CHAPTER - 5

SAUDI LABOUR LAWS AND INTERNATIONAL STANDARDS.

We have already noted that the Saudi Labour Code of 1969 was drafted with the help of the International Labour Organization; we have also noted that some of the provisions of the Labour Code were incorporated, not for substantive purposes, but to meet the requirements of Western democracies, and International Conventions. In this context, it becomes all the more necessary to compare the provisions of the Saudi Labour Code, with some basic international Conventions – by this test, it shall be possible to ascertain and identify, to what extent does the Labour Code compare favourably with various international instruments.

5.1 THE INTERNATIONAL LABOUR ORGANIZATION – MACRO ISSUES

It is necessary to set out at the outset some of the theoretical issues relating to the ILO. The functions and objectives of the ILO need to be described briefly. Article 10 of the Constitution of the ILO deals with the functions of the ILO. Para 1 of Article 10 states that the functions of the ILO shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and the conduct of such special investigation as may be ordered by the International Conference, [which must be held once each year] or by the Governing Body [which consists of twenty-four Government representatives, twelve employers representatives and twelve workmen representatives.]. Para 2 of Article 10 states that subject to the directions given by the Governing Body, the International Labour Office shall – a) prepare documents on the various items of the agenda for the meetings of the International Conference; b) accord to Governments at their request all appropriate assistance within its powers in connection with the framing of laws and regulations etc.1 c) carry out the duties enjoined by the Constitution of the ILO in connection with the effective implementation of the Conventions; d) edit and issue publications relevant to the objects of the ILO. Para 1 of Article 19 says that when the Conference has decided

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1 It is noted that Saudi Arabia’s Labour Code was drafted with the assistance of the ILO.
on the adoption of proposals with regard to an item in the agenda. it shall be decided by the Conference, whether these proposals shall take the form of an International Convention or a Recommendation, or shall not be considered. Two-thirds of the members present and voting shall decide on the adoption of a Convention or a Recommendation. Para 3 of Article 19 states: “In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.” This provision enables the ILO to make Convention or Recommendations, which may not represent the best provisions; in effect, if due consideration is to be given to climatic conditions, uneven development, etc, it is obvious that, any Convention or Recommendation of the ILO can at best be termed as “less than the best” or “minimum standards”, which, theoretically, even the countries for which special consideration was made, shall be able to adopt and implement.

In terms of Paras 4 & 5 of Article 19, the Director General of the ILO shall communicate a certified copy of the Convention or Recommendation to each of the Member States. In the case of a Convention, the member shall be sent a copy for ratification; on receipt of the Convention, the Member States shall, within a period of one year of the close of the session of the Conference preferably, but, not exceeding eighteen months, bring the Convention before their respective appropriate authorities, for enactment of legislation and other incidental matters. It is notable that the period of limitation for ratification starts from the close of the session, and, not from the receipt of the Convention from the ILO. If the Member State obtains the ratification of the respective appropriate authority, then it shall communicate the formal ratification to the Director General, and, shall take such other steps, as may be necessary to make effective the provisions of the Convention. Sub-Para (e) of Para 5 of Article 19 says: if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director General of the
International Labour office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which present or delay the ratification of such Convention.

It may be said that one of the glaring deficiencies of the ILO system is that the Conventions of the ILO are not binding on the Member States. Atleast two factors confirm this proposition. Firstly, once a Member State voluntarily agrees to join the ILO, then, there should be no reason, why, it should not agree with it's Conventions; it must be said that the ILO Conventions are not specific to any Member State – they have universal application; therefore, it cannot be said that ILO Conventions prejudice any Member State – they in fact represent only the “minimum standards;” it may be argued that a resolution of the United Nations Security Council or of the General Assembly may impose a singular burden on an individual - Member State; in that eventuality, non-compliance of the Resolution by the Member State may be justified; but, this is not the case with ILO Conventions. Secondly, we have noted that in terms of Para 2 of Article 19, Conventions and Recommendations have to be approved by a two-thirds majority of the members present and voting in the International Conference; even where the Member State has voted in favour of the Convention/Recommendation, there is no liability to ratify the same; therefore, it is possible that a Member State may vote in favour of a Convention in the International Conference, but, may not ratify it. This is a case of legislative double-standards.

The procedure for ratification of a Recommendation is akin to the procedure for ratification of Conventions.

The view that ILO Conventions and Recommendations are the minimum acceptable standards, is supported by the contents of Para 8 of Article 19 which states that: “In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom, or agreement which ensures more favourable
conditions to the workers concerned than those provided for in the Convention or Recommendation."

Even in case any Member State has not ratified any Convention but had voted in its favour, then, in terms of Article 22 of the ILO Constitution, such Member has to submit an annual report to the ILO on the measures which it has taken to give effect to the provisions of that Convention.

The Annexure to the Constitution of the ILO is the Declaration Concerning the Aims and Purposes of the ILO. As this Declaration is a summation of the various underlying principles of ILO, reference to its contents is considered to be useful and necessary. This Declaration was adopted at the Twenty-sixth session at Philadelphia, on the 10th May 1944.

Part I of the Declaration says: "The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

a) labour is not a commodity;
b) freedom of expression and of association are essential to sustained progress;
c) poverty anywhere constitutes a danger to prosperity everywhere;
d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of Governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare."

If we recall our discussion of Chapter 3, it shall be difficult to reconcile the provision of the Indian migrant worker, with the principles enunciated in a) and b) above. Be that as it may, since this Declaration, like the Conventions and Recommendation are only guide posts, without any mandatory stipulation, there is no difficulty in noble intentions co-existing with difficult working conditions.
Part II of the Declaration states, interalia, that:-

“(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;

(b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;

(c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they be held to promote and not to hinder the achievement of this fundamental objective;

(d) it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective:......”

This is not the appropriate forum to discuss, whether, or, to what extent, the working of the ILO has been in consonance with these accepted principles; most definitely, it needs to be specifically examined to what extent has this Declaration been reflected in the Saudi Labour Code, generally; for our limited purpose, it is suffice to say that Clause (d) above enjoins upon the ILO to examine and consider all economic and financial policies and measures to see whether the objectives are being met; notably absent is the reference to legal policies and laws, which also play a determinant role in this regard. It cannot be denied that, it should be the primary objective of the ILO to examine all national and international labour laws; if the ILO does not do its, then, who shall?

Part III of the Declaration states, interalia, that :-

“...The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes, which will achieve:

(a) full employment and the raising of standards of living;...
(b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;

(c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;

(d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection:...

Our concern in this study is with migrant workers; this Declaration recognizes that migrant workers as a class have a separate identity and need to be examined and considered as such. In a later section, we shall examine in detail, the provisions of two Conventions and Recommendations in respect of migrant workers, which should encompass the intentions of this Declaration, in so far as it regards to them.

5.2 STANDARD-SETTING MECHANISM OF THE INTERNATIONAL LABOUR ORGANIZATION

Having considered, briefly, the objectives and functions of the ILO, it is now necessary to examine the Standard-setting mechanism of the ILO. Possibly an unique feature of the ILO, compared to other multi-lateral organizations is, the institutionalized method of standard-setting. It has now become customary for Governments, employers and workers to meet under the aegis of the International Labour Conference, every year for about three weeks usually in the month of June to examine questions of topical and mutual interests, and arrive at an element of consensus.  

Another characteristic feature typical of the ILO is that, over the years, its Conventions and Recommendations have evolved into a code of social policy and labour protection. Notwithstanding the fact that these Conventions and

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2 This is so, because, it is not necessary for each Resolution/Convention/Recommendation to be approved by all members; approval of two-thirds of the members present and voting is only required; therefore, "an element of consensus;"
Recommendations may not represent the best provisions, or that most of the Conventions and Recommendations, remain to be ratified, yet, this body of labour legislation represents a comprehensive code covering virtually every aspect of employment. Further, this "law making" activity of the International Labour Organization has been evolutionary; the Conventions and Recommendations have evolved over a period of time, in response to prevalent challenges; e.g. the Unemployment Convention of 1919 and the Employment Policy Convention of 1964, though, on the same subject, yet, they address different issues; in our own context, we shall be examining Convention 97 (C97) and Convention 143 (C143), on the same subject matter, but differing in more than twenty five years. So, it may not be possible to identify any set pattern on subject-matter in Conventions; what is definitely discernible is the attempt to address specific issues, as they arose.

This, however, should not suggest that the subject matter which the Conventions have covered has remained static; on the contrary, the subject-matter of Conventions is another glowing example of the wide range of employment-related issues which have been addressed. This is supported by the evidence of the earlier Conventions which dealt with working conditions, hours of work, etc; in the more recent past, the issues relate to civil liberties, worker’s rights, special group’s problems, etc.³

As noted in an earlier paragraph, the Constitution of the ILO provides that due emphasis/consideration should be given to the climatic conditions, extent and nature of development, etc. of Member States, whilst drafting Conventions; therefore, there are some Conventions which address problems of a class of some of countries, e.g., Protection of Migrant Workers in Under-Developed Countries (1955); however, the large majority of Conventions have universal application; the normal practice appears to be to lay down basic requirements of universal application in a Convention, which is supplemented by a Recommendation indicating the details of implementation, and, embodying sometimes, higher norms than those contained in the Convention.

The Conventions and Recommendations of the ILO have, over a period of time, come to be accepted as authoritative and acceptable norms of labour legislation. In countries like Colombia, Costa Rica, Honduras, the Labour Codes say that for matters not specified therein, the Conventions and Recommendations of the ILO shall be the governing principles – this is irrespective of whether they have been ratified or not. The provisions of the International Labour Organization instruments constitute standards not only as a point of reference, but also of harmonizing national interests and measures; e.g., the Protection Against Accident (Dockers) Convention (Rev) 1932, is used in various countries, as ships move from country to country, and there is a need for harmonizing the law relating to Dockers’s accidents. More than sixty countries, including Cameroon, Iraq, Laos, Saudi Arabia, Somalia and Zaire have utilized the technical expertise of the ILO in drafting their Labour Codes; this has enabled the ILO to play an active role in getting in-corporated many beneficial measures in the Labour Code, e.g., in Saudi Arabia.

Lord McNair⁴ said that ILO Conventions were “...one of the most striking innovations in the field of treaty-making which has accrued during the present century.” Striking because, these were multi-lateral treaties, unlike the usual bilateral ones, which had wide application; obligations and duties imposed by these Conventions were usually without reference to any specific country etc.

The ILO Conventions do not come into force unless at least two ratifications are reported. It has already been submitted that, this should not be a necessary requirement; every Member State should be liable to abide by the Conventions, the logic is that Member States must first have a commitment to the ILO, and, thereafter to each other, inter se; if this not accepted, then, at least those countries which supported the Convention in the International Conference, should be deemed to have ratified the Convention. Such as those States, which ratify a Convention, are required by the principle of public international law and the ILO Constitution to match their internal laws in consonance with the Convention which they have

ratified: for this purpose, a period of twelve months is given to the Member State to enact fresh laws, from the date of ratification of the Convention. In other words, if a Convention were to be converted into national law, then, a Member State has to do so within thirty months - maximum period of eighteen months is allowed for ratification, and a further period of twelve months is allowed for the new legislation.

Therefore, ILO Conventions are in the nature of international treaties, which create binding obligations on their ratification. It may also be concluded that:

a) ILO standard setting remains an important means of promoting balanced development, in justice and freedom, and as a source of inspiration for social policies;

b) International Labour Standards should continue to be adopted on an universal basis; however, they should have an element of flexibility, so that the concerns and needs of all Members States are considered;

c) however, flexibility in the standards should be for certain supplementary provisions only; for basic issues like human rights, etc. there should no scope for flexibility.

Having examined the standard – setting mechanism of the ILO, and, the nature and characteristic features of ILO Instruments, it is now necessary to consider, the mechanism available to the ILO for ascertaining the impact of its Conventions. Conventions would fall into two categories – those which have been ratified by a Member State, and those which haven’t been ratified. In respect of a ratified Convention, a Member State is required by the ILO Constitution (Article 22), to submit annual reports on ratified Conventions as may be required by the Governing Body, to the International Labour Office. At present, such reports may be called for every year or alternate year or every four years. Another source of information available to the ILO about the effect of Conventions is the Reports on Unratified Conventions and Recommendations. [Article 19 (5) (e)]. In case a Member-State does not ratify a Convention or a Recommendation, it must submit a Report to the

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Director-General of the International Labour Office, on the position of its laws and practice in regard to the matters dealt with in the said Instrument.

Yet another source of information available to the ILO is the Report of the Committee of Experts on the Application of Conventions and Recommendations. The International Conference of 1926 took a decision to establish this Committee, which consists of nineteen members, who are appointed by the Governing Body on the recommendation of the Director-General of the International Labour Office. The members of the Committee are independent experts, who hold office for a period of three years, renewable. The function of the Committee is to examine the Reports submitted by the Governments of the Member States, examining to what extent the Member States have discharged their obligations under ratified Conventions. The Committee also examines the Reports in respect of unratified Conventions also. The Committee is guided by the principles of independence, impartiality and objectivity.

Another source of information available to the International Labour Organization on the status of Convention – implementation in Member States is the representations which employer’s association or unions may make against their Governments, in terms of Article 24 of the ILO Constitution. This mechanism has not been used much in the past; notably, the first representation was made by the World Federation of Trade Unions (WFTU) against, the then, EEC; the second representation was made by the International Confederation of Free Trade Unions (ICFTU) against the then Czechoslovakia; the third representation was made by WFTU against, what was known as Federal Republic of Germany. As the end result of the representation is not binding on the Member State, expectedly, this mechanism has not been used much.

Another source of information to the ILO about the status of Convention implementation is the complaints procedure, envisaged in Articles 26 to 29 and 31 to 34 of the ILO Constitution. Any Member State may complain to the ILO that it is not satisfied with the implementation of a Convention by another Member State,
which has been ratified by both of them. However, since the level of ratification of Conventions is extremely low, this mechanism also is not a very efficacious remedy.

With this, it is now proposed to examine in detail the provision of the relevant ILO Convention and Recommendation.

5.3. THE ILO INSTRUMENTS & MIGRANT WORKERS

In this Section we shall examine the provisions of the Migration for Employment Convention (Revised) 1949, [C97], the Migration for Employment Recommendation (Revised), 1949 [R86], the Migrant Workers (Supplementary Provisions) Convention 1975 [C143] and the Migrant Workers Recommendation, 1975 [R151]. It is clarified that Saudi Arabia, Kuwait and India have not ratified any of these.

a) MIGRATION FOR EMPLOYMENT CONVENTION (REVISED) 1949 - ANALYTICAL OVER-VIEW

The Migration for Employment Convention (Revised) 1949 [C97] was adopted on 1-7-1949, and came into force on 22-1-1952. This Convention revised the provisions of the Migration for Employment Convention, 1939.

Article 1 of C97 states that each member of the ILO, for which this Convention is in force, undertakes to make available on request to the ILO and to other members a) information on national policies, laws, regulations relating to emigration and immigration; b) information of special provisions concerning migration for employment and the condition of work and livelihood for migrants; and c) information concerning general agreements and special agreements on these questions concluded by the Member. In effect, India could be called upon to submit details on the Emigration Act, 1983, in terms of (a) above; in terms of (b) above, Saudi Arabia could be called upon to detail information about the special provisions made in the Labour Code, in respect of migrant workers. It is not clear, whether, any of these provisions of Article 1 have ever been invoked, and to what avail.

Article 2 of C97 states that each Member for which this Convention is in force, undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with
accurate information. At best, this is a very generalized and unspecified stipulation; it does not say who shall maintain the information or who shall be responsible for its dissemination; especially, where the large majority of jobs available to migrant workers in the host country are in the private sector, it is extremely difficult to ensure effective implementation of this Article.

Clause (1) of Article 6 states that each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, the same treatment to lawful immigrants, which is available to its own nationals in respect of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, etc; membership of trade unions and collective bargaining; accommodation; social security in respect of employment injury, maternity, sickness, old age, etc. We have already noted, both theoretically, and in practice, that, migrants, the large majority of them at least, take up what are known as 3D jobs - dirty, dangerous and demanding; this means that in the paradigm of migration, there is an inbuilt mechanism of discrimination; at a simplistic level, it may be said that majority of the migrants will take up those jobs which the indigenous population shall not – so, there is no scope for uniformity in wages, hours of work, etc.

Article 9 states that each Member for which this Convention is in force, undertakes to permit, subject to such conditions as the laws stipulate, the transfer of such part of the earnings and savings of the migrant, as he may desire. We have already noted that, one of the determinants of migrants is the scope of increased earnings, compared to what was possibly available, in the home country. In that context, the facility of repatriation of savings, is an essential concomitant of the migration process. This Article makes suitable provision for the same.

Article 10 states that where the member of migrants going from one country to another, is sufficiently large, the competent authorities of the countries shall, wherever necessary and desirable, enter into agreement for the purpose of regulating matters of common concern. We have noted in an earlier Section that ILO Conventions are international treaties, which create binding obligations on
ratification. This Article makes provisions for bilateral treaties, with the framework of the ILO Constitution and Conventions. This is an ideal opportunity for Member States to settle differences, or, generally regulate and make orderly, the flow of migration; however, two problems come in the way – one, this Convention and therefore this Article can be invoked, only, if it has been ratified by the member concerned, and two, the home country may not be too keen to upset the applicant of foreign hard currency remittances which is sourced to migrants, by, insisting with the host, to regulate the flow; to maximize his profits, the host would always like to keep the matter informal and unregulated, to the extent possible.

Articles 12 to 22 (both inclusive) deal with ratification and denunciation of the Convention; the procedure to be followed for the ratification or denunciation, and, the consequential action that needs to be taken is covered in some detail in these Articles; since this is not a substantive issue of concern in our study, there is no need to examine the provisions of these Articles.

Annex I to the Convention deals with the Recruitment, Placing and Conditions of Labour Migrants for Employment Recruited Otherwise Than Under Government-Sponsored Arrangements for Group Transfer; Annex II deals with Recruitment Under Government Sponsored Arrangements, and Annex III deals with Importation of Personal Effects, Tools, etc. We have noted that workmen recruited through Government agencies enjoy better privileges and working conditions, than those in the private sector; therefore, for our purposes, it will be adequate if we examine the provisions of Annex I only. Clause (2) of Article 3 of Annex I states that the right to engage in the operations of recruitment, introduction and placement shall be restricted to public employment bodies or other public bodies of the territory in which the operations take place; or to public bodies of a territory other than that in which the operation take place, and which are authorized to operate in that territory by agreement between the Governments; or any body established in accordance with the terms of an international instrument. This means that where employment is taking place by a method other than Government employment, then, such employment can be made only by public bodies of the host country, or public bodies
of any other country who are permitted to carry on this activity, or by any public body established by an international instrument.

Article 5 states that each member for whom this Convention is in force undertakes to ensure that a copy of the contract of employment shall be delivered to the migrant before departure from his home country, or at the latest, on arrival in the host country; that the contract shall contain provisions indicating general conditions of work and the wages; a document which gives a general idea about the condition of work in the host country. Clause (3) of Article makes the above provision mandatory for the members to comply with those requirements. "The competent authority shall ensure...". This is one of the rare instances where the provisions of the ILO Conventions are mandatory in nature.

In summing our analysis of C97, we may say the following:

a) That the Convention has 22 substantive Articles, nearly half of the Arts (i.e. 12 to 23) deal with procedural and consequential matters:

b) Therefore, the operative portion of the Convention is restricted in size and therefore in effect;

c) From the viewpoint of a legal analysis it can be said that only one Article, i.e. Art 6, provides for real protection to a migrant; rest of the Articles are quite supplementary in nature;

d) Consequently, one may conclude, that, in the garb of a migration Convention, ILO has created an elaborate edifice, on a very narrow base - i.e.: Art 6.

e) Tore, it is ascertainable, what could be the impact of this Convention in altering the migration process – quite negligible.

b) *ATION FOR EMPLOYMENT RECOMMENDATION*

sed) 1949 – Critical Review

C97 accompanied by Recommendation 86 – Migration for Employment Recommendation (Revised) 1949. This was adopted on 1-7-1949 – on the same day as C97 sought to supplement the provisions of C97. For the purposes of our discussion, shall be adequate if we examine the Annex. to this Recommendation.
which is the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons. We shall discuss only the more relevant of the provisions.

Article 21 of R86 states that members should in appropriate cases, supplement C97 and the preceeding paragraphs of R86 by bilateral agreements, which should specify the methods of applying the provisions of C97 and R86. Clause (2) of Article 21 of R86 says that in concluding such agreements, Members should take into account the provisions of the Model Agreement annexed to this Recommendation, in framing appropriate clauses for the organization of migration for employment and the regulation of the conditions of transfer and employment of migrants.

Article 2 states that the parties agree, with regard to their respective territories, to take all practical steps, so far as national laws permit, against misleading propaganda relating to emigration and immigration (emphasis mine). It is a serious limitation of this Article, in as much as, the actions of the respective States hinges upon, what the national laws and regulations permit; this, in effect would mean that, if the national laws and regulation of the party(ies) do not permit taking any action on this matter, this Article would come to naught. What should have been provided for, was that the parties would take necessary action, to bring into place such laws, regulations, etc. as may be required to counter misleading propaganda.

Article 3 of the Model Agreement is a beneficial provision, which says that, the parties agree to take measures with a view to accelerating and simplifying the carrying out of the administrative formalities relating to departure, travel, entry, residence, and settlement of migrating as far as possible, with their families. Such measures shall include providing facility of interpretation. It must have to be borne in mind, that, whilst doing so, the home country must take special care to ensure that, in the garb of ease of travel, illegal emigration does not become easy; many Third World countries, like India, are facing serious problems in illegal emigration.6

6 In June 2000, Indian Media carried extensive reports of how the attempt of 58 Chinese to smuggle into England, in a lorry, ended in their death; see Indian Express, Mumbai 23-6-2000, The Times of India, Mumbai 20-6-2000.
Interpretation service would be of tremendous help to a prospective migrant worker, especially where the official language of the host country is not known to him, e.g., Indians in Saudi Arabia.

Article 5 deals with conditions and criteria for migration. Since a bilateral treaty between two Member States is possible, therefore, in terms of this Article they may jointly determine: a) the requirements for migrants and their families, in respect of age, health, educational qualifications etc; b) categories of workers whose families may join them; the number of migrants required; c) the areas of recruitment and the areas of placement. The provisions of Article 5 would be operative, in the event of Government – to – Government level of recruitment; the trends indicate, atleast in respect of Indian Migration to Saudi Arabia, that, employment in the Saudi private sector far exceeds the employment in the Saudi Government sector; to this extent, the efficacy of this Article is diminished.

Article 7 states that an intending migrant shall undergo an appropriate examination in the territory of emigration, which should cause the least in inconvenience to the migrant. It, prima facie, appears to be difficult to envisage, how such a provision can be implemented, when, we are considering migration in lakhs, and, where the job requirements as per many employment notices, is immediate; further, when a large number of the migrants are illiterate, semi-literate, unskilled or semi-skilled workers, there lies a question to determine the types of test they be possibly subjected to. This provision is implementable, if highly skilled or technical workers are migrating; even then, before offering employment, the prospective employer would assess the suitability of the migrant, and there should not be any likelihood in mistake in selection, in most cases.

Article 8 provides that on selection, the migrant shall be made aware of all the necessary information that he may require as to the nature of work, place of employment, travel arrangements, conditions of work, etc.; on arrival in the host country, the migrant and his family shall receive all documents needed for stay, work etc. In the light of our discussions in the previous chapters, this provision may appear to be utopian to say the least; whilst, some of this may happen, when the
employment is in the Government sector, but, the position of those employed in the private sector is vastly different. Be that as it may, this provision definitely serves the purpose of setting the standard of the facilities which should be made available to migrants and their families.

Article 13 provides for the facility of transfer of funds; Clause (1) states that the country shall permit the migrant to carry foreign currency as may be required by the migrant for the immediate purpose of settling down in the host country, and the host country shall permit repatriation of funds to the home country. The facility of repatriation of strong or hard currency is one of the prime motivations of the migration process; in addition to labour legislation, such transfer of funds is also governed by foreign exchange or currency control regulations.

Article 15 provides for the supervision of living and working conditions. Clause (1) says that provision shall be made for the supervision by the competent authority or duly authorized bodies of the host country of the living and working conditions of the migrants. Clause (4) states that assistance with respect to the working and living conditions may be given either through the regular labour inspection or through voluntary organizations. It may be recalled that the Saudi Labour Code was drafted with the help of the ILO, and that, Woodward had said that many of the provisions of the Labour Code were incorporated merely to satisfy the ILO etc.; therefore, we find an echo of the labour inspection provision here, in the Saudi Labour Code. Of course, since this is only a recommendatory provision and not binding on the members, and, further, being part of a Model Agreement, we find that such provisions, only serve the purpose of standard setting and guidelines.

Article 16 provides for the mechanism of settlement of disputes, and, states that disputes between the migrant worker and his employer, shall be settled in terms of the labour laws of the host country. What should have been specified is, what should the law provide? Should it be a comprehensive dispute resolution code like to Indian Industrial Disputes Act, 1947, or, it is sufficient to make provision for dispute

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7 Supra.
resolution, within the Labour Code, as in Saudi Arabia? This is a choice which the legislature of each country may make.

Article 17 provides for Equality of Treatment; Clause (1) stipulates that the host country shall provide to migrants and their families, treatment which is similar to its own nationals, arising out of legal and administrative provisions or collective bargaining. Clause (2) states that such non-discrimination shall apply irrespective of nationality, race, religion or sex, for the following: a) wages; b) membership of trade unions and collective bargaining; c) admission to schools; d) welfare measures; etc. Of course, it has been stated earlier also that non-discrimination is one of the fundamental objectives of any migration policy; in our context, two issues arise: (i) can discrimination be said to exist, when migrants are not extended those fundamental rights which are not available to locals e.g., trade union? – the answer would have to be in the negative; (ii) though no discrimination on the grounds of religion is permitted, but, in an Islamic state, where the Shariat does not recognize any other religion [other than Christianity, to some extent], can denial of freedom to profess a religion other than Islam, be considered to be discrimination? – the answer would have to be in the positive.

Article 21 deals with social security. Clause (1) says that both the States shall determine in a separate agreement the methods of applying a system of social security to migrants and their dependents. A word needs to be said about the scope of treaty making envisaged here. As per the ILO Constitution, ratification of a Convention creates binding obligations; therefore, if two states, e.g., Indian and Saudi Arabia, were to ratify C97, they would be obliged to implement its provisions; a second stage of agreement would be the execution of an agreement on the lines of the Annex. to R86; the third stage of agreement would be treaty or joint-declaration, as envisaged in Clause (1).

Article 22 deals with contracts of employment. We have already noted that this is a contentious issue – having little scope of enforceability in Saudi Arabia. However, if India and Saudi Arabia, were to execute the Model Agreement, as contemplated, then, such Model Agreement would ensure that: a) individual work contract would
be in line with the Model Contract; b) the contract would be translated into a language which the migrant understood; c) the contract would contain the full name etc. of the migrant; nature of work; occupational category; remuneration and overtime; bonuses, etc.; what deductions the employer may make; duration of the contract; when may the contract be terminated prematurely, etc. If the provisions of this Article are implemented, even without recourse to a Bilateral Agreement, but by the laws of the host country, [e.g., like the Payment of Wages Act of India], then, many of the wage-related problems of migrant workers who are doing manual or semi-skilled work, could be mitigated.

Article 23 is another example of beneficial protection available to the migrant workers. It says that, if the competent authority of the host country considers that the employment for which the migrant was engaged does not correspond with his physical capacity or occupational qualifications, then, the said authority shall provide alternative employment to the migrant, which corresponds to his capacity; during the interim period of unemployment if any, because of this alternative employment, a separate agreement between the States should determine, as to how the migrant is to support himself. For example, if a migrant gets employment as a driver, but, because of a physical infirmity, it is no longer possible for him to continue working as a driver, then, it terms of this Article, it could be possible to give him some alternative employment. Article 24 of the Model Agreement, provides for similar protection in the event of the migrant worker becoming redundant.

Article 25 is also a provision of beneficial protection to the migrant, and it provides that the competent authority of the host country undertakes that a migrant and his dependents shall not be repatriated to his home country, unless he desires so, if because of illness or injury, he is unable to follow his occupation. Though it is not stated as such, it is presumed that such protection shall be available during the balance of period of employment or visa.

Article 27 of the Model Agreement provides that the parties shall, by way of a separate agreement, provide for avoidable of double taxation.
Our analysis of the Annex to R86 indicates that, Member States, by executing an Agreement on the lines of the Model Agreement, may make greater beneficial provision for the migrant workers, than what the main C97 provided for.

c) **THE MIGRANT WORKERS(Supplementary Provisions) CONVENTION, 1975 - An Analysis**

The Migrant Workers (Supplementary Provisions) Convention, 1975 (C 143) was adopted on 24-6-75 and is effective from 9-12-78. It has an extended Preamble, and, it is necessary to highlight the various issues which are raised therein, which are, interalia, as under: - a) the Preamble of the Constitution of the ILO imposes upon it the task of protecting the interests of migrant workers; b) the Philadelphia Declaration reaffirms the principle that labour is not a commodity, that poverty anywhere constitutes a danger to prosperity anywhere; c) considering the ILO World Employment Programme and the Employment Policy Convention and Recommendation, 1964, and emphasizing the need to avoid excessive and uncontrolled or unassisted increase of migratory movement; d) considering the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; e) considering that the migration of workers should take place under the responsibility of official agencies for employment or in accordance with relevant bilateral or multilateral agreements; f) considering that evidence of the existence of illicit and clandestine trafficking in migrant labour calls for further standards aimed specifically at eliminating these abuses; g) considering that further standards, covering social security, etc., are desirable in order to promote equality of opportunity and treatment of migrant workers, to ensure equal treatment compared with the local population. Therefore, the Convention was framed within the framework of the above issues, and sought to address the problems raised by them.

Article 1 of C143 states that each Member, for whom this Convention is in force, i.e., who has ratified this Convention, undertakes to respect the basic human rights of

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8 Notable that this is done, even whilst the huge rush of migrant workers from the Indian subcontinent to the Middle East, was as yet unfolding.
all migrant workers. It is not proposed to examine this Article at this stage, as, in a later section, we shall consider the various provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, in the context of migration.

Article 2 states that each Member [significantly, it does not specify that should be in force in that Member State but it may be assumed to be so], shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members to, interalia, suppress clandestine movements of migrants for employment and illegal employment for migrants.9 It would appear that curbing clandestine migration is a very difficult – even countries which have strict visa regimes, like Saudi Arabia, are constantly faced with this problem.

Article 5 states that one of the purposes of Articles 3 and 4 would be that persons indulging in manpower trafficking can be prosecuted. Similarly Article 6 states that provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers, to be followed by penal action, including imprisonment. In other words, an investigative machinery is contemplated to unearth cases of illegal migration. We have noted one such instance, where fines were imposed on Saudi employers for employing illegal migrants: though threatened, but, penalty of imprisonment was not imposed in this case.

Article 8 is a beneficial provision for the migrant worker, which provides that, merely on the ground that the migrant has lost his job, his stay in the host country should not be jeopardized; further, he should get the same treatment as an local citizen in respect of social security, alternative employment and retraining. Though

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9 It would be relevant to take note of the following news item, which appeared in the Economic Times, Mumbai, 23 July, 2000:- “Dubai: Saudi Arabian authorities have started a fresh crackdown against illegal foreign workers after the Kingdom’s latest amnesty offer expired on July 2. According to reports reaching here, over 350,000 workers, including 10,000 from India, are believed to have used the amnesty, which lasted from April 20 to July 2. An estimated 2000 Indians have already left. But a large number of illegal expatriate workers still remain in Saudi Arabia and have become the target of the fresh crackdown. The authorities have imposed fines totaling $900,000 on 27 people, including 13 Saudis, for employing workers with invalid residency papers, a newspaper reported. Earlier the officials had warned that a six month imprisonment and a fine of up to 100,000 Riyals awaits those employing illegal workers.”
not so stated, it may be presumed that the loss of employment contemplated in this Article, is on account of reasons beyond the control of the migrant – obviously, if he is dismissed by his employer for misconduct or by way of penalty, such a protection should not be available to him.

Article 10 of C143 is a significant addition to the protection available to any migrant worker. It says that, each Member who has ratified the Convention undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate within the local context and environment, equality of opportunity and treatment in respect of employment and occupation of social security, of trade union and cultural rights and individual and collective rights and freedoms. It has been stated earlier that, we have to bear in mind that migrants are expected to be treated at par with locals, in respect of rights and freedoms; it is for this reason that the Article provides for “methods appropriate to national conditions and practice.” Consequently, if locals are denied the right to form trade unions and engage in collective bargaining, then, in terms of this Article, it would be proper to deny these rights and freedoms to migrant workers also. Article 12 of C143, inter alia, states that each member shall seek the cooperation of employer’s and worker’s organization and other appropriate bodies in promoting the acceptance and observance of the policy provided in Article 10. It is a moot point to be considered, who ought to be consulted, in the event that no worker’s organization are permitted in a Member State e.g., in Saudi Arabia.

In an earlier Chapter, we have alluded to the etymological confusion over the word ‘migrant’ and its relationship with ‘immigrant’, emigrant, etc. Article 11 of C143 sets at rest any confusion that may survive on the meaning of the word ‘migrant’ in our context, when it says that, “...the term migrant worker means a person who migrates or who has migrated from one country to another with a view to being employed...” Since the word ‘migrant’ now becomes the key to the definition, we find that the Concise Oxford Dictionary, defines ‘migrate’ as “move from one place of abode to another, especially in a different country.” This should take care of any semantic confusion that could have arisen in this regard.
Article 13 creates an obligation on the Member State who has ratified this Convention to take all necessary measures to facilitate the reunification of the families of migrants; this is in the nature of an intention, or a goal to be achieved, without creating any mandatory commitment. Since this is a non-binding obligation, it is likely that Member States may prefer to take the easy option of not complying with it; e.g. family reunification is extremely difficult in countries with strict visa regimes, e.g. most countries of the Middle East, especially Saudi Arabia, the U.S.A. etc.

C143 is structured into three parts – Part I being Articles 1 to 9, dealing with migration in Abusive Conditions; Part II being Articles 10 to 14 dealing with equality of opportunity and treatment; and Part III being Articles 15 to 24, being Final Provisions i.e., dealing with the procedure for ratification of the Convention and consequential action. Like C97, more than one third of the Convention deals with the procedural aspect, leaving less than two-thirds for the substantive provision. However, the similarity between the two Conventions, ends here. Whereas, in C97, only one Article, viz. Article 6 dealt with the substantive issue of beneficial protection to migrant workers, C143 has a greater coverage of such protection, with Parts I & II, almost entirely being devoted to the subject. Therefore, it may be said that the intentions of the ILO, as they appear from the extended Preamble to the Convention, is substantially met, atleast to the extent that relevant statutory provision has been made. As with other ILO Conventions, it’s applicability and enforceability, would depend upon the ratification of the Convention, by Member States.

d) **MIGRANT WORKERS RECOMMENDATIONS 1975 – Analytical Over-view**

C 143 is accompanied by Recommendation 151 (R151). R 151 was adopted on 24-6-1975, the same date on which C 143 was adopted.

Para 1 of R 151 states that Members should apply the provision of this Recommendation within the frame-work of a coherent policy on international migration for employment; the policy should take care of the needs of the host as well as the home country, and the long term and short term aspects of the migration.
We have already noted in an earlier chapter, that Stalker\textsuperscript{10} had suggested the framework of the migration policies for both the home and host states; that would be in consonance with the principles enshrined in this Article.

Para 2 stipulates that migrants and their families should enjoy equal rights with locals, in respect of: - a) access to vocational guidance and placement services; b) access to vocational training and employment of their own choice; c) advancement in accordance with their individual character, experience, ability, etc; d) security of employment; e) remuneration for work for equal value; f) conditions of work, including hours of work, etc; g) membership of trade union, etc; h) rights of full membership in any form of cooperative; i) conditions of life, including housing, etc; In effect: the migrant should be treated at par with a local national, not only in respect of his work, but, for all other social areas also.

Para 7 states that in order to enable the migrant and his family to take full advantage of their rights and opportunities, such measures as may be necessary may be taken to: - a) to inform them, in a language familiar to them, of their rights under national law and the provisions of Para 2; b) to teach them the language of the host country, during working hours; c) to promote their adaptation to the culture of the host country, whilst preserving their national identity. We have noted that whilst ratified Conventions create binding obligations, Recommendation are suggestions to improve upon the minimum standards, as contained in the Convention. Therefore, Para 7 is extremely significant, is as much that, it desires assimilation of the migrant with the local population, yet provides for retention of their national characteristics. The migrant seems to be getting the best of both the worlds.

Para 8 provides for the regularization of the stay of such migrants, who does not enter the host nation legally, and on being regularized, they should be treated as legal migrants; in case, it is not possible to regularize them, they should continue to enjoy, in respect of their present and past employment, rights in relation to wage, social security and trade unions membership.

\textsuperscript{10}Supra
Para 10 stipulates that, to make the migration policy of the host nation, as responsive as possible, conditions of the home country should also be kept in mind. This would mean that, if implemented, then, the migrant worker, in our context, should enjoy the privileges and protection, that are available to Indian workers in the organized sector in India, as would be illustrated in the next chapter. Para 11 states that the social costs of migration should be spread across the entire host country, especially those who profit the most from it. Therefore, in S. Arabia, the social cost of migration should be borne more by the private sector, as they profit the most from it.

Para 13 enjoins upon both the home and host countries, to facilitate reunification of families, as early as possible. There is however, one inherent difficulty in this recommendation. In our context, we have identified that the prime motivator of migration is labour shortage; therefore, the host country is seeking an early supply: it essentially does not have any specific economic necessity for the migrants’ family; on the contrary, it would be perceived that the migrant’s family would be a wholly unnecessary burden on the infrastructure of the host country. This could then lead to a tendency to initiate steps to keep the migrant’s family out by imposing visa restrictions. This is not only the case in the Middle East, but also in the USA and Europe.

Para 23 states that in accordance with the provisions of Para 2 of this Recommendation, migrants and their families should benefit from the social service available to national citizens. Para 24 states that such social services should perform the following functions: - a) giving migrant workers and their families every assistance in adapting to the economic, social and cultural environment of the host country; b) helping migrants and their families to learn the local language, and, take advantage of all the facilities available in the host country; c) ascertaining the needs of the migrant and his family; d) assisting in formulation of appropriate policies; and e) providing information for fellow workers, supervisors, etc. about the problems of migrant workers.

Para 31 states that a migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to
that, he should be allowed unemployment benefit; his residence authorization should also be extended accordingly. This recommendation would be difficult to implement in respect of such countries, like Saudi Arabia, where permit of residence is co-terminus with contract of employment with a particular employer. As a matter of fact, in Saudi Arabia, such a situation, as envisaged in this Para, would not arise at all.

Para 32 is a beneficial provision for illegal migrants also, as it provides for the following benefits on departure from the host country, irrespective of his legal status:- a) entitlement to any outstanding remuneration for work performed, including severance pay; b) entitlement to occupational – injury related compensation; and c) entitlement to compensation in lieu of holiday work; reimbursement for social security payments. Therefore, if an illegal migrant is evicted from the host country, then, he would be entitled to receive these benefits.

This concludes our discussion on C97, R86, C143 and R151. It is hoped that the comparison of the Saudi Labour Code vis-a-vis the ILO Instrument would be clear; the attempt was not to criticize the Labour Code, but, merely, to compare it with some of the international instruments. The comparison may appear at time to be none-the-flattering; it is not intended to take a judgemental attitude to this matrix; it may be possible that, this uneven comparison, is because the ILO standards are universal in scope, and they may not provide for peculiar regional circumstances. Therefore, to gain another insight about the Saudi Labour Code, it would be compared with purely regional standards, which, it is hoped, would have taken cognizance of local/regional peculiarities. These are Labour Standards, prescribed by the League of Arab States.

5.4. THE SAUDI LABOUR CODE AND LAS NORMS

Before we examine the various provisions of the League of Arab States [LAS], Norms, a brief introduction to the LAS is necessary.
The LAS \textsuperscript{11} was set up in 1945 by seven Arab States; amongst its objectives are making provisions, intralia, for cooperation between the Member States in the social sphere. To achieve that purpose, the Arab Labour Organization [ALO] was established in 1965, and, the Arab Labour Charter was adopted.

The aims of the ALO are: - a) to coordinate Arab efforts in the labour sector; b) to unify labour laws and conditions in the Arab States; c) to undertake study and research; d) to prepare an Arab Labour Dictionary; and f) to develop and protect trade union rights and freedom. Boudahrain \textsuperscript{12} highlights some of the intrinsic problems of the ALO, saying “Not only do members fail to make their financial contribution promptly, but they rarely ratify the instruments they adopt and tend to hinder the action of the ALO in the sphere of technical cooperation.” Therefore, at first sight itself, it appears that the ills and problems faced by the ILO are also faced by the ALO. The reasons for that may not be too difficult to ascertain.

Boudahrain \textsuperscript{13} says: “Before specifying the aims of the ALO, we should first point out several basic principles which bear a resemblance to the Philadelphia Declaration, adopted at the twenty-sixth session of the ILO Conference on 10 May, 1944. There are certain analogies between the principles, which were to inspire the policy of Member States in both these specialized institutions.” We now have the benefit of the past and hind-sight to say that these “principles” were those, which made the whole exercise non-mandatory and therefore, left enough leeway to Member States, to do as it pleased them. In effect, the commonality of the “principles” between ILO and ALO could be said to be in the realm of pious intentions, which, in practice did not cost anything.

Boudahrain continues: “Following the example of the ILO Constitution, the Arab Labour Charter affirms that that ‘universal peace can be based only upon social justice. Moreover, the basic law of the ALO considers that ‘labour is not a

\textsuperscript{11} The Member States, are Algeria, Egypt, Iran, Jordan, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, Sudan, Syria, Tunisia & Yemen.


\textsuperscript{13} ibid pg.14
commodity and that the working masses within the Arab nation have right to work in suitable conditions, befitting the dignity of the Arab citizen, and that all human beings have the right to pursue their material advancement and their spiritual development in freedom and in conditions based upon equal opportunities and social justice."14 Whilst it was easy for all Member States to agree upon such harmless generalities, but, their commitment to specific action is less forthcoming. Boudahrain says that Gulf States are gradually moving away from the Arab Labour Organization. In our context, a presumption arises that Saudi Arabia would have a decreasing commitment to the ALO.

Be that as it may, our study would be furthered by an examination of the LAS Labour Standards, which were adopted in 1966. Saudi Arabia is not amongst the nine countries which have ratified this Convention.

In Part One, Article 6 states that labour laws of the Member States should especially include the areas of, interalia, worker's organization, the emigration of workers, individual labour contracts, wages, working hours, holidays, trades union, labour disputes, etc. It is notable that the Saudi Labour Code had the benefit of C97 and the LAS standards, as, they were adopted in 1949 and 1966, respectively. So, a comparison between them would be useful. It is noted that the Saudi Labour Code does not provide for trade unions and workers organization; though provision for labour disputes has been made, it is noted that the provision for the same is neither efficacious, nor, beneficial. Therefore, the Saudi Labour Code does not even incorporate the relevant provision of regional standards also.

Article 7 states that labour legislation of Member States should ensure labour freedom, prohibition of free labour and the individual choice of work including the right to change it. It says: "The legislation of each country should organize the particular condition appropriate for the exercise of this right." This would mean that, given the broad framework of the Article, each Member State's laws could partake of a local character, and adopt the broad principles, as applicable in its own local environment. It is not supposed that, its total negation was contemplated. That is

14 ibid.
However, what is provided in the Saudi Labour Code, which places strict enforcement on lack of job mobility; the conditions are so stringent that, job mobility in Saudi Arabia could be either a rare occurrence or illegally performed.

Article 10 (3) states that: “An independent law of social insurance should be promulgated, including all regulations and private standards.” We have already noted that there is no institutionalized social security system in Saudi Arabia, except GOSI, to which, only a small minority of worker have access. This then, is another area where the Saudi Labour Code is deficient, compared to the LAS Standards.

In Part Two, Article 21 states that “The condition of the employment contract should be in accordance with the rules laid down by law and should aim at the maximum protection of the worker.” This needs to be examined in two ways; firstly, without prejudice to the contents of the employment contract, we have seen that it is possible that the migrant worker in the Middle East, especially Saudi Arabia and Kuwait, could find the contents of the contract, unilaterally changed, to his disadvantage; the Saudi Labour Code does not provide the worker with any effective mechanism, by which he could get this prejudice rectified; secondly, the extent and the nature of protection that is available to the migrant worker in the Labour Code. At best, it is a passive formulation which does not lend itself to any specific protection to the worker. Article 20 states that as far as possible the labour contract ought to be in written form and should include all statements specifying the rights and duties of both parties. Whereas Article 21 states that the condition of the employment contract should be in accordance with the rules laid down by law and should aim at the maximum protection of the worker. If we read the two Articles together, we encounter a subtle dichotomy; whilst on the one hand, it is not mandatory that all employment contracts must be in writing, yet, it is stipulated that the contract must provide for maximum protection of the worker. So what shall be the effect if the employment contract is not in writing – which possibility is provided for. Obviously, the provisions of Article 21, are subject to the implementation of the provision of Article 20.
Article 26 states that legislation should establish the nature and extent of penalties and the guarantees, which ensure the protection of workers, viz. the authority for punishment, the burden of proof, the guarantee of the right of defense, the causal relationship between the work performed and the violation, the standardization of penalties, the execution of punishment, etc. This Article provides for a very detailed procedure about how misconduct is to be dealt with, covering the entire process – from the occurrence of the misconduct, the competent authority to impose the penalty, the procedural due process, the standardization of penalties, etc. Such a provision can be found in India in Statutory Conduct and Discipline Rules.

Article 34 stipulates that each country shall establish a system of minimum remuneration to guarantee the satisfaction of the worker’s basic needs. Whilst such a protective provision is well-founded and well-meaning, the Labour Standards do not provide as to how such stipulations can be enforced; it also does not provide, what penalty should be imposed upon employers who violate this provision. It often happens that either the migrant workers do not receive the wage contracted, or, in some extreme cases, they are not paid wages at all. Therefore, it is submitted that, whenever any beneficial provision is made in the statute, there should be a corresponding penal provision, by which, violation of such provision is minimized.

Article 45 states that the legislation of each country shall establish working hours which does not exceed eight hours each day and forty eight hours each week; a minimum rest of one hour should be provided each day. Article 48 provides that workers may be employed for overtime work or during the weekly rest period in cases and circumstances determined by legislation, provided that the total daily hours do not exceed ten hours and sixty hours per week. Workers should be paid overtime wages for such periods. The Saudi Labour Code notes a similar provision. However, as usual, there is no mechanism provided to enforce such a mandate. We have noted that migrant workers often work ten to twelve hours each day, seven days a week. They do it to maximize their earnings, to further the objectives of their migration. This would but have an adverse impact on their health; the social system must have a built-in mechanism, which should ensure that such exploitation of
workers is not allowed; whilst the worker drives himself to ill-health, the employer profits from this. Such overtime work, as is common amongst migrant workers in the Middle East, could be a fertile ground for a analysis, in the context of surplus value – but, that is beyond the scope of this study. Suffice it to say that, the longer a migrant worker works, the greater is the profit because the cost of hiring an additional hand, with all its attendant costs, would be higher.

Article 73 states that Joint Committees shall be formed at each plant depending upon legislation to be made in this regard. They shall consist of representatives of management and workmen to deal with suggestions received from worker’s organization regarding productivity, training, education, probation, the management of social services, etc; depending upon the legislation that each member may enact, the Joint Committees are empowered to suggest on a wide range of issues listed above; of course, this would presuppose that some sort of Worker’s Organizations would be permitted in that State; however, Saudi Arabia, as we have noted, does not permit trade unions; therefore, it could never happen that such Joint Committees could be established.

Article 75 provides for the formation of Consultative Committees, consisting of representatives of the Government, the Employers and Labour at the level of each industry and at the national level; these Committees shall examine social and economic matters of common interest. There will be difficulty in the implementation of this Article in Saudi Arabia, because, in the absence of trade unions, it would be difficult to ensure genuine participation from the worker’s side; the State sees itself as a “surrogate” Union, and, in that event it could never be said that the genuine aspiration of the worker’s could be represented by the State.

Article 76 says: “Workers can form association to further their interests, defend their rights, improve their material and social conditions, and contribute to the increase of productivity.” If we consider the last item first, it must be said that this Article

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15 It is seen in the “labour aristocracy” debate, some writers tend to suggest that even formal, bureaucratized trade unions, do not reflect the true will of the workers, they represent; but, in the absence of anything better, it would still have to be presumed that trade unions are the best representation of workers, subject to usual and inherent limitations.
explicitly imposes a responsibility on the Unions/Associations, to take a cooperative stance, vis-à-vis the employer, in order to increase productivity. Classical trade unionists have always held that increase in productivity is not their responsibility, but that of the employer; some unions actually argue against increase in productivity, as that entails decrease in members to be employed, which would be contrary to their stated objectives; be that as it may, along with rights, associations are also imposed with responsibilities. However, no Union, irrespective of ideology, would object to the earlier part of the Article; it must be admitted that the scope of the Article -- i.e., further interests, defend rights, improve material and social conditions, covers the entire range of objectives which an union could reasonably aspire for. Of course, all this is also not possible in Saudi Arabia.

Article 77 is a very progressive and liberal formulation in as much as it says, "The procedures for the formation of such associations are limited to the requirement that a record of the establishment be deposited with the authorities concerned; the authorities cannot object to the establishment of an association except on grounds of violation of law." In India the Trade Unions Act, 1926 has laid down a very elaborate procedure for the registration of Unions. But under LAS Norms a summary procedure is provided for. It may even be said that such a summary procedure could be fraught with great risks and be liable for misuse; however, since enforcement of the penal provisions of the law in the Gulf regime is fairly strict, it may be said that the final part of the Article would be able to take rectification measures, if such an eventuality should arise.

Article 78 says: "The legislation of each country should include guarantees and regulations to ensure advantage to labour of whatever jobs or profession through a suitable system of protection against any act or procedure affecting their freedom to organize and their pursuit of different activities..." It is notable that the Article stipulates "Guarantees" and "regulation to ensure;" this is therefore, not a recommendatory but, a mandatory provision -- these are in relation to their freedom to organize and pursuit of different activities. Such activities would obviously be based on the principles enunciated in Article 76. So, whereas Article 76 said...
workers “can” organize, Article 78 extends that privilege into a right, which is mandatory.

Article 85 says that employers or their organizations and the concerned labour organization [may be at the level of the industry], shall, in order to achieve stable labour relations, meet for collective negotiation on the conditions and organization of labour on the basis of the position and nature of the industry. They should try, to the extent possible, to conclude a collective employment contract specifying the rights and obligations of both the parties. Article 87 says that the legislation of each country shall prescribe the conditions of the application of some or all the provisions of the collective employment contract to all employers and workers. These represent very progressive attempts at managing industrial relations at an even keel; by Article 85, employers and unions, at the industry level, could arrive at consensus on matters which are in their mutual interests, specifically, on the conditions and organization of labour. An industry-level agreement, as contemplated in this Article, would cover areas like wages, hours of workers, holidays — i.e., working conditions, and, formation of associations, their role, responsibility, etc.

By virtue of Article 87, the laws of each country shall specify, to what extent would the industry-level agreements contemplated above, shall be made applicable to all employers and workers at the local levels. In other words, macro-level agreement, would be made applicable at the micro-level, subject to national legislation. This would ensure that whatever is agreed upon at the national level, would, actually get implemented, because, such agreements would be operative only at the level of employer — worker.

Articles 89 to 93 (both inclusive) deal with resolution of labour disputes. Article 89 says that legislation of each country should require the referral of collective labour disputes to bodies of conciliation. An inference is drawn that this Article does not deal with individual industrial disputes, i.e., those dealing with individual workmen; the Convention does not at any other place, make a provision for conciliation in case of individual disputes, therefore, it may be presumed that such a provision was not contemplated in the Convention. The legislation of the State should also establish
such rules for conciliation, which would guarantee the resolution of the dispute, within the shortest possible time. Article 90 stipulates, interalia, that, the arbitration council should be established from amongst representatives of the public authorities, employers, and those, who have high qualifications and experience in labour affairs, industry and law. It is notable that all the members of the league of Arab States are Muslim nations, and Shariat would be the dominant feature in their legal system – yet, this Convention no where invokes the provisions of Shariat. It may be recalled that the Saudi Labour Code, in its dispute resolution mechanism, and in the composition of Labour Courts had made it compulsory that atleast one of the members of the Court would be someone with expertise in Shariat; in this Convention, no such provision is made. It therefore, provides for a very liberal and secular legal system.

Article 96 states that: “Legislation shall organize a labour inspectorate and organize it’s responsibilities to guarantee the implementation of labour regulation, collective employment contracts, and bills concerning labour condition, the protection of labour, the provision to workers and employers of technical information and advice in the sphere of the application of the labour regulations.” The purpose of the labour inspectorate is to play a dual role – enforcer and regulator. The inspectorate is enjoined upon to enforce the provisions of the labour regulation, provisions of the collective labour contracts and protection of labour; its facilitating role involves providing technical information to employers and workers in the sphere of application of labour regulation. We have noted that the Saudi Labour Code also provided for an elaborate labour inspection mechanism. It even provided that, implicitly at least, the labour inspectors could even play the role of a trade union. Of course, this Convention does not go to that extent, but, the provisions regarding labour inspection in this Convention and in the Saudi Labour Code, are pari materia, to a large extent.

Article 99 states that labour courts must be set up to deal with labour disputes; the legislation shall consist of two stages, with each country determining the manner of the court’s establishment and their system of operation. We have earlier, in relation to Article 89 averred that this Convention does not specify how individual labour
disputes are to be handled; it is possible that this Article would include labour disputes both of collective and individual, nature. Article 100 states that the procedure in such courts should be simple and speedy, and each party must have the right to attend proceedings either himself or through legal counsel. Discretion is left to Members, as to how they would draft legislation, which would achieve this purpose. This may be useful because the situation in each Member State may be distinct from another, and, an uniform procedure or stipulation, may defeat the objectives of these Articles. We have noted that Chapter XI of the Saudi Labour Code deals with the Labour Disputes Board. In keeping with the provisions of Article 99, in Saudi Arabia, there are two levels of courts competent to deal with labour disputes – the Primary Labour Disputes Board and the Supreme Labour Disputes Board; in addition, Section 183 of the Saudi Labour Code, makes provision for arbitration of labour disputes. Of course, there is nothing in the Saudi Labour Code, which suggests that early disposal of labour disputes, is one of it's stated goals.

It is now necessary to examine the provisions of the Convention which deal with its enforcement and control over implementation. Article 101 states that each contracting State (i.e., one which has ratified the Convention) agrees to adhere to Part I and III and atleast 51 articles of Part II. It may be recalled that Part I consisted of Articles 1 to 10; Part II consisted of Articles 11 to 100, and Part III consists of Articles 101 to 114; Member States are expected to report to the Secretary-General of the Arab League of the articles chosen in Part II. As Saudi Arabia has not ratified this Convention, therefore, it need not comply with the provisions of Article 101. On ratification, certain responsibilities devolve upon the States.

Article 102 states that the States have to submit an Annual Report to the Secretary-General of the Arab League on the implementation of those 51 articles, which they have chosen for implementation. In terms of Article 104, a copy of the Report contemplated in Article 102 must be made over to the main employer’s and worker’s organization. This would facilitate the worker’s organization to also get a formal, official overview of the country’s industrial relations situation; such employers’ and
worker's organization are entitled to comment upon the report, and the same should also be sent to the Secretary-General of the Arab League by the Members State.

In terms of Article 105, a committee of experts shall be constituted who shall examine these Reports, including the comments of the worker's organization. Article 106 stipulates that the Committee of Experts shall consist of at least seven members, who shall enjoy a three-year term, renewable. It has to be mentioned that the provisions of Article 104 are extremely progressive which, keeping in view the conditions of labour in the Gulf region, are so beneficial, that they appear to be misplaced. There may be underlying irony in all this – since Gulf States do not permit labour unions – the question of supplying copies of reports to them, just does not arise; the Convention puts so many onerous burdens on the ratifying States – that they may be disinclined to ratify them; as a result, the noble objectives sought to be achieved by the Convention, are negated, by their very own goodness.

An examination of some of the important and more relevant provisions of the Convention of Labour Standards, 1966, of the League of As was made, vis-à-vis the Saudi Labour Code. It was stated at the beginning of the section that it may be the case of some people that comparing the Labour Laws of a country, with the universal standards, as contained in the ILO Conventions, may not be wholly appropriate; the ILO Conventions may not take into consideration local conditions, which may be region-specific. Therefore, if regional standards are available, then, a more appropriate comparison would be between the country's labour laws and that area's regional standards. This is what was attempted in this section. It would however be clear that, the Saudi Labour Code does not compare favourably even with it's own region's Labour Standards. The reasons for this are obvious – Saudi Arabia has neither ratified the relevant ILO Conventions, nor, the Regional LAS Convention; therefore, there is no pressure upon it, to bring its labour laws in conformity with either of them. Why Saudi Arabia does not wish to conform with either universal standards or regional standards, is in the realm of political – economic analysis of the Saudi State – which is clearly outside the purview of this study.
5.5. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES – Analytical Review

Furthering the debate and examination of the Saudi Labour Code vis-à-vis international instruments, it now necessary to consider the provisions of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families [hereinafter referred to as the Convention of Rights of Migrants or CRM].

The CRM was adopted on 18 December 1990 by the United Nations General Assembly. This Convention is the only United Nations Instrument on the subject of migration, and therefore assumes special significance in our study. It recognized and built upon the provisions contained in existing ILO Conventions, and in many ways went beyond them. It extended to migrant workers who enter or reside in the host country illegally (and members of their families) rights which were previously limited to individuals involved in regular migration for employment, going beyond those elaborated in Part I of ILO Convention No. 143. While the long-term objective of the United Nations Convention is to discourage and finally eliminate irregular migration, at the same time it aims to protect the fundamental rights of migrants caught up in such migratory flows taking account of their vulnerable position. Other significant aspects of the Convention include the fact that ratifying States are not permitted to exclude any category of migrant worker from its application, the “indivisibility” of the instrument, and the fact that it includes every type of migrant worker, including those who are excluded from existing ILO instruments.

“This new Convention has, however, received but a lukewarm welcome from States. While 20 ratifications are required for the Convention to come into force, as on 11 December 1998, only nine States had ratified or acceded to it. Further, as is the case with the ILO Instruments, the majority of States parties to this Convention are, on the whole, migrant-sending States which, while extremely important in terms of protecting migrants prior to departure and after return, hold little influence over the daily living and working conditions of the majority of migrant workers. A Global
Campaign for Ratification of the Convention on Rights of Migrants was launched in Geneva in 1998.\textsuperscript{15}

Since the CRM has raised the issue of the fundamental rights of migrants, it should be necessary, in the latter part of this Chapter, to examine, some of the more relevant provisions of basic United Nations human rights instruments also.

As the CRM is the latest in the series of international instruments on protection of migrant workers, it is expected that it should be the most comprehensive and liberal provision; however, as the ILO itself notes above, this Convention also faces the problem of ratification by Members, as is the case of ILO instruments. In the absence of ratification [Saudi Arabia has so far not ratified CRM] no binding obligations arise; so our analysis, instead of being focused on “what is”, is content to examine “what could be”, if the Convention would have been ratified.

The Preamble to the CRM declares that the States parties to the CRM, take into account in particular, the, Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Form of Racial Discrimination, the Convention on the Elimination of All forms of Discrimination Against Women and The Convention on the Rights of the Child; the various ILO Instruments considered by us in this Chapter, and the Convention Concerning Forced or Compulsory Labour (No. 29) and the Convention Concerning Abolition of Forced Labour (C105), and the Convention against Discrimination in Education of the UNESCO, and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and The Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions. This long list of international instruments gives an indication, as to the paradigm within which the CRM was drafted. Additionally, the CRM also takes cognizance of the fact that the migration

\textsuperscript{15} Migrant Workers, ILO, Geneva, 1999, pp. 24-25.
phenomenon involves millions of peoples and affects a large number of States in the international community; it also acknowledges that migrants are vulnerable because they are away from their home States, and therefore, there is need for a “Comprehensive Convention” which could have universal application.

Article 1 of CRM states that the Convention applies to all migrant workers and their families, without distinction of, interalia, their status. Therefore, CRM is applicable not only for legal migrants, but, even to illegal or irregular migrants. This assumption is furthered by the definition of “Migrant Worker”, as contained in Article 2, which says that a migrant worker is one who is engaged or has been engaged in a remunerated activity in a State of which he is not a national. This is a very simple definition, not liable to be misconstrued or misunderstood. Only two conditions have to be satisfied by a migrant worker (i) he must be engaged in wage employment, and, (ii) he must be employed outside his home country.

Article 4 states that “family” refers to the person married to the migrant worker, or have a relationship which is equivalent to marriage, and, dependent children and other dependent persons, who are recognized as members of family by relevant legislation. Article 5 says that a migrant and his family shall be deemed to be documented or regular if they are authorized to enter, stay and engage in wage employment, by the law of the State; else, they shall be considered to be undocumented or irregular.

Article 7 states that the parties undertake, in accordance with international human rights instruments, to respect and to ensure to migrants and their families, the rights provided by CRM, irrespective of sex, race, colour, language, religion, or conviction, political or other opinion, natural, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. Therefore, assuming that Saudi Arabia would have ratified this Convention, then, it could not possibly discriminate against Hindus. It also could not treat Pakistani Muslims better than Indian Muslims.
Part III of CRM, covering Articles 8 to 35 (both inclusive) deals with the human rights of all migrant workers and their families. The emphasis is added to highlight that such protection would be available equally to both regular and irregular migrants. The more important and relevant rights protected and guaranteed by this Part are as under:-

a) Migrants and their families shall be free to leave their home States and any other State without restrictions except those reasonably imposed, according to law; they shall also have the right to reenter their home State (Article 8).

b) The right to life of migrant and their families shall be protected by law (Article 9).

c) No migrant or his family shall be subjected to torture, cruelty, inhuman and degrading treatment. (Article 10). In this context, it would be appropriate to recall the plight of the two British nurses, whose case was referred to in Chapter 3, who were allegedly stripped and physically assaulted.

d) No migrant or his family shall be held in slavery or servitude, or made to perform forced or compulsory labour. (Article 11). It may be recalled the bitter experience of the Mumbai youth, who spent days together as slaves in Dubai, as mentioned in Chapter 3.

e) Migrants and their families shall have the freedom to pursue their religion (Article 12). It may be recalled that Saudi Arabia does not only forbid practice of any religion other than Islam, but, even carrying photographs of Hindu Gods and Goddesses into the Kingdom is forbidden.

f) Article 17 (4) states that during the period of imprisonment imposed by a court of law, the aim should be to reform the prisoner; it may be recalled that the plight of the two undertrial British nurses was so pitiable, that, they were on the verge of a nervous breakdown.

g) Article 21 states that it shall be unlawful for any one, other than a duly and legally authorized person to confiscate, destroy or attempt to destroy
documents of identity and permit of residence; it would be recalled that the Saudi employer keeps passports of all his migrant workers, and, this operates as a curb on their freedom of occupational mobility.

h) Article 23 states that migrant workers and their families shall have the right to have recourse to the protection and assistance of Consular and Diplomatic authorities of their home States, if any of their rights protected by CRM are impaired. It may be recalled that Filipino nurses in Singapore had availed of the assistance of their diplomatic mission, when they wanted to leave Singapore to escape atrocities.

i) Article 25 guarantees migrants, including irregular migrants, equality with the nationals of the home State, in matter of wages, etc; we have already noted that in Saudi Arabia, locals receive substantially higher salaries than migrants for the same jobs; we have also noted that illegal migrants get lower wages than legal migrants.

j) Article 26 deals with trade union rights and the freedom of association; since the contents thereof prima facie appear to be complicated, a little explanation thereon is necessary. Sub-clause (a) permits attendance in meetings of trade unions and other associations, established in accordance with law; it may be argued that, if trade unions are not permitted in law, then, obviously, this Article would not be applicable; Clause 1 of this Article states that no restrictions may be placed on the exercise of these rights, other than those prescribed by law; however, it is clear that the legislative intent was never to defeat the overall purposes of this Convention, because, it is stipulated that only such restrictions may be imposed by law, which is necessary in a democratic society; in that event, it is clear that right to organize is a fundamental democratic right.

k) Article 31 seeks to ensure respect for cultural identity of migrant workers and they shall not be prevented from maintaining cultural links with their home States. We have already noted that in Saudi Arabia, in accordance with the
strict application of Shariat, no other religious-cultural stream is permitted to be observed.

l) Article 34, for the first time, imposes duties on the migrant and his family to comply with the laws and regulations of the host nation.

The above are some of the rights and duties duly enjoined upon migrant workers and their families by CRM.

Part IV of the CRM deals with those rights which shall be applicable to only regular or documented migrants, i.e., unlike the rights available in Part III, they are not available to irregular or illegal migrants. Some of the rights, which are more relevant, to our context, are enumerated below:-

a) In terms of Article 37, migrant workers have the right, before departure, to be made aware, either by the home State or the host State, of all the conditions of admission and employment, and the authority they may approach in case of change in conditions. We have noted that employment contracts are often changed at the will of the employer, leaving the migrant worker, with little option; in case, the provisions of this Article were enforceable, either this malpractice would not occur, or, if occurred, the migrant would know, whom to approach for redressal.

b) Article 40 guarantees the right to form unions.

c) Article 41 guarantees the right to migrant workers to vote in election in their home countries; such a right is presently not available to Indian migrant workers, and other NRIs though, hectic lobbying for this is under way.

d) Clause 2 of Article 42 provides for consultation with migrant workers in host countries, in decisions concerning life and administration of local communities of migrants; it may be recalled that, in Saudi Arabia, migrant workers live in very difficult conditions, and this provision appears to be Utopian, especially in the context of Saudi Arabia.
e) Article 43. guarantees migrants, equality in treatment with locals of the host countries, especially in the matter of access to placement services and access to health and social services. We have noted that in Saudi Arabia, occupational mobility for migrants is extremely difficult; therefore, there is no question of access to placement services; further, only those migrant workers who are in employment in the Government sector have the facility of medical assistance, as part of their employment contract.

f) Article 44 provides for the reunification of families of migrant workers; it may be recalled that, Saudi Arabia permits family unification only for a select group of migrant workers, the practice differing to a very large extent. from this Convention.

g) Article 54 guarantees to migrant workers equality of treatment with nationals of the host country, in respect of protection against dismissal, unemployment benefits, etc. It may be considered whether any of this is actually possible in Saudi Arabia, where, not only a heavy bias operates against migrants, but, this is coupled with the stated objective of the country to its Saudization programme.

The above are some of the rights guaranteed by CRM only to legal migrants. As our analysis of Part III of CRM revealed, even those rights which are available to illegal migrants are not available to regular migrants in Saudi Arabia, so the question of extending rights of Part IV, which are of a higher quality, as they are restricted to only legal migrants, being extended to migrants in Saudi Arabia, can only arise if one is led to believe in far-fetched optimism.

It is clarified that, there is no intention to criticize the Saudi legal system, or the manner in which migration is allowed to operate; the emphasis has been on critiquing the same, as a stand-alone legal system, then in relation to the actual practices, and now, in relation to ILO Conventions and other International Instruments. The avowed objective is to test the Saudi Labour Law system against
diverse yard-sticks; unfortunately, they do not come out favourably in relation to any set of comparisons, which has been utilized so far.

At the beginning of this section, we had noted that the Preamble to the CRM made references to various human rights instruments. To make our comparative analysis complete, it is necessary to examine the Saudi Labour Law system in relation to some of the more significant and relevant, human rights instruments, all enunciated by the UN.

5.6. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND THE SAUDI LABOUR LAW SYSTEM

a) THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. (UDHR) - vis-à-vis Saudi Labour Law System

The UDHR was adopted by the General Assembly of the United Nations. on 10 December 1948. In a resolution dated 4 December 1986, the General Assembly described the UDHR as the "...common standard of achievement for all peoples and all nations and having provided the basis for the development of the International Covenants on Human Rights, has been and rightly continues to be a fundamental source of inspiration for national and international efforts for the protection and promotion of human rights and fundamental freedoms..." 16

The Preamble to the UDHR notes that the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear has been proclaimed as the highest aspiration of common people, and that human rights should be protected by law. The General Assembly proclaimed the UDHR to be the "common standard of achievement for all peoples and nations."

Article 1 of UDHR states that all human beings are born free and equal in dignity and rights; they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Human rights presuppose humane attitude towards one another, so that in turn, human rights would remain protected.

Article 3 states that everyone has the right to life, liberty and security of person; Article 4 prohibits slavery or servitude; further, slavery and slave trade shall be prohibited in all their forms; Article 5 prohibits torture, cruelty, inhuman or degrading treatment or punishment. We are constrained to note that cases are reported where migrant workers in Saudi Arabia and in Middle East have been deprived of their liberty – especially, domestic workers are often confined into homes, and ill-treated by their masters; we shall examine in a later Chapter, whether the current trend of migration from India to the Middle East, is indeed slavery or not. There is a strong lobby of activists which is comparing against the system of criminal justice, especially, punishments, under the Shariat, claiming that it is cruel and inhuman.

Clause (2) of Article 13 states that everyone has the right to leave any country, including his own, and to return to his country; therefore, every migrant worker has a right under the UDHR to go abroad in search of employment, and return to his home country, when desired.

Article 18 guarantees the right to freedom of thought, conscience and religion; this right includes, interalia, to manifest his religion or belief in teaching, practice, worship and observance. We have however noted that non Muslim migrant workers in Saudi Arabia are not permitted to profess their religion. Therefore, it may be said that the fundamental right, guaranteed by the UDHR, is routinely abrogated for non-Muslim migrant workers in Saudi Arabia.

Article 20 guarantees the right to freedom of association; as Saudi Arabia does not permit formation of trade unions, this is also another right, which is abrogated in Saudi Arabia.

Clause (2) of Article 23 states that every one, without any discrimination, has the right to equal pay for equal work. We have noted in Chapter 3 that wages in Saudi Arabia are dependent not upon the work done or the quality of workers, but, upon the country of origin of the worker, after which, his religion could play a critical role. Saudi Arabia has institutionalized wage – differentials based upon nationality – thus
violating this provision of the UDHR; what is unfortunate is that, this blatant violation does not attract comment, if not condemnation, either from the home country [who is more concerned about the hard-currency in-flow], or by the ILO [who is helpless as Saudi Arabia has not ratified its relevant Conventions] or the UN [who in any case, has no mechanism to enforce this].

Article 24 states that every one has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. We have noted instances, where migrant workers work continuously for 10-12 hours every day, seven days a week; the worker must be compelled to do this, to maximize his earnings, sometimes to compensate for the unilateral reduction of wages by the employer on arrival in Saudi Arabia; for whatever reason, working for such long hours on regular basis is an extreme form of exploitation and a violation of the fundamental rights of the workers.

Our brief analysis of some of the provisions of the UDHR reveals that the reality of the Saudi Labour Market, in the context of migrant workers, is in stark contrast to some of the provisions of the UDHR.

**b)** \textit{INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR).} – Vis-à-vis Saudi Labour Law System

The ICCPR was adopted by the General Assembly on 16 December 1966, and came into force on 23 March 1976.

Whereas the UDHR setout the norms for human rights, the ICCPR deals with a specific area of human rights, i.e., civil and political rights; in a way the UDHR is the bulwark on which the super structure of the various other types of rights are established.

Article 2 states that every State which ratifies the ICCPR undertakes to respect and ensure that all individuals within its territory enjoy the rights mentioned in this Convention, irrespective of, interalia, national or social origins; we have already noted that Saudi Arabia guarantees fundamental rights, only to its citizens – this is not available to other persons, who may be found in its territory; this Article
however, stipulates that rights of all individuals should be protected, notwithstanding that they may not be the nationals.

Article 6 states that every human being has the inherent right to life; in paragraph 2 of this Article it is provided that in those nations which have not abolished the death penalty, this may be imposed only for the most serious crimes. In India, death penalty is awarded only in the “rarest of rare cases.” However, in Saudi Arabia, Shariat permits death penalty for a range of crimes; we have noted that advertisements for jobs in Saudi Arabia carry the notice that carrying drugs to the Kingdom is punishable by death. Whilst this raises various questions about the system of administration of criminal justice, which is outside the scope of this study, it has to be fairly conceded that, despite its religious sanction, the widespread use of the death penalty in Saudi Arabia, is violative of this Article of ICCPR.17

Article 7 states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Whilst, it is not intended to join issue with the Shariat, the penalty of public flogging, etc. which is quite common in the countries of the Middle East, especially so in Saudi Arabia, is definitely violative of Article 7 of ICCPR. Article 8 forbids slavery; this is pari materia with Article 4 of UDHR. In a later Chapter, we shall examine, to what extent, the migration system, as it operates in Saudi Arabia, is different from slavery. Para 3 (a) of the Article prohibits forced or compulsory labour. We have noted various instances in the Middle East where migrant workers are compelled to perform forced labour.

Article 18 guarantees the right to freedom of thought, conscience and religion; Paragraph 3 of the Article grants freedom to manifest one’s religions. We have already noted the level of religious suppression that non-Muslims migrant workers have to endure in Saudi Arabia. Article 21 guarantees the freedom of association, and Article 22 guarantees the right to form trade unions. Both these are denied to migrant workers in Saudi Arabia.

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17 It has been reported that till August 2000, in the current calendar year 84 persons have been executed in Saudi Arabia. See Asian Age, Mumbai, 13-8-2000.
Article 26 states that all persons are equal before the law and are entitled to equal protection, irrespective of, inter alia, country of origin. It is supposed that there has been an adequate documentation in this study of the way in which migrant workers are discriminated against in Saudi Arabia; the discrimination becomes more apparent on the ground of religion, and also on nationality. It is one matter for discrimination to exist in the socio-economic system of any country; but it should be wholly unacceptable, if this is State-sponsored, or even institutionalized. The tragedy of this is compounded by the phenomenon of mute spectators like the UN, ILO, home countries, who, helplessly watch this situation.

Article 27 says that in those States, in which ethnic, religious or linguistic minorities exist, then, persons belonging to such minorities should not be denied the right to, either individually or in groups, to enjoy their own culture, to profess and practice their religion or to use their language. If one is to search for a country where this Article is blatantly violated, one may consider Saudi Arabia. Not only are non-Muslims vigorously prevented from practicing their religion, migrant workers are not permitted to socialize in the open, meet with females, or even wear half-pants. The atmosphere is one of strict conformity and no deviance is permitted. To compound matters, most official communication is only in Arabic, which most migrant workers do not understand.

It would thus be seen that, in our brief examination of some of the provisions of the ICCPR, rights and freedoms guaranteed by this Instrument, have no relevance either with the position of statute in Saudi Arabia, or with the ground realities as they emerge. It is obvious that the oil-rich nations of the Gulf region enjoying tremendous clout in international relations because of their wealth, oil reserves and consequent influence, yet, their labour law regimes, especially in relation to migrant workers, is so adversely loaded against them, that, it is time that somebody should sit up and take notice. It is a challenge to all democratic nations, and those which believe in basic human rights, as to the extent of their tolerance of this highly exploitative and discriminatory phenomena. May be, in the end, such debates may
end up only in academic studies, without any effect on the ground realities in the various host States.

C) DECLARATION ON THE HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT NATIONALS OF THE COUNTRY IN WHICH THEY LIVE – Vis-à-vis Saudi Labour Law System

This Declaration was adopted by the General Assembly of the United Nations on 13 December 1985. The Preamble to the Declaration says that the General Assembly recognizes that the protection of the human rights and fundamental freedoms provided for in international instruments should also be ensured for individuals who are not nationals of the country in which they live. Though there are separate international instruments either in the form of ILO Conventions and Recommendations or United Nations Conventions and Declarations, which address issues specifically related to migrant workers, a brief reference is made to the above Declaration, as, migrants are to be found outside their home States, and, therefore, it is considered to be relevant to our context.

Article 2 of the Declaration is extremely significant. Paragraph 1 of the Article says nothing in the Declaration shall be deemed to be considered to either legalize the illegal entry of an alien, nor, would this Declaration impose any restrictions on Member States to restrict the entry of aliens, or to establish differences between nationals and aliens. However, Paragraph 2 of the Article states that this Declaration shall not prejudice the enjoyment of the rights accorded by domestic law and of the rights which are available under international law, to an alien.

Article 3 says that every State shall make public its national legislation or regulations affecting aliens. It is not clear as to what is the underlying principle behind this Article, as, all laws are valid, only when they are made public, by notification in any public document or Gazette. Article 4 imposes an obligation upon aliens that they shall abide by the laws of the State where they reside, and shall respect the customs and traditions of the people of that State.

18 This is especially relevant in the context of illegal migrants, who are to be found in large numbers in the Middle East.
Article 5 guarantees certain rights to aliens, some of which are extremely ambitious:

a) Right to life and security of person.

b) Right to protection against arbitrary or unlawful interference with privacy, family etc.

c) Right to equal protection before courts, etc.

d) Right to choose a spouse and marry, to found a family; this is extremely ambitious, as, in many countries, aliens could acquire legal status by marrying a citizen, thereby changing their status from aliens to deemed citizen.

e) Right to freedom of thought, opinion, religion;

f) Right to retain their language, culture, etc.

g) Right to transfer abroad earnings, savings, etc.

h) Subject to reasonable restrictions, aliens shall be guaranteed the following rights also, viz.

   (i) right to leave the country
   (ii) right to freedom of expression
   (iii) right to peaceful assembly
   (iv) right to own property, subject to domestic law.

Article 6 states that no alien shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Whilst a “migrant” would necessarily be some one who is in employment, an “alien”, within the meaning of this Declaration, could be any individual, not necessarily in employment, who is found in a country other than his own. As such, protection, which is ordinarily available to a migrant or his family, is also available to an alien, i.e., a person not in employment in the host State.
Article 7 says that an alien, who is legally in the host country, may be expelled therefrom only in pursuance of a legally valid decision, and except in exceptional circumstances, should be normally given a show-cause, before he is expelled. This could be applicable for example, to any student in the host State, who may have over-stayed his residence visa. Article 8 grants some further rights to legal aliens, who, could be in employment in the host State, in view of the rights protected: -

a) the right to safe and healthy working conditions;
b) the right to join trade unions;
c) the right to health protection, medical care, social security, rest and leisure, etc.

Therefore, the difference between rights of migrants and right of legal aliens, is virtually obliterated here.

Article 10 gives the right to an alien to contact the Diplomatic or Consular staff of his home State.

This brief examination of some of the provisions of the above-mentioned Declaration gives an indication that not only the rights and freedoms of migrant workers are protected by international instruments, but, also those of aliens, who may or may not be in employment; if however, an alien is in employment in the host country, then, the rights which would be available to migrant workers, are also to be extended to him. There was not much need to comment upon the affairs subsisting in Saudi Arabia, in the context of this Declaration, because, when the Saudi position compares unfavourably in relation to the rights protected specifically for migrant workers, the position in respect of other aliens is expected to be much worse.

**CONCLUSIONS**

In this Chapter, it was attempted to consider the legal position as it operates in Saudi Arabia, as well as the practical application of it, vis-à-vis, international instruments. This was done to put the Saudi Legal system in comparative perspective, to gain some new insights. The comparison, unfortunately, remains an academic exercise, as, Saudi Arabia is not legally bound to implement any of the International
Instruments, of which we have taken note, nor there is any method, that it could be compelled to comply.

What would be apparent is that the Saudi legal system deserves a close look, preferably by the State itself, and, additionally by the United Nations and the ILO. The objective of such an examination should be to improve the position of the statute, so that, the reality on the ground would also see improvement. It is hoped that this study would further that effort and carry it forward.

This comparative study of International Standard vis-à-vis Saudi Labour Law System brings into forefront the pitiable problems of condition of the migrant workers. In the context of migrant Indian workers to Middle East countries specially Saudi Arabia, the study draws the attention of the social activists both National and International, to conclude that migrant labour is a commodity, which can misused.