subsequent Women’s Decade that a concrete and comprehensive action programme was set into motion. It is the most comprehensive international legal instrument on the field of human rights of the women and contains more concrete provisions aimed at the real implementation of the rights already recognized.

The Convention has the twin objectives: to prohibit discrimination and ensure equality. The scope of the obligations created by the Convention extends to political, economic, social, cultural, legal, familial and personal fields of activity. The Convention is the first international treaty including provisions for a reporting system and review machinery. It is considered as the crowning achievement of the commission on the status of women in the field of standard setting.

Part-I of CEDAW define, discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.  

Article-3 of Part-I requires states to take appropriate measures in all fields, particularly the political, social, economic and cultural fields, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.

Article-5 (a) requires States to take all appropriate measures to
modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Article-6 also requires States to suppress all forms of traffic in women and exploitation of prostitution of women\textsuperscript{110}.

Part-II of the Convention focuses on equality within political and public life of the country, including equality in voting and participation in formulating government policies.

Part-III addresses equality of men and women in the field of education, employment, health care and economic benefits. A special provision requires States to take into account particular difficulties experienced by rural women in the areas of health, education and other aspects of rural life\textsuperscript{111}.

Part-IV establishes equality between men and women in civil matters, including the right to contracts and administers property. Women shall also enjoy the same rights with regard to freedom of movement and choice of residences as men. State shall also eliminate

\textsuperscript{110} Supra.

\textsuperscript{111} Article – 14.
discrimination in marital and other family matters, allowing women equal rights with respect to choosing a spouse, choosing a family name or profession, and owning and disposing of property.\textsuperscript{112}

Article-17 of Part-V of CEDAW establishes a Committee on the Elimination of Discrimination Against Women for the purpose of considering the progress made in the implementing the treaty. States party of CEDAW must submit periodic reports on measures taken to effect provisions of CEDAW to the Secretary General of the United Nations, for consideration by the Committee.\textsuperscript{113}

Part-VI contains procedural provisions, including a settlement procedure for resolving dispute between two or more States concerning the interpretation or application of the Convention.

Thus the Convention combines three main approaches: a non-discrimination approach, a protective approach and a corrective approach.\textsuperscript{114} The Convention mandates the monitoring of its implementation by States parties through a reporting procedure.\textsuperscript{115}

\textsuperscript{112} Articles 15 & 16.
\textsuperscript{113} Article 18.
\textsuperscript{115} Article 18.
October 1999, two new monitoring procedures for CEDAW Committee—a communication and an inquiry procedure were added to the Convention through the adoption of Optional Protocol to the Convention on the Elimination of Discrimination against women, which came into entry into force in December, 2000.

While it had been one of the goals, stipulated in the Beijing Platform for Action, to achieve universal ratification of the Convention by the year 2000, it was not achieved. At the end of 1992 Lijnzaad records 120 States parties to the Convention, of which 81 had ratified without reservation and 27 had entered reservations to substantive provisions or other declarations\(^{116}\). By January 2004, there were 175 States parties to the Convention with the reservation by 55 States parties. It has been pointed out that reservation to this Convention raise not only a number of legal problems which may be inherent in the system of the Vienna Convention on the Law of Treaties (VCLT), but also many political, economic, moral and social issues.

It is notable that the Convention itself does allow for reservation as described in Article-19 of the Vienna Convention on the Law of Treaties. Article-28 (1) of the Convention notes that the Secretary-General of the United Nation shall receive and circulate to all States the

\(^{116}\) Supra.
text of the reservation made by States at the time of ratification or accession. However, despite the withdrawal provision of reservations, most of the general reservations as well as those to substantive articles are found to be going against the ‘object’ and ‘purpose’ of the Convention.117

Many countries, though signed the convention, made reservation to the Convention. Thus, Turkey, Tunisia, Maldives, Bangladesh, Egypt, Libya, Morocco, Iraq, Cyprus, Australia, Belgium, France, U.K., Austria, Malta, Ireland, Jamaica, Jordan, Republic of Korea, Thailand etc. reserved mainly the Articles – 2, 5, 16, 19 etc.118 Reservation to Article-16 constitute rejection of the extension of human rights doctrine into the private arena and assumes an inferior domestic role for women. Thus, the Republic of Maldives does not see itself bound by any provision of the Convention which obliges to change its Constitution and laws in any manner.119 Similarly, the Government of the People’s Republic of Bangladesh does not consider as binding upon itself the

117. Article – 29 (3)

provisions of articles-2, 13(a) and 16 (1) (c) and (f) as they conflict with the Sharia Law based on Holy Quran and Sunna 120.

Considering the above mentioned situations, CEDAW has adopted two General Recommendations on reservations, No.4 (adopted at its sixth session in 1987) and No.20 (adopted at its eleventh session in 1992). In General Recommendation No.20 CEDAW looked ahead to the forthcoming 1993 World Conference on Human Rights and recommended that the States should raise the question of the validity and the legal effect of reservations and should reconsider such reservations with a view to strengthening the implementation of all human rights treaties. In this way CEDAW has consistently questioned the status on the need for, and extent of their reservation, in particular seeking information on the practical impact upon women's equality in the reserved areas. However its lack of formal follow-up powers limits CEDAW's efficacy in this regard. In its suggestion No.7 (1995) the CEDAW Committee had drawn up a list of 'elements' for an optional protocol. In element 28 it had stated that no reservations permitted.

These reservations and widespread objection to the CEDAW Committee's power to questioning reservation can be seen as part of the

120. Reservation made on 6th November 1984.
overall marginalization of women’s rights. Rejection of the fundamental obligation of non-discrimination on the basis of sex through broad reservations to the Women’s Convention should be seen as undermining commitment to all human rights guarantees.

India being a member state of the Convention is trying to implement the provisions of the Convention.

**Declaration on the Participation of Women in Promoting International Peace and Co-operation, 1982** :-

The Women’s Year, the ensuing Decade for women, and the three world conferences held between 1975 and 1985 raised United Nations activities for women to a much higher level of visibility and formal commitment than they had enjoyed up to that time.

The General Assembly by its Resolution 37/63 of 3rd December, 1982 proclaimed the Declaration on the participation of women in promoting International Peace and Co-operation. The General Assembly notes down the economic and social Council resolution 1984/16 of 24th May 1984, in which the Council took into account the fact that millions of women were still experiencing untold sufferings and violation of human dignity resulting from different forms and manifestations of colonialism, foreign domination, apartheid and racial discrimination\(^121\).

The declaration encourages the full participation of women in the economic, social, cultural, civil and political affairs of society and in the endeavour to promote international peace and co-operation.

The declaration also invites all governments to take the necessary measures to ensure wide publicity for the declaration on the participation of women.

Again in 4th December 1986 in its 97th Plenary meeting the General Assembly expressed the need for equal participation of women in the decision-making process, including that related to peace, disarmament and security at national, regional and international level122.

The Vienna Declaration and Programme of Action, 1993:-

The efforts to revitalize the women's right marked with the Nairobi Conference in 1985, which led the end of the Women's Decade adopted by United Nation. The subsequent adoption by the General Assembly is the Forward-Looking Strategies for the women upto the year 2000. An important effect of the Strategies are the shift emphasis from the promotion of gender specific activities to the strategy of "mainstreaming", i.e., taking the situation of women into account in analyzing the overall economic and social trends and incorporating a

women's dimension in all global planning by the United Nations system. Thus the system-wide medium term plan for women and development for the period 1990-95 was recommended to give priority to devise comprehensive approaches for women in the field of international action\textsuperscript{123}.

Consequently, on June 25, 1993, the World conference on Human Rights at Vienna adopted the Vienna Declaration and Programme of Action, which is a hallmark in the efforts to gain recognition of women's human rights in many ways. It, for the first time, recognized the violations of the women's human rights and integrated their rights in the mainstream of the United Nations human rights dialogue. The Declaration recognized human rights of women as an inalienable, integral and indivisible part of universal human rights and demanded the equal status of women and the human rights of women. It pressed for the eradication of all forms of discrimination against women, both hidden and overt. But the most important of Vienna Conference is that, it for the first time recognized the gender based violence against women in public and private life as a human rights concern. It welcomed the

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decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women\textsuperscript{124}.

However, the propounders of the World Conference were fully aware that a vast majority of women are ignorant about the protective laws or even their existences. The law has therefore remained an ineffective instrument of social change for equality of women. Though legal aid and literacy services are available to women at all levels, women still remain without that intended protection. The need is to make the women to be aware of human rights as women’s rights, and to make them aware that the constitutional safeguard as well as the legal provisions are available in case of violation of their rights. Hence, the Vienna Declaration adopted the programme of action to declare the decade of Human Rights education upto the year 2004.

The World Conference also urged that steps should be taken by the Division for the advancement of women (DAW) in corporation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the human rights activities of the United Nations regularly addresses violations of women’s human rights, including gender-

\textsuperscript{124} 49\textsuperscript{th} session of the Commission on Human rights by Res.1993/46 of 8\textsuperscript{th} March,1993
specific abuses. Thus, the Declaration firmly recognized the violation of women's human rights.

The Vienna Declaration also proposed for the establishment of Human Right Commission. The Government of India, as a follow-up of World conference, adopted the Protection of Human Rights act, 1993 for the establishment of a National Human Right Commission. However, the act did not incorporate the women's human right or its violation under the definition of human rights.

**Declaration on the Elimination of Violence against women, 1993:**

One of the important decisions of Vienna Declaration was that it specifically condemned gender based violence and all forms of sexual harassment and exploitation and called upon the General Assembly to adopt the draft declaration on violence against women.

In pursuant to that decision, the General Assembly, in 1993 adopted the Declaration on the Elimination of Violence Against Women, 1993, by its resolution No. 48/104.\(^{125}\)

‘Violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or

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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\textsuperscript{126}.

The General Assembly hereby recognizes that the violence against women is a manifestation of historically unequal power relations between men and women, which led to domination over and discrimination against women by men.

The General Assembly was also concerned about the women belonging to minority groups, indigenous women, refugee women, migrant women, destitute women, women with disabilities, women in armed conflict situation which is specially vulnerable to violence.

Article-2 of the Declaration give a list of wider range of violence, not to encompass a limited description of it.

Similarly, Article-3 give a list of human rights in political, economic, social, cultural, civil or any other field which women are entitled to enjoy equally with men.

Articles-4 and 5 provide for adoption of all appropriate measures for removing violence and co-ordination along with other UN treaty bodies.

\textsuperscript{126} Article – 1.
However, Article-6 said that nothing in the present declaration shall effect any provision that is made conducive to the elimination of violence against women. Thus, Article-6 itself reflected the limitation of the declaration. Apart from this, though the declaration recognized the domestic violence as a human rights violation, but this has been expressed in a negative way.

**Beijing Declaration and Platform for Action (4th World Conference on Women, 1995):**

This Declaration was adopted in 1995 at Beijing as a part of forward looking strategies. The Declaration determined the goals of equality, development and peace for all women everywhere in the interest of all humanity.

The declaration also reaffirmed the equal rights and inherent human dignity of man and woman and ensures the full implementation of the human rights of woman and girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedom. The declaration achieved the full and effective implementation of the Nairobi Forward-looking strategies for the advancement of women.

The Beijing Declaration again convinced that women’s rights are human rights and their full participation is required on the basis of equality including participation in the decision-making process. Beijing
Declaration also convinced the harmonious partnership in family and the equal rights and opportunities and access to resources.

Finally, the Beijing Declaration determined to ensure the full enjoyment by women and the girl child of all human rights and to take all necessary measures to eliminate all forms of discrimination against women. It also determined to promote women's economic independence, including employment and all forms of violence against women.\textsuperscript{127}

The Platform for action reaffirms the fundamental principle set forth in the Vienna Declaration and Programme of Action. As an agenda of action, the platform seeks to promote and protect the full enjoyment of all human rights and the fundamental freedom of all women throughout their life cycle\textsuperscript{128}.

Thus the Platform for Action will require a strong commitment on the part of the governments, international organizations and institutions at the levels. It is a powerful agenda for the empowerment of women. It


calls for the integration of gender respective in all policies and programmes. It focuses on concrete measures to address the critical areas of concern worldwide. The Platform for Action call for concrete action:

- to protect and promote the human rights of women and the girl child as an integral part of universal human rights.
- to eradicate the persistent and increasing burden of poverty on women.
- to remove the obstacles of women’s full participation in public life and decision-making, at all levels including the family.
- to eliminate all forms of violence against women.
- to ensure equal access for girl children and women to education and health services.
- to promote economic autonomy for women, and ensures their access to productive resources; and
- Action to encourage an equitable sharing of family responsibility.\textsuperscript{129}

Thus, the platform for action places heavy responsibilities on the United Nations system. It calls upon U.N. Organizations to play a key

\textsuperscript{129.} Supra. P. 462.
role in follow-up, implementation and monitoring. Paragraph-112 of the Beijing Platform of Action describes violence against women as nullifying women's human rights and fundamental freedoms and as an obstacle to the achievements of equality and development and peace.

As a part of the ongoing process of promoting women's rights, the government representatives at the Beijing Conference decided to meet again in five years to evaluate their process toward implementing the Platform for Action. This evaluation process was known a the Beijing +5 Review, which was ended in a special session of the U.N. General Assembly in June 2001, in New York. 180 nations reached on a consensus document that reaffirmed the platform approved at the 1995 4th World Conference. The Beijing +5 Review involved a multitude of voices and perspective. In this respect, all the nations were fully aware that they had made little progress toward fulfilling the Beijing promises, but were reluctant to make more commitment. Some groups expressed disappointment with the failure to implement a stronger statement\textsuperscript{130}. Non-governmental Organizations marked it as lack of more concrete benchmarks, numerical goals, time-bound targets, indicators, and resources aimed at implementing the Beijing Platform. The United

\textsuperscript{130} www.feminist.org.11/06/2001:1 & 134.
Nations Division for the Advancement of Women (UNDAW) sent out a questionnaire to the governments on the implementation question, and through an analysis of responses, identifies six major areas of constraint to the implementation. They were found in -

- discriminatory attitudes.
- economic change / instability.
- conflict and displacement.
- lack of data and monitoring mechanism.
- shrinking and or lack of resource allocation &
- back lash to empowerment.

Further, four cross-cutting themes were chosen: Globalization and the economic empowerment of women, especially poor women; Women, Science and Technology and the new information age, Women’s leadership, Human security and social protection. Finally, the United Nations adopted the Optional Protocol on CEDAW, after some two decades of negotiation. Despite the dictates of international human rights law, laws at the domestic or national level continue to be weak and ineffective, failing women in their hour of need\textsuperscript{131}.

Optional Protocol to the Convention of the Elimination of Discrimination against Women, 2000 :-

The strength and effectiveness of the Global campaign can be seen in the adoption of the Optional Protocol to CEDAW which was approved by the U.N. General Assembly in December 1999 and went into force in 2000, by the General Assembly, Resolution No.54/4. The Protocol contains 21 Articles and deals with the individual’s petition of member states, regarding the violation of women’s human rights.

Article-2 of the Protocol provides for the submission by or on behalf of any individual, claiming to be a victim of violation of any of the right set forth in the Convention.

The Governmental, Inter-Governmental and Non-Governmental Organizations (GOs, IGOs & NGOs) :-

The Governmental, Inter-Governmental and Non-Governmental Organizations have the pivotal role to moderate the women’s human rights. The United Nation has been a key player in expanding women’s right and broadening the definition of what constitutes those rights. Again, international attention to women’s human rights first appeared in the form of the United Nation Commission on the status of women. Established in 1946, the Commission played a crucial role in identifying the various areas of inequality and discrimination affecting women. The
lack of understanding of women's rights as human rights is reflected in the fact that few governments, like USA, are committed in domestic or foreign policy to women's equality as a basic human right. No government determines its policies towards other countries on the basis of their treatment of women, even where aid and trade decisions are said to be based on a country's human rights record\textsuperscript{132}.

This is the gap that women's organizations have worked to bridge through variety of international forums. Elisabeth Friedman suggests three turning points that helped to advance women's human rights globally. First, women's human rights activities successfully pressurised the major human rights organizations to focus some of their attention on women's human rights. Thus, Amnesty International started to work on women's human rights in the late 80's, when staff and membership realized that women were underrepresented in their research. Secondly, despite the Convention, the exclusion of women from international human rights norms and laws, as well as the possibilities of using these norms and laws, to advance human rights became clearer. Thirdly, women's group became actively involved in the preparatory meetings of Vienna Conference, 1993\textsuperscript{133}.

Optimism with respect to women's human rights is dependent on an ongoing global local dialogue. In this spirit, the United Nations Development Fund for Women (UNIFEM) has successfully worked with the CEDAW Convention. Specifically, UNIFEM in co-sponsorship with International Women's Rights Action Watch (IWRAW) Asia Pacific has held a number of Global to local training sessions designed to increase the presence and influence of women's NGOs in countries reporting to the Committee. Apart from United Nations and its specialized agencies there are various specialized agencies like International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), etc. who work under the board supervision of the Economic and Social council and other organs of United Nations.

Article-71 of the United Nations Charter authorized the Economic and Social Council to make suitable arrangements for the consultation with the Non-Governmental Organizations (NGOs) which are concerned with matters within its competence. The Council has accordingly made such arrangements with several hundreds international and national organizations which are contained in Resolution-1296(1968) of the Economic and Social Council. These Non-Governmental Organizations are divided into three groups –
Category-I, which are made up of NGOs having a basic interest in most of the activities of the Council.

Category-II, which are made up of NGOs having a special competence but which are concerned with only a few of the council’s activities.

Category-III, which can make occasional and useful contribution to the Council’s work are placed on a roster for adhoc consultation\textsuperscript{134}.

The Economic and Social Council, by its resolution 1987/5 of 26\textsuperscript{th} May, 1987, invited non-governmental organizations in consultative status to summit to it written statement which might contribute to full and universal recognition and realization of rights contained in the international Covenant on Economic, Social and cultural Rights, and requested the Secretary General to make these statements available to the Committee on Economic, Social and Cultural Rights in a timely manner.

The historical background of NGOs could be traced out since the 17\textsuperscript{th} Century to the end of the Second World War. Though the existence of non-governmental philanthropic and humanitarian efforts were

\textsuperscript{134} NGOs in the New Millennium. R.K. Pruthi. Saad Publication. 1\textsuperscript{st} Edi 2006. P.193
observed since 1641, the very first Non-Governmental Organization is known to have militated against slavery in 1788 were the Quakers (the society of friends) of Philadelphia. During 17th and 18th Century various NGOs grew up, only in 19th and early 20th Century several new non-governmental international organizations dealing with women’s rights issue came into being. Thus, the International Council of Women was founded in 1889. The International Alliance of Women was founded in 1904. The World Union Catholic Women’s Organization was founded in 1910 etc. The International Council of Women, the International Alliance of Women, the Women’s International Democratic Federation, the World Young Women’s Christian Association etc. are the other international organizations who campaigned for sexual equality, for women’s right to suffrage, for humanitarian law in armed conflict, against prostitution and the white slave trade, for the protection of children and young people, for the defence of minority rights, for peace etc.

In 1976, the Pan-African Women’s Organizations submitted a draft convention containing 25 articles to the United Nation Commission on the status of women. The draft have major

135. U.N. Fact Sheet.
repercussions on the drafting of the final text of the Convention recognizing the importance and usefulness of the work performed by this organization in the process of elaborating the Convention on Elimination of Discrimination Against Women and agreeing with their aims to protect human rights of women.

In India, there are various National Civil Liberty Organizations and regional organizations exclusively dealing with the protection of political and Civil rights of women. However, in the last few decades, there has been a proliferation of NGOs in India. But, attention often centers on the larger, well-known NGOs, such as SEWA, Asha, Aware, Sadguru, CRY etc., who are recognized leaders in the field, just for profit sector, where attention is often on large multinational corporations\(^{136}\). In case of Assam, Jati Jana Jati Mohila Samity, Rural Economic Development Organization for the downtrodden women and children, Assam Boro Women's Justice Forum, Assam Pradeshik Mohila Samity – APMS (Assam), Assam Women Writers Association (Assam), North-East Network (NEN) etc. are different women's organizations which work to promote women's human right. It is

notable that All India Women Conference (AIWC) is the only NGO in India who get the consultative status given by the United Nation.

**Human Rights Machinery :-**

The human rights machinery within the body of United Nations are the important tools for the protection of human rights violation of women. The General Assembly is the main representative body of the United Nation. Under Article-13 of the U.N. Charter, the function of the General Assembly is to initiate studies and to make recommendation for the purpose of promoting international co-operation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedom for all without distinction as to sex. Since the adoption of Universal Declaration of Human Rights in 1948, the General Assembly has adopted numerous declaration or Convention on the rights of women. Most of the items relating to human rights are referred by the General Assembly to its third Committee. The subsidiary bodies concerned with human rights and fundamental freedoms of women and they include –

(A) **Commission on Human Rights :-**

The Commission on Human Rights was established on 10th December 1946 at the first meeting of ECOSOC, and was one of the first two 'functional commission's set up within the U.N. structure. It is
the main body dealing with all matters relating to human rights. It can also invite any organizations whether governmental or non-governmental, in accordance with the resolution of the General Body to participate in its deliberation. To assist it, the Commission established the sub-Commission on the promotion and protection of human rights. The sub-Commission established 7 working groups that investigate specific human rights concern and it includes minorities, transnational corporations, administration of justice, anti-terrorism, contemporary forms of slavery, indigenous population, communication and social forums. The Commission established 30 special procedures, or mechanism, to address specific country situations or sensitive issue like starvation of child in South Africa.

However, in 2006, the United Nation General Assembly under the Presidentship of Jan Eliasson had transferred the Human rights Commission into a new Human Rights Council. The move to change the Human rights Commission had been initiated by the western Countries, which wanted to strengthen the UN’s human right work, and to ensure that countries with a bad human rights record could not become members.

Among the highlights of the resolution are that 47 member States will be elected by an absolute majority in the General Assembly. There will be a graphic distribution of membership and the membership is for three years. It is limited to two consecutive terms and thus preventing de facto permanent membership by some members. The General Assembly, by a two-third majority, may suspend the rights of a Council member that commits gross violation of human rights and the member States will be subjected to a periodic report.

(B) **Commission on the Status of Women**: 

The Commission on the Status of Women is a functional Commission of the United Nations Economic and Social Council (ECOSOC), dedicated exclusively to gender equality and advancement of women. It is the principal global policy making body for women’s rights. The Commission was established by ECOSOC resolution No.11 (II) of 21st June, 1946 with the aim to prepare recommendation and reports to the Council on promoting women’s right in political, economic, civil, social and educational fields. The Commission can make recommendation to the Council regarding immediate attention of some urgent problems.
The mandate of the Commission was expanded in 1987 by ECOSOC resolution 1987/22 to include the functions of promoting the objective of equality, development and peace, monitoring the implementation of measures for the advancement of women and reviewing and apprising progress made in the sub-regional, regional, national and global levels, regularly reviewing the critical areas of concern in the Beijing Platform for action to develop its catalytic role in mainstreaming a gender perspective in United Nation activities. ECOSOC again modified the Commissions term of reference in 1996 in its resolution 1996/6, to consider the emerging issues, trends and new approaches of forward-looking strategies by way of system-wide medium term plan of equality between men and women139.

**Membership and Composition :-** The Commission consists of representatives from each of the 45 member States elected by the Council on the basis of equitable geographical distribution.

The Commission has established only sessional working groups, primarily to review communications and on an informal basis to expedite consideration of certain agenda items to draft recommendation. The commission adopted a number of resolutions, including the

139. Supra.
situation of and assistance to the Palestinian women and girl child and HIV/AIDS.

The functions of the commission shall be to prepare recommendation and reports to the Economic and Social Council on promoting women’s rights in political, economic, civil, social and educational fields. The Commission shall also make recommendations to the council on urgent problems requiring immediate attention in field of women’s right.

(C) Committee on the Elimination of Discrimination against Women :-

The committee on the elimination of Discrimination against Women is the monitoring body of the CEDAW. The legal basis of the Committee can be found in Article-17 of CEDAW\textsuperscript{140}. The Committee consists of 23 expert persons having knowledge on human rights issues. The mandate of the Committee is to watch the programme for women made in those countries which are members of the CEDAW Convention. The Committee monitors the implementation of national measures to fulfill this obligation. The Committee also makes recommendations on any issue affecting women to which it believes the

\textsuperscript{140} The procedures before the UN Human Rights Treaty Bodies. Divergence or Convergence. Wouter Vandenhole. Antwerp- Oxford. 1\textsuperscript{st} Edi.2004. Intersentia
state parties should devote more attention. Governments which have ratified the Convention is obliged to submit reports to CEDAW on implementation of the Convention on every four years. CEDAW holds two sessions a year for a period of three weeks each and it is serviced by the Division for the Advance of Women (DAW).

**Periodic Report** :- In each session the Committee reviews a number of periodic reports submitted by the member States regarding any matter on legislative, administrative, judicial and other measures and ask the respective government representatives about the implementation of the Convention. Being a member of the CEDAW, the Government of India submitted its annual report to the Committee annually.

The Optional Protocol to the Convention provides for an inquiry procedure against the individuals complaints. Under the Optional Protocol, any individual woman or group of women whose rights under the Convention have been violated in a State which is a member to the Optional Protocol will be able to present a complaint to the Committee on condition that her domestic remedies have been exhausted. The committee will not consider any complaints which have been placed before any other international Court.
The main functions of the Committee are –

(a) Examination of state reports141.

(b) Individual Complaint142.

(c) Fact finding through confidential enquiry procedure for gross and systematic abuse143.

Finally, it may be concluded that the discussion on the United Nation and its different organs under different Conventions, and the role of NGOs for adopting those Conventions and implementing those human rights, painfully realize the fact that even after 50 years of adoption of Universal Declaration of Human Rights, women's rights have only recently been acknowledge conceptually while its practice and reality still remain tangled in complex issues of culture, inadequate or lack of enforcement, accountability systems and political will. All these combine to ensure a long struggle ahead for making human rights a reality for all women. But, regarding the position of the Convention in India, it may be stated that India have included the provisions of

141. Article – 18.
143. Article – 8.
UDHR in its Constitution, more fully under Part-III and Part-IV of India but not the provision of CEDAW. Hence in the next Chapter, a thorough discussion has been done regarding the women's human rights and its protection or violation under the Constitution of India.